

**REPORT ON PROCEEDINGS BEFORE**

**PUBLIC ACCOUNTABILITY COMMITTEE**

**INQUIRY INTO THE TRANSPORT ASSET HOLDING ENTITY**

**CORRECTED**

**At Sydney on Thursday 10 February 2022**

**The Committee met at 10:00.**

**PRESENT**

Mr David Shoebridge (Chair)

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Lou Amato  
Ms Abigail Boyd  
The Hon. Scott Farlow  
The Hon. John Graham  
The Hon. Daniel Mookhey  
The Hon. Peter Poulos

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



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**The CHAIR:** Welcome to the virtual hearing for the inquiry into the Transport Asset Holding Entity, otherwise known as TAHE. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land upon which the Parliament stands. I pay our collective respects to their Elders past, present and emerging. Today's hearing is being conducted as a virtual hearing. This enables the work of the Committee to continue during the COVID-19 pandemic. I would ask for everyone's patience if we have any technical difficulties as a result of the virtual hearing format. If participants do lose their internet connection or are disconnected, they are asked to simply re-join the hearing by the same link they were provided by the secretariat.

Today we will be hearing from the NSW Treasury, Transport for NSW, TAHE and the NSW Auditor-General. We will be hearing from these witnesses in circumstances where the Auditor-General and Audit Office's report on State finances was delivered only yesterday. I think it is fair to say that it made for disturbing reading. It is only appropriate that we test the position of Treasury, Transport and TAHE in light of those harsh findings from the Audit Office. 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. While parliamentary privilege is applicable to what witnesses say during their evidence, it is not applicable to statements made outside the hearing. Committee hearings are not intended to provide a forum for people to make adverse reflections. In that regard, we would appreciate, wherever possible, if people could stick to the issues rather than the personalities. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. It is a matter this Committee will uphold. There may be some questions that a witness can only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised they may take a question on notice and provide an answer within 21 days.

Finally, I will make a few notes on virtual hearing etiquette to minimise disruptions. I ask Committee members to clearly identify who questions are directed to and ask everybody to please state their name when they begin speaking. That may seem repetitive and iterative but it does greatly assist Hansard. Could everyone please also—and I would ask if you could commence this now—mute their microphones when they are not speaking. Please remember to turn your microphones back on, however, immediately prior to speaking. Members and witnesses should, wherever possible, avoid speaking over each other so that they can be clearly heard and recorded. Also, to assist Hansard, I would like to remind members and witnesses to speak directly into the microphone and, if possible, to avoid making comments while your head is turned away.

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**Mr SAN MIDHA**, Deputy Secretary Policy and Budget, NSW Treasury, before the Committee via videoconference, on former affirmation

**Ms CASSANDRA WILKINSON**, Executive Director Transport and Planning/Industry, NSW Treasury, before the Committee via videoconference, on former oath

**Mr STEWART WALTERS**, Chief Finance and Operation Officer, NSW Treasury, before the Committee via videoconference, on former oath

**Dr PAUL GRIMES**, Secretary, NSW Treasury, before the Committee via videoconference, affirmed and examined

**Mr SEAN OSBORN**, Director, Accounting Policy, NSW Treasury, before the Committee via videoconference, affirmed and examined

**The CHAIR:** I now welcome our first witnesses from NSW Treasury. There is now an opportunity, if Treasury would wish it, to give a brief opening statement. Does any witness from Treasury wish to take that opportunity?

**PAUL GRIMES:** Chair, I do not have an opening statement as such, but I think it would be helpful for the Committee for a few initial comments if that would assist the Committee.

**The CHAIR:** I do not mind the title, Dr Grimes. You can start now.

**PAUL GRIMES:** Thank you, Chair. Maybe to commence, I just indicate to the Committee that we really welcome the opportunity to appear before the Committee today and to assist the Committee in its consideration and look forward to being able to respond to the Committee's questions. As indicated at the outset, the Auditor-General's report raises a number of important and serious matters. Treasury takes those matters very, very seriously and very much is seeking to work with the Auditor-General in ensuring that we can properly address those findings and recommendations over the period ahead. For us, it is very, very important that we have strong processes and we have a strong relationship with the Auditor-General and the Auditor-General's office and that we engage effectively in the work that we are doing. So we take the findings very seriously and we will be responding quite positively to those.

Having had the opportunity to consider over the last day the report of the Auditor-General, I do believe it is appropriate to be initiating within the department an appropriate independent assessment of the processes adopted by Treasury in the preparation of the audit of the State financial statements. Importantly, an assessment of that sort will allow us to identify key lessons learned and to build those key lessons learned into our ongoing program of improvement to ensure that we are assisting the Auditor-General in the conduct of the audit as effectively and as efficiently as we possibly can. Also, it will provide an opportunity to ensure that we have got assurance around our systems and processes and also assurance around the way in which Treasury is engaging with the Auditor-General and her staff in the conduct of the audit. I thought it was appropriate to indicate to the Committee the intention to constitute an appropriate independent assessment of the processes through the audit. That will then allow us to better understand the circumstances and it will allow us to better identify key lessons learnt and build that into our program of work.

**The CHAIR:** Thank you, Dr Grimes.

**PAUL GRIMES:** Pleasure, Chair.

**The CHAIR:** Please assure me that you are not going to, in light of the reports from the Auditor-General, engage yet another external consultant to do that work. Please tell me that is not the path you are going down. You have actually read that part of the Auditor-General's report critiquing the over-reliance on external consultants? Tell me that is not the takeaway you have got.

**PAUL GRIMES:** No, Chair. If it is helpful for the Committee—I think it is most appropriate to engage a very experienced and respected individual who has deep experience in government finance and auditing practices.

**The Hon. DANIEL MOOKHEY:** Congratulations on your appointment, Dr Grimes, and thank you again to all the Treasury officials who are appearing either for the third time or the first as well. Dr Grimes, can I ask you in the first instance—having read the report from the Auditor-General, do you accept that that is a searing indictment of the integrity and competence of both the Government and NSW Treasury?

**PAUL GRIMES:** Mr Mookhey, as I indicated, I think the appropriate next step is to have a full assessment undertaken of the circumstances. Certainly, I would like to have the opportunity to have the benefit of

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an assessment of that sort to help us better understand the circumstances rather than drawing other conclusions at this stage before a process of that sort has been conducted.

**The Hon. DANIEL MOOKHEY:** Dr Grimes, I accept that you are new to the job. But, having read this report, what conclusion do you draw about the conduct of your department and the Government you serve?

**PAUL GRIMES:** Mr Mookhey, as I indicated at the commencement, I take—and indeed Treasury as a whole takes—the findings and observations that have been made by the Auditor-General very seriously. I think they do warrant serious consideration. And, I believe, a properly constituted, independent assessment is the appropriate process to be able to consider those matters to ensure that any key lessons learned are identified and then built into the approach that we take to [disorder].

**The Hon. DANIEL MOOKHEY:** Dr Grimes, the Auditor-General's inspection is an independent process. This is what the Auditor-General says in her foreword:

The challenges encountered in completing this year's audit were extraordinary and tested the constructive partnership between the Audit Office and NSW Treasury.

She goes on to say:

This has warranted an extreme risk finding for NSW Treasury to significantly improve governance processes ...

The Auditor-General, who is independent, has given this Committee and the public a clear sign that makes it appear as though the NSW Treasury and the New South Wales Government were engaging in a systemic campaign to mislead and deceive her and, for what it is worth, the Parliament when it comes to the matter of the Transport Asset Holding Entity. Apart from this intention to commit an independent review, are you going to hold a single Treasury official accountable? Is there going to be any interim action taken whatsoever in respect to the officials who have been responsible for this, on your part as the new leader of Treasury?

**PAUL GRIMES:** I think, Mr Mookhey, it is very, very important to ensure that there is proper process here on two levels. One is a proper process to identify the key actions that we need to take to provide assurance around our processes for engagement into the future. And I think it is important we do the work to support the identification of actions that we might need to build into our program of work. The second that you are raising some serious questions around the conduct of individuals, I think it is much more appropriate to have properly understood the circumstances before we start to draw very strong conclusions. I do not believe that would be appropriate. There needs to be proper process.

**The Hon. DANIEL MOOKHEY:** Dr Grimes, to be clear here, you are leaving a very clear impression that you think that the only error that Treasury has made has been process driven and not intent, which I find very difficult to square with the many, many references to Treasury's conduct littered throughout this report. Are you seriously suggesting that you are not going to take any action whatsoever even on an interim basis in light of the Auditor-General's devastating findings?

**PAUL GRIMES:** Mr Mookhey, it is very important that there is appropriate process. I would expect an experienced independent assessor—if there were matters that needed to be drawn to my attention as secretary, that the assessor would do that and that would provide the basis for the consideration of whether there was any further action required. It is important to take a properly considered approach rather than making—jumping to a particular conclusion before that has occurred.

**The Hon. DANIEL MOOKHEY:** Dr Grimes, are you suggesting that, in addition to the Auditor-General's report, you need another report to tell you that the conduct of your department in this respect has failed most, if not all, standards expected from the public service? Are you seriously suggesting we have to wait for another report from another independent source to, for want of a better term, either interrogate the Auditor-General's independent findings or provide an alternative one? That is the impression you are leaving.

**PAUL GRIMES:** I am seriously saying that the Auditor-General has not made conduct findings—

**The Hon. DANIEL MOOKHEY:** Is that because the Auditor-General does not have the power—

**The CHAIR:** Mr Mookhey, let Dr Grimes finish. He was saying, "has not made conduct findings".

**PAUL GRIMES:** Has not made conduct findings. The Auditor-General has raised concerns and as a result I believe the appropriate process is to actually consider those concerns properly through an independent assessment process. That will allow us to better understand the circumstances and to properly consider the processes and approaches that have been taken in engagement with the Auditor-General and the Auditor-General's office. So also a very serious indication from me that the comments that the Auditor-General has made would be taken quite seriously—and to provide assurance to you in that regard.

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**The Hon. DANIEL MOOKHEY:** Dr Grimes, will that process that you described have the power and authority to inquire into the conduct of the Treasurer or the Premier?

**PAUL GRIMES:** Any assessment that is undertaken would be an assessment of the department's processes. I think that is the appropriate scope of a departmental assessment process.

**The Hon. DANIEL MOOKHEY:** Let us just be clear here: Neither the conduct of the Premier's office, the conduct of the Premier as Treasurer or the current Treasurer could be inspected by the process that you are saying you need?

**PAUL GRIMES:** The process that I am suggesting, Mr Mookhey, is one looking at Treasury's engagement processes with the Auditor-General and the Auditor-General's staff in the conduct of the audit.

**The Hon. DANIEL MOOKHEY:** When will that process be complete, Dr Grimes? When will this independent assessment be completed?

**PAUL GRIMES:** At the earliest possible opportunity. I think it would be inappropriate for me to be putting very specific time frames on the conduct of that process right at the outset. Because in engaging an eminent, highly experienced assessor, I would expect that they would want to have some opportunity to properly and fully consider the matters. But clearly the sooner it can be concluded the better. Because we [disorder].

**The Hon. DANIEL MOOKHEY:** I appreciate that. Dr Grimes, which of the officials present were responsible for managing Treasury's liaison with the Audit Office?

**PAUL GRIMES:** I would have to refer to the officers. I imagine Mr Walters may be the appropriate person to respond to that. But I, having not participated in the audit itself—he may be better placed to respond.

**The Hon. DANIEL MOOKHEY:** Then I will direct these questions to Mr Walters on that basis, Dr Grimes. Mr Walters, on page 22 the Auditor-General says:

A key reason for the delay in signing the audit opinion for the TSSA related to the fact that information relating to TAHE was not shared with the Audit Office, or that information was not shared on a timely basis. This unnecessarily prolonged the audit process.

Why wasn't Treasury sharing information with the Audit Office in a timely manner?

**STEWART WALTERS:** Mr Mookhey, can you hear me, firstly?

**The CHAIR:** I think it would be good if you spoke up, Mr Walters.

**STEWART WALTERS:** Can you hear me, Chair?

**The CHAIR:** I would still ask you to speak up.

**STEWART WALTERS:** I am speaking as loudly as possible. Is that any help?

**The CHAIR:** We will deal with it as it is. Mr Walters, carry on.

**STEWART WALTERS:** Apologies. At the next juncture I will see if I can improve the sound quality. Mr Mookhey, in response to your question, we—sorry, can you hear me?

**The Hon. DANIEL MOOKHEY:** Yes, Mr Walters.

**STEWART WALTERS:** We provide information to the Audit Office regularly. We consult and meet weekly during the process of the audit.

**The Hon. DANIEL MOOKHEY:** Well, that is not what the Audit Office says. In fact—

**STEWART WALTERS:** If I may continue.

**The Hon. DANIEL MOOKHEY:** Sorry, Mr Walters. I thought you had completed.

**STEWART WALTERS:** No—not complete. We have a process with the Audit Office whereby we set out what we believe is relevant information as preparers to provide to them. We do all of that on a timely basis. We provide it typically in tranches so that we do not wait until the end. Similarly, the Audit Office will typically, and it is certainly in the case of the matter relating to the Transport Asset Holding Entity—it requested an enormous number of documents unparalleled in recent time given the nature and the complexity of TAHE. We categorised those. A number of them are not Treasury's documents as you might expect. [Audio malfunction] other agencies so we coordinated the collection of those. [Audio malfunction] met each week and provided tranches, ticked off lists, but worked closely with the Audit Office to make sure that we could provide to them all the documents they sought at the earliest possible juncture.

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Some of them were documents that had not yet been completed, I would note. For example, statement of corporate intent for TAHE—that was a matter for TAHE and its board. As soon as that was made available to us by them and signed off by the board, we provided that to the Audit Office. There were also a number of documents that the Audit Office requested that were Cabinet in confidence. We contacted the Department of Premier and Cabinet to facilitate them and it is only they that may release them—but they were released to the Audit Office to assist the Audit Office. We have done all of that throughout the period July through to December [disorder].

**The Hon. DANIEL MOOKHEY:** This is, I think, my last question—

**STEWART WALTERS:** —as soon as possible and everything that was requested of us.

**The CHAIR:** Mr Walters, I am going to allow Mr Mookhey to actually put the substance of the audit report to you. Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** It is this: Mr Walters, I struggle to reconcile your claim that information would have been provided in a timely manner when the Auditor-General provides one example to substantiate her criticism that Treasury was withholding information. She says on page 23:

Further, this process of seeking ordinary representations from NSW Treasury's management, that all key documents were made available to audit, was unnecessarily obstructive and difficult. Before management signed the representation to declare they had shared all relevant information, they shared at least a further 34 megabytes of data, or 23 reports (1,023 pages), with the Audit Office, around midnight, the morning of audit signing.

You cannot seriously be suggesting to this Committee that we should believe what you just said when the Auditor-General herself is clear that you were dumping thousands of pages of documents on her office at the morning that she was meant to sign the audit.

**STEWART WALTERS:** Thank you, Mr Mookhey. I will respond. As I said, we have provided the documents that we believed were relevant to the audit from State accounts and TAHE on a timely basis. We have also provided to the Audit Office all the documents that they have requested. But you correctly point out that the Auditor-General right at the end of the audit asked for the provision of a number of other documents. We did not believe they were relevant, but we take the request of the Audit Office extremely seriously, so we located all the relevant documents and the quote of 20-something documents immediately—in the immediate six or eight hours—and provided them to the Audit Office for completeness to ensure that they were able to consider everything that they believed appropriate. They received those documents. I believe they reviewed them and were comfortable that there was nothing that required them to either change their opinion or delay the issuing of an unmodified opinion. That was their right and we were respectful of that, but they asked us to make sure that we had provided everything we thought they needed. They identified some stuff that we had not considered necessary. It did not matter. We provided it to them as quickly as we could [disorder].

**The CHAIR:** Mr Walters, have you read this report?

**STEWART WALTERS:** The report that was released yesterday, Mr Mookhey?

**The CHAIR:** Mr Shoebridge. But, yes, have you read this report?

**STEWART WALTERS:** I'm sorry, Mr Shoebridge. I can see—

**The CHAIR:** Okay. Have you read the report?

**STEWART WALTERS:** I have read through as diligently as possible in the last 24 hours.

**The CHAIR:** I would invite you to read pages 22 and 23 of the report and digest it and genuinely respond to it if there are further questions put to you about it, because your response to date suggests you have not read the report. Dr Grimes, are you satisfied with Mr Walters' response given the content of the audit report, pages 22 and 23? Are you satisfied with Mr Walters' response?

**PAUL GRIMES:** Mr Walters is describing the circumstances, Chair. The important thing is to have a proper assessment of all of the circumstances here and I think I would prefer an opportunity to properly consider the full sequence of events through an assessment process.

**The CHAIR:** Dr Grimes, I am going to hand over to Ms Boyd now, but the hubris and the lack of humility from Treasury given these significant findings about the conduct of your officers—I find incredible. I will hand over to Ms Boyd.

**Ms ABIGAIL BOYD:** Thank you, Dr Grimes. I will direct my next question to you so you will have a chance to respond to that. Thank you for appearing today. I have sat here listening to your evidence so far, Dr Grimes, and I do share the Chair's concerns. You have referred to this damning report from the Auditor-General as containing "concerns" and "comments". This is a damning report card, not just on your department but on the

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Government itself. It shows a government in complete shambles. For you to now say that there will be some other sort of internal review indicates to me that you are not taking the Auditor-General's report seriously. What is your response to that?

**PAUL GRIMES:** I would be very sorry if you had that impression in any way. Indeed, Chair, any sense of behaving without appropriate accountability and humility—I would not want to convey that impression at all. Quite the contrary, actually. It is for that reason that I do believe it is important that we as a Treasury take the report very seriously—the findings of the Auditor-General very seriously—and we ensure that there is an effective follow-up. An effective follow-up, the appropriate approach, is to ensure that we have a full assessment of the circumstances that allows us to be able to properly identify the specific areas that we need to build into our processes to ensure that there is an excellent working relationship between the Audit Office and Treasury. There is a strong commitment by the staff in both organisations to maintain what has been a very strong relationship over the years. I have had excellent conversations with the Auditor-General in recent days and very much look forward to our further engagement and making sure that we address any concerns that the Auditor-General might have.

**Ms ABIGAIL BOYD:** I understand that this review that you are proposing will be just of the department. I note that we have seen significant departures from the Government. We saw the secretary of Transport and then, of course, most recently the secretary of Treasury stepping down or being pushed—who knows? You are now in this position. I ask you: As a result of this review, are we likely to see more public servants losing their jobs? How many public servants need to fall on their swords before you admit that it is this Government leadership that is the problem here?

**PAUL GRIMES:** I am indicating that the proper process for Treasury is to have a proper examination of the issues.

**Ms ABIGAIL BOYD:** Have you read the transcript or seen the footage of the last inquiry hearing that we had?

**PAUL GRIMES:** I have only seen parts of it. I have not seen all of it.

**Ms ABIGAIL BOYD:** Are you familiar with the statements that your predecessor, Mr Pratt, made at that time?

**PAUL GRIMES:** Only in very general terms. I do not have a full knowledge of all the things that Mr Pratt may have said.

**Ms ABIGAIL BOYD:** Do you stand by or have you identified anything in his statements that you would not agree with, particularly—

**PAUL GRIMES:** I have not reviewed his statements at that level, Ms Boyd.

**Ms ABIGAIL BOYD:** Okay. I will just lead you to some of them. He said—and this is on 16 December. Mr Pratt said, and I quote:

There has been a false narrative that TAHE was created to perpetuate an accounting trickery. That is wrong.

He then goes on to say that the "reform will deliver demonstrable and measurable benefits to the people of New South Wales." Finally, he says:

There has been a false narrative also about Treasury versus the Auditor-General. That is wrong.

Those statements—would you view them as being an accurate reflection after having read the Auditor-General's report yesterday?

**PAUL GRIMES:** I do not think it is appropriate for me to be providing commentary on previous statements. I can really only speak for myself, Ms Boyd. As a result I will confine my comments to my personal experience in the role as secretary of Treasury.

**Ms ABIGAIL BOYD:** Is it your view that the accounting treatment that was supposed to apply to TAHE was in fact incorrect as presented by Treasury?

**PAUL GRIMES:** It has been indicated by the officers previously and, indeed, indicated by the Auditor-General in her report—this was a particularly complex audit and raised a particularly complex set of accounting considerations. The auditor has pointed out areas where further work should be undertaken and we will have an important program of work responding to the findings of the Auditor-General and engaging with the Auditor-General on accounting treatments.



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**Ms ABIGAIL BOYD:** I note that there were a number of people who raised alarms in relation to the accounting treatment of TAHE. One of the most alarming parts, I think, of this Auditor-General's report is her comments on the risky over-reliance of Treasury on external consultants, particularly this forum shopping where, not content with one set of opinions, Treasury then went and sought other opinions or chose to rely on other opinions. It is not true, is it, to say that you were not aware of the risk of the accounting treatment around TAHE?

**PAUL GRIMES:** Are you asking me personally or the organisation—

**Ms ABIGAIL BOYD:** Sorry, Treasury as a department.

**PAUL GRIMES:** Treasury as a department—it may be more appropriate for me to refer to relevant officers in making observations about understandings within Treasury in the past.

**The CHAIR:** Maybe we will direct it to Ms Wilkinson. Ms Wilkinson?

**CASSANDRA WILKINSON:** Chair, I think it is fair to say that the treatment of TAHE required both Treasury and the Auditor to consider the application of standards and rules, some of which had been subject to change since the legislation to establish TAHE in the past. I think it is fair to say that many lengthy discussions and technical papers were produced so the principles that were underpinning TAHE's establishment could be tested and discussed. Many of those technical papers that Treasury wrote were considered by the Auditor-General. On many of them we agreed; on some of them, we did not come to an aligned view. We absolutely look forward to better aligning our views as we move forward with the additional work that she has proposed we do.

**The CHAIR:** Ms Wilkinson, you have not answered Ms Boyd's question about doctor shopping. You kept going and kept getting different expert opinions until you got the one you liked. Are you going to address that critique from both Ms Boyd and the Auditor-General?

**CASSANDRA WILKINSON:** If I may, Treasury sought advice from relevant experts on different topics. We certainly did not seek to have competing views on the same technical areas. I think some confusion has arisen because advice that was procured by other departments contained observations we did not agree with, but that has been canvassed in previous discussions at these hearings.

**Ms ABIGAIL BOYD:** Ms Wilkinson, do you now accept that your department got it wrong when it came to the accounting treatment of TAHE?

**CASSANDRA WILKINSON:** As I say, there are many areas of accounting where further technical work and discussion and interpretation of standards is necessary. I will say that people did their best to do very good work. We did our best work with our best intentions to deliver the policy that the Parliament passed and gave us the task to do. If the Auditor-General has suggestions on ways we can improve then we welcome that opportunity.

**Ms ABIGAIL BOYD:** Let me be very clear: Nobody is casting aspersions on the intention of department officials. However we now have, on the one hand, the PwC report, Mr Lyon's report; the Auditor-General—we have been questioning through this Committee for an entire year about the accounting treatment, basically saying, "There are real problems with the accounting treatment here." You are still relying solely on that one report that you got from KPMG that supported your accounting treatment, is that correct?

**CASSANDRA WILKINSON:** No—

**PAUL GRIMES:** Ms Boyd—

**CASSANDRA WILKINSON:** Ms Boyd, that is not correct. We rely on our own judgement. Our judgement is from time to time supported—we seek advice on technical matters, but ultimately the views we form and the advice we give to Cabinet is our own opinion. We have absolutely done our best to give the best advice we can and we stand by it. Having said that, as I say, many of these matters are areas of emerging understanding of the application of standards, and we absolutely look forward to improving our work in the future as best we can, working with the Auditor-General.

**PAUL GRIMES:** Ms Boyd—

**Ms ABIGAIL BOYD:** We all—sorry, just one final question. I will come to you in a moment, Mr Grimes.

**PAUL GRIMES:** Yes, thank you.

**Ms ABIGAIL BOYD:** Ms Wilkinson, we all make mistakes. We all do our best and then we adjust when new information comes to us. I appreciate that until this moment the reports I mentioned before have not changed your approach, but now that the Auditor-General has so very clearly laid out her concerns and commented

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on the accounting treatment, will you now accept that something needs to be done about the accounting treatment of TAHE?

**CASSANDRA WILKINSON:** I think it—

**PAUL GRIMES:** Ms Boyd, I think—

**CASSANDRA WILKINSON:** —has been quite clear on that topic.

**PAUL GRIMES:** Yes. Ms Boyd, I think it is appropriate for me—I can respond on this because I think it is important to have a clear line of sight to the fact that the Auditor has accepted the accounting treatment. The accounts are unqualified accounts.

**Ms ABIGAIL BOYD:** You are very lucky!

**PAUL GRIMES:** No, but it is important to maintain that in context. These are unqualified accounts. The issue that the Auditor has raised is the elaboration and further work that needs to be undertaken around the accounting treatment, and we will be following through very diligently, as I hope I have indicated to the Committee clearly earlier on.

**The CHAIR:** Dr Grimes—

**Ms ABIGAIL BOYD:** I would not crow too madly about the "unqualified" point, given that she has also suggested you go and speak direct with the ABS on a number of issues.

**PAUL GRIMES:** And even that is precisely the reason why I say we are very committed to—

**The CHAIR:** Dr Grimes, we are going to hand over to the Opposition now. I am sure we will talk about the \$25 billion changes you had to make to your accounts to get them unqualified—but the Opposition has the call.

**The Hon. DANIEL MOOKHEY:** A fine introduction to the question I was going to ask, Dr Grimes, and I pick up from there. You say the accounts are unqualified, but the better explanation of events is that the Auditor-General was going to qualify the accounts, she warned the Government and then the Government scrambled and injected an additional \$1.1 billion into TAHE in order to avoid the Auditor-General effectively saying that New South Wales' books were unreliable. That is actually what happened, is it not?

**PAUL GRIMES:** The circumstances are actually set out in the Auditor-General's report. Importantly, one of the key accounting issues here is around long-term gross of return, and the long-term gross—

**The Hon. DANIEL MOOKHEY:** Sorry Dr Grimes, [inaudible] respond directly to my question.

**PAUL GRIMES:** My intention is to respond directly to your question.

**The Hon. DANIEL MOOKHEY:** I know it is your intention, but I would ask you to respond directly to my question. It is not the case—the Auditor-General makes it clear on page 2, which states:

The Audit Office advised NSW Treasury that the 2020–21 TSSA would be qualified with respect to TAHE

Thereafter, the Government scrambled and kicked in an additional \$1.1 billion to avoid qualification. That is what actually happened, is it not, Dr Grimes?

**PAUL GRIMES:** And my response was that the Auditor actually sets out the circumstances, including the relevant chronology. It is set out in the Auditor's—

**The Hon. DANIEL MOOKHEY:** Thank you.

**PAUL GRIMES:** I was responding directly. I was responding directly to you—

**The Hon. DANIEL MOOKHEY:** Thank you, but now that you have agreed that that is what the audit report has said, let us actually talk about the substantial issue here—about what this means for the finances of the State. The Auditor-General states this on page 4:

There is an additional \$4.1 billion required over the following six years, which falls outside of the forward estimates period ... While this has been communicated to the government's Expenditure Review Committee, it is yet to be provided for in government's budget figures.

She goes on to say elsewhere in the report that this has been left to a future government to deal with. This is an absolute financial disaster for the budget of New South Wales, is it not, Dr Grimes?

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**PAUL GRIMES:** I do not think it is appropriate for me to be engaging in that sort of language, Mr Mookhey. Really the Auditor is just pointing out something that in some respects is not remarkable. What I am referring to is the preparation forward estimates is over a four-year period. That is the standard—

**The Hon. DANIEL MOOKHEY:** But the substance of the point—

**PAUL GRIMES:** —conventional approach to forward estimates, and the Auditor-General is pointing out that there will need to be decisions in future years to give effect to the arrangements that have been applied within the forward estimates period.

**The Hon. DANIEL MOOKHEY:** Then let us talk about what has happened within the forward estimates. Within the forward estimates, as stated in the half-year budget review, we have had to inject an additional \$1.1 billion in an additional allocation to Transport for NSW to be provided to rail operators as a part of the updated shareholder expectations for TAHE. Where is that \$1.1 billion coming from?

**PAUL GRIMES:** It would be coming from the budget.

**The Hon. DANIEL MOOKHEY:** We had to put aside \$1.1 billion of consolidated revenue in order to obtain unqualified accounts, is that correct?

**PAUL GRIMES:** And to indicate the intention for TAHE to be making an appropriate rate of return— and bearing in mind, Mr Mookhey, that there are a number of different transactions that occur here that are reflected in the budget, not just the payments that are made to TAHE but also TAHE, in earning a return, returns dividends to the Government [inaudible] its earnings—

**The Hon. DANIEL MOOKHEY:** Yes, but let us just be clear here: As a result of this disaster, at least in the next three years taxpayers are going to have to fork out another \$1.1 billion of borrowed money because fundamentally the Government got its accounts wrong.

**PAUL GRIMES:** And I am indicating that you need to consider all of the transactions, including the dividends that are paid.

**The Hon. DANIEL MOOKHEY:** Rest assured, Dr Grimes, that I have. According to the updated figures by the Auditor-General, the difference in licence and access fees that we paid Transport to pay TAHE and the amount of money TAHE then returns to taxpayers is negative \$13 billion. Accepting your logic, Dr Grimes, as a result of this decision New South Wales taxpayers will lose \$13 billion by the end of the decade. Pray tell, how is that not a fiscal and financial disaster?

**PAUL GRIMES:** I do not believe that is correct, and I will explain. The money would remain within the public sector. The accounting questions that are at issue are the division between the general government sector, the public non-financial corporations sector and the public financial corporations sector. I think it is important to understand that the money is staying within the public sector.

**The Hon. DANIEL MOOKHEY:** Is it not the case that according to the process that NSW Trains and Sydney Trains have to follow when it comes to ticket prices, they are going to have to put an application in to increase ticket fares in order to recover the additional money that they are paying in access fees? As a result of this, taxpayers are losing either way. They either lose from the budget or commuters have to pay more. That is the truth, is it not, Dr Grimes?

**PAUL GRIMES:** Again, you need to consider the full suite of the financial flows, not just a partial assessment of the financial flows.

**The Hon. DANIEL MOOKHEY:** Dr Grimes, are you prepared, therefore, to now guarantee that in your judgement taxpayers are not going to lose a cent and commuters will not face a single cent of fare increases as a result of the decision to create TAHE? Are you prepared to give us that guarantee?

**PAUL GRIMES:** You are asking me to give a policy guarantee, Mr Mookhey, and it is not—

**The Hon. DANIEL MOOKHEY:** No, that is the logical conclusion arising from your answer and the analysis that you have provided. Can Treasury give us this guarantee? [Inaudible]

**PAUL GRIMES:** No, my answer—

**The Hon. DANIEL MOOKHEY:** —fares will not rise or taxpayers will not lose a cent as a result of the decision to create TAHE?

**PAUL GRIMES:** My answer went to the accounting issues, Mr Mookhey, and the fact that TAHE is a public non-financial corporation. It is part of the whole of the public sector. The Government prepares consolidated public sector accounts. That is the point that I am endeavouring to make—

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**CORRECTED**

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**The Hon. DANIEL MOOKHEY:** Dr Grimes, let us treat this as a separate question: Can the Treasury give us an assurance that taxpayers are not going to lose a cent as a result of the decision to create TAHE and rail commuters will not face a cent of additional fare increases as a result of this controversial decision?

**PAUL GRIMES:** Again, you are asking me for a policy commitment.

**The Hon. DANIEL MOOKHEY:** Dr Grimes, one of the remarkable criticisms that the Auditor-General makes here is that she goes to the issue of Treasury's competence. On page 11 she states:

NSW Treasury presented late, unsophisticated, and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome of higher projected returns

She goes on to state:

All of these models were unsophisticated, containing errors, omissions, and/or poor logic.

I might need to address this to Mr Midha; I believe his team might have been responsible for that. Mr Midha, how is it possible that you got it so wrong?

**SAN MIDHA:** There are two parts to this. One is that the model that was originally done was prepared by TAHE. It is not a Treasury model. The 10-year model was well prepared by TAHE. I will actually hand over to Mr Walters to talk about the further scenario work that was done—

**The Hon. DANIEL MOOKHEY:** To be fair, Mr Midha—no, I am just asking for a direct response. I can take it up with Mr Walters if we need to, but I am asking you directly, Mr Midha. This is a criticism directly at Treasury. It states:

Treasury presented late, unsophisticated, and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome of higher projected returns

You were giving the Audit Office your preferred scenario hoping that she would tick it off. That is the truth, is it not?

**SAN MIDHA:** I do not understand exactly what you are referring to, because [inaudible] there is a number of different models and scenarios. Specifically, the fund flow model that was built for TAHE's returns—the 10-year model—was very thorough. That was built by TAHE; that we incorporated. Longer term scenarios were made—they were scenarios; they were not models—and that might be where that [inaudible] referred to—

**The Hon. DANIEL MOOKHEY:** Mr Midha, I will repeat the question and allow you to directly respond. The Auditor-General was very clear here. She states:

All of these models were unsophisticated, containing errors, omissions, and/or poor logic.

That is a stunning indictment of the competence of the NSW Treasury and the New South Wales Government. Would you like to respond?

**SAN MIDHA:** I cannot find why the Auditor-General obviously has said it. I am comfortable that the models that we created are still the ones that are being used. Those models have been signed off by the Auditor-General and [inaudible].

**The Hon. DANIEL MOOKHEY:** We are still using these—

**SAN MIDHA:** Sorry?

**The Hon. DANIEL MOOKHEY:** We are still using these models?

**SAN MIDHA:** Absolutely.

**The CHAIR:** That might be an appropriate time, Mr Mookhey. Mr Midha, have you read the audit report?

**SAN MIDHA:** Not completely, no.

**The CHAIR:** It is not long. I had a busy day yesterday. This is not my day job, doing the Treasury work. You are telling me you came to this Committee without having read the audit report?

**SAN MIDHA:** I got through some of it but not all of it in detail.

**The CHAIR:** I tell you what: I will help.

**PAUL GRIMES:** Chair, I think it is appropriate for me to say something at this point. Mr Midha is not the sole senior official who has responsibilities here. Mr Walters, as he has indicated, plays a huge role—

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**CORRECTED**

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**The CHAIR:** Yes, Mr Walters has not read all of the report either. Nor have you, Dr Grimes. We have got limited time. If you are interfering to seek to indicate that there might be other people who can handle questions—

**PAUL GRIMES:** No, I am not doing that, Chair. I just provide you with assurance that I am explicitly not—

**The CHAIR:** Have you read the report, Dr Grimes?

**PAUL GRIMES:** What I was seeking to do—

**The CHAIR:** Have you read the report, Dr Grimes?

**PAUL GRIMES:** Yes, I—

**The CHAIR:** I asked Mr Midha if he had read the report and you are seeking to interfere with my questioning. Why are you doing this?

**PAUL GRIMES:** Chair, I am not seeking to interfere with your questioning. My intention is to assist you.

**The CHAIR:** Well then, can you answer whether or not Mr Midha has read the report?

**PAUL GRIMES:** What I am seeking to do in assisting you is to indicate to you that Mr Midha is not the only senior official—

**The CHAIR:** Mm-hmm.

**PAUL GRIMES:** —responsible here, and so—

**The CHAIR:** Thank you, Dr Grimes. It is actually not of assistance. I am more than happy for you to butt in when it is of assistance; it is not of assistance here. I will go back to Mr Midha. Mr Midha, to assist: The audit report makes a series of fundamental criticisms to the models that you presented, being Treasury, to support the valuation for TAHE. Have you read the part of the Audit Office's report that identifies those specific criticisms, Mr Midha?

**SAN MIDHA:** The models are developed by the accounting team, and that is why there is a number of models; it is not—

**The CHAIR:** Have you read that bit of the report?

**SAN MIDHA:** [Inaudible]

**The CHAIR:** Mr Midha, it will be simpler if you answer the question. Have you read that bit of the report?

**SAN MIDHA:** Like I said, I have read parts of the report and I am—

**The CHAIR:** Alright. Have you read the bit where the errors were identified? I will put the first error: Were you aware that the Auditor-General was deeply critical of the models because they excluded:

... TAHE's original asset write down value of \$24.8 billion (later amended to \$20.3 billion when access fees were amended) being holding gains/losses arising from valuation changes

There was a \$20 billion-plus error in the model. Were you aware of that?

**SAN MIDHA:** I will have to defer that. That work was done by the accounting team. I am not close to that work, so I will defer to Mr Walters.

**The CHAIR:** To be clear, you are not aware of the \$20 billion mistake. Mr Walters, are you now aware of the \$20 billion-plus error in the model?

**STEWART WALTERS:** Chair, I have read those papers that you refer to so I am happy to respond.

**The CHAIR:** Do you accept there was an at least \$20.3 billion error in the model presented to the Audit Office?

**STEWART WALTERS:** Chair, if I may, we provided a model based on the TAHE valuation as Ms Wilkinson described. It was a 10-year model with [inaudible] cash flow, balance sheet—a reasonable degree of sophistication. Included in that was our technical assessment at the time that the writedown of the asset was not part of the returns sought. The Audit Office disagreed with that assessment. As a result, in the next iteration that we worked through with them we made those adjustments. I just would—

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**CORRECTED**

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**The CHAIR:** You made a \$20.3 billion change between 16 December and 18 December because the Audit Office would not sign off on your modelling if you did not include it. Is that not right, Mr Walters?

**STEWART WALTERS:** That is incorrect, Chair.

**The CHAIR:** When did you make the \$20 billion change, then?

**STEWART WALTERS:** [Inaudible] provided, as I said, a 10-year model based on TAHE several months before that. The Audit Office disagreed with our technical assessment of whether you include the writedown or not in the definition of the—

**The CHAIR:** When did you make the change? When did you put the \$20 billion writedown into the model?

**STEWART WALTERS:** We provided additional scenarios to those models much earlier than the date you just referred to—16 December—as indicating this is what the returns would look like if we acknowledged your technical assessment or—

**The CHAIR:** Mr Walters, you now grudgingly acknowledge that that was wrong and you have put the \$20 billion writedown in. That is the case, is it not? Or are you wanting to change the accounts that you presented to the Audit Office?

**STEWART WALTERS:** All I am saying, Chair, is that we had, using our best information and our technical assessment—

**The CHAIR:** You got it wrong, Mr Walters! You got it more than \$20 billion wrong. Are you going to accept that now?

**STEWART WALTERS:** We adjusted the model. The Audit Office believed that that was correct to include the writedown. We made that correction. On 16 December the final models were provided to the Audit Office. They included, as you indicated, the writedown [inaudible] as a return.

**The CHAIR:** What about the \$15 billion you just made up? The \$15 billion where—I will use the Audit Office's words—you included:

... possible future cumulative revaluation increments of \$15.0 billion, which could not be supported with any evidence to explain how it was derived, and was described as a 'plug' figure

How on earth could you present a model where you just made up a \$15 billion plug figure, Mr Walters?

**STEWART WALTERS:** Chair, we provided a 10-year model that showed the returns—

**The CHAIR:** No, answer about the \$15 billion figure you made up. That is what I want to know the answer on. How do you justify bodgying up the figures and putting a \$15 billion made-up figure in the accounts to give the Audit Office?

**STEWART WALTERS:** I did a 10-year model that showed the returns from TAHE. The Audit Office was not satisfied with the 10-year model—

**The CHAIR:** Because you made up a \$15 billion figure! Deal with the \$15 billion figure, Mr Walters.

**STEWART WALTERS:** Chair, the Audit Office asked us to provide a longer term model that showed the returns over a much longer period such that they would provide a return of equity and the writedown. We were very clear with the Audit Office: "We will do so, but please acknowledge that we don't have a level of sophistication at this point that goes out to 35 years." That is a reasonably large request in a short period of time. We did as best as possible to create a scenario that ran for 35 years.

**The CHAIR:** Dr Grimes, are you satisfied with Treasury providing models to the Audit Office which include \$15 billion figures that are presented without any evidence and are described as a "plug" figure? Are you satisfied with that, having read the Audit Office's report?

**PAUL GRIMES:** I want to assure you, Chair, I have read the Auditor's report. As I indicated at the commencement of this hearing today, I provide assurance to the Committee that we are taking the observations that the Auditor has made very seriously. It is for that reason that I believe it is appropriate to have a well-constituted, independent assessment conducted of our processes that will allow us to properly consider questions of that sort.

**The CHAIR:** Mr Pratt, your immediate predecessor, in his opening sentence of his opening statement to this Committee just at the end of last year—only days before there was a \$25 billion turnaround in the accounts—stated that in relation to TAHE there was "no budget black hole". That was plainly wrong, was it not,

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**CORRECTED**

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Dr Grimes? Your predecessor was effectively misleading this Committee because he knew that there was this \$20 billion in revaluation and then a further \$5 billion that had to be found in the next 10 years. It was plainly wrong, was it not, Dr Grimes?

**PAUL GRIMES:** I do not believe, Chair, that it is appropriate for me to comment on statements made by witnesses in the past. I do not believe that it is an appropriate thing to do. All I can do is comment on current circumstances.

**The CHAIR:** Alright. At the time that Mr Pratt gave his evidence on 16 December Treasury was aware of the fact, was it not, that there was going to have to be an additional \$5.1 billion pumped into TAHE over the next 10 years because of the Audit Office's concerns, and it would have to recover a \$20.3 billion asset writedown between now and 2052? Treasury was aware of that as at 16 December, was it not?

**PAUL GRIMES:** Again, Chair, I think—and again, I [inaudible].

**The CHAIR:** No, answer my question, Dr Grimes. Treasury was aware of that on 16 December, was it not?

**PAUL GRIMES:** It is not my role to be commenting on—

**The CHAIR:** Well, if you will not answer it I will go to another witness. Ms Wilkinson, Treasury was aware—

**PAUL GRIMES:** [Inaudible] my intention is not to be unhelpful, Chair.

**The CHAIR:** Well answer the question then, Dr Grimes. Treasury was aware of this on 16 December, was it not?

**PAUL GRIMES:** Which thing specifically?

**The CHAIR:** That the Audit Office was going to require an additional \$5.1 billion to be put into TAHE over the next 10 years, and there was a \$20.3 billion asset writedown that had to be recovered over the next 30 years. Treasury was aware of that on 16 December when Mr Pratt gave his evidence, was it not?

**PAUL GRIMES:** The appropriate approach is to refer—as you indicated, Chair—to the officials who were here at that time.

**The CHAIR:** Ms Wilkinson, Treasury was aware of the Audit Office position on this, was it not, on 16 December?

**CASSANDRA WILKINSON:** We were in ongoing discussions with them about their [inaudible].

**The CHAIR:** No, Ms Wilkinson, please answer the question directly. Treasury was aware that the Audit Office had that position on 16 December, was it not?

**CASSANDRA WILKINSON:** If I may phrase the question differently [inaudible] so that I can be clear—

**The CHAIR:** No, please answer the question. Treasury knew at 16 December last year that in order to get an unqualified audit opinion it had to put at least \$5.1 billion more into TAHE over the next 10 years and had to recover a \$20.3 billion asset writedown over the next 30 years. Treasury was aware of that on 16 December, was it not?

**CASSANDRA WILKINSON:** I do not agree with the way you have characterised that. Negotiations were ongoing at that time.

**The CHAIR:** Ms Wilkinson, are you seriously saying to this Committee under oath that you did not know that the Audit Office had at least a \$25 billion difference of opinion with you and Treasury as at 16 December? Is that seriously your evidence? We will have the Audit Office later to clarify this.

**CASSANDRA WILKINSON:** You have asked me the question two different ways. Was I aware of the Audit Office's views? Yes, of course I was; I was meeting with them very regularly. But initially you asked if Treasury was aware that we had to make adjustments on that day. No adjustments had been agreed on that day. We were still in discussions with the Audit Office at that time.

**The CHAIR:** Ms Wilkinson, the truth of the matter is—

**PAUL GRIMES:** [Inaudible]

**The CHAIR:** No, Dr Grimes, we will get to you. Ms Wilkinson, the truth of the matter is—sorry, Mr Mookhey—the truth of the matter is that Treasury gave misleading evidence to this Committee at the end of

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**CORRECTED**

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last year knowing full well there was a multibillion-dollar problem with TAHE and then pretending to us that it was all fine, there was no black hole and this was some kind of media conspiracy. The evidence of Treasury on the last occasion was plainly wrong, was it not?

**CASSANDRA WILKINSON:** I do not accept your characterisation but I cannot comment on other witnesses' testimony. But what I told you was correct: We were of course aware of the Auditor-General's opinions. We had not yet agreed on a treatment that we would implement at that time.

**The Hon. DANIEL MOOKHEY:** Can I just pick it up there, Chair? Ms Wilkinson and Mr Midha, how can you say that given Mr Pratt made that statement at 12 o'clock on 16 December and then at 3.00 p.m. the Treasury and the Government released a half-year budget in review that kicks in an additional \$1.1 billion? It just defies all logic or credibility that we could believe that you did not have any idea or the position was not finalised, when literally after Mr Pratt and Treasury leaves here you issue a half-year budget review that kicks in an additional \$1.1 billion. It was the same day! How can you honestly expect us to believe that you were giving accurate evidence to this inquiry when it is clear Treasury knew on 16 December, when Mr Pratt made that statement to this Committee?

**CASSANDRA WILKINSON:** If I may, Mr Pratt referred to the half-year in his evidence on that day. What we knew was disclosed on the day because it was in the half-year review and Mr Pratt referred to the half-year review.

**The Hon. DANIEL MOOKHEY:** Yes, but the Chair's question was whether you were misleading this Committee.

**CASSANDRA WILKINSON:** Well, I [inaudible].

**The Hon. DANIEL MOOKHEY:** Let me finish, Ms Wilkinson. It is abundantly clear that the Treasury—or at least the conclusion that we should draw is that Mr Pratt's statement was on behalf of the Treasury. We checked it; it was on made behalf of the Treasury. Treasury was misleading this Committee on 16 December because it knew it was about to announce an additional \$1.1 billion to go into TAHE. That is the most reasonable interpretation of events, is it not?

**CASSANDRA WILKINSON:** I believe Mr Pratt referred to the half-year in his evidence. I am happy to take this question in more detail on notice to make sure we give you an absolutely accurate response, but my recollection was that our secretary at the time referred to the half-year in this evidence. We would not have understood that your Committee had the opportunity to have the updated information in the half-year review. I am very happy to take this question on notice to make sure we give you an accurate response.

**The Hon. JOHN GRAHAM:** Mr Grimes, can I ask about another part of this time line? I want to return to those questions my colleague was asking about the 34 megabytes of data, the 23 reports, the 1,023 pages which were delivered around midnight. I just want to be clear on the date they were delivered. That was midnight late on Thursday 23 December or the morning of Friday 24 December, is that correct?

**PAUL GRIMES:** I will refer to the relevant officers who were involved with that period. I believe perhaps Mr Walters is the appropriate person to respond.

**STEWART WALTERS:** That is correct.

**The Hon. JOHN GRAHAM:** And who transmitted those documents from the Treasury?

**STEWART WALTERS:** I will take it on notice, but just one of the Treasury officials.

**The Hon. JOHN GRAHAM:** Who directed that they be transmitted?

**STEWART WALTERS:** I would have directed them.

**The Hon. JOHN GRAHAM:** The following day or perhaps later that day, depending on whether it was just before or just after midnight, the Treasurer and NSW Treasury signed a consolidated financial statement. At what time did that occur?

**STEWART WALTERS:** I would have to check the precise time, but it would have been afternoon or thereabouts.

**The Hon. JOHN GRAHAM:** So the afternoon that day, and you are referring to when the NSW Treasury signed the consolidated financial statements. When did the Treasurer sign the statements?

**STEWART WALTERS:** It would have been some point that day, Mr Graham.

**The Hon. JOHN GRAHAM:** So it would have been after the Treasury had signed them.



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**CORRECTED**

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**STEWART WALTERS:** Yes, the process for signing is that the secretary and myself sign the accounts first and then the Treasurer does similarly. We provide those back to the Audit Office, and we then follow with the provision of their audit opinion.

**The Hon. JOHN GRAHAM:** So late on Friday 24 December, the Treasurer signed the account. Were the Treasury officials and the Treasurer together at that time, or were you physically separate at that time?

**STEWART WALTERS:** It was carried out virtually, Mr Graham. We provided the documents in hard copy to his office, and then the briefing was done virtually.

**The Hon. JOHN GRAHAM:** And where was the Treasurer? Was he at his office in 52 Martin Place?

**STEWART WALTERS:** I will take that on notice, where he precisely was.

**The Hon. JOHN GRAHAM:** Who were the Treasury officials involved in that signing and that briefing?

**STEWART WALTERS:** The formal written brief provided to the Treasurer is collated by a number of officials. For the signing and that final briefing verbally with the Treasurer, given that we were in a virtual environment, that was myself that provided him with the opportunity to ask questions at a virtual briefing, Mr Graham.

**The Hon. JOHN GRAHAM:** Was the Premier or the Premier's office briefed by Treasury?

**STEWART WALTERS:** On what, precisely?

**The Hon. JOHN GRAHAM:** On the signing. Were they briefed on or about 24 December?

**STEWART WALTERS:** I am not aware; I would have to take that on notice. The typical convention is to provide a briefing to the Treasurer's office in advance during the process and then finally before signing, but I will take on notice whether the Premier—

**The Hon. JOHN GRAHAM:** Thank you. I will hand to my colleague.

**The Hon. DANIEL MOOKHEY:** When did the shareholding Ministers, the Treasurer and the finance Minister, issue the letter that updated their statement of expectations. What date?

**STEWART WALTERS:** I will ask one of my colleagues to assist. I am not across that information, Chair.

**The Hon. DANIEL MOOKHEY:** Was it after 16 December? Dr Grimes, you may refer this to whoever you wish to. When did the Treasurer and the finance Minister issue the letter that updated their expectation on their returns from TAHE?

**PAUL GRIMES:** I might just check to see which officer is best placed to answer that question, Mr Mookhey.

**SAN MIDHA:** I am not sure I am aware of the date. We can take that on notice and come back.

**The Hon. DANIEL MOOKHEY:** Mr Midha, did you ever have any conversations with the CEO of TAHE, either in writing or verbally, in which you encouraged them to unilaterally changed their expectations or to reopen the access agreements?

**SAN MIDHA:** I would have spoken to the CEO about the change of the return. Yes, I probably would have updated—

**The Hon. DANIEL MOOKHEY:** Did the CEO of TAHE ask the Treasurer to formally issue a letter to change the statement of expectations at any time from 14 December? Did the CEO refuse your request and insist on the Treasurer issuing TAHE with a formal letter to update his expectations around 23 December?

**SAN MIDHA:** I am not sure what the formal process was. I can take that on notice and we can return.

**The CHAIR:** Mr Mookhey, we have to go to Ms Boyd.

**Ms ABIGAIL BOYD:** I will direct my question to Mr Midha. We have had a number of conversations over the past year, both in budget estimates and in the context of this inquiry, where I have asked you for your opinion in relation to the accounting treatment of TAHE, because I had been directed to you by the former secretary. You assured me a number of times that you were not concerned about the accounting treatment of TAHE. At the last hearing on 16 December, in particular, I asked you again directly: Are you concerned about the independence consideration around the accounting treatment of TAHE? Have you read the bit of the report from the Auditor-General that makes it very clear that those assumptions you were working on were incorrect?

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**CORRECTED**

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**SAN MIDHA:** Sorry, what specific assumption?

**Ms ABIGAIL BOYD:** Around the independence, around the control and around what the classification of the entity should be with the ABS. Having at least glanced at the report, I hope, do you now admit that you got it wrong?

**SAN MIDHA:** No, we have not. The accounts that have been signed off take into account the independence of TAHE and the rate of return, so right now we are comfortable that this is an unqualified set of accounts that indicate that it is a commercial entity. There are things that have been raised by the Audit Office—as Mr Grimes just pointed out—that we will closely look at, do an assessment and understand how we can improve this process as we go forward to make sure that tension needs to be the case in terms of its lending status and in terms of its accounting status.

**Ms ABIGAIL BOYD:** Can we just clarify: The report from the Auditor-General was going to be qualified. It is only unqualified now because of the \$5.2 billion of public money that will now be pumped into TAHE. Is that not correct?

**SAN MIDHA:** As Dr Grimes pointed out, it is within the government. There is no impact to the financial status of the government. Within the stock the PNFC has [disorder].

**The CHAIR:** If you answer the question, Mr Midha, this will happen much more quickly. Ms Boyd asked a specific question. Please answer that.

**SAN MIDHA:** The question was—there is an incremental cost to government.

**Ms ABIGAIL BOYD:** The accounting treatment would not work or would not have been signed off on by the Auditor-General if that \$5.2 billion had not been committed. Is that correct?

**PAUL GRIMES:** Ms Boyd, are you happy for me to just respond to your question?

**Ms ABIGAIL BOYD:** I would like to ask Mr Midha, because he is the one that I was directed to previously by your predecessor in relation to these issues.

**PAUL GRIMES:** I understand. If it is helpful, I am happy to respond as well, but if you wish to direct the question then I will obviously respect that.

**Ms ABIGAIL BOYD:** Thank you. Mr Midha?

**SAN MIDHA:** So the process that we were working through with the Audit Office. The numbers are—I cannot remember if it was \$5.1 billion. Over which period was this? This was the \$5.1 billion over 10 years?

**Ms ABIGAIL BOYD:** That is correct, with an unknown amount in the future or a substantial amount to come for future governments and generations, yes.

**SAN MIDHA:** Potentially, but I think it is a mix of a number of different things. The accounts that we have that were current within the four years of the forecast—the modelling we have is that we are totally comfortable with those adjustments that were made.

**Ms ABIGAIL BOYD:** Could you answer my question? Without the commitment for the \$5.2 billion over the next 10 years, the accounting treatment would not work. Is that not correct?

**SAN MIDHA:** That is an opinion. We have got to work on the facts. [Disorder].

**PAUL GRIMES:** I think it is appropriate for me to respond.

**Ms ABIGAIL BOYD:** Fine.

**PAUL GRIMES:** The point that you are making is that that was required to support the earnings assumptions to give effect to the PNFC sector, and this was precisely the engagement that occurred.

**Ms ABIGAIL BOYD:** Dr Grimes, I think I only have time for one last question. I appreciate that you have not been the Secretary of Treasury for very long but, from my perspective, we have been looking into this for about a year. At every turn, it appears that the Treasury have been scrambling to make an accounting treatment work for TAHE that simply does not work. The latest we have is this \$5.2 billion of public money being used to plug the hole. We have seen multiple consultants' reports, at a huge cost to the public purse, being used to try to paper over the cracks in this accounting treatment. Now we have a report from the Auditor-General, and I want to quote one part of that to you right now because I think this is the most damning part in relation to TAHE. She says:

NSW Treasury presented late, unsophisticated, and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome ...

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**CORRECTED**

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That is absolute confirmation of what this Committee has seen over the past year. What is your response to that?

**PAUL GRIMES:** The response is on a couple of levels. Importantly, as I have indicated to the Committee right at the outset, I would like to fully understand the circumstances with a properly constituted independent assessment, which I think will be very valuable in properly reviewing circumstances and, indeed, giving the Committee confidence and assurance in the processes that we have been following. The next point to make, I think, is to not lose sight of the fact that there are accounting questions here around the proper justification of—

**Ms ABIGAIL BOYD:** Sorry, can I just interrupt you, because time is short and that is not quite in line with the question. I just want to direct your focus, because what I am getting at here is that the Auditor-General is not saying these were just mistakes. She is implying that they were deliberately done in order to get the desired accounting treatment.

**PAUL GRIMES:** This is the additional amounts that were provided to support the higher rate of return.

**Ms ABIGAIL BOYD:** This is not just about a difference of opinion on accounting treatment. What the Auditor-General is saying is that she was deliberately misled in order for Treasury to get the outcome it wanted on the accounting treatment.

**PAUL GRIMES:** That was not quite the way I read it, Ms Boyd.

**Ms ABIGAIL BOYD:** I suggest you read it again.

**PAUL GRIMES:** I am just trying to make sure I am properly understanding your question. But if your question is, "Was there a policy decision to make additional contributions to the rail operators to support higher rail access fees, to in turn support the TAHE making a 2.5 per cent rate of return?"—

**Ms ABIGAIL BOYD:** That is not what I am suggesting.

**PAUL GRIMES:** Maybe I have misunderstood. I have not intended to misunderstand your question.

**Ms ABIGAIL BOYD:** That is okay. Let me repeat what the Auditor-General has said. She said, "NSW Treasury presented late, unsophisticated"—that one has to really sting, I think—"and inaccurate forecasts." But then the important bit: She goes on to say, "all of which sought to support the desired outcome". That implies not just an error but a deliberate misleading, don't you think?

**PAUL GRIMES:** I did not read it quite in those terms. Appropriately, you could refer that question to the Auditor-General, but I did not read it in those terms and honestly did not read it in those terms. The way I read it was in terms of supporting the accounting treatment and ensuring there is an appropriate basis for the accounting treatment. That was the way I read it, but I do recognise, Ms Boyd, that that is appropriate to raise with the Auditor-General.

**The CHAIR:** At least you read it, Dr Grimes.

**PAUL GRIMES:** Oh, indeed.

**The CHAIR:** If you want to persuade this Committee the Treasury has taken on board the concerns of the Audit Office, including the "extreme risk" finding against your office, and will be looking to remedy the defects then I would suggest that you get the deputy secretary and the chief finance and operations officer to read the report before they come and present sworn testimony to this Committee next time. I am astounded that basic due diligence did not occur from a deputy secretary in your office and also from your chief finance and operation officer. I do not know if you wish to make an excuse or an apology for it now, but I am astounded that basic due diligence did not occur before coming to this Committee, Dr Grimes.

**PAUL GRIMES:** Chair, just assuring the Committee that we will be working very diligently through the issues and look forward to further engagements with the Committee [disorder].

**The CHAIR:** It all starts with reading the report, Dr Grimes. Thank you all for your evidence today.

**PAUL GRIMES:** I have read the report very carefully.

**The CHAIR:** Thank you for your evidence today.

**PAUL GRIMES:** Thank you, Chair.

**The CHAIR:** We will have a short recess until 11.30, and then we will have the Secretary for Transport for NSW.

**(The witnesses withdrew).**

**CORRECTED**

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**(Short adjournment)**

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**CORRECTED**

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**ROB SHARP**, Secretary, Transport for NSW, before the Committee via videoconference, on former oath

**The CHAIR:** I welcome our next witness to the Committee, Mr Rob Sharp, the Secretary for Transport for NSW. I give you this opportunity, if you wish, to make a brief opening statement.

**ROB SHARP:** Thank you. Yes, I will take that opportunity. I welcome the opportunity for the second time to be here at the parliamentary Committee in my capacity as Transport secretary and am happy to answer any questions in respect of the establishment or operation of TAHE, particularly around the safety assurance and licensing arrangements that are embedded in the model. The transition from RailCorp strengthened existing governance, establishing TAHE as a State-owned corporation. It was established with the aim of improving the value of assets and managers and to deliver a range of commercial services and projects to improve the transport system.

As secretary, I have been involved with the establishment of TAHE, and I can confirm that I see strength in governance and assurance mechanisms in relation to the safe operation and maintenance of our heavy rail networks. That has been a key area of focus since standing up TAHE. Transport Asset Holding Entity's assets have operated safely, and we continue to maintain those assets—this is Transport for NSW, Sydney Trains and NSW Trains. The Country Regional Network is operated and maintained by UGL. Importantly, as I have mentioned before, the accredited rail transport operators, Sydney Trains and NSW Trains, continue to take the lead safety role regardless of the asset ownership. They have continued to run the operation and the day-to-day customer services, and this is pursuant to the rail operations agreement and legislation. I just want to reiterate that safety does remain the number one priority across Transport's operations.

There has been quite a bit of press around licence fees and farebox revenue, and I just want to take the opportunity to provide a bit of clarity on that topic. The two are wholly unrelated so, whilst access and licence fees are an element of the TAHE operating model, there is no connection between the access fees and the ticket prices. This reflects the commercial arrangement separating ownership and service delivery. Sydney Trains' TrainLink payments to TAHE for access fees are managed through a budget process. Ticket prices are established through a process overseen independently by IPART, the Independent Pricing and Regulatory Tribunal, and that process is not influenced by the associated access fees. We do see benefits from having TAHE in the rail system. One is that it has been established as a strategic asset manager, holding and also financing transport assets. Transport does remain accountable for the long-term transport strategy across all modes, but that does include heavy rail, including initiating heavy rail related projects, aligned with the strategy and ultimately the outcomes of government policy.

Sydney Trains and NSW Trains are the operators of public passenger services and continue to operate those. The establishment of TAHE has provided the opportunity for the operations to be dedicated, and Transport is focused on delivering safe, reliable services. All the commercial activity across the substantial network is now accountable—the accountability of TAHE—so the commercialisation of property, for example, would sit with them. Just to close, thank you for the opportunity to speak on how Transport for NSW is working across government to continue to deliver safe and reliable public transport outcomes. Thank you, Chair.

**The CHAIR:** Thanks, Mr Sharp. That is very comforting. I will hand over to Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** [Inaudible]

**The CHAIR:** You have done it again, Daniel.

**The Hon. DANIEL MOOKHEY:** Sorry, Chair. Thank you, Mr Sharp, for your appearance today. Just a very basic and preliminary question: After the new ministerial order arrangement, who is currently the portfolio Minister for the Transport Asset Holding Entity?

**ROB SHARP:** The portfolio sits with Minister Elliott in his role as Minister for Transport.

**The Hon. DANIEL MOOKHEY:** Mr Sharp, were you advised on or about 14 December last year that the Auditor-General was likely to qualify the State's accounts with respect to TAHE?

**ROB SHARP:** My involvement with the Auditor-General was purely as a director sitting on the TAHE board, so I had no direct communication or relationship with the Auditor-General through that process. The accounts were a matter for Treasury, ultimately, at the government level, and the TAHE board and the chair of TAHE in signing off the TAHE accounts.

**The Hon. DANIEL MOOKHEY:** Just to be clear, in your capacity as Secretary of Transport, independently of your membership of the board, you were never advised that the Auditor-General was intending to qualify the State's accounts.

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**CORRECTED**

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**ROB SHARP:** No.

**The Hon. DANIEL MOOKHEY:** So how did you become informed that there was an issue to do with the Transport Asset Holding Entity that necessitated the reopening of the access agreements?

**ROB SHARP:** The process through which I became aware was partly on the board but also the TAHE organisation approaching Transport in regard to the upcoming commercial negotiations. Those negotiations have commenced now, basically as part of the February-March budget process. My team and I received an approach in December flagging that there had been a change to the returns, and they were flagging to us that there would be the expectation that the negotiations that would commence in February-March would take that into account.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Sharp. Just to be clear, you said in December?

**ROB SHARP:** In December.

**The Hon. DANIEL MOOKHEY:** Was it 14 December?

**ROB SHARP:** I would have to take on notice the specific date of that communication.

**The Hon. DANIEL MOOKHEY:** I do not need the specific date; I just need it thereabouts.

**ROB SHARP:** It would have been around that date. It would have been in mid-December, because we worked with TAHE in the lead-up to Christmas in regard to what that negotiation framework would look like.

**The Hon. DANIEL MOOKHEY:** And you were not told by the Secretary of Treasury at the time, Mr Pratt. You found out as a result of either your membership of the TAHE board or TAHE approaching Transport to inform them, correct?

**ROB SHARP:** Correct.

**The Hon. DANIEL MOOKHEY:** When did you become aware the Department of Transport was getting an additional \$1.1 billion in order to provide it to the rail operators as part of the updated shareholder expectations of TAHE?

**ROB SHARP:** The actual dollar amount became clear to us as we worked through what that negotiation framework was going to look like. Transport Asset Holding Entity is responsible for the pricing, so they presented to us a model which took into account our forecast capital investment profiles, applying their new returns, which provided those numbers that you refer to.

**The Hon. DANIEL MOOKHEY:** Were you aware of the specific amount that you were getting—an additional \$1.1 billion—prior to that announcement in the half-year budget review?

**ROB SHARP:** The numbers that I am aware of—for financial year '22, which is the current year, there was an agreed budget amount. The numbers that we put into forward budgets we are working through at the moment.

**The Hon. DANIEL MOOKHEY:** Mr Sharp, I am asking a very specific question. Were you aware that your department was getting an additional \$1.1 billion prior to that being announced in the half-year budget review on 16 December, a few hours after we last saw you in this inquiry?

**ROB SHARP:** As I indicated, our awareness of those numbers came through the discussions with TAHE on the increased return and the framework which was used, I presume, for TAHE to forecast their revenue. But those forecasts indicated what that number was, so it was during that process that those numbers emerged for me.

**The Hon. DANIEL MOOKHEY:** I know that. The timeline here is very important because I want to ask you what happened after 16 December. I want to be very fair to you, Mr Sharp. Can you assure us that you knew specifically that your department was getting an additional \$1.1 billion prior to its announcement in the half-year budget review? Because you are leaving an impression that the first time the Department of Transport and you as secretary found out about this additional money was in the budget paper when it was released that day at circa 3.00 p.m.

**ROB SHARP:** Mr Mookhey, I will have to take on notice that specific date, because you are asking a very specific question around a date. I do not have that information on hand, but the process I have described.

**The Hon. DANIEL MOOKHEY:** Sure, but then by 18 December, which is a Saturday—two days later—TAHE and the rail operators have signed a new heads of agreement. How is it possible that you were able to negotiate with your supplier? I am asking you this now in your capacity as Transport secretary, just to be clear, not your capacity as a member of the TAHE board.

**ROB SHARP:** Yes.

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**CORRECTED**

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**The Hon. DANIEL MOOKHEY:** How is it possible that you were able to enter into a heads of agreement with your major supplier in which you agreed for them to charge you an additional \$5 billion over the next 10 years? How is it possible that you were able to complete that negotiation in two days?

**ROB SHARP:** Firstly, the heads of agreement is not an agreement for the dollar amount. The dollar amount is subject to negotiations through a very specific framework, referencing IPART, which is what we are in the process of doing now. The heads of agreement was in response to the shareholders' request for higher returns and what that would mean for the framework. The framework is around how does the entity who owns those assets get a fair commercial return. The debate was around what was a fair commercial return. I was happy to sign the heads of agreement on the basis that we would be negotiating that still in reference to IPART, which provides a floor and a ceiling in terms of what those numbers might be.

**The Hon. DANIEL MOOKHEY:** Did you sign the heads of agreement?

**ROB SHARP:** I signed them, as well as the heads of the operating entities, because clearly they are responsible for their budgets.

**The Hon. DANIEL MOOKHEY:** They are responsible for their budgets.

**ROB SHARP:** Ultimately, I have the overall responsibility, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** They are not here, so I might ask you these questions directly and then we might get them or we might not. Either way, is it not a better explanation of events that you signed that heads of agreement because if you did not then the government would have had its accounts qualified?

**ROB SHARP:** No, I think the circumstances for Transport are that a major supplier comes to us and indicates that for the next round of negotiations—which is for financial year '23—that is what we are negotiating. I am not negotiating three or four years ahead; we negotiate each year. The reason for that is that the actual timing of assets and acquisitions varies, and for each year we adjust it.

**The Hon. DANIEL MOOKHEY:** Mr Sharp, are you saying that there is absolutely no correlation whatsoever between your decision to sign those heads of agreement and the warning from the Auditor-General that she would otherwise qualify the accounts? Are you are saying that there is no nexus between the two?

**ROB SHARP:** That has not been a driver for me. I wear a Transport hat, Mr Mookhey, and the driver for me is: Am I obtaining a fair access fee? Any organisation would not want to pay more. However, with respect to the commercial returns—

**The Hon. DANIEL MOOKHEY:** If you are concerned with whether you will pay more—you had an agreement that lasted for 10 years and under which they had no legal ability to force you to reopen it, in which you did not have to pay an additional \$5 billion, and yet you chose to reopen the agreements to pay TAHE more. It is not like this has resulted in us getting a cheaper deal. You offered in the agreement to pay more, and you did it within 48 hours. Did you have any advice or any analysis before you went ahead and agreed to that?

**ROB SHARP:** Yes. Clearly, internally, we called all of the experts together and worked on it. It was a tight time frame; I agree. However, it was a framework. It is not a full commercial agreement that we were negotiating in that time frame. The 10-year agreement has an annual review process, so IPART reviews the charges every year and takes into account interest rate, inflation, risk environment—

**The Hon. DANIEL MOOKHEY:** Yes, we know this, Mr Sharp. I think my time may have just expired, but my last question is: Just because TAHE has to deliver a greater commercial profit, because that is what the Treasurer told them to do, why does that have any bearing on you? As TAHE's principal customers, why is that a relevant consideration whatsoever? You were agreeing, basically, to help your supplier make a greater profit. That is what has happened here. Please explain to me why you had to have any consideration whatsoever to the fact that the Treasurer decided he wants more profit from TAHE.

**ROB SHARP:** The Rail Access Undertaking that applies to third parties as well as us as rail operators accessing those assets has a commercial return assumption in it to the asset holder. Each year that return will vary depending on the risk environment, the inflation environment. The information that was passed to me was as fact.

**The Hon. DANIEL MOOKHEY:** You had security. You had a signed contract that insulated you from a \$5 billion variation under the terms of the agreement you signed. That does not mean that every time they decide to make more profit they get to charge you. That is how monopolies behave; that is not how genuine commercial businesses behave. Your agreements gave you the power to refuse it. You chose not to exercise it, and I am putting it to you that you did so because if you did not then the Government would have a massive problem. That is the truth, is it not, Mr Sharp?

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**CORRECTED**

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**ROB SHARP:** No, I do not agree with that, Mr Mookhey. The agreements do have an annual review mechanism. In my experience across asset holding companies outside of rail—and it has principally been in aviation—these commercial return debates happen every year. This is not an unusual circumstance, from my perspective. The timelines were tight, and it was not an agreement that I signed. What I agreed to do was to negotiate in February-March, acknowledging that the commercial returns expectations have risen. That negotiation is underway now, and I have a floor and a ceiling that IPART, an independent organisation, sets. I will be making sure we pay within that because that is the fair commercial benchmark that I hang my hat on.

**The CHAIR:** Alright, Mr Sharp. You know what the law says about an agreement to agree: It is no agreement at all.

**Ms ABIGAIL BOYD:** Thank you, Chair, and thank you, Mr Sharp, for appearing before us again. I just want to go back a step on that then. When these negotiations occurred, were you presented with the amount and then basically it was checked and that was that; or, basically, what happened in terms of Treasury approaching you in the first place?

**ROB SHARP:** So TAHE came up with their price, or offer, if you like, which any commercial business would do. The IPART—I keep referring to IPART because this is actually the key linkage for me. IPART is a reference point in terms of what is a fair price for the asset holder to actually charge. The reason IPART exists is that it is a monopoly at the end of the day. So I reference that to give myself comfort that between the ceiling and the floor that IPART sets, my charges are going to sit within there. It is up to me to negotiate those charges within that range. In terms of—

**Ms ABIGAIL BOYD:** Okay, and that—

**ROB SHARP:** Sorry?

**Ms ABIGAIL BOYD:** That is what you told us last time as well—that it was by reference to IPART. Do we take it, then—

**ROB SHARP:** Yeah. So, to turn to your specific question, the team looks at the models and the assumption changes and we need to then independently arrive at a view on whether we are comfortable with those numbers. Now, in the actual negotiations we will go and benchmark or reference IPART specifically and we will debate those drivers of pricing their [inaudible] and that is how the negotiation process will work. In the heads of agreement, we did not do that because it was actually an acknowledgement, really, that there was going to be an increase flagged in terms of the return expectations. We will still use our process in February-March to benchmark and negotiate those numbers. So, TAHE—

**Ms ABIGAIL BOYD:** So [inaudible].

**ROB SHARP:** So, TAHE numbers are only a forecast based on what they believe the commercial return will be.

**Ms ABIGAIL BOYD:** Understood. So there has not been a change then since the last time IPART set the floor and ceiling.

**ROB SHARP:** Correct.

**Ms ABIGAIL BOYD:** Nothing had changed from the IPART perspective, but you nevertheless agreed to renegotiate in December in anticipation of the IPART changing in [inaudible].

**ROB SHARP:** No. In the processes we have reviewed, we review IPART. IPART comes out with their information, if you like, on the ceiling and floor each year. That is an annual process.

**Ms ABIGAIL BOYD:** Right.

**ROB SHARP:** But there is a review underway. Just to flag the complexities in this area, IPART is actually reviewing those undertakings and their approach at the moment. There is consultation. We have provided some feedback into that.

**Ms ABIGAIL BOYD:** Yes.

**ROB SHARP:** In terms of your question around the floor and the ceiling, that has not changed but the amounts that we were talking about were still prime facie within that range.

**Ms ABIGAIL BOYD:** I see.

**ROB SHARP:** So I was able to negotiate on the basis that it was still consistent with the IPART model, albeit prior to the ceiling that was.



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**CORRECTED**

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**Ms ABIGAIL BOYD:** So, to recap: Treasury comes due in December; you are not obliged to negotiate with them at all until February or March; and, when you do negotiate with them, there is sort of an understanding that the prices might move, depending on IPART. Nothing has actually changed with IPART, yet you still agree to do a renegotiation of an extra \$5 billion being handed over in December.

**ROB SHARP:** The negotiation is only relevant to '23. It is not relevant to—the pricing does not get agreed for following years—

**Ms ABIGAIL BOYD:** Different [inaudible].

**ROB SHARP:** —because of all the things I have just spoken about.

**Ms ABIGAIL BOYD:** But you still—

**ROB SHARP:** It is an annual price agreement.

**Ms ABIGAIL BOYD:** Can you see, though, from our perspective that it looks very unusual for an organisation, which is not obliged to enter into any negotiation or to change the fee structure at this point, to agree to give over an extra \$5 billion in a really short period of time?

**ROB SHARP:** Yes. I understand the optics that you are referring to. It teaches us this: The pricing is set between a floor and a ceiling. When the pricing was initially set up for the current year, it was in stand-up mode and those dollars were at the lower end, if you like, of the pricing range but still within the IPART range that they give. The range has to change and there will be a review by the IPART, as normal, but negotiations were approaching so we are talking two months or eight weeks before the negotiation. It is not unusual for a supplier to flag that their expectations will be higher. What I have acknowledged is that expectation. I have also looked at the framework. We will still be contractually negotiating within that framework, which has not changed.

**Ms ABIGAIL BOYD:** Okay.

**ROB SHARP:** But the price will be at the upper end towards the ceiling. That is the reality.

**Ms ABIGAIL BOYD:** I will give you the benefit of the doubt that at the time the negotiation was done you thought that it was just a new ordinary course of business. Having now read the Auditor-General's report, do you see that you were effectively being asked to plug an accounting problem for Treasury?

**ROB SHARP:** I have read the Auditor General's report. I have not been able to sit with the team and digest it. Obviously, the recommendations and comments in there we will certainly take on board and reflect on, but in respect to a budget question you have got to refer that to Treasury. I am wearing a Transport hat and my Transport hat is really a focus on a couple of things: It is on the safety and the operations and it is on paying a reasonable fee for accessing the assets. Clearly, there has been quite a complex history on this and it was an interesting read. However, it is not appropriate for me to comment on budget issues and the comments that you have just raised then.

**Ms ABIGAIL BOYD:** Sure. But when we look back at your opening statement in December when you came before the inquiry, you were very confident that the structure of TAHE would work as it had been set up and that the accounting treatment did not cause you any particular concern. You talked about TAHE's assets being safely operated and maintained. There are a number of assertions that you made in relation to the Victorian model and the Queensland model being similar, et cetera, et cetera. The Auditor-General's report makes it very clear that that is not actually correct. And now that you have looked at the report and in particular the comments around the control of the assets, the independence of the entities involved and also the very clear differences between the New South Wales model and the Victorian and Queensland models, do you still stand by your statements that you made in December?

**ROB SHARP:** You raised about three or four topics there, so in terms of the actual structure it is not unusual for assets to be held in asset holding companies and that was the principal that I was referring to. I think if you looked at every asset holding company, they will all have differences in terms of what they are trying to achieve. Where I have principally seen it historically is in aviation. Most of Australia's airports are long-term leases from the Federal Government and there are asset holding companies that own those assets. They have regulated assets that support aviation and they also have non-regulated commercial developments.

So my commentary was in the context of my experience with asset companies. Yes, there are differences in Queensland and Victoria. I would fully expect, once you get into the operation of them, they would be different to see if they are being viewed for different outcomes. But the ultimate purpose for them is to have a team that is focused on the asset and managing that asset and extracting value from it, and operations. Our teams focus on the operational elements. That was one of the benefits that I flagged back in December and I still see that as the case

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**CORRECTED**

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because our operational teams are no longer looking at a commercial development on a block of land that is not used by rail anymore.

**Ms ABIGAIL BOYD:** I am sure we will come to the safety concerns and the Glenbrook commission recommendations perhaps in the next round, but I just wanted to close this point off. So given that the Auditor-General has far from given her blessing on the accounting treatment of TAHE, even with this massive \$5.2 billion injection, and has in fact recommended that the ABS be consulted in relation to elements of the treatment, how do you see Transport's role, should the entire thing need to be wound up?

**ROB SHARP:** Look, I cannot talk to whether the budget or the returns or the SOC approach is appropriate or not. That is a decision for Treasury and the Government. That policy decision does, however, mean that it got my attention very quickly in terms of the safety and what were the costs focus. The prior secretary certainly spoke to those issues and I focused straight in on those as well. I have spoken consistently around the safety elements. In fact, nothing has changed there. The model that was landed, it all sits with transport operators. The same people are doing the job and they are liaising and working with the same safety regulators and I have, as the secretary, the same safety accountabilities. So from a Transport perspective, yes, I have read the Auditor-General's report. Clearly, complexity is there. You need to talk to Treasury and the Government about it in terms of the setting up of the SOC, but that is a policy decision. For Transport, under that policy umbrella, we have to make sure we are protecting the operations to the public.

**Ms ABIGAIL BOYD:** Just one final question then: Are there circumstances in which you would reject a further increase in the fees if Treasury approached you and wanted you to—

**ROB SHARP:** Yes, there would be, and that reference point is the IPART ceiling. There is no circumstance where I would agree that a dollar amount would be paid for TAHE that is above the ceiling and there would have to be good reasons why it is at the ceiling as well. There would have to be good explanations and that is the negotiation process where they would need to demonstrate that choice as part of that process.

**Ms ABIGAIL BOYD:** Thank you.

**The CHAIR:** We will go back to the Opposition.

**The Hon. DANIEL MOOKHEY:** Mr Secretary, one aspect of the time line is a bit curious. You signed this head of agreement on a Saturday. Do you routinely sign heads of agreements on Saturdays that result in you agreeing to pay an additional \$5 billion? Why was that signed on a Saturday?

**ROB SHARP:** Sadly, Mr Mookhey, I find myself working regularly on Saturdays. That is not unusual for me. However, in terms of the tight time lines that you referred to earlier, certainly that drove us to be working on that weekend. There was obviously an urgency in terms of us considering the TAHE proposition and what they were taking [inaudible].

**The Hon. DANIEL MOOKHEY:** And the urgency arose from the concerns that the Auditor-General had expressed and at that time you were aware of. Correct?

**ROB SHARP:** Look, from my understanding it came from a direction from the Minister, or the shareholder, the finance Minister, in terms of the returns and that is clearly going to impact on the negotiations that we were funding up.

**The Hon. DANIEL MOOKHEY:** Did the finance Minister issue a direct direction?

**ROB SHARP:** My understanding is that there is a statement of expectations, and that statement of expectations referred to the returns.

**The Hon. DANIEL MOOKHEY:** But that is not—

**ROB SHARP:** That would be a question for TAHE in terms of the pre-indication.

**The Hon. DANIEL MOOKHEY:** No, no. That is a statement of expectation is issued by the portfolio Minister because we have a copy of it, the one that was issued, when we previously put it to you. Did the Minister at the time, who I believe was Mr Stokes, did he issue a direction to agree to this?

**ROB SHARP:** No.

**The Hon. DANIEL MOOKHEY:** When did you advise Minister Stokes—or, what advice did you give Minister Stokes from any time from 16 December to when the budget comes out and the eighteenth when you signed the heads of agreement? You do not need to be specific to the hour, but just in general: What advice were you giving the Minister at the time?

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**CORRECTED**

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**ROB SHARP:** The process was largely Transport negotiating with TAHE around the upcoming framework of the negotiations. We had daily morning hook-ups with the Ministers and the Ministers' officers. Through that period anything that is urgent or material gets discussed—

**The Hon. DANIEL MOOKHEY:** Sure. Well, in those conversations—

**ROB SHARP:** —through those forums, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** In those conversations did either you advise the Minister or did the Minister advise you that you were the beneficiary of an additional \$1.1 billion from the Treasury?

**ROB SHARP:** The Minister certainly did not raise it or direct me. However, during the process, clearly there were going to be increases in charges and that was conveyed to the Minister's office through those conversations.

**The Hon. DANIEL MOOKHEY:** Well, did you tell the Minister that you were intending to sign off on an agreement that would result in an increase in charges of \$5 billion?

**ROB SHARP:** I signed off on an agreement that indicated there would be a new framework for the negotiation. The Minister was relatively new in that portfolio and I was explaining the IPART approach and the benchmarking that we do around that—

**The Hon. DANIEL MOOKHEY:** When you were talking with the Minister, who at the time was Minister Stokes and who was into the job for quite a few months, in so far as his tenure as Transport Minister, can you at least assure us that he knew that Transport was getting an additional \$1.1 billion as part of a budget review to pay TAHE more, so that TAHE could make a great profit? Did the Minister know?

**ROB SHARP:** As I said, the conversations each morning were around where we were at, the process, and what those implications were. As I indicated, the agreement was to agree a framework to negotiate in February-March. The actual agreement on the price is still to be recommended. But, clearly, TAHE set an expectation of a commercial return at the time.

**The Hon. DANIEL MOOKHEY:** Again, Mr Sharp, I am just going to repeat the question because it was a very direct question. To the best of your knowledge, was the Minister of Transport at the time aware that he was getting an additional \$1.1 billion in order to facilitate greater profit for TAHE?

**ROB SHARP:** You would have to ask the Minister that question. As I have indicated, there were a number of propositions.

**The Hon. JOHN GRAHAM:** Mr Sharp, can I just stop you there? This goes centrally to your role as the secretary of the agency.

**ROB SHARP:** Yes.

**The Hon. JOHN GRAHAM:** Did you brief the Minister? When did that occur?

**ROB SHARP:** Yes, as I have indicated, the Minister was briefed during those morning calls. If you are after a specific hour, which is the question Mr Mookhey asked, I cannot tell you.

**The Hon. DANIEL MOOKHEY:** No, no: I am asking you about prior to the half-year budget review. I am not asking you about a particular hour of the conversation. It is a very quick question. Was he aware of it prior to it being announced in the half-year budget?

**ROB SHARP:** This comes back to your very early question around the time lines of 14 or 16 December. I would have to go back and look at my notes—

**The Hon. DANIEL MOOKHEY:** Mr Sharp, you appeared before this inquiry on 16 December.

**ROB SHARP:** —from that period to be specific on question.

**The Hon. DANIEL MOOKHEY:** You were appearing before this inquiry on 16 December in which you made an opening statement and gave us your assurances that everything was fine—which is my paraphrasing of your statement, to be fair—and that day they announced a half-year budget review. You are not in a position to tell us or confirm that the Minister knew at that point in time that he was getting a windfall gain from the Treasury of an additional \$1.1 billion in order to facilitate aid to TAHE. You cannot give us that assurance that he knew about it.

**ROB SHARP:** No. The communication on that very specific element, I would have to go back and look at the notes at the time. In regards to the timing, yes, when I last appeared here my comfort was around the

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**CORRECTED**

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structures that protected the operations and reliability, and that IPART benchmarking exercise gives me comfort because these fees are associated with an independent party.

**The Hon. DANIEL MOOKHEY:** Your department paid \$1 million to KPMG. They gave a crystal-clear warning that the access fees as agreed would breach the floor test by IPART. Given that your department spent \$1 million accessing that advice, and that advice was given, why was that advice ignored by your department, clearly?

**ROB SHARP:** The KPMG report was at a point in time when there were actually quite a large number of items that were covered off in that report from [inaudible].

**The Hon. DANIEL MOOKHEY:** Well, it was Christmas.

**ROB SHARP:** And a lot of those were actually picked up and put in this report.

**The Hon. DANIEL MOOKHEY:** No, no. Mr Sharp, I am asking you directly—

**ROB SHARP:** Yep.

**The Hon. DANIEL MOOKHEY:** —about that aspect of the report which, to be fair, was given to you in 2020; and, to be fair as well, your deputy secretary came before this inquiry and affirmed it at the hearing before your appearance as being accurate advice that Transport stood by. It told you that the agreements you had entered into would breach the test. To be fair, you are the beneficiary of that because you were—

**The CHAIR:** It is time.

**The Hon. DANIEL MOOKHEY:** Mr Chair, let me finish. You were getting access to the assets at a cheaper price, but you knew that there was a bit of risk in all of this. Yet, all of a sudden, you find yourself in a circumstance where you agree to reopen negotiations and, well, enter into a framework of negotiations within two days. I am trying to understand how it is possible you can reconcile this, given that you were given a very clear warning that the access fees you were agreeing to were wrong.

**ROB SHARP:** The access fee that was agreed to as part of the introductory year was actually set as part of that FY22 budget process and there was a contractual arrangement that was put in place on 1 July 2021, which you are aware of, that actually set that. That was within the IPART framework. But, as I indicated, it was at the lower end of it. So there is a floor and a ceiling and, from my perspective, the question I asked essentially is: Where are we within that IPART framework?

**The CHAIR:** Mr Sharp, what is the current floor and ceiling set by IPART? You keep talking about it. Tell us what they are.

**ROB SHARP:** Yeah. I would have to take that on notice in terms of the exact amounts because it does depend on the location and what you are actually accessing.

**The CHAIR:** How can you be comfortable—

**ROB SHARP:** That information should be publicly available. I will have to take it on notice to provide it to you.

**The CHAIR:** How can you be comfortable about a ceiling you do not know the quantum of?

**ROB SHARP:** There is a team of specialists that actually work in this space. As a secretary I would rely on the team and the lawyers to provide me very specific advice on that matter and they have provided that on two occasions. The first occasion was the initial fee and the second occasion was input during the process to sign the heads of agreement in December.

**The CHAIR:** One of the key factors for IPART setting that ceiling is the reasonable rate of return for TAHE on its assets. Do you agree with that?

**ROB SHARP:** Correct.

**The CHAIR:** So, when TAHE's reasonable rate of return on its assets went up by two-thirds, your ceiling went up by two-thirds, did it not?

**ROB SHARP:** The notion of a return or an adequate return does not apply just to us. It applies to all the third party contracts that access the network.

**The CHAIR:** But, Mr Sharp you—

**ROB SHARP:** There is a calculation that takes in that into account.

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**CORRECTED**

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**The CHAIR:** Mr Sharp, are you challenging the truth of that proposition I put to you, seriously, when the rate of return goes up by two-thirds, the ceiling goes up by two-thirds? You know that, do you not?

**ROB SHARP:** I am not sure who has asked me the question.

**The CHAIR:** It is Mr Shoebridge, or Chair, but you can call me whatever you like.

**ROB SHARP:** I am happy for the question.

**The CHAIR:** Yes.

**ROB SHARP:** Yeah. Look, it is a moral that does take into account the return and is that return a reasonable commercial return? As I indicated earlier, that is one of the key elements of our negotiation—to actually get comfort that that is a reasonable return. That is a key issue.

**The CHAIR:** Are you still debating with TAHE whether or not their two and a half per cent return is a reasonable rate of return? You said that is still a matter of issue between Transport and TAHE.

**ROB SHARP:** Every—it is not an issue but every element in the framework would be reviewed and looked at.

**The CHAIR:** I am asking you about that.

**ROB SHARP:** [Inaudible]

**The CHAIR:** Do you accept that?

**ROB SHARP:** Pardon?

**The CHAIR:** Do you accept it, or is it an issue in contest between you and TAHE? It is a simple question, Mr Sharp.

**ROB SHARP:** In any commercial arrangement the supplier in this case has indicated their expectations—that their return needs to be at that level. Prima facie, they have presented that information and we have agreed, during February and March, to negotiate. The negotiation takes into account every aspect, including the timing of acquisitions and the risk environment that drives that return.

**The CHAIR:** So, sitting there now, Mr Sharp, you are saying it is not Transport's position to accept the two and a half per cent return. You have not adopted that as a position. Is that your evidence?

**ROB SHARP:** No. I have not said that we are adopting it or not. All I have said is that there is this process where that would be discussed.

**The CHAIR:** Well, I am asking you: Have you adopted that position?

**ROB SHARP:** We have preliminaries—

**The CHAIR:** Mr Sharp! Mr Sharp! Please answer the question directly. I am asking you whether Transport for NSW accepts the two and a half per cent return being demanded of TAHE. It is a simple question. Have you accepted it, or not?

**ROB SHARP:** We have accepted it on the basis that—

**The CHAIR:** Okay. All right. Done.

**ROB SHARP:** —they have presented that to us as a part of their proposal for the increase in fees.

**The CHAIR:** No, no. Sorry. You have accepted it as part of their proposal, which you are going to negotiate on in February and March.

**ROB SHARP:** Correct.

**The CHAIR:** Is that what you are telling me?

**ROB SHARP:** Yes.

**The CHAIR:** So, are we—

**ROB SHARP:** Mr Shoebridge—

**The CHAIR:** Sorry. You do not have any say about what is in their—

**ROB SHARP:** I am trying to answer your question, Mr Shoebridge.

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**CORRECTED**

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**The CHAIR:** You do not have any say about what is in their proposal. I am asking you about whether or not you accept—Transport for NSW accepts—that the two and a half per cent rate of return is reasonable and would be the basis of your ongoing relationship with TAHE. I cannot believe you cannot answer this question, Mr Sharp.

**ROB SHARP:** No. I mean, we know what the number is. It has been provided to us, as I indicated, but we do have a formal negotiation process that we go through. All these things are up for discussion. Now, the reason for the discussion is I need to be satisfied at the end of the day that the charge that I am going to be cutting a cheque for is reasonable in the context of the IPART framework and there will be experts who give me advice on that. So, if that return picks a number that is higher than that, then a negotiation would be needed because, as I indicated earlier to Mr Mookhey, I will not be signing off a charge that is higher than what I would deem to be falling within the IPART framework and the methodology that that framework has.

**The CHAIR:** So TAHE and Treasury have said to the Auditor-General that TAHE can expect \$5.2 billion in access and licence fees to be added to the discounting cash flow valuation over the next 10 years. That is almost wholly coming from you. Do you accept that Transport will be paying an additional \$5.2 billion in access and licence fees over the next 10 years?

**ROB SHARP:** The basis of that calculation is TAHE forecasting what those returns would be, if that framework is applied. So the number is a mathematical number that comes out of that model and reflects the reality—

**The CHAIR:** Mr Sharp, my question was—

**ROB SHARP:** —that it is totally within the IPART framework—

**The CHAIR:** Mr Sharp, my question was—

**ROB SHARP:** —which prima facie it is.

**The CHAIR:** Mr Sharp, I do not want a description of the Auditor-General's report or a description of Treasury. I want to know what Transport's position is. Does Transport agree that they will be paying an additional \$5.2 billion in access and licence fees over the next 10 years? Yes or no?

**ROB SHARP:** There is not a yes or no because, as I mentioned to Mr Mookhey, this is an annual negotiation takes place and IPART updates their framework and those key reference points each year as well.

**The CHAIR:** So that assumption—

**ROB SHARP:** The negotiation I am doing is for the next 12 months. The numbers that you are referring to are a forecast. They may well be the numbers, but the reality is, for example, with COVID some of the larger projects—and we have got in the pipeline \$15 billion of rail [inaudible].

**The CHAIR:** Mr Sharp, you are transgressing.

**ROB SHARP:** Finally [inaudible] and those numbers will change.

**The CHAIR:** All right. So, sitting here, on the basis of your evidence it seems to me that that figure is not worth the paper it is written on. It could be \$5.2 billion or it could be a lot more; it could be a lot less. You do not know.

**ROB SHARP:** It is a question for TAHE in terms of their forecasting.

**The CHAIR:** But you have not agreed to pay it.

**ROB SHARP:** [Inaudible] before.

**The CHAIR:** Mr Sharp, you have not agreed to pay it. That is the key point, is it not?

**ROB SHARP:** No, we have not, and that is part of the assurance framework for Transport.

**The CHAIR:** Do you understand that Transport for NSW will be required to kick in additional payments to TAHE to make up the \$20.3 billion loss in valuation over the next 30 years? Do you understand that making up that \$20.3 billion loss will involve additional contributions from Transport?

**ROB SHARP:** The commercial return element of this discussion, that is all some part of that commercial return and the commercial return that the shareholders have requested from TAHE will come from Transport, but it will also come from commercial property developments and other value creations, which is one of the reasons that that entity was formed.

**The CHAIR:** So you do not know—

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**CORRECTED**

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**ROB SHARP:** Whether that cuts through to us or not, it is a question for TAHE ultimately over the longer term what those allocations look like.

**The CHAIR:** Well, it is going to be a question for you, is not, if you have to pay an extra \$20 billion. It is going to be a big question for you, is it not?

**ROB SHARP:** As I indicated, this is a key area of focus, as it was for the prior secretary. The fact that there is an independent organisation, IPART, that ensures that there is not a monopoly pricing of those assets, that is my key reference point, if you like, apart from just normal communications and checking on how much we are getting asked to pay for access to the rail network.

**The CHAIR:** It must frustrate you know end that by reason of the assets being taken from you, handed to TAHE, then having a bin fire on their valuation that you have to kick in an extra \$20-odd billion over the next 30 years. That must frustrate Transport a great deal.

**ROB SHARP:** I think the question for me on that is there is a policy decision that has been made. Those assets were sitting in RailCorp. The policy decision was to move to a commercial arrangement. I would say it has been a challenging process to work through the complexity of getting this model bedded down. A lot of work has gone into it from the team to ensure we have got the governance structures and protections in place. For me, on the access charges, those external benchmarks of IPART give us comfort that those numbers are within a methodology that is independently reference-able. So I am not just relying on TAHE putting a price on the table.

**The CHAIR:** Alright. Mr Sharp, unfortunately we have no time to explore the safety issues raised in the Auditor-General's report but we may find time for that at a later point. Thank you for your assistance today and good luck when trying to sort this mess out.

**ROB SHARP:** Thank you.

**(The witness withdrew)**

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**CORRECTED**

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

**Ms BENEDICTE COLIN**, Chief Executive Officer, Transport Asset Holding Entity, before the Committee via videoconference, on former affirmation

**The CHAIR:** I would like to welcome our next witnesses, Mr Bruce Morgan, Chair of the Transport Asset Holding Entity, and Ms Benedicte Colin, Chief Executive Officer for TAHE. Welcome, both of you. Can you hear us clearly there?

**BRUCE MORGAN:** Certainly, Chair.

**BENEDICTE COLIN:** Yes, Chair.

**The CHAIR:** The good news is we can hear you both clearly from this end. If you can get your IT team maybe to just focus a little more closely on the camera that would actually be of assistance—to zoom in a little. I note that you are both under your existing oaths or affirmations but I will give you this opportunity if you wish to make a brief opening statement.

**BRUCE MORGAN:** Thank you, Chair and the Committee members. Yes, I would like to make a brief opening statement because things have moved along a little since I met with you on 16 December, and Ms Colin would like to make a few comments as well. As you aware, since I last spoke to you the Auditor-General has confirmed TAHE's accounts. The Auditor-General's confirmation that the comprehensive evidence that she obtained is sufficient and appropriate to provide a basis for her unqualified opinion is a significant milestone for TAHE. And we welcome the opportunity it provides to get on with the business of delivering new value and better commuting experiences for the people of New South Wales.

As an accountant myself of 37 years of auditing experience, I want to place on record my respect for the extremely thorough process we have been through with the Auditor-General. This process did take longer than a normal audit. However, this is appropriate for a complex, once-in-a-generation reform in its major transition and establishment year. It is major transition that is established here. The application, focus and diligence from all sides involved in the process has established a robust foundation and delivered an outcome that we can all have confidence in. In this process both TAHE and the Audit Office engaged independent firms in order to determine the value of TAHE's assets.

I acknowledge the matter of uncertainty that was raised by the Auditor-General's emphasis of matter paragraph. Let me briefly address this. TAHE has 10-year agreements in place with Sydney Trains and NSW Trains and these agreements expire six years after the end of the current forward estimates period. As the Auditor-General points out, there is no way we can know today what the situation will be when we come to the annual review of those agreements in, say, five or even 10 years' time. However, this situation is not inconsistent with the uncertainty faced by most businesses. It is also not unusual for regulated businesses—and in my experience with water and in energy—to have some uncertainty over the long-term funding base. While the Auditor-General has noted the uncertainty, importantly, her opinion was not modified in respect of this matter.

I also welcome the commentary on TAHE's independence made in the report on State finances. As the independent chair of TAHE I agree that the independence of TAHE is an important matter. TAHE's governance arrangements are being developed to respond to the 2017 amendments to the Transport Administration Act, bringing an independent commercial focus to managing assets. The Auditor-General's commentary ensures that all partners and parties will continue to focus on and prioritise this important consideration. Going forward, in addition to TAHE's many other benefits, its financial status offers substantially increased transparency and scrutiny over the costs of our transport network, enabling us to take a far more practical approach to generating value from it. I would like now to hand over to our Chief Executive Officer Benedicte Colin, who also has some opening comments.

**BENEDICTE COLIN:** Thank you Bruce, Chair and Committee for the opportunity to be with you again. I want to take this opportunity to reinforce my strong belief in the significant benefits an independent TAHE offers for the people of New South Wales. The model is the optimum structure for the management of transport assets because it ensures expertise is applied appropriately. Operators can focus on running services safely and efficiently, while TAHE takes its asset management expertise and applies it proactively to unlock the value in them. That value can then be reinvested in both assets or returned to the States as dividends.

The model is fully transparent. We report annually and independently from government to Parliament and our accounts are subject to its full scrutiny, as they should be. Our strategy statement of corporate intent and our key documentation is also publicly available including the access and license fees we receive, which are



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**CORRECTED**

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renegotiated annually. We work to the highest standard of independent governance with clearer visibility and decision-making processes to ensure we are actively managing our assets. What TAHE should be judged on is what we actually deliver and the additional value we create above and beyond the 2.5 per cent return on equity, and I am proud of the work that has already been done by our small team to scope out this opportunity. This is the work that gives me confidence there is so much opportunity and plenty of low hanging fruit to pursue.

To give you a flavour of some of the work done to date: We have approved funding to complete the tender documentation for the revitalisation of the Central Station Precinct, which will unlock 24 hectares of Government-owned land and drive the success of Tech Central. We have approved a proposal for short-term retail activations along the Eddy Avenue Plaza and are currently procuring new tenants. In the Redfern North Eveleigh Precinct we have progressed the planning of the refurbishment of the Chief Mechanical Engineer's building so the space can be leased out – which will reactivate more than 10 hectares of space to the public for the first time in about 100 years. We are actively considering a range of other retail and residential activations. A business plan is being prepared to identify key locations where capital investment could result in improved rentals and returns. These will be included in future budgets.

Regionally, we have approved funding for master planning and site investigations for a number of regional precincts including Broadmeadow and Glendale. From an improved utilisation perspective, we are investigating options to refurbish and repurpose some unused heritage stations, (particularly in regional areas), are approving community rail trails on unused lines and have already divested an unused quarry. We are actively investigating other commercialisation opportunities for our assets in the telecommunications and energy spaces. Of course, this is just the beginning, but I share this to give you a sense of the potential and opportunities that will open up as we apply a strategic, proactive and commercial management approach to our wonderful portfolio of assets. My team is passionate about this opportunity. We are all firmly committed to delivering real value, creating wonderful, successful places and making NSW an even better place to live, work and play. Thank you again for this opportunity.

**The CHAIR:** Thanks, Ms Colin. Personally, I would like you to be focusing on it being a great place to get around safely rather than live, work and play. But I will hand over to the Opposition.

**The Hon. DANIEL MOOKHEY:** Thank you, Chair. And thank you, Mr Morgan and Ms Colin, for your appearance today. Can I just say again to Ms Colin and the TAHE staff, thank you for the efforts that you have undertaken to assist the inquiry and to assist the upper House when it calls for papers as well, which I know has been an attack on your resources. Mr Morgan, in light of the Auditor-General's report, have you given consideration to resigning?

**BRUCE MORGAN:** Mr Mookhey, I find that a rather strange question. The Auditor-General's report focuses mostly on Treasury. We have not seen the Auditor-General's detailed findings in respect of TAHE at this point in time. We have been issued an unqualified audit opinion—an unmodified audit opinion. The Auditor-General has also entered correspondence with me. As I said, there are no legislative or compliance breaches that TAHE has. So I do not see on what basis you would suggest that be the case.

**The Hon. DANIEL MOOKHEY:** Mr Morgan, I assume from your opening statement that you have read the full Auditor-General's report in respect of TAHE?

**BRUCE MORGAN:** Mr Mookhey, we received draft sections of the Auditor-General's report on the State finances that were applicable to TAHE and we have reviewed those as we were asked to review those [disorder].

**The Hon. DANIEL MOOKHEY:** Mr Morgan, have you personally read the Auditor-General's report that was released yesterday?

**BRUCE MORGAN:** Mr Mookhey, if you will allow me to complete my statement, I will tell you what I have read and at what stage it is at, and you will be very clear about where I am at. So we received the sections of the report that were applicable for TAHE review earlier in the week. I read that draft section as well. I have not read all of, but I have read some of, the Auditor-General's final report.

**The Hon. DANIEL MOOKHEY:** Mr Morgan, as Chair of TAHE, appearing before this Committee, why have you not read the full report?

**BRUCE MORGAN:** I have read the sections of the draft report that were applicable to TAHE. I am advised by my colleagues as to the fact that there were minor changes made to that. I do not think I have yet got to reading the full report. I shall do in the fullness of time. The report was published yesterday. Yesterday I had formal duties all day elsewhere but I shall be approaching the rest of the report in the fullness of time. But, importantly, I have read the extracts of the report where Treasury and TAHE are referred to.

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**CORRECTED**

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**The Hon. DANIEL MOOKHEY:** Mr Morgan, on that basis, given that I am sure in the draft report—as you said there have been minor variations—the Auditor-General makes it clear that TAHE got its asset valuation wrong to the tune of billions of dollars. It equally made it clear that it excluded \$24 billion of its assets from its forecasts, equally that you mispriced all your assets and that you entered into an agreement which undercharged your two principal customers responsible for 90 per cent of your revenue by billions of dollars. This all took place while you were Chair. Ms Colin was not in the position. You were the chairperson as this all took place. I ask you again, surely such levels of incompetence would necessitate your resignation and the resignation of the other directors who are capable of resigning?

**BRUCE MORGAN:** Mr Mookhey, I absolutely disagree with your comments and I do not agree with the basis of your comments. The initial draft accounts of TAHE were drawn up on the basis of the direction from the shareholders to achieve 1.5 per cent. As you are aware, I recall I mentioned, when I appeared before this Committee on 16 December, on 14 December we had received a direction from the shareholding Minister that the returns were increased by 2.5 per cent. In the period leading up to the finalisation of the audit, we had been in discussion with, as part of, as I referred to in my last appearance, an iterative process—a normal iterative process—with the Audit Office to determine the fair value of the assets which would be incorporated into TAHE's accounts. There was a movement in the value of those assets when the final shareholder return of 2.5 per cent was noted and that resulted in a range of adjustments. The 20-odd billion you refer to—I think you were referring to discussions not with TAHE that the Auditor-General had but rather with Treasury.

**The Hon. DANIEL MOOKHEY:** Mr Morgan, I might now turn then to Ms Colin, if that is possible. I thank you for clarifying that you received a letter on the fourteenth, which is Tuesday 14 December.

**BRUCE MORGAN:** Correct.

**The Hon. DANIEL MOOKHEY:** Ms Colin, were you in discussions with any Treasury officials prior to 14 December about any issue related to the expected rate of return?

**BENEDICTE COLIN:** Thank you, Mr Mookhey, for the question. Yes, we were aware of issues related to our rate of return. We were made aware of that issue [inaudible] a couple of days before 14 September.

**BRUCE MORGAN:** December.

**BENEDICTE COLIN:** December. Sorry, Chair.

**BENEDICTE COLIN:** We had also regular engagement with the Audit Office throughout the process—

**The Hon. DANIEL MOOKHEY:** Ms Colin, my question was directly about direct conversations between you and Treasury officials. You answer as "we". I am asking specifically about you and conversations specifically with the Deputy Secretary of the Treasury, Mr Midha. Did you have any conversations with Mr Midha in the days prior to you receiving—

**BENEDICTE COLIN:** Thank you, Mr Mookhey, for the question. Yes, I had conversations with Mr Midha before 14 December in relation to the return on [disorder].

**The Hon. DANIEL MOOKHEY:** Did those conversations take place on the weekend prior?

**BENEDICTE COLIN:** That is correct.

**The Hon. DANIEL MOOKHEY:** As part of those conversations, did they relate to the expected rate of return that TAHE was meant to deliver?

**BENEDICTE COLIN:** Until the revised letter of the change in the expected return on 14 December, we were operating with our statement of expectations. We have clarified that our pricing was consistent with expected return of 1.5 per cent.

**The Hon. DANIEL MOOKHEY:** Did Mr Midha at any time encourage you or ask you to reopen the heads of agreement prior to the issuing of the letter of expectation?

**BENEDICTE COLIN:** Mr Midha informed us that there was going to be probably a revised expectation for the shareholders on the rate of return [disorder].

**The Hon. DANIEL MOOKHEY:** My question was, did Mr Midha ask you to reopen the agreement of your own volition in order to renegotiate the access agreements that you had already signed?

**BENEDICTE COLIN:** I do not think that would be necessarily a fair characterisation of the—

**The Hon. DANIEL MOOKHEY:** How would you characterise it? What request did Mr Midha make?

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**CORRECTED**

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**BENEDICTE COLIN:** I cannot particularly recall what Mr Midha asked us, but I understand that there were, at that point in time, discussions about having a revised expectation in terms of a return on investment and I did tell Mr Midha that I would need some written confirmation on this.

**The Hon. DANIEL MOOKHEY:** That was my core question. Did you insist on the Minister issuing you with the new letter of expectations prior to you embarking upon any further process?

**BENEDICTE COLIN:** Mr Mookhey, I take governance very seriously. I report to a board and the board has to have consideration around the shareholders' expectations [disorder]

**The Hon. DANIEL MOOKHEY:** I am not critical of—

**BENEDICTE COLIN:** Just to answer—

**The Hon. DANIEL MOOKHEY:** I am just asking a direct question. Did you ask for the expectations to be changed by [inaudible] writing directly from the Treasurer and—

**BENEDICTE COLIN:** Yes, absolutely, because I was operating under a statement of expectation until that date, which specifically specified the 1.5 per cent return to government. I did indicate in writing to Mr Midha that if that was going to change I needed some formal confirmation, which I received on 14 December.

**The Hon. DANIEL MOOKHEY:** Can I ask you, Ms Colin—my final question here—to table all correspondence between you and Mr Midha, and any other Treasury official that you were in with, from 11 December to 18 December, if you do not mind.

**BENEDICTE COLIN:** I will take that question on notice. Thank you.

**Ms ABIGAIL BOYD:** Thank you, Chair. Thank you to both of you for making the time to come here today. Mr Morgan, listening to your opening statement, you refer to this thing—the Auditor-General's report being an important milestone for TAHE—and you seemed almost celebratory about it. I think the ordinary person reading the Auditor-General's report would see that TAHE's accounting treatments scraped through by the skin of its teeth. We have an Auditor-General's report that flags a number of ongoing concerns and that really does not give any comfort that TAHE is going to meet the accounting treatment in the future. Why are you referring to it in such a sunny manner, shall we say?

**BRUCE MORGAN:** Thank you, Ms Boyd. I am not sure I am feeling in all that sunny a mood at the moment, but the issue of unqualified audit opinion is important for us and it is important because it establishes a milestone having completed the transition process through to where we are now. As I mentioned before the Auditor-General also said that we had met all legislative and other compliance obligations. So yes, there are three issues referred to in emphasis of matters. That is not unusual, and I do not find that unusual for an organisation that is in a fairly early startup stage as a State-owned corporation. The matters raised by the Auditor-General are ones we share the same view on but I would say that the Auditor-General was able to issue an unmodified opinion, so she took into account the activities that continue the growth of the organisation that gave her comfort enough to issue an unqualified opinion. If she had a completely adverse opinion on those matters, the audit opinion would not have been unqualified.

**Ms ABIGAIL BOYD:** So the audit of the State's finances was significantly delayed because we were waiting for this discussion to wrap up in relation to TAHE's accounting between the Auditor-General and Government and TAHE. It is true, isn't it, that we were very close to getting a qualified opinion from the Auditor-General when it came to TAHE's accounting?

**BRUCE MORGAN:** We had regular meetings with the Audit Office. We were not involved in the direct negotiations about the treatment of TAHE's equity injections as equity or as an expense, if you like—a capital expense. That was entirely a negotiation between the Audit Office and Treasury. What we did know from the conversations we had on a regular basis—because the Audit Office was actually very helpful in keeping us apprised—was that, in order to avoid the qualification, a number of matters needed to be resolved in a particular way, and that is where it ended up.

**Ms ABIGAIL BOYD:** And one of those matters, in order to sort of patch things up and allow the unqualified opinion to be issued, was this renegotiation of the access fees. Is that correct?

**BRUCE MORGAN:** What had to happen was that the Audit Office needed to see a higher rate of return to be satisfied that we retained our PNFC classification as a State-owned corporation and a result of that increased return, as advised by Ms Colin, that we received from the Minister on 14 December, was that that access fee would have to be renegotiated and ERC apparently considered that the previous day—that is, 13 December.

**Ms ABIGAIL BOYD:** So given that it was—

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**CORRECTED**

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**BRUCE MORGAN:** You are quite right. It was a result of, yes.

**Ms ABIGAIL BOYD:** Given that it was clear that the access fees needed to be renegotiated in order to comply with that letter from 14 December, how come on 16 December, when you appeared before our Committee, you told my colleague Mr Mookhey that there was no renegotiation of those access fees ongoing?

**BRUCE MORGAN:** What I do recall, Ms Boyd, was that almost the last statements I made in my last appearance were two things—one, to express that the rate of return that was now required was 2.5 per cent and then to have a discussion with Mr Shoebridge about the fact that we would have a commercial negotiation and he questioned whether I was confident that we would have a positive outcome for TAHE on that negotiation, to which I replied I was confident.

**Ms ABIGAIL BOYD:** I am looking at—

**BRUCE MORGAN:** So the—

**Ms ABIGAIL BOYD:** Sorry, go ahead.

**BRUCE MORGAN:** So I think that what I did say was that I thought initially that Mr Mookhey was talking about the broader route access fees in place for all of the use of the railway – private and public railway users. I then, when I rejoined or was questioned, said I would like to provide a point of clarification because, if your question was directed to the rail access agreements with Sydney Trains and NSW Trains, yes, because of the increase in the return there would need to be a negotiation as is contemplated under the agreements every year and that I was ultimately confident that we would have that negotiation and we would be able to achieve the return asked for.

**Ms ABIGAIL BOYD:** Understood. So when it came to renegotiating those access agreements, which I understand TAHE has an official role in coordinating, is it the case that if Transport for NSW had turned around and said, "No, we are not paying more", you then would have been faced with getting a qualified opinion from the Auditor-General?

**BRUCE MORGAN:** Let me ask Ms Colin to deal with the process of renegotiation because this is an important point that you make and it goes to ultimately the memorandum of understanding that was concluded on 18 December and what that actually means in reality and how it will move forward from here.

**Ms ABIGAIL BOYD:** Thank you.

**BENEDICTE COLIN:** Thank you, Mr Chair. Ms Boyd, I will make some additional comments. You are quite right in terms of TAHE being service provider, that we have to make sure that our customers are funded should we seek an increase in the pricing. The letter we received from our shareholder the Treasurer on 14 December assured that Treasury will be funding the operator for that increased pricing. So that gave us assurance that we had a framework. I also would like to correct this, you mentioned that the agreements were being renegotiated. They have not been yet. The track access agreement has in there a clause which allows for a review of the pricing on an annual basis, and that is what we will be doing at the end of this quarter and before the end of the financial year.

So we have not renegotiated yet. We have signed a heads of agreement which gives an intention to renegotiate and that has actually been highlighted by the Auditor-General in her report as an emphasis of uncertainty. I am confident that we can deliver on the rate of return which is expected by the shareholders because our operators will be funded accordingly. The other matters to consider as part of the negotiation, are how the transport investment plan changes as part of the budget process and whether the CapEx that were forecast last year have been delivered and if there is any change in the assets. So it is a bit more complex than just changing the rate of return. We have actually been consistent with the agreements that are in place. We have not reopened them. We will just use the provisions that are in this agreement to review the pricing.

**Ms ABIGAIL BOYD:** So perhaps if I could just put it in a more simple way, the event that occurred in a hurry that required the Transport department to pay an additional \$5.2 billion in its agreements—whatever that agreement is called. If they had not agreed to that amount—to that increase—is it then correct that you could not have received an unqualified opinion?

**BENEDICTE COLIN:** It is not my business to be speculating. What I am giving at the moment is facts. We have entered into a heads of agreement which has been signed between TAHE, TfNSW, Sydney Trains and NSW Trains. We have [inaudible] a commitment to review the pricing as per the expectation and some guidelines. So I am afraid I cannot comment on the speculations.

**Ms ABIGAIL BOYD:** In substance, the effect of Transport agreeing to pay that additional \$5.2 billion was to fix the accounting treatment for TAHE, wasn't it?

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**CORRECTED**

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**BENEDICTE COLIN:** Again, I could not say that it is to fix the accounting for TAHE. The matter that we had for discussion between us and the Audit Office related essentially to the valuation of our assets, which we came to a landing on and agreed on a difference of judgement. I cannot comment on the impacts on the State's account.

**The Hon. DANIEL MOOKHEY:** Mr Morgan and/or Ms Colin, when did the Auditor-General sign your financial statements?

**BRUCE MORGAN:** Mr Mookhey, that was 24 December, the day—

**The Hon. DANIEL MOOKHEY:** Thank you. Why has TAHE failed to table its annual report in the Parliament?

**BENEDICTE COLIN:** My understanding—and it could be because I am not familiar with the process—is that we are still to receive a report from the Audit Office. I had a conversation with the Audit Office at the beginning of this week. My understanding was the priority was from the Audit Office on the State's account and we still need to receive further input from the Audit Office, at which point we will table our annual report.

**The Hon. DANIEL MOOKHEY:** So, Mr Morgan and Ms Colin, both of you have made repeated references to the auditor's opinion as being unqualified. I accept that it is not a technical qualification. The commentary of the auditor in the notes report, we have not seen those. So how can we take it that you are properly representing the auditor's position when we have not seen the report or the auditor's independent report on your statements?

**BRUCE MORGAN:** Mr Mookhey, I guess those accounts will be tabled as soon as they can be. But I think you should ask the Auditor-General this afternoon whether the substance and, in fact, the words of the Auditor-General's report on TAHE are effectively, in respect of TAHE, the same in both sets of accounts. I think that would be a question she could answer. We certainly have—the audit report that I have for TAHE is, I would say, without comparing word for word identical effectively to what has been captured in the State accounts.

**The Hon. DANIEL MOOKHEY:** Mr Morgan, I invited—

**BRUCE MORGAN:** To the timing of the lodgement of those accounts, we would like them lodged as soon as possible. I wish they were before you today.

**The Hon. DANIEL MOOKHEY:** Indeed. I asked because I think you are the only New South Wales government agency that is yet to do so. I will take that up with the Auditor-General as you recommend me to. Can I just return to the time line that we were talking about before. You received a letter of expectation on Tuesday 14 December. On 16 December it is announced in the half-yearly budget review that there is an additional \$1.1 billion going to your customers to pay you. Then the heads of agreement is signed on 18 December, which is Saturday. Why was there such an urgency then to enter into the heads of agreement four days after receiving your new expectations?

**BRUCE MORGAN:** Mr Mookhey, the finalisation of the TAHE accounts and the State accounts was dependent on the Auditor-General being satisfied on a range of fronts, including obviously the return that TAHE was expected to generate. From the point of view of moving as far down the track as we could on putting those arrangements in place, and for me as a chair, and for my board as directors, being confident that we were presenting a set of accounts on which we could rely, as Ms Colin previously said, there needed to be some confidence and an update on, one, expectations and, two, a statement of a memorandum of understanding prepared to provide the evidence not only to us but also to the Auditor-General. The Auditor-General required as much confirmation as possible that we could have some certainty over the revenue streams that backed up the valuation of the assets.

**The Hon. DANIEL MOOKHEY:** Am I understanding you correctly Mr Morgan when I say, the reason why the heads of agreement had to be signed four days after you received the updated expectations was if you did not the Auditor-General would not have signed your account six days later and nor would she have signed the State's account six days later?

**BRUCE MORGAN:** Mr Mookhey, that is the case but the primary thing you should be focused on is whether the directors would have signed the accounts six days later. And without enough evidence to underwrite the value of our assets, which had increased from our previous value based on 1.5 per cent return, we the directors would not have signed the accounts and, if we do not sign the accounts, the Auditor-General does not sign the accounts so—

**The Hon. DANIEL MOOKHEY:** I will take you up on that.

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**CORRECTED**

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**BRUCE MORGAN:** I beg your pardon. Just let me continue. The Auditor-General and directors of a company work hand in hand—independently but hand in hand. [Disorder]

**The Hon. DANIEL MOOKHEY:** My time is limited and I did want to pick up on the point you are making. TAHE had provided the Auditor-General with draft accounts prior to you formally signing the accounts [inaudible]. That is correct?

**BRUCE MORGAN:** Correct.

**The Hon. DANIEL MOOKHEY:** And you as directors would have seen the draft accounts. This is correct?

**BRUCE MORGAN:** Correct.

**The Hon. DANIEL MOOKHEY:** At the time you saw the draft accounts, as directors, no aspect of them caused you to question whether or not they were accurate. Is that fair?

**BRUCE MORGAN:** Correct, but they were draft accounts awaiting audit.

**The Hon. DANIEL MOOKHEY:** And then some time you provided—if on notice you can provide us the exact date you provided the Auditor-General with the draft accounts that would be helpful, but we will ask the Auditor-General as well. But the Auditor-General—

**BRUCE MORGAN:** Subsequently we would be delighted to do that.

**The Hon. DANIEL MOOKHEY:** But the Auditor-General by this point had indicated to you, had she not, that she was not going to sign your accounts unless there were substantive changes?

**BRUCE MORGAN:** I would have to take that on notice but I do not believe so. At that point in time, the majority of discussion would have been—and the Auditor-General should be asked whether this is the case—between Treasury and the Auditor-General because the principal issue that we are narrowing down on is whether the injections into TAHE would be equity or otherwise.

**The Hon. DANIEL MOOKHEY:** I appreciate that but the Auditor-General is your independent auditor as well, is she not?

**BRUCE MORGAN:** I beg your pardon?

**The Hon. DANIEL MOOKHEY:** The Auditor-General is your independent auditor, is she not?

**BRUCE MORGAN:** Correct.

**The Hon. DANIEL MOOKHEY:** So I am not asking about her interaction with Treasury in respect of Treasury accounts. I am asking in respect of her function as your independent auditor. She indicated to you in respect of your own financial status that, on the base of the drafts she had seen, they were not accurate. Is that fair?

**BRUCE MORGAN:** I do not believe that, but I would be happy to take that on notice because the way that presentation of draft accounts works is that we obviously have a process through the year where the Auditor-General interacts with the organisation. We prepare a set of draft accounts. They are not signed off by directors. They are not the directors' signed accounts. They are accounts which are submitted for audit—

**The Hon. DANIEL MOOKHEY:** Yes.

**BRUCE MORGAN:** A major point of discussion between ourselves and the Auditor-General at that point in time was the basis on which assets would be valued, and we have had that discussion at previous hearings. That was the biggest issue that TAHE dealt with with the Auditor-General. The question you are putting was not our primary issue that was going to be resolved by discussions with Treasury and the Auditor-General.

**The Hon. DANIEL MOOKHEY:** My final question is to you or Ms Colin. On or about 18 December did you inform the Treasurer, the Premier's office or the finance Minister as your shareholding Ministers in government that you had entered this Heads of Agreement? What briefings did you provide your shareholding Ministers, both the Treasurer and finance Minister from 16 December onwards?

**BENEDICTE COLIN:** I am happy to answer this question. I now do believe that was the 18 December but I remember writing to the Treasurer and confirming that we had entered into a Heads of Agreement and that would have been the week after the 18 December.

**The CHAIR:** Thank you for your attendance today Ms Colin and Mr Morgan. Did you hear the evidence given by Treasury this morning

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**CORRECTED**

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**BRUCE MORGAN:** I heard most of it.

**The CHAIR:** Ms Colin, just to check. Have you read the Audit Report, the one that was delivered yesterday?

**BENEDICTE COLIN:** With the reservation I have read the section that relates to TAHE which are chapter 1 and chapter 2, yes.

**The CHAIR:** Did you read the passage that begins:

Between 9 July and 1 December 2021, NSW Treasury submitted three versions of estimated returns with respect to the GGS's investment in TAHE. All of these models were unsophisticated, containing errors, omissions, and/or poor logic. Most importantly, none were able to demonstrate that a realistic rate of return would be derived from the GGS's investment in TAHE.

**BENEDICTE COLIN:** Yes, I did.

**The CHAIR:** Did you hear NSW Treasury say that, in fact, it was TAHE that produced those models?

**BENEDICTE COLIN:** I did hear that. My response to that is, I am not privy to the model, the information that Treasury provided to the Audit Office so I cannot comment on it.

**The CHAIR:** Did you provide models to Treasury? During that time did you provide models which estimated the returns?

**BENEDICTE COLIN:** We certainly did our own internal model which backed our pricing and our valuation. We were asked by Treasury during that time in December to assist them with the provision of information to the Audit Office. I cannot comment on the information that has been provided to the Audit Office.

**The CHAIR:** Just to be clear—did you give versions of estimated returns to Treasury during that period between July and December 2021?

**BENEDICTE COLIN:** I will have to take that question on notice. My recollection is that we did provide some information to assist Treasury in the development of the financial model that we provided to Treasury.

**The CHAIR:** So cannot say whether or not what Treasury told us which is that the models that were unsophisticated, contained errors, omissions and of poor logic were your models, you cannot say whether they were your models? Is that what you are telling me?

**BENEDICTE COLIN:** Correct.

**The CHAIR:** Treasury said they were, though—

**BRUCE MORGAN:** Excuse me—

**The CHAIR:** I will come to you in a second, Mr Morgan. Treasury said that they were your models. Should we accept Treasury's word? Do you think we should?

**BENEDICTE COLIN:** I cannot comment on Treasury work. I cannot comment on the information that Treasury provided to the Audit Office.

**The CHAIR:** Mr Morgan?

**BRUCE MORGAN:** We have probably dealt with this but as far as I am aware, and I did check this with Ms Colin before, I do not believe that there has been any criticism by the Audit Office of the quality of the modelling that we did within TAHE that they looked at and relied on, so I am not sure of what was provided by Treasury to the Audit Office or who the source really was. I do not know—

**The CHAIR:** Ms Colin, did TAHE provide separate modelling to the Audit Office?

**BENEDICTE COLIN:** TAHE provided information to support the valuation of our assets.

**The CHAIR:** Did you provide modelling?

**BENEDICTE COLIN:** That was independently audited on both sides by TAHE and the Audit Office and that was for the purpose of establishing assets.

**The CHAIR:** Ms Colin, my question was about modelling. Did you provide modelling about the expected returns to the Audit Office?

**BENEDICTE COLIN:** I would have to take that question on notice Mr Shoebridge.

**The CHAIR:** Is it true, Ms Colin, that in the initial accounts that TAHE provided to both Treasury and the Audit Office they excluded TAHE's original asset write down?

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**CORRECTED**

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**BENEDICTE COLIN:** That would not be correct.

**BRUCE MORGAN:** Mr Shoebridge, that is incorrect because the write down would be reflected in a reduction in reserves. So, it actually appears on the balance sheet. The original write down that you are referring to is the long-term projections which was obviously discussed between Treasury and the Audit Office in terms of understanding the return that would be achieved by Treasury, by the shareholders over a period of time. We were not party to that discussion. But the write down is included in TAHE's accounts.

**The CHAIR:** You are saying where the Auditor-General says that there are errors in what was provided to them by Treasury, including:

- excluding TAHE's original asset write down value of \$24.8 billion (later amended to \$20.3 billion ...) being holding gains/losses arising from valuation changes

Treasury went off on a frolic of its own, did it, and provided different information to what you provided to Treasury? Is that your position?

**BRUCE MORGAN:** Our position is that the profit or loss you are referring to is in the balance sheet and always has been of TAHE because it is a real reduction in reserve. As I said, it is a discussion between Treasury and the Audit Office as to whether that amount should or should not be included in the calculation of return is not a question that I could answer.

**The CHAIR:** It was not your doing, though, that excluded that write down from the modelling? You did not exclude that write down from the modelling?

**BENEDICTE COLIN:** Correct.

**BRUCE MORGAN:** No. I do not believe that we were involved in that discussion.

**BENEDICTE COLIN:** We were not.

**BRUCE MORGAN:** We were not, okay.

**The CHAIR:** Were you aware of the concerns of the Auditor-General that the draft accounts that were provided to it in relation to TAHE were potentially going to contain a material misstatement without the \$5.1 billion additional contribution from licence fees? When were you first aware of those concerns?

**BRUCE MORGAN:** I do not believe Mr Shoebridge that the assets or otherwise of the \$5.2 billion would result in a material misstatement. As I said before, the most difficult discussion that we had with the Audit Office was really about how to value the fixed assets. We came up with a more conservative number from our experts and they came up with a more aggressive number and the difference at one stage was \$4 billion, and that is referred to. That was the major point of our discussion.

**Mr DAVID SHOEBRIDGE:** The Auditor-General's report states:

As a result of signing the HoA on 18 December 2021, \$5.2 billion in access and license fees were added to the discounted cash flow valuation, resulting in an upward revaluation of TAHE's PPE and intangibles. This ensured TAHE's asset values fell within a supportable range and were not materially misstated at 30 June 2021.

Do you agree with that conclusion from the Auditor-General?

**BRUCE MORGAN:** There are two steps in the process. Firstly, when we prepared the draft accounts they were based on a return of 1.5 per cent and we debated that at previous committee meetings. We were then provided with an update which I referred to last time of 2.5 per cent. To achieve the 2.5 per cent of 5.2 in round terms was needed and we actually agreed with the Auditor-General as to where we would land on an asset valuation incorporating that cash flow. There was no disagreement with the Auditor-General about that at all. It was a result of this changes in return with the Audit Office and giving effect to the agreement struck on equity between Treasury presumably and the Audit Office.

**The CHAIR:** My final question is this. What is TAHE's strategy to recover that now \$20.3 billion loss? You are required to cover the loss if you want to have your accounts signed off by the Auditor-General. What is your strategy to recover that \$20.3 billion loss?

**BENEDICTE COLIN:** As I mentioned we have got various levers to produce revenue. One of them at the moment is the access and licence fees and we will consider a review of pricing with our rail transport operators. As I mentioned in my opening statement there are many more opportunities where we can draw additional return and hopefully in excess of the 2.5 per cent and that will certainly be my intention as we develop the property portfolio that we invest and create a stream of sustainable investments that can be distributed to Treasury.



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**CORRECTED**

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**The CHAIR:** Ms Colin and Mr Morgan, thank you for your attendance today. I think a couple of questions have been taken on notice. I also ask you to take on notice if you have any forward adopted strategies for recovering that \$20.3 billion to provide the Committee with the details? I also ask that you provide the Committee with a copy of the Heads of Agreement and relevant correspondence to the Heads of Agreement it would be much appreciated.

**The Hon. DANIEL MOOKHEY:** Can I ask Mr Morgan to provide the updated statement of expectations that was issued on 14 December last year too?

**BRUCE MORGAN:** Certainly. Chair, before we leave, could I make one comment. There is much concern about the \$5.2 billion over four years. The one thing I would say, of course, is the extent that that produces a surplus within TAHE does a number of things. One, it helps us recover the write off which you mentioned over the longer term. Second, the surplus will go forward for funding assets in accordance with transport's plan. The next step, once we have turned our capital management plan and come to an agreement with government, it will go back to government and the Government will use that for whatever purposes it needs to run the State. It is not as if the \$5.2 billion disappears down a black hole or is leached out, it will actually be put to use and probably avoid some equity injections from Treasury around the development of new assets. Thank you for the opportunity.

**The CHAIR:** I think if we are talking about the \$5.2 billion one of your biggest problems is that your primary customer, Transport for NSW, told us it has not agreed to pay it yet. So that is a problem for you, is it not? Transport for NSW told us in the previous session it has not agreed to pay it.

**BRUCE MORGAN:** I think that is an incorrect assumption. Where we are at is the negotiations have opened up and as Ms Colin very clearly pointed out the assets and licence agreement are with the Ministers which is a normal mechanism which will not require the agreements to be put aside, but rather allow for the development of this additional amount in accordance with the bands across [inaudible]. You asked me at the last appearance, I am again confident that we will get to an agreement with Transport of that magnitude.

**The CHAIR:** We would appreciate seeing the Heads of Agreement which Mr Sharp described as an agreement to agree, as opposed to an agreement. But they will speak for themselves, Mr Morgan. Again, I appreciate your assistance today.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

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**CORRECTED**

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**MARGARET CRAWFORD**, Auditor-General, Audit Office of New South Wales, before the Committee via teleconference, affirmed and examined

**IAN GOODWIN**, Deputy Auditor-General, Audit Office of New South Wales, before the Committee via teleconference, sworn and examined

**SCOTT STANTON**, Assistant Auditor-General, Audit Office of New South Wales, before the Committee via teleconference, sworn and examined

**The CHAIR:** I thank you for coming. It was our original intention to hear from you last year but on mature reflection we thought it was best to wait until the State finances audit had been completed and that happened fairly recently. If any of you would like to make an opening statement now is the opportunity.

**MARGARET CRAWFORD:** Thank you, Chair. I will be brief. I am very pleased to inform the Committee that I have completed my obligation to audit the total State account and TAHE accounts and have tabled my report to Parliament on State finances 2020-21. On this occasion my report has presented in some detail not just the outcome of the audit but on the process to get there and the risks and uncertainties remaining. As I said in my introduction to that report my independent auditor's opinion on the State's consolidated financial statements, albeit delayed, is unqualified. However, it does include an emphasis of matter drawing attention to significant uncertainties remaining in relation to the state's equity investment in TAHE.

I must say though that I was quite alarmed by the evidence presented by Mr Sharp early today regarding the \$5.2 billion increase in funding to Transport for NSW so the operators could pay increased access fees to TAHE. The quantum of payments was never part of the uncertainties we reference. We agreed in good faith to accept the Heads of Agreement undertakings. On the basis of what we heard today we will now have to reaffirm these commitments.

I have explained that the delay in completing the audit was due to protracted disagreement over the Government's cash contribution to TAHE. This may have been avoided had certain reports been provided to my office earlier and had the engagement with auditees been more open to different views. To be clear, this year's audit was extraordinary and unusual in my experience over nearly six years as Auditor-General. It tested the relationships and resilience of staff of both organisations. We must now work hard to restore the trust that is essential to the conduct of audit and confidence in the financial management of the State's resources.

Having completed the audit and my reporting obligations I am pleased to provide testimony to this Committee today. I would note at this juncture that at your last hearing the former Secretary of Treasury referred to my absence as me having "pulled out". I note Chair that you corrected this characterisation and I thank you for that. To be clear, until my audit is complete there are limitations on what I can say and I did not want to waste the Committee's time. Thank you.

**The CHAIR:** So the record is entirely clear, it was the position of the Committee that this has been the most appropriate order in which to hear from you following the completion of your report. We do appreciate that. I will hand over to the Opposition to commence questioning. Mr Mookhey, if you do that a fourth time, you will forego your first position as questioner and I will go to Ms Boyd.

**The Hon. DANIEL MOOKHEY:** Thank you. This time I argue it was the software, it was not fault. Auditor-General, I appreciate that you and your staff have appeared today. I want you to assume that everybody who is giving evidence has read your report as well. Auditor-General, I will start with the statement you made in your opening statement when you referred to Mr Sharp's evidence. I think you said his evidence had created some alarm—did I hear you correctly?

**MARGARET CRAWFORD:** I think it would be concern. I would have to go back over what I said.

**The Hon. DANIEL MOOKHEY:** Okay, we will go with concern.

**MARGARET CRAWFORD:** My apologies, I said I was alarmed.

**The Hon. DANIEL MOOKHEY:** I thought so, you were quite alarmed. What about his evidence alarmed you?

**MARGARET CRAWFORD:** The fact that he really raised a question over whether the re-negotiated agreement would reflect the terms of the Heads of Agreement that was entered into on 18 December 2021 which included, made specific reference, to an additional contribution to Transport for NSW of \$5.2 billion which was to pay for increased access fees to TAHE.

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**CORRECTED**

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**The Hon. DANIEL MOOKHEY:** Just to be very clear, your decision to issue the accounts without qualification—did it turn specifically on that representation or those representations?

**MARGARET CRAWFORD:** That was one of the key matters that meant that we could be satisfied that was going to be a reasonable return; that TAHE would have a reasonable return on the State's equity investment in TAHE.

**The Hon. DANIEL MOOKHEY:** Was that because you were given representations, or the documents made clear, that rather than Heads of Agreement were not just an agreement to agree but were an actual agreement, and that at leads to you to be able to accept the representations?

**MARGARET CRAWFORD:** There was a Heads of Agreement to re-negotiate the agreement but, as I said in my opening statement, we accepted that in good faith that that would be followed through quickly and the terms of the Heads of Agreement would be converted into a legal agreement as soon as possible.

**The Hon. DANIEL MOOKHEY:** Having heard the secretary it has given you doubt as to whether that action will happen?

**MARGARET CRAWFORD:** I think it needs now to be re-affirmed.

**The Hon. DANIEL MOOKHEY:** What does that mean, Auditor-General?

**MARGARET CRAWFORD:** Well, in the first instance I would go back to Treasury and seek its affirmation that what it indicated in its Heads of Agreement would now be converted into a formal legal agreement. In the first instance that would be my course of action.

**The Hon. DANIEL MOOKHEY:** But Treasury cannot compel Transport to sign it? Correct? If Transport refuses to follow through on the commitments that were made in the Heads of Agreement, or if the outcome of its negotiations with TAHE are substantially different, what does that mean for the audit?

**MARGARET CRAWFORD:** Yes. It does have consequences. Maybe if I might, Mr Mookhey, ask my Deputy Auditor-General to speak to that for the next step.

**IAN GOODWIN:** Just to be clear, the accounting issue that we had was about whether to treat the cash contribution as an equity investment. That required evidence of an intention to derive a sufficient, realistic return and that intention needed to be backed up by something. Up until a point in mid-December that evidence did not exist. The actions taken by government to put additional funding towards TAHE changed the projections that you spoke about the earlier projections, changed those projections, and it put it back on the path that there was going to be now an intention to be able to earn that realistic return to meet that financial reporting requirement.

When we came to considering the audit opinion the issue we had was that we needed to see that concretised in an agreement. We had suggested to Treasury that our very strong preference was to see that in signed agreements but it was explained that those signed agreements take some time and obviously there was an imperative to sign the accounts but it was also assured, in further conversations with Treasury, that the \$5.2 billion absolutely would follow through to the Heads of Agreement. So the Heads of Agreement was, us being pragmatic that there was a procedural administrative matter that needed to be completed.

The \$5.2 billion was never in question and so the evidence presented earlier today that the \$5.2 billion might be in question is the first time this office has heard that, and we need to clarify that because that becomes important. If that \$5.2 billion does not have a reality, it undermines the projections that Treasury put to the Audit Office about that rate of return and we are back to where we were before mid-December.

**The Hon. DANIEL MOOKHEY:** I appreciate that Mr Goodwin but it sounds like you were given a clear commitment from Treasury and that commitment is now in doubt. Is that a fair summary of what you are saying?

**IAN GOODWIN:** We were given a clear commitment from Treasury. We had a signed Heads of Agreement that sought to, I guess, clarify that commitment in writing. The wording though in that Heads of Agreement—which is why we had the significant uncertainty—said that the Heads of Agreement formed the basis of negotiations.

**The Hon. DANIEL MOOKHEY:** There is a reasonable risk now that the Audit Office was duped.

**IAN GOODWIN:** There is some testimony that was provided this morning that the Audit Office now needs to clarify as to whether that was actually the intent of the wording. We definitely need to clarify that.

**The Hon. JOHN GRAHAM:** Perhaps also the same question to the Auditor-General is: Do you also feel that that commitment is now in doubt?

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**CORRECTED**

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**MARGARET CRAWFORD:** Well, I heard the testimony and I can only say, as I did in my opening, that I was quite alarmed by that evidence. I could imagine that Mr Sharp may not have got it 100 per cent right but I do not know that, so our next step is obviously to go back to Treasury in the first instance to affirm what was the basis on which I issued my own report.

**The Hon. DANIEL MOOKHEY:** There is a position advanced by Mr Sharp that was also supported by TAHE which in both inquiries said that the final outcome will follow a negotiation, and at this point it is just a matter for agreeing. Just to be very clear, and to be fair to Mr Sharp, it was not just him. Did you see TAHE's evidence?

**MARGARET CRAWFORD:** We did.

**The Hon. DANIEL MOOKHEY:** That confirms that these negotiations—that all that had been entered into is a Heads of Agreement to negotiate with a view that an outcome is reached between January and March. No one was prepared to warrant that it was \$5.2 billion. Myself and my colleagues Mr Graham and Mr Shoebridge pushed a bit harder. On the basis of seeing both their evidence should we be worried that the audit has to be reopened or the audit was agreed to on a false basis or not on the basis of representations which were inaccurate for you?

**IAN GOODWIN:** It is not the first time that we have heard evidence presented to this Committee that is probably the first time we have heard a key fact. So I think in fairness to the Secretary of Transport and to the representatives of TAHE, we need to just now clarify the language that was there. At the moment what I do have is a signed Heads of Agreement that formed the basis of negotiation. That Heads of Agreement document actually has a table in it and that table actually has the \$5.2 billion in it. That \$5.2 billion also represents what I understood in my conversations with senior people in Treasury would crystallise and from representations that we got from NSW Treasury that that was briefed to government as part of revising the mid-year budget review. The \$1.1 billion was going to be reflected in the mid-year budget review and forward estimates, plus the \$4.1 billion that sat outside the forward estimates. We went to great lengths to confirm that that was briefed to government. We had every reason to believe that the \$5.2 billion was not in doubt. What we now need to do—because it is very important to the judgments formed in the Auditor-General's opinion—is confirm that that language that was put this morning does not undermine that \$5.2 billion.

**The Hon. DANIEL MOOKHEY:** Auditor-General, in your report you made the point quite clear, and we all understood, that beyond the forward estimates at least \$4.1 billion of this money has to arrive in TAHE's accounts for these fees. But it is not in the forward estimates. It is not in the budget. In fact, you made the point quite clearly that the Government has not included it in its forward figures which will give it the power of the Heads of Agreement. Does that further raise questions as to whether the Heads of Agreement can be relied upon? Is that still real now?

**MARGARET CRAWFORD:** Again as Mr Goodwin said, we certainly received assurances from Treasury that the additional \$4.1 billion had been raised with government and was a commitment of government. Now it is not unusual that would not have been forward estimates to go through to 2035. But that is why we raised it as an area of uncertainty.

**Ms ABIGAIL BOYD:** I thank all of you for your work on this and for your very comprehensive, if not alarming, report. Having watched the Treasury, Transport officials and TAHE over the past year it seems to me that what we have here is a series of events which are basically a scramble to fix an initial mistake. To what extent do you think the agreement that was reached on 16 December was one of those scrambling events? Do you think that the absolute minimum was done at that point for the signing of the Heads of Agreement and the commitment of the initial 1.1 just to get the audit review across the line?

**MARGARET CRAWFORD:** The actions that were taken between 14 December and 18 December were the actions that were needed to pass the accounting tests for the equity injection into TAHE so we would achieve those accounting requirements. It would be done in a very tight period of time. It would be in all of our interests to finalise the signing of the accounts before Christmas. As I said in my opening statement, this whole exercise really did test the resilience of our people and to drag it out after Christmas—we would have if we had to—but certainly we were keen, as was Treasury, to get the matter done by Christmas.

That does not mean to say that we cut corners. We absolutely made sure that we had confidence that the accounting tests were met in order to be able to sign off on the opinion. We also went to great lengths with Treasury to make sure that in its financial statements referenced also—in 9-11, I think it is, Ian—the uncertainties and made full disclosures that we could reference in our index. So I think we passed all the tests. Yes, it was pretty much 24 hours a day work involved to get there but it does pass the test.

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**Ms ABIGAIL BOYD:** When I asked the previous witnesses today whether the commitment of \$5.2 billion necessary in order to get an unqualified audit opinion from you—that is correct, is it not?

**MARGARET CRAWFORD:** It depends if you are talking about TAHE or the total State accounts. Ian, do you want to elaborate?

**IAN GOODWIN:** Yes. It is a very good question and it is good segue to clarify a couple of things, if I may. We are talking about two different accounts here. We are talking about a whole-of-government accounts—the total State sector—and then the TAHE accounts which is one of the entities that make up the total State sector. There were separate issues for each. They were both two audits. Both culminated with issues that had potential qualification breaches. In terms of the total State sector accounts, the answer to your question is, absolutely yes. The \$5.2 billion that was provided for, that we understood, that was reflected in the Heads of Agreement, was absolutely the critical factor to change it from a qualified opinion on the whole-of-government accounts. And that is why the Auditor-General said the testimony provided this morning needs to now be clarified.

In terms of TAHE's own accounts there were separate issues. TAHE has to fair value its assets and there were some contested views that we communicated to TAHE that unless they were changed would also be material to the financial statements—material in the statements means a qualification. Those were around asset valuation. I would say the asset valuation of TAHE is a very complex matter, just working through, discounting of cash flows, and agreeing on some quite complex assumptions around discount rates the alpha, the beta and the gearing matters. They were complex and they do have a degree of judgement. But ultimately we were able to agree with TAHE on the fair value of its assets.

That is important because a fair value of assets leads to the size of the write down that became the question of the sufficient rate of return. The valuation of TAHE's assets which were written down by a significant amount, TAHE has to present those assets correctly in its own accounts. We had some matters that we dealt there. But the outcome of that asset valuation became the issue for the total State accounts in terms of understanding whether there would be realistic rate of return on the Government's current contribution into TAHE. They are two separate issues. The short answer to your question of \$5.2 billion is yes it was important.

**Ms ABIGAIL BOYD:** Just to clarify then in relation to the State accounts, in order to pass the audit or to get an unqualified audit opinion, \$5.2 billion had to be committed in quite a rapid fashion in December?

**IAN GOODWIN:** Yes.

**Ms ABIGAIL BOYD:** Can I clarify with you that that \$5.2 billion is just for the first 10 years of operation of TAHE? Is that correct? What is the consequence on the budget after that?

**IAN GOODWIN:** Correct. So if I may, I guess when the accounting issues became well understood there were three options on the table effectively before Treasury and us. Before the middle of December we communicated that on the current calculations when you incorporate that loss that TAHE had, there was not a sufficient rate of return to justify that under the Government Finance Statistics Manual that you could classify this as an equity contribution. It would need to be an expense. So we communicated that the options that were able to avoid qualification, was to reverse the accounting entry and expense it or provide evidence that there was a sufficient rate of return that could be achieved.

That latter point is what led to the events in mid-December, quite rapid events that led to the \$5.2 billion. I would say we never put an amount on the table. The Government had to put put forward to show a rate of return. What we did say is that you had to have a rate of return that earned the 2.5 per cent because in the absence of a government policy around rates of return we referred to the long-term inflation rate and the Commonwealth Department of Finance's guidance on this, so doing that 2.5 per cent, but in addition to recover the revaluation loss. We also agreed that it was not unreasonable to recover that revaluation loss over the asset useful life so that is why it talks about a 30-year period. What that means is that there is still a long tail of additional funding that needs to come in to earn that rate of return. So the rate of return calculation is not a return for one year, it is looked at over that 30 year period.

**Ms ABIGAIL BOYD:** So in order to calculate that precisely then but you are saying is that an amount that is much larger than the \$5.2 billion that will need to come out of future budgets after 1 July?

**IAN GOODWIN:** Correct, and that is why we have made a recommendation to Treasury and to the TAHE board, but it sits immediately with Treasury, around improving the state of its projections because the projections that were provided to us, and I just want to clarify the projections were provided by Treasury, not by TAHE. I can explain that a bit more but there was a bit of confusion this morning in a testimony. Those projections are provided by NSW Treasury. They do have inputs from TAHE but when we got to the final projection what we had was 20 years' of a one line growth of 2.5 per cent. I am saying that for now, because this is a first year of

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operation of TAHE in its new design, we can accept that but what Treasury needs to do with the TAHE board is a more sophisticated set of projections rather than one line from year 11 through to year 30 plus of just assuming a 2.5 per cent growth rate because we do not know what source, or the means, that is going to be there. What it does mean—it is outlined in the Auditor-General's report—is it is a significant amount of expenditure going forward.

**Ms ABIGAIL BOYD:** So the protections that were given to you, or the estimated returns, contain a number of errors, as detailed on page 11 of the Auditor-General's report. Are you saying that those errors came from Treasury and Treasury cannot really blame TAHE for that?

**IAN GOODWIN:** There is an operating model, and that certainly sits with the TAHE board, but that is not what we are talking about. These were projections to show the evidence whether a sufficient rate of return could be achieved, and we received a number of projections. My understanding is the very first one that we received definitely had some TAHE involvement to provide what their revenue numbers were understood to be under the statement of corporate intent. But, ultimately, that was a calculation that the NSW Treasury provides to demonstrate whether they could earn a rate of return to support the accounting treatment as an equity investment. So they are NSW Treasury's calculations.

**Ms ABIGAIL BOYD:** Ms Crawford, we heard from Mr Morgan that the report you released yesterday was a significant milestone for TAHE, which I characterised as being perhaps unduly sunny. Could you confirm that the entire audit review, and the production of a report that has an unqualified opinion in it, really hinges on whether or not that \$5.2 billion commitment is correct? And could you tell us about the uncertainties going into the next year?

**MARGARET CRAWFORD:** The \$5.2 billion is one consideration—a very critical consideration, but one of only a number of matters. As they are going forward, there is still a lot of work to be done. You referenced TAHE. So in the case of TAHE, really they have a big task in front of them to—rather than just, I guess, talking about the potential for commercial activity and greater returns from outside of government, we need to see some evidence of that, at least a good plan that assists to make it real. Again, Ian, I will defer to you for anything further on that.

**IAN GOODWIN:** I think you have probably made a very succinct summary there, Margaret.

**The CHAIR:** We will go to the Opposition. Mr Mookhey or Mr Graham.

**The Hon. DANIEL MOOKHEY:** Auditor-General, just to finish this line of questioning, if it is the case that you had classified what is currently termed "equity investment" to a grant expense, that would effectively affect the budget result, would it not?

**MARGARET CRAWFORD:** It would impact the budget result, yes.

**The Hon. DANIEL MOOKHEY:** And after your inquiries that you now have to do to confirm tension that will confirm that the heads of agreement remains, what powers do you have to reverse the audit? Do you have the power to change the audit or not?

**MARGARET CRAWFORD:** Again, I will ask Ian. If you could step through that process, Ian.

**IAN GOODWIN:** Thank you, Margaret. Just to confirm on the budget result, it impacts the general government sector budget result.

**The Hon. DANIEL MOOKHEY:** Yes, [disorder].

**IAN GOODWIN:** So the general government sector sits within the entire total state accounts. So there was earlier testimony that when you look at the whole of government, yes, at the total State sector accounts, which includes the general government sector and the two—the PNFC and the PFC—they were not impacted to that, but when you talk about the general government sector, it does impact the general government sector budget result. So the implication is—and this is what I would cautiously characterise as an "if", because we do need to step through the work. But in a hypothetical scenario, if an auditor was presented with information that put into question the evidence that you rely on for your opinion, you would need to reconsider whether to reissue your opinion.

**The Hon. DANIEL MOOKHEY:** So, Auditor-General, there is a chance that you might need to reissue the opinion if, after your inquiries, you decide that you were given incorrect information?

**IAN GOODWIN:** I think that is a bit speculative. Just to be clear, what we have is written evidence in the heads of agreement that reflects the \$5.2 billion. What we now need to do is clarify the language this morning. I would not want to speculate what we need to go forward on until we have clarified that.

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**The Hon. DANIEL MOOKHEY:** I think my colleague may have one or two questions.

**The Hon. JOHN GRAHAM:** Thank you for the evidence you have given; it has been very helpful. I want to clarify exactly what those questions might be. I think we started with the certainty of an unqualified audit. Although, Auditor-General, as you importantly note, it includes that emphasis of matter but now some uncertainty. I think you have been clear about the first of those uncertainties, the \$5.2 billion, and exactly whether and how that is provided for. I think you have been very clear on that. I imagine, given what you have said, a second matter you will be keen to clarify is exactly the timing of those moves to the next stage of those formal agreements. Is that one of the other matters you will be seeking to clarify here?

**MARGARET CRAWFORD:** It is just a given, in a sense. Our opinion, really, even though we have relied on heads of agreement, our opinion is it is essential that we get the signed agreements. It should not be an uncertainty; it just should happen. Although, I think we did reference it as one of the things that had to happen. Then there are other matters that go longer term, as I discussed before, in relation to what TAHE needs to do to really firm up its operational and business plan.

**The Hon. JOHN GRAHAM:** The fact it happens is not in doubt but the timing of that—do you feel confident after the evidence this morning that you know what the timing of moving to those formal agreements is?

**MARGARET CRAWFORD:** Ian, I think that is what we need to affirm.

**IAN GOODWIN:** Yes. What I heard this morning is not different to what we were told in December around timing. These are quite complex agreements, and that would be the case that it would take time to do it, and it was explained that it would occur in that period of February to March. Our initial preference then was to—obviously in a perfect world you would sign the audit opinion when those new agreements were signed, but the heads of agreements is a practical way to move forward and we always understood that it would be in February/March.

**The Hon. JOHN GRAHAM:** Yes, I talked about that quite well.

**IAN GOODWIN:** Yes. It is a procedural matter.

**The Hon. JOHN GRAHAM:** And a third question: When you say you understood this was briefed to government, your report is more specific than that. It said that it has been "broadly communicated to the Expenditure Review Committee", and that is in relation to the money that is not yet in the budget but will be required to be.

**IAN GOODWIN:** Yes.

**The Hon. JOHN GRAHAM:** Is that something that you now want to clarify: exactly how has the Department of Premier and Cabinet been briefed and to what extent?

**MARGARET CRAWFORD:** We have written confirmation of that from Treasury, so we have that in writing.

**The Hon. DANIEL MOOKHEY:** Auditor-General, I will turn to the foreword of your report. You say:

This year's audit was significantly delayed by protracted disagreement over the treatment of the Government's cash contribution to TAHE.

You go on:

This matter was further frustrated by the fact that information was withheld and not shared with my Office on a timely basis.

And, to be fair, you repeat that at multiple instances in the body of the report as well. And you incidentally also provide examples of information that was withheld from you. But I read and the inference that I drew was you were being misled. Did you feel like perhaps you were being misled throughout this process?

**MARGARET CRAWFORD:** That is an interesting characterisation. We had been making a request for information around TAHE for a considerable amount of time. We raised the matter, or the risk associated with TAHE, in our report to Parliament on the finances the year before and made recommendations re what was needed in respect of TAHE. From that moment on we were seeking confirmation in documentary form that the recommendations were being implemented and that the operating model et cetera was being progressed. So, as a regular thing, I meet with the secretary of Treasury. It used to be quarterly but throughout this year it has been more like monthly. And Ian, my deputy, often joins me at those meetings.

I think it is fair to say, Ian, that at every meeting we raised issues about the need to receive information, documentation, to support the intention with TAHE. Over time our request escalated. There is a whole litany of

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written requests. Scott, the assistant Auditor-General, who is with us today, certainly put in writing on a number of occasions requests for specific documents. I personally wrote to the secretary of Treasury asking and alerting him to the fact that the time frame for the completion of the audit was going to be at risk if we did not receive particular information. And, in addition to all those many requests, there was again evidence provided to your Committee that alerted us to other documents that, in fact, were many years old that we had not received. So it has been a constant issue throughout this process. Now, what word did you use, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** "Mislead". Did you feel misled?

**MARGARET CRAWFORD:** I felt incredibly frustrated, as I said in my report, that we could not get, in a timely way, everything that we were asking for, and that we had to be always so specific as opposed to just relying on information to be freely given to us. So, yes, I do not believe I felt misled; I felt that people were not being helpful and that perhaps there was a reluctance to share certain reports with us because those reports may not support the particular outcome that was being sought.

**The Hon. DANIEL MOOKHEY:** Ms Crawford, that sounds to me like you were not being misled but there was an attempt at a cover-up. Not providing you with information that would not support a position, keeping from you information that you would otherwise need—that sounds more like a cover-up than a campaign to mislead. Is that an unfair summary or is that something you cannot comment on?

**MARGARET CRAWFORD:** What I can comment on is really in the report, and we are quite fulsome in what we say about these matters in my report. I think in this instance, as I said earlier, this was very unusual. In all the time I have been Auditor-General I have never experienced an accounting issue—every year there are accounting issues in relation to total State accounts, but this one was very high stakes. It felt like it was very high stakes, and that there was an outcome that people were locked into and therefore reluctant to provide any information that did not support that policy position.

**The Hon. DANIEL MOOKHEY:** If you do not describe that as a cover-up, how do you describe it? Because how else can you describe that?

**MARGARET CRAWFORD:** I can only describe the facts as occurred and our engagement with officers, and that is all documented in my report. I will leave it to others to label it.

**The CHAIR:** Ms Crawford, Mr Sharp made it abundantly clear in his evidence today that Transport for NSW did not have an in-principle agreement to pay the \$5.2 billion in additional licence and access fees. What was the position that was relayed to you by Treasury in relation to that matter?

**MARGARET CRAWFORD:** Again, I might defer to Ian for the detail, but what we are referencing is what was in the heads of agreement. Ian, have you got the detail there?

**IAN GOODWIN:** Yes. I think the details sits in a MOP, if I may, in a series of key events, because we did not have the perfect world, and the perfect world was signed agreements. If I may, in our job as auditors we are faced with making calls of judgement, and those calls of judgement do rely on your reflections of people's intent. So those key events were that there was a communication to ERC of the magnitude of \$5.2 billion. And, as the auditor general said, we got that in management representations from Treasury, and I certainly got that as a verbal confirmation from the deputy secretary that that was briefed as part of getting government to add the additional \$1.1 billion to the midyear budget. So that is the first step of us looking at intent.

The second step was that in conversations with Treasury, we requested that that be put into re-signed agreements before signing. The practicalities of that were explained and Treasury made the suggestion of the heads of agreement. We had no reason to believe that those heads of agreement were not going to have substance going forward. What we did request is that the heads of agreements were specific to the numbers that were briefed to the ERC, which includes a table at the back as an attachment to the heads of agreement, that has those additional fundings, which are reflected in page 14 of the Auditor-General's report, by year, the \$5.2 billion. So the judgement was that there was clearly an intent to move forward on that. This testimony just puts a different colour on that.

**The CHAIR:** Mr Goodwin, it was not a vague statement. As I understand it from what is contained in page 14 of your report, the heads of agreement and the commitments given to you were very precise figures going forward. Is that right?

**IAN GOODWIN:** They absolutely were, and that is the basis on which we made the judgement that we could see that the returns were going to be earned. But we felt that there was still an uncertainty and that uncertainty was, if I may, a procedural or administrative matter of timing to convert that heads of agreement into re-signed agreements.



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**The CHAIR:** Did Treasury ever convey to you the position that Mr Sharp gave to the Committee today, that Transport for NSW had not agreed to those precise figures and, indeed, were going to enter into a negotiation on the figures between a floor and a ceiling price over February and March this year?

**IAN GOODWIN:** Absolutely not. And, in fact, us accepting the heads of agreement was a point of tension that I was not always comfortable with. I specifically had a conversation with the chief finance and operations officer of Treasury, who was quite clear to me that those amounts would follow through. And if they did not, everyone would be embarrassed.

**The CHAIR:** If you had had the benefit of Mr Sharp's evidence before you had completed this audit, would you have given an unqualified opinion?

**IAN GOODWIN:** I think what it would have meant is my advice to the Auditor-General would have been that we would have had to seek clear affirmation from the Treasurer around that.

**MARGARET CRAWFORD:** If I could jump in, Mr Shoebridge, that is still the case. I think we need to work this through—

**IAN GOODWIN:** Yes.

**MARGARET CRAWFORD:** —and just simply get the additional affirmation that we are seeking.

**The CHAIR:** And absent that, the option of retrospectively qualifying the accounts is still on the table, isn't it?

**MARGARET CRAWFORD:** It is always on the table for any audit, but I do not think we are at that point. I think we have got a few—

**IAN GOODWIN:** Margaret, if I may. I think, in fairness to your question, Chair, I would say that that is very speculative at this point.

**MARGARET CRAWFORD:** Correct.

**IAN GOODWIN:** And I would not want to be giving any comfort to that question. I think what we need to do is some work to clarify what was said, because it may have just been words that could have been better expressed. So we need to work that through.

**The CHAIR:** At the very least it has thrown a great deal of uncertainty into the mix, hasn't it?

**IAN GOODWIN:** It was not expected to be heard.

**The CHAIR:** This is not the first time, is it, that evidence has come out in this Committee that has had a potential fundamental impact on the valuation of TAHE and on the balance of the evidence given to you by Treasury, is it?

**IAN GOODWIN:** That is correct.

**The CHAIR:** Can you talk us through the other instance?

**IAN GOODWIN:** Do you want me to go over that, Margaret?

**MARGARET CRAWFORD:** Yes, please.

**IAN GOODWIN:** Obviously we had raised the accounting issue of TAHE last year as a high-risk matter, and that obviously means that for the people who are preparing the accounts there is a lot of work that we need to do on both sides to work through that high-risk matter. And we have been requesting all documents that were relevant to the judgements around TAHE. I believe in the mid-November hearing there was evidence put forward from an accounting firm that pointed us to a report, known as the "gold report", that we had not been made aware of; a report that was done by a firm for the TAHE advisory board through Transport for NSW in 2017 and was considered by the TAHE advisory board in early 2018. That report—had we been made aware of it, we would probably have had much earlier conversations on all of these issues. So the issues that came to light to us between the period of June and December 2021, some of those issues, the really important issues around the impact of the possibility of a large asset writedown and the implications of that asset writedown on the accounting treatment, were considered in that gold report, and that gold report was considered by the TAHE advisory board, which had deputy secretaries and secretaries as representation. We were not aware of that report until your committee hearing.

**The CHAIR:** Would a fair reading of your request for information that you had made to the Treasury about TAHE provide that you had asked for that report prior to becoming aware of it in the previous hearing?

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**IAN GOODWIN:** We have been making multiple requests for documentation that would help us to understand the accounting treatment and the rationale for the accounting treatments. And, indeed, documentations that speak to the operating model and the business model of TAHE have evolved. If I may just, Chair, we cannot ask for something that we do not know exists. So we generally ask as a general thing and, to be clear, we made everyone aware that we saw that this was a high-risk matter.

**The CHAIR:** Did Treasury explain how it was that this report, which undermined their position that they were putting to you on how you should treat TAHE's accounts—did they explain how it was that they had failed to provide it to you, notwithstanding that the Government had had it for four years?

**IAN GOODWIN:** This matter certainly was raised with the secretary for Treasury. I accept what the former secretary of Treasury said; he said that he was not aware of that report. But certainly his deputy secretary would have been aware of the report because he was at the meeting, according to the minutes, that considered that report. I do not have a clear explanation as to why that was not provided to us.

**The CHAIR:** But, again, there is a pattern here, isn't there, of Treasury championing and providing up-front evidence that supports their position but you having to drag from them, kicking and screaming, all of the evidence that may, in fact, go contrary to their position. There is a pattern here, isn't there, Mr Goodwin?

**IAN GOODWIN:** The matters that—

**MARGARET CRAWFORD:** If I could just jump in.

**IAN GOODWIN:** Sure.

**MARGARET CRAWFORD:** Mr Shoebridge, our report documents all of these matters very clearly and sets that all out. So I do not know that we should try to characterise it beyond the facts that are in the report.

**The CHAIR:** I will finish by asking this: It is these kinds of matters that go to your conclusion about there being a trust deficit at the moment, isn't it?

**MARGARET CRAWFORD:** It certainly tested our relationship and our level of trust, something that is fundamental to the conduct of our audit. And, to be honest—I am always honest—the relationship between the Treasury and the Audit Office is fundamental to how we run this State, really. It is a critical relationship. We always have arguments but, generally speaking, the relationship is really solid and can be relied upon. Last year was really unusual. As we write in the report, it was extraordinary.

**The Hon. DANIEL MOOKHEY:** Auditor-General, at what point did you start to doubt the level of trust you could have with Treasury?

**MARGARET CRAWFORD:** Again, listening to testimony to your Committee certainly raised questions for us because we were made aware of matters that we had previously not been aware of. Numerous media articles, of course, also referenced matters that we were not aware of. They are the sorts of things that encouraged us to press Treasury more firmly on receiving the documentation that we required to complete our audit.

**The Hon. DANIEL MOOKHEY:** Auditor-General, I am glad we could be of assistance, but are you saying that through the course of the inquiry, which commenced, I think, in August last year, is when you first started to doubt Treasury's representations to you?

**MARGARET CRAWFORD:** I do not think I can be that precise. Ian?

**IAN GOODWIN:** Yes, I am not sure we can be that precise. There were certainly differences of views, and I guess there was a surprise that we were not aware of this report. I was just reflecting—one of the things that was always considered was whether Treasury thought it was relevant to our audit. We would say it was relevant to our audit. I do not think there is a clear line, to your question, around the deficit of trust. But what I would say is that I think we were all surprised that we received a large number of documents prior to signing the audit report as a result of us seeking a representation that they had provided us all the documents.

**The Hon. DANIEL MOOKHEY:** I was actually going to go into that next, Auditor-General, because this is a matter that you report on page 23, in which you say:

Before management signed the representation to declare they had shared all relevant information, they shared at least a further 34 megabytes of data, or 23 reports (1,023 pages), with the Audit Office, around midnight, the morning of audit signing.

First question: Is that normal?

**MARGARET CRAWFORD:** Getting the representation letter is standard practice on all of our audits.

**The Hon. DANIEL MOOKHEY:** Sure.

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**MARGARET CRAWFORD:** But, yes, it is unusual to get that amount of information so late in the process.

**The Hon. DANIEL MOOKHEY:** Or, alternatively, it was a slightly early Christmas gift, as it turned out, in that particular year. What was the nature of those reports and did you have time to review them?

**MARGARET CRAWFORD:** I will defer to both Ian and Scott on that.

**IAN GOODWIN:** I might invite our assistant Auditor-General on the specific documents. But I might explain the procedural aspect that is quite relevant here, because it is the request that we were seeking that is more important than what the documents were that were received in the end. As a standard practice across the entire New South Wales Government that we audit, there is a process called a management representation letter. And in that representation, we see confirmation from those charged with governance that they have provided all documents—whether draft or final—to us, developed by consultancy firms—broad language. Across all our audits, we have not had an issue with someone saying they are not going to sign the representation, that they have provided that documentation. That became an issue for Treasury leading into the night of 23 December, where they sought to amend the representation that they were going to provide us. That removed the absolute clarity that all documentation had been provided while seeking to make it relevant to the material or stuff that they had relied upon. As the auditor, we need to form the judgement as to what is relevant to the material because the—

**The Hon. DANIEL MOOKHEY:** Can I just pause you there before we get too far beyond that part of your evidence? Are you saying that Treasury tried to change their representation letter the night before the audit was signed?

**IAN GOODWIN:** They sought to provide input that would have modified the representations. That in itself is not necessarily an unusual process. We do work with our audit clients around the representations, but this one is just—this is standard language.

**The Hon. DANIEL MOOKHEY:** Sure. But, to be fair, you were seeking them out. There was an attempt to modify it—which may be routine, it may not be—but soon thereafter you received an additional 1,000 pages and 23 reports. Clearly the inference is that you should have received that much earlier and you should not have to be relying on you having to check for it, and that this information should have been freely volunteered. Is that the right [inaudible]?

**IAN GOODWIN:** The information should have been provided, particularly once Treasury were alerted the year before that this was a high-risk area and we raised a high-risk finding and reported it to the Parliament. It is, in my experience, unusual for someone to try and modify the representation around providing all documentation.

**The Hon. DANIEL MOOKHEY:** Just to be clear: No other agency in any of the audits that you have completed has ever tried to do anything similar?

**IAN GOODWIN:** Correct. This became a matter that the secretary of the Treasury did help to resolve. We met with the secretary, after working this through the chief finance and operations officer, to explain to the secretary that the request that we were making of Treasury was no different to the requests that we were making across the public sector. And really, frankly, if all information had been provided to us, there should be no trouble in signing that representation.

**The Hon. DANIEL MOOKHEY:** Auditor-General, as devotee of reports, have you ever issued an emphasis of matter before?

**MARGARET CRAWFORD:** I have not personally, I do not think, but I am going to again—we have researched this. Ian and/or Scott?

**IAN GOODWIN:** I might invite Scott, head of financial audit, on that question. Scott, can you answer the question on emphasis of matter?

**SCOTT STANTON:** Thank you. I do not have that precise information in front of me. Basically, we have issued one before but it is in the order of about eight to 10 years ago that we issued an emphasis of matter. So it is unusual in that context. It has been quite some years before we have done it, but there was one before. I think that was around uncertainties in—I would have to check that, but it was about eight or so years ago.

**The Hon. JOHN GRAHAM:** If you could take that on notice, that would be helpful.

**SCOTT STANTON:** Certainly.

**The Hon. DANIEL MOOKHEY:** Auditor-General, one point you make in your report on page 23 is that there has been an "undue reliance on external consultants". You say:

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**CORRECTED**

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The extensive use of consultants can give rise to the risk that:

- agencies shop for opinions from multiple experts in order to receive advice that matches the outcome being sought.

Do you think that the Treasury in submitting the State's accounts were shopping for opinions from multiple experts in order to receive advice that matches the outcome that it sought?

**MARGARET CRAWFORD:** Thank you, Mr Mookhey. I think that the reliance on one consultant on this matter over a period of time did raise risks because, having formed or provided advice, that advice was not likely to ever be changed or contradicted if you go to the same firm, the same person. It is in their interest to continue to present arguments that support their original position. So I think looking for a diverse range of opinions is a good thing.

**The Hon. DANIEL MOOKHEY:** Just to be specific here about the advice that you are referring to, are you referring to the accounting advice that Treasury obtained from KPMG?

**MARGARET CRAWFORD:** Yes.

**The Hon. DANIEL MOOKHEY:** That is the advice that was provided by Ms Watson, who appeared before our inquiry—correct?

**MARGARET CRAWFORD:** I cannot be 100 per cent if it was always there, but certainly Ms Watson had an ongoing role with Treasury in providing advice on TAHE and other accounting matters.

**The Hon. DANIEL MOOKHEY:** Sure. Your point about the incentives for a consultant to persist with advice and not change minds according to facts but, equally, the Treasury's desire to return to them, which I guess is more important, in your view, that was a mistake by the Treasury, given you recommended that Treasury—did not know "whether there is sufficient competent oversight of its use of consultants and assess the risk of an over dependence on consultants at the cost of internal capability". The implication that I drew from that was Treasury was too reliant on KPMG's accounting advice. Is that fair?

**MARGARET CRAWFORD:** I think there is a risk always if you just go to one firm on one matter that you are not going to get a diversity of views and you are not necessarily going to be open to different opinions. That is what we experienced in the conduct of this audit.

**The Hon. DANIEL MOOKHEY:** I have one final question. You are aware that PwC had given advice "We can't really support the conclusion you reached," and Treasury then insisted on obtaining advice from KPMG, which it then stuck by through multiple years. To be fair, doesn't that sound like doctor shopping?

**MARGARET CRAWFORD:** I do not know if it is that. Ian, do you have a view on that?

**The Hon. DANIEL MOOKHEY:** Let me put it this way: PwC provided advice which said this was creating accounting issues; KPMG provided advice which said it did not. Treasury changed its advisers to KPMG. What are we meant to infer from that?

**MARGARET CRAWFORD:** I think evidence has already been presented to the Committee that there was a government policy position here that officers were asked to implement. Certainly it is not unusual to get advice—seek advice that would assist you to deliver the outcome you are trying to deliver. I think just when it became such an argument or disagreement between us and Treasury, it just would have been good for people to be slightly more open to alternatives.

**The CHAIR:** Ms Boyd.

**IAN GOODWIN:** Margaret—

**The CHAIR:** Sorry, you go, Mr Goodwin, if you want to add to that.

**IAN GOODWIN:** I was just going to clarify to the Committee the PwC and the KPMG thing. It is not as simple as that in the reality. The model I think that PwC was looking at for TAHE did evolve, so the final model that we looked at is a little bit different to the initial model PwC did. There are some nuances that would have led to some differences.

**Ms ABIGAIL BOYD:** Auditor-General, you mentioned just a moment ago about there being a clear policy direction, and I think it is important to remember the context that this is all operating within. Obviously we had a desire from government from the now Premier to set up TAHE in the way it was set up, and you referred earlier to people being locked into the outcome that they wanted and sort of acting to then provide only the information that sort of backed up that outcome. Obviously it is not unusual for governments to start off down one track and have a particular policy. But in your experience, is it unusual for them to then try this hard to, as you say, lock in the outcome that they want?

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**CORRECTED**

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**MARGARET CRAWFORD:** Well, there is a lot in that. This was big. Obviously the implications here were really quite huge to the State. So it is not unusual that there would be an enormous amount of work done before any change would be made. That is to be expected on such a big issue. The other thing I need to make clear is that at no point have we questioned the model of TAHE of having a specific asset management agency set up in the way it has been set up. The only matter for us through our audits has been "Is it being accounted for correctly?" and that all turned on the matter of reasonable return on investment. So that is the issue we had focused on throughout this, not whether TAHE is a good idea or a bad idea.

**Ms ABIGAIL BOYD:** Of course, because that is a policy matter. I am just looking at page 11 of your report, where you say:

**NSW Treasury presented late, unsophisticated, and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome of higher projected returns**

You do not say "all of which did support"; you have used the word "sought"—"all of which sought to support". Now, I read that as there being an implication of intention on behalf of the people giving you documents that they were giving you documents that supported the outcome they wanted. Is that a fair inference?

**MARGARET CRAWFORD:** I am going to ask the Deputy Auditor-General to speak to this as well, but other than to say it is normal in the conduct of an audit that a particular argument is made by the preparer of accounts and attempts are made to support the particular argument. That is not at all unusual. The auditor's role then is to review and opine on that. Ian, did you want to add anything to that?

**IAN GOODWIN:** Yes, thank you. I think it is important in all of this just to echo the Auditor-General's earlier comment this has never been an issue about TAHE as a concept. What we were seeking was to get the financial reporting to reflect what was actually the outcomes and ensure that the GGS budget results are appropriately reflected. To the specific question—and, Chair, if you like, I can also clarify the question around the emphasis of matter we last alluded to in a very simple manner. But to the specific question on these forecasts, I guess we were surprised by some of the adjustments that were made to the forecast where we may have provided feedback. We received an initial forecast—that was back in July—which would have had some TAHE input, but ultimately the question is the question around rate of return, which is a question for Treasury and their calculation. We provided feedback on it, and then there was a second one done in November, another one done at the beginning of December, and then the final one on 14 December. Throughout that process, as we provided feedback saying that the revaluation loss was a holding loss and they needed to accommodate for that, we then saw other adjustments to come into it.

So the initial projections that we had did not have some items that appeared in the second and third iterations. That was surprising. Some of those matters were they included \$2 billion worth of government guarantee fees. They had received advice from an accounting firm that they should not include government guarantee fees because government guarantee fees is not a return of distributable earnings; it is akin to a tax on borrowings. So we were surprised to see that come in. That was not in the first iteration, but when we provided feedback, that did appear. They included—there was no balance sheet to support the income statement that was included, and there was difficulty reconciling the income statement and the balance sheet in the forward years. There was an amount put in that was \$15 billion as an asset revaluation increment, or a holding gain. So a holding gain is part of that rate of return. That was way out in the forward years, and when we sought evidence on it—because it appeared as three tranches of five billion—there was no evidence to support it. They are the sort of things that were surprising to be included in projections.

**Ms ABIGAIL BOYD:** Can I—

**The CHAIR:** Sorry, Ms Boyd. I think Mr Goodwin was just going to clarify the prior emphasis of matter.

**IAN GOODWIN:** Yes, Chair. The last time we issued an emphasis of matter was—I just moved off that page. Just give me two seconds. The last emphasis of matter was in 2011 around the uncertainty of certain collection of tax assessments. That was really the last time, around that 2011 period and going into 2012.

**Ms ABIGAIL BOYD:** Can I just check with you that errors in the documentation or the inaccuracies that were presented to you in relation to TAHE, are they separate to the \$6.6 billion worth of errors that you identified in the audit?

**IAN GOODWIN:** Yes, they are separate. The errors here were errors in a projection, whereas the \$6.6 billion were errors that had to be corrected for signing off on the 30 June—the actual numbers in the 30 June 2021 accounts. So the errors that we are talking about here are forward projections—assumptions being made in years forward—to support the question of a rate of return. The \$6.6 billion is errors that sit across the entire sector. They are not just NSW Treasury errors; they are errors that sit in a variety of government

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**CORRECTED**

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departments. But I would say that the large bulk of it does relate to TAHE and the upward revaluation that occurred of TAHE's assets.

**Ms ABIGAIL BOYD:** Perhaps this question is for you, Auditor-General. With this many errors and with these comments about information being presented that is self-serving or designed, perhaps, to elicit certain outcomes, if it is not a cover-up is it just rank incompetence and can you tell the difference, in your perspective?

**MARGARET CRAWFORD:** I think it is fair to just sit back a little bit and consider the real challenges that have been faced across government in the last couple of years. Finance teams are working remotely, and there are major pressures to deliver on all sorts of fronts at the moment. So I think that probably contributes to some of these errors. Also, I think there were changes in accounting policies that are not straightforward. There are always big assumptions to be made around valuations and the like. So I do not think it is rank incompetence. I think it can always—we could all improve, but there were particular pressures on finance teams over the last 12 months, and the errors when presented were corrected. Ian, are you going to be a bit harder than me on that?

**IAN GOODWIN:** No, I think I was probably just going to really just support [inaudible] to that comment. I am just looking at the list of those errors. So \$6.6 billion is a big headline, but a large number of that sits in a couple of adjustments. There are then the better part of about 15 other errors that sit with other agencies. What in that number is we are reporting errors over \$20 million, but more than \$5.5 billion of that \$6.6 billion sits in really one bulk. There are two sets of transactions. There was TAHE-related adjustments, which related to some adjustments going through TAHE's own accounts around the asset valuation and whether there were service concession assets under a new accounting standard. There was a \$1 billion adjustment that relates to Treasury around a liability on some borrowings that have not been reflected, where the settlement date was put to 1 July but the trade occurred back in May. So we said, in substance, the debt is there, so we asked for that \$1 billion to be corrected by Treasury, and they did correct it. The rest of them are much smaller amounts and they are a range of issues across a range of agencies.

**Ms ABIGAIL BOYD:** I would like to just clarify I was not referring to individuals being incompetent but more the systems and the processes of Treasury, but if you could just answer that last bit of my question: If there was a cover-up rather than these just being run-of-the-mill errors, how would you know? How would you know the difference?

**IAN GOODWIN:** Can you just repeat that question just so I can [disorder]?

**Ms ABIGAIL BOYD:** I will rephrase it. On the face of it, we have a whole lot of errors and a whole lot of selective information coming to the Audit Office from Treasury. We were told earlier that it is not possible really for you to make the judgement that it is, I guess, misleading. But how would you know what the difference is between just a run-of-the-mill error and something perhaps a little bit more like a cover-up? Is that something that you would be aware of?

**IAN GOODWIN:** To give a professional opinion from audit work, it would be difficult to say that, in the light of what we are doing. We are doing a financial audit of the Government's financial statements. We are not doing a code of conduct inquiry, and that more appropriately would rest with line management. To your question around the tension, I have been in the audit game for about 30 years, as you can sort of see by my face, and it is not the first time there has been disagreements. That is not unusual, and I would say I feel we have always had a constructive relationship with NSW Treasury and have worked through other issues in the past, so I just want to acknowledge that. So the tensions that arise, it is not unusual, and you would work through it. It is not necessarily unusual that people will get invested in their position, and that makes it very difficult to work through, but professional people normally work that through. I guess my reflection that is—what is a little bit surprising was the issue of documentation and not being made that available. The audit does rely on a degree of trust. We are very thorough, make no mistake—and I think anyone that is subject of this audit would acknowledge that we are very thorough—but it does require a degree of trust. We cannot ask for a document that we just do not know exists, but we can say what the areas of risk are and then we will work with management to work with us in providing that information.

**MARGARET CRAWFORD:** It is important to know that in the conduct of a financial audit we are doing it every single year in every government-controlled agency. So our people, our teams, are almost embedded within their organisations. They are dealing with—there are strong relationships but also a good understanding of who we are working with, and I think that is why it is a trusting relationship that we need to continue to work on.

**The Hon. DANIEL MOOKHEY:** Thank you. Auditor-General, I only have a few quick questions before I pass to my colleague. The Audit Office is currently conducting a performance review into the Transport Asset Holding Entity, is it not?

**MARGARET CRAWFORD:** We are just kicking that off, Mr Mookhey.

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**CORRECTED**

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**The Hon. DANIEL MOOKHEY:** When do you expect—in your [inaudible] calendar it is due this year, is it not?

**MARGARET CRAWFORD:** We are just kicking it off. We are at the commencement stage. While we have not finalised the scope of that audit yet, an audit of that nature would normally take eight, nine months.

**The Hon. DANIEL MOOKHEY:** So it is likely that at the end of the year we will get a performance review from the Transport Asset Holding Entity?

**MARGARET CRAWFORD:** That would be my expectation.

**The Hon. DANIEL MOOKHEY:** Yes. Just finally—

**MARGARET CRAWFORD:** Sorry, I should just correct, if you do not mind—it is a performance audit.

**The Hon. DANIEL MOOKHEY:** Sure, performance audit. That is correct. I am sorry. I only have two other questions. TAHE has not yet tabled its annual report, and they made it clear that that was as a result of delays of the Audit Office. When do you suspect that you will be finished and we will be in a position to see TAHE's annual report and its financial statements?

**MARGARET CRAWFORD:** I do not think that evidence was correct. We do not have any role in the tabling of their annual report and our audit opinion. It is just a bit of confusion, I think, around that.

**The Hon. DANIEL MOOKHEY:** That came from the Chair, but your view is that nothing should impede TAHE from being in a position—certainly, nothing on your end would impede TAHE from being in a position to table its report to Parliament?

**MARGARET CRAWFORD:** No. Once we have signed the audit, which we have, it is then over to them.

**The Hon. DANIEL MOOKHEY:** My final question before I pass to my colleague is: At the conclusion of this financial year, you are required to repeat the entire process, are you not?

**MARGARET CRAWFORD:** Yes, we are.

**The CHAIR:** That is rude pointing that out now, Daniel.

**The Hon. JOHN GRAHAM:** [Inaudible] I just wanted to turn back to the events of Christmas Eve. We were informed by the Treasury officials earlier that the actual signing of the consolidated financial statements occurred late on Friday 24 December. As I understood it, they [inaudible] transmitted the paperwork to the Treasurer, who was in 52 Martin Place, and then electronically briefed him. Then the Treasurer, late on Christmas Eve, signed the consolidated financial statements. From your knowledge, Auditor-General, when was it on that Friday that that occurred?

**MARGARET CRAWFORD:** Thank you, Mr Graham. I cannot be precise about what happened at the Treasury's end, or Treasurer. I know that I signed the opinion, my audit opinion, at around about four o'clock on Christmas Eve. We would have had their signed accounts obviously prior to that. Ian and/or Scott, do you know anything more precise than that?

**IAN GOODWIN:** Not more precise. Your opinion is signed once we receive the financial statements. Obviously we have to do some very quick checking, and then the Auditor-General signed her opinion late on that afternoon on Christmas Eve.

**The Hon. JOHN GRAHAM:** Do you recall how it was communicated to you that the Treasurer had signed those consolidated financial statements?

**MARGARET CRAWFORD:** They would have gone to our team. Scott, do you know the answer to that? I am sorry, I do not mean to put you on the spot, Scott.

**SCOTT STANTON:** It was all happening within those hours on that day, so it just would have been through the normal processes of sending their documents to us.

**The Hon. JOHN GRAHAM:** Auditor-General, were you in the CBD at the time or were you [inaudible]?

**MARGARET CRAWFORD:** I was sitting here in my dining room, as I am now.

**The Hon. JOHN GRAHAM:** The Treasurer and the Treasury officials must have been the only people in the CBD at that time.

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**CORRECTED**

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**IAN GOODWIN:** Just if I may, through the Chair, it is not usual for us to know the intricacies of how Treasury would get the Treasurer to sign that. We would just receive the financial statements once signed.

**The Hon. JOHN GRAHAM:** Yes, that is understood. That went quite well on the time. Just finally, I wanted to return to the concept of a sufficient rate of return in your report. Obviously you recommend that Treasury should have a policy on this. They do not at the moment [inaudible] you have insisted on that for this entity. You are insisting on a very modest rate of return when you say that it should be considered to be at least a long-term inflation rate. From a public point of view, from a taxpayer's point of view, all that would be doing is really keeping the value of the dollar today the same as the dollar tomorrow. It is a very, very modest rate of return. If a financial adviser gave you that offer, you would be sacking them as a citizen. It is very modest, given that rate at which you insisted.

**IAN GOODWIN:** Do you want me to, Margaret?

**MARGARET CRAWFORD:** Yes, certainly.

**IAN GOODWIN:** You are absolutely right, Mr Graham, that there is not a policy covering this and that is certainly our recommendation that we have made to Treasury. The absence of the policy meant that we went to do some work to find out what was reasonable around that rate of return and certainly drew on some background that I was aware of at the Commonwealth Government where the Department of Finance had put that into the long-term inflation rate. To your point as to whether the 2.5 per cent is modest, it probably is reasonable to reflect that a lot of these State-owned corporations where the Government might make investments have a public policy purpose. So they are not simply about making straight-out profits. So they do have a public policy purpose. But it is not unreasonable that you would expect that the rate of return should at least match the inflation rate because—well, short of that, it is less.

**The Hon. DANIEL MOOKHEY:** Mr Goodwin, having examined the table that is provided in note 11 of the actual State accounts that is also reproduced in the State finances report, TAHE does not reach a rate of return that is above inflation until 2027-28. That means that at least until 2027-28 it is a real loss in real terms until that point in time, and only from 2027-28, assuming that everything that the Treasury has told you happens, only then do taxpayers even start to get to a real rate of return of zero. That is fair, is it not?

**IAN GOODWIN:** Yes, that is quite a complex table to follow. There were two parameters that were being discussed with Treasury and certainly how they positioned it, which was the 2.5 per cent on a year-by-year basis and the return of the revaluation loss. When we look at that return question we are looking at in aggregate, whereas that amount that you are talking about in 2027-28 in the financial statements, that relates to getting to a two point five [disorder]—

**The Hon. DANIEL MOOKHEY:** It does [disorder].

**IAN GOODWIN:** Yes, but it does not account for the revaluation loss [disorder].

**The Hon. DANIEL MOOKHEY:** Look, 100 per cent agree with you—

**The CHAIR:** Daniel, sorry, the time has concluded for that session.

**The Hon. DANIEL MOOKHEY:** Sorry.

**The CHAIR:** Auditor-General, I am trying to get an understanding about what the impact on the State accounts was of the dispute between yourself and Treasury over the treatment of TAHE. Having eventually accepted the bona fides of the Government on the \$5.1 billion of additional funds, as I understand it, that allowed you to treat TAHE as an independent for-profit entity within the New South Wales Government. But if you had not been satisfied, what would the effect have been on the final position on the general government sector budget? Is it as easy as reversing the \$2.4 billion equity injection and saying it is a \$4.8 billion turnaround? Is it as simple as that?

**IAN GOODWIN:** Had the \$5.2 billion not come into the calculus, the situation that were in front of the Auditor-General were the request that Treasury would have to reverse what was accounted as equity contribution to the grant expense because we did not have the evidence in that rate of return question; or, if that was not done, then the Auditor-General is left with very little option but to qualify the whole government accounts.

**MARGARET CRAWFORD:** And if I qualify, that does not change how the accounts are presented. I am just saying that they were not presented correctly.

**The CHAIR:** But if the accounts had been presented without the \$5.2 billion as a sort of future income, the other avenue for getting an unqualified opinion from the Audit Office was to reverse that \$2.4 billion and therefore add \$4.8 billion to the deficit. Is that right?



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**CORRECTED**

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**IAN GOODWIN:** Does it add \$4.8 billion or \$2.4 billion? I think it is—

**MARGARET CRAWFORD:** Add \$2.4 billion.

**IAN GOODWIN:** I think it would add \$2.4 billion. So there is the cash contribution of \$2.4 billion that had been accounted to the balance sheet. That would now reverse itself and be reflected—

**MARGARET CRAWFORD:** An expense.

**IAN GOODWIN:** —as an expense.

**The CHAIR:** And you did not have to reverse the equity as well for the government sector accounts?

**IAN GOODWIN:** There would be a series of accounting entries, but the net effect would be an additional expense of \$2.4 billion to the general government sector budget result.

**The CHAIR:** Could I ask you about the evidence that we got earlier from Mr Walters about the provision of information? His evidence, if I could summarise it, was they gave everything that you needed in a timely fashion and full disclosure to you. It was unfortunate that Mr Walters had not read your report. Can you tell me how you could digest the volume of material you got in those last 24 or 48 hours from Treasury? What impact did that have?

**MARGARET CRAWFORD:** Ian?

**IAN GOODWIN:** Thank you, Margaret. There are two things that I want to say there, Chair. In terms of the Treasury testimony saying that we requested those documents and they gave it to us on the twenty-third, that is not correct. We had no anticipation that we were going to get that number of documents. What we had requested of Treasury is that they sign a representation letter to us that they have provided with us all the documents, and that was a matter of tense debate, a matter that we communicated to the chief finance operations officer could result in the Auditor-General writing to the Treasurer that we would disclaim the accounts if they were going to the hold the ground and not attest that they had provided all the documents.

**The CHAIR:** So because you—

**IAN GOODWIN:** What then followed—sorry, if I may just finish. What then followed surprised us when we received all of those documents.

**The CHAIR:** So it was a situation where you are insisting upon them—as you would expect year end, year out—that they had provided you with all the information.

**IAN GOODWIN:** Correct.

**The CHAIR:** You could almost characterise that as overwhelming you with documents, because you were insisting on just the standard statement from Treasury; that it was almost like a punishment.

**IAN GOODWIN:** Well, I am not sure—I mean, it probably felt punishing at the time, but I am not sure that it was designed as a punishment. I think we were just taken by surprise. But to your question about how did we digest through that, the material question that was presented to us was "Was there evidence of a sufficient rate of return?" That evidence sort of culminated with the \$5.2 billion that occurred between 14 December and 18 December—so government decisions through to heads of agreement—and reflected in the mid-year budget budget with the \$1.1 billion. That became the evidence efforts. All the other documents, we did have to review the documents—and, with the indulgence of the Committee, I just want to publicly acknowledge the outstanding work of the Audit Office team and the Total State Sector audit team, who I observed in the email traffic working through that night, that went through those documents. What we had to do was to make sure there was nothing fatal to the judgement around that rate of return question, but it was unlikely that it was going to be because the evidence of rate of return sort of crystallised in mid-December, but we certainly had to go through that document at a rapid rate and it was an outstanding, professional job done by the Audit Office team.

**The CHAIR:** I want to be clear I do not think your team should have been put in that position by Treasury in the manner in which they were, but we might move on. When I put to Treasury the concerns that the audit report had about the three versions of modelling that came between 9 July and 1 December for TAHE accounts, Treasury sought to disown that modelling and say that it was the product of TAHE. I understand that that is not your position or your understanding of the modelling. Is that right?

**MARGARET CRAWFORD:** I think Mr Goodwin clarified that previously, Mr Shoebridge. Did you want to repeat, Ian, the key points?

**IAN GOODWIN:** The modelling that we are talking about is the modelling around the projections around the rate of return. NSW Treasury as the preparer of the whole government accounts, and the cash

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**CORRECTED**

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contribution come in out of what was the former Crown entity. It is for NSW Treasury to obviously demonstrate that that rate of return could be achieved. It is not unreasonable that they would seek input from TAHE, and I believe it did seek input from TAHE, but those projections were provided to us by NSW Treasury. Even if NSW Treasury said that they were wholly calculated by TAHE—and I could not attest to the exact inputs into the background—it is the responsibility of Treasury to put quality control oversight over the information provided to us. But that information is provided to us from NSW Treasury, to be crystal clear.

**The CHAIR:** My final question is this. Audit reports are great—they set out issues, they identify problems, they provide a clear pathway to fix issues. But they are not much use if senior officials in the organisation which they relate to do not read them. Is it your expectation that your audit report will be read by the likes of the deputy secretary and the chief finance and operation officer of Treasury, read in full?

**MARGARET CRAWFORD:** It would be my expectation that everyone across government would read every report that I write. They are full of excellent information. I was gratified to hear the evidence by the new Secretary of Treasury, Dr Grimes, who had clearly read the report in its entirety. Certainly conversations with him earlier—last week, I think—have been quite affirming in terms of working constructively on our relationship in all future audits.

**The CHAIR:** But has any other entity where you have provided an audit proposed what Mr Grimes has proposed, which was refer your independent external audit off to yet another entity to determine its veracity? Have you had that with any other agency?

**MARGARET CRAWFORD:** I probably could not comment, Mr Shoebridge. Not that I am aware of. I think it does go to the matter that Mr Goodwin referred to previously that our audit is an audit of the financial statements. It is not an audit of conduct. So I think that is what Mr Grimes, perhaps as the new secretary, is looking for his own advice and making his own inquiries into.

**The CHAIR:** Unfortunately, we have run out of time. Again, thank you for all the work you did. On behalf of the whole Committee, I want to thank all the team in the office for the extraordinary hours you must have put in, not just in the lead-up to Christmas but throughout last year, and we are grateful for the assistance you have been able to provide to the Committee.

**MARGARET CRAWFORD:** Thank you.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:40.**