

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

**NSW GOVERNMENT'S USE AND MANAGEMENT OF CONSULTING
SERVICES**

CORRECTED

At Macquarie Room, Parliament House, Sydney on Tuesday 5 September 2023

The Committee met at 9:15.

PRESENT

Ms Abigail Boyd (Chair)

The Hon. Mark Buttigieg

The Hon. Wes Fang

The Hon. Scott Farlow (Deputy Chair)

The Hon. Sarah Kaine

The Hon. Peter Primrose

The CHAIR: Welcome to the eighth hearing of the Public Accountability and Works Committee inquiry into the New South Wales Government's use and management of consulting services. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal or Torres Strait Islander people joining us today and those watching online. Today we will hear from a number of transport sector agencies, including Transport for NSW, Infrastructure NSW, the Transport Asset Holding Entity and Sydney Metro. We will also be hearing from KPMG.

Before we commence, I make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, the House has authorised the filming, broadcasting and photography of Committee proceedings by representatives of media organisations from any position in the room and by any member of the public from any position in the audience. Any person filming or photographing proceedings must take responsibility for the proper use of that material. This is detailed in the broadcasting resolution, a copy of which is available from the Committee secretariat.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff. In terms of audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphones. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

Mr ROB HALSALL, Executive Director, Procurement, Transport for NSW, sworn and examined

Mr PETER PERDIKOS, Executive Director, Commercial, Procurement and Transformation, Transport for NSW, sworn and examined

The CHAIR: I welcome our first witnesses, from Transport for NSW. Would you like to begin by making a short opening statement?

PETER PERDIKOS: Thank you for the opportunity to participate as a witness in the hearing today. As part of our roles, we have strategic oversight across the procurement of goods and services in Transport for NSW. Under the Transport procurement operating model, we provide Transport staff with policies, standards and guidelines as to how they should procure goods and services, including consultants, with ultimate accountability for those procurements sitting with the respective financial delegate. Given the significance and scale of transport operations infrastructure delivery, Transport has a unique role ensuring that every dollar spent, including on consultants, considers value for money and serves the public good. Transport's procurement spans a diverse range of industries, ranging from transport logistics, building materials and construction, business services to information and communications technology.

As a result of that, there will always be a need for some external strategic advice to assist and support in decision-making. Agencies within the Transport cluster are authorised by the NSW Procurement Board to undertake either goods and services or construction procurement through the NSW Treasury procurement accreditation program. Accreditation allows Transport to buy goods and services or construction services and sets minimum standards for managing procurement activities and risk, promoting the delivery of strategic outcomes and driving continuous improvement.

It is worth noting the Transport procurement model currently consists of the following key frameworks: a goods and services procurement framework, which sets out the requirements for goods and services across Transport; the TfNSW roads and maritime procurement framework, which sets out the requirements for roads and maritime related construction and infrastructure procurement; an infrastructure and place construction procurement framework, which sets out the requirements for that related construction and procurement; and, finally, the Sydney Metro construction framework. Procurement activities in relation to the engagement of these services are monitored and reported across Transport to provide visibility and transparency of these services and ensure that Transport delivers on its commitments to its customers and community.

I would also like to add in 2021 Transport reformed its goods and services procurement framework, structures and governance. The reform program, including recruitment to fill those structures, was completed in late 2021 and early 2022. Since then, we've undertaken and continue to implement a significant uplift program across goods and services procurement policy, strategy, data, analytics, contract management and driving improved value for money. As part of our uplift program we have for the first time in Transport established a category management approach, providing the necessary expertise and investment to drive improved risk management, financial sustainability and value for money.

I'd also like to acknowledge the Audit Office report into consultants delivered by New South Wales government agencies released in March this year. Transport for NSW was one of the agencies within the scope of the audit and welcomes the recommendations to improve the practices in relation to the engagement of consultants. We are currently working through the relevant recommendations of the audit, including ongoing work with NSW Procurement to drive alignment and uplift across procurement and management of consultants. Thank you again for the opportunity to appear before the Committee around providing information around Transport for NSW's current operating framework. We look forward to your questions.

The CHAIR: Thank you for coming along today and being here to answer these questions. I think we've spent a lot of time looking at the way that Health works and now we're beginning to look at Transport and Infrastructure today. Can I just start off by asking you a little bit about the way that you classify and record consultants versus contractors? For example, if a layperson were to look into your annual reports, it would have over \$1 billion of expenditure in consultants and contractors as a line item for what I understand to be your core operating element, but then we only have \$20 million or whatever listed as being consultant spend when we get to that specific disclosure section. Can you explain to us what sits in that other big chunk and the different categories and how you make those distinctions?

PETER PERDIKOS: I'll start off and Mr Halsall may wish to add anything that I may miss here. Generally, with the definition as provided by the Procurement Board with respect to consultants, we're looking at that advisory nature to assist decision-making. There's a category within the professional services. That looks at four different aspects. Now, that really is where we have supply of secondees, where we have managed service

providers in addition to that, and we have organisations who come on board under a statement of works. That's the category that's the non-consultant spend. That can be vast and varied in terms of the work that they do. I think the distinction between that and the consultant is that advisory nature with respect to the recommendations made to assist decision-making.

The CHAIR: You could have secondees from consulting firms, for instance, that would be categorised as contracting, not consulting?

PETER PERDIKOS: That's correct. I think what we find is it's less about the supply or the firm. We talk a lot about the big four and so forth. It's more around the work that they're doing on any specific engagement as to what the categorisation is. That's not a Transport categorisation. We align to the NSW Procurement Board definitions. That's something that—we work within those definitions to categorise our spend.

The CHAIR: Mr Halsall, I understand you've got significant experience in procurement in various types of organisations. Do you have a view on whether that sort of definition is really working for these purposes and whether we should really be looking more at the nature of the entity that we're doing a transaction with versus whether or not it's considered to be in the nature of advisory or something else?

ROB HALSALL: I think what we try to do is elaborate on the Procurement Board direction that has been advised and shared earlier by Mr Perdikos. Within Transport, we've worked over the last 12 months to further kind of define and produce fact sheets around what is external workforce—so what do we class as external workforce more generally and what the definitions of that are. We produced that in line with our policy harmonisation goals at the end of October 2022. It was something that we recognised we needed to elaborate further on to provide greater segregation, greater granularity on what those classifications were.

We updated that guidance again following the performance audit completion by the Auditor-General's office in March 2023. We've also produced fact sheets for the standard commercial framework. As you know, within the performance management scheme, we have standard commercial framework suppliers and then we have outside-standard commercial framework suppliers. So we produced a fact sheet internally within Transport to make it really clear what the obligations are in engaging professional services more broadly and, obviously, what the obligations are on those individuals if they choose to engage within the standard commercial framework or outside the standard commercial framework. That's another example, I would say.

Finally, we've developed a standalone consulting fact sheet. We did that in alignment with NSW Procurement and Treasury. We produced that as part of our goals on policy harmonisation. We produced that last year in advance of October 2022, and then we refreshed that again earlier this calendar year. I guess what I'm trying to share is that there is a collective number of guidance documents, which we have developed prior to the Auditor-General's performance audit but also after that and the learnings from that to further, I guess, make it really clear what the differences are between the external labour definitions.

The CHAIR: From a basic perspective, if we're looking at last year's financials, there's a line item under "other operating expenses", which says, "Consultants and other contractors," and it's \$1.35 billion. Can you give us any more colour around what that includes? How much of that would be, for example, external staff being contracted in?

PETER PERDIKOS: We don't have that detail on hand. We're happy to take that on notice. However, what I will say is that size—if we think about the Transport program, I think our budget was roughly \$39.8 billion last year. If you look at the capex side of that, it's over 70 per cent. Now, there's going to be assistance required, and I think that was part of what we mentioned right up-front. Whether that sits across project management, financial services and the like, there'll be aspects that Transport brings on that expertise to assist with delivery of that program. Now, as we've mentioned and what we've said, that's distinct from consultant usage, which is that advisory nature of it. We can get some details around that, Chair, and come back to you.

The CHAIR: It would be very useful. I understand that a significant number of total staff within the transport sector, or within the transport department and agency, are external staff. Can you give me a general percentage of how many of Transport for NSW's staff are not employed by Transport for NSW but are contractors?

PETER PERDIKOS: I don't have the exact details right now. I know in the vicinity. We've spoken around professional services and what that looks like and, as we've mentioned, supply secondees and the like. We also have labour hire staff to assist as well. I don't have the numbers in front of me today, but we'll come back to you on the actual details of that. As mentioned to you, we have done a lot of work around consultants, but, as Mr Halsall mentioned, we also have been focusing on the broader cohort of our workforce—what we term the external workforce. That does include labour hires and professional services contractors. We have quite an extensive program focused in on that. That feeds into our internal capability and capacity programs but also with respect to, in a changed fiscal environment, how we meet those priorities as well.

The CHAIR: So, for example, I understand from Sydney Metro's annual report that around one in four of their employees is not an employee of Sydney Metro but is an external contractor or consultant, however you want to define it. Is it similar in the broader transport department?

PETER PERDIKOS: Thanks for the question. I'm not aware that it's at those levels. Sydney Metro has a specific program very much focused on infrastructure delivery. I know you're speaking to Sydney Metro later today. With respect to Transport, I think we always say "in the vicinity of 30,000 employees".

The CHAIR: Out of?

PETER PERDIKOS: It's 30,000 in the Transport cluster. Of those 30,000 employees and staff, there's a portion of those that are either labour hires or professional service contractors. I don't have the exact numbers here in front of me today. I know we've been on a program that—we're starting to see some changes in that cohort. But I'm fairly confident it's not in the vicinity of 25 per cent across Transport.

The CHAIR: How many of those are secondees as opposed to labour hire? Can you come back and tell me that as well?

PETER PERDIKOS: We'll come back to you on that. We'll take that question on notice.

The CHAIR: I understand—and I think this something you said earlier, Mr Halsall—there was a memo put out—

The Hon. MARK BUTTIGIEG: Is it possible for you to perhaps get those figures while the Committee's in hearing? Is that possible?

PETER PERDIKOS: We'll see what we can do. We'll follow that up.

The Hon. MARK BUTTIGIEG: That would be the sort of thing the department would keep, wouldn't it?

PETER PERDIKOS: I don't want to make a commitment that we can come back to you—but if we can't get it within this hearing, we'll come back to you with that.

The Hon. PETER PRIMROSE: Can I also maybe ask, to assist you, I note that your report to Treasury and the actual codes that are used for consultant expenses are AE208020001 and, for contractors, AE208040001—presumably, if you've reported those, there must be a list somewhere.

PETER PERDIKOS: We'll take that away. I don't know. That reporting could be financial rather than headcount and FTE. We'll take that away and see what we can provide.

The Hon. Dr SARAH KAINE: While we're just asking for information, Mr Halsall, I think you mentioned some fact sheets and those kinds of things. Could we on notice have copies of those?

ROB HALSALL: Absolutely. We can provide those for you.

The Hon. Dr SARAH KAINE: Perhaps the different iterations as well would be useful.

ROB HALSALL: Absolutely. Yes.

The CHAIR: One of the issues that we've been looking at in this inquiry is the potential for there to be conflicts of interests or misuse of information when you have secondees sitting in departments. We've seen it. There's a number of PwC secondees, for instance, and we see it across all of the departments. I was concerned, actually, in the context of the SO 52 into Josh Murray's appointment, just randomly, at one of the end of the emails there was a bit of a—I think it was an internal memo attached to the back of one of those emails, which talked about changes to how you identify external workers. Sitting at the bottom of this email chain from Transport for NSW, it says—and this is from this year:

You'll soon be able to see the name of the company our external workers (excluding labour hires) are contracted with. You'll also see what type of work they do and the job family they support.

This will help Transport protect our confidential information and improve transparency.

What concerned me about that was that it implied that previously people didn't know who was an external worker and who was somebody who was working for Transport for NSW. If that's the case, there would be very little to prevent a free flow of information within a department. Did you identify problems with the use of information? What led to this statement?

PETER PERDIKOS: I'll just provide some context around that, Chair. I think the point there is that we identified and have a continual uplift program. We can go into the details of that. One of the areas we've looked at is our external staff. There's a significant program around that external staff program. To your question around

"Have we only just implemented that?", if someone is a supply secondee working in Transport, up until recently that was noted by "T for NSW" or "Sydney Metro" and then followed by "PSC", professional services contractor. That's always been the case. What we've added more recently is additional detail. In addition to saying "T for NSW PSC", we now have the organisation and name the organisation from which they are seconded. So there is additional detail to what we already had that identified them as being external—we just now know which external firm they are coming from.

The CHAIR: What is the practical distinction then between those kind of labour hire and secondment people?

PETER PERDIKOS: The supplier seconder is generally there to provide a statement of work. That can be a very clear statement of work, generally their tenure is shorter, it's more specialised. Labour hire can supplement your workforce. It's probably a little bit more generalised and the like. That's a little bit different when we have labour hire staff as compared to professional services contractors; it's the type of work they're doing which distinguishes how we engage them. We do have a system called contractor central, through which we bring all of our labour hire staff on. We are currently, as mentioned, through a significant uplift program around our professional services contractors.

The CHAIR: When you say "uplift program", what does that mean?

ROB HALSALL: General improvements. It's an acknowledged need to improve business controls and improve practice, improve policy, improve guidance, improve training and awareness.

PETER PERDIKOS: Happy to step through some of that if that's useful.

The CHAIR: I'm just curious because you don't have to look for very long on LinkedIn or any social media to find people who have worked within Transport as secondees for eight years-plus. That is just one of a lot of examples. It strikes me as extraordinary that we have such a lot of money going to people who are secondees for long periods of time. What does Transport for NSW do to monitor that and reign that in?

PETER PERDIKOS: I'll kick this off. Rob, you might like to add some more to this. We've got something at the moment called external workforce optimisation program. I know it's a mouthful, but what we are really focused in on is exactly the point you've just made there, among others, which is really focused in on tenure, the pay rates in addition to that, but also setting really clear guidelines for our hiring managers internally as to when to bring someone on board, having a very clear scope of works when it's a professional services contractor. One of the things we look at is we shouldn't be having people in there for extended periods of time—it's 12 to 24 months, very defined scope of works. That program, which is currently in flight and we are operating through, is very much focused on that. One of the things that we're working through is ensuring we provide our hiring managers and our key decision-makers visibility and transparency around those things, including tenure, spend and the like. That's what we are currently rolling out.

The Hon. MARK BUTTIGIEG: Do any of your industrial instruments contain provisions for time limits on fixed-term employment and things like that—secondees? Do you know?

PETER PERDIKOS: I don't have that background. Happy to take that on notice and come back to you.

The Hon. Dr SARAH KAINE: Is part of this external workforce optimisation framework—which is quite a mouthful—mapping, for example, salaries and remuneration of external staff to ongoing staff?

PETER PERDIKOS: Not specifically. One thing we've looked at is job families. Within those job families we recognise—whether it's project management, financial services and the like, we have a look at what those job families are, the capabilities that are associated with that as well. If we just slightly move to labour hires, for labour hires we do have different pay rates, for example, across different job families. One of the things we do track now is what that looks like. For example, there'll be different pay rates and maximum pay rates for different job families. We do track where there's variance above that as well.

The CHAIR: When you say "job family", is that like job type?

PETER PERDIKOS: Yes. It could be an engineer, project management, financial services, IT. Each of those job families will have different capabilities and one of the things we look at from a labour hire perspective is maximum pay rates across those.

The Hon. PETER PRIMROSE: Who came up with the term "job families"?

The CHAIR: A lot of buzzwords going on here.

ROB HALSALL: I think it's a bit of a recognised term that's used in that particular industry.

The Hon. PETER PRIMROSE: Presumably someone hired a consultant to develop that one.

ROB HALSALL: I can't comment on that.

The CHAIR: Are you able to provide us, on notice, with a list of how many people have been on contract or secondment—however you want to call it—filling a so-called temporary role for more than 12 months, more than 24 months, more than 36, more than 48 et cetera? It would be very useful to see just how long. But also I know in a lot of these examples, these people are—I've got one in front of me that has been a secondee for eight years but in sort of five or six different roles within Transport, so they're going from one to the other. Would that be classified in your records as being a continuous person for those purposes?

PETER PERDIKOS: Without knowing the specific circumstances of that, it's difficult to comment, but one of the things we do look at is potentially, for example, if they've had a break in service and it's been a three month—it's different; there are different rules. We look at the individual engagements. I don't have those details in front of me, but generally we would look at, on any specific engagement, that tenure, that one to two years.

ROB HALSALL: Sorry, if I could add to that, Chair, that's part of that uplift program that we referred to. Today we have a contractor central which allows us to look at how we onboard labour hire. We're moving towards a vendor management system, which is a different piece of technology, which we'll implement by May next year. It will give us greater granularity and greater ability to report on those more effective business controls when we onboard and exit external labour. That, again, is part of an evolution of where we are today, and, again, a lot of this comes down to quality data, being able to leverage data effectively to make better decisions.

The Hon. Dr SARAH KAINE: Mr Halsall, is that the vendor management scheme that Treasury is working on?

ROB HALSALL: It's related to that. Obviously, there isn't necessarily one vendor management system that all agencies will be adopting.

The Hon. Dr SARAH KAINE: That's a worry.

ROB HALSALL: We've obviously been working on a vendor management system and a strategy for over the last 12 months. We have a defined pathway to achieve, I guess, a digital solution for Transport by May next year. As you can appreciate, each agency is probably at their own stage of maturity on their digital road map. We've obviously worked with Treasury and NSW Procurement on the general principles of a vendor management system and we were part of a whole-of-government working group that sits in this area, but we've obviously chosen to move forward to provide better functionality within the Transport environment.

The Hon. Dr SARAH KAINE: Will those vendor management systems be compatible? Will they talk to each other? Because what we've found so far is the range of ways that things are reported in different agencies makes it extremely difficult. You mentioned the problem with data. So they will be compatible with each other? They will talk to each other?

ROB HALSALL: I can't guarantee that we can integrate with every other vendor management system. Where we can be clear on the definitions, be clear on the fact sheet information that I referred to earlier, be clear on how we classify different parts of external labour, then being able to extract the right information, clean information that resonates with the information that Treasury would be working on—for example, as you know there's a trusted and accurate data program that NSW Procurement is working on. We're working with them on that to make sure that the categorisation that we can provide aligns with their categorisation, which means we have a consistent source of truth where at all possible.

The Hon. PETER PRIMROSE: Can I ask who made the decision that it was good not to have a consistent range of definitions, say, for the various family groups? Who within government would think that that was a good decision to make?

PETER PERDIKOS: Sorry, just to understand the question a little bit better, are we referring to consultants and non-consultants?

The Hon. PETER PRIMROSE: The questions that were just asked, what we're saying is that time, expense and work has gone in to develop what, presumably within individual agencies and across agencies, should be a consistent way of defining and following through on the use of public funds in relation to various categories. You've just said that the decision was made that that didn't work for you. I don't understand, regardless of what internal decisions may be made, in what world is it a good decision not to allow there to be consistency across agencies? Who would make that decision?

ROB HALSALL: I'm not sure whether there's a misinterpretation of what I said earlier. We're very aligned to the definitions that exist within NSW Procurement; we're very aligned to those. In fact, we're working

proactively with NSW Procurement to make those as current and contemporary as possible and make sure there's consistency in that. I think what we were referring to was the implementation of a vendor management system and the fact that unless there's a whole-of-government solution for a vendor management solution, then that's really with each agency to implement the appropriate digital road map. It wasn't that we weren't aligned with definitions. It wasn't that we were going outside and creating separate definitions where unnecessary.

The CHAIR: But there's not just one big vendor management system that applies to everybody?

ROB HALSALL: That's correct.

The Hon. PETER PRIMROSE: So I could go to Health after this is implemented, and I could go to Community Services. I could go to Roads and you guys, and when something is being purchased—a good or a service—those definitions would align?

PETER PERDIKOS: They absolutely should. One of the things, just to give you an example, that Mr Halsall mentioned was around the consulting fact sheet. We worked on that in close collaboration with NSW Procurement, including seeking and getting their endorsement before we released that internally at Transport. The reason for doing that was to get complete alignment with the definitions that are used at a whole-of-government level and then apply those in a Transport context. The consulting fact sheet that Mr Halsall referred to then reflects that definition in, as I mentioned, a Transport context around the different types of procurement that we do. But absolutely from a definitional perspective, we seek to, and do, align with NSW Procurement.

The Hon. PETER PRIMROSE: Therefore, the Auditor-General's concerns raised in the report in March would no longer apply?

PETER PERDIKOS: I think there were seven recommendations in there. Some of them were directly for NSW Procurement around definitions. From my understanding of those recommendations, it was around clarity around the consultant rather than consistency and alignment into the clusters. I want to draw that out a little bit further. Whatever the definition currently is, we have worked closely with NSW Procurement and ensured that definition is applied consistently within Transport. Whether additional work is required to clarify the definition itself is a matter for NSW Procurement.

The Hon. PETER PRIMROSE: I'm going to put a whole range of questions on notice because I don't want to drive everyone insane. It would seem to me that when a member of the public, including us, want to look at expenditure, the obvious place to go through is to look at Treasury. There are a range of very specific Treasury definitions. I'm not sure whether consultants and contractors are caught under those definitions as well—for example, "other operating expenses", "other operating expenses cash" and "program delivery expenses". Each of them have very specific codes with Treasury, but you can see where we're driving to. It is that every time we ask these questions, we are told, "There's a disparity. It's not sure." Quite often it suddenly appears as though contractors particularly, and maybe consultants, have been caught up in a range of these other areas as well, to the point where you never, ever actually know how much an individual agency is expending. So I'll put that to you. That's the reason for the voluminous questions you're going to receive.

PETER PERDIKOS: On consultants, we referenced earlier around the uplift program. Mr Halsall and his team early last year, I think it was in April 2022, have stood up a weekly—every consulting engagement that comes through, his team reviews. We report that weekly in terms of spend, engagements and the like. So we see the volume of that spend. The work that Mr Halsall's team does across that applies the definitions as set by NSW Procurement, and we ensure that those engagements are coded correctly. That uplift program that Mr Halsall and his team have led, as we've mentioned, includes the consulting fact sheet. We've worked in with the business, we've communicated that out to our staff and we continue to review every engagement that comes through, with respect to whether it's a consultant spend or otherwise, applying that definition. We've had a range of other activities to support that as well. For example, we've looked at our financial delegations. We've revised those financial delegations for all consulting engagements. Within Transport for NSW, if we look at anything up to one-quarter of a million dollars, it requires a deputy secretary approval. Anything above that requires secretary approval. We've taken those definitions, we've applied a program around that and then implemented that and tracked that through.

The Hon. Dr SARAH KAINE: Can I ask a question about the financial delegations? You mentioned them earlier. When you were talking about who has the ultimate responsibility for the consultant spend, you mentioned that it was a responsibility of the financial delegate. Does that accord with the procurement framework? I thought—but please let me know—that the ultimate responsibility lies with the secretary, who is the representative on the NSW Procurement Board and needs to be able to go to that board and justify that. I presumed

that the secretary was the ultimate financial delegate, and that within your other classifications you have the capacity to engage, but ultimately the secretary is the one who has to front the Procurement Board.

PETER PERDIKOS: Thanks for the question. That's right: Ultimately, through our financial delegation framework, those delegations flow down from the secretary to different people.

The Hon. Dr SARAH KAINE: Okay. It was just that initially you said the ultimate responsibility is the financial delegate—

PETER PERDIKOS: The financial delegate heads up the engagement and makes the authorisation based on those delegations to bring on that consultant or otherwise. As we've mentioned, we have the program around that. The secretary, through the NSW Procurement Board, we have an accreditation program—if we just focus on goods and services—led by Mr Halsall's team across an annual accreditation program, where we need to attest to NSW Procurement around our engagements around a series of metrics, including a range of areas around goods and services procurement. But one of those is how we bring on consultants and other engagements.

The Hon. WES FANG: Does the financial delegation assume that you've got operational experience?

The CHAIR: I'm going to rule that question out of order as not being relevant to the terms of reference.

The Hon. SCOTT FARLOW: Why not?

The Hon. WES FANG: Yes, why is it out of order?

The CHAIR: Because Mr Fang is clearly talking about the other inquiry.

The Hon. SCOTT FARLOW: No, he's not. He's asking a question about the delegations. It's completely within the—

The Hon. WES FANG: And the requirement for operational experience.

The Hon. Dr SARAH KAINE: It would depend on the position description and what it required.

The Hon. WES FANG: Well, I wasn't asking you; I was asking the witnesses.

The CHAIR: We're not going there, Wes.

The Hon. SCOTT FARLOW: It's a general question.

The Hon. WES FANG: It was a general question, yes. Very general. I was just asking. I was wondering if operational experience might be useful in a role with Transport.

The CHAIR: I will give you one leave pass. Witnesses, if you would like to answer the question—if there is an answer you can give?

The Hon. WES FANG: Who wants to answer that one?

PETER PERDIKOS: What I will say in response to that question is that our delegations are framed around positions rather than individuals. The expectation is that those positions are in a position to make the appropriate decision.

The Hon. WES FANG: Right, so the experience isn't necessarily required. Fair enough.

The CHAIR: But when we're talking about delegation—because I picked up on that as well, that sort of statement about ultimate responsibility—when you delegate, you are not giving away your responsibility; you're delegating but you're still responsible. The secretary will always be the one responsible for procurement decisions across the board, right, across Transport?

PETER PERDIKOS: That's correct. Our financial delegations, as mentioned—whether it's a risk-based approach or a financial-based approach, ultimately those delegations flow from the secretary's delegations.

The CHAIR: Back to that vendor management system, is that something that you've had external help with? Have you had consultants helping in relation to the vendor management system upgrades?

ROB HALSALL: Not that I'm aware of. We're working with our colleagues in shared services, who are the sponsor for that initiative. Mr Perdikos mentioned earlier that we've invested in category management—again, apologies for another procurement term. It's basically more of a data-driven, strategy-driven approach to expenditure categories, and labour is an expenditure category. We're working very closely with our corporate IT colleagues internally and with our shared services colleagues to implement that vendor management system. To my knowledge, there is no external labour or advisory being used to implement that solution.

The CHAIR: Thank you. Are you able to provide on notice a breakdown of total spend to each of the big four—KPMG, EY, PwC and Deloitte—regardless of classification from Transport for NSW?

The Hon. WES FANG: Probably call them the "big three" now and then the other one.

The CHAIR: The big three and the other one.

ROB HALSALL: Yes, we'll be able to provide you with that information.

The CHAIR: Thank you.

PETER PERDIKOS: Sorry, Chair, just to confirm: What's the time frame? Are you looking for the last financial year?

The CHAIR: Yes, sorry—in the last financial year. That would be very useful. The 2022 financial year, and what we have to date on 2023 would be very useful. Obviously, Mr Perdikos, you had a front seat view of what I call the TAHE debacle. People are divided on the TAHE issue.

The Hon. WES FANG: I'll take a point of order on that. Will you withdraw—

The CHAIR: I withdraw the word "debacle". I'll insert "sham". Let's move on. There is no point of order. How long did you work on the TAHE—

The Hon. SCOTT FARLOW: Project.

The CHAIR: Project, thank you.

PETER PERDIKOS: I started working on it in late 2017. That's when I stepped into that program.

The CHAIR: Did you have concerns about TAHE and the way it was structured?

PETER PERDIKOS: I think it's probably a matter for public record and it may have been picked up in previous standing orders that, yes. Through that program, and as part of my role, it was to identify risks and then mitigate those risks and work through the program. I think there are aspects where I called out whether the pace of our implementation or other aspects—those were called out as part of just good program management and then really seeking how we can rectify and mitigate those risks.

The CHAIR: Were you concerned about safety aspects?

PETER PERDIKOS: I think that was one of the overriding concerns for Transport as a whole.

The CHAIR: Did you ever attend or hear of a meeting in 2019, which I understand Transport and Treasury may have attended, in relation to the PwC report on the accounting treatment of TAHE and basically agreeing it wasn't a good idea?

PETER PERDIKOS: I'm very aware of the PwC engagement that you're referring to. Just as way of background, yes, that was an engagement through Transport for NSW. But, for clarity, we had governance in place at the time. There was something called a TAHE advisory board and that TAHE advisory board comprised senior members at an executive level from what was the Department of Premier and Cabinet, NSW Treasury and Transport for NSW. It was that advisory board that asked for advice, and it was procured through Transport for NSW. We worked with PwC to assess and determine a series of accounting-related questions and there were a series of meetings, as you might imagine, through that process, including at the conclusion of that process.

The CHAIR: Do you think KPMG were brought in to basically clean up after PwC said that TAHE wouldn't work? Was KPMG brought in to offer a different opinion?

PETER PERDIKOS: It's a little bit difficult for me to answer that in the sense that KPMG were brought on with respect to the engagement you're referring to by Treasury. It wouldn't be right for me to speculate as to the intent of that. What I can say is that KPMG were looking at slightly different questions that were put to PwC. The model of TAHE or the proposed model had moved on, to an extent. We had new accounting standards that were applicable from 1 July 2019. There were others applicable from 1 July 2020. Also, while it was something we were working through at the time, Treasury was also looking at broader whole of sector advice, which was applicable across other identities in addition to TAHE.

The CHAIR: Were you surprised that the TAHE structure was back on the table in 2020 after what you had seen with PwC?

PETER PERDIKOS: I don't know if I should be speculating. I'm not sure if I was surprised. It was government policy and it was our job to implement it. At no point was I aware that government had changed that policy. In the sense that it remained government policy, it remained our obligation and our duty to implement that.

The CHAIR: The KPMG engagement after the PwC engagement—I appreciate that they were technically by different entities but you do refer to this TAHE advisory board sitting over things. Do you think it's fair to categorise that as an example of doctor shopping or forum shopping?

PETER PERDIKOS: I don't want to speculate on that. For clarity, I did refer the TAHE advisory board, and the PwC engagement was sought through there. However, the KPMG engagement that you're referring to with respect to Treasury, that was not a matter that was progressed through and endorsed through the TAHE advisory board. That was a Treasury engagement directly.

The Hon. SCOTT FARLOW: For clarification, the TAHE advisory board was constituted of Treasury, Transport and Premier, was it?

PETER PERDIKOS: Yes, that's right.

The CHAIR: So you worked with Brendan Lyon from KPMG in relation to Transport's engagement of KPMG for TAHE.

PETER PERDIKOS: That's right.

The CHAIR: Did you agree with the statements of the former Treasury secretary, Mr Pratt, where he alleged that Mr Lyon's work on TAHE contained persistent errors?

PETER PERDIKOS: I will answer it this way: We worked closely with Brendan, and the work that was brought on with that engagement for KPMG really focused in on the operational, asset management and safety aspects. There was an aspect within that engagement and the scope of that engagement around understanding the financial impacts and risks and the like. The work that we did with Brendan was extensive. That work was not just in relation to Transport; we worked extensively with TAHE, once they got stood up on 1 July 2020, and Treasury. The work that went into that—defining the roles, responsibilities and accountabilities across what is a complex model—was extensive work. It actually formed the implemented model. It was really critical around what we've got to around informing that, including identifying those risks and mitigating those risks. We have done that through various—whether it's governance, whether it's things like their operating licence and the like. That work was critical that we worked with KPMG and Brendan Lyon on. From our perspective, it got us into a position, through the end of that work, where we were much better off through having done that.

The CHAIR: Were you happy with Mr Lyon's work from a client perspective?

PETER PERDIKOS: Yes. I think it's a matter of a former Transport secretary has sat in different committees that you, Chair, have been part of and others have been a part of. That work was extensive and formed the basis through which we implemented the TAHE operating model. From a Transport perspective, we're confident that the risks, whether they be around safety, operational or asset management, were identified and mitigated. And they were able to implement a model that ensured, from a TfNSW or rail operator perspective, all of those issues were addressed.

The CHAIR: From a Transport for NSW perspective, was the engagement of Mr Lyon and the work that was done not a cause for concern or complaint?

PETER PERDIKOS: No.

The CHAIR: Given what we now know from that previous inquiry, where we saw the former Treasury secretary, Mr Pratt, putting pressure, shall we say, on Mr Lyon to potentially change advice or write something different to what he had written in his report, do you think that was appropriate for somebody from Treasury, who was not the client of Mr Lyon, to be doing?

PETER PERDIKOS: There were a lot of things that came out through that inquiry. There was an element of what I was aware of at the time, and there was a large part of it that I wasn't aware of that came out through that inquiry. Some of what you've just referred to there—and to the extent of what is now on the public record—a large part of that I was not aware of at the time. To comment directly with respect to your question, we had ongoing governance. I think there were weekly meetings at that point in time with Mr Lyon and his team, with Treasury, with TAHE and Treasury's engagement with KPMG as well. The reason I'm saying that is, in those discussions, those were complex programs. Those were robust discussions.

It's a matter of course that in developing that and implementing the TAHE operating model there was a lot of discussion. We engaged and we provided feedback, for example, to Treasury with respect to some of the advice they were receiving from KPMG as well—the separate engagement they had in place. In a normal course of events, there was information shared between the agencies with the respective KPMG engagements. Now, I think you're focusing in on the comments made by the former secretary. I was made aware of those largely through your

previous hearings in the TAHE inquiry. The appropriateness or otherwise of those is probably not for me to comment on.

The CHAIR: Just to recap, though, we have KPMG, in this case, working for two distinct clients. We have one engagement with Treasury and one with Transport. In your answer just now, you've said that you talked about the work that KPMG were doing for Treasury with Treasury. Did you at any point talk to or try to influence the work that KPMG were doing for Treasury by talking directly with KPMG?

PETER PERDIKOS: Just so I'm clear, we're talking about the Treasury KPMG engagement?

The CHAIR: Yes.

PETER PERDIKOS: We had extensive conversations with both Treasury and the lead KPMG partner for Treasury on the advice that we were receiving—extensive—whether through formal governance processes or outside of those formal governance processes. It was a fluid environment at the time. As you might imagine, in the type of advice we were receiving from both KPMG engagements and when you look at accounting advice and the like, it's not black and white a lot of the time. There are interpretations in that. So, yes, there was a large amount of conversations through various parts of Transport with Treasury and KPMG, and that includes whether it's our finance areas, our legal areas and the like. But, yes, we had direct engagement with Treasury's lead KPMG partner and we had ongoing conversations with her and her team, and similarly with Treasury, around the engagement.

The CHAIR: How does that work in practice? Again, we're talking about two distinct clients and the same firm. KPMG have talked about the management of conflicts of interest in that circumstance. Understanding that there will be conversations in those circumstances, as you say, flowing between, where is the line for you as to when communication would be inappropriate with another client's firm working on that work?

PETER PERDIKOS: Ultimately that engagement, whichever respective engagement we're referring to—the deliverable is back to that client. As I said, the normal course of events is deliberations, questions, clarifications, understanding implications of the advice. To get the advice in the KPMG engagement with Treasury they largely relied on a lot of inputs from Transport, whether that be revenue flows and other matters or decision-making rights. In that, we provide a large source of information. There would be a lot of questions that we'd need to clarify and understand.

Now, there's a line somewhere—I understand the question, Chair—around when it becomes inappropriate. If I just talk from a Transport perspective, there was a deliverable finalised by KPMG to Treasury that was provided to Transport. Yes, it's a matter of public record that there were questions around how we reconciled those things, and I think KPMG has commented on that as well. However, what we didn't do is—there wasn't a process through which we then went through and gave advice or requested changes to that advice. That was accepted and we worked through the implications of that.

The CHAIR: So that's what Transport did in relation to Treasury's work, but what we saw in the inquiry was that Treasury didn't necessarily do that in relation to Transport's work. We saw direct interference in the writing of the report, and I believe that is what KPMG is referring to when they have now admitted that they didn't quite get that right. Going forward, what has Transport done to ensure that a situation like that doesn't happen again?

PETER PERDIKOS: It's worth commenting on our conflicts of interest processes. It's probably a broad range of activities that we've done since that. We've seen the recommendations that have come out of the TAHE inquiry. We've also seen the Auditor-General's TAHE report and, similarly, the Auditor-General's consultants report. Conflicts of interest are a large part; you see that throughout there. Under the performance and management scheme, there are obligations across both—and we also have our internal controls, which I'll come to in a moment. There are obligations under the supplier where an engagement is made with a supplier, at the point of engagement, for that supplier to notify the client—in this case, it's Transport—of any actual or perceived conflicts of interest. At that point in time, whether it's at engagement or throughout the engagement, the client—I refer back to Transport. We can then make a decision, or we are obligated to make a decision, whether to continue with that engagement with conditions or, alternatively, to terminate the engagement.

With respect to our staff, we have conflict-of-interest training that we roll out with our staff. But also, from a tender evaluation committee—our staff on those tender evaluation committees, people involved in the procurement itself, need to declare any real or perceived conflicts as well. The chair of those tender evaluation committees will then make a decision around the appropriateness or the course of action that may be taken in those circumstances. Now, one of the things that we've done—we've referred earlier to an uplift program. Mr Halsall has implemented what's termed—again, sorry for the buzzwords here, but these are the terms we use internally—a procurement risk oversight committee. Mr Halsall and his team review a series of different risks

across our goods and services procurement. One of those is around conflicts of interest declarations—so we track that. That's something that Mr Halsall and his team actively work through. So those are some of the things that we've done now. There is probably some obligation on the supplier, and then we have a decision point to make as a client, and then, similarly, with our staff internally, around declarations and training, to uplift that.

The Hon. WES FANG: "We bought two tickets to the Haylen dinner."

The CHAIR: Is that a question?

The Hon. WES FANG: No, sorry, I was just talking to Scott.

The CHAIR: Talk more quietly.

The Hon. WES FANG: Sorry.

The CHAIR: Thank you. In terms of this particular engagement with KPMG around TAHE, it ended up with the person that you had engaged with at KPMG—who you have said you had no problems with their work—being, effectively, forced out of KPMG. I won't recap the whole debacle that ensued. What did Transport then do to express its dissatisfaction with KPMG after that project had ended?

PETER PERDIKOS: I think I'll just refer back to the work we received as a client from KPMG. We had no issues with that. It was actually high-quality work that informed the basis of the TAHE operating model and, from a Transport perspective, it identified and mitigated all the risks and underpins the model that's in place now. Now, there were matters there throughout that process, some of which I was aware of and from a contemporary nature, some post-fact, that came out in the inquiry. I know that the former secretary had worked through and was working directly with KPMG. I can't comment on what conversations he may have had with KPMG or otherwise. But in terms of your question, what did I engage with KPMG on? I didn't, directly. As you might imagine in any structure, I worked with my superiors through that, so I can't comment anything beyond that.

The CHAIR: Have any regulators contacted you about the work that KPMG did on TAHE?

PETER PERDIKOS: We have had some contact earlier this year, around March-April. I'll just clarify, just so we're really clear here, it wasn't from the regulator directly. It was from KPMG, seeking to provide the regulator with some correspondence.

The CHAIR: Interesting. So not seeking your views but something that they needed to submit to the regulator themselves?

PETER PERDIKOS: That's right, yes.

The CHAIR: But nothing directly from any regulator?

PETER PERDIKOS: Well, I'll just clarify that—as far as I'm aware.

The CHAIR: Do you think that KPMG's behaviour throughout the TAHE project was ethical?

The Hon. WES FANG: Do you mean their conduct or their behaviour?

The CHAIR: Either.

PETER PERDIKOS: I probably don't want to get into a debate as to whether it was ethical or not. As I said, I've only seen lots of what's come out post the engagement. There was a lot that came out in the inquiry that I wasn't aware of at the time. I will just keep referring to it from a Transport perspective. From a client perspective, we were happy with the work that was provided. I think the process—it's a matter of public record, around the process—could have been improved. In hindsight, if we were to run something similar again we may have to have different controls in place.

The CHAIR: We heard from the Procurement Board representatives that they effectively don't take anybody off of the prequalification scheme unless there's a process where a complaint is made and then they investigate it and then they might take away that prequalification. Is there an opportunity for you or anyone else in Transport to complain about the behaviour of a consultant?

PETER PERDIKOS: Under the performance and management scheme, there is opportunity for a range of post-engagement reviews to occur. There's a threshold there for anything above \$150,000, but there's also more scope around supplier performance. So there is a mechanism and there is a process in place through which government agencies can, through the NSW Procurement Board, raise those matters.

The CHAIR: Did you or anyone from Transport raise any issues about KPMG's work or performance?

PETER PERDIKOS: Not that I'm aware of, Chair, just noting that at that point in time my role was in TAHE rather than from a procurement perspective. But I'm not aware that any issues were raised.

The Hon. SCOTT FARLOW: In terms of first principles, why was the decision made for Transport to—and I'll ask Treasury separately—engage KPMG individually and not go through the advisory panel? What was the rationale for that?

PETER PERDIKOS: When you say "the advisory panel"—

The Hon. SCOTT FARLOW: The constituted TAHE—I think it was—advisory panel. Treasury, Premier—

PETER PERDIKOS: The TAHE advisory board, yes. The committee had been meeting for a number of years. Now, I think the last meeting—it's a matter of public record as well—was in early 2020. At that point in time it had effectively been disbanded and we had moved into weekly steerco's with representatives from the relevant departments. But at that point Transport wanted some advice with respect specifically to safety, asset management, operational matters, including with respect to the rail operators, in addition to the financial modelling. So that decision was made at a Transport local level.

The Hon. SCOTT FARLOW: Why the decision to go external to be able to get that advice from KPMG and not to do that in house?

PETER PERDIKOS: Thanks for the question. The way I'd answer that is I wasn't aware—I wasn't part of the engagement or the decision to bring on KPMG. I think the former secretary has been on the record that there was a need, given the pace and given the impending implementation standard with TAHE, to get some really detailed advice in a short space of time to inform the stand-up of TAHE. But I can't comment on anything further than that.

The Hon. SCOTT FARLOW: In terms of that advice, you say you were happy with that advice and the work that was produced by KPMG? Do you think that that was value for money in terms of what you actually got out of that and its use in being able to establish TAHE?

PETER PERDIKOS: Yes, we do. It's a very complex program. We're talking about \$40 billion worth of rail assets. We're talking about the day-to-day operations of a heavy rail network. Now, we delved into some significant matters around safety, around asset management, matters for which solutions were devised and implemented and still form the basis of the model today—around our three lines of assurance, for example, around safety and asset management, around the different decision-making rights of the rail operators, of TfNSW and TAHE. Think about the scale of what was being implemented, including the complexity of it. That advice was critical and without that we'd be in a very different position.

The Hon. SCOTT FARLOW: With that advice and of course the work that Transport for NSW did as well, do you think that the concerns that may have existed at that time in terms of safety and the like had been ameliorated in terms of TAHE's establishment?

PETER PERDIKOS: We're confident that they have—happy to step through why I'm confident. What was established through that work with Mr Lyon and his team—a very extensive process. I've referred a lot to Transport being the client. We didn't work in isolation. We worked with TAHE once they were stood up. We worked with Treasury and we worked with our rail operators in Transport. We identified the different roles and accountabilities and from there we got confirmation of that across the board, which has informed things such as the operating licence issued by the Minister to the TAHE board, which effectively defines the functions under legislation for which they can and can't play. We have implemented governance—or TAHE has implemented governance—around asset assurance. The safety aspects as well have been implemented off the back of that report as well. We're confident that, effectively, TAHE is playing a third line of assurance now with respect to asset management and safety. I know there are various ways of describing TAHE, and I think we have heard some of the words here today. But, with respect to asset management and safety, we are really confident around what has been implemented and the uplift in those areas.

The CHAIR: Are there any more questions on TAHE?

The Hon. WES FANG: I've got plenty, but I will put them on notice.

The CHAIR: Going to go back to contractors, I've got an example that I want to get a copy of so I can show it to you. I'm just giving you the eTendering records for a contract that Transport for NSW – Corporate has engaged in with Bryan Joan Pty Ltd. This is "Project management services for WestConnex M4-M5 link tunnel project" for almost \$165,000. I understand this is an example of a so-called secondment. Are you familiar with this one at all?

PETER PERDIKOS: No, I'm not. I'm not familiar with it.

The CHAIR: I will then also hand up to you another contract with Bryan Joan Pty Ltd. This one is actually with Infrastructure NSW, and this one is for—I think it's like \$1.3 million. Sorry, \$2,333,912. This one goes for about 3½ years. The one that you've executed from Transport goes for about seven months and so they are overlapping contracts. Have you got any knowledge of any of this? You may need to take it on notice.

PETER PERDIKOS: No, I don't have any knowledge of it, especially for the Infrastructure NSW part. But even for the Transport aspect, no, I don't have any background knowledge of it.

The CHAIR: I will also give you a copy of a LinkedIn record for a Mr Bryan Tan, who is the managing director at Bryan Joan Pty Ltd. What you will see here is eight years of so-called secondments. He starts as a secondee with Sydney Metro North west. It goes on until we get to the last four years where Mr Tan has been a secondee to various parts of Transport and Infrastructure. Notably, what you will see here is that the contract—that \$2.3 million for 3½ years—is "Director, Commercial_On secondment to Infrastructure NSW" that you see there on the front page. That's the 3½-year contract. So he's getting \$2.3 million for that. But then in this new one that you have signed with him, he is also on secondment to Rozelle Interchange as "Strategic Negotiation Advisor" for an additional \$165,000. It does appear that this is one person who has two jobs and has been on secondment within the government for at least eight years. Is this common?

ROB HALSALL: I haven't seen this particular example before, so I can't comment directly on this. What I would say is that, if we refer back to what Mr Perdikos said right at the outset today around the differences in the operating model, obviously the accountability that we have within the commercial procurement and transformation component is focused on goods and services. So we don't have direct accountability for the infrastructure delivery services. That would reside with either Sydney Metro, potentially, in this case or with our Infrastructure and Place colleagues.

The CHAIR: Okay, but ultimately with the Transport secretary. That \$2.3 million for 3½ years at a director level, is that comparable with what you would get in a public sector role?

PETER PERDIKOS: I don't believe it is. But I can't comment on the details without knowing what sits behind this. I know we've called out an individual here. Whether there's a team that's supporting this individual and this scope of works—I don't have any details around this scope of works or what's been presented. It's probably best we take that question on notice.

The Hon. Dr SARAH KAINE: Using this example but going back to our vendor management system, if we had a cross-government vendor management system, would we not be able to check different engagements of different organisations across, particularly, quite related entities, such as Infrastructure, Metro, Transport? Wouldn't that be possible if it was an integrated whole as opposed to agency based?

ROB HALSALL: I would assume, if it's a single system with single definitions, integration that was possible across those different environments, then, obviously, standardisation could occur.

The Hon. Dr SARAH KAINE: Currently, with what we're looking at across different agencies, including yours, that's not going to be a capability, so we still could have the situation where you wouldn't be able to have a line of sight to all the different tranches of work that an organisation or an individual might undertake.

ROB HALSALL: Again, just touching back on what Mr Perdikos said earlier, we have a weekly review of newly created purchase orders for consulting engagements, weekly review for consulting engagements. That is done, applying the definitions that we referred to earlier. We also have a monthly review process in place with all of the transport finance business partners. I guess what we're trying to convey here is operationalising policy obligations through day-to-day activity as opposed to it residing in a policy but not being operationalised and then not being assured upon. We're trying to assure that information ongoing in the goods and services space. But we meet with all finance business partners in Transport on a monthly basis to validate consultancy engagement, to cleanse the POs. If there's aged POs on systems, we're closing those off as efficiently as we can so that we do have an accurate position. That's predominantly using purchase orders and contracts.

What we're talking about here—if you move towards a vendor management system, you're getting much more granularity on the deliverables expected from those engagements. You're getting clearer descriptions. You're getting clearer statements of work, that would be stored in a single repository that would then be able to be interrogated more efficiently. I guess I'd just like to make the distinction between a supplier payment view, which is what we see through some of the procurement systems, where you see the contract and you see the expenditure—but you don't necessarily get the same granular information you would through a scope of work managed system through a vendor management system. They're two different types of technology.

The Hon. Dr SARAH KAINE: I appreciate that. I appreciate the efforts that you seem to have been making, following the recommendations that have come out. I was merely asking if currently what's in train would actually allow the kind of information to come to light, that might expose, potentially—we're not suggesting anything—the kind of information that the Chair has provided with you today.

ROB HALSALL: I would say in simple terms the answer would be, yes, when we move to an implementation of the VMS. But again it depends on the contracting entity. If we're contracting in the same entity, then, obviously, you'd be able to see that information in the extract. If it's multiple entities, different ABNs, then being able to understand what the relationship between those ABNs were would be the next level of interrogation that may need to be done, either outside the system—the system isn't necessarily going to tell you what the relationship between ABNs are, if that makes sense.

PETER PERDIKOS: I think that thing you said—we are looking at it from a Transport perspective. If we're looking at something more broad, we probably need—that's something we'll work with NSW Procurement on. But that's really dependent on what their program is and rolling out their uplift program and probably—that's my word, not theirs. So be careful there. But that's something that we'll need to look at from a whole-of-government perspective.

The CHAIR: I guess one of our frustrations in this inquiry has been just how hard it is to get information in relation to exactly how much is being spent on consultants, how much is being spent on consultants by another name, by contracting or whatever. Is part of the problem that we have a very siloed government, where we have each department not really having systems and structures to talk to other departments in the right way?

ROB HALSALL: I would say that's a contributing factor. There's different levels of maturity, there's different capabilities, there's different capacities that are being allocated to manage these. We are fortunate that we've been able to establish a category management function last year where we've recruited 20 people to come in and focus on specific expenditure like professional services and that's really delving down into the information, looking at the expenditure data, introducing a new expenditure taxonomy. So, again, sorry to make it about procurement, but if we don't have the data that we can't mine, then we can't interrogate and we can't then make insightful decisions. Our starting point within Transport was agreeing on a whole-of-Transport taxonomy for goods and services and construction, being able to interrogate the supplier payments that go out the door, so to speak, and being able to then break that down and categorise it. Imagine grandparent, parent, child and grandchild: Imagine four levels of categorisation and being able to break down professional services into the appropriate areas.

The Hon. MARK BUTTIGIEG: It's an interesting line of questions and answers. How many did you say you took on? Twenty?

ROB HALSALL: As part of a post-corporate functions review, which Mr Perdikos referred to earlier, it was deemed in the centre-led component—obviously we've got a devolved environment within Transport where we have procurement teams that sit in different divisions, in different agencies—but the centre-led component was reviewed and within corporate services, where we sit, we've made investment in roles that didn't exist before. We've moved from purely a sourcing and contract management or administration centre-led function to something that is more data driven, strategy driven, and then that informs the sourcing that better informs how we manage contracts.

The Hon. MARK BUTTIGIEG: Presumably there's been some academic work on this, managerial stuff, MBAs, all that sort of thing. I just wonder, does anyone ever look at this from a high-level view and say, "Well, actually we've got to spend so much time and energy on watching the contractors and the consultants that there might be a cost-benefit analysis in looking at—is it just easy to have everything in house, direct reporting lines, deliverables being more accountable because of direct employment?" Have these discussions ever been socialised internally about where do you draw the line? It seems to me as though, because of the opaque nature of the data, there's a lot of time, resource and money spent on actually finding out what they're up to, right?

ROB HALSALL: Are you referring to an in-housing of procurement per se, or are you talking about the specific resources that are being engaged through consulting or professional services engagements? Are you referring to more of a workforce strategy?

The Hon. MARK BUTTIGIEG: Yes, more of a workforce strategy. I've got X amount of the budget dedicated to consultancy services and Y budget dedicated to contracting and labour hire. The ability to keep those people accountable is somewhat difficult and you've actually got to take on resources to keep an eye on what's going on because they are once removed, so to speak. Has anyone ever done an analysis to say, "Well, actually it would be cheaper just to insource everything and build up the capacity over the long term. We'll save a lot more money?" That's one of the key themes that's been coming out in various evidence.

PETER PERDIKOS: I think there are probably a couple of areas I just want to add to that, probably answer it in two ways. We have identified within Transport three job areas—I'll just get these right; they are engineering finance and commercial, technology, and project delivery and management—of particular focus for in-house capability. We're working through that through recruitment campaigns to ensure that we have the right capability in house in those areas which matches our work program. In addition to that, in our construction side of the business, infrastructure and place area, we understand that cyclical nature of capital programs—a project ends, a new one starts—but generally those capabilities remain similar. We have programs there where we seek to retain people as different projects end and that we can move them over at grade and mobilise them and put them on to new projects. I think to the earlier part of that question, which was around the category management area of Mr Halsall's team, Mr Halsall described what we are doing around consultants and contractors.

It would be fair to say that that particular team is accountable for a very broad range of outcomes. That includes—I forget what the actual number is, Mr Halsall—around the multibillion-dollar spend annually. But they are looking at risk management. They are looking at driving cost avoidance, cost reduction across our broad suite of procurements. And, as I said, we've been in place now probably 18 months. There are a lot of runs on the board in terms of what they've achieved there. So I just wanted to differentiate that the people aren't there just overseeing consultants and professional contractors.

ROB HALSALL: I will just add to that. They're really designed to do what you're saying, to look strategically, look more at a holistic level and understand what better practices there are maybe that we could work with our internal colleagues on, for example, in labour services or professional services. They're just two categories. We have over 500 subcategories of expenditure within Transport, as you can imagine.

The Hon. MARK BUTTIGIEG: Does that include analysis on things like—in our four years in opposition, it's well known on the public—

The Hon. WES FANG: It's 12 years actually.

The Hon. MARK BUTTIGIEG: In the last four years in opposition, it was well known and put on the public record some of the cost blowouts on some of these projects, and a lot of it was attributed to outsourcing and contracting, particularly to offshore entities. Has anyone ever gone back and looked at it from that perspective and thought "If we had have had an internal model of service delivery, we could have probably saved ourselves significant amounts on budget had we insourced it all"? Is that part of that project?

PETER PERDIKOS: I'll try to respond to that, and Mr Halsall may want to add—

The Hon. MARK BUTTIGIEG: And you know I'm referring to things like the light rail, the new intercity fleet, the ferries—

The Hon. WES FANG: Is that the ones your union mates blocked?

The Hon. MARK BUTTIGIEG: —and the litany of things **that are** well publicised on the public record. But it seems to me as though there's significant project cost blowouts, and it may not all be attributable to outsourcing and contracting—I don't know, but it seems to me as though there's some correlation there.

PETER PERDIKOS: I think the key thing we're looking at—I don't know specifically, to answer your question directly, if that has been looked at. I'm happy to consider that. One of the areas that we've been really focused on though, coming to the point you're making, is we look at plan, source, manage from a procurement perspective. The teams that have been stood up are really focused on looking at a holistic, whole-of-organisational level how we plan better. The reason why I'm raising that is you see similar types of procurement across different parts of a large business like Transport. Where we can aggregate that spend, where we can ensure that we can have access to markets, seek where we can drive costs down, cost reduction, cost avoidance and we can work at an agency, whole-of-department level, to source and plan for our procurement activity, we see great benefits in doing that. And we have launched more recently into a program of activity that's directly focused on that.

ROB HALSALL: Maybe I will just add to that and give you a practical example. The plan, source, manage, which you would be familiar with, is the NSW Procurement policy triangle of kind of the procurement life cycle, if you like: planning before you go to market; then sourcing, entering the market; and then managing the engagement post-contract, the execution. Planning would be firmly in the category space that we just referred to, so applying a longer-term horizon—not 12-month, but 24-, 36-month horizons—on aggregate expenditure areas that holistically touch the whole of an agency, for example. This year we've worked with our executive and had sponsorship to implement annual planning, which is looking at specific category areas, looking at the volume of contracts expiring in each of those areas and really trying to plan effectively in a longer-term horizon. That's one element. Obviously execution and having the right skills to go to market, the right internal skills as well, is

part of that, but the management component is another area. We obviously contract lots of goods and services, so—

The Hon. MARK BUTTIGIEG: Can I just ask you a bit more sort of granular question. When someone makes a decision to let a contract for a massive project like the light rail or the new intercity fleet or whatever, is that outsourced to consultants to come back to the department and say, "We reckon you should go with firm X because they've got the capacity, the capability, and the price is good"? Is that an internal charge that you'd use for that or would it be a consultancy firm that makes that decision?

ROB HALSALL: We have internal sourcing teams, and those sourcing teams should be engaged above \$250,000 if it's goods and services, for example. We have a central team that would be engaged that would work with the internal client, work with the internal business owner who's managing that project, and work to define the business requirements, work to define the evaluation criteria and work to define the terms on which we're going to go to market. If there are advisers as part of that process, that's a decision that is made within the needs for that particular project. So it's not necessarily that you're outsourcing how to run a procurement exercise—not at all. We have devolved procurement functions that actually have accountability to run very specialist procurement within different parts of Transport, or we have more general sourcing functions which service the remainder of Transport as well. It depends on whether the project has warranted the need for external advisory to be part of that project.

The Hon. MARK BUTTIGIEG: When these projects come back and there's a cost overrun, is there a review process to say, "What happened here? How could we have done it better?"

ROB HALSALL: I can't comment on a particular project that you're referring to.

The Hon. MARK BUTTIGIEG: Just in general.

ROB HALSALL: In general—and this is something that we've invested in over the last 12 months to uplift again—we have a contract management obligation with the business owners or the engagement managers that reside within the business. They don't reside in a central procurement function necessarily. They reside in the business that is operating those services day in, day out. So there is a contract management framework which we've actually reimaged this year. We've gone back and realised that we need to implement more effective controls. For example, we have an end-of-contract review checklist. We have a "lessons learned" checklist. We have a final contract performance review that's expected. That exists within the standard Plan, Source and Manage NSW Procurement policy. It's around ensuring that those things are happening. So we're running assurance processes now which are helping us get visibility into the completion of those activities.

The CHAIR: Can I ask about another example? I'm looking at a contract that was entered into with EY Sweeney, or EY, in relation to the Household Travel Survey, which I understand is something that has been done over a number of years. The contract was for 4½ years at a cost of \$8.4 million. There seems to be a lot of money spent on surveys and similar things within different parts of government. Do you think it's money well spent, and is it something that really we could be bringing in-house?

PETER PERDIKOS: Without knowing the specific details of that—I'm familiar with the Household Travel Survey and the importance of that and the informing of our planning activities, service delivery activities and the like. With respect to the question directly, as I said, it is an important survey. Whether that's a capability that should be in-house or otherwise and an assessment of that is difficult for me to comment on. I'm just not aware of what part of the business we're potentially referring to here. But that's something, as I said, that we always make assessments on around what's the right internal capability and what's our workforce strategy around those things.

The CHAIR: I've got an example of one of the surveys. It's like a travel day memory jogger. These things get posted in people's mailboxes, and then it's asking you on it to write down where you've been for a particular period of time. So you select your travel day and then you put down where you went and where you arrived. It seems very rudimentary. It is \$2 million a year for this sort of thing to go out. What else is happening to justify that amount of spend?

PETER PERDIKOS: I'm not across the details of that particular engagement, including, I think, what you are referring to there, Chair: all the activity that sits behind that around the compilation of any data that may come out of it or how it's used. I am happy to take that on notice and come back to you.

The CHAIR: I understand that a new contract has been signed with somebody else for a survey to continue into the future. Do you have any knowledge about that?

PETER PERDIKOS: I don't. Mr Halsall?

ROB HALSALL: No, I don't have any knowledge. We can take that on notice.

The CHAIR: Thank you. I think that's all we have time for. Thank you very much. It has been very illuminating. To the extent that questions were taken on notice or there are supplementary questions, which I'm sure there will be, you will have 21 days to respond to those. Thank you very much for taking time out to speak with us.

(The witnesses withdrew.)

(Short adjournment)

Ms JANINE LONERGAN, Acting Chief Executive, Infrastructure NSW, affirmed and examined

Mr TOM GELLIBRAND, Head of Projects, Infrastructure NSW, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to begin by making a short opening statement?

JANINE LONERGAN: Thanks for the opportunity to appear as a witness at your hearing today. Infrastructure NSW provides independent, evidence-based advice to government on infrastructure priorities and projects. We prepare the State's infrastructure strategies and plans, assure other agencies' capital works projects and deliver nominated major infrastructure projects and precincts. We're a small agency of 144 employees. We're a strategic user of specialist professional services, including consultancies. We engage external support during peaks in workloads as necessary. This enables specialist subject-matter experts to be used economically and efficiently with no long-term employment liability to government.

Infrastructure NSW has historically taken a conservative approach to disclosing consultants in our annual reports. Prior to the 2022 financial year we included "professional services"—for example, large infrastructure delivery contracts, engineers, architects and the like—in our consultants disclosures. This was broader than the Procurement Board definition. Since the 2022 financial year, Infrastructure NSW has disclosed its consultancy services in line with the Procurement Board definition. We disclosed consultants engaged specifically to provide advisory work for management, including capitalised consultancy. Our total consultant spend for the 2022 financial year was \$2 million. For the 2023 year, our total consultancy spend was \$1.7 million. Projects NSW accounts for over 90 per cent of dollar value and number of engagements of total INSW procurements, with over 99 per cent of those engagements being specialised professional services engagements rather than consultancies.

The timing and scale of the projects delivered is highly variable. This limits opportunities for long-term workforce planning. Each project requires highly specialised, diverse and often scarce professional services. The services are generally required for time-limited, specialised elements of project work. It is neither feasible nor cost effective to recruit required resources into full-time positions in INSW. Thank you. We look forward to assisting the Committee with questions.

The CHAIR: Infrastructure NSW is a bit different to some of the other agencies that we have been looking at. As you say, it was designed explicitly as a very small agency with the intention that it would rely, to a large extent, on external contractors and consultants. In the context of an inquiry into the government's reliance on consulting firms, it's an interesting one for us to look at. Thank you for the level of disclosure in relation to consultants in your annual reports. Obviously, as you say, a huge amount of the spend sits in an "other" category, whether it's contractors or consultants. Can you talk us through the different categories of that? Part of my reason for asking is that I'm interested in working out where there is a true need for specialist advice and where we have ongoing work that we could be bringing in house in some way. Can you tell us what the main categories are?

JANINE LONERGAN: Certainly. The way in which we understand the definition of a consultant is that it's somebody providing advice to management to assist with decision-making. It's specialist knowledge not usually held within the organisation. That is as opposed to a contractor that is really doing the doing. It's somebody that is delivering services. It's sometimes referred to as body hire or resourcing support. In Infrastructure NSW, the vast majority of our professional services spend, whether that's contractor or consultant, is on the delivery of our major projects. I'll ask Mr Gellibrand to speak to that in a moment. Our use of contractors is in the projects area.

You heard me say in my opening statement that for the 2023 financial year there was an expense of \$1.7 million on consultants. The majority of that use is in relation to specific specialist pieces of work. For example, Infrastructure NSW prepares the State Infrastructure Strategy. That is of significance in relation to the whole State. It's a really significant piece of work. We have a core team of no more than 15 people in our organisation that work on that document, and that covers all the infrastructure sectors and it also covers different technical areas of skills. You are talking about needing skills in relation to economics, policy development and engineering. Whilst we have really highly skilled and professional people within—and we do a lot of that work ourselves—there will always be a need to supplement that work with additional consultants for really time-limited periods. Our use of consultants is strategic. I'll ask Mr Gellibrand now to talk about our use of contractors in the project space, which is the vast bulk of our spend.

TOM GELLIBRAND: Thank you, Janine. As Janine mentioned, the bulk of expenditure on contractors sits within my domain in the delivery of projects at INSW. Probably a good place to start is to think about a big project in a number of stages. The way I would like to describe it is that you've got define, design, procure, deliver,

commission and handover. If you think about each of those steps, there are different requirements to each of the steps. At the define phase, we work really closely with clients. It could be Venues NSW or the Museum of Applied Arts and Sciences or the Art Gallery of New South Wales or organisations like that. We have to make sure that they actually understand what it is that they want.

Often it starts off with, "We'd like to have a world-class art gallery that's attractive to people all over the world and can be cost neutral." That's terrific, but that's a difficult thing to build. I'm being slightly high level just for illustrative purposes. We need to sit down with the clients and say, "How many seats do you want in your stadium? What's your approach to the provision of amenities? Are they gender neutral for all of the sportspeople? What is the ratio you're using for male to female?" We spend a lot of time at the definition phase understanding what it is that they want. We've got our own skills in working with a client, but we do engage specialists, like a brief writer. Ultimately, we need to insert things in tender documents which are really clear. The State wants to buy these things. That enables contractors to go and provide a price for the thing that you want to buy. It helps with the process. Up-front there are some technical requirements around brief writing, concept design, early engineering and early cost planning. That's all really important.

It's around that time that government starts to make a decision. They will say, "Yes, we really want a football stadium. We really want an art gallery." They make an investment decision. It goes through an assurance process, which we can talk about, but that's a separate thing. They make a decision. We then move into a lot of detailed design. We now know the scope of the project and we have to design it so we can get planning approval. We have to design it in such a way that people know what they're tendering for. That requires engineering. That requires investigations into contamination and all sorts of archaeological and heritage investigations. Those skills are specialist in nature, and we require them as part of the planning process to make sure that we can demonstrate to the community and to the Department of Planning that we know what we're in the business of building. We don't retain those. They tend to be up-front, short-term assignments. They will do their work, it goes into planning documentation and tender documentation, and those people will leave. They sometimes come back later on, which I can get to.

Then you're into the procure phase. For some of our projects, they're quite large. The Sydney Football Stadium was \$800 million; Powerhouse, \$600 million; and Sydney Fish Market has got a funding envelope of about \$750 million. They're quite large. The market, as we all know, goes through changes. Sometimes the market is willing to take on more risk than other times. Sometimes there's a scarcity of resources in the market, so people want to join up. That means that when we go to the market, we've got to be aware of that environment and ensure that we're tendering in such a way that we get the best price and that we can actually get people turning up to the tender box in the first place. That's important. You don't want to open it up and realise that no-one is actually interested in your job. That's not helpful.

We often engage experts in that field as well—procurement experts. These are people who all they do is assist organisations, private and public sector, in tendering. Is it a design and construct contract? Is it a PPP? Is it an alliance? Does it involve an early contractor involvement? There are all sorts of different ways you can form up contracts. You need to reflect deeply on that before you go out to contract to make sure you're in tune with the market. In that procurement phase, we'll often engage with a professional company that's up to speed with procurement.

And then you're in delivery. What does delivery take? Delivery in terms of Infrastructure NSW is a time when we have government employees working on the project, but they're very small in number. For Sydney Football Stadium, we would have had, not including myself, four government employees working pretty much full time on that project with the contractor. But those government employees were supported by specialist contractors. So there's cost planners. Understanding of the bills comes in. Has this work been done? Can I verify these invoices? We've got specialist programmers that can look strategically at what the contractor sought to do and where the contract is up to. When I say "program", some of these programs will have 10,000 to 15,000 lines of information in them, so they're very complex documents. Understanding where a critical path might pass through that program is absolutely critical in terms of how you manage that project, but also how you might assess claims that come in from that project.

During delivery we are supported by specialists, and we always have a small core team of government employees. Having said that, on the Sydney Football Stadium I did employ a government employee as project director. On other projects, we had contractors fulfilling that role. So in some cases we have a government employee and in some cases they're contractors. It's a blended model that we apply. Why do we do that? As far as possible, we'd love to have government employees, but attracting the calibre of employees that you will need sometimes for a project that's between \$500 million and \$1 billion is quite difficult. You need someone with considerable experience. Where they're not available inside the public service or you can't attract them through

the normal processes, we need to engage contractors, and we've done that at Infrastructure NSW on a number of occasions.

And then, the project's going well. When you're getting towards the end you have to make sure, as the project's getting commissioned, that you understand what's happening. Testing, commissioning, witness testing—there are all sorts of things. We oversaw the delivery of a jail in Grafton, probably the most secure facility outside the Australian Mint—probably more secure, actually. Nothing gets out unless they want it to. Witnessing the testing and commissioning of that facility was really important for a whole host of reasons, and we employ a specialist consultant to do that. But it is one person—not working full time, just participating.

That's really important from a client point of view because the client needs confidence at the end of the project that they're getting what they want and they're starting to get visibility about how it operates, and then there's a handover process as well. That's making sure that the contractor is preparing training manuals and operating manuals. If you can imagine a facility like a jail or a stadium—the number of rooms that exist in those buildings. Each room has a key. Every key has to be described in a place so that when Venues NSW, for instance, walks in, they know exactly how to operate it. There's a specialist skill set associated with that, and we've used specialist contractors for that.

Right at the end of that process—thank you for indulging me, in terms of my perhaps lengthy explanation—we also engage people who have written the brief up-front to make sure that, at the end of the project, those things that the Government has wanted to buy have indeed been provided. So there's a check. It's not a short list. It's a very long list that they go through assiduously to make sure that everything the Government has been asking for has actually been delivered. And if it hasn't been delivered, there's a paper trail. It says, "Yes, on 7 July 2022 there was a decision made by government to vary that," so it has been recorded. And then they've gone, "Yes, and did we get that variation? Correct." That's a really important verification exercise at the end of a project, and we've used contractors for that as well.

The CHAIR: Thank you. That was incredibly interesting.

The Hon. PETER PRIMROSE: That was very enlightening and very good. Can I just ask you to confirm how much you said you spent on consultants last year?

TOM GELLIBRAND: On contractors?

The Hon. PETER PRIMROSE: On consultants, sorry.

JANINE LONERGAN: Consultants was \$1.7 million. On contractors, \$10.2 million. Our total professional services spend for the 2023 financial year was \$11.9 million.

The Hon. PETER PRIMROSE: I'm looking at a Treasury document for Infrastructure NSW. I will cite its reference. Under AE208020001 Consultant Expenses it says \$13,348,000. Either there's a disparity and Treasury's got it wrong or what you define as a consultant and what Treasury is defining as a consultant is significantly different.

JANINE LONERGAN: We can come back to you on notice with that.

The Hon. PETER PRIMROSE: Yes, that's why I gave you the reference. It's not a trick question. I think what we're finding consistently here is the issue of definitions. I'll give you that reference to their code again: AE208020001. That's the Treasury definition. It also talks about another category here, "temporary employees and short-term staff last year"—\$1,114,000. Maybe you could come back and tell us what's included in that definition. There is also another one in terms of fees for service expenses. That's AE208090090, and that lists \$314 million. I have no idea what that is but I'd be really grateful if you could have a look at those documents. As I said, I've got the Treasury documents in front of me here, so I'm just reading off them.

JANINE LONERGAN: We'll look at those, thank you.

The Hon. PETER PRIMROSE: Please, take it on notice. I don't expect you to have that. But I suspect it's to do with definitions.

The Hon. MARK BUTTIGIEG: Do you have any commentary on what that might mean, "fees for services"?

TOM GELLIBRAND: Well, \$314 million, assuming that's over one financial year—

The Hon. PETER PRIMROSE: Yes.

TOM GELLIBRAND: —is an extraordinarily large amount of money. If it relates to Infrastructure NSW, I suspect it could only relate to a capital works project. Because if it was salaries it would be, like, a million dollars a day. It'd be capital.

The Hon. PETER PRIMROSE: In 2021-22 it lists the same category, "fees for service expenses", \$237,847,000. I'm just reading straight from the Treasury document. So, please, it's not a gotcha or a trick moment. I'm just trying to work out what those allocations are for. As I said, the actual codes are the ones that are used by Treasury, so it should be relatively easy to go back and work out what's in the code.

The Hon. MARK BUTTIGIEG: Obviously take the detail on notice—we don't expect you to answer it now—but would it be conceivable that part of that could be internal governmental services provided or would it be external?

TOM GELLIBRAND: No. For each of our projects we incur governmental fees associated with planning applications. That's a percentage of the capital improvement value of the project. It's established by the department of planning. But thankfully it's not in the order of hundreds of millions of dollars. Normally it would be—it can be up to \$5 million, depending on the capital value of the project.

The Hon. MARK BUTTIGIEG: So that figure is relating to some sort of external services? This is the perennial problem that the Committee has had: trying to get a handle on the precision of the definitions of what's actually out, what's actually in, what's consultancy, what's contractors and there is this nebulous, amorphous fee for external services. It's important evidence because it kind of goes to the heart of what we've been trying to get a handle on, so we'd appreciate that.

TOM GELLIBRAND: Yes.

The Hon. PETER PRIMROSE: Thank you.

JANINE LONERGAN: Chair, sorry, my team has just updated me, helpfully, that the "fees for services" relates to client agency projects. The Treasury—

The Hon. MARK BUTTIGIEG: So it is internal then?

JANINE LONERGAN: The Treasury financial system called Prime that you'd be familiar with, that's a definition used within that system. So perhaps we will take on notice those numbers that you gave to us. But I think we're needing to just align the Treasury definitions used within Prime and how that is then extrapolated across Infrastructure NSW.

The Hon. MARK BUTTIGIEG: So, for example, if Infrastructure NSW builds a hospital, you may have to charge Health for services?

The Hon. WES FANG: That'd be Health infrastructure, wouldn't it?

The Hon. SCOTT FARLOW: Well, you'd be advising on it. Sorry, you go.

TOM GELLIBRAND: As soon as Janine was providing that advice it made me think that for some of our projects we get funding directly from the agency. So Create NSW, because they put up the business cases, ultimately, for Powerhouse Museum at Parramatta and for Sydney Modern art gallery as well as Walsh Bay, Treasury actually gives them the money. Then what I do is I write them a letter every three months saying, "Could you give me how much money I'm going to be spending on this project in advance for the next three months?" So I am actually charging them a fee for the delivery of their project. That would explain fees for services with respect to the Sydney Modern, Powerhouse Museum and the Walsh Bay Arts Precinct. Whereas Sydney Fish Market, a \$750 million funding envelope, there is no client. It's quite an interesting project. There is no Ministry of Fish. In that case, Treasury gives us the funding allocation directly, so we wouldn't be invoicing anyone. Not that we don't invoice Create NSW, but I write to them and say, "Here's our cash flow. Could you please deposit this much money in our account so we can continue to deliver the project?"

The Hon. Dr SARAH KAINE: Is it a direct correlation—with your example of Create NSW, is it you know what the bill is and that's what you ask for? Or is there an internal government tax that you take from Create NSW?

TOM GELLIBRAND: One.

The Hon. Dr SARAH KAINE: So it's like for like? Whatever your bill is anticipated to be—that's what you get from Create?

TOM GELLIBRAND: Correct. And there's a reconciliation process. So we ask for the money in advance and, in the event our cash flow is less than expected, the following three months we actually ask for less. The

payments that are made to Infrastructure NSW are made to cover off the costs incurred associated with the contractor, the big builder—John Holland, Richard Crookes, whoever it may be—as well as all of our delivery costs, so that's a portion of my salary, project director, our project managers.

The Hon. SCOTT FARLOW: One of the suggestions throughout this inquiry has been about internal consulting arms within government. Infrastructure NSW somewhat fulfils that function, don't they, with other departments in terms of providing some advice around infrastructure procurement, infrastructure delivery, but also getting external consultants where needed? I think you gave a good example before. It's not every year you're building a stadium, but probably some State government around the country is building a stadium every year. It's about finding those experts in those areas to be able to get that external advice and Infrastructure NSW effectively works in that role in procuring that.

TOM GELLIBRAND: To an extent. To the extent to which it's a procurement, I'm not too sure. We hosted a meeting with Infrastructure Australia just recently on lessons learnt for Sydney Football Stadium, because Infrastructure Australia and the Commonwealth are delivering one of the stadiums for the Brisbane Olympics. There are two. One is being done by the Queensland Government. One is by the Commonwealth Government. They came in and wanted to understand lessons learnt for Sydney Football Stadium, which we did. But that was myself, people that had worked on the project. We didn't procure any advice to support Infrastructure NSW. We are consulted infrequently in government.

Again, Create NSW is a good example. They look at their cultural facilities on an ongoing basis—the National Art School, the Australian Museum—and they look at how they operate and they come up with ideas for improvements. We often will go to meetings and they'll say, "This is what we're thinking about doing. This is how much we think it's going to cost. What do you reckon?"—often fairly high-level discussions. But we'll provide them with advice on maybe a way of packaging it up, give them advice on what's happening with the market, whether or not projects can be staged. Certainly that was the case with National Art School. It's a very complex heritage environment and a very difficult place to work in. So we spent a bit of time with Create and the operators of National Art School just helping them with their thinking. We don't charge for that.

The Hon. Dr SARAH KAINE: Clearly for projects as big as stadiums et cetera, you need to get in the expertise but, looking through some of the consultant spend over the last few years, there seem to be a quite a few—I think it was in 2019-20—that were about developing business cases. We've had this with other agencies about engaging external consultants to write business cases. In terms of the types of skills which are continually required, one would've thought that developing business cases is one that's a constant as opposed to the occasional rebuild of a stadium. For example, you were even talking about brief writers et cetera. I wondered if you've engaged in any sort of multi-year analysis of the types of, perhaps, smaller consultancies to consider whether some of that might be undertaken in house.

JANINE LONERGAN: We haven't considered that. I think our agency is just too small to really do that. As I said, we have a staff of 144 people. We have staff involved in our strategic expert advisory function. That team prepares the State Infrastructure Strategy and then the annual State infrastructure plans. We have our assurance team, which assure all of the State's major infrastructure projects. That team is a team of about 20 people. For something like a business case, we would need to work with consultants as appropriate, and we don't do enough of them to warrant having people whose skill set—and it is a specialised skill set, writing a business case¹. It wouldn't be effective to have those people as employees when we have such, I guess, an inconsistent need for them.

The Hon. Dr SARAH KAINE: It's just that in that one year that I'm looking at, there seemed to be quite a few. I get that you don't have existing resources to do that, but has the analysis been undertaken across multi-years to sort of look at the different tranches of work to see whether there is the capacity—obviously not necessarily from your internal—to save, maybe, \$500,000 a year or whatever it is on fairly standard activities?

TOM GELLIBRAND: I think it's a good question that needs to be asked. It's acknowledged that Infrastructure NSW is quite small. We get busy when there are projects, and when there are no projects, we are a lot less busy; in fact, we decommission our part of the business. But we do operate, as I say, a blended resource model, and the core competencies that we retain are project management, resources, safety, communications and engagement, and stakeholder management. We've got a matrix arrangement because we are so small. I rely on the resources in our finance team to assist me in reporting, communicating cash flows to client agencies and things

¹ In [correspondence](#) to the committee received 4 October 2023, Infrastructure NSW provided a correction to their evidence by replacing the word 'plan' with the word 'case'.

like that, as well as procurement. All the small engagements—even the big engagements—have all got to go through our procurement team, our systems, subsystems and what have you.

We've got resources that help us with general procurement—not the really big stuff about how to deliver a million-dollar project in today's market but more like, "Let's make sure that we engage this project, direct it appropriately according to all the rules and guidelines, and we follow all the practices and procedures." Those resources are held internally and, if I didn't mention it, safety as well. So we do retain those core, generic skills for our projects but not the more specialist ones. Certainly, from a project's point of view, we're not in the business of developing business cases, but we do review them frequently with agencies.

The CHAIR: When you were talking before, very helpfully, about the different stages of the project—I have to say, your job sounds great; it sounds very interesting. But you talked about a couple of types of consultant or contractor that you would get onboard at different stages. At one point you talked about brief writers. How specialised does a brief writer have to be? Why can't we have a brief writer or a team of brief writers—I don't know how many are required—that sit across projects and do each project?

TOM GELLIBRAND: It is probably a skill that could be retained if you had the volume. If you think of the profile, the resourcing profile for a brief writer is steep. It goes all the way down, and then it's almost non-existent. The bills we get on a regular basis from our people that write the briefs are just in the thousands of dollars. Every two months, they will do a review of progress and assess whether or not the components of the brief have been delivered at that point in time. It could be some of the basic foundation works and they say, "Yes, tick. That has been done." So they do progressive verification, but it's very lumpy. When you break down a project into stages, you realise that the profile is quite lumpy and you need certain experts at certain times, and then, beyond that, you don't need anyone. If you wanted to retain more experts, you just need to have a more predictable frequency of projects—so as you're coming off one project, there's another one next to it.

The CHAIR: Excuse the ignorance, but can a brief writer not do any other part? Is a brief writer spending all of their time doing the brief writing or do they do brief writing and then other types of technical writing as well?

TOM GELLIBRAND: It's technical in nature, but it's probably one of those areas that, if you had the appropriate person, they might be able to assist in other areas. Again, in a small agency, we had a period where we just wanted to review all of our project management plans and project manuals so that when we get new staff on, we say, "This is how we do it in Infrastructure NSW. These are the rules, processes and procedures." We actually got a technical writer in to assist there, just to make them a little bit more uniform and user-friendly, and then they stopped. So we don't have a need for any sort of technical writers as such. But, in a broader agency, if you're running up standard contracts, standard requirements for a particular product, a school, or a more generic product, you could see a longer and a more uniform pipeline of work. That could justify retaining more.

The CHAIR: What about if you were to look at the work for a brief writer across the New South Wales Government as opposed to just across Infrastructure? Is that the kind of thing that we should really be having as an in-house function that can then be used across departments? Is some of this a siloing problem that we're having?

TOM GELLIBRAND: I think it's a very interesting question. Generally, when resources are centralised, agencies can experience difficulty accessing, even though their job is to be "I'm centralised, and my job is a brief writer, so come to me when you want work." But then an agency might go there, and they'll go, "I'm actually a bit busy at the moment." But, if you've got a program, you need that resource right then, right now.

The CHAIR: But maybe then you could get additional resources, but at least you've got that minimum resource to begin with, at what would, presumably, be a much lower cost.

TOM GELLIBRAND: Yes. Your question is "Could the shared service model that's being deployed for invoicing and other transactional arrangements that exist in government—could that model be deployed for capital projects?" I think there would be opportunities for it, but they would lend themselves—this is by no way of an excuse—to agencies that deliver fairly uniform projects on an ongoing basis. We need schools. We always will need schools. Those schools need to not just be built but to be maintained, expanded, redeveloped. That's a pipeline of work that won't go away, hopefully.

The CHAIR: Similarly, you talked about procurement experts being brought on towards the middle of the project. Would those procurement experts not be able to be housed within government?

TOM GELLIBRAND: Certainly, from my experience, when you're in the business of delivering projects, that's where the focus is—it's delivery. In the case of Infrastructure NSW, we've always, over the last, probably, five, four years, we've had three or four significant projects on at the same time. The focus of our attention is delivering those. The procurement experts are looking across many, many more projects, not just here in

New South Wales or Australia but overseas as well. Their ability to understand trends, pressures, availability of resources, contracting models is far superior to the knowledge that I would have because that's not my focus. My focus is to—someone wants a particular project. We define it and ask, "What's the best way of delivering that? What model will work best for this particular scale of project and this type of project and at this point in time?" Then I'll say, "Thank you very much." We assess that. We go through a process. Then we'll deploy a model, an approach and go and buy a tender, buy the service.

The CHAIR: What's the overlap, then, with the resources that Health Infrastructure have and School Infrastructure have? Is there a sharing of resources at all? Or are they seen as being very different parts of government?

TOM GELLIBRAND: I'm not familiar or I'm not aware if they share any resources. But one of the roles in NSW is to maintain a construction leadership group, which is a forum. I can speak a little bit on it. I don't run the construction leadership group. It's a forum that NSW facilitates, that brings together people from Health Infrastructure, Schools, Transport, a variety of other agencies. That group gets together understanding about what's happening, trends in the market, resources, contractor performance, issues around safety—I think WorkSafe NSW also attends and talks about trends in terms of what's driving safety incidents on sites—so that the agencies have a shared understanding of some of the uniform issues and pressures that they face. We've got good engagement with people across government. The extent to which those agencies then want to actually share project management resources is another matter. I know when we're looking to recruit government employees it's not uncommon that phone calls would be made: "Do you have any surplus people? Can I tap someone on the shoulder?"

The CHAIR: At all of those stages with all of those different consultants being used, is all of that spend capitalised within the project cost? Do you know?

TOM GELLIBRAND: Correct.

The CHAIR: Given that that then sits on a separate part of the State's finances and not part of the general budget, is there less focus on constraining those costs, do you think?

TOM GELLIBRAND: Absolutely not. Each of the projects that we delivered is governed by a steering committee. Underneath the steering committee we've got a government-side project control group, and we've also got a project control group that we usually have with a major contractor. At the steering committee level, the chairman of the steering committee does vary a little bit. In the case of Sydney Modern we have David Gonski, who was an appointee from the Art Gallery of NSW, but we had our CEO on that committee as well, as well as independents. Those also included representatives from Treasury and then Department of Premier and Cabinet as well.

At the steering committee level we have representatives from government, client agencies and quite often independents as well. Independents that are involved in construction law or contract management or construction themselves. We don't escape scrutiny at that level and we also have to report regularly on our projects—like all other projects in New South Wales—through the high-profile, high-risk processes that go through Infrastructure NSW. We are assured actually by Treasury, not by NSW, so there's a separation there. But we have to demonstrate that we're operating within our budgets, that we are managing our contingencies appropriately and we are on time.

The CHAIR: If you take that example of the brief writer, if they were brought in house and they are a government employee, presumably you could still carve out the work they do on a particular project in order to cost it as part of that capitalised expenditure? Or does it cause an issue?

TOM GELLIBRAND: No, not at all.

The CHAIR: There's no accounting benefit of having an external party?

TOM GELLIBRAND: Again, at NSW we capitalise all of the costs we're supposed to, so there's accounting standards for that. If you are working on a project full-time, obviously all of your costs would be allocated to that project. Where you get to a point where it's part-time, you have to either make an assumption around percentages, or you keep time sheets. My time is largely capitalised, but not all of it because I also am a member of Janine's executive team and therefore I have to work on the business as well as in the business. When I'm working on the business with Janine and her team, my costs are actually allocated on the staff budget to the Government, but the rest of my time I'm actually just working on projects, so those costs are distributed across the projects that we're delivering.

The Hon. MARK BUTTIGIEG: I was just curious if you had any commentary around the historical comparison of what used to happen years ago when there was a clerk of works and the Government had a whole

department looking after the project. How has it changed in that time and if it has changed for the better or whether or not there were some merits in that model, or do you think we've moved on and it's just superfluous? I am curious to know how it evolved into this model from what used to be, maybe 30 or 40 years ago.

TOM GELLIBRAND: I'm not the best person to ask that question. State-owned corporations have generally delivered all of their assets themselves—Sydney Water, Endeavour Energy in the past. Public Works and Services, I think it was called at the time, had a predominant role in the delivery of everything else, but not totally everything. They had a very large role to play in the delivery of assets on behalf of government agencies.

Then there was a point in time which I wasn't involved with it, but that public works and services area was basically reorganised and, I understand, resources were actually backed into agencies so that they could be more responsible for their own works. And then what we have now is a group called Public Works Advisory, which is a remnant of the Public Works and Services. I might be using the wrong names here as well, so I apologise if I'm not referring to them correctly. Public Works Advisory now plays a very significant role in assisting councils and regional areas in the delivery of capital works. They have a model where they will go and procure resources and services to build and repair bridges, roads, regional assets. They're not as significant, I believe, in metropolitan areas.

The Hon. MARK BUTTIGIEG: Is it possible that some of that overarching umbrella function which the old Public Works department would have performed through commonalities of knowledge across different projects, economies of scale, all that sort of thing—is it possible that some of that has been lost in the devolution to the agencies for responsibility, or is that outweighed by the specific boutique sort of approach you get of an agency carrying out its own projects? It's a difficult question because unless you were around at that time, it's hard to know, but it's just interesting to see the difference in the models.

TOM GELLIBRAND: Yes, I don't think I could answer it properly but I was thinking of something my mother said to me—or it might have been my grandmother: "The proof's in the pudding." The other way of looking at it would be to look at the performance of particular agencies like Infrastructure NSW or School Infrastructure or Health Infrastructure and actually look at the value of the capital assets that they're creating, and you look at what the overhead would be associated with that and determine if that's efficient. If the answer is that looks like an efficient model, then I think that's the answer. It's by assessing the performance rather than looking at what the change has been.

The Hon. MARK BUTTIGIEG: Is someone in Treasury doing that?

TOM GELLIBRAND: It gets assessed as part of business cases. So a business case has to disaggregate costs and apply benefits to the expenditure. When you disaggregate costs, it's really important to work out how much the thing will cost to build, how much it will cost to get it approved, how much it will cost to manage it and finish it off. You can call those costs overhead costs, and the business case evaluates that. There is a value-for-money proposition. You've got to make sure your overhead costs are always as tight as they possibly can be.

The Hon. MARK BUTTIGIEG: Who's the gatekeeper that says, "Here's the cost-benefit analysis, the disaggregation process you just went through. Here's the cost-benefit"? What's the gatekeeping process for signing off on that and saying, "Well, actually, we think there is too much overheads in this"? Is there a process or is it that it is what it is?

TOM GELLIBRAND: It's a very good question. It's a role that I'm not responsible for, but as Janine mentioned in her opening statements, Infrastructure NSW performs a number of functions. The assurance function is really important. Do you want me to talk a bit more about that?

JANINE LONERGAN: Yes.

TOM GELLIBRAND: With the assurance function, as business cases are going to government for investment decision, the assurance function in INSW does a rigorous evaluation of it. Have you got your costs right? Is your delivery model an appropriate one given the type of work, given the cycle in the market, given the availability of resources, what have you? And they go into the costs associated with delivery. Is it an efficient model? Is it inefficient? That advice from INSW goes along with all of those investment decisions, and that's a really important part to get an independent objective view on whether or not—

The Hon. MARK BUTTIGIEG: And presumably this would be replicated across Health Infrastructure, School Infrastructure, yes?

JANINE LONERGAN: Indeed. We publish business case summaries on our website, and those business case summaries include commentary from Infrastructure NSW on the robustness of that business case.

The Hon. Dr SARAH KAINE: Can I ask a slightly unrelated question? With the consultants that are engaged at the earlier stages, is there any mapping or anything available for us to see which shows—one of the things that has come out of this inquiry and others is the sort of "land and expand" model of consultancy where they come in and advise on a particular aspect and then go on to provide other services et cetera. Have you got any mapping or analysis of how that has worked across projects that you've delivered or that you've been responsible for?

TOM GELLIBRAND: I haven't witnessed it in my time at Infrastructure NSW. Having said that, my time at Infrastructure NSW has always been as the head of projects, but I'm under oath. I haven't witnessed that on any of our projects. Our engagements are really targeted. The only people that last the duration are generally government employees who are project managers, our finance people, myself and our project director. In fact, we've got the opposite. We've employed Turner and Townsend as a project management group to assist us with the delivery of the Sydney Fish Market project. That's unusual for projects in my area. It was set up when it was with UrbanGrowth. Then we had changes in government and UrbanGrowth was incorporated into Infrastructure NSW, so they were already commissioned and employed. Since that time we've progressively reduced the size of that team. What you find with Turner and Townsend, Bechtel and some of the big companies is there is a reputation that they will go in and provide a really good level of service and it will progressively increase in size during the project. I'm not going to critique as to why that occurs, but that's an observation. The observation at INSW, where we have used a company that provides project management services, has been it has contracted.

JANINE LONERGAN: To give some further context for Infrastructure NSW, in our 2020 annual report we disclosed a spend of about \$44 million on professional services. That reflected that during that year we had a number of major projects underway. The following year we disclosed \$17 million in professional services. So that goes to the lumpiness of the projects and the different phases that they're in, and the need for bringing in the contractors varies as the project goes along.

The Hon. Dr SARAH KAINE: I understood that. It was more in the example you were giving about the getting in and what's the further work for the same contractor. That's a bit different to the global amount of consulting.

The CHAIR: Can I ask how many secondees you have within Infrastructure NSW itself?

JANINE LONERGAN: In relation to projects, I don't think we have any secondees at the moment. I'm aware of one secondee in relation to our assurance function². But in terms of the number of contractors that we have within INSW at the moment, we've got 30 people that are contractors—that could be contingent labour or consultants.

The CHAIR: I was asking Transport in the last session about a person called Bryan Tan. There's a tender record of them being appointed as Commercial Director of Infrastructure NSW, and on their LinkedIn, at least, they refer to themselves as being on secondment to Infrastructure NSW. What position level is that?

TOM GELLIBRAND: Bryan—I'm not exactly sure why he recorded it as a secondment, but he's effectively a body hire. We got Bryan in—

The CHAIR: What does "body hire" mean? It sounds like a sci-fi movie.

TOM GELLIBRAND: It's a specialist. He's a specialist contractor, but it's just him. It's not a company; it's an individual.

The CHAIR: But he's appointed through his company, which is just him.

TOM GELLIBRAND: Yes. I think he trades as Bryan Joan but his name is Bryan Tan. Bryan was brought in to assist us specifically at a time when, on one of our projects, we'd led a contract but we were in a very significant dispute and a variation process, and we needed specialist and very experienced assistance in terms of commercial negotiations. It wasn't so much a legal matter; it was more a commercial outcome that we needed to negotiate with the contractor. I did talk to a few people about what sort of support we could get from government employees, whether or not people would be available. At the time we had an urgent need and Bryan filled that. At the time he would have been working full-time, but he works on a part-time basis at the moment with us.

The CHAIR: So a 3½-year contract part-time at \$2.3 million?

² In [correspondence](#) to the committee received 4 October 2023, Infrastructure NSW provided a clarification to their evidence.

TOM GELLIBRAND: I think the \$2.3 million, yes, is the amount of money that's—

JANINE LONERGAN: It's the upper limiting.

TOM GELLIBRAND: Yes, the upper limiting fee.

The CHAIR: It's \$2.3 million for his 3½ years part-time?

TOM GELLIBRAND: Yes. He worked in a full-time capacity during that period when we were going through those commercial negotiations, which lasted for—well, the busy period would have been close to a year and a half. Then he's been working on a four-day week; he went down to three days a little while ago. It's essentially on a needs basis. Up until recently it was coming down and potentially exiting.

The CHAIR: What senior executive level would he be if he was a direct hire?

TOM GELLIBRAND: I think, and I'm not an expert at this, but if we'd used the government senior executive service bands, the most we would have been able to offer him would have been an SES2 band. Because we did, I do recall—

The CHAIR: He's getting considerably more than that.

TOM GELLIBRAND: Absolutely.

The CHAIR: Do you see it as a problem that we have somebody being on effectively double the pay of a public servant doing the same job for such a long period of time, for 3½ years?

TOM GELLIBRAND: Do I see it as a problem? I have witnessed and been employed in positions where contractors that I've engaged earn considerably more than me.

The CHAIR: Yes.

TOM GELLIBRAND: Probably that's been a constant theme for quite some time for different sorts of roles. It's often the case with a project director. The project directors I employ at the moment—I've got a couple of external project directors—they earn more money than I do.

The CHAIR: He's also employed with Transport for NSW as a strategic negotiation adviser on another \$165,000.

The Hon. WES FANG: It seems like he's quite good at what he does.

The CHAIR: I'm making no comment on his ability; I'm talking about the practices of Infrastructure. But that's a seven-month contract for an additional \$165,000. Presumably he's doing that on his other day, then?

TOM GELLIBRAND: Yes, Bryan and I spoke quite some time ago about him supporting some commercial negotiations associated with WestConnex. I can't remember what stage it was—1B, the big one down at Victoria Road. He worked for them not so much for a block of time but a few days a week over a period of some months. I think since then it's been going in and attending meetings from time to time.

The CHAIR: This is just one example that I've found just because it came up on eTendering in the last couple of months. I'm sure if I kept looking I would find more. Is this common? How many people do we have sitting on long-term contracts like this within Infrastructure?

TOM GELLIBRAND: Is it common? In a relative sense, no, because most projects have people on short-term assignments or they're government. In terms of a percentage it would be quite minor, but it does exist.

The CHAIR: When we have business cases prepared, are those business cases prepared on the assumption that we will be able to find people as permanent employees to fill these sorts of roles?

TOM GELLIBRAND: The assumptions for the business case? The business cases assume a resourcing approach.

The CHAIR: Do they assume it at this level though? At the moment we're looking at significant shall we call them "blowouts" on some projects. Is part of the problem that we have business cases that don't envisage that we're going to be spending twice as much money on labour hire?

TOM GELLIBRAND: No, I think the, to use the common term, "cost blowouts" are just associated with significant variations or just underestimating the impacts of escalation and the market. If you think something is going to cost X and you go to the market and you realise it costs two times—

The CHAIR: Do you ever go back and look at the business cases and go, "This project ended up costing a lot more than what was envisaged. Where were the assumptions wrong?" Do you ever go back and look at those business cases and analyse them?

TOM GELLIBRAND: I am happy to say that, at Infrastructure NSW, all of our projects have actually been under budget, essentially. We have actually returned money back to government. A key role of Infrastructure NSW, on the assurance side of things, is to undertake a project assurance at a series of gates—gates zero, one, two, three, four, five and six, with six being benefits realisation. I am not the expert in assurance. At each of those gates, Infrastructure NSW will go in and say, "How's it going?" They also do health checks. Against your project objectives and against all the things you promised—where you would be, how much you would spend and what you would provide—they say, "How are you going?" That is the rigorous, ongoing assurance for all major projects. I am not sure how many we are assuring at the moment.

The CHAIR: But analysing the assumptions after the event?

JANINE LONERGAN: Yes. In addition to that, our assurance team prepare annually a trends and insights report, and that report is public on our website. It really does look at what are the key trends—for example, the impact of inflation over the past couple of years and what impact that has had on major infrastructure delivery.

The Hon. Dr SARAH KAINE: Could I ask a question going back to the skill sets that you keep as permanent and those that you engage? We have just heard an example about the \$2.3 million over a series of years, and there seemed to be engagements before that. Is there a plan in place for someone within INSW to shadow this person so that the skills are transferred so that we don't have to spend three or four times the amount we would spend if it was internal? Is there a skills transfer plan as part of that engagement? If not, again, it goes back to what kind of analysis you conduct, particularly on those long-term engagements, to see where upskilling might be the appropriate way to avoid that cost in the future.

TOM GELLIBRAND: I am very happy that you asked me that question. When I joined Infrastructure NSW in May 2019, in the Projects NSW area that I was taking over, there was a very small number of government employees, I think, directly employed—it might have only been two. One of those was a young woman who was working in an administrative role recording the minutes of steering committee meetings and doing fairly standard administrative work. She was a highly capable and highly competent person.

Since that time, she's been given more and more opportunities. She actually worked directly with Bryan Tan on the Sydney Fish Market project. One of the real focus areas that we gave her was commercial matters—managing claims, variations and negotiations with a contractor. She didn't necessarily have any experience in that area, but she shadowed Bryan Tan and was also managed very carefully by the project director, who is a government employee.

I'm really happy to say that she is now a project director on the delivery of the Harbour Park down at Barangaroo. That is a role that we've just given her in the last month, and that is over four years. Her ascension, in large part, has to do with the level of supervision she's had and the management she's had from people like Bryan Tan, in terms of the commercial area, which was quite specific, but also the project director on the Sydney Football Stadium project as well. Over that period of time, we've got a homegrown employee. We're a very small agency, but it's very satisfying to see someone that was working in an administrative role move to being a project director.

The Hon. Dr SARAH KAINE: That is an excellent example. Thank you.

TOM GELLIBRAND: She is also a mum of a young kid, working part-time. So it's a good story.

The Hon. Dr SARAH KAINE: She sounds like a gun. Thank you for that example. That period of time has passed so, looking to the future, will that kind of \$2.3 million contract be obsolete?

TOM GELLIBRAND: I think, hopefully, yes. In the event that you're involved in a significant variation contractor dispute, which we were at that particular point in time, it's not unusual to bring in negotiators and people that are very experienced, and they would come and go. We've retained the services of Bryan Tan a little bit longer than that because, as that was tapering off, we were actually letting other contracts and we had other variations underway, so he was kept reasonably busy.

The CHAIR: Again, apologies to Mr Tan for using him as a case study because I'm sure he is not the only one. When we look at his employment, he's been in roles within transport infrastructure for the last eight years. For the current one where Infrastructure has employed him as the commercial director for projects, it said that that was done by limited tender. When we talk about limited tender in that context, are we really just talking about a recruitment process? Are we just getting a few people and it would be like a normal recruitment process but, at the end of the day, we're hiring a contractor?

TOM GELLIBRAND: The tender guidelines tell you against certain limits whether or not you can go to someone or a company directly—one written quote or two written quotes, all the way up to when you have to go to an open tender and go through that process. There are limits set for each of those.

The CHAIR: At what point did you make the decision to not do a hiring process but instead do a tender process and appoint a contractor for a role that otherwise would look like something that should just be filled by an employee?

TOM GELLIBRAND: In this case in particular, the variation and the dispute was of a magnitude that we needed to get someone not just quickly but that could help us straightaway, as opposed to, "Let's go through a recruitment process and try to get a government employee." I wasn't confident, given the amount of money we'd be able to pay, that they would actually be able to step in and provide us with the level of services we need. We're talking about differences in a dispute in the tens, twenties, thirties of millions of dollars' worth.

The CHAIR: Do these contractors effectively have us over a barrel, then? They have got the expertise. They are then able to charge us twice what we'd get if we had an employee in that role. That means that, by the same token, we're then unable to hire an employee because they're not going to accept less than these people who are currently filling these roles. You could just become a contractor and charge twice as much. How do we break that reliance that we have?

TOM GELLIBRAND: I wouldn't say they've got us over a barrel, but we've got unequal bargaining positions. In government, we can offer a certain amount of money for certain types of employees with different backgrounds—be they lawyers, commercial people or town planners—whereas the private sector at different times will pay a lot more and government will find it difficult to compete. There are some people who will still choose to work in the public sector because of all the merits associated with that, but other people will choose to be in the private sector and earn considerably more.

JANINE LONERGAN: We would say that the engagement of Mr Tan has been absolute value for money for the State. I say that from the point of view that the highly specialised work that Mr Tan has done in relation to the dispute resolutions and variations has saved the State millions and millions of dollars.

The CHAIR: He has spent eight years working for the Government and, according to his LinkedIn at least, not working elsewhere. That expertise that he has gained has been in government roles and you are now paying quite a lot of money—double what you'd be paying a government employee—to then buy back that experience he has gained from those roles in Transport and Infrastructure. Does that not strike you as a problem that we ought to be trying to solve?

TOM GELLIBRAND: Yes.

The CHAIR: Do you have any suggestions for how we might solve that?

TOM GELLIBRAND: At Infrastructure NSW, in my area, I'm responsible for delivering up to \$3 billion worth of projects every year. I'm fully accountable for that. If it doesn't go well, I'd lose my job. That would also reflect badly not just on the organisation but on the CEO as well. For someone in the private sector with that same level of responsibility, they get paid three or four times what we can pay inside the government. Governments aren't uniformly attractive to private sector employees that have responsibility for very serious outcomes. When I say "serious outcomes", I mean outcomes that involve a lot of money and a lot of reputational issues for the organisation, be they public or private sector. The infrastructure field stands out as one where governments have found it very difficult to compete with the private sector. We don't pay bonuses—

The Hon. MARK BUTTIGIEG: This is part of the whole problem, isn't it?

The Hon. WES FANG: But is it a problem?

The Hon. MARK BUTTIGIEG: I don't want to pre-empt what requires deeper reflection and study, but you could argue from the evidence we've heard now in—how many hearings have we had now? Is this our sixth?

The CHAIR: This is the eighth.

The Hon. MARK BUTTIGIEG: Eighth—that government, by over-relying on consultants and external contractors, has actually created a market that has allowed it to have a monopoly on expertise and project management. Therefore the taxpayer actually ends up paying more by virtue of government not taking a long-term approach of building up internal expertise. With public servants like you two, for example, we're getting much better value for money, rather than paying the private sector three or four times more. If we had in-sourced all our capability over the long term—it would be an interesting exercise to try to analyse. That's kind of the picture we're getting. Often we don't have the ability to go internally, but we've sort of created the problem ourselves over a

long period of time. This goes to the heart of what government policy should be. That's why this inquiry is so important. I wonder if you've got any commentary around that.

TOM GELLIBRAND: I think it's reasonable to expect that there's likely to be a differential between the private and public sectors in terms of remuneration for a lot of positions, and that differential increases with the speciality of those positions. If you are working in a call centre—a very important role—the salaries between the private and public sectors would be reasonably uniform. But there are many, many people who work in call centres. It's not a specialised area like understanding the contaminants in soil and how you remediate those sorts of things. That's a much more specialised area. There will always be a bit of differentiation between—

The Hon. MARK BUTTIGIEG: It's a case of where you draw the line, I guess.

TOM GELLIBRAND: Yes. I don't think the State is ever going to compete with the private sector in terms of some of the specialist project development roles. Because there are significant associated bonuses in the private sector. They're remunerated to improve their budgetary position in terms of cost versus revenue. Whereas, in the public sector, when the Government agrees to a business case—so, here's the money for the Sydney Football Stadium—my job is to make sure that we don't spend any more than that, and that the bid we get in from the contractor is how much we pay them. But my job is not to screw the contractor to see if I can—"Oh, look, I've actually got some money back for the State because I've been really, really difficult and managed this contractor in an adversarial fashion." That's not my job. My job is to work within the funding envelope and minimise the expenditure of contingency. But once we've set a price with a contractor, my job is to make sure that is not exceeded unless there has been an agreed variation.

The private sector is different. They're often incentivised to actually do better. They might have a project and they say, "Okay, here's our margin," whatever it might be. Pick a number. They're incentivised to—if they can improve that margin over time, they've done well. They've brought greater value to the organisation and they will often be remunerated for that. So you've got a choice. You can work for the public sector and deliver according to the parameters set, or you could work in the private sector and actually be incentivised to even get a better deal through the passage of time.

The Hon. WES FANG: Is it fair, having listened to all the testimony around this issue, to distil it down to this? Effectively, it's supply and demand. There is somebody who has gained experience through the provision of infrastructure within government. There have been learnings, as the Chair has indicated. That person becomes more valuable over time. They can leave and work for another organisation on other projects, or we can bring them back in a consulting or contract fashion to work on future projects where they can receive remuneration that's in line with what they might receive outside. Otherwise we lose that skill set and then we aren't able to deliver the project as efficiently or in line with the budget as we may have if someone like Mr Tan, who has been named numerous times throughout this inquiry, had done so. That's just the way the business world works, isn't it? And if we can't offer those roles with the salary attached that the private sector can, this is one way of retaining those skills so that they don't walk out the door and then we're not able to have them on our projects at all. That's another view of it, isn't it, really?

TOM GELLIBRAND: If I'm correct, I think your first observation was that there are situations where people will work for the government and then they'll get to a point where they actually leave and join the private sector, doing a similar thing for more money, and sometimes they contract their services back or they might work for one of the big—you know, UGL, John Holland, Lendlease or something. That's correct. We've got evidence of that. Some of the people I've worked with are now working in the private sector—so that happens. They capitalise on the experience and the training they've gotten in the public service and then they get a different, arguably better-paid job in the private sector.

The Hon. WES FANG: And sometimes they come back. They might be the secretary. They may not have the operational experience, but they might come back.

TOM GELLIBRAND: We have experienced working with individuals as contractors and then they've come back into government as a government employee.

The Hon. WES FANG: They buy tickets to the Minister's dinner.

The CHAIR: It's interesting because right at the beginning we talked about how sometimes we get external people in because they fill a special role, they have a speciality and that's why we require them. But from what we've heard today there is also evidence that sometimes it's for market reasons, because you cannot hire into the public sector. It's difficult to now unpick what has occurred over the past however many years of that happening, but in terms of recommendations coming out of this inquiry is there, perhaps—I guess the question is if we were to offer something higher than what's being offered by the public sector now but maybe not quite as much as a contractor, would that go some way? I know a lot of people work in government for less than the private

sector because they want to serve the public. Is an increase in executive pay part of the answer, in your view, of sort of repopulating the public sector?

TOM GELLIBRAND: I wouldn't use the word executive because I don't necessarily think it should just—we shouldn't look at it through that lens.

The CHAIR: True.

TOM GELLIBRAND: I think we should look at what are the specialists skills and competencies that the State would like to retain, and have a cohort of people and then look at how much they might need to pay those people. That might be executives but it could also be—it might not be executives, and maybe people at a grade working in commercial areas might be worthwhile investing in through a differential pay arrangement. We could be developing those people and they could ascend into executive levels with that competency and maybe expand on it as they move through. So it doesn't always have to be executives. I don't want to be justifying paying executives more money.

The CHAIR: No.

TOM GELLIBRAND: But I think there are probably cohorts of specialty that could be worth looking at in terms of whether or not you could provide a differential rate of pay.

The CHAIR: A more competitive pay might end up saving us more in the long run because we'd have to pay less for contractors in the long run. Do you think that's fair to say?

TOM GELLIBRAND: It has potential. Right at the beginning of this session I think you said something like I have a "really good job".

The CHAIR: Yes.

TOM GELLIBRAND: That's one of the reasons why I'm here. It would be very unlikely that I would have had the same opportunity in the private sector to have been involved in the range of projects that I have been. Part of the privilege of working in the public sector is you do get opportunities that might not be available to you in the private sector. That's one of the reasons why I'm attracted to working in the New South Wales public service. Other people are more driven just by dollars. So it's not a simple answer, but I think there are situations where the public service could be more attractive to people if they looked at particular areas of skills and expertise to maybe review how much they're paid.

JANINE LONERGAN: One of the things that we really get value from by bringing in a contractor or a consultant when needed is the fact that they're drawing on their expertise that they have gained through their exposure to different clients. That's a real benefit to us, so you don't want to lose that either.

The CHAIR: That's not the case that we've been talking about, because he's not worked elsewhere—or not for the last eight years. I take your point that there are cases where we would want someone coming in for their special expertise but, when we're talking about these long-running engagements, that's the question here.

The Hon. WES FANG: I put something to you just very quickly—something else you said. It struck me that, when you were talking about your role versus, say, a consultant who comes in to look at or deliver a project that you've got oversight on, you in effect work within a certain parameter that's given to you by the government and you've got a cost and a project delivery, and you work within those parameters. The consultant that you bring in, though, from the private sector may have a slightly more mercenary-type view. Are you not, in effect, bringing in somebody to do the dirty work to get that project delivered, to bend the arms and to screw people down that you necessarily can't do but somebody from the private sector can because that's what they do? Effectively they're a gun for hire so that you can do what you do and you don't have to get your hands dirty. Is that one way to actually look at it?

TOM GELLIBRAND: That's a good question and I can say absolutely not. We would never do anything like that.

The Hon. WES FANG: Not you, but I mean—

TOM GELLIBRAND: It's a good point. But, again—

The Hon. WES FANG: Because it makes sense.

TOM GELLIBRAND: —when we engage with large contractors to deliver projects, we agree on a price. And my job is to make sure that we don't exceed that price. But, if they said, "It's going to cost a hundred million bucks", my job is also to make sure that they get the margin that they had in there. Success is a function of both parties being successful. It's not successful if we screw the contractor right down and they end up having to sack

people, having to become insolvent. The State might be \$50 better off, but overall are we better off? No. We approach all of our projects—it might sound a little bit trite—in a very ethical fashion. We make sure that we're only pursuing things that we think we're genuinely entitled to. If a contractor comes in with a foolhardy grab-for-cash variation, I'm going to deal with that very seriously and I'm going to say, "This is what the contract says. You are not entitled to this variation." That will be a very frank discussion but we'll do it in an ethical fashion. I won't be seeking to recoup any benefit for the State that the State's not entitled to.

The Hon. MARK BUTTIGIEG: What happens in the converse, though, when you have a contract overrun? We've seen projects run over by 30 per cent, 40 per cent, 50 per cent. So what's the review mechanism for that situation? I understand that some of this private sector caper is about gaming on variations. That seems to be a constant theme too. Do you want to give some commentary around that?

TOM GELLIBRAND: Again, we've mentioned it before and Janine was talking about the role of assurance. As you're going through the different gates of delivery, zero through to six, there are health checks, there are gateway reviews to look at the performance of projects. They will provide government with a view to explain why the variation has occurred. Is it inclement weather? Is it unforeseen contamination? Is it industrial disputes? There is a role for INSW in assuring those projects and getting a window in as to explain why.

The Hon. MARK BUTTIGIEG: But you've just got to wonder whether or not, to be frank, it's working, given some of the cost blowouts we've seen. I'll give you an example that I have some awareness of. There was, I think, the light rail project down in George Street. I know that a big portion of that cost blowout was because no-one had really spoken to Ausgrid about all the underground electricity cables that had to be moved in that project. You've got to ask yourself in a situation where a government is running a major project—and I knew this because people at Ausgrid had contacted me about this coming up as an issue. The idea that government wouldn't have the wherewithal to get into the weeds there and say, "Well, what do we actually have to do to cater for these unforeseen circumstances?"—I'm sure I could find 100 other examples like that if we started digging. But those sorts of things are quite concerning in terms of whether or not that's the fault of the structural make-up of the model or whether that's just life and, you know, we've got to deal with it because things are unpredictable.

TOM GELLIBRAND: I wasn't involved in the light rail project.

The Hon. MARK BUTTIGIEG: No.

TOM GELLIBRAND: But I did work at Sydney Water for 10 years.

The Hon. MARK BUTTIGIEG: So you'd be familiar with—

TOM GELLIBRAND: And there's nothing more certain than George Street is full of assets.

The Hon. MARK BUTTIGIEG: That right!

TOM GELLIBRAND: And I'm 99.9 per cent sure Transport would've been aware of pretty much all of them. I think it's reasonable to assume that the due diligence that was done on the light rail was pretty good, because it's the standard process for all projects when you're in that definition phase—"What am I proposing to do? What's there?"—surveying the site, doing checks on what are all the assets, where all the assets are, what condition are they in, whether or not some of them are heritage assets, because there are heritage, sewer and water assets in the city, all those sorts of things.

The Hon. MARK BUTTIGIEG: I suppose the point that I'm trying to make is whether it is possible with this model where you give it to a head contractor to run the show—sure, there's oversight, consultation and feedback mechanisms. But they don't then go and speak to Ausgrid, for example, which is now a State-owned corporation and so not answerable to government either. They don't speak to each other at the level that they need to, and then they come back with a variation to say, "We had this issue with the electricity cables. Therefore, sorry, extra 20 per cent," and the poor old taxpayer has got to foot the bill because there is no coordination. That's my concern.

TOM GELLIBRAND: I've had direct experience with that, and that actually goes to some of the disputes that I've been involved with as well. A contractor said, "How could I have possibly and reasonably known that these assets actually existed, because on this plan it says that it's dead but on this plan that you now show me it's a live asset? Therefore, I've got to now relocate it and there's an additional cost. Therefore, it's a variation." Again, when it's developing its project, government has to go through a due diligence exercise, but there is also a requirement on the contractors to do the same thing. It doesn't matter who you employ; I think there will always be situations when you get down to the real detail that when people start excavating they will go, "Oh, I didn't really think this should be here or it's in a different location or it's a different dimension."

The Hon. MARK BUTTIGIEG: Sure. But, at the risk of sounding older than I would like to sound, in the good old days you would have had someone with corporate knowledge in government who would have gone, "Shit, we better to speak to Ausgrid about this. There are a ton of electricity cables down there." Do you know what I mean?

TOM GELLIBRAND: Those old people still exist.

The Hon. WES FANG: But with better manners.

The CHAIR: Order! We are running well over time now, but I rudely interrupted Ms Lonergan before when she was trying to respond, and then other questions interjected on top of that. Ms Lonergan, I'm giving you the chance now to answer, if you can remember.

JANINE LONERGAN: Probably just a couple of things—when we were talking about the tenure of contractors engaged by INSW, I mentioned that we have 30 contractors on our books at the moment. Of those, nine have been with us for more than one year. So that just gives you a little bit broader context. In relation to Mr Tan, he did come to INSW from—and with—the experience that he has had in his career. So to your point about different experience gained working across different sectors, that has been of benefit to Infrastructure NSW.

The CHAIR: Thank you. Unfortunately, that is all we have time for. It has been a really fascinating discussion, and I really do like the idea of your job, Mr Gellibrand. I like the idea of managing and looking at it all and creating whole new structures and infrastructures. It sounds fascinating. Anyway, to the extent that questions were taken on notice or there are supplementary questions, there will be 21 days to respond to those. That concludes this session, and we will be back in just a moment with representatives from TAHE.

(The witnesses withdrew.)

Mrs LYNDAL PUNCH, Chief Financial Officer and EFM Finance and Business Performance, Transport Asset Holding Entity [TAHE] NSW, sworn and examined

Mr REYNARD SMITH, Acting Chief Executive Officer, Transport Asset Holding Entity [TAHE] NSW, affirmed and examined

The CHAIR: Welcome back. We now welcome our next witnesses. Would you like to commence with a short opening statement?

LYNDAL PUNCH: Yes, I would if that's okay. Thank you very much. Good afternoon. I thank you for the opportunity to come and speak to you today on behalf of TAHE in relation to how we use and manage consultants. My name is Lyndal Punch. I'm the Chief Financial Officer of TAHE. I've been employed by TAHE since December 2022. I'm joined today by Reynard Smith, who is our Acting CEO while Benedicte Colin is on leave. Reynard's substantive role is the Executive General Manager of Strategy and Innovation. As you may be aware, TAHE was established in 2020 to replace and continue the Rail Corporation of New South Wales.

TAHE is the strategic asset manager and custodian of the State's approximately \$20 billion rail network assets, which includes railway tracks, rolling stock, train stations, as well as the owner of over 300 million square metres of land across New South Wales. Rather than simply divesting any under-utilised asset, TAHE retains and invests in its significant asset base through revitalisation projects, precinct creation, community heritage upgrades and affordable housing and, in doing so, provides long-term returns for the State of New South Wales. TAHE is also very focused on strategic asset management, improving safety and a resilience across the network, generating whole-of-life costing models which take into account climate change and stretch the anticipated life of our rolling stock.

At TAHE we recognise the importance of good governance and transparency around consultant engagements. We have a comprehensive procurement framework embedded in the organisation and we are committed to delivering an excellence in procurement outcomes. Our framework is designed to ensure fairness and transparency and to maximise value for money in procurement. Our procurement policy framework consists of a policy, standard procedures, delegation systems, processes, templates, supplier code of conduct, TAHE Code of Ethics and Conduct, and a conflict-of-interest process.

At TAHE we promote sound commercial decisions based on integrity and risk-based principles by applying a high standard of ethics and probity while driving sustainability and social outcomes. We procure services in a way that maximises value for money, meets fairness, probity and corruption prevention requirements, is sustainable and encourages diversity, and is consistent with our supplier code of conduct. TAHE as a State-owned corporation is not obliged to comply with the NSW Procurement Board directions on engagement of professional service suppliers, which includes the use of consultants. TAHE is, however, consistent and compliant with those directions via mechanisms to consider the need, market engagement, decision-making and transparency.

In particular, TAHE encourages our people to utilise whole-of-government prequalification schemes such as the Performance and Management Services Scheme, which sets clear boundaries on rates, expenses and discount structure. Our approval to commit and/or expend public money is taken very seriously. When approving a procurement request, approvers must be satisfied that expenditure is necessary and meets the TAHE business needs, that the services are not able to be performed internally or from peers across the sector, that funds are available to meet the commitment, that the procurement policy and framework has been complied with, including no conflicts of interest, and probity concerns addressed, and that the approver has the appropriate delegation of authority.

The TAHE instrument of delegation is limited in relation to the engagement of consultants. Only executive general managers and myself as the CFO, the CEO and the board have delegation to approve consultant expenditure at various financial thresholds. Contract variations require both CEO and board chair approval, and significant reasoning and justification is required when seeking a contract variation. These controls ensure that TAHE executive and board have appropriate powers and oversight in relation to consultant spend. In the interest of transparency, TAHE discloses any contracts valued at \$150,000 or more, per the Government Information (Public Access) Act 2009. We also disclose all our consultant spend in the TAHE annual report. Our internal audit program includes procurement audits to ensure the highest level of transparency and value for money is maintained and to ensure we maintain strong governance and control. The Audit Office of New South Wales also reviews TAHE expenditure as part of the year-end audit activities.

TAHE's use of consultants in a financial year may vary, noting our consultant spend in financial year 2022 was \$2.3 million and in financial year 2023 is expected to be of similar value. Consultants may be used by TAHE to provide advice or services in an area of specialisation. As a relatively small workforce of approximately

50 people in financial year 2023 and 35 people in financial year 2022, every effort is still made to perform activities internally and leverage off our internal capabilities. Sometimes, however, this is not possible and areas of specialisation that provide access to market information or expert analysis or independent advice is required. Consultants may also be engaged for statutory requirements, which can often be in relation to financial services. An example of this is the independent valuation of TAHE's assets or the independent review and assurance activities required by the TAHE board on financial models.

As with many other organisations, TAHE has also enlisted assistance with various consultancies to explore enterprise level strategies required particularly within TAHE's implementation years. I note, however, that while the establishment of TAHE has been of ongoing interest to this Committee, questions in relation to the use of consultants in the establishment of TAHE should be directed to NSW Treasury and Transport for NSW. Across our portfolio TAHE may also engage consultancy services on broader strategic engagements, including affordable housing solutions. Precinct revitalisation, heritage strategy, urban design, ecology studies, engineering flood modelling and geotechnical investigation are all further examples.

Most importantly, when we engage a consultant we focus on ensuring our engagements are necessary and that engagements deliver value for money and help to grow the skills and knowledge of our organisation. Our annual strategic business planning and budget process also helps inform the need and use of external suppliers, including consultants, throughout a financial year. When we get to the project level, the planning stage when engaging consultants is critical and enables us to assess the risk and to find the best strategy and market approach to procurement.

The scope for a consultant engagement will often go through several review layers to mitigate the risk of scope creep and variations post contract award and, most importantly, to ensure that at TAHE we are getting the best outcomes to achieve our objectives. TAHE actively manages and engages with consultants for the life of an engagement to ensure that the service is being delivered as agreed to the required level of performance and quality. A review of the services provided at the close of the engagement is also performed and communicated with the supplier. In closing, at TAHE we focus on ensuring our engagements are necessary, that engagements deliver value for money and help to grow the skills and knowledge of our organisation. Once again, I thank you for the opportunity to come and speak on behalf of TAHE today.

The CHAIR: You said that you've spent \$2.3 million in financial year 2022 on consultants, and I think it was \$3.264 million in 2021. What is the 2023 unaudited spend looking like for consultants?

LYNDAL PUNCH: The unaudited expenditure is approximately \$2.3 million.

The CHAIR: For 2023.

LYNDAL PUNCH: For 2023.

The CHAIR: So same as last year?

LYNDAL PUNCH: Very similar.

The CHAIR: Interesting. In your annual reports you list the other category of "Contractors - maintenance related and other". So, for instance, in 2022 that was \$92.5 million. How much of that is maintenance related and how much of it is other?

LYNDAL PUNCH: I'm afraid I don't have that information in front of me at the moment so I'll have to take it on notice.

The CHAIR: That would be very useful. Can you tell me what is in the "other" category?

LYNDAL PUNCH: Again, I'll take that on notice so I can give you the correct information.

The CHAIR: You mentioned the approval processes for consulting spend in your opening statement. Can you just tell me again, at what level does the board get involved with procurement?

LYNDAL PUNCH: We have a very comprehensive delegations framework. Within that delegations framework has the required levels for individuals. So in terms of when the board gets involved—and I just got the delegation instrument now so I can tell you when, for consultants, they get involved.

The CHAIR: You did say for a variation of contract.

LYNDAL PUNCH: They also get involved for approvals. Sorry, bear with me for just one minute. To approve the expenditure to engage consultants, professional services and/or labour hire personnel, the CEO has a delegation limit of \$500,000. Anything above \$500,000 must be reported to the board for board approval.

The CHAIR: That's useful. I'm just looking at the 2022 spend on consultants as disclosed in the annual report. So only that top one, that ICA Partners at \$710,000, would have required board approval. Is that right?

LYNDAL PUNCH: Per the delegation instrument, yes. However, our board and our audit risk committee do get visibility of all consultancy spend throughout the year.

The CHAIR: But they don't have to actively approve it or get involved in the actual negotiations or signing off or anything like that?

LYNDAL PUNCH: Only for anything above \$500,000.

The CHAIR: Just above \$500,000. And the rest is delegated to the CEO, so that was Ms Colin and now—

LYNDAL PUNCH: Excuse me, would you mind if I correct that?

The CHAIR: Please.

LYNDAL PUNCH: The CEO has delegation of up to \$500,000, but there are delegation limits for our executive leadership team. In terms of our executive leadership team, myself as the CFO and my colleagues at the EGM level have a delegation of up to \$150,000.

The CHAIR: So you've got a delegation of \$150,000 yourself?

LYNDAL PUNCH: Correct.

The CHAIR: Just in terms of the management of conflict of interest, I understand that your chair, Bruce Morgan, was a PwC partner for 26 years. I think you yourself were at EY for a few years and other consultants. Mr Smith as well was also at EY for some time. Have there been any contracts with PwC that aren't classified as consulting that are above that \$500,000 limit, for instance?

LYNDAL PUNCH: Not that I'm aware, and not as reported in the annual reports. I can say that there has been consultants—I'm just having a look, sorry, on our financial year 2022. There has been those—PwC asset valuation was approximately \$138,000.

The CHAIR: Yes, and then there was one that was disclosed on eTendering—2023, valuation of Transport Asset Holding Entity cash-generating units of \$279,400. So there have definitely been contracts with PwC but none of them at that board approval level. So, presumably, Mr Morgan didn't get involved in those contracts.

LYNDAL PUNCH: No, he would not have got involved in those contracts. But the audit and risk committee—for the appointment of a valuer, we did an independent tendering process. The recommendations did go up to the audit and risk committee for noting, from my memory, and the chairman did refrain from any comments in relation to the preferred supplier for the engagement.

The CHAIR: Just on the \$279,400 one, which is for a contract between 8 November last year to 30 June this year—so presumably it will be captured in your 2023 annual report—it said on eTendering that that was non-tender, that it didn't go out to tender. Do you know why that is?

LYNDAL PUNCH: No, I will have to take that on notice. To my knowledge, we actually did go out to tender. So I will have to take that on notice to clarify.

The CHAIR: Yes, if you don't mind. Another one that came up was Frontline Strategic Services, providing asset management services for \$300,300. That one I think is a five-month contract for this year and, again, was specified to be non-tender. So maybe it's an error. But if you could come back and let us know, that would be very useful.

LYNDAL PUNCH: Absolutely.

The CHAIR: How many staff do you have employed to do communications and media work within TAHE?

REYNARD SMITH: I can take that question. We currently have two, and we have one coming back, I believe, in a couple of weeks from maternity leave.

The CHAIR: What are their roles exactly?

REYNARD SMITH: We have a member of the executive team, in terms of corporate affairs. The other two roles report into that in terms of community engagement and corporate affairs.

The CHAIR: TAHE spent significant amounts of money on SEC Newgate for communications work, and I think we may have talked about this with TAHE in a budget estimates session. How much in total has TAHE spent with SEC Newgate?

REYNARD SMITH: I don't have that number in front of me, but I'm happy to take that on notice.

The CHAIR: Thank you. Are you able to tell me why it is felt necessary to employ SEC Newgate?

REYNARD SMITH: I can confirm that we no longer engage SEC Newgate. The engagement of Newgate was before Lyndal's and my time at TAHE. However, I understand they were engaged to perform those communication engagement functions that we have since brought in house. TAHE's place-making projects, such as the precinct creation and affordable housing pilot projects, require significant engagement with key stakeholders, and that's looking to local communities, councils and property groups. That requires a lot of time and effort by these communications professionals. Until we were able to perform those critical services in house, we did rely on specialist communication firms such as Newgate.

The CHAIR: Newgate is also a lobbyist, though, isn't it?

REYNARD SMITH: I'm sorry. I'm happy to provide that on notice in terms of what their full capabilities are, but I wasn't there when they were first engaged.

The CHAIR: Are you able to provide us with the terms of reference or the brief in relation to the Newgate work?

REYNARD SMITH: I would have to take that on notice and see what information we can provide.

The CHAIR: Thank you. That would be very useful. Just coming back to TAHE's spend on the big four. I know we have what has been disclosed in the annual reports, but are you able to tell us the total expenditure that has gone from TAHE to, for example, PwC in each of the last three financial years, whether or not it's treated as a consulting spend on whatever it is—just PwC at one end and TAHE at the other?

LYNDAL PUNCH: I can confirm that in 2022, as part of the annual report, the PwC independent asset valuation was \$138,096. At the moment I'm unable to confirm the amount for 2023 for PwC. In 2021 PwC were engaged for rail management advisory services, which was a total of \$129,100, as reported in the annual report. PwC were also engaged at the time for the independent asset valuation, which was \$60,000.

The CHAIR: But that's what is disclosed in the report as being consulting spend. My question was how much in total has TAHE paid PwC, whether or not it was acting as consultant or anything else. If you were to look at the spend—where you've put a certain amount of money to PwC, for example—how much would that be?

LYNDAL PUNCH: I'll take that on notice and provide that amount and percentage for you.

The CHAIR: Thank you—and also for EY, KPMG and Deloitte. That would be incredibly useful. One of the things that we're finding very hard is being able to actually get that figure.

The Hon. PETER PRIMROSE: May I ask, in relation to that, if you could also provide the categories—what they're actually called, whether X amount has been labelled in your budget processes as for communication, for consultants, for contracting or something else. If you could just disaggregate it that way, that would be useful as well. Thank you.

The CHAIR: That would be incredibly useful. Do you have any secondees or contractors sitting within TAHE?

LYNDAL PUNCH: Yes, we do.

The CHAIR: Can you tell me how many?

LYNDAL PUNCH: I'm so sorry, I do not have that number in front of me. But we do have a few secondees at the moment from Transport for NSW. I think there's approximately three, but again I will take that on notice just to confirm the amount.

The CHAIR: Sorry, three secondees from Transport?

LYNDAL PUNCH: Transport for NSW, from my knowledge. We also have contractors as well.

The CHAIR: How many contractors?

LYNDAL PUNCH: I'll take it on notice, I'm sorry.

The CHAIR: Thank you—and at what level those contractors are sitting would be good as well.

LYNDAL PUNCH: Sure.

The CHAIR: What their position titles are.

The Hon. Dr SARAH KAINE: And where they're from.

The CHAIR: And where they're from.

LYNDAL PUNCH: Could I just confirm, was that for this financial year only?

The CHAIR: The ones you currently have. That would be very useful. Do Government members have any questions while I look through my documents?

The Hon. Dr SARAH KAINE: No, the comms one was my obvious one.

The CHAIR: I am just looking at a contract award that was published on 23 May. It's for transport and traffic planning evaluation, \$705,000. So that we get a flavour of what sort of consultants you're using and what for, can you tell us, firstly, would that go into the consulting spend or would that be part of other contractors?

LYNDAL PUNCH: I understand the question but I don't have the information in front of me. I will come back to you on that one.

The CHAIR: All right. I might need to come back to you with a bunch of these, then. Again, we are just trying to understand what gets disclosed and what doesn't. In terms of the recording of contractor versus consulting that TAHE does, does it follow the same definition as the rest of government? When we're talking about the—I forget what the exact definition is. Is it from the Treasury guidance?

The Hon. Dr SARAH KAINE: Treasury procurement guidance.

The CHAIR: Does it work under the same guidelines, even though you're a separate entity?

LYNDAL PUNCH: In terms of our definition of "consultants", we are consistent with the Procurement Board. TAHE defines a consultant as a person or organisation engaged under contract on a temporary basis to provide recommendations or professional advice to assist decision-making by management. It is the advisory nature of the work that differentiates a consultant from other contractors.

The CHAIR: Okay.

The Hon. Dr SARAH KAINE: Can I ask a follow-up question?

The CHAIR: Please.

The Hon. Dr SARAH KAINE: That raises a question about the comms contract again. You were saying that you only had a small team and that you could in-house. You seem to be suggesting that SEC Newgate performed the work as opposed to provided advice. You were saying that you only had a small team and you have now in-housed that work. Was their role not advisory, as per the description you have just spoken about, or were there other things in that that we haven't heard about? Was it advisory or was it indeed that you didn't have the staff able to do the website or do whatever else you were doing?

REYNARD SMITH: I would say, from the best of my knowledge, there's a bit of both. But I'm happy to provide a further breakdown on notice, if required.

The Hon. Dr SARAH KAINE: No. What it goes to illustrate is this conflation between the consultancy-contractor spend. If you're saying there's a bit of both, does that mean that there is also SEC Newgate somewhere in contractors—

REYNARD SMITH: No. It's all under SEC Newgate, yes.

The CHAIR: I'm a bit worried you're going to have to take this on notice, but I am going to give it a whirl. There was a contract published on eTendering on 13 February in relation to computer equipment and accessories. The contractor name is Experteq and under "Particulars of goods or services" it says, "Market analysis of audiovisual equipment for meeting rooms—non-tender, \$210,000." Why are we spending \$210,000 on analysing audiovisual equipment for meeting rooms? Are you able to tell me more about that one?

REYNARD SMITH: That is actually the establishment of our meeting room. We don't have any meeting rooms in the offices we have so that is the actual purchase of TV screens and video cameras to actually establish those meeting rooms.

The CHAIR: So it includes the actual assets?

REYNARD SMITH: Yes.

The CHAIR: Why market analysis, then? Why is that the description?

REYNARD SMITH: I would have to have a look at that and take that on notice, sorry.

The CHAIR: We don't normally disclose every bit of equipment. Are you hiring that equipment rather than actually becoming the purchaser of it?

REYNARD SMITH: I don't have the details in front of me, sorry. I will have to take that on notice.

The CHAIR: This is giving me flashbacks of the last time I asked TAHE representatives about eTendering. There are a bunch of very different types of approaches here. We've got one for "contingent workforce" from 30 September for \$153,000 with Hays Recruitment. Are you able to tell me anything about that one? Is that just recruitment services or is that the actual contingent workforce itself? Do you know?

LYNDAL PUNCH: I wish I did right now. I'm afraid I don't. We will take it on notice, sorry.

The CHAIR: Anyone else? I might just put some of these questions on notice.

The Hon. PETER PRIMROSE: I will just put all mine on notice. I think that might be the appropriate thing to do.

The CHAIR: Looking at your position within the broader transport department and network, are there any problems that TAHE experiences in relation to procurement or suggestions that you have for streamlining? If you were in our position of making recommendations on how to make our procurement systems more efficient or transparent, are there any recommendations that you would make?

LYNDAL PUNCH: We have an internal audit of procurement. As part of that audit, it always looks for the deficiencies and opportunities for improvement in our processes. From my review of those audit recommendations, they have only ever been to low or "opportunities for improvement". If anything, it has identified that TAHE internally has strong governance and processes in place, including the policy and procedures that I outlined in the opening statement. I am, however, aware that we are working very closely with Transport for NSW to introduce a supplier consultant management framework to ensure value for money, risk management and performance management. This framework is still very much in its infancy, but it's certainly intended to provide benefits from a stronger supplier relationship from both the benefits for TAHE and the benefits for the consultants and contractors.

The Hon. Dr SARAH KAINE: We heard from Transport earlier that they're developing their vendor management system. Will you be using the same one as them when that's developed?

LYNDAL PUNCH: At TAHE we utilise Transport for NSW for a number of systems, given that many of the staff originally came from Transport for NSW at TAHE's establishment. We try to leverage off their systems for efficiencies and for scale. We would certainly be working with Transport for NSW to determine whether we are able to leverage off that system and ensuring that there's appropriate privacy and controls in place to manage between the two entities.

The Hon. MARK BUTTIGIEG: But there's no overarching direction to use a uniform system, is there, from Treasury or Procurement or anyone like that? It's just that each agency uses what they're used to using, is it?

LYNDAL PUNCH: While I can't comment for the other agencies, what I can say from my own experience of working in the New South Wales government is that there's every effort, particularly in terms of shared service arrangements, to try to find efficiencies of government and to ensure that we get the best value for money for the public money.

The Hon. MARK BUTTIGIEG: I understand there's an agency-specific motivation to try to do the right thing. But as far as you're aware, there's no dictum from government saying that you will use this standard accounting framework or standard invoicing system so that we're measuring apples with apples, essentially, across different agencies? There's no overarching guideline on that or software to use or system to use?

LYNDAL PUNCH: Not that I'm aware, unfortunately.

The CHAIR: I know there were problems last year with the audit on TAHE's financials —your eyes just went very wide!

The Hon. WES FANG: Your eyes just went very narrow.

The CHAIR: Do we anticipate any issues this year? Are we going to see the annual report any time soon?

LYNDAL PUNCH: Every effort is being made to ensure that we meet the Government's time frame of requirements for the annual report. The financial statements are clearly going to be an element of the annual report.

We are still working with the Audit Office of NSW on the finalisation of our accounts, so I'm unable to comment any further on what you may see in those accounts.

The CHAIR: I understand that Ms Colin is leaving at the end of the year. Are there active efforts to recruit for that position on a permanent basis?

REYNARD SMITH: It's not really for me to comment on the decisions of Benedicte. In terms of the appointment and recruitment, that's a matter for the TAHE board, with the approval of the voting shareholders, in accordance with the Transport Administration Act.

The CHAIR: Will it be difficult to appoint that position given the current Government's statements around effectively changing the status of TAHE?

REYNARD SMITH: Again, I can't comment on the Government's policy. As I said, that matter is for the board.

The CHAIR: Are there any other questions? I think we might close early. I anticipate I will put in some supplementary questions. Thank you very much for attending. We appreciate your time. To the extent that there are supplementary questions or questions on notice, you will have 21 days to respond. The Committee secretariat will be in touch in relation to that.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms FIONA TRUSSELL, Chief Finance and Commercial Officer, Sydney Metro, sworn and examined

The CHAIR: Welcome. Would you like to begin by making a short opening statement?

FIONA TRUSSELL: Thank you for your invitation to provide evidence to this inquiry. I commenced in the role in December 2022. Sydney Metro is the New South Wales government agency tasked with delivering a high-capacity, high-frequency metro rail network across Greater Sydney. We are the biggest public transport project in Australia, overseeing a portfolio of more than \$60 billion worth of works. Our program includes operation of the Metro Northwest line and three lines currently under construction: City and Southwest, West and Western Sydney Airport. These four metro lines will deliver a fully automated railway that includes 46 stations and 113 kilometres of new metro rail, connecting people across Sydney to fast, reliable and accessible transport.

Our role is to plan, build, operate and optimise rail services, and to create vibrant and attractive precincts and places. While we have a range of in-house capabilities and skills, due to the scale and nature of our projects there is a need for flexibility to supplement our workforce with experts at different stages of a project's delivery. As such, we engage a blended workforce. Sydney Metro is a corporation constituted under the Transport Administration Act and is administratively arranged within the Transport sector. The cluster's principal agency is Transport for NSW. Separately, Sydney Metro is governed by a decision-making Board.

As a New South Wales government agency, we are subject to all standard legislative controls applicable to public authorities. This includes our engagement and management of consulting services. We are accredited to conduct the procurement of construction works and related services under the New South Wales Government accreditation program for construction procurement. We abide by the arrangement set out by the NSW Procurement Board, and we operate in compliance with the NSW Government Procurement Policy Framework and Transport Procurement Policy. We monitor and test our compliance with these regularly. We comply with our reporting obligations in accordance with the GIPA Act and the Government Sector Finance Act.

In our 2021-22 annual report, total annual expenditure on consultants was \$2.7 million across 12 engagements, predominantly for strategic, independent advice to inform the Board or senior management to assist in decision-making. We have policies, procedures and systems in place to ensure our engagement and management of consulting services is undertaken in a considered and ethical manner that delivers good outcomes and value for money. We strive for continuous improvement and always welcome opportunities for further enhancement and innovation. Thank you for the opportunity to be a witness today. I welcome questions from the Committee.

The CHAIR: Thank you for coming along and for providing that opening statement. Can we just start with the overall picture? Looking at your annual reports, there's a combined contractors and consultants spend, which is multiple times the value of the consultants spend. For example, in 2020 consultants were around \$587,000, whereas total contractors and consultants was \$47.2 million. A similar magnitude of difference applies as we go through. In 2022, \$3 million was disclosed, but \$205 million in total. I understand that that was a particularly big year because of some COVID-related expenses. Can you tell us what sits within that larger amount of contractor and consulting spend?

FIONA TRUSSELL: I think our large program of works—our \$60 billion program of works—and, as I mentioned, our blended workforce, the way in which we operate to manage and deliver our program of work, our three mega projects, concurrently, the phases and the life cycle of project management and also the scale of activities means that there are different phases and activities that occur across our business throughout the year and throughout the program of work. I think, as you're reflecting on the 2021-22 annual report—the specific detail—I am happy to take that on notice, but it does reflect some step up in COVID-related activities as well.

The CHAIR: What percentage of that amount that is, as you said, the blended workforce is a sort of contractor for individuals to come in and perform work within Metro?

FIONA TRUSSELL: I think it would be helpful if I just describe the nature of that blended workforce for the Committee. So, in addition to government employees, and our government employees are also a mix of fixed-term, permanent and temporary employees, we may also utilise—and that is very much subject to the nature of the work and the specialist skills that we may need at a particular point in time—skill hire, contractors and professional services contractors, some of which may be integrated staff within our teams and others may be delivery partners and industry partners specific to the nature of the work. In terms of the mix of employees relative to external providers, which I think is the Committee's question, it is circa 70 per cent government and 30 per cent professional services contractor skill hire.

The CHAIR: Okay. I am just looking at the 2021-22 figures. We have a full-time equivalent of 1,071.7 in your headcount: some 852 of them are government staff and around 230 are labour hire. Does that sound right?

FIONA TRUSSELL: To be really clear and check those numbers, I would have to take that on notice. Typically, it's around the 70 per cent to 30 per cent mix. Although, as I indicated, as the nature of the program of work changes and the phases of program delivery change, the nature of the activities changes and the nature of the skills changes reflecting—we've got a large number of in-house skills and in-house capabilities and it will vary. It will vary throughout the year and it will vary towards the end of the year and across multi-year programs relative to what that need is.

The CHAIR: How does that relate to that, when we take it back to the annual reports and we see the consultant and contractor spend? So, for instance, take a more normal year like the 2021 financial year. The total contractors and consultants spend was \$28.6 million. What percentage of that would be from that non-government staff spend?

FIONA TRUSSELL: I would have to take that specific question on notice, if I may.

The CHAIR: That would be really useful. Are you able to also take on notice an analysis of how many of those people have been working within government for more than a year, more than two years, more than three years et cetera?

FIONA TRUSSELL: I'm happy to take that question on notice.

The CHAIR: How many professional service contractors hired at Sydney Metro in the last three years have been on contracts worth the equivalent of, like, a band 2?

FIONA TRUSSELL: Again, that's a level of detail that I certainly don't have with me this afternoon, but I would be happy to take that question on notice.

The CHAIR: If you could, because I can't see the specific number of labour hire or contract staff. Anything you can give me as a bit of a breakdown as to how many there are and what equivalent level that they tend to sit at—that kind of thing. That would be incredibly useful.

FIONA TRUSSELL: Sure.

The Hon. PETER PRIMROSE: I look at, for instance—and earlier today I was looking at—things like Transport for NSW and the Treasury advice that they produce in relation to all different agencies. For Transport for NSW there are two categories and Treasury gives specific numbers to them. There are consultant expenses and contractor expenses. In relation to Sydney Metro, there is a particular classification called contractor expenses—it lists a particular number—but there are no consultant expenses. Now, it's almost impossible, I suspect, if someone goes through and simply looks at this, they would assume that—I don't understand why Transport for NSW has two, whereas Sydney Metro only has contractor expenses, according to NSW Treasury. What is a contractor?

FIONA TRUSSELL: I am not immediately sure about what particular document you are referring to. It's a little bit difficult for me to provide context to your question. In terms of definitions of consultants versus contractor, we work with Transport for NSW and we sit within the Transport cluster. We utilise New South Wales Government policy, procurement guidelines, Procurement Board directions and the like, and we also utilise a Transport consultancy definition fact sheet.

The Hon. PETER PRIMROSE: But you would see why I'm confused because you say you use the things. Transport for NSW, and the other agencies that we've met with this morning, have both, so you can disaggregate it. Whereas I would assume that Treasury would be a reasonably central agency but for your organisation there are only contractor expenses. If anyone was going through this document, they would assume you don't employ consultants at all.

FIONA TRUSSELL: We do report in our annual report every year our consultancy expenditure. So as I indicated in my opening statement, \$2.7 million worth of consultancy expenditure in 2021-22 against 12 engagements.

The Hon. PETER PRIMROSE: Can I ask you to take it on notice—and I am not being funny about it. I just don't understand why the Treasury doesn't list you as having any consultants at all. Either Treasury's wrong or there's something wrong in terms of your reporting to Treasury.

FIONA TRUSSELL: I would be very happy to take your request on notice.

The Hon. PETER PRIMROSE: Can you please take it on notice and just let us know who's in the poo.

The CHAIR: That is one way to put it. Can I ask you, Ms Trussell—I suspect you will have to take this on notice—what is the average amount of remuneration that's being paid for that project manager level when it's a contractor within Sydney Metro? Do you know?

FIONA TRUSSELL: I would have to take that on notice, in terms of our employee salary bands. I am happy to if that's your question. Or is it—

The CHAIR: No, it's in terms of the contracting. I'm not sure if you were watching this morning, but we were talking with Transport and Infrastructure about the numbers of consultants or contractors who are appointed to a particular role instead of an employee. Do you know how many of those you have in Sydney Metro and what their average remuneration might be?

FIONA TRUSSELL: I will take it on notice, but what I will say is that we may not know the remuneration specifically that individuals are paid by third parties. We will engage our contractors through the professional and managed services scheme. Those schemes have rates notated in them and our arrangements are relative to those schemes that we have utilised. In terms of what those employers pay their individuals, I wouldn't be able to provide that level of information.

The CHAIR: Are you aware of a director within Sydney Metro—a project manager—called Barry McGrattan?

FIONA TRUSSELL: I don't personally know Barry.

The CHAIR: Barry McGrattan has been at Sydney Metro for nine years and 11 months in various roles, and during that same time has been the managing director of a company called Bellgrove Advisory. Bellgrove Advisory is also listed on—I just did an eTendering search and I came up with 10 different roles that Bellgrove Advisory has been granted by Metro in the last year. Some of them range as high as \$700,000. I have got one here for two years for \$951,000. There are a bunch of contracts which appear to be effectively hiring people into Metro. Are you aware of these?

FIONA TRUSSELL: I am aware of Bellgrove Advisory, amongst other contracts that the organisation operates, all of which are disclosed on our eTendering website. As I mentioned at the outset, we do operate a blended workforce and that blended workforce can engage specialist skills as required. They may be in the commercial management, they may be—there is a variety of specialist skills that are required, subject to the timing of the project and the phase of the project. All of those arrangements are conducted in accordance with the New South Wales procurement guidelines and use of panels and schemes, as applicable.

The CHAIR: How many Bellgrove Advisory people do you have sitting within Sydney Metro?

FIONA TRUSSELL: I would be happy to take that question on notice.

The CHAIR: Thank you. Are you part of Transport's new thing where they have got a clear listing of who is not an employee of Metro and who is? Is it made clear so that people know where those who are sitting within Sydney Metro who aren't government employees are from?

FIONA TRUSSELL: Yes, we are part of the Transport cluster, and we are part of the cluster's arrangements in terms of IT systems and the like, and the staff profiles. All of that is visible to us.

The CHAIR: Prior to that, would it have been well known who was an employee and who was not, before that new Transport direction came in?

FIONA TRUSSELL: I do think this makes it particularly visible.

The CHAIR: Previously it wasn't visible?

FIONA TRUSSELL: I have only been in the organisation for eight months, so it is a little bit difficult for me to answer that particular question.

The CHAIR: I understand that didn't come, through, until—

FIONA TRUSSELL: This is quite recent. But staff profile and understanding PSCs and contractors who work in our business is generally well known.

The CHAIR: Given that you have had Barry McGrattan sitting within Sydney Metro for almost 10 years, and he is also the managing director of Bellgrove Advisory, what steps did Metro take to ensure that the information he received while being at Sydney Metro was not then used to benefit Bellgrove Advisory in relation to these contracts that have been signed in the last however many months?

FIONA TRUSSELL: Firstly, what I would like to say is, in terms of professional services contractors, skill hires and the like, they do not have any delegated authority. They are not in a decision-making authority role, and they all report, ultimately, to government employees. The ability to hire and recruit people is not an authority that they have. Those decision-making authorities sit with government employees, within our delegation.

The CHAIR: I understand that, but if I've been sitting within Sydney Metro for 10 years, even if I'm there as a secondee or a contractor for another company, presumably I am in a better position than someone else in terms of working out what Metro would want when pitching for further work from Metro. What does Metro do to ensure that people who are sitting there on contract are not able to take the information and knowledge they have to then enable more people from their firm to work with Metro?

FIONA TRUSSELL: Procurements are assessed on a needs and outcomes basis. We have rigorous procurement policies and procedures in place to assess, plan, manage and source our arrangements.

The CHAIR: That is the procurement side. What about the information?

FIONA TRUSSELL: In terms of arrangements in place to make those assessments, those assessments are made by management, by government employees. I am not quite sure what else you'd like me to respond to.

The CHAIR: The question is what steps does Metro take to ensure that the information obtained by these consultants or contractors whilst sitting within Metro is not then taken and misused in order to benefit their company getting more work out of Metro?

FIONA TRUSSELL: What I can say is, for all of our third-party providers, first and foremost, they are all provided the Transport for NSW ethical policy provisions, which govern how they are to behave and the ethical requirements. Anyone that sits within transport positions—or Sydney Metro positions—we have rigorous conflicts of interest procedures and they are all required to comply with conflicts of interest policies and procedures. We have very robust processes that allow that to be determined and assessed, identified and managed.

The CHAIR: The eTendering system only requires contracts be kept on there for three months after they have been published—some of them stick around a little bit longer, but we don't get to see much past that or to go, sort of, historically. Sitting on there at the moment are 10 contracts for Bellgrove Advisory and we know that somebody seemingly employed in Sydney Metro for 10 years is the managing director of Bellgrove Advisory. Does that not raise flags for you in terms of conflicts of interest?

FIONA TRUSSELL: As I said, we have rigorous processes for managing conflicts of interests. Contractors and professional services providers are not decision-makers. They have no delegated authority. They have no ability to make decisions.

The CHAIR: Perhaps you could confirm whether he is in fact an employee or a contractor. Do you know, off the top of your head?

FIONA TRUSSELL: I'd have to take that question on notice. I believe we're talking about a contract, not an employee.

The CHAIR: In terms of having a contractor sitting in Sydney Metro for 10 years, why wouldn't they be an employee by that point? Why are we having people at executive levels sitting as contractors for a 10-year period?

FIONA TRUSSELL: I can't comment on the specifics of the example that you're putting before me, but organisations that we bring in to help us and support our in-house capabilities, they may be a number of different individuals with a number of very specific skill sets. I think, importantly in the environment we're operating in and the macro-economic conditions that we are operating in, which means that there are skill shortages and challenges around recruiting specific skill sets, it means that it will flex across our business from time to time. The nature of the skills that we're going to source will change as well, and that can happen over an extended period of time.

The CHAIR: One of the people hired under those contracts at Bellgrove Advisory is Sydney Metro's interface management acting director, James Hayward. Are you familiar with James Hayward?

FIONA TRUSSELL: No, I don't know James Hayward personally.

The CHAIR: He's contracted on more than \$600,000 a year and has been continually employed via contracts on Metro Northwest and other related Metro projects since 2014. Does that strike you as unusual?

FIONA TRUSSELL: Well, as I said, our contractual arrangements are sourced through the PMS scheme or varying government panels or open tender or tender arrangements. There are a variety of different ways in which we procure our services, and they have terms of arrangement. We go through processes of review, KPIs and performance measures, and it is very much about the outcome of the delivery of the service that we're looking for.

The CHAIR: Do you think it's common or are you surprised that there are professional services contractors employed by Metro on over half a million dollars a year? Does that strike you as a lot?

FIONA TRUSSELL: Look, I'm not going to comment on the specifics of what we pay on a daily rate. They are relative to the PMS scheme. There are competition limits and the like that are in place, and they're competitively sourced.

The CHAIR: At that sort of director level, if they were employed directly by Sydney Metro then they would be on about half of that, wouldn't they?

FIONA TRUSSELL: I'd have to take that question on notice.

The CHAIR: Is \$600,000 more than what the current Secretary of Transport is being paid, or around about?

The Hon. MARK BUTTIGIEG: It was around about, from memory, wasn't it?

The CHAIR: Yes, around about. So we have people sitting at director level within Metro who are earning more than the Secretary of Transport. Does that strike you as problematic?

The Hon. SCOTT FARLOW: He's probably got operational experience, though. That might be the difference.

FIONA TRUSSELL: What I would like to say is that what individuals are paid by their employers—we don't have that level of information.

The CHAIR: Okay, I understand. But you do have the contracts, which have been made public on eTendering, which tell us how much they're paid.

FIONA TRUSSELL: It tells you how much we pay for those services.

The CHAIR: It tells you how much you pay for those services, and in many of those cases they are single contractors who come from a company that's just them. I appreciate you have not been at Metro for very long, but do you think that all of those people who are currently employed on those massive salaries could be more effectively employed as employees of Metro? What could we do to make that happen?

FIONA TRUSSELL: In operating a blended workforce—and a blended workforce in fact also provides our employees the ability to learn with a knowledge transfer from specialised skills that are provided by external contractors and the like as well. So the blended workforce also enables a transfer of capability, and knowledge management is also important in that.

The CHAIR: Sorry, can we just drill into that? If you have someone who is sitting within Metro for 10 years as a contractor, what is the sharing of capability there? Presumably Metro has given them that experience for 10 years. They're now valuable because they've worked within government for 10 years. But because they've always been a contractor they're now on a really quite exorbitant salary compared to the same people who would have just been employed by Metro. What are we getting out of that situation? What is the public getting out of paying so much to train up someone and then to continually be reliant on them?

FIONA TRUSSELL: We are delivering an incredible program of work: three concurrent megaprojects with fabulous outcomes, and they're complex. They are complex.

The CHAIR: Yes, but that's not the question. The question is why these particular people—

FIONA TRUSSELL: And the complexities—

The CHAIR: Go on.

FIONA TRUSSELL: No problem. The complexities of those, the commercial arrangements, the challenges, problems that need to be solved and outcomes that are to be delivered—there is knowledge sharing amongst the teams, and there are learnings from the specialised skills that are brought into the business. They do not operate in silos.

The Hon. Dr SARAH KAINE: I just want to rephrase the Chair's question, because when you said "there is knowledge that they have brought into the team", I think the confusion from our end is, if they've been sitting in that team for 10 years, what is it that they're bringing that isn't already in the team?

FIONA TRUSSELL: I'm happy to take the specific question on notice. But what I can say is that individuals that are brought into the organisation with a specialised skill set typically are brought in for discrete periods of time. Those skills may be utilised across different activities, different teams, different projects and outcomes, not only within Sydney Metro but other parts of government or other parts of Transport. So the skills that they provide and services that they provide to our projects are absolutely utilised and understood by others in our teams.

The Hon. MARK BUTTIGIEG: The Chair has said that this was a 10-year continuous contract.

The CHAIR: It was 10 years working in government, across different positions in Transport.

The Hon. MARK BUTTIGIEG: So, effectively, where the department is paying someone the equivalent of the Secretary of the department, presumably there is an assessment that the value-adds are equivalent to what the Secretary of the whole department adds. Essentially, that's the—

The CHAIR: That's more than the Prime Minister. When we're talking about value-add—and this isn't an exception. Again, I don't want to devalue the work of my office, but it's very easy to find examples of this type of arrangement.

The Hon. PETER PRIMROSE: Ms Trussell, if you are unable, given your recent arrival and your position, to answer the questions we are putting, who within your organisation can?

FIONA TRUSSELL: Well, it's best we take them on notice and provide you a response.

The Hon. PETER PRIMROSE: Are you saying you don't know, or you won't say?

FIONA TRUSSELL: No, I'm saying that I'm happy to take it on notice and consider your specific question and provide you the response.

The Hon. PETER PRIMROSE: So you're not aware of who in your organisation knows the reasons why these people are being employed?

FIONA TRUSSELL: Well, there is a specific example that has been provided and my response was "I don't have the details for that specific example, so will take it on notice and provide a response."

The Hon. PETER PRIMROSE: Okay.

The CHAIR: Do you know Paul Rogers, the Sydney Metro utilities director?

FIONA TRUSSELL: No, I don't know Paul Rogers.

The CHAIR: Paul Rogers sits as the Sydney Metro utilities director. He is also the sole director of a company call PRO Consultants. PRO Consultants has won contracts worth \$13.3 million since August 2021—so, in the past two years, \$13.3 million. At least six people have been hired to work at Sydney Metro on contracts equating to a \$500,000 a year salary. Six of those people report directly to Paul Rogers. So, again, we have someone who has their own company and who has been sitting within Metro, and he wins contracts for some people that he then employs in his other company to be hired to sit beneath him in Metro. Does that strike you as unusual?

FIONA TRUSSELL: Again, it's no different to the response I provided previously, Chair. PSCs, skill hires do not have an ability, do not have a financial delegation, to hire people into our business. Those decisions are made by government employees.

The CHAIR: And, from a probity perspective, there are no conditions put on these contractors when they're sitting within Metro to not be running businesses separately or not be tendering for work as external operators? I understand you have not been at Metro for all that long, but you've been around a long time. Surely this strikes you as unusual?

FIONA TRUSSELL: Any individual that is sitting in a government role or engaged within our business under a contract has conflict-of-interest and probity obligations. We have very rigorous procedures in place to manage those obligations.

The CHAIR: Is there any checking or enforcement of conflicts of interest?

FIONA TRUSSELL: So conflicts of interest in terms of our employees—all employees are required to declare their conflicts of interest.

The CHAIR: That's just a declaration, though. Enforcement?

FIONA TRUSSELL: And there are ongoing obligations on individuals to declare where situations change. Our senior managers have annual declarations required to declare their conflicts of interest.

The CHAIR: Apologies for sighing, it's just that we have seen this from department after department, from firm after firm—this idea that you just declare the things and then it's not a problem. Clearly, it's not enough to just declare a conflict of interest or to be held to a standard.

FIONA TRUSSELL: Sorry, if I could add—if there are conflicts disclosed, then there are management plans, management controls put in place to manage those conflicts and no doubt a variety of actions follow as a result of that.

The Hon. Dr SARAH KAINE: What if they're not disclosed? How do you know that there's not one?

FIONA TRUSSELL: Well, we certainly take fraud and corruption very seriously. We have an internal team that is focused on fraud and corruption, integrity management—

The Hon. Dr SARAH KAINE: Do they check conflict-of-interest declarations periodically?

FIONA TRUSSELL: They most certainly do. In terms of conflicts, we have probity assessments. They can review and advise our conflicts of interest probity controls, management of those controls. We can seek advice from them. We also use throughout our full procurement process—we have a conflicts of interest process and probity controls in place there. We have probity reviews, probity advisers throughout and evaluations of that through our evaluation committees. There are many and varied procedures in place to manage for this.

The Hon. Dr SARAH KAINE: Could I ask you to provide on notice the last report of the probity committee that looked at conflicts of interest and checked those that weren't declared? Could we get that on notice please?

FIONA TRUSSELL: I am happy to take that on notice.

The CHAIR: Again, we have processes and procedures, and this is very similar to what we've heard across the whole of government. There seems to be a lot of trust being put in people to simply do the right thing, but what we haven't seen within government is any sort of enforcement or checking or consequences for doing the wrong thing. Do you have any examples of that at Sydney Metro?

FIONA TRUSSELL: As I said, we do have an internal fraud and corruption team certainly who investigate matters. I am not at liberty to discuss any matters that may have been investigated.

The CHAIR: Perhaps you could come back on notice with the numbers of people who may have been—the number of investigations or some sort of information that could give us some assurance that some action gets taken somewhere.

FIONA TRUSSELL: I am happy to take that on notice and see what we can provide for you.

The CHAIR: I've given you two examples—we had a third example that I raised this morning—of situations where there are people sitting within Transport, and particularly within Metro, who have been there for a long number of years, 10 years, eight years. These people are contractors. They describe themselves as being on secondment and in many cases they run other entities that then pitch for work back to the Government to get more consultants and contractors put within Metro. I have described the consulting profession as being a bit like an infestation. When I look at this situation, it does seem like consultants have got us over a barrel, or contractors have got us over a barrel, when it comes to embedding themselves in our operations and then making themselves pretty much hard to replace. Does that cause you concern? Having heard this, are you going to be taking some action to work out the extent of the problem within Metro?

FIONA TRUSSELL: Firstly, what I will say is that Sydney Metro has grown from a single delivery office through to an organisation that has been established under the Transport Administration Act in 2018 to managing concurrently, as I indicated up-front, three mega projects, operating the services of Metro Northwest and the like. Over the last few years, we have used a blended model to deliver the outcomes. Sorry, I have forgotten the rest of your question, Chair.

The CHAIR: Perhaps I'll ask you a different one. If we are paying large numbers of people sometimes two, three times as much as what they would be getting paid if they were direct employees of Sydney Metro, is that contributing to increased costs of the projects that Sydney Metro is running?

FIONA TRUSSELL: The program of work that we have means that we use a multitude of delivery partners and contracted services to meet the program of work and the life cycle of that project at a point in time. The market forces, the supply and demand, and the economic conditions that we work our way through mean that skills and capabilities that we need will ramp up and ramp down according to the cycle of that project. In terms of the overall value for money, value for money is assessed right through our life cycle. It's assessed right up-front through the planning process, it's assessed through how we source, and it's assessed through how we manage the outcome of the project that we're delivering.

The CHAIR: We have allowed a two-tier workforce to occur within Sydney Metro and other parts of Transport, wouldn't you agree, where some people are paid one thing and then somebody sitting across from them,

who happens to be a contractor, is paid two or three times more than that. Again, is that not a problem from your perspective and something that you would be looking to investigate and potentially change in the future?

FIONA TRUSSELL: Workforce planning is certainly an area of activity and review that is ongoing all the time, relative to the project and relative to the project's activities, the skill sets, the capabilities and the capacity of the business. So we are continuously reviewing our workforce plan and our workforce needs. To deliver a \$60 billion program of work, we work with a multitude of industry partners and providers to enable those services to be delivered. We absolutely have a continuous program of work and planning to enable us to be comfortable that we are delivering the value for money. It's a rigorous part of our ongoing assessment, as I said, right through the life cycle, through the plan, through the procure and through the manage of the project.

The Hon. MARK BUTTIGIEG: But, somewhere along the line, doesn't someone look at these things and go, "Hang on a minute, this bloke has been on the books for 10 years"—I am using this as an emblematic example because the Chair has raised it—"and we are paying him \$600,000 a year, effectively. I wonder if we could do that better. We may as well resource someone internally for \$300,000 or \$200,000"? Does anyone actually put that?

FIONA TRUSSELL: Maybe I didn't explain myself well enough; my apologies. If we look at our workforce needs and we look at the outcomes and the services that we need to deliver, it depends on the peak and the nature of the activity of work. If we assess that we're going to have a need for those particular services right up-front over a longer period of time—it can be short-term or it could be mid-term—we will assess that and review that. All of our arrangements have contract dates. They are reviewed relative to contract dates and business needs throughout the program of work.

The Hon. MARK BUTTIGIEG: In terms of this particular example—and, as the Chair has pointed out, with a bit of legwork, there's many more—are you confident that there has been value for money in that particular arrangement over a 10-year period?

FIONA TRUSSELL: In terms of the specific examples that were provided, I'm happy to take the detail on notice. I don't have the detail across those. But value for money is certainly an important assessment in everything that we do.

The Hon. Dr SARAH KAINE: Could I follow up on that value-for-money question, Ms Trussell. You'd be familiar with the Auditor-General's report on the use of consultants and the use of Sydney Metro as an example. In terms of value for money, that report points out that a selected consulting firm—it was a single source procurement that was engaged just under the \$250,000 threshold for approvals—had not agreed to the government's standard commercial framework. That is the maximum rates that consultants can charge. In that type of situation, how could the Metro be sure that they were getting value for money?

FIONA TRUSSELL: Firstly, what I would like to say—we absolutely welcome the findings and the conclusions of the audit report. I am pleased to say that the audit report did not identify any noncompliance with New South Wales' procurement policy or guidelines. In terms of that report, we are committed to working through recommendations with a recommendation program of work we expect to complete through to the end of this year. A number of initiatives have already been undertaken. In terms of the procurement of our providers, we utilise the performance management scheme. There are requirements within that and requirements within the Procurement Board in terms of engagement of any providers that are outside the commercial framework. We've complied with the requirements of those.

The Hon. Dr SARAH KAINE: I understand the official requirements that you complied with. The question was, "How can you be sure that it's value for money if there's no comparator?" While I appreciate that there were no adverse findings in terms of the actual letter of the regulation, it was included as an example because of the gaming aspect of getting an organisation in under that threshold and then continuing and varying the contract, which actually does allow a subversion of the framework. I appreciate what you're saying about no black-letter noncompliance, but the reason that the example was included was about that other aspect.

FIONA TRUSSELL: If I can respond to your observation, wherever possible, Sydney Metro plans and assesses the full value of contractual engagements up-front. The scope of work that was approved up-front, as noted within the Audit Office report, was in accordance with that. That was our assessment. Supplementary scope of work was not anticipated at the time, at the outset of that engagement.

The Hon. Dr SARAH KAINE: So it was just a coincidence that it was \$249,000, the initial?

FIONA TRUSSELL: It was a scope of work, I understand. We've utilised the panel, the PMS scheme, and that was the quote.

The Hon. Dr SARAH KAINE: Big coincidence.

The CHAIR: While we're on variations, can I ask you just about two specific ones before I move on to other things? You may need to take these on notice. I understand. There's one for cost-consulting services that was awarded to E3 Advisory. There was a variation published on 20 March. Under that variation, the contract was extended by a month, from 29 June 2023 to 31 July 2023. The amount payable went from \$262,405 up to \$660,000. I'm curious as to how it doubled for one month's extra work. Do you know any visibility on that one?

FIONA TRUSSELL: I don't have that level of detail with me, Chair—happy to take that on notice.

The CHAIR: Then I've got another one here, for probity advisory services with O'Connor Marsden. This one is advisory services of the Sydney Metro West projects. This one runs from 21 October 2021. The variation was published—it must have been the original, published on 25 November 2021—I'm not sure. It then says that the amended contract duration is one day extra. So it's gone from 31 August 2024 to 1 September 2024. But the amount goes from \$331,238 to \$1.153 million, which is like a three-times extension for a one-day extension in contract length—so that is another one that would be good if you could look into.

FIONA TRUSSELL: I am happy to take that on notice for you, Chair.

The CHAIR: I know that you were also involved in the work that Transport did in relation to setting up TAHE. Is that right?

FIONA TRUSSELL: I have previously worked for Transport for NSW, yes.

The CHAIR: Were you involved in the TAHE project?

FIONA TRUSSELL: Yes, I was.

The CHAIR: Did you have oversight of Transport for NSW work with Mr Lyon from KPMG?

FIONA TRUSSELL: Chair, can I say that this afternoon I am here representing Sydney Metro. I don't have much information at hand with regard to TAHE, so I would be more than happy to take your questions on notice—if I can say that from the outset.

The Hon. MARK BUTTIGIEG: I am sorry, Ms Trussell, that was a fairly straightforward question that didn't require intricate knowledge of TAHE. It was about whether or not you had worked with—

The Hon. WES FANG: Point of order: Given that we have the procedural fairness resolution, the witness should be allowed to complete her answer prior to any interjections from the Hon. Mark Buttigieg.

The CHAIR: I wasn't aware that the witness was giving an answer. If she is giving an answer, please continue.

FIONA TRUSSELL: I do think it's appropriate to say that absolutely up-front that I will have to take questions on notice with regard to TAHE. But I can confirm that I do know Brendan Lyon.

The CHAIR: The reason I ask—firstly, unfortunately we were not able to have the chance to speak with you during the TAHE inquiry, even though you were named on a number of the emails. It is very handy to have you here. Given that we are looking at the way in which government is using consultants, I am particularly interested in your thoughts from that time around the conflicts of interest that KPMG had, how they were managed and whether you had any—I'm trying to put this in a way that you don't feel that you are stepping outside of the role that you are here for. Are there any recommendations you would have in terms of government using consultants going forward to avoid the conflicts of interest issues that happened during that TAHE work?

FIONA TRUSSELL: I think with regard to conflicts of interest it's important for our organisations, as we do at Sydney Metro, to have really robust policies and procedures that address the manner in which conflicts of interest are managed, not only internally for our organisations, but being clear with our service providers. I think being clear and managing our processes in accordance with that is very important.

The CHAIR: Have you been contacted by any regulators in relation to KPMG?

FIONA TRUSSELL: I have not personally.

The CHAIR: Has KPMG contacted you in relation to any regulatory inquiries into KPMG?

FIONA TRUSSELL: I have not personally had any contact on that matter.

The CHAIR: I can probably ask my remaining questions on notice. Thank you for attending and giving us the benefit of your insight. To the extent there were questions taken on notice or there are supplementary questions, you will have 21 days to respond and the Committee secretariat will be in touch to discuss.

(The witness withdrew.)

(Short adjournment)

Mr PAUL LOW, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, sworn and examined

Mr MARCUS McARDLE, Risk Management Partner, Audit, KPMG, sworn and examined

The CHAIR: We now welcome our next witnesses, from KPMG. Would you like to commence by making a short opening statement?

PAUL LOW: I would, thank you, Chair. Committee members, we welcome the opportunity to appear before the New South Wales Public Accountability and Works Committee's inquiry into the Government's use and management of consulting services. Joining me today, as introduced before, is Marcus McArdle, a risk management partner and a member of our firm-wide risk, ethics and independence team. We recognise the vital role the New South Wales public service plays in protecting and securing the State's future by delivering on the policy agenda and priorities of the Government and of the Parliament.

For KPMG and other private sector firms, it's unquestionably a privilege to be engaged to support the New South Wales public service in the work that it does. We recognise that in these roles, we must operate with the highest levels of integrity, trust and confidentiality. We are committed to exhibiting the highest standards of personal and professional integrity. We acknowledge that there have been times in the past, like the matter involving TAHE, where we have made mistakes. We have been candid about that. As our CEO told a Senate inquiry earlier this year, we use these difficult experiences as opportunities to improve the way we work and the services that we provide.

KPMG is a compliance-based firm. Robust policies and procedures related to our confidentiality and conflict management obligations are in place at all levels in our organisation to ensure that we must, and do, take our responsibilities seriously. All KPMG partners are subject to the Accounting Professional and Ethical Standards, APES 110 Ethics for Professional Accountants. The requirements of APES 110 are reflected in the numerous KPMG policies and procedures that apply to all partners and our staff. Given community expectations continually evolve, it's important to ensure the regulatory landscape reflects the contemporary environment. From our perspective, we believe the regulatory regime can be strengthened to help enhance trust in both our sector and the work that we do.

We are committed to working constructively with this Committee and the Commonwealth's review of the regulation of consulting, accounting and auditing firms to consider practical and fit-for-purpose reforms that would build confidence amongst clients, stakeholders, our staff and the community. When working with the public service, our obligations are twofold. We understand the need to deliver high-quality service through independent, robust advice to assist the public service in fulfilling its role, and we must demonstrate value for money, ensuring the public is receiving significant benefits for what are valuable taxpayers' funds.

There is an important point to make about our work with the public service. Our agenda isn't to replicate or replace the work that the public service can do itself. For example, KPMG is, by choice, not a member of the New South Wales government's Contingent Workforce Scheme, which is essentially a labour hire panel. Our focus is to add value to and strengthen the public service work by tapping into our specialist national and global leading expertise in digital and technology, and commercial and transaction advice for infrastructure projects, and in the areas of risk, compliance, assurance and controls.

Our submission recommends to the Committee several opportunities for greater integrity, transparency and value-for-money improvements. These are in addition to the steps that KPMG should, can and has taken to support these outcomes, including the release of our impact report, our partnership agreement and strengthening our conflict management and confidentiality controls. But we recognise there's more that we can do. We support the New South Wales Government's commitment to increase penalties for improper disclosure of confidential tax information and we support strengthened processes in relation to confidential consultations.

We also support greater transparency of consulting spend and continuous improvement in procurement frameworks. These include better centralised collection and reporting of procurement data through a single platform, options for better public service knowledge transfer and skills uplift, and that governments consider the introduction of an integrity charter for working with the public service. Thank you for the opportunity to make this opening statement. We are proud of the work we do to support the New South Wales public service and welcome questions from the Committee.

The CHAIR: Thank you for coming along today. Because the media will ask, is there a reason that Mr Yates didn't appear today?

PAUL LOW: Thank you, Chair, for the question. We determined, given the scope of the focus of this Committee, my previous appearance before this Committee in relation to some of the matters we'll no doubt discuss, as well as my role leading our government business across the country, that I was best placed to respond in more detail to the Committee's questions around its terms of reference. Equally, Mr McArdle is an expert in our ethics, independence and risk team. We felt, between the two of us, we had the appropriate leadership coverage for the Committee's terms of reference.

The CHAIR: You said in your opening, and I also heard this said, I think, at one of the Senate inquiries, that KPMG made mistakes in relation to TAHE. What were those mistakes?

PAUL LOW: As the Committee would be aware and as is on public record, we failed to understand that we had gotten ourselves into a conflict situation around the two pieces of work under which we were providing services to the NSW Treasury, around the accounting standards and treatment of the TAHE entity, and the work we did for Transport for NSW, around the long-term operating and financial implications for TAHE. Our challenge was that when we realised that there wasn't a consistent policy view within the government agencies around implementation of the TAHE initiative—Committee members will know this has gone back a number of years, probably a decade or so. As we stepped into that, we were under the understanding that through these two pieces of work, our role was to help support the implementation and provide advice in two specific areas to support implementation of TAHE.

What we failed to understand at the time of the engagements was that there was not an alignment between the government agency interests, and what we should have done was we should have stepped back and shown courage, stepped back from those engagements and asked the Government to resolve those issues through its agencies. That, on reflection and consistent with the Auditor-General's report findings, was probably something that we should have done at that time, and we did not. The only thing I would add to that was we felt we would be able to bring forward the advice in the consistent manner to support the Government's thinking, but obviously we were not able to do that, and we should have stepped away at that time.

The CHAIR: It's heartening to hear you say that there were mistakes and admit those mistakes. What have been the consequences of those mistakes, internally?

PAUL LOW: I think there are a couple of elements of consequences. I was the engagement quality review partner on Mr Lyon's engagement. We can talk about that role if that's helpful for the Committee as a way of understanding how we support our more complex projects. My role was really to work with Brendan and the team to deliver those transport outcomes, and similarly there was an EQCR partner for the Treasury piece. The implications for us were very significant, reputationally, and we've also lost two partners from our business during that period of time. Having been in that engagement in supporting our teams, as I described to you, it had a personal toll on many people. It was a very challenging environment. For us as a firm, that's why we felt we needed to really lean into that, own up to our mistakes and put in appropriate controls in future arrangements so that we don't find ourselves in that situation again.

The Hon. SCOTT FARLOW: Mr Low, one of the questions we've been grappling with throughout this inquiry is about the Chinese Wall, so to speak, that exists within professional service firms and how that works, particularly in the context of government and private sector clients. Here was a case, of course, of two government clients, effectively, and we saw that the Chinese Wall broke down entirely. Of course, that was partly contributed by the Government. What do you see as some of the changes you've made to be able to actually enforce those Chinese Walls in such situations?

PAUL LOW: I would say that, not dismissing the significance of TAHE, it was quite a unique situation, as you describe. It's not very often that you get to this stage in a major transformation where there isn't an alignment around the idea and the implementation pathway. We stepped back from that moment and there are two things that we did. Firstly, we strengthened our engagement review and acceptance arrangements so that when we receive a brief from government, it then triggers a risk management process within our firm, which Mr McArdle can speak to and give the Committee a sense of in a moment. But the focus of the engagement review is a series of questions to understand the intent, the complexity, the risk and the conflicts—perceived or otherwise—and allow us to determine, then, "Should we accept this piece of work or not?" We included an additional step in our risk management processes to say, "Are the government entities in conflict?" to draw out this particular circumstance.

The other thing that we have done is strengthen our client lead partner network so that we had greater insight as to what was happening at the time within our business, so that we were more informed about these things as they came to the foreground and better prepared for making decisions in relation to the scopes of work that we respond to. It might be helpful for Marcus to talk a little bit about our risk management processes and what we've done around confidentiality et cetera since that time, if that would assist the Committee.

MARCUS McARDLE: Thanks, Paul. Just to build on that, we've reinforced the systems that we have in place and our people who are working through these engagements to ensure that they know the way in which those processes need to be applied. Anytime that there is an engagement that we have an opportunity to participate in, we go through a rigorous engagement assessment process and a client assessment process. In the event that there are conflicts identified through that process, we do elevate it to a commercial conflict resolution committee. That committee is led by the national managing partners of each of our parts of the firm. They assess the highest risk commercial conflicts that have been identified through our systems that require that level of oversight. Through that committee, there are certainly instances where we would decide not to take on an engagement because of the conflicts that have been raised or, alternatively, consider whether we can implement mechanisms that would enable us to deal with those conflicts. But, as I say, there can be circumstances where we would reject engagements because we cannot deal with those conflicts.

The Hon. Dr SARAH KAINE: Can I ask what that threshold is? Do you have a set of guidelines that is, "We will accept this," "We'll ask more questions when it gets to this level," and then, "When we've got two different sections working on the same issue but for different departments, we'll say no"? Is there a threshold? How will that be uniformly implemented?

MARCUS McARDLE: There isn't a black line, if you like, that would automatically require that. But in the individual circumstances, partners that are involved would complete questionnaires that are part of the engagement and client risk assessment process. That would then trigger the need to raise these matters to the commercial conflicts committee because of the fact that we've identified that there are potential conflicts there. It is not a one size fits all, but through that process we would raise it through to the commercial conflicts committee.

The Hon. Dr SARAH KAINE: I'm just a bit—probably not cynical, given the history. We're then accepting that the partners involved are going to be the ones who identify this and set that in motion? I don't mean to be cynical, but there are things that would suggest that, as the public or the Government, maybe we don't want to take your partners at their word with regards to conflict.

PAUL LOW: I might just hop in there, if that's okay, Dr Kaine. In our business, the focus is at two levels. One is what we need to do within our business and what are our obligations fulfilling our code of conduct, APES 110 and what our risk and control environment is as an independence environment, which is what Marcus just described. But we only activate that when we are engaged around a scope of work by government. Similarly, under the professional management services schemes, there are particular requirements for us to advise around any conflict situations in the discussion about when we put a bid in or, in some cases, we'll determine not to bid a piece because we feel—particularly given our reflections since the TAHE matter around perceived conflict because actual and perceived are in fact the same thing. That was one of our other learnings.

There are control mechanisms coming back at us the other way. I'm not sure if the Committee recalls or whether it has been briefed in full on this but, under our arrangements under the professional management services scheme, there's a balance scorecard report every year about our compliance around risk management, financial matters, operations and client satisfaction. They are tests generated as a result of surveys, commissioned by the agencies who engage us around our conduct across those four categories. There's a whole means there of ensuring that there's appropriate expectation coming back at us around how we manage and consider, and have the conversation around conflicts and independence issues.

But I think it's fair to say, with every intent about looking for solutions here, that this area is a great focus across the country right now. There's no question that further things can be done to strengthen this activity: extending disclosures of client arrangements or commitments and being more transparent around the reporting of who gets government contracts and the value et cetera. There are many things that could be done to strengthen the transparency and the independence platforms around these issues.

The Hon. Dr SARAH KAINE: You might forgive me for saying this, given the circumstances that we've all seen play out this year, but it seems that suddenly now that all of these things have been revealed—we've had TAHE here; we've had the PwC; we've had you guys finding a whole lot of your staff cheating on ethics tests. You can understand that there's a bit of a credibility gap. You are all now saying, "Oh, how wonderful that we can be regulated. We should be regulated. That's all appropriate." It's sort of a road-to-Damascus moment for you all, isn't it?

PAUL LOW: The issues about ethical behaviour and consequences—we leant into that with the internal exam cheating matter that you mentioned. It might be useful for Marcus to talk a little bit to the Committee. We've been on a journey for three years and we've had two very significant moments in that. The first one, as you identified, was the internal exam cheating matter, and then TAHE. Neither of those were our finest moments. But in every instance we've looked to reflect back on ourselves and say, "What can we now do to improve ourselves?" and participate in processes like this to enhance that arrangement and to make sure that all the elements that sit in

our code of conduct and the value and purpose that we bring to serving the public service are there clear in our intent and in our delivery. And also publishing the transparency report—for three years we have been publishing the transparency report. Again, they are ways that we are leaning into this issue in a public manner. I might hand to Mr McARDLE to reflect on the exam cheating matter.

MARCUS McARDLE: To go further on that, Dr Kaine, when that came to light, we did identify regulators immediately that we became aware of it. We launched an investigation. We also engaged an independent party to conduct an in-depth cultural review of the firm. That has been a journey that we've been on to strengthen our culture. A key part of that is reinforcing the "speak up" culture within our firm so that people should feel that they have the ability to raise any issues regarding code of conduct, independence matters and anything that they are not comfortable with through the organisation. We had that in place but, historically, they were very senior people that you had to contact. They were our chief risk officer; they were our ethics and independence partner; they were our head of our people and inclusion. What we decided and the feedback that we got through the review was that we implemented an ethical champions network, which is 60 individuals across our firm at levels lower than partner so that our people could feel more comfortable raising an issue with someone who is closer to their level within the organisation.

The CHAIR: When was that, sorry? When did that come in?

MARCUS McARDLE: We did that through last year, Chair.

The CHAIR: In response to the ethics cheating?

MARCUS McARDLE: As part of the review that we conducted out of the independence cheating matter.

The CHAIR: Can we just come back to the mistakes that were made in relation to TAHE? We've talked about conflicts of interest. But another major one of them, I hope, is in relation to the way that the firm deals with whistleblowers and with people calling out wrong conduct. When Brendan Lyon attempted to raise red flags in relation to the work that you were doing for government, what was the response, Mr Low, to what Mr Lyon was saying?

PAUL LOW: The response to that was, as soon as we identified that we had an issue, which was very early—I think it was June 2020, which was at the time that Transport, as per the Auditor-General's reflection of this, commissioned KPMG in the understanding that Treasury had also commissioned us on the accounting treatment side. As soon as we realised that situation, we set up an oversight committee so that we could openly with our firm bring forward those risk issues to deal with at a senior level within the firm between the national managing partners overseeing those pieces of work.

The CHAIR: Was that effective?

PAUL LOW: History would say that it was effective at bringing the issues forward in our firm for consideration. It wasn't effective in getting us to the right decision point, which was, as I mentioned before, treating the two clients as separate entities and understanding that we had got ourselves into a conflict situation.

The CHAIR: But Mr Lyon raised multiple red flags around the conflicts of interest and the unethical behaviour from the former Treasury secretary. He kept raising those red flags and nothing was done. That is my understanding. Then we had an inquiry and it all came out. He has lost his job at KPMG. Do you think that was a mistake in relation to the way that the whistleblowing procedures or the calling-out procedures worked within the firm?

PAUL LOW: As Mr Lyon raised those issues—and I will remind the Committee that I was in that chain with him delivering that Transport piece of work, so I'm aware of that passage of time and what we were dealing with in terms of bringing forward the challenges in the two pieces of work. The firm grappled with that and it couldn't find a solution. It did listen to input from all sides in our firm, as we were making sure that we delivered within the scope that we were commissioned to do for the two agencies—Transport for NSW and Treasury. It is unfortunate about the personal impact on many people, as I said earlier in this conversation.

The CHAIR: It's more unfortunate for some than others though, isn't it, if some people are losing jobs after trying to call out bad behaviour? From our perspective, when we're looking at the Government's use of consulting firms such as yours—coming back to what Dr Kaine was saying; there seems to be a bit of an ask of us to just trust that consulting firms are doing the right thing—how are we to be sure that the culture that allowed that situation to occur in relation to TAHE, which ended up with a man losing his job, isn't a culture that still exists today? What have you done to reform?

PAUL LOW: I have a couple of responses to that question. In terms of matters of fact, I don't mean to be trite about this, but Brendan resigned seven or eight months after the TAHE reports were delivered. He made a

choice to go forward and set up his own consulting business with the support—as per his emails as he left the firm—from KPMG. I'm not suggesting for a moment that the challenges of TAHE, which we were all facing into at a personal level at that particular time, didn't have an impact on him, his team members, the people delivering on the Treasury side, their team members and, in fact, probably within the Government as well. It was a very unfortunate set of circumstances, and we had a responsibility in that around our clients and our people. There were a range of elements, as per previous submissions from KPMG in relation to the previous inquiry, about things that KPMG did to put support around people.

The important question that you're raising is this issue about behaviours, ethics and how our firm responds to and drives forward the right culture. We have, in the last two weeks, released our impact report, which I will get Marcus McArdle to talk about in a moment. That indicates, over the three years, the movements and indices in how people feel about the culture of KPMG and the responses from staff members. We are constantly focusing on ways to drive that conversation in the right way. If it's okay with the Committee, I'd like Marcus to reflect on some of those elements that might assist with those reflections.

MARCUS McARDLE: Thanks, Paul. It does pick up on your comments, Chair. Within our impact report—this is the third year that we've published that report in which we provide a lot more transparency on the firm than has been provided in the past. It is prepared in accordance with a global reporting initiative set of standards. But, to your point, we provide detailed information regarding code of conduct matters which have been raised by our people and the result of the investigation of those. For example, through the year ended 30 June 2023, over 65 per cent of those matters that were raised as code of conduct matters through a whistleblower hotline, for example, or through other channels within the firm, were substantiated and action was taken. And that action could be on a spectrum—from impacts to people's remuneration all the way to being exited from the firm. So we've really leaned into that by providing a lot more transparency on those matters, and you can see that in the impact report.

The CHAIR: Just finally, Mr Low, you said before that Mr Lyon resigned. He has made it very clear, on multiple occasions, that he was sacked. Why is it that nobody else faced consequences in relation to the mistakes that were made in relation to TAHE?

PAUL LOW: Mr Lyon did resign from the partnership on 30 June 2021.

The CHAIR: Was he strongly encouraged to resign?

PAUL LOW: That's a matter for Brendan. That's a personal decision. I wasn't in the room; I'm not part of that conversation, so I can't answer that question. What I can say to you, though, in relation to issues around consequence, is that in our firm there is a structure—a balance scorecard around performance—and each and every year we look at how our staff and our partners responded to the particular areas of behaviour, of living the values et cetera. During that process, there are times when people's behaviour and activities are brought to the fore around their contribution and how they went about it. So, in that environment, there would have been conversations at the time around performance. I'm not in the performance chain for those conversations, so I can't give any insights to the Committee about others that were impacted. But what I would say is that both Heather Watson and Brendan resigned from the firm.

The Hon. MARK BUTTIGIEG: Are you saying there were performance appraisals that fed into that process?

PAUL LOW: I'm not sure if there were any performance appraisals, Mr Buttigieg, that were going into the resignation-retirement process. I can't provide insight on that. I wasn't in those conversations.

The Hon. MARK BUTTIGIEG: Are you able to provide the Committee with any of those performance appraisals, on notice?

PAUL LOW: I'm happy to take that question on notice.

The Hon. Dr SARAH KAINE: Could I ask a related question? I think we asked this of Deloitte in here recently. Could we also get your performance framework? Most particularly, I am interested in your KPIs and how performance bonuses are awarded. This question may be for you, Mr McArdle. Obviously, we don't need to identify them, but could we get how many people have been disciplined or gone through some kind of process because you have identified behaviour that does not comply with your standards and your codes?

MARCUS McARDLE: We could take that on notice, Dr Kaine. Yes.

The CHAIR: Mr Low, were there any concerns that you had on matters that you observed during the firm's work in relation to TAHE that you should have reported to a whistleblower hotline or to some other framework within the firm?

PAUL LOW: It was an area of rich contest of ideas and stress—that is, we get engaged to deal with very complex, very challenging engagements at times. This was one of those situations. In any environment there is a contest of ideas; there are people who have got tense reactions to what we're trying to manage—so the stress of the environment that you work in, at times. But I didn't see anything in my overview of supporting Brendan in that material which warranted reporting. There were moments of concern, and he was offered, you know—and I do go back to the original kind of reflections that this is a committee around the terms of reference. I don't want to get involved in the personal side of things, but what I would say is that there were, as per responses to previous inquiries, opportunities provided to Brendan around care. Part of my role was to support him and the team, ensuring we delivered our objectives and the scope in relation to the Transport for NSW piece of work.

The Hon. Dr SARAH KAINE: Mr Low, I'm just trying to reconcile two bits of evidence you've just given us. Early on this afternoon you mentioned that it took you by surprise that you hadn't managed the conflict because you hadn't realised that there were differing views of different agencies. We're now hearing that, actually, there was quite intense discussion and firm views. So which is it?

PAUL LOW: I think with the passage of time—what happened at that particular point in time is the Cabinet had made a decision to pursue TAHE as a policy initiative. As I recall and understand, it instructed the two agencies, Transport for NSW and Treasury, to come together and prepare a submission to support the implementation of that. That required advice around the accounting treatments—which you'd be aware of—for TAHE as an entity, and a piece for Transport for NSW to understand, "What are the implications here for us? What are the long-term risks and opportunities and things that we need to consider?" That was the piece of work that Brendan delivered and I oversaw with him, and that's the piece of work I think was subject to discussion and reflection by representatives or witnesses to the Committee this morning.

In that environment there's an understanding, as we were leaning into those two pieces of work, that we felt we would be able to bring the agencies together to solve the equation the Government had around implementation. As the Auditor-General's report noted, that was one of the factors in Transport deciding to seek Mr Lyon and KPMG's support around advancing the TAHE matter, but those relationships broke down quite quickly at the agency level and, therefore, in our business as well. We then were struggling with, "Okay, how do we then advance this?" So it became acute in a matter of probably weeks—if that makes sense—in a fast-moving timetable where we were trying to support our public service agencies to deliver the outcomes for government through our technical advice across the two engagements.

The Hon. MARK BUTTIGIEG: Did Mr Lyon ever raise with you his continuing concerns?

PAUL LOW: Mr Lyon raised it several times during our discussions about the challenge we were leaning into for that piece of work that he led. We had a committee comprising the TAHE entity, Queensland Treasury and also Transport for NSW. These were all challenges. These were all agencies trying to work through the perspectives of each other to try and make sure they got an informed view to Cabinet.

The CHAIR: They weren't just challenges, were they? Mr Lyon raised clear concerns around ethics, not ideas and challenges. He was claiming that KPMG was not acting ethically, wasn't he?

PAUL LOW: That was one dimension of some of his representations, and it was a challenging environment, as I described to you.

The CHAIR: But he was right. He was raising red flags around ethical conduct that has been borne out to be correct, and nothing was done within the firm's processes.

PAUL LOW: As I said at the start of this Committee hearing, there were extensive learnings on behalf of all of us in relation to TAHE. I wouldn't say there was unethical behaviour; I would say there were errors of judgement in our firm and we sought to bring together the right mechanisms to provide support and a means by which to work through the expectations of our two clients. There's not much more I can add apart from indicating to you that we have reflected on that and we have put in place new arrangements to ensure that we don't have those sorts of situations occurring again. In terms of the whistleblower dimension that you referred to before, we are strong supporters of the whistleblower environment. It was one of the issues that enabled us to respond to exam cheating and we're strongly leaning into that conversation about an appropriate whistleblower regime supporting our staff and the community.

The Hon. MARK BUTTIGIEG: What were those whistleblower protections like at this time? Have you since updated them or were they always of this standard?

MARCUS McARDLE: We have enhanced our retaliation monitoring system so that if people raise concerns through whistleblower hotlines—there are, we understand, concerns when people decide to do that in that they think that there could be some sort of retaliation to them in the future. We've put in place mechanisms

to attempt to monitor that and ensure that that doesn't happen, and we've communicated that to our people. The sort of things that I referred to earlier, Mr Buttigieg, are a range of things that we have put in place as a result of it: the independent culture review that we undertook three years ago, the retaliation monitoring system, we've trained all our people on an ethical decision-making framework, put in place the ethical champions networks and we've reinforced the use of the whistleblower hotline. That is an independently operated hotline. We don't get the initial results of that. It goes through to our KPMG global operations overseas and they then provide that back to us and request us to provide comments on it.

The Hon. MARK BUTTIGIEG: Can you just tease out the retaliation piece for me?

MARCUS McARDLE: Yes. That is a process that we've put in place so that people that would have raised matters through a whistleblower hotline, if they felt in any way that they were receiving retaliation through their work—their interaction with superiors—that they could raise that through separate channels of the firm for further investigation of that.

The Hon. MARK BUTTIGIEG: Was that in direct response to Mr Lyon being called back from leave the day before his wedding?

MARCUS McARDLE: These matters, Mr Buttigieg, as I say, were part of the external review that we had conducted where we identified a number of things that we did want to action to enhance our culture within the firm.

The Hon. MARK BUTTIGIEG: So the external review found that retaliation was obviously a weakness in the whistleblower protections?

MARCUS McARDLE: The external review was conducted back in 2020. As a result of that, a number of opportunities to improve our ethical culture framework were identified for us, and we have worked to action those.

The Hon. PETER PRIMROSE: Just briefly, what external oversight is there in relation to all of this now? I say that because one of the things that we've found in relation to, for instance, the State whistleblower legislation, is the fact that a whole lot of it is based upon internal, in-shop oversights. Frankly, if I'm someone who is being victimised or seeing something, if the only thing I can do is ring some of the people higher up in the organisation—who are mates with the people who are a couple of steps down in good old Australia—I'd feel a bit wary about that and I'd like to know that there's someone outside.

When we were setting up the legislation in New South Wales, for instance, there's a provision that after you've gone through these matters within your organisation, you can choose to approach a member of Parliament and it will still be protected as a protected disclosure. I'm not suggesting that is what you should do, but it's simply someone outside the organisation who is also independent and may be on your side. I mean, that's one of the reasons why people approach their trade unions. What powerful body outside—who is not part of KPMG—can people approach, who has the power to take action?

PAUL LOW: There's probably a few dimensions to that, which I'll ask Marcus to reflect on in a moment. Not diminishing what you mentioned at the outset, we do have a core responsibility, in terms of looking after our people, to be strong supporters and enactors of appropriate whistleblowing regimes, and that's something that we continue to work on. In our business that's very important. Outside—

The Hon. PETER PRIMROSE: Every organisation that I've ever spoken to says that.

PAUL LOW: Yes, I'm just about to—

The Hon. PETER PRIMROSE: That's why you need someone outside.

The Hon. WES FANG: Point of order—

PAUL LOW: Sorry, I'm just setting that down and moving to your question about external. Marcus, do you want to talk about CA ANZ or the other regulatory bodies in relation to this?

MARCUS McARDLE: Yes. If I could just comment, Mr Primrose, on that comment on the whistleblower regime, in one of our submissions to the Federal inquiry we have noted that we would be a strong advocate of a more uniform approach to whistleblower protections. We voluntarily apply the Commonwealth whistleblower regime for the KPMG Australia partnership, but we recognise, to your point, that there's not consistency there. And so we've certainly, per our recent submission, encouraged a review of this to provide consistency and, as you say, comfort to people who wish to use that. To the point that Paul noted, many of our people are members of professional organisations. Many of our accountants are members of CA ANZ—Chartered Accountants Australia and New Zealand. Other professions that we employ, similarly, are members of those professional bodies. They

have opportunity through those bodies, as independent bodies, to raise concerns regarding things that to this point they may be faced with in their professional obligations.

The Hon. SCOTT FARLOW: In terms of that issue, let's go back to the TAHE situation. You had Ms Watson, who was an accountant, and Mr Lyon, who wasn't an accountant. What happens in that situation? Where is the recourse for Mr Lyon in that instance, if it's not through the CA ANZ framework?

The CHAIR: He was still a member of CA ANZ.

The Hon. SCOTT FARLOW: Was he a member of CA ANZ?

MARCUS McARDLE: He would be, Mr Farlow.

The Hon. SCOTT FARLOW: As a partner?

MARCUS McARDLE: Yes. As a partner, he is a member. Yes, correct.

The Hon. WES FANG: I'm trying to understand the governance structures where a lot of these issues would be teased out. Ultimately, it falls to the board of directors of the company in relation to the governance aspects of the organisation. How are the directors appointed? How do they gain their roles? What do they do by way of continuing personal development in that role? Can you provide some insights into that?

MARCUS McARDLE: I can comment and Paul can add to that. The board that you're referring to is the board of KPMG Australia, is that correct, Mr Fang?

The Hon. WES FANG: Yes.

MARCUS McARDLE: That board is made up of a number of partners of the firm and also independent board members. We have two independent board members sitting on our board who are not partners of the firm. They are, as I said, independent of the firm. We engage an external recruitment organisation to identify independent partners. They are appointed by the board for three-year terms.

The Hon. WES FANG: But in relation to the whistleblower aspects, they're ultimately the body which is going to be at the front of any prosecutions that may be in place. Are you providing to those independent members and to the other members the clear training that's required in order for them to understand what it is that the State and also Federal legislations entail?

MARCUS McARDLE: If I could just clarify. When our people would wish to use the whistleblower hotline available within the firm, that is run by an independent party. KPMG in Australia does not have visibility at that point of which of our people or what are the matters that are being raised through that process. That information then goes to KPMG Global. That is the overseeing entity of the KPMG network of independent member firms. They receive that information through the hotline. They then provide it back through to the firm, to our chief risk officer. They specifically say, "These issues have been identified. You need to action this and respond back on what has occurred." There is an independent oversight through the KPMG Global network that is monitoring anything that has been raised through the whistleblower hotline.

The Hon. WES FANG: That's all de-identified?

MARCUS McARDLE: Correct, yes. Exactly.

The Hon. WES FANG: In relation to Mr Lyon, when he identified issues—and that's obviously been well ventilated—was that done through that process or was it done through another process?

PAUL LOW: Thank you, Mr Fang, for your question. I'm not aware—but it is anonymous. I'm not aware of any formal whistleblower submission by Brendan. But, as I say, I may not be aware of that because it is in fact a confidential hotline.

The Hon. WES FANG: When he left KPMG, did he leave on reasonable terms with the organisation? There was no exit interviews where—

The Hon. MARK BUTTIGIEG: I guess it depends on who you ask.

The Hon. WES FANG: I'm just curious because I'm looking at some—

The Hon. SCOTT FARLOW: You can ask him tomorrow, I guess.

The Hon. WES FANG: Yes. I'm looking at the information I've got on his LinkedIn page. He says "with kind agreement from the firm" he is seeking to leave. I'm curious as to how he might have provided you with some information prior to his leaving.

PAUL LOW: His negotiation or his retirement process was handled by our former CEO, so I'm not privy to what happened within those conversations. But you are correct in referring to his LinkedIn account and the way that he publicly reflected on his departure from KPMG and the support that KPMG provided to allow him to start up his business and pursue new ventures. I'm not discounting the challenges which were faced during the intensity of the TAHE period, but I would say there is a personal reflection about where Brendan was and the reasons why he left.

The CHAIR: And you've obviously seen his testimony under oath in front of the inquiry we had into TAHE last parliamentary term, where he made it very clear that he felt quite unhappy about his treatment at KPMG.

The Hon. WES FANG: No, I appreciate that. I'm just trying to cover off all the aspects of it.

The Hon. SCOTT FARLOW: I'm sure he'll have reflections tomorrow.

The Hon. MARK BUTTIGIEG: Can I ask a follow-up to my colleague Mr Primrose's questioning regarding—let's call it the gold standard, the Federal whistleblower legislation? That's all about external accountability. Am I right in saying that, as a partnership, you're not bound that Federal whistleblower legislation? If you subscribe to the view that that is the best system of accountability, wouldn't it be better to set up that external accountability that my colleague suggested?

MARCUS McARDLE: You are correct, Mr Buttigieg, in that that Federal whistleblower Act—we have voluntarily applied that for KPMG Australia partnership.

The Hon. MARK BUTTIGIEG: But what does that mean if there's no external accountability?

MARCUS McARDLE: What do you mean by "no external accountability"?

The Hon. MARK BUTTIGIEG: My colleague pointed out that if you're a whistleblower and you've totally lost faith in the credibility of the firm, ringing someone inside the firm is not going to cut it for you. You need some sort of external body or person to go to. In the case of Mr Lyon, how would that have been availed?

MARCUS McARDLE: We can only speculate in the sense that the Federal legislation that is there for whistleblower protection is Federal legislation; that is, Australian companies that are actually bound by the Corporations Act apply that. As a partnership we are not bound by that, but we have sought to apply it, as you say, as a gold standard of what is applied in the Australian corporate landscape for whistleblowers. So I think your question around other potential options or avenues for people to use or what could be contemplated—I'm afraid I couldn't answer that because we are working with that.

The Hon. MARK BUTTIGIEG: This is genuinely a question out of ignorance, so it's not a rhetorical question. So the current Federal legislation doesn't have provision for external recourse?

MARCUS McARDLE: I couldn't comment on that, Mr Buttigieg.

PAUL LOW: We would have to take that question on notice, I think, given that we're not experts in the HR dimensions and human resources dimensions. But what I would say to the Committee is that we have a strong human resources, people and inclusion team within our business. During the course of TAHE, they were required to speak to a number of people within our business around the challenges of meeting the expectations of our clients as a consequence of the TAHE arrangements that availed. In that situation every staff member, whether they're a senior staff member or a partner, has the opportunity to raise and engage. That's the role of the leadership group in our people and inclusion group: to look after the care and issues raised by members of our staff.

I'm not aware of any formal complaints or formal submissions made by Mr Lyon into that environment. But they are probably of a confidential nature anyway, and should be, so it's a little bit hard for us here today to give you all of those reflections, because we weren't in all of those conversations. But what I can say to you is that our focus is on ethical conduct and the highest levels of integrity, independence and conflict management, and that's what we strive to achieve. We recognise, as I've outlined today and as we have publicly done for the last two years, that we made some big mistakes during that process.

The CHAIR: Mr Low, Mr Lyon signed a deed of release with KPMG on his resignation from KPMG, did he not?

PAUL LOW: I wasn't involved in his departure, so that's a question for Mr Lyon to answer.

The CHAIR: Do you know that, though?

PAUL LOW: I don't know the specifics.

The CHAIR: Is it common for KPMG to enter into deeds of release with partners that then prevent them from saying things once they are no longer a partner?

PAUL LOW: That's not something for me to comment on. I've not been in a position of authority to know what happens in those circumstances, Chair.

The CHAIR: Are you able to take it on notice to tell us how many partners have resigned with a deed of release in, say, the past three years?

PAUL LOW: I'm happy to take the question on notice.

The CHAIR: Thank you. This whole question goes to a theme throughout this inquiry where every time we ask about either potential or actual breaches of ethical conduct or the standards we would expect from consulting firms, we are told about processes and procedures that get followed, boxes that get ticked, forms that get signed, conflicts that get declared. But what we are finding very hard to discover is any form of regulation or binding mechanism or anything else that holds anybody to account if there is unethical behaviour. From a government's perspective, that then makes it very difficult, when you're being told to simply trust a consulting firm, to have that trust. And so if, indeed, as your evidence is saying today, both Ms Watson and Mr Lyon left voluntarily, presumably, from your organisation, who did face consequences for the mistakes that were made in relation to TAHE—actual consequences?

PAUL LOW: Well, I guess in terms of—and I mentioned this earlier in one of the other responses, Chair—there was significant reputational damage for the firm, which means that when government considers the use of KPMG for engagements, that is something that they would consider in terms of how we perform and discharge our duties.

The CHAIR: Has the level of work tapered off from government? If you look at the percentage increase or decrease from the New South Wales Government to KPMG in the past few years, what does the trend look like?

PAUL LOW: The trend would look reasonably—be about even, but remembering that we also had COVID during that period, which was a significant impact on all of us in terms of the amount of support that was needed to support the community. So it's very difficult, going back to your point, to trace back the directness of that. But what I would say to you is that we are judged through our professional and management services contracts, around our performance and our engagements.

The CHAIR: Let's just take a step back. When I asked what the tangible consequences were of what you have admitted were mistakes made by your firm, you referred to there being reputational damage. What we know from what you've now said is that there certainly wasn't a drop-off in work from government to KPMG, so what were the consequences of bad behaviour?

PAUL LOW: There were some adjustments in some of our agencies—Treasury, by way of example.

The CHAIR: What do you mean by "adjustments"?

PAUL LOW: Well, we didn't do as much work in Treasury as a consequence of the outcomes of TAHE.

The CHAIR: But made up for by other agencies?

PAUL LOW: We provided services to other agencies as government came to us—the public service came to us seeking assistance.

The CHAIR: So it's a very small pool of people that damage to your reputation was done within, then—one department, very briefly. Is that correct?

PAUL LOW: As I said before, Chair, it's very difficult to draw a direct relationship between what occurred and what didn't occur in terms of the consequences from a financial perspective. What I would say to you, during that period of time post-TAHE we were very aware of our reputational damage and what we needed to do to rebuild that with the New South Wales public service.

The CHAIR: Is it possible that the amount of work that Treasury was giving to KPMG dropped off once Mr Pratt left?

PAUL LOW: I wouldn't be able to answer that question.

The CHAIR: Are you able to tell us if Mr Pratt ever worked for KPMG?

PAUL LOW: I'm not aware of Mr Pratt working for KPMG.

The CHAIR: Could you double-check your records? There is certainly a media report that refers to him as having worked at KPMG.

PAUL LOW: I'm not aware of that, but I'm happy to take that on notice.

The Hon. Dr SARAH KAINE: I have a couple of questions. You're talking about reputational damage and I guess, relatedly, what might be uncharitably called "spin" about KPMG. Mr Low, you'd obviously be familiar with the submission that you signed off on for this inquiry?

PAUL LOW: That's correct.

The Hon. Dr SARAH KAINE: I have to say, it doesn't really accord with your evidence today, if I'm honest. Reading through your submission as I did, you seemed very concerned about the Tax Practitioners Board case—that, of course, involved one of your competitors—and yet there is no self-reflection on either the TAHE case, the "speak up" culture piece, the ethics cheating. In fact, there seems to be some gratuitous mention of gender equity reports that don't fit within the scope at all. Why didn't your enthusiasm for expressing or admitting mistakes extend to the submission? Because, as I said, it really does perpetuate cynicism around the approach that I don't think is helpful for you or your profession.

PAUL LOW: We do lean into the TAHE issue on page 10 of our submission, where we call that out. We felt it was important—as we have done in terms of appearing previously before this Committee and appearing before the Senate committee on these matters as well—to be fulsome in our reflections around what we got wrong and owning our mistakes. We took the approach to this Committee, around its terms of reference, of identifying ways in which we could enhance the outcomes from a taxpayer's perspective in terms of value, transparency and accountability, which is why we've put together a series of five recommendations to support some of the considerations of this Committee—so leaning into the challenge that the Committee put to us about coming forward with some ideas around how this could be strengthened.

I've mentioned it before. We've also, outside of this forum, done things within our business about creating greater transparency around it, such as our impact report, which has a number of indices we talked about before about being clear about complaints et cetera and other inappropriate behaviour. We have also in our impact report talked about the current environment, both the Federal inquiry and other parliamentary inquiries on these matters in the content of our impact report—so leaning into the challenges that we see. I would say to the Committee that we are here to provide our insights and our reflections, which have included some unfortunate circumstances. We're not moving away from that at all. There are things that we have learnt from that experience at many levels in our organisation. We are committed to working with the Committee and other forums to get the right contemporary environment, which I said in my opening statement—the contemporary model that people would expect of firms like ourselves who are providing value around taxpayer expenditure.

The Hon. Dr SARAH KAINE: Sorry, it might have been in the report. It's presented as "learnings" rather than "mistake"—that might have got me on that one. Mr McArdle—again I think we asked Deloitte—could we please get a sample partnership agreement? We already had a brief discussion about how partnerships are different to other business arrangements. I know you're probably going to say it's commercial—

MARCUS McARDLE: No, Dr Kaine, that one is—we've released that publicly. We're the only big four firm that has released our partnership agreement. We can certainly provide it to you. It's now out in the public domain. That is something we, again—to the point of transparency, we've referred to it in our impact report. To Paul's point, we're leaning into the opportunities to be more transparent and that's an example of it.

The Hon. Dr SARAH KAINE: If you could provide that, that would be helpful.

MARCUS McARDLE: Sure.

The Hon. WES FANG: Just in relation to the work that was done with TAHE, we've heard a lot of debate today around the way that—there are tasks that a consulting firm does that the public service cannot necessarily do and also there's that level of experience that perhaps is missing within the public service due to the difference in the wage structures between a private organisation and a public service organisation. Could you detail what it is that KPMG was able to do in relation to the TAHE project that meant that they had to come on board as opposed to the public service doing it? What was the actual fee that was paid in relation to that work? We heard from Transport today that obviously there was one component with Transport, one component with Treasury. There were some numbers that were there. I'm just curious as to the value that was available to the public service in engaging a big four firm as opposed to trying to get that work done within its own public service structure.

PAUL LOW: Yes, thank you, Mr Fang, for your question. Firstly, maybe one of the last questions first in terms of the fees from TAHE—so our fees for TAHE between I think 2017 and 2021 were \$3.4 million, and around about two-odd million, 2.4 million in relation to the Treasury advice. The Treasury advice was around

providing specific accounting advice around the application of public sector accounting standards to understand how the ABS should categorise the TAHE entity, in this case, as a public non-financial corporation.

That required specialist CFOA advisory advice. Going to your question earlier before, Mr Farlow, that required someone with deep accounting capability and a team that focuses on how to deal with public assets in the appropriate way. That's a specialist skill that gets developed over a range of time and periods, and our partners and our team members involved in that had that deep expertise, supporting then advice into Treasury, who could then consider what this means to our State financial position.

On the Transport side, it's an equally complex piece, looking at the long-term operating model and implications for Transport for NSW—so what are the safety considerations, although they weren't the domain of our report. We aren't safety specialists; that was the independent regulator. But it was needed to understand whether the other elements, so system integration, all of the service solutions—could Transport achieve the transport system outcomes it was trying to achieve for the community through the structures that government was asking it to examine in detail.

That did not require accounting advice and our team was focused on financial modelling, which is different from accounting advice. That's very specific skills, understanding the complexities of the transport system and the long-run financial implications. I think the Committee would have heard this morning about the quality of that piece of work from Transport in terms of assisting it to understand and, ultimately, government to understand: Was TAHE the right solution at this point in time for the transport agenda of the State?

They are quite specialist skills, feeding two technical reports into the public service, who are then required to frame the advice to government. Our role is not to policy-make. Our role is to support the public service to bring forward robust and independent advice to support downstream decision-making and their advice to government around what's the appropriate way to undertake a transformation or an initiative such as TAHE, which has a strong infrastructure dimension to it.

The Hon. WES FANG: And you don't believe that those skills exist in the public service at the moment? Obviously, you'll have a view about this that might differ because, obviously, it might impact your business model, but is it not worth the public service perhaps looking to engage with those skills in order to have them in house? You'll say that it's better to have a big four firm to do it, but obviously we've heard some stuff today around whether we need those skills within the public service.

PAUL LOW: Yes, it's a very relevant question, and it goes to the point of what the New South Wales public service or, in fact, the APS is required to do. These are very complex times. Many matters are bumping into each other—energy transition, social reform, housing, transport integration and system development. That scale, it's very hard to have that level of capability on tap when you need it, given the scale of what governments and the public service are doing.

But, going to your point, our view is that we need to have a well-informed and very capable public service. So part of the work that we do often in our projects is to either work in a joint team with the public service or leave assets—financial models, economic models et cetera—with the public service so there's something behind they can use and skill and train. From our perspective—and I think the TAHE example is a great example of that—a well-informed public service means that it's very clear for us to be where we need to focus and the advice that we need to provide into that system. So, as a firm, a stronger public service is in the interests of everyone, including KPMG.

The Hon. SCOTT FARLOW: Mr Low, I think one of the themes throughout this inquiry has been that the public service goes to consultants to advice-shop, effectively—to get something that confirms something they want to get up. We've heard some instances of what I think are very worthy projects where they've had consultants back them up to get them over the line in terms of the rest of government. I think NSW Ambulance had an example in that regard where they were able to get additional funding in government because they had a consultant's report to back it up. I guess one of the things that the public sector is supposed to be is a frank and fearless adviser to government. How does a consultancy that is paid for by a certain arm of government provide that frank and fearless advice to government?

PAUL LOW: I'm not sure whether the Committee's heard testimony from Treasury or Infrastructure NSW at any stage during the hearings. But one of the core dimensions about ensuring robust and independent advice is the application of consistent frameworks around value-for-money assessments, which underpin the business case processes. These are well established, nationally consistent. Each jurisdiction has one, which it puts across all of its investments. Going to the point that you described before, Mr Farlow, there can be a clear, independent view about what is the cost benefit of a particular initiative so the Government can make then an informed decision

based on the advice from the agency that brings that forward. That's absolutely integral to effective policymaking and then policy implementation.

From our perspective, every consultant—I'm not sure what our peers have shared with the Committee, but every business, every consultancy wants to be really clear about the framework it's applying so that it knows how to exercise that independent judgement, and working through established frameworks to support better decision-making around how taxpayers' funds are best managed. In some cases, there will be business cases which are difficult to get up because they're not at the right time for the benefits that are sitting there that could be realised. Sometimes those projects then go away, get re-scoped by agencies or are not implemented or taken any further by governments.

The Hon. MARK BUTTIGIEG: Would it be fair to say that without the benefit of Mr Lyon on the inside, so to speak, the Auditor-General would never have got to the bottom of TAHE?

PAUL LOW: No. I don't think that's true. I think there was, during that whole period, a requirement for Treasury to demonstrate the classification of TAHE as whatever entity it was considering for State financial purposes. The classification of TAHE as an entity is something for the ABS. They do those classifications around what is the nature of the entity. Then the Auditor-General engages around those issues. It's fair to say that, during the consultation and discussions that government agencies were having around TAHE, there was a question about is this a public non-financial corporation. The Auditor-General, in terms of conducting her review of TAHE, determined for the State Government accounts that it still had that status but they would monitor that status going forward as the TAHE initiative was stood up and maybe those circumstances would change. So—

The CHAIR: But she backed up Mr Lyon's approach and advice, didn't she, ultimately.

PAUL LOW: This is bringing us back again to the nature of Mr Lyon's engagement. He was about the long-term financial and operating model structures for TAHE, for Transport for NSW. It wasn't the remit of Transport, nor KPMG in that engagement, to provide insights around accounting standards and treatments. Mr Lyon is on the record, as I was and as many others were in previous evidence, that he is not an accountant. He's got a policy background, and a financial and commercial background.

The CHAIR: He still got it right.

PAUL LOW: It was the Treasury responsibility, and our support to Treasury around the accounting standards. That's where the skill was applied. That's the remit of State Treasury. Yes, there was a contest of ideas. But, at the end of the day, the Auditor-General, in relation to the technical matters we're discussing here today, was clear about what she found at that point in time in relation to the treatment. There were other observations—I recognise that—but in relation to the treatment issue that's come up in this conversation, she was pretty clear about where her opinion was at that point in time.

The CHAIR: Just coming back to this, how do we get comfortable, when there are breaches of ethical standards or the standard of behaviour that we would expect from consultants, that there's actual enforcement—firstly, that there's monitoring, then that there's enforcement and actual consequences? Looking at the CA ANZ investigation into the TAHE issue, when did you first get involved? When did CA ANZ first contact KPMG in relation to investigating it?

PAUL LOW: Is this the confidential CA ANZ investigation you're referring to?

The CHAIR: This is the investigation CA ANZ told us they were running in relation to—

PAUL LOW: I'm not privy to that investigation. That's a matter for CA ANZ.

The CHAIR: We were told earlier by Mr Perdikos that he had been contacted by KPMG in relation to the CA ANZ investigation, asking him for information. Presumably, you have been contacted by CA ANZ in relation to the investigation?

PAUL LOW: CA ANZ has made contact with KPMG to get access to documentation that Transport had, and so KPMG engaged with their client about the provision of those documents.

The CHAIR: When did CA ANZ get in touch with KPMG?

PAUL LOW: I'm not sure when that was. It's a confidential investigation. I'm not privy to when that contact was made.

The CHAIR: I understand the content of it is confidential, but the fact of it has been well aired in this inquiry already. Are you able to come back on notice, perhaps, to tell us when you were contacted?

PAUL LOW: Yes, within the realms of those expectations that CA ANZ has around confidentiality, I'm happy to take that question on notice, Chair.

The CHAIR: Given CA ANZ has pretty limited powers to do anything, even if they do find that there was some wrongdoing as part of the TAHE affair, do you think that there needs to be some sort of stronger external regulator of the consulting industry?

PAUL LOW: I'll ask Mr McArdle to answer that for the Committee.

MARCUS McARDLE: As part of our submission to the Federal inquiry into audit, that's one of our recommendations, that there be consideration. We are happy to be part of discussions regarding an overall reconsideration of regulation of the broader consulting profession.

The CHAIR: Under that type of stronger regulatory regime that you envisage, what kind of consequences would a firm potentially be subject to, do you think?

MARCUS McARDLE: I can comment where we are at at the moment, Chair. At the moment KPMG is overseen by over 40 different organisations at a national level, State level, territorial and international level. A number of those agencies oversee the firm, some oversee our people, some of them require annual audits, and many of them require licensing. There's quite an overlapping framework.

The CHAIR: I understand that, but when it comes to something like a breach of ethical standards, even the banks are routinely fined for doing the wrong thing. What sort of organisations come in and fine KPMG for unethical behaviour of partners?

MARCUS McARDLE: Picking up on your question earlier around CA ANZ, our people are members of CA ANZ. Partners are members of CA ANZ and a number of our staff are members of CA ANZ. KPMG Australia, as the partnership, is not a member of CA ANZ; however, regulators such as ASIC or the US PCAOB regulate the firm and they can apply sanctions against the firm for breaches of particular requirements.

The CHAIR: Are you aware of ASIC imposing any sanctions on any consulting firm?

MARCUS McARDLE: Again, ASIC are on record through a previous inquiry of saying they are required to enforce the application of audit and accounting standards. But, again, if you compared ASIC to other foreign regulators, their oversight of professional services firms does differ to international counterparts.

The CHAIR: It does. So, again, who do we have to regulate the firms in a way that would actually, whether for individual partners or for the firms themselves, result in a fine being imposed for breach of ethical behaviour?

PAUL LOW: I think this is the question of the day at many levels, isn't it? It is a very complex regulatory environment. There is no single regulatory setting that oversees the consulting industry. There are multiple overlapping ones, depending on the professional status of individuals and the role of various bodies. There are two elements to the question; the first one is what could possibly be done. I think that's part of what this Committee and the Federal Government are contemplating around what is the appropriate regulatory regime to ensure that all standards of behaviour and compliance are met. That's one dimension to that. The other point, which we talked about a little bit earlier, is that we are assessed on every single engagement about the way that we comply around four dimensions. There's an opportunity for our clients to provide advice around their expectations to us and whether we are delivering to the appropriate standard.

The CHAIR: You were talking there about overlapping; there are a number of regulators who could potentially get involved. I see it more like a lattice than an overlap. It's just full of holes. Compared to when you look at financial regulation, when you look at even the regulation of the legal profession, what we have in relation to the consulting firms is effectively no regulation, because it's all processes, procedures, signing off things, but there's no actual consequences for poor behaviour that we have examples of actually ever being implemented or enforced. Tell me I'm wrong.

MARCUS McARDLE: If I could pick up on that, in response to matters that individual associations that our people—our partners and our staff—are members of, they have responsibilities to apply the relevant requirements of those organisations. They can take action where there has been breaches of those, and there's evidence of that in the past.

The CHAIR: What is the action they will take?

MARCUS McARDLE: They could have their ability to practise in that particular profession removed.

The CHAIR: But they could still practise at a consulting firm in a different profession. We have people in consulting firms who have no profession. We have some who are accountants and lawyers. There's a range, isn't there?

MARCUS McARDLE: As an accountant who is part of CA ANZ—so Chartered Accountants Australia and New Zealand—if there was a sanction levied against that person by that organisation, through our internal processes, there would be a reason for that person to identify that they were subject to a sanction.

The CHAIR: But you can avoid a sanction from CA ANZ by just resigning, can't you?

MARCUS McARDLE: I'm not aware of that fact, Chair.

The CHAIR: Where is the incentive for anyone to act ethically if there's no consequence or real likelihood they will ever be held to account for that breach of ethical behaviour?

MARCUS McARDLE: I would go back to the fundamental premise of our firm. Integrity is a core value of the firm, and acting ethically and honestly is a fundamental—

The CHAIR: Yet we've got these examples of ethical breaches. Again, this is my point. We have "We're set up, we're ethical, we've got these rules, we've got these procedures and we've signed these documents. It's all fine." But then we have breaches of ethical behaviour on record and no consequences. Is it ever going to change if we don't ever have real consequences for bad behaviour?

PAUL LOW: There are a couple of dimensions to that. There have been instances in our past where there have been sanctions applied. The exam cheating one was one of those. People left our organisation and there were financial penalties.

The CHAIR: That wasn't an Australian regulator putting those sanctions on, was it?

MARCUS McARDLE: No, there was. CA ANZ did levy sanctions on individuals as a result of that.

The CHAIR: What were their sanctions?

MARCUS McARDLE: Again, they're confidential investigations by CA ANZ on those members. As far as we know, through the public discussions that CA ANZ has had in other parliamentary inquiries, CA ANZ levied sanctions on members as a result of that exam cheating scandal.

The CHAIR: CA ANZ has come back on notice to questions telling us that there's only, I think, nine people they've ever actually put sanctions against, and only two of them in Australia. Are you saying that in Australia, the only sanction for something as shocking as cheating on ethics exams was two people not being able to be in their profession, or not being members of CA ANZ, basically? Is that sufficient, do you think, to hold an entire profession to account?

MARCUS McARDLE: To your point, I can't recall the exact numbers. CA ANZ is responsible for administering those disciplinary matters on its members. The reality is, in that particular matter, there was a range of investigations done by different bodies who took different sanctions. KPMG, the firm, received a financial sanction by the US regulator and that was a US\$450,000 fine.

The CHAIR: In the US, yes.

MARCUS McARDLE: No, here in Australia. The firm KPMG Australia.

The CHAIR: But imposed by the US regulator.

MARCUS McARDLE: Correct—which has oversight of the Australian firm by the nature of the fact that we service global clients.

The CHAIR: So we're to rely on the US regulator to enforce the ethical standard of consulting firms in Australia?

MARCUS McARDLE: I think it goes to the point we mentioned earlier. ASIC did respond in an earlier committee meeting to say that, as they are currently constituted, they do not have a remit to enforce, in that particular instance, oversight over audit firms' training.

The CHAIR: It brings us back to where we began, that there is—

The Hon. MARK BUTTIGIEG: That's the question, isn't it? Do we require a legislative framework with more punitive teeth rather than a tick-a-box situation where everyone feels good because there is a paper trail?

PAUL LOW: We're not here to defend the way history has played out in relation to the role of regulators. We've been very clear on the public record, both in our submission here about strengthening arrangements, but

also in our submissions to the Commonwealth around leaning into is there a better regulatory model to ensure that the expectations of consulting firms around value for money, integrity, trust and accountability are best served. In the opening statement, we talked about being more contemporary. We are supporters and happy to work with those new models. Some of that will be picked up through reviews by Treasury underway at the moment—Federal Treasury, that is—and through the other joint parliamentary committee.

The Hon. MARK BUTTIGIEG: The CA ANZ body—is that a membership advocacy body as well?

PAUL LOW: As well as what, Mr Buttigieg?

The Hon. MARK BUTTIGIEG: As well as regulatory standards. When you join CA ANZ, you get industry support—that's one of its key functions, presumably, isn't it? I join and I get X, Y, Z services, I get the latest tax law, whatever it is.

PAUL LOW: Yes. I'm a member of CA ANZ and as a member—

The Hon. MARK BUTTIGIEG: Isn't that an inherent conflict in itself? You join an organisation for advocacy and support. There's an inherent tension between that and then telling you, "You're a bad boy. Out you go."

The Hon. SCOTT FARLOW: The same thing could be said for the Law Society.

The Hon. MARK BUTTIGIEG: Sure.

MARCUS McARDLE: That's right. I think it's a fundamental premise, as you say, of many organisations. As members sign up to CA ANZ, for example—

The Hon. MARK BUTTIGIEG: No, but this goes to the Chair's point about an alternative regulatory regime.

MARCUS McARDLE: That's our point. As we've said openly, we would be very supportive in being part of discussions around a review of oversight of regulation on the consultant profession.

PAUL LOW: The less grey, the clearer the black and white is, the easier it is for us to make sure we enforce the appropriate standards in our organisation and lead those in the most effective way. We are a compliance-based entity and we made that point in the opening statement. We would welcome views, perspectives, commentary and discussion amongst industry participants around what could be done to create a better environment.

The CHAIR: In the meantime, the second point that you talked about was how it is within the rights of your clients to put their own sanctions on firms that are breaching requirements. We heard before that it doesn't look like government work has dried up for KPMG. What could we do to protect ourselves against ethical breaches?

PAUL LOW: We talked about that a bit earlier, and I don't want to diminish the significance of our reflections and what happened in the Tax Practitioners Board matter, but that did trigger within the Commonwealth Government a review of expectations around consulting firms and around what's called a significant event disclosure. In the procurement models, the Commonwealth Treasury and finance department have been framing the notification requirements that consultants need to provide under their main panels when events occur. There's a process of engagement underway at the moment about defining what is a significant event.

I think what's happening across the country is that there are reforms coming through to reflect the changes in expectation. We can do things ourselves, and we are doing that, starting a number of years ago, starting with some of those very first unfortunate circumstances. But there is more that we need to do and the industry can do as a consequence of deliberations of this Committee and the Federal Parliament around our industry to make sure that those expectations are able to be clearly implemented and responded to by firms such as ourselves going forward.

The CHAIR: Would you give the public back the \$3 million that you were paid for the work on TAHE?

PAUL LOW: The work that we did for TAHE was accepted in full by the two organisations that engaged with us. So we feel we've fulfilled the requirements of our obligations to those two agencies. In fact, there was commentary earlier today about the quality and the benefits of that advice to Transport for NSW to help them navigate some complexities. So in regard to those matters, we feel we've delivered to the expectations of government at the time.

The CHAIR: Maybe we can keep the Transport work, because that one has proved the test of time, but when we look at that Treasury advice, the \$2.4 million—

PAUL LOW: The Treasury advice was over that three-year period. Very similar to the Transport advice, Treasury used that advice to inform their thinking around the State's assets. That was proven by the Auditor-General to be an effective way to treat that entity at this point in time.

The CHAIR: The Auditor-General agreed that there was created basically a \$10 billion hole from that advice.

PAUL LOW: The Auditor-General confirmed the public financial non-corporation status of TAHE, which was the entity that we were asked to provide accounting standard treatments on. What government decides to do with that advice and how they use that designation in their thinking around policy matters is a matter for government. That wasn't a matter for KPMG.

The CHAIR: In terms of, again, consequences, there's no consequence that the client can put on KPMG for the breaches of expected standards and behaviour in relation to TAHE?

PAUL LOW: As I mentioned earlier to the Chair and to the Committee, we have fulfilled the obligations. Our performance is monitored through the professional and management services panel arrangement and there are engagement reviews undertaken around our performance across the four areas of the balanced scorecard in terms of the quality of advice. I think the question is best directed to the New South Wales public service than to us.

The Hon. MARK BUTTIGIEG: Is there a KPMG partner on the board of CA ANZ?

MARCUS McARDLE: I'd have to take that question on notice, Mr Buttigieg.

The CHAIR: I expect there is. In the few minutes we have left, I will ask you a little bit about something quite different: secondments. How many secondees do you have within New South Wales government?

PAUL LOW: We currently have five FTEs seconded into the New South Wales government.

The CHAIR: Which agencies are they sitting in?

PAUL LOW: They're across, I think, five agencies. I'll take that question on notice. I think there's one in Health.

The CHAIR: Thank you.

The Hon. Dr SARAH KAINE: Could we ask how long they've been there as well?

PAUL LOW: Less than a 12-month period.

The Hon. Dr SARAH KAINE: All of them?

PAUL LOW: Yes.

The CHAIR: I understand that under the standard commercial framework there's a 10 per cent discount given on work where there's a secondee put into government departments. Is that because having a secondee within government creates a benefit equivalent to cash to a consulting firm?

PAUL LOW: No. A secondment is the request for specific capability, usually at a junior or middle level, to provide particular technical advice, whether that's accounting advice, financial or commercial advice or technology or digital advice. It's a very specific requirement. As Committee members would probably know from previous evidence from our firms, when we receive a scope of work and determine that we wish to respond to it, we invest time and resources to develop a methodology and ensure that we've got the appropriate risk management controls in place and we've scoped the project effectively for the client. That is a cost that we incur in terms of the business development cycle and competitively tendering.

With a secondment, normally an agency would come to you, and maybe an alternative, and say, "I need this particular skill set for this particular time to come in and provide advice and support to the public servants." There is inherently less time and cost associated with providing that resource, hence the consideration of a discount under the scheme.

The CHAIR: So it's a 10 per cent discount where the contract is only for a secondment, as opposed to where it is for something larger and you happen to have a secondee. Is that what you're saying?

PAUL LOW: No, I'm not saying that. If I go to other competitive tendering processes etcetera, under the panel, as you'd be aware, we have a ceiling rate for our personnel. In any particular engagement or scope that comes to us, we make a decision as to what is the nature of this piece of work, how do we think we can best deliver it and what resources should come to bear. In that regard, there is also a pricing conversation about how we deliver the right value for money for the taxpayers. In that environment, that ceiling I talked about before—

that ceiling rate that sits inside our panels—we will invariably come well below that to understand how we can competitively bring together a team to deliver. We inherently look to discount, as we go forward, at every opportunity. What I was trying to get to with the secondment piece, though, is there isn't a transaction cost in that, if that makes sense, in that we don't have to spend that same amount of time developing the proposal and preparing a methodology. So in that case, that reflects a cost that we then don't pass through, obviously, because it's a secondment arrangement.

The CHAIR: Okay. But if you've developed a scope of work and all the rest of it for a project that's going to take five team members and one of them is then put in as a secondee, does that one person get a 10 per cent discount on their fee or is it across the project?

PAUL LOW: Sorry, Chair, we wouldn't put a situation where we would bid a piece of work and then have a secondee as a part of that. The secondee arrangement is completely different from tendered work. There are different ways that the public service decides it wants to secure work. Sometimes it's through consultants—as I said, it's quite a small number—but sometimes they need that specialist skill. That's done through a different mechanism. What I was talking about before—and I'm sorry if I confused the Committee—was the more competitive process about the time we invest in a methodology and bringing a team together to answer the exam question that sits within the scope that's been provided by the client.

The CHAIR: So we are talking about a secondment where it's just one person?

PAUL LOW: Yes, correct..

The CHAIR: We heard from PwC that they have a program of putting their partners and employees onto boards. Do you have a similar thing?

PAUL LOW: I'll ask Mr McArdle to respond to that, thank you, Chair.

MARCUS McARDLE: Chair, I can answer that. We prohibit our partners and staff from acting on government boards that have a for-profit or commercial motive. That would be a board such as energy or utility transport. We prohibit that.

The Hon. SCOTT FARLOW: But health, for instance, you wouldn't?

MARCUS McARDLE: No. For health we would consider that that would be a commercial or for-profit government board and we would not allow our partners or staff to serve on those sorts of boards.

The CHAIR: What kind of boards could they sit on?

MARCUS McARDLE: They could sit on not-for-profit boards—for example, a museum.

The CHAIR: What about universities?

MARCUS McARDLE: Yes, we do have a small number of partners and directors sitting on university or public school council boards. That would be an example, yes.

The Hon. WES FANG: I'm just curious, when somebody leaves KPMG, do they still have a share or an equity in the organisation? Do they still get paid or, when they leave, are they, in effect, out?

PAUL LOW: I'll take that question, Mr Fang. As per our partnership agreement, there are no mechanisms in our business to maintain any financial relationship with that partner once they retire. Once they retire, there is no further financial connection point with that partner. Our partnership agreement does not allow for that.

The Hon. Dr SARAH KAINÉ: And we'll see that when we get it.

MARCUS McARDLE: You will, yes.

PAUL LOW: Yes, absolutely.

The CHAIR: Unfortunately, that is all we have time for. Thank you for coming along and answering questions. It has been very informative. To the extent that questions were taken on notice or there are supplementary questions, you will have 21 days to respond to those. The committee secretariat will be in touch to discuss that. That concludes today's hearing. Thank you, everybody.

(The witnesses withdrew.)

The Committee adjourned at 16:47.