

REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 3 – EDUCATION

**INQUIRY INTO TERMINATION OF THE FORMER MANAGING
DIRECTOR OF TAFE NSW**

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 4 April 2022

The Committee met at 14:30.

PRESENT

The Hon. Mark Latham (Chair)

The Hon. Anthony D'Adam

The Hon. Wes Fang (Deputy Chair)

The Hon. Scott Farlow

The Hon. Courtney Houssos

The CHAIR: Welcome to the inquiry into the termination of the former managing director of TAFE NSW. I welcome our two witnesses, Ms Tickle and Ms Harrisson. It is our first hearing into this particular matter. Before I commence, it is the custom of the Parliament to acknowledge the traditional inhabitants of this land, the Gadigal people of the Eora nation. I do that with all due respect, as well as acknowledging all the other important contributors to the history of this site, including the construction industry and the parliamentary staff who have supported MPs and made our work possible. We acknowledge and thank them all.

Today we have a hearing with representatives from the Department of Education and TAFE NSW, and I thank them for giving up their time to give evidence to this inquiry. We have the regular outline of proceedings about the broadcast being on the Parliament's website, our instructions to media representatives, procedural fairness and adverse reactions. If you cannot answer anything immediately, you are free to take the question on notice. I ask everyone to turn off their mobile phones for the duration of the hearing. I now welcome our witnesses. Because this is a separate inquiry to budget estimates, you both need to be sworn in afresh.

Ms GEORGINA HARRISSON, Secretary, NSW Department of Education, affirmed and examined

Ms JULIE TICKLE, Chief People and Culture Officer, TAFE NSW, affirmed and examined

The CHAIR: Would either of the witnesses like to start by making a short statement?

GEORGINA HARRISSON: I would like to take the opportunity to make an opening statement. I understand from my invitation to attend this hearing, together with Ms Julie Tickle, Chief People and Culture Officer, TAFE NSW, that the Committee has further questions concerning the termination of the managing director of TAFE NSW. I also understand the Committee has invited the former managing director of TAFE NSW, Mr Steffen Faurby, to appear before the Committee. In my capacity as Secretary of the Department of Education, I would like to provide some further information to assist the Committee.

I can confirm that part 5 section 13 of the Technical and Further Education Commission Act 1990 provides for the establishment of the Managing Director of the TAFE Commission. It is a statutory office and is appointed by the Governor. Provisions regarding the employment of the managing director are set out in schedule 1A of the Act. This includes that the employment of the managing director is governed by a contract of employment between the managing director and the Minister. Schedule 1A further provides that a range of provisions under the Government Sector Employment Act 2013 will relate to the employment of public service senior executives and apply to the managing director, noting that the GSC Act references to the employer are to be read as a reference to the Minister.

I can confirm that the termination of Mr Faurby was conducted in line with these pieces of legislation. Mr Faurby was provided with written advice from Minister Lee advising of the Minister's decision in relation to the termination of his appointment in accordance with schedule 1A section 3 of the TAFE Commission Act 1990 and Mr Faurby's contract of employment. That written advice in the form of the Minister's signed letter was given to Mr Faurby by me during the course of a meeting with him at 4.15 p.m. on 2 December 2021. In accordance with schedule 1A section 3 of the TAFE Commission Act 1990, and clause 11.2 of Mr Faurby's contract of employment, Mr Faurby was entitled to 38 weeks' compensation payment on termination of his employment, together with other accrued statutory entitlements.

I understand from the previous questions at budget estimates that the Committee has requested a copy of Minister Lee's letter to Mr Faurby from both the Department of Education and from TAFE. Neither the department nor TAFE have been able to provide the Committee with the letter as requested. I can confirm that this is on advice from both the department's general counsel and TAFE legal that the letter contains personal information relating to Mr Faurby, as it relates to his employment arrangements. As such, it contains matters of privilege and it is considered inappropriate for the department or TAFE to release the letter through a general request from the Committee.

In closing, I would like to emphasise the advice given at the initial hearing that the role played by me was to facilitate the Minister's position in operationalising and facilitating his employment decision. Ms Tickle, as the Chief People and Culture Officer of TAFE, was required to action the termination once she had been informed of the decision on 3 December. This is consistent with longstanding conventions around the role of secretaries in supporting Ministers in their employment relationship with statutory officers and the role of HR functions in our organisations. Together with the department, I have sought to professionally support that convention and the specific employment framework that applies to the managing director of TAFE NSW. I trust this assists the Committee further in its understanding of the issue insofar as my role and that of the department is concerned.

The CHAIR: Ms Tickle, did you have an opening statement, or has it been covered by the secretary?

JULIE TICKLE: Yes, it is covered by the secretary.

The Hon. ANTHONY D'ADAM: I will refer Ms Tickle to question 17 in relation to questions taken on notice at a hearing earlier in March. You were asked if you could also review the files in relation to the termination of Mr Faurby and see if you could provide material about the termination. You said, "Yes, certainly." Mr Shoebridge went on:

Mr DAVID SHOEBRIDGE: Including any communication, if there is, either with the Governor or with the Executive Council about the termination of Mr Faurby? You have to give a verbal response.

JULIE TICKLE: I am sorry, yes.

The answer says, "Refer to response budget estimates transcript question 16." I will start by asking Ms Tickle, did you review the file?

JULIE TICKLE: Yes, I did. The letter is the file.

The Hon. ANTHONY D'ADAM: There are no other items on the file?

JULIE TICKLE: No.

The Hon. ANTHONY D'ADAM: Nothing else?

JULIE TICKLE: The only other item is the payroll information that I provided to the estimates hearing.

The Hon. ANTHONY D'ADAM: So there is no supporting brief in terms of the preparation of the letter?

JULIE TICKLE: No, there is not.

The Hon. ANTHONY D'ADAM: Is it customary for there to be no other documentation in relation to the preparation? Presumably there was some instruction to you, from someone, to prepare a letter in certain terms. Why is that not on the file?

JULIE TICKLE: I did not prepare the letter, and I was not instructed to prepare the letter. I received a copy of the letter on 3 December after the meeting that Ms Harrison has just described. I had no involvement with preparing the letter.

The Hon. ANTHONY D'ADAM: Do you have a file management system in the department and in TAFE?

JULIE TICKLE: Yes.

The Hon. ANTHONY D'ADAM: Which one?

JULIE TICKLE: TRIM.

The Hon. ANTHONY D'ADAM: So there will be a TRIM record of whoever has had access to the file? Are you the only person who has had access to the file?

JULIE TICKLE: I would have to take on notice who has had access to the file, but I certainly did receive a copy of the letter. It was sent to me by the Department of Education.

The Hon. ANTHONY D'ADAM: In terms of the file contents, are you aware of who was asked to do the actual preparation?

JULIE TICKLE: No, I am not.

The Hon. ANTHONY D'ADAM: Is there any indication, or are you aware in any way, of how the letter came to be created?

JULIE TICKLE: No, I am not aware. I received a copy of the letter. I don't have any information about how it was prepared, or who prepared it.

The Hon. ANTHONY D'ADAM: Is it unusual for that not to be on the file?

JULIE TICKLE: It would be unusual if it was a termination where TAFE had prepared the letter; however, as we did not, I wouldn't describe that as unusual, no.

The Hon. ANTHONY D'ADAM: I see. So, Ms Harrison, Education prepared the letter and provided it?

GEORGINA HARRISSON: We did prepare the letter. We prepared a draft letter for the Minister's consideration following his instructions that he wished to terminate the contract of the managing director of TAFE.

The Hon. ANTHONY D'ADAM: Is there a separate file in Education with the letter and the drafting instructions and the various communications that would have been required in order to bring that letter into being?

GEORGINA HARRISSON: Yes, the documentation you would expect to see is available in that context.

The Hon. ANTHONY D'ADAM: Are the contents of that file open to be produced to the Committee?

GEORGINA HARRISSON: I am very happy to take it on notice and to take advice on that. If we are able to provide it, I am certainly happy to. I will just need to check with my general counsel what the conditions are around that. I can assure the Committee that there is a brief, a draft letter was prepared for the Minister, it was provided to the Minister's office. I think at the last hearing, when you asked me questions on this matter, Mr D'Adam, I did not see a copy of the final letter once it was handed to me in a sealed envelope, and I handed

that sealed envelope to Mr Faurby. I was unaware at the time whether any changes had been made. I can confirm, having gone back and reviewed the files on your question, that the majority of the letter stayed the same following that draft. So, yes, that is on it.

The Hon. ANTHONY D'ADAM: So you have seen the contents of the file, Ms Harrison?

GEORGINA HARRISSON: I have seen the contents of the file, yes.

The Hon. ANTHONY D'ADAM: Are you able to identify what other documents sit on the file?

GEORGINA HARRISSON: There is a brief to the Minister outlining the termination process with a draft letter attached, and there is email correspondence between my office and our HR department requesting that to be provided.

The Hon. ANTHONY D'ADAM: Ms Tickle, did you review this answer before it was submitted?

JULIE TICKLE: Which answer?

The Hon. ANTHONY D'ADAM: The answer on question 17.

JULIE TICKLE: Yes. The answer to the question on notice?

The Hon. ANTHONY D'ADAM: Yes.

JULIE TICKLE: Yes.

The Hon. ANTHONY D'ADAM: And so you signed off on that response?

JULIE TICKLE: Yes, I believe so. Yes.

The Hon. ANTHONY D'ADAM: Was that based on advice from the general counsel at TAFE? Perhaps I should say, what advice did you receive prior to signing off on that answer?

JULIE TICKLE: I am just going to question 17. In terms of providing the letter, which I was asked to provide at the hearing, we did receive advice from the general counsel of TAFE NSW, who provided the same advice as the general counsel at the department, which was that we were unable to provide the letter to the Committee.

The Hon. ANTHONY D'ADAM: Ms Harrison, can you identify the head of privilege that you are relying on in terms of not providing a copy of the letter?

GEORGINA HARRISSON: I don't have that to hand, Mr D'Adam. I can only refer to advice that I have received from my general counsel.

The Hon. ANTHONY D'ADAM: Is that written advice, Ms Harrison?

GEORGINA HARRISSON: I will go back and check on that. It was actioned for me by my office. What I can say in relation to that letter is I know that the Committee is in contact with Mr Faurby, and I understand he is cooperating with the Committee. Given that the letter refers to, and the concerns are around, his privacy, it would be a question for him to answer whether he wished the letter to be provided. Or, if we were in a position to provide the letter in such a way that the contents did not breach Mr Faurby's privacy, we would be able to provide it in that manner.

The Hon. ANTHONY D'ADAM: On notice, are you able to provide the advice that was provided to you in relation to this answer?

GEORGINA HARRISSON: Inasmuch that it does not breach privilege then, yes, I am happy to take on notice and provide back to you what I can.

The Hon. ANTHONY D'ADAM: Ms Harrison, are you able to identify the nature of the information which the department claims is personal information of Mr Faurby?

GEORGINA HARRISSON: Issues that relate to him personally would include things such as the reasons for the termination being actioned, for example. That would be personal information relating to Mr Faurby.

The Hon. ANTHONY D'ADAM: The reasons for his termination is personal information?

GEORGINA HARRISSON: As it relates to him and his professional standing, yes, I believe they do. If I may, what I might be able to do to help you, Mr D'Adam, is—as I indicated, we provided a draft letter to the Minister. It was prepared by the department's HR operations area in line with a request from the Minister. The

draft letter was adapted from a standard termination letter template based on section 41 of the GSC Act, and it was modified to suit the employment framework for the managing director of TAFE.

A range of standard operational procedures were initiated by the department to support Minister Lee and Mr Faurby, consistent with the termination of executives in the public service. This included facilitating the provision of the termination letter; arranging personal support for Mr Faurby; notifying appropriate stakeholders of the situation, including the Public Service Commissioner; and arranging for the appropriate internal organisational communications to be initiated. The letter references the termination being responsive to changing organisational needs and the future direction and leadership required for TAFE NSW. That was the notification in the draft provided to Minister Lee's office.

The CHAIR: Can I just ask, Ms Harrison, when did Minister Lee request the draft letter?

GEORGINA HARRISSON: I had a meeting with Minister Lee on 17 November when he finalised his decision requesting for the termination to be actioned.

The CHAIR: Was there any discussion you had with Minister Lee prior to 17 November about general dissatisfaction with Mr Faurby and reasons that might explain the termination?

GEORGINA HARRISSON: I have regular conversations with Ministers in the cluster. They will, from time to time, touch on issues relating to the nature of the relationship between a Minister and a senior official. The Committee will appreciate that having a high-trust relationship with clear alignment on the strategic direction of government in those officials is an important part of a constructive relationship between a Minister and their officials. Certainly I discuss those types of issues with Ministers when they occur.

The CHAIR: Generally, when did that discussion about Steffen Faurby start up?

GEORGINA HARRISSON: The first conversation I recall with Minister Lee in relation to Mr Faurby was in August in relation to the relationship between the two and how that was working. I provided feedback to Mr Faurby on that matter at the time.

The CHAIR: Was there any formal process at this point—a warning, a performance plan—that was put in place for Mr Faurby, or was it more, after August 2021, you just had some general discussions that then culminated in this decision in December?

GEORGINA HARRISSON: I think a couple of things to clarify there, Chair. Firstly, it is important to remember in this instance that the Minister is the employer, and so I am aware that Mr Faurby and Minister Lee had a conversation after that feedback in August. In my ongoing engagement with Mr Faurby, I continued to inquire into how the relationship was progressing and whether, from Mr Faurby's perspective, he was seeing improvement.

The CHAIR: But there was no formal process of a warning letter, or, "I've got to put this in writing to you, Mr Faurby, that these are the problems that we've got to fix"?

GEORGINA HARRISSON: Not from the department, but I couldn't account for what Minister Lee may or may not have provided to Mr Faurby in their regular conversations and correspondence.

The Hon. ANTHONY D'ADAM: Was the Public Service Commission consulted?

GEORGINA HARRISSON: Yes, I spoke to the Public Service Commissioner a number of times through the period.

The Hon. ANTHONY D'ADAM: And what did they say?

GEORGINA HARRISSON: They talked about getting the necessary support in place. Once the decision to terminate had been made, the focus of the conversation with Commissioner Lo was on the support that we would provide to Mr Faurby on his exit to make sure—these are obviously not the best days in someone's career, and they are not conversations that anyone relishes having, Mr D'Adam. I wanted to make sure that there was someone outside of the situation that would lean in and support Mr Faurby following the termination being actioned.

The Hon. ANTHONY D'ADAM: Do you know whether that occurred?

GEORGINA HARRISSON: I couldn't confirm. I am aware that Commissioner Lo did reach out to Mr Faurby. I cannot confirm the nature of that engagement or how many times they might have spoken, for example.

The Hon. ANTHONY D'ADAM: Coming back to the answer, I just want to clarify: You reviewed the answer prior to publication, I'm assuming.

GEORGINA HARRISSON: Not of the TAFE questions, no, but of the department ones, yes.

The Hon. ANTHONY D'ADAM: The question that was directed to the department about the provision of this information, the one that you were responsive to, you reviewed that and signed off on it?

GEORGINA HARRISSON: My executive director for government business would have reviewed that and signed off on it.

The Hon. ANTHONY D'ADAM: You are aware of the process available for information to be provided on a confidential basis to the Committee, aren't you?

GEORGINA HARRISSON: I am, Mr D'Adam. But my understanding of that process, and I believe it came up in other matters discussed this morning, is that process would normally, from a department's perspective, be initiated following our inability to return the document. Now would be a good time for us to start having that conversation in the way that we may provide the letter in such a manner.

The Hon. ANTHONY D'ADAM: I see. You and no-one from the department has reached out to the Committee secretariat to see if there were other means to meet the obligations in relation to being responsive to the question?

GEORGINA HARRISSON: I do believe we were responsive to the question in the nature of the question that was posed, which was in a public forum for a public response. Certainly I can confirm that we have not had any contact from the Committee seeking to have the letter provided to them in another manner either, Mr D'Adam. But I am very happy for us to look at the way that we may do that.

The Hon. COURTNEY HOUSSOS: Ms Harrison, thank you very much for your time and your testimony. It has been quite informative. I just wanted to recap a couple of things. It was in August that the Minister first raised concerns with you about Mr Faurby?

GEORGINA HARRISSON: That is, to the best of my recollection, the first time I recall an issue being raised, yes.

The Hon. COURTNEY HOUSSOS: Then he finalised his decision on 17 November?

GEORGINA HARRISSON: That is when I went back to the organisation and requested that we provide information, advice for Minister Lee, on how he would terminate the contract and provided him with the draft materials.

The Hon. COURTNEY HOUSSOS: Are you aware of any correspondence or any meetings? You said that you are aware of a conversation that happened between Mr Faurby and Minister Lee subsequent to your conversation in August. Are you aware of any conversations that happened after that meeting on 17 November?

GEORGINA HARRISSON: Obviously the managing director of TAFE will meet with the Minister in a number of different ways, through regular meetings and regular one-on-one conversations. I don't have access to Mr Faurby's or Minister Lee's diary to confirm what conversations might have happened when.

The Hon. COURTNEY HOUSSOS: But you said that you were aware after these concerns had been raised in August that there had been a conversation. Are you aware if there was another conversation after November?

GEORGINA HARRISSON: I am not aware of any—sorry, after August, I think you asked me?

The Hon. COURTNEY HOUSSOS: No. You told me that after your August conversation with the Minister there was a subsequent conversation between Mr Faurby and Minister Lee.

GEORGINA HARRISSON: Yes, that is correct.

The Hon. COURTNEY HOUSSOS: Are you aware if there was a subsequent conversation after his decision on 17 November?

GEORGINA HARRISSON: I am not aware of conversations that may have happened between the Minister and Mr Faurby at that time, no.

The Hon. COURTNEY HOUSSOS: You presented Mr Faurby the letter at 4.15 p.m. on 2 December. Are you aware if that was the first time that Mr Faurby was being told?

GEORGINA HARRISSON: That is standard with convention around the termination of public service employees. Yes, I think that would have been the first time he would have been notified of that decision.

The Hon. COURTNEY HOUSSOS: You said that after 17 November you returned to your office and then requested a brief to the Minister.

GEORGINA HARRISSON: That is correct.

The Hon. COURTNEY HOUSSOS: Was that the first time that your office provided advice to the Minister's office about what the process would be?

GEORGINA HARRISSON: I would have, in broad terms, given Minister Lee a verbal view of what the process would look like during that meeting on 17 November, and then confirmed it in the written briefing.

The Hon. COURTNEY HOUSSOS: Are you able to tell us when that briefing was provided to the Minister?

GEORGINA HARRISSON: I don't have the date on hand, but I am able to provide that on notice.

The Hon. COURTNEY HOUSSOS: Prior to August, were any performance issues raised by Minister Lee about Mr Faurby with you?

GEORGINA HARRISSON: Ms Houssos, I am just thinking back to the time before August. You will be aware I was confirmed in the role around six weeks before then, after which we had a cyber incident and a major disruption to schooling through COVID-19. I am not aware that Mr Faurby's performance was central to mine and Minister Lee's conversations at that time, as we were focused on the delivery of TAFE through that Delta wave, largely, and our conversations on the delivery of ongoing skills development for the community.

The Hon. COURTNEY HOUSSOS: I understand. But it was pretty soon after you took on the role that he started raising concerns?

GEORGINA HARRISSON: Yes. I guess I give that time frame to indicate that I also wouldn't have a view of whether any discussions happened prior to me joining the role.

The Hon. COURTNEY HOUSSOS: In the course of your handover from your predecessor was it raised with you that there were some issues with the working relationship, or that there had been some concerns that had been raised?

GEORGINA HARRISSON: Not in the context of the individual. No, I don't think there were in the context of the performance of TAFE or the individual.

The Hon. COURTNEY HOUSSOS: No?

GEORGINA HARRISSON: Not explicitly raised. What I took as feedback at that time was that there was work to do across the department and TAFE to ensure that the Government's agenda and its priorities were receiving the focus that the Government wanted it to receive and that we were clear on our relative roles and responsibilities around some of those initiatives. If I, for example, give you areas such as the institutes of applied technology, that would be an area where, as a department—and TAFE as a more commercial entity, for whom we have a regulatory response—the feedback and handover with my predecessor focused on the need for us to get clearer on that. That would be an area where I think it would be reasonable for the Minister to expect us to be clear on our roles and responsibilities.

The Hon. ANTHONY D'ADAM: Are you aware of any issues being raised with your predecessor?

GEORGINA HARRISSON: Not that I am aware of, but I couldn't speak for him.

The CHAIR: Ms Harrison, it is well documented publicly that former Premier Berejiklian headhunted Steffen Faurby, and there was a special salary package involved. Was she in contact with you or anyone, to your knowledge, to say, "What's happening here with Steffen?"

GEORGINA HARRISSON: You will appreciate the decisions relating to the termination occurred after former Premier Berejiklian had left the administration. It was under Premier Perrottet that those decisions were made.

The CHAIR: But August onwards, after Minister Lee first mentioned his dissatisfaction?

GEORGINA HARRISSON: There were not conversations with me, but I couldn't account for whether or not Minister Lee had conversations with his Cabinet colleagues or the Premier about those issues.

The CHAIR: And Premier Perrottet, was he involved at any stage?

GEORGINA HARRISSON: Equally, I had no conversations with Premier Perrottet, but I cannot determine whether or not the Minister had those conversations. It would be normal for him to consider to do so.

The CHAIR: Where are we at now with the termination letter and Committee access to it? Is it reasonable to redact anything that is intensely private and provide it to the Committee? Or can it be classified as a privileged document?

GEORGINA HARRISSON: I am very happy to provide it as a privileged document.

The CHAIR: And when can that happen, please?

GEORGINA HARRISSON: I can have that back to you in the next 24 hours.

The CHAIR: Thank you for your cooperation, which has been very helpful. We can close the hearing on that basis.

(The witnesses withdrew.)

The Committee adjourned at 14:54.