

**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 Wednesday 6 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. Dr Sarah Kaine  
The Hon. Mark Latham  
The Hon. Peter Primrose



**The CHAIR:** Welcome to the ninth 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 people 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 and Torres Strait Islander people joining us today or watching on the broadcast. This morning we will hear from Professor Brendan Lyon and the Australian Services Union, before moving in the afternoon to hear from a range of State-owned entities, including NSW Treasury Corporation, Sydney Water, Hunter Water and EnergyCo.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, 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 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's 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 the audibility of the hearing today, I remind Committee members and witnesses to speak into the microphones. Finally, I ask that everyone please turn their mobile phones to silent for the duration of the hearing.

**Professor BRENDAN LYON**, Professor of Practice, Faculty of Business and Law, University of Wollongong, affirmed and examined

**The CHAIR:** I welcome our first witness. Would you like to begin by making a short opening statement?

**BRENDAN LYON:** Thank you, Chair. Through you, I thank the Committee for the invitation to give evidence today. As at least some of you would recall, I last appeared before this Committee on 8 November 2021, approaching two years ago. I was subpoenaed to appear and to produce documents in my possession during that public inquiry into TAHE. In 2021 I had finished my work on TAHE and, in consequence, I faced internal reprisals led by KPMG's chief executive, Andrew Yates, and his most senior colleagues. I had faced investigation for wholly vexatious complaints to force me from the firm. I was under vicious and personal attack from the Treasury secretary. I was attacked by Government politicians. I was sacked and have lost at least \$2 million to costs and to lost earnings. To this day I face continuing attacks on my character by the guilty. I don't say that because I am seeking your sympathy. I would do it all again in an instant, because some things matter much more than a partnership in some global firm. I listened carefully to the testimony by Mr Peter Perdikos of Transport for NSW, who placed on record the import of my advice in identifying and curing the material safety problems introduced by TAHE. That process forced discussions about the legitimacy of the accounting treatment and caused major outbursts in ill-treatment of me by KPMG and Treasury personnel.

I am old enough to remember the Waterfall, Glenbrook and more than 100 other rail accidents caused last time operations and assets were split, so much so that the first report I provided contained case studies of rail tragedies caused by poorly executed structural separations in live rail, the inclusion of which saw Mr Pratt's first complaints about me, saw him demand the case studies be removed before Cabinet saw them and saw his friend, Mr Hunter, form the conflicted oversight group that included the CEO of KPMG, Andrew Yates. But the counterfactual point that Mr Perdikos was too polite to say is that the efforts to frustrate my work meant KPMG and Treasury chose flawed accounting over public safety. That is as far as I can imagine from the public interest and not the behaviour of good human beings.

Mr Staples and I were both sacked for our work on TAHE, but I am sure we would each do the same again in the same circumstance. I must admit I was surprised to hear Mr Low of KPMG testify that KPMG observes the whistleblower laws in the Corporations Act. Mr Low also testified yesterday that I did not make any reports under KPMG's whistleblowing policy. He is wrong. I made countless written reports under that policy, including to the CEO, Andrew Yates; risk partners, Joel Lucas, Jeff Cook and Christine Wilcox; KPMG's general counsel, Louise Capon; KPMG's then head of people and culture, Deb Yates, now on the executive team at Lendlease; my divisional managing partner, David Heathcote; KPMG's global head of tax, David Linke; Ms Watson as the engagement partner with the conflicting work; the head of my practice group, Stanley Stavros, now on the national executive committee of KPMG; and, of course, to my second partner, Paul Low, KPMG's head of government, who appeared before you yesterday.

In this regard, I point the Committee to the emails numbered 58 to 61 in the subpoenaed documents of the last inquiry by this Committee. My first email reports extensive ethical risks and failings to David Linke, who then forwards it to Mr Andrew Yates, Mr Hunter and Ms Watson and her second partner, Andrew King. In my assessment alongside those warnings, I had also noted that I considered there to be an extremely high level of media interest, including in KPMG; an extremely high level of political interest, including in KPMG; an extremely high level of professional and reputational risk to KPMG and, likely, a call for papers and upper House inquiry into the erosion in the New South Wales budget due to TAHE and KPMG's accounting advice. That email was sent on 25 July 2020. In response, I was disciplined for not being a team player, as I was with subsequent written reports of misconduct, including to the general counsel, Louise Capon, and the head of risk, Jeff Cook. I do not understand how you could make a clearer internal report than to do each of those things.

I do not blame Mr Low. I like Mr Low. I do not blame him for sticking to the KPMG team line. After all, Mr Low is earning about \$2 million a year and I am not. He can be a team player, but he should take his money quietly and not become complicit in the smears of others that found they could not stand with his team's culture or practices. The evidence that is already in the Parliament's possession shows repeated clear internal whistleblowing reports by me, and it shows equally clear internal reprisals by Mr Yates, Mr Hunter and Ms Watson. Mr Low saw it all and Mr Low could have and should have, under that policy and as a senior partner, reported those reprisals. Perhaps Mr Low is unfamiliar with the policy. Given my treatment, I doubt that it is very often used at KPMG, if at all.

Another surprising part of yesterday's testimony was the insistence that I was not fired—something that was also the subject of a submission by KPMG to the Federal inquiry—backed up, in both cases, by a post I had made on LinkedIn before my departure. On this point KPMG are either being deliberately dishonest or they are

totally demented. First, LinkedIn is not usually a place where one shares their mental state. Second, the Parliament has extensive records that prove that this is materially false. That evidence shows that KPMG's general counsel even sought to insist on my immediate return from leave the day before my wedding to be sacked in reprisal for my work on TAHE. It was only the revelation that prominent defamation lawyer Rebekah Giles was acting for me which saw that urgent meeting delayed and, ultimately, never convened.

That was then and this is now. What were allegations made by me have moved to findings made by the New South Wales Auditor-General, by the Public Accountability Committee and, increasingly, the court of public opinion. These findings are evidenced through scores of documents, emails and texts. While KPMG submitted yesterday, and continue to argue, that their work for Treasury was sound, the Deputy Auditor-General testified to this inquiry's earlier hearing, "It's history now that the Auditor-General said the KPMG advice that Treasury preferred was not necessarily the advice that was going to get a cleared opinion. It was going to get a qualified opinion." New South Wales is now worth \$20 billion less because of KPMG's advice and New South Wales taxpayers and the Government face a complete bugger's muddle to unpick the mess.

Even the industry self-regulator CA ANZ has now placed on record it is undertaking some form of ethics investigation into KPMG's partners and their actions on TAHE, albeit with very scant detail and little apparent urgency. But KPMG are still, as I understand it, trying to discredit me to journalists and, no doubt, to politicians. I've been credibly advised in recent days there's been renewed backgrounding against me by KPMG operatives. By its nature backgrounding involves unsourced hints and allegations made behind closed doors and therefore are very rarely able to be evidenced—just alleged. I believe that this instance is different. On 8 July, shortly before my Senate testimony, I received a WhatsApp message from KPMG's corporate and government affairs partner, James Copsey. Members of the Committee might note that Mr Copsey was sitting behind Mr Low at the hearing yesterday. Mr Copsey messaged me at 7.17 a.m. Mr Copsey's message contained a document resembling a political shit sheet which, in this instance, sought to cast shade over my role at the University of Wollongong as a professor of practice.

The document included a message from Mr Copsey asking if I had anything to add. Precisely 15 minutes after it was sent, at 7.32 a.m., Mr Copsey updated his WhatsApp seeking to set disappearing messages. Once it was apparent to Mr Copsey that he could not remove the document unread, he then sent a text which said:

By the looks of this one of your academic colleagues at the university isn't happy. Not from me, obviously ... James Copsey.

I responded asking Mr Copsey the following:

What was document you sent me? It's not appeared anywhere online.

And why would you ask me if I have things to add?

Mr Copsey responded, somewhat unconvincingly in my opinion:

That's how it was sent the me ... its obviously doing the rounds. Just giving you a heads up.

If the Committee will forgive me, I do not accept Mr Copsey at his word. Mr Copsey is the public affairs and government partner. In other words, he's KPMG's spinner and in-house lobbyist. He is the man Friday to the CEO, Andrew Yates. In the past four years, Mr Copsey has never once provided me with a heads-up about anything else. He's never done a thing that's been in my interest. In my opinion either Mr Copsey texted me KPMG's shit sheet in error or else he sent it intentionally in some attempt to intimidate me before my Senate testimony. Of course, were KPMG bound by the Corporations Act I could report this. Mr Copsey and Mr Yates could each potentially face criminal charges, and even jail time, were it shown that they'd engaged in unlawful reprisal, but as a big four partnership they are protected from the laws and taxes which bind all other corporations in Australia. It is useful to turn from the deeply personal, but I am pleased to say increasingly historic, impacts of TAHE, to consider contemporary structural causes and remedies.

There is now clear evidence of ethical and professional misconduct across Australia's big four accounting consulting partnerships. These failings are borne of a culture where accountability and ethics are words used in inquiries, not duties which fundamentally bind the actions of partners and firms. This is caused, in my opinion, by the interoperation of two Acts enacted by this Parliament precisely 100 years apart. The first is the Partnership Act 1894, which codified the rights, obligations and risks affecting general law partnerships. The second is the Professional Standards Act 1994, which sought to support the public good via codified rights and obligations for certain professions and is unique globally for its provision of statutory caps which limit professional legal liability. The Partnership Act and the Professional Standards Act individually seek to balance protections of the public interest against the preservation of appropriate private rights. But, in practice, the Professional Standards Act has been used by the big four to fundamentally retard the partnership model to create a new species of protected pseudo-corporation.

**The Hon. WES FANG:** Point of order: Short opening statements usually don't run this long.

**BRENDAN LYON:** I've got another two paragraphs, Mr Fang.

**The CHAIR:** I hear the point of order. In this particular instance, it is very interesting. Can we just let it finish?

**The Hon. WES FANG:** It is interesting, but we would normally not allow witnesses to have an opening statement this long.

**The Hon. MARK LATHAM:** They are not normally of this nature, though.

**The CHAIR:** Exactly; it's not normally this spicy. Please, go ahead.

**BRENDAN LYON:** But in practice the Professional Standards Act has been used, as I said, to fundamentally retard the partnership model and create a new species of protected pseudo-corporation—one which avoids the transparency, the legal duties and taxes paid by other corporations and one which provides a far stronger protection than the corporate veil granted to real corporations. It is clear that the national and State interests are not served by allowing the perverted big four pseudo-corporate model to continue, and it is within the powers of this Parliament to remedy the structural problem facing the big four. I thank the Committee for your forbearance for my opening statement and look forward to your questions.

**The CHAIR:** Thank you very much, Mr Lyon. It was a long opening statement but it was well worth it, in my opinion.

**The Hon. MARK BUTTIGIEG:** Chair, can I ask a quick opener on the evidence?

**The CHAIR:** Please, go ahead.

**The Hon. MARK BUTTIGIEG:** Mr Lyon, did you table that WhatsApp message to the Senate inquiry?

**BRENDAN LYON:** No, I have not. I will table it—

**The Hon. MARK BUTTIGIEG:** Would you be willing to table it to this Committee?

**BRENDAN LYON:** I will. It's on my phone and I will submit it to your staff at the conclusion of the hearing.

**The Hon. MARK BUTTIGIEG:** Okay, thanks. Maybe, just for the purposes of the Committee, in terms of just a bit of a recap on the structural separation of TAHE and the purpose thereof, and the effect it had on safety—just a thumbnail sketch. I think the evidence we got yesterday in the context of that structural separation was "Well, Treasury gave us riding instructions. We complied and the accounting advice was in accordance with the instructions." That is pretty much the argument we got yesterday. Do you have some commentary around that?

**BRENDAN LYON:** Look, that's entirely misleading. The reality is that they were in a conflict situation. They were in a conflict situation caused by the work for Treasury in the first instance. It is on the record from Mr Staples asserting that to the firm—asserting that it conflicted with the evolving Transport work and asking for it to be remedied. That is how I came to work on TAHE. I didn't particularly want to work on it. I was asked to do so because of the damage to the firm that had already been done at the start of the conflict. Once Mr Pratt became unhappy, they formed a conflict oversight group that made various undertakings to Ms Trussell, who appeared yesterday, and to Mr Staples that, again, are all on record about how they were going to manage the conflict moving forward and that it would be minimised.

The great fib in what's portrayed by KPMG about all of this is the conflicting work was accepted in October 2020. It was after my final report—that was required by the Cabinet and being prepared for the Cabinet by Transport for NSW—had been out in exposure draft for, I don't know, six weeks. And so it was deliberately procured. It was agreed to at a secret meeting without me present. And it was done absolutely seeking to have two answers and therefore none to go back to Cabinet because of the scale of what was being revealed and the pressure—the obvious pressure—that that had on Mr Pratt and his colleagues. I should just say this is all already on evidence. It's worth having a look at, but there are sort of two sets of books running around what happened with TAHE. One that's being narrated and one that is being evidenced. The one that's being evidenced, it takes a long time to get through, but I would recommend you read it. It could be a dodgy film one day.

**The CHAIR:** Can we go back to the evidence we heard yesterday around your leaving of the firm? It was very much portrayed as a resignation, rather than a sacking. I did ask very pointed questions about this of Mr Low and he was very clear that you had not been sacked. What's your response to that? Why is he saying that?

**BRENDAN LYON:** I guess Mr Low is being cute in the construction, and that has been a feature all the way through. There's a sort of construction of facts that suits the issue that's being discussed at a point of time, but it conflicts. Technically, I did sign a retirement deed.

**The CHAIR:** So there is such a thing. What happens?

**BRENDAN LYON:** To exit a partnership, you sign a retirement deed. That's why they talk about retiring. It was the sort of retirement that you do with legal counsel sitting on each side of the table, after a 15-month vicious and bitter campaign that is all through the evidence that I'd given before. I guess what you would call it in truth is constructive dismissal. Maybe I shouldn't use the term "sacked". In my submission I certainly said constructively dismissed. Mr Low should not say it was voluntary because he is aware that is untrue. We discussed it many times and he was on my side, until he wasn't.

**The CHAIR:** I asked him if you had signed some form of deed in relation to your constructive dismissal, and he said he was not aware of that.

**BRENDAN LYON:** I find that unlikely. He is a very senior member of the firm. But, again, I like Mr Low; let's give him the benefit of the doubt. Certainly, the senior leaders—and it's probably a good demonstration of why Mr Yates should have appeared at the inquiry yesterday, because he certainly could have given a lot more evidence to that effect.

**The CHAIR:** We also asked yesterday of Mr Low, a number of times, as to whether or not he was aware of you making reports in relation to your concerns around what was happening at KPMG.

**BRENDAN LYON:** I'm going to give him the benefit of the doubt again. Those emails that you have where I'm saying, "The firm is in fundamental conflict. You and I cannot in good conscience report to this conflicted committee because we are breaching ethics and we are potentially involved in a conspiracy to maladminister New South Wales"—they are also on record. I don't know if I need to put in the heading "this is a risk report" or whether there's a form that needs to be filled out, but there are, I don't know, dozens—scores—of emails, including the one that I read out where I even presciently pointed out that people are going to notice that the budget's been knocked by tens of billions.

**The CHAIR:** I also asked him if he himself had made any kind of report or raised any concerns in relation to the work KPMG was doing with TAHE, and he said he couldn't recall doing that. Was he concerned?

**BRENDAN LYON:** Yes, very. And you can see it. You can see it all through the emails. Again, just having a look back through the evidence, the text messages that are on evidence from Mr Low and others, it was a huge bunfight within KPMG. But it was one where there was only one side that was going to lose in the end because all of the powerful partners had set up a committee and they were definitely going to get the answer that was wanted. I think Mr Low didn't do himself the best justice yesterday in terms of his forthright answers or complete answers to the questions. It was very clear and it is very clear on the evidence. People could see it. I lost 27 kilograms in 10 months, and that wasn't through diet and exercise. It was through stress and pressure. It's evidenced by all of the emails that include Mr Yates and the others.

Again, I don't understand how they can say that no risk reports were made or no whatever they call them, whistleblower reports or whatever else. I even warned them a year before the inquiry started that if they continued then all of those outcomes were likely to happen because this is public finance. This is public rail operations. Transport were deeply concerned about—and particularly in the period. Again, longitude is important. I guess by the time I'd finished my second report, Transport were comfortable that there was an operating model that was well understood. There were more than 1,000 tasks that were allocated out across the live rail operating environment, so very complex. It involved months of sort of complex consultation with the rail operators and everybody else. No-one wants to go back to leaving jobs unallocated in a live rail environment when you're putting a split between assets and operations. I guess everybody was concerned about that.

**The CHAIR:** In the time we have available, if we look back at what has occurred, we have evidence on record, as you say, of you having raised concerns on multiple occasions with senior people at KPMG. We have those concerns being borne out by history. We have KPMG themselves saying that they made mistakes. We have the Auditor-General backing up the problems that you raised in relation to TAHE. We now have a new government that is trying to unpick what is at least a \$10 billion problem that we have in the budget as a result of that. When I had KPMG in front of this Committee yesterday and asked them questions, I couldn't get any evidence that there had been any consequences for KPMG as an organisation.

**BRENDAN LYON:** I was obviously listening yesterday. What I heard is their billing changed slightly but has still grown, and life goes on, and "Why is everybody still talking about TAHE?"

**The CHAIR:** What assurance does the New South Wales Government have that it is dealing with an entity that is acting ethically?

**BRENDAN LYON:** Given what I've seen, I don't think it has any assurance of that. From the actions of Mr Yates and the other very senior partners, you can't say that the circus is different if the clowns are the same.

**The Hon. MARK LATHAM:** Professor Lyon, to your understanding, where did the TAHE debacle start? I think it is clear to any commonsense observer that this entity was never suited to being a State corporation because it's loss-making and inherent with risk and looked like it was an attempt to get it off the budget, and the consultancy firm just did the—

**BRENDAN LYON:** Or to keep it off.

**The Hon. MARK LATHAM:** Sorry?

**BRENDAN LYON:** To keep it off.

**The Hon. MARK LATHAM:** To get it off and keep it off.

**BRENDAN LYON:** Yes.

**The Hon. MARK LATHAM:** Do you know where that policy decision came from? Was that ever made clear in the process by which the consultancy firm and Treasury just played along?

**BRENDAN LYON:** Just in the way that if you're a little bit worried that you might go missing you leave a nice trail for the record, I recommend that the Committee look at the second report that I wrote on TAHE because it details this from the structural separation of the railways in the nineties, which is when they went off. In my view, that historic change in structure was a well-intentioned one that involved Transport—I could be wrong—but was designed to try and bring product efficiency into railways. It happened in the context of the Hilmer competition reforms and the structural reforms that were going on at that time. That proved not to be safe in the context of a complex suburban rail operating environment. It saw tasks unallocated. It ultimately saw rail tragedies. It takes a little while, it seems, for the reporting to catch up with the change in structure—

**The Hon. MARK BUTTIGIEG:** Sorry, Mr Lyon, is that because it's impossible to separate capital and operational without affecting safety, in a nutshell?

**BRENDAN LYON:** It was because things got forgotten, Mr Buttigieg. When you bring in a separation like that and people forget who is accountable for which particular bits of complex operations—so it's the interfaces. It's not malignant. It's not malicious. It's just very complex.

**The Hon. MARK BUTTIGIEG:** Just an unforeseen by-product of the separation?

**BRENDAN LYON:** Yes. It's not been unique to the New South Wales railways that that happened. Hatfield in the UK was similarly caused by structural separations. They can be done, but they have to be done very carefully and very prudently. They shouldn't be done in a bum's rush, because it has to be operating on 30 June or else the Auditor-General is going to find out. That's not without an operating model in place. That's where Treasury were at, at that point in time.

Sorry, Mr Latham, back to your question: It takes a little while for the books to catch up to reality. Usually the books are reflecting—or are supposed to reflect and write down accurately—what has happened. I guess the ABS gave notice to New South Wales that they were going to change the accounting treatment because they were controlled entities not operating as they'd been. In 2015 it was put into the budget that the State would adopt the Transport Asset Holding Entity structure, and it would do that explicitly to maintain the budget treatment.

It was then not switched on because Transport were very cautious. People still remember Waterfall and the other things, and they have a big impact culturally, as you'd expect. There's a very strong safety culture in operating transport environments, so it never really progressed to consideration of an agreed operating model. It was always a concept that existed only in the books. All of a sudden the Audit Office, as they should, began to write matters of emphasis of increasing urgency in the State's review of finances. All the time lines were missed, there was still no operating model, and then all of a sudden Mr Pratt decided it must happen at any cost and it must happen by 30 June 2020.

**The Hon. MARK LATHAM:** But in answer to my question about where the idea started, you're saying it started within the Transport—

**BRENDAN LYON:** It started within the Treasury.

**The Hon. MARK LATHAM:** It wasn't a ministerial initiative, necessarily, to get it off budget?

**BRENDAN LYON:** It was already off the budget. It was more that the ABS had given notice of its intention to reclassify, and so it's been about trying to maintain that treatment and then ultimately to increase it in its transition phase, where you could.

**The Hon. MARK LATHAM:** So your depiction is it started within Transport for well-motivated reasons.



**The Hon. SCOTT FARLOW:** Treasury.

**BRENDAN LYON:** Treasury—it started within Treasury, yes, in its modern iteration.

**The Hon. MARK LATHAM:** It started within Treasury for well-motivated reasons, but then unravelled.

**BRENDAN LYON:** No, I think it started in Treasury—in the current iteration, I think it started purely for budgeting reasons. You can see that because there was no progress to develop an actual operating model.

**The Hon. MARK LATHAM:** But that was Treasury, not the Treasurer, that was driving it?

**BRENDAN LYON:** I don't know.

**The Hon. MARK LATHAM:** You don't know that far up the chain?

**BRENDAN LYON:** Yes.

**The Hon. MARK BUTTIGIEG:** What were the budgeting reasons? Was it so you could load it up with debt?

**BRENDAN LYON:** No, it's so you could not count your depreciation or your capital investment into rail on your budget. That's very beneficial. It helps to undertake larger investments if some of them are not reported in the same way, or some of those costs, so I think it was about that. The budget paper in 2015 was pretty explicit about that.

**The CHAIR:** We've heard figures of \$10 billion or \$20 billion in costs to the government, to the public purse, as a result of the flawed accounting advice that KPMG gave to Treasury. Before I go any further, what is that figure? What do you think the figure is?

**BRENDAN LYON:** I think it's the writedown that happened to the asset, so it's recorded now in the State's books. I think it was \$20.6 billion or something thereabouts. The problem in my model was that I couldn't find a reason for the writedown because of the revenues to do with the full economic cost calculations required again under the National Competition Policy. I don't know how they got to that, but I'm sure it's very valid. It was done by PwC.

**The CHAIR:** We've been left with this sort of budget black hole. We have a set of evidence from an accounting firm that is telling us that, yes, they made mistakes. But really there have been no real consequences, as far as I can tell, other than to you.

**BRENDAN LYON:** There were vast reputational consequences but no change to billing or work or positions. In fact, most people got a promotion.

**The CHAIR:** Should they just give the money back for the work that they did? I asked them this yesterday.

**BRENDAN LYON:** Look, I think they should. I absolutely think they should. They gave two bits of competing advice. They did it deliberately; that's not acting—

**The Hon. MARK BUTTIGIEG:** It sounds like it would be covered in one year's wages.

**BRENDAN LYON:** It would be insured under the scheme.

**The CHAIR:** It would be insured under the scheme—can we talk a bit about that, then? You said in your opening statement that the scheme that New South Wales enacted under legislation, and that the other States and Territories copied, has given protection to the big four in a way that doesn't exist in other parts of the world. Is that correct?

**BRENDAN LYON:** That's correct. It's unique in its effect. Again, it was done for honourable reasons. It was done to react to the caution of the insurance markets after the eighties crash, and it was done to respond or to seek additional competition in the provision of audit services. It was done so that smaller firms wouldn't be betting the entire firm on one good-faith error in an audit, and they would be able to compete with what were then the big eight. In practice, the big eight have become the big four. They do 99 per cent of the audits for listed corporations, so it's actually seen a concentration, as far as I can see it, in audit activity. It's been extended well beyond audit; it covers everything they do. As you discovered yesterday, I was a member of Chartered Accountants while I was a partner at KPMG. Everything I did was covered as if I was an accountant in public practice. I did all sorts of ethics training at KPMG. I actually read it, which is why I did as I did. I saw the others do the tests but maybe not pass the ultimate one when it came to it.

**The CHAIR:** Are you suggesting that we scrap that protection or just modify it in some way?

**BRENDAN LYON:** I think there is a very good argument to say that the professional scheme was not brought in to help big global firms to avoid the risk and consequences of misconduct or malpractice. It wasn't brought in to give them an unusual protection and liability cover in their management consulting and their other non-accounting work. I think, at the very least, there should be a very firm consideration of winding it back to the bits that we want to protect. The other question that I have is where is the enforcement in return? So the premise for the scheme, as well as responding to market factors and trying to reduce costs—sorry, I forgot my train of thought.

**The Hon. WES FANG:** I'm sure the script is there.

**The CHAIR:** That's all right. We were talking about enforcement. This was, again, one of those issues that we had—and when I was talking with KPMG—about where is the enforcement if there is something that goes wrong.

**BRENDAN LYON:** Yes, sorry—that's what I was saying. The premise of the professional scheme was that you would have a better-off outcome for the public overall because you would have better conduct and less claims overall because of the enforcement under self-regulation by the professional association. That's the bit where—I know that you are in receipt of private information. I met with Chartered Accountants Australia and New Zealand last week—with Ms Chapman and with the head of public sector audit, Amir. It was a perfectly pleasant meeting, but I kept getting told, "We can't tell you about that", "We agree, it's all terrible", and, "Yes, it's terrible that the accounting profession is where it is and it's on the dinner table for discussion by families." But when it came to any consequences, it was, "Can't tell you that. You're just going to have to leave it with us. Our by-laws mean blah."

**The Hon. MARK BUTTIGIEG:** This point about self-regulation you made, which we touched on yesterday, can be extrapolated right across a range of industries, not just accounting firms. But this concept that you can join an association and everyone does the right thing because we are all in the same tent, so to speak, and we will slap you over the wrists if you do something wrong—there is no third-party punitive intervention like there might have been in other industries years ago. I don't know whether, in the accounting industry, that has been since time immemorial. Have you got any commentary about the efficacy of that approach?

**BRENDAN LYON:** Moving from professions, technical professions, regulating themselves is fraught with danger because they do—fundamentally a profession requires two things: exercise of professional judgement, and that that exercise of judgement is demonstrably in the interest of the client, patient or community at large. If I look at the other professions that do function differently and better, as far as I can see, when you look at the lawyers, for example, lawyers are routinely struck off when they do something wrong—routinely. What's the difference between the Law Council, which is the membership group, and Chartered Accountants Australia and New Zealand? It's that there is the Legal Services Council that checks whether the council is enforcing the code: whether it's investigating and whether it's prosecuting issues of professional conduct judiciously and well. They have what accountants would otherwise describe—

**The Hon. MARK BUTTIGIEG:** That's an interesting analogy. That Legal Services Council, is that like—

**BRENDAN LYON:** State.

**The Hon. MARK BUTTIGIEG:** That's a State regulator?

**BRENDAN LYON:** Yes, and it just checks the homework. It's much easier—and I made this point to CA ANZ. I'm not actually trying to harm them, and I don't want any of the accounting firms to leave Australia. We need them; they're supposed to do a job. It's just that at the moment I can't see how they've got the incentives to do a good job because they're not exposed to any downsides when they do a terrible job, and demonstrably so.

**The Hon. SCOTT FARLOW:** Professor Lyon, to that point yesterday, you were a member of CA ANZ as a non-accountant?

**BRENDAN LYON:** Yes. That's the Deputy Chair's favourite term. I've heard it so many times in your hearings.

**The Hon. SCOTT FARLOW:** And then, in terms of those people who are working under you, they are not members of CA ANZ. Is that correct?

**BRENDAN LYON:** No, they were all chartered accountants.

**The Hon. SCOTT FARLOW:** They were all chartered accountants?

**BRENDAN LYON:** Yes.

**The Hon. SCOTT FARLOW:** What about other people in the firm who were not accountants? Are they governed by anything?

**BRENDAN LYON:** Yes. All the partners are members and then their staff are covered by them. In my instance, I had mostly accountants—and very good ones—working for me. That was, again, the great fallacy of those castigations: that I wasn't an accountant and, somehow, I had been sitting in my garage doing this financial model that was kooky. It was just not right. And, again, you've got the evidence. It went through all of the risk processes. It went through the financial modelling group. It was assessed. I went through independent safety review of my operating model, which I insisted be external to KPMG because I didn't want to sign off on something where I have to turn up at a commission of inquiry into a rail accident later.

So it was all belts and braces, and then it was hit with a report that had a shelf life of about five minutes before it expired that said "everything's tickety-boo and it's all fine". Well, it wasn't tickety-boo; it wasn't fine. The Transport secretary was willing to lose his job over it because it mattered, not because it was a political issue or anything else. The fact that the maths didn't work—that is to the eternal shame of the Treasury, because it was an incompetent assessment that was done both for the Cabinet minutes that went up and the prior modelling which had overestimated the benefits two-fold or else had hidden the coming write-down in asset value—to go to the Chair's question about \$20.6 billion.

These are complex issues. Mr Pratt—and the evidence when KPMG were defending their work more was all to say that "it's all complex", "it's so terribly complex", "accounting is so complex". My observation is accounting shouldn't be complex. It's probably only complex if you're trying to contort it to unnatural positions that aren't going to work and, ultimately, that's not to the benefit of the governments that this advice goes to. It wasn't to the benefit of public administration. It wasn't to the benefit of the NSW Treasury.

I think the professional standards and profession acumen were clearly not there. Adverse comment by the Auditor-General—I mean, that is a pretty big thing. It's not even just an adverse comment by a client or an audit and risk committee; it's the Auditor-General of New South Wales. Those things should matter, but I haven't seen any consequence and, again, I'm just told, "It's all tickety-boo. Don't worry, there's an investigation going on." Well, into who? Over what? This was led from the top level of the firm down. Is the investigation just into Ms Watson, who left recently to go and work for Mr Pratt in his new private board role, working as the managing director? Did she take the fall for it professionally? We don't know—or perhaps you do, because you've received or will receive confidential information from chartered accountants. But to the public, there has been nothing other than continued billing and it just continues on.

**The Hon. SCOTT FARLOW:** Just to continue this for a second, we have received some suggestions before this Committee that there needs to be another body to regulate professional services outside of accounting. Do you think that is merited?

**BRENDAN LYON:** I think, ultimately, you should be binding all of your consultants to the public service code and you should be enforcing the contracts on them. I don't know if you need a regulator or you just need a clear statement of the standards that the public service has to comply to and enforce them onto the contractors. The problem with this is that the regulators don't feel particularly regulatory-ish and they see themselves more as a membership group in competition with another membership group for accountants. So again, if we go to incentives, I can understand why chartered accountants find it difficult to take material, fast action even where the evidence has been there for some years, unenforced.

**The Hon. MARK BUTTIGIEG:** Yes, but if you bind them, unless there is oversight, how are you going to make them accountable?

**BRENDAN LYON:** If you're doing government work it's not that common that you'd be submitting it to, or it would be visible to, an external regulator. You could have one within the public sector or you could have—there should be close-out reports and stuff done anyway. In my experience, you hear about it if someone is unhappy about something and so you usually do hear about it. These breaches are not so much about sloppy work; they're about flexible ethics and, sort of, fundamental breaches. I guess that's something where it is a matter of judgement. It's very hard to codify how to be a good person every day of the week, otherwise you'd be passing a law that says, "No DHs are allowed by law in New South Wales." It's a matter of judgement for professionals, like it is for individuals.

I guess we expect the public service to be bound by a code that's principles based. We can question how much that's enforced as well, but I would try and back-to-back that. And you need consultants. They're experts. They come in, and they help the Government to do things that are unusual and atypical. I guess it's where they're being brought in to be evidence-makers for things that don't make sense and, in the case of TAHE, were never going to work. I mean, audit were already hot on the trail. It was never going to work.

**The Hon. PETER PRIMROSE:** I have a relatively simple one, I hope. You've mentioned a number of things, and it's all incredibly interesting and valuable, so thank you for that.

**BRENDAN LYON:** Thank you.

**The Hon. PETER PRIMROSE:** I note, for example, you've raised two particular pieces of New South Wales legislation—partnerships—and that's something that we should seriously consider in terms of recommendations and review. But I was wondering, out of everything else, if you could nominate some specific things that you believe this inquiry should recommend that flow out of your evidence. You've given us a lot of material and you've alluded to a number of things. If you could just give three, four or five, whatever, very specific things that you would recommend that we should be recommending.

**BRENDAN LYON:** All right. Well, I'm ad-libbing now, Mr Primrose. Let me just make a quick passing comment on the Partnership Act. The basic discipline and the reason that partnerships are not exposed to the degree of regulation and controls that corporations are is on the premise that the partners are jointly and severally liable and will lose their personal belongings if they let the partnership incur losses beyond what it can pay. That is premised—and it's in the Act—that it is about the partners all being engaged in mutual control of the organisation. That is not how these work. When you join KPMG, you are given an enduring power of attorney that you sign at the same time you sign your partnership deed. It cedes all of your rights under the partnership—I think to the chief executive but it might be to the chairman. In effect, you're an employee. You're not a partner, you're not jointly engaged, and you never see the books of the firm.

I did note with interest—I should have read the Act much earlier—that I could have actually gone in and demanded under the 1894 Act to inspect the books that must be kept on the premises, and I would have probably taken a feathery pen or worn my new academic robes or something along those. I guess the point I'm making is that it's a nonsense that these are partnerships. They use legal agreements within them to create it into an old-style partnership that doesn't even have a board that matters. It's just a kingdom run by the CEO and a cabal of senior partners. Why did we bring in the Corporations Act? Why did we strengthen duties on directors? Why did we bring in insolvent trading protections and all of the rest? We did it to stop exactly these kinds of structures and behaviours from happening, but we're letting it happen in the people we're expecting to patrol the borders.

In recommendation terms, I think that very clearly there needs to be public examination of the scope and remit and operation of the professional scheme for public accountants. I think that that is—it's underway now by a body called the Professional Standards Council, but it is, as you say, a reference of concurrent powers that that will occur under and, I think, the New South Wales Parliament, the New South Wales Government and members of the public. It's not a well-known organisation but potentially quite impactful in the decisions that it does and doesn't make.

The other thing to have a look at is the structure of your own legislation and whether it's appropriate, given the passage of time and what we've seen, and whether it might be better, given the fundamental aims of it, to reduce it to accountants that are smaller or to radically increase the penalties and make them uninsurable in some instances for the major firms. I'd say that getting a new boundary around the operation of the professional scheme is one. I think that the more reporting that there is around the outcome of tendering—and I know that the Committee and the Procurement Board and everybody else is focused on that, but that has been a problem since the icare inquiry on "It's about getting an honest picture of what's being spent with which consultant and for what purpose."

I think transparency is always a good way to reduce an overgrowth of fungus. In this instance, it may well prove that transparency and being held to account by a regulator in a strengthened way or a removal of the scheme altogether and a strengthening of contracts—but I think the broader problem is what's going on in the audit side of these firms. Are these same failings being repeated? I guess that's the thing that should worry us all, not so much as taxpayers on the end of big bills for reports but more for our superannuation funds. We know from the ASIC sampling that there's been a very high failure rate. They'll explain that and say, "Yes, but they're the complex ones that they sample." If you're failing half the complex ones, that's pretty bad because complex companies are generally large ones with lots of our super in them.

**The Hon. WES FANG:** Professor Lyon, thank you for appearing today. We've heard from CA ANZ that there are some gaps in what it is that they're able to do. Do you agree that we might need to strengthen some of what it is they are able to look at and perhaps investigate?

**BRENDAN LYON:** I think that, from the way I read the by-laws, they can strip someone of membership, they can strike them off. It shouldn't take three years to investigate something where all of the—I guess what I'm saying is the law enforced is the one that becomes optional. That's probably what we're seeing.

**The Hon. WES FANG:** Are you a member of that organisation at the moment?

**BRENDAN LYON:** No. They did invite me to rejoin on Friday, and I'm giving that due consideration at the moment. In truth, I should say, Mr Fang, if I may, that the meeting with CA ANZ was very pleasant and I don't bear them any ill will. I guess, if we go back to reality, they're fighting to be a relevant membership organisation. That's what they spend their time doing. It's not an emphasis on discipline. No-one's expected them to do it. They've not been held to it. I guess that's the gap.

**The Hon. WES FANG:** But it is true, isn't it, that they can't investigate former members. So anything that you've perhaps provided by way of commentary or evidence that isn't quite accurate, they're not able to investigate that at the moment, are they, because—

**BRENDAN LYON:** I would welcome—I would rejoin so they could investigate me, if that's what you're alleging, Mr Fang.

**The Hon. WES FANG:** Is that a commitment, Professor Lyon?

**BRENDAN LYON:** Yes.

**The Hon. WES FANG:** That's interesting. Are you currently regulated by any professional body?

**BRENDAN LYON:** No.

**The Hon. WES FANG:** So there's no recourse to your professional—

**BRENDAN LYON:** For what?

**The Hon. WES FANG:** For work, for example.

**BRENDAN LYON:** I have contracts. I don't have a protection, so they have absolute recourse.

**The Hon. WES FANG:** Are you a consultant at the moment?

**BRENDAN LYON:** Yes.

**The Hon. WES FANG:** Under which organisation?

**BRENDAN LYON:** It's called Project Partners.

**The Hon. WES FANG:** So it's not just your work with the university that you've got.

**BRENDAN LYON:** No.

**The Hon. WES FANG:** You also do contract work.

**BRENDAN LYON:** Yes. We have a website that's not secret.

**The Hon. WES FANG:** Does anybody regulate that work that you do under that?

**BRENDAN LYON:** Yes. My clients do.

**The Hon. WES FANG:** Your clients do.

**BRENDAN LYON:** And the work we're doing at the moment, yes, because I'm a witness, expert witness, in a case in the Supreme Court of Victoria, where I'm the court's witness. I'm definitely regulated by statute for that.

**The Hon. WES FANG:** Usually expert witnesses are there under a certain guise, as an expert. What's the expertise that you're—

**BRENDAN LYON:** Transport pricing—very similar to the TAHE one but not involving rail. I can't speak about the case. It's a modelling exercise, a lot like—

**The Hon. WES FANG:** What qualifications are required to be an expert in transport?

**BRENDAN LYON:** Experience and judgement.

**The Hon. WES FANG:** So no qualifications itself.

**BRENDAN LYON:** In what?

**The Hon. WES FANG:** That's what I'm asking.

**BRENDAN LYON:** I've got an MBA. I studied law originally, left that in fourth year. I've got a Master's of Business Administration. I'm currently doing a PhD on the regulation of professions. I've spent nearly 22 years working in regulated, priced transport markets, published very widely on them. I guess there is no degree that

would cover all of those things. I guess it's professional experience that I've earned, working in the infrastructure sector for a long time. If there is some suggestion that you have of improper anything, then it would be good to put it to me in the interests of the procedural fairness provisions of the Committee.

**The Hon. WES FANG:** No. I'm just trying to understand and build a picture.

**BRENDAN LYON:** I understand what you're doing. I understand.

**The Hon. WES FANG:** We've had a lot of evidence put to us. Evidence is really not helpful unless it's tested.

**The CHAIR:** Before I go to Dr Kaine, could I suggest to Mr Fang that this witness has provided folders of documents to this Parliament previously. If there is any aspect of his testimony today Mr Fang would like further evidence about, please put it to him now, or put it in as a supplementary question so that we can clear that up.

**The Hon. WES FANG:** Chair, to that point, we are here as a committee.

**The CHAIR:** That's right.

**The Hon. WES FANG:** And the Committee is during its inquiries able to put questions to the witness.

**The CHAIR:** Yes.

**The Hon. WES FANG:** I'm just doing that.

**The CHAIR:** That's fine.

**The Hon. WES FANG:** My questions haven't been ruled out of order.

**The CHAIR:** That's not what I said. All I was saying is that if you have something specific, please do put it in the interests of procedural fairness.

**The Hon. WES FANG:** And I am.

**The CHAIR:** And I will now go to Dr Kaine.

**The Hon. WES FANG:** Well, I hadn't finished my questions. I've had literally five minutes out of the time.

**The CHAIR:** We will come back to you if there's time, Mr Fang.

**The Hon. WES FANG:** Okay, thank you.

**The Hon. Dr SARAH KAINE:** Just a quick follow-up on the questions from Mr Fang, you weren't suggesting in any way that as a consultant you would not be regulated by any of the suggestions that you've made—you would be quite happy as a consultant to submit yourself to any regime?

**BRENDAN LYON:** One hundred per cent. My whole career has been demonstrated, or I have sought to demonstrate honesty and integrity in the work that I do. And I am more than happy—when I last appeared here, and it's probably a reasonable point for all of the Committee to note, it was just me. I had a Treasury secretary who was making full allegations about conduct and personal matters. I had a firm that were backgrounding against me, meeting with politicians and giving them questions and suggestions to ask, all of that sort of thing. I guess this time there are findings and it should be a different discussion, but in some ways it's not, because there haven't been consequences for anyone else.

**The Hon. Dr SARAH KAINE:** Just to that, given that we heard that there haven't been consequences—and even reputational damage hasn't resulted in a decline in business, it would seem—we heard some testimony from KPMG yesterday, and previously from other consulting firms, where they've made seemingly very earnest commitments about the change in culture in their organisations and public mea culpas about what's gone before. How convinced are you about the cultural change in those organisations?

**BRENDAN LYON:** I was so convinced that I came off the bench when they wrote their submissions to the Commonwealth and to yourselves, saying that they are the most ethical firm and blah, blah, blah, and didn't even mention TAHE in the Commonwealth one, and then testified in June saying that they'd learnt their lessons and everything else, but the people sitting there are the same people that did all of that to the New South Wales taxpayer and by consequence to me and my wife and friends. I guess it just brings it home that they're still the same people and it triggered me to write a submission, which I did, to the Commonwealth, where I tried to largely focus, not on KPMG, because in some ways I kind of feel sorry for—I certainly feel sorry for the good people who work within all of those firms. I think they've been badly led. I don't particularly bear KPMG ill will. I'll

always not love that organisation. But I guess what I see is a sector that needs regulation because it's badly led and it's badly incentivised. Those two things together have led to some pretty bad outcomes, of which my last four years has been one.

**The CHAIR:** I will go back to Mr Fang.

**The Hon. WES FANG:** Thank you. We were just talking about qualifications for the evidence you are providing to the Supreme Court of Victoria, I believe it was.

**The CHAIR:** How is this relevant to the terms of reference, Mr Fang?

**The Hon. WES FANG:** I'm just establishing the credibility of the witness, that's all.

**The CHAIR:** Could you do it in a more specific manner, please?

**BRENDAN LYON:** I can't answer any questions about that case, Mr Fang.

**The Hon. WES FANG:** Okay, that's all right.

**BRENDAN LYON:** Because it's regulated and I have to adhere to the ethics of that.

**The Hon. WES FANG:** You made the point to the Deputy Chair that your accounting background isn't by way of qualification, is it?

**BRENDAN LYON:** I'm not an accountant. I never said I was an accountant. In fact, the part of my report where I question the accounting treatment is all about the requirement to give control of the rail assets across to a remote organisation. I don't particularly care about the accounting treatment. I know a hell of a lot more about AASB 1059, AASB 16, et cetera, et cetera than I wanted to. What I do know is transport, pricing, regulation, and that's what I did.

**The Hon. WES FANG:** But in November 2020 your Transport report said that State-owned corporations can be given direction by the shareholding Minister.

**BRENDAN LYON:** They can.

**The Hon. WES FANG:** And it has to be laid before Parliament?

**BRENDAN LYON:** Yes.

**The Hon. WES FANG:** Section 20N of the State Owned Corporations Act does allow for direction but there is no requirement for laying anything before Parliament. Is that correct?

**BRENDAN LYON:** I'm not sure, Mr Fang. You might want to ask the Parliamentary Counsel's Office, who would probably be better to do that.

**The Hon. WES FANG:** It seems that that might have been not quite accurate in the report.

**The CHAIR:** Mr Fang, can I ask where you are going with this? Are we now having a discussion about your views of accounting treatment or your views of corporate structures versus Mr Lyon's?

**The Hon. WES FANG:** I have plenty of views about corporate structure and corporate treatment.

**The CHAIR:** Can you please bring this back to the terms of reference?

**The Hon. WES FANG:** We are not testing my views here, Chair.

**The CHAIR:** No, we are not.

**The Hon. WES FANG:** We heard yesterday from KPMG that there were a number of increased and improved whistleblower protections for people within KPMG, and you indicated that you have used some of those. Was your conduct or behaviour the focus of any whistleblower reports to KPMG?

**BRENDAN LYON:** I'm sure, Mr Fang, there were all sorts of vexatious complaints that were made.

**The Hon. WES FANG:** From people that worked underneath you?

**BRENDAN LYON:** Probably.

**The Hon. WES FANG:** Is that an admission that your conduct—

**BRENDAN LYON:** I have absolutely no idea. Not that I'm aware of.

**The Hon. WES FANG:** Not that you're aware of?

**BRENDAN LYON:** Not that I was made aware of at any time. If one were to emerge now, I guess I would look at that with extremely sceptical eyes, given the passage of time.

**The Hon. WES FANG:** Even if it was historic and made in the circumstances that it was—

**BRENDAN LYON:** I would say that if KPMG want to start issuing documents they should do it.

**The Hon. WES FANG:** I'm simply asking a question. I'm not suggesting anything.

**BRENDAN LYON:** I have absolutely no idea what you are talking about. It was never raised with me at any point, and there were lots of conduct complaints that are all on the record that were issued to me. I've put them all on the record. Go and read them. There were complaints made by Ms Watson that I had bullied her by using words like "ethics" and "professional scepticism" and said that I was unwilling to work with her on the basis of her conflicts and that that had made her feel bullied and ostracised. Comments I had made in the conflict group were similarly where I raised ethics and conduct issues that were fundamental breaches. I would have used the same words they used in the conduct letters except I would have just explained them differently and said, "These are what I allege were the problems at KPMG." So I don't know what you are talking about. It was never brought to my attention that such a complaint had been made. If one emerged now, then I think most people would treat it with derision.

**The Hon. MARK LATHAM:** Professor Lyon, drawing to the end of your session, I for one put on record my admiration for your role as a whistleblower. As you have indicated, it's fraught with revenge, retribution, bitterness and personal cost to you, but we're all better off for your honesty and the material you have brought forward now over a substantial period of time. That should be recognised.

**BRENDAN LYON:** Thank you.

**The Hon. MARK LATHAM:** More generally, to lift above the TAHE debacle, one thing that has come out of this inquiry is that under the former Government there is a relatively small number of firms—some accounting, some legal and some in other areas—who seem to get a great share of the work. Isn't this just evidence of reverse agency capture—that these consultancy firms know that if they play the game and they tell the government what the government wants to hear, regardless of the risks and the downside, they get the next job as well—and that we're so much better off doing this work through a fearless, independent, well-staffed public service that, in the public interest, acts according to the facts rather than a commercial interest of how to gouge some more money with the next job?

**BRENDAN LYON:** You need both. You need a really functional public service that knows what the mission is and knows what the lines are between a public outcome and a political outcome, and where the line is to say no. In my view, that is not served when work is concentrated amongst a politically powerful and politically connected small number of firms who say that they do everything but, from what I saw, will do anything. It's not everything they'll do; it's anything they'll do.

**The Hon. MARK LATHAM:** What makes them politically connected?

**BRENDAN LYON:** They're some of the largest political donors in the country. That was part of the submission I made to the Commonwealth, and they are the largest non-contractor providers—non-construction providers to government. Again, I think there's a range of ways that things could be tightened up. I guess my observation generally is the lines have gotten pretty sloppy. To Mr Fang's probing questions—and I'm happy to take questions; I welcome them—I guess the point that I'm making is the entire sector needs to be tightened up. Government needs to be better at buying and specifying what it does. It needs to be better at saying what it is that—and the professions also need to be better incentivised to do proper practice of what they're supposed to do and not do everything or anything for cash.

**The CHAIR:** Have you ever seen any accounting firm or any of these big four give policy or campaign advice during an election campaign?

**BRENDAN LYON:** I'm certainly aware that they attach personnel to political oppositions over time. I would take it on notice but definitely I'm aware. I don't if KPMG does. I'm aware another firm had done that. Let me just take it on notice and I'll just refresh my recollections.

**The CHAIR:** Sure. Thank you. Unfortunately, we are out of time. I just want to ask one last question, just reflecting again on the evidence you've given us today, the evidence we heard yesterday, as Dr Kaine says, about the reformed KPMG—that they've learnt lessons, and that they've changed the way that they've behaved or that they're now behaving. Right at the beginning you mentioned that the CEO, Mr Yates, was aware of your concerns. Did you face retaliation from Mr Yates?



**BRENDAN LYON:** Yes. He was the incoming CEO. He is the one—all of a sudden it was me out the door. They waited until TAHE had gone through Cabinet, which I think happened in February and then just got hit with a conduct complaint every few days until I was gone from the firm. So it was led by Mr Yates. He had put a prohibition or agreed a prohibition on me doing New South Wales government work, which as an infrastructure partner who lives in Sydney is pretty—

**The Hon. WES FANG:** Did you get a payout when you left?

**BRENDAN LYON:** I did.

**The Hon. WES FANG:** You did?

**BRENDAN LYON:** Yes. It wasn't big enough, Mr Fang, but, yes, I did, and again it sort of shows you that they knew that things were untoward at the time. If I was facing conduct complaints that had even a scintilla of backing, I don't think I would have got the retirement benefit that I did get. But if the whistleblower protections that applied to corporations existed, I wouldn't have had to have expended money to defend myself in the context of ensuring that, after subpoena, the right things have come out.

**The CHAIR:** And people that worked with you at KPMG followed you, didn't they?

**BRENDAN LYON:** They did, yes. Some of them have moved on now, but, yes, they did. Again, I wouldn't be surprised if everybody in my team put in complaints about their treatment. They should. It was disgusting. If you go and read the email I sent when I got disciplined for not doing the occupational health and safety training because I had been taking cold and flu tablets and was up for 48 hours to get the first report in because we were given no resources, I was then disciplined for being aggressive in my explanation of why I hadn't done the training. Nonetheless, the working conditions that my team and I had to suffer and endure were a disgrace—an enduring disgrace—and I wouldn't be surprised if every single one of them went at KPMG for something. They should.

**The CHAIR:** Thank you. Unfortunately, that is all we have time for. I think we could speak for many hours with you.

**The Hon. WES FANG:** Agreed.

**The CHAIR:** It is not easy being a whistleblower, but I know that this inquiry and this Committee in its former iteration in the last Parliament has benefited greatly from the evidence that you've given and we're certainly a lot wiser than we would be otherwise, so thank you very much.

**BRENDAN LYON:** Thank you.

**The CHAIR:** To the extent that there were questions taken on notice or there are supplementary questions, you have 21 days to respond, and the Committee secretariat will be in touch.

**BRENDAN LYON:** I only took one, but I also only took one last time and it was a 162-page response. I guess Mr Fang may want to start there just to get some of the history when he wasn't on that Committee. But it's very well evidenced and would probably put to bed some of the concerns he might have.

**The CHAIR:** Excellent. Thank you.

**The Hon. WES FANG:** I also look forward to you joining—

**The CHAIR:** Order! Thank you very much. That concludes this session.

**BRENDAN LYON:** Thank you.

**(The witness withdrew.)**

**Mr ANGUS McFARLAND**, Branch Secretary, Australian Services Union NSW and ACT (Services) Branch, affirmed and examined

**Ms JAN PRIMROSE**, Deputy Branch Secretary, Australian Services Union NSW and ACT (Services) Branch, affirmed and examined

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

**ANGUS McFARLAND:** Thank you for the opportunity to appear before the Committee this morning. My name is Angus McFarland. I'm the State secretary of the union. I'm joined here by Jan Primrose, my deputy. Our evidence today is based on conversations, feedback and insight from our members. In New South Wales we cover community services, the NDIS, airlines and transport. But of relevance to today's deliberations, we cover the water industry. We're the union for public and private water in New South Wales, including Hunter Water, Sydney Water, WaterNSW and private providers, which includes the desal plant, Veolia and others. Today I will focus my opening remarks on Sydney Water.

Sydney Water is a utility that provides water, wastewater, recycled water and stormwater services for the Sydney Basin. The latest annual report shows that Sydney Water has approximately 3,000 full-time equivalent direct employees. There is no data on the number of indirect employees, those employed through contractors. Sydney Water's most recent available annual report states that over the next four years it will deliver capital works of about \$8.21 billion. This is a very significant budget to deliver essential services, with very significant implications for planning and the environment. This expenditure should be spent in the best interests of people and the environment. While we do know the approximate budget, we do not know how it will be spent in terms of the use of consultants and contractors.

It is of concern to our members that consultants, in fact, also do become contractors. The manner in which this happens may vary; however, we believe that at Sydney Water there has been extensive use of private external consultants to provide feasibility studies and proposals for capital works and maintenance projects. We believe that those private external consultants have access to internal information that allows them to develop these proposals and studies. We further believe that those consultants are able to utilise that information in their own tenders to deliver projects. In this way, consultants on capital and maintenance projects become contractors on the same projects. Our concern is that this is not a transparent or accountable procurement process.

We further believe this has led to a hollowing out of skills and networks in the workforce at Sydney Water in relation to specialist procurement, engineering, planning and design, and related teams, and also in relation to the field staff of tradespeople and other skilled workers. Our members are further concerned that projects delivered by external providers may not be at best-practice standard, necessitating further and expensive rectification work, which increases the final cost of projects. Another concern is the inefficient use of public funds to deliver essential water services and that this is leading to an unbalanced budget in which funds are not effectively prioritised, as issues requiring urgent work replace planned maintenance and work. This has led to the budget at Sydney Water, we believe, not having sufficient funds for effective, long-term, preventive maintenance, which can cause disruption to water services such as the recent experience in Lane Cove, where people had no water supply for up to a week.

At the recent State election, there was a clear difference between those competing to be Premier around a commitment to protecting Sydney Water as an essential public asset, and the electorate overwhelmingly endorsed the current Government's position. The first piece of legislation enacted by the new Government was to protect Sydney Water and place it in the Constitution. Unfortunately, it appears that some of those appointed to deliver the agenda of the previous Government have not acknowledged that there is a new Government. The managing director of Sydney Water was appointed by the last Government in 2019. I understand from annual reports that his salary is in the vicinity of \$800,000. Prior to his role at Sydney Water, he did work as the head of some of the largest private water providers. For example, he was the CEO of Suez, which last year was awarded a prominent contract to deliver an upgraded Prospect Water Filtration Plant. He was also the managing director of United Utilities Asia and Pacific, which was also awarded a significant contract last year to construct and operate the Upper South Creek Advanced Water Recycling Centre.

It's important to note, though, that the preference for private consultants and contractors is not limited to organisations the managing director has previously led. There are many other private consultants and contractors delivering major projects across the organisation. Our members tell us they are often associated with cost overruns, necessitating late variations and delays in project delivery. For example, in recent weeks our members were told of \$40 million in cost overruns in the treatment division alone of the organisation, while approval was recently given for a further 20,000 man-hours of work to external private providers. We have further reason to be concerned

about these procurement processes. At Sydney Water it's all underpinned by a secretive panel of preferred providers, and we have been informed that there are examples of internal costings for projects being significantly less than the quotes provided by external providers, who are ultimately awarded the very lucrative contracts.

We've also been told of demand for late contract variation by these private providers—variations on late contract delivery for critical maintenance. And then, when those projects are delivered, we're aware that there are instances of critical asset damage and work being of such a poor standard that additional and expensive work is required to meet legal and operational requirements. In support of this view, our members point to a significant increase in prosecutions, fines and penalties levied against Sydney Water in recent years due to their breaching operating licences that can be linked to poor procurement practices, the recent example being \$400,000, plus costs, and a requirement for an apology by Sydney Water associated with the 16 million litres of sewage at Naremburn. It appears that, to many, the payment of fines and penalties has become a cost of doing business rather than a cause for shame. We do know that EPA officials have told our members that they regard Sydney Water's business model as "putting out fires", rather than having a realistic plan for preventing them.

Summing up, in view of the essential services that Sydney Water does provide and in the interests of public accountability, we believe there are many questions that Sydney Water needs to answer. Indeed, we believe it would warrant its own separate inquiry process with broad terms of reference, including the management of the organisation, procurement, use of contractors, use of public funds and whether the organisation is meeting environmental and other standards, including staffing issues. While we can provide some information to you based on what is on the public record and based on what our members tell us, it appears that Sydney Water Corporation, as a State-owned corporation, is not required to provide the same level of information and data transparency as other State government agencies. That's my opening statement. We're happy to respond to any questions.

**The CHAIR:** That's quite a statement—again, a very good one and worth the extra time for. There's a whole lot of information that you've just given us that seems incredibly valuable. Firstly, are you able to table the opening statement? That might be helpful for us to get our heads around it ahead of having Sydney Water in front of us later on. Can we start with the issue around the contractors and these consultants becoming long-term contractors? Can you go back, because that was a lot of information. Can you explain a little bit more about that?

**ANGUS McFARLAND:** Yes. I might ask Jan to elaborate on this one, but our understanding is a lot of the private consultants who are used to help develop feasibility studies do have access to information which can then be useful for them to assist or advise contractors bidding for work. There's a lack of transparency around how the panel of preferred providers et cetera is established, but it is something that our members inform us is a problem and there is a link. Jan, do you want to elaborate?

**JAN PRIMROSE:** Sorry. Do you want to ask first?

**The CHAIR:** We can ask Sydney Water about that panel of providers. In terms of contractors you're talking about, it sounds very similar to what we heard in relation to the transport and metro stuff yesterday, that we have these people sitting within government departments who have access to a bunch of information that they're able to then take and use to pitch for more work. Is that correct?

**JAN PRIMROSE:** Our members have explained to us that a common process is that if there is a major operational maintenance or capital works project a specialist consultant will be brought in to develop a proposal. It might be a feasibility study or it might be a proposal for a project. To develop that proposal they would have access to a whole range of otherwise confidential information at Sydney Water. They would then develop a proposal which they would present to Sydney Water, and then they would bid to deliver the project, but they would have the advantage of the information that other people wouldn't. But also, because there's a panel of preferred providers, if they're also on the panel of preferred providers then they have a second advantage in proposing their tender. In some of those instances, they are also tendering against Sydney Water for the tender to deliver the project as well. They have the advantage of already having all the information plus the advantage of also being on the panel of providers.

**The Hon. MARK BUTTIGIEG:** Does that mean the internal employees don't have access to that same intellectual property to be able to make an informed bid?

**JAN PRIMROSE:** Our members have told us that while they might have access to the information they haven't had the advantage of having developed the proposal, and if the external consultant has developed the proposal then they're in an advantaged position relative to internal.

**The Hon. MARK LATHAM:** Is there a case study we could look at? It is good that members give you feedback, but are there specific examples the Committee could examine?

**JAN PRIMROSE:** There are a number of examples. It is probably better—with respect—if the Committee were to ask Sydney Water for specific examples, because the procurement team is very small at Sydney Water, and if we gave very particular examples I think that could be a problem for the members who have given us the information, if that's all right.

**The Hon. MARK BUTTIGIEG:** By way of context, I think you said there were 3,000 directly employed.

**JAN PRIMROSE:** A bit over that.

**The Hon. MARK BUTTIGIEG:** What has been the historical—presumably—decline? Do we have any statistics on 10, 15 or 20 years? I am just interested to know what it was historically. You have a public utility—it is essentially a State-owned corporation now, but a public utility for all intents and purposes—with a job to do, and that is to supply water to a big and growing city. Presumably, the work has increased. It has not gone away. If there has been a decline in full-time employees over a period of time, that has to have been supplanted by these other people. What sort of quantities are we talking about?

**ANGUS McFARLAND:** I don't know the exact—my recollection of this is that there used to be around 10,000 employees at one stage. Direct—their own. I would want to check that. I can provide further information, but that's my understanding of the trend over the last couple of decades.

**The Hon. MARK BUTTIGIEG:** We might ask Sydney Water that too. So that is a 70 per cent reduction in internal staff over probably 15 to 20 years?

**ANGUS McFARLAND:** Yes. That would be my guess. As I said, I'd want to check that.

**The CHAIR:** Were these contractors sitting next to employees? We heard yesterday of a relatively new thing that Transport for NSW are doing where they are making efforts to protect their confidential information by letting everyone know who is a contractor and who is an employee. Has Sydney Water done that? Do we know? Is it clear who is an employee and who is not?

**JAN PRIMROSE:** We're not aware of something that would—if you're talking about labelling or something, it's nothing clear like that. But, certainly, the people who work at Sydney Water are aware of who is on the site as a contract employee or a consultant as distinct from someone who's an employee of Sydney Water, although the contract staff drive cars that have Sydney Water labelling all over them and they wear clothing and do other things, essentially, as if they were Sydney Water employees.

**The CHAIR:** What about email addresses and things? Is there any difference? If you were emailing internally, would you know if you were emailing someone who is an employee or a contractor?

**JAN PRIMROSE:** I'm not aware, from what our members have told us, of people who are working for consultants or as contractors having the same email addresses. But the contract and consultant staff often also work in the field, so that you might have, for example, if they were doing a maintenance project, a team of 20 or 30 people working on a site, and you couldn't tell who was the Sydney Water person and who was not directly employed by Sydney Water. They're all essentially doing the same work at the same site, or similar and related work.

**The Hon. Dr SARAH KAINE:** Have your members suggested or given you any indication about the length of time that these non-employed people have been around? Have they seen evidence of people moving from project to project?

**JAN PRIMROSE:** Certainly. Yes, they have. Their concern is that the number of employees of consultants and contractors has increased exponentially and that projects are extended end on end so that at the beginning of the period of time—for example, when it appeared to our members that Sydney Water was being prepared for privatisation—some very large contracts, through consultants, were commenced with long contract periods, like five years with an option for a further five years. So they extend over very long periods as well.

**The Hon. Dr SARAH KAINE:** Mr McFarland, you spoke about connections between the current CEO and organisations that have subsequently won large contracts. Could you expand a bit on that? Is there evidence that you could provide?

**ANGUS McFARLAND:** I guess the evidence is the annual reports of the company and his LinkedIn, in terms of where he's worked and who has contracts with the company since that time—very significant ones. So that's all on the public record. I want to be clear in my statement to say I'm not trying to suggest that their use of contractors is limited to places where he has worked. I'm not suggesting that, but I was just pointing out facts that are on the public record. I think when you add on to that the lack of transparency around the process, the decision-making, the internal bids and other things—that's why we do have questions about all of that.

**The Hon. MARK BUTTIGIEG:** Is there a track record of this fellow, Mr Cheroux, prepping public utilities for sale?

**ANGUS McFARLAND:** I believe that in South Australia he was a part of it, or worked there, when that was privatised—SA Water—prior to moving to New South Wales.

**The Hon. MARK BUTTIGIEG:** In your industrial instrument, how elaborate is the provision for internal employees to be able to bid? You mentioned, Ms Primrose, that they have access to information but not necessarily the wherewithal or time to develop an alternate proposal. Was that an accurate characterisation of your evidence? Therefore, the contractors have an advantage because they've obviously got the developed proposal?

**JAN PRIMROSE:** I think it would be maybe more accurate to say, and reflecting on Mr McFarland's comment, that over a period of time—we've been told that the original procurement team at Sydney Water was replaced so, of all of the people who worked on the procurement team, a significant number of people were replaced by the new procurement team and the new panel system. There is a new procurement team. Major projects are not necessarily developed by that procurement team. There would be people in specialist roles throughout Sydney Water who would need to be brought together to develop a proposal of the size and magnitude and cost that is involved in a major public utility like Sydney Water. Over a period of time, as more and more consultants are brought in, and less and less work is done in house, there's been a hollowing out in the skills and the ability and capacity of the organisation to compete with those specialist consultancies. I'm not trying to work around; I just think it's not a straightforward thing.

**The Hon. MARK BUTTIGIEG:** So essentially the wherewithal for internal employees to provide an alternate bid and put proposals together theoretically could be there if there was the intellectual infrastructure to put it together, but there's not because it's been hollowed out.

**JAN PRIMROSE:** Certainly. That's not uncommon to Sydney Water. That's a more general problem.

**The Hon. Dr SARAH KAINE:** Could I ask a follow-up about current employees?

**The Hon. WES FANG:** Did you seek the call from the Chair?

**The Hon. Dr SARAH KAINE:** Ms Primrose, you said that consultants and contractors are working alongside full-time or ongoing—

**The Hon. MARK BUTTIGIEG:** Point of order: There's these constant juvenile interjections from the member. We're trying to listen to the question and the answer. I ask you to ask the member to stay silent while we're asking questions.

**The Hon. WES FANG:** In that case, I will take a point of order because I had indicated to the Chair that I had questions and, instead of seeking the call from the Chair, the member just launched into questions. The Chair didn't have the opportunity to provide the call to me but you still seek—

**The CHAIR:** Order!

**The Hon. Dr SARAH KAINE:** Thank you, Mr Fang. We had been pursuing a free-flowing approach. My apologies, Mr Fang.

**The Hon. WES FANG:** Thank you.

**The CHAIR:** Order! I will allow Dr Kaine to finish her question on this line and then I will come to you, Mr Fang. There is plenty of time.

**The Hon. Dr SARAH KAINE:** Thank you. Mr Fang, you're not always on this Committee. We have, in these hearings, pursued a free-flowing approach so let's just ensure that.

**The Hon. WES FANG:** Again, it's free flowing through the Chair.

**The Hon. Dr SARAH KAINE:** My question, Ms Primrose, was you indicated that consultants and contractors work alongside direct employees of Sydney Water. Would the consultants and contractors be members of your union?

**JAN PRIMROSE:** I couldn't tell you, I'm sorry. I just couldn't tell you, I'm sorry.

**The Hon. Dr SARAH KAINE:** Okay, they wouldn't necessarily, but there has been an increase in those consultants and contractors over time, instead of direct employees?

**JAN PRIMROSE:** Absolutely.

**The Hon. Dr SARAH KAINE:** Do you think that might have any impact or be informed at all by negotiations or the situation with regards to enterprise agreements and Sydney Water dealing with the union as a representative of those workers? Do you think there might be any industrial intent in hollowing out the permanent, ongoing workforce?

**JAN PRIMROSE:** I'm not aware of that, no.

**The Hon. WES FANG:** Mr McFarland, I noted during your opening statement that you talked about the piece of legislation that was put forward to have Sydney Water protected by having it included in the Constitution. I'm sure you'd know, however, that there were a number of other smaller regional water entities that weren't included, that other parties within the Parliament thought should be included. Did you have a view on that—that there was only a selective protection of metropolitan assets and not for rural and regional communities?

**ANGUS McFARLAND:** Firstly, I'm not exactly sure how this sits within the terms of reference of this inquiry, but—

**The Hon. WES FANG:** I think it's just related to the opening statement that you made in general. I was just curious to get a baseline from where I can start the questions.

**ANGUS McFARLAND:** I think that the Government's commitment was in response to the previous Government failing to rule out privatising certain things. I don't know that that related to those things—

**The Hon. WES FANG:** Did they do that, though? Did they fail to—

**ANGUS McFARLAND:** Sorry, you asked me for my opinion on it, and I'm just giving it to you.

**The Hon. WES FANG:** Yes, but I'm just asking, like, factually, did they fail to—

**The CHAIR:** Order! If we could allow the witness to answer the question you've asked.

**The Hon. WES FANG:** Apologies, Chair.

**ANGUS McFARLAND:** Yes. That's, I guess, my response to that.

**The Hon. WES FANG:** Okay. You didn't have a view that rural and regional communities should have their water assets protected as well?

**ANGUS McFARLAND:** I guess that would be something that—the union for those regional assets is not the ASU. That's a different union. So I would be discussing with them their members' concerns and seeking, as unions do, when we—on policy matters around industries we don't cover.

**The Hon. WES FANG:** Just in relation to that, you were happy to provide a view earlier to the first part of the question. Do you not have a view on it?

**ANGUS McFARLAND:** I've just answered your question, sorry.

**The CHAIR:** Yes. Are you going to continue down that line of questioning? I wanted to ask how it related to the terms of reference, but if you're not going to continue then I don't need to ask.

**The Hon. WES FANG:** I'm happy to move to some other things.

**The CHAIR:** Have you got another question?

**The Hon. WES FANG:** I certainly do, Chair. I've got many questions. In fact, if I don't get through them, I might put them on notice. But we will see how we go. In relation to the opening statement that you made, as well, around the current head of Sydney Water and previous roles, does it not strike you as perhaps disingenuous to suggest that one's actions in a previous employment or entity are somehow going to be reflected in their current role? Certainly there are many people who have been employed in roles prior to their current role—may have had a different scope in their tasking. But is it not, I guess, coming here and using parliamentary privilege with an axe to grind to make these sort of statements in an opening statement that are baseless—

**The Hon. MARK BUTTIGIEG:** Point of order—

**The Hon. WES FANG:** I'm just—I'm going to—

**The CHAIR:** Order! I will hear the point of order.

**The Hon. MARK BUTTIGIEG:** The point of order is this: The member is referring specifically to an answer that the witnesses gave to a question I asked. They weren't verballing people or trying to undermine people's reputations. They answered to the best of their ability in a factual sense to a question I asked about the chief executive's previous employment history and track record.

**The Hon. WES FANG:** To the point of order: I was referencing the opening statement and then I was going to further elucidate that answer by asking the witness to, I guess, provide some evidence of the anecdotal points that he indicated were from his members. I was going to start there and then work my way down. I was teasing out a line of inquiry.

**The CHAIR:** Order! In relation to the point of order, I would ask that we show respect to the witnesses we have in front of us. If we could—

**The Hon. WES FANG:** I believe I was.

**The CHAIR:** Please be more direct in the questions that you're asking, without as much commentary that lends itself to inference that may not be desirable.

**The Hon. WES FANG:** It is a quid pro quo, Chair, I might say, because these opening statements that are more like monologues are unhelpful.

**The CHAIR:** Order!

**The Hon. WES FANG:** Mr McFarland, do you have any evidence to support your concerns, raised in your opening statement, around the head of Sydney Water?

**ANGUS McFARLAND:** Yes, the annual report of Sydney Water and the LinkedIn of the managing director—all on the public record.

**The Hon. WES FANG:** Do you have any documents that indicate a predisposition or a prior willingness to engage in these concerns that you've raised?

**ANGUS McFARLAND:** I don't think I indicated there was a predisposition.

**The Hon. WES FANG:** In relation to the anecdotal evidence you raised during your opening statement from your members, whilst interesting and, as the Chair indicated at the time, somewhat spicy—or that might have been the previous one. But certainly there were interesting points raised in your opening statement. I note that it was, as I indicated, anecdotal without a lot of evidence.

**The CHAIR:** Is this commentary or a question?

**The Hon. WES FANG:** Are you able to provide specifics in relation to the concerns that your members have raised, the work that's been done in relation to investigating or determining the validity of those concerns—

**The Hon. Dr SARAH KAINE:** Point of order: I'm not sure if Mr Fang was listening, but Ms Primrose, in answer to a question from Mr Latham, did answer regarding her concerns about being able to do that and how one way for us to potentially verify those issues was indeed to ask specific questions of Sydney Water, which we intend to do.

**The Hon. WES FANG:** No, I appreciate that.

**The CHAIR:** Order! There is no point of order as such, but, Mr Fang, please ask specific questions about what it is you are seeking elucidation or evidence about rather than a more generalised—

**The Hon. MARK LATHAM:** Maybe it helps if the union could provide the case studies on a confidential basis to the Committee, which is standard practice, because without detail it's very hard to make—

**The Hon. WES FANG:** That's exactly the point that I'm making. The opening statement made clear reference to concerns raised by their members around conduct or behaviour of the entity without actually identifying specifics.

**The Hon. MARK LATHAM:** We don't want people to lose their job.

**The Hon. WES FANG:** Yes. But we need specifics as to what it is that we're seeking to ask questions about.

**The CHAIR:** Order! Is it possible to provide any more information to us on a confidential basis after the hearing?

**ANGUS McFARLAND:** Yes, as I said in my statement, the evidence I've given is based on conversations with our members. As members of the committee have pointed out—based on what Jan said earlier—we do need to take into account the privacy and job security of our members. But we can certainly ask them about providing that detail in a confidential way, as has been suggested.

**The Hon. WES FANG:** In relation to those conversations, where concerns have been raised with you, have you documented those? Have you made file notes? Have you got a register of these concerning reports or conduct? How do you track these conversations that you have with your members?

**ANGUS McFARLAND:** We talk to our members all the time, every day, as you would appreciate.

**The Hon. WES FANG:** I appreciate that, but how do you register it?

**ANGUS McFARLAND:** We talk to our members all the time and we then share information internally through our different channels, through our team meetings, discussions that people have et cetera.

**The Hon. WES FANG:** But how do you record it? How do you ensure that these concerns that you've raised, that you've come to this inquiry and included in your opening statement, are registered?

**The Hon. MARK BUTTIGIEG:** Point of order: The witness has clearly answered that it's recorded in the collective conversations that they have with their members on a daily basis. It's now on evidence in the transcript from the opening statement that this is what their members say, so we should take that on face value because it's the evidence under oath.

**The Hon. WES FANG:** To the point of order: I'm trying to seek an elucidation around this issue given it was felt by the witness so important to actually come and provide evidence in the opening statement—

**The Hon. MARK BUTTIGIEG:** The witness has answered.

**The Hon. WES FANG:** I'm seeking to understand how it is recorded and actioned within the organisation. I'm sorry, but "conversation" is not appropriate.

**The CHAIR:** Order! I'm done hearing the point of order, thank you. There's no point of order. However, Mr Fang, in the interests of time—and I need to go to other members soon—I will allow you to ask that one question and then we'll be going to Mr Farlow.

**The Hon. WES FANG:** Can you please provide to the Committee on notice the evidence of those conversations as recorded by the union so that we can better understand the way that it's recorded for following-up purposes but also so the validity can be cross-referenced?

**ANGUS McFARLAND:** I've already made an affirmation about the things that I'm saying, and I've already said that it's based on conversations, feedback and insights. I've already given commitment to Mr Latham around how we'll be able to provide more information to the Committee.

**The Hon. WES FANG:** Does that mean you don't record them?

**ANGUS McFARLAND:** That means I'm responding to Mr Latham's request, not to yours—

**The Hon. WES FANG:** I understand that, but my request is separate and discrete.

**ANGUS McFARLAND:** I've responded to your question.

**The Hon. SCOTT FARLOW:** Thank you, Mr McFarland. In your opening statement you outlined concerns about Mr Cheroux's previous engagement with Suez and pointed out a contract with the Prospect wastewater treatment plant. Suez has been in that space for quite some time. Have you got evidence in terms of an uptick of work to Suez since Mr Cheroux has come into the role?

**ANGUS McFARLAND:** What we have available to us is what's on the public record about the contracts that they declare in their annual report. What I was pointing out in my statement is also what's public about where he has worked. I have not done an analysis myself from the date he's commenced to every contract since, et cetera. As I did say in my statement, it's important to note that the issues around contracting, from our perspective, aren't just relating to companies that he may or may not have worked for.

**The Hon. MARK BUTTIGIEG:** I have a quick follow-up that will perhaps help: Is that information available from Sydney—they don't provide it. Presumably the union has asked for it?

**JAN PRIMROSE:** One of the concerns that Mr McFarland raised in his opening address was precisely that point. Unlike other State government agencies, departments and entities, the requirement to make public all of the contracts that the organisation enters into is different. What we've been able to do is look at what is publicly available, and that's available on the Sydney Water website in their annual reports, their IPART submissions and so forth. We've been able to look at those, but we're not able to access further information. That also informs the comment that Mr McFarland made earlier, which was that to divulge publicly too much information would be difficult because that information is not publicly available. Therefore, to provide information on that, other than



on a confidential basis, would expose the people who potentially might have given it to us. Certainly they would be questions that perhaps Sydney Water could be asked, but they are not keen to give us that sort of information.

**The Hon. SCOTT FARLOW:** Thank you, Ms Primrose. Mr McFarland, you've called publicly for the dismissal of Mr Cheroux from the role as managing director of Sydney Water. I don't know if you went that far today in your opening statement, but you certainly did say that he didn't necessarily fit with the change of administration now. In a recent article it was indicated by Minister Jackson that she'd be meeting with you, I think, within two weeks of that article. Has that meeting taken place? If so, what was the outcome of that meeting?

**ANGUS McFARLAND:** Yes, the meeting was yesterday. It was in relation to that and a second letter that we wrote to her on Monday, following the vote at Sydney Water where 75 per cent of employees voted to reject the organisation's proposal around cutting their conditions. The letter was basically suggesting a path forward. We wrote a similar letter to Mr Cheroux on Monday. The meeting with the Minister was about us articulating our view.

**The Hon. SCOTT FARLOW:** Was there any outcome from that meeting?

**ANGUS McFARLAND:** No, I think she said she wanted to think about it, basically. It was us articulating our position to her.

**The Hon. MARK BUTTIGIEG:** Chair, just on that agreement, 75 per cent is a pretty high no vote. Are you able to inform the Committee what the proposition was from Sydney Water for the yes vote, in general terms, so we have an idea of the sorts of circumstances surrounding the no vote?

**ANGUS McFARLAND:** Yes. Sydney Water were proposing to basically take their employees backwards in their conditions at work, so putting up to 50 per cent of their employees onto individual contracts, disrupting established work patterns—so increasing the span of hours, removing RDOs et cetera—making people work longer for less, which would have impacted overtime rostering, caring responsibilities et cetera. Basically, the workforce gave a very clear indication of their views on that.

**The Hon. MARK BUTTIGIEG:** Contracting 50 per cent out of the agreement, essentially?

**ANGUS McFARLAND:** No, it's a provision that is around putting people onto what are called independent contracts within the EA, where lots of different provisions no longer apply to them.

**The Hon. MARK BUTTIGIEG:** Like the old local workplace flexibility agreement set-up?

**ANGUS McFARLAND:** Yes. Well, it's a bit different to that as well, actually, but if you want to—

**JAN PRIMROSE:** They're not individual flexibility agreements. It's more than half of the workforce on individual contracts of a kind that was very common 25 years ago and is no longer common.

**The Hon. Dr SARAH KAINE:** As a follow-up to that, do we have any sense of the workplace arrangements for those consultants or contractors who are working alongside your members?

**JAN PRIMROSE:** I can tell you that some of them have enterprise agreements as an industrial instrument. I can certainly tell you some of them do. I couldn't tell you, honestly, what all of them have, but I can certainly say a significant number have enterprise agreements in their own right, and we've seen those enterprise agreements.

**The Hon. MARK BUTTIGIEG:** Is there any provision in the main Sydney Water agreement for those external people to have similar wages and conditions?

**JAN PRIMROSE:** In fact, the external contractors have better wages and conditions.

**The Hon. WES FANG:** Mr McFarland, I want to turn back to your opening statement. Are the reports from your members often related to the quality of work or the cost overruns et cetera? What are the basics of those reports?

**ANGUS McFARLAND:** I'll ask Ms Primrose to answer that one because—

**JAN PRIMROSE:** I'm sorry, I just want to understand the question. Would you—

**The Hon. WES FANG:** The reports that you get from your members that are raising concerns in relation to Sydney Water and, I would assume, the performance or conduct of contractors or consultants—could you provide some insight into whether it is work related or paperwork related?

**JAN PRIMROSE:** There are consultants and contractors to do a very wide range of work at Sydney Water, and so the comments that have been made to us by our members vary according to the different work that's being done. But certainly you would be correct that our members certainly have raised with us their concern about

cost overruns, late delivery of work and work that they say they're disappointed in—in the standard of work that's delivered. Those sorts of comments. Is that what you mean?

**The Hon. WES FANG:** Yes, so there are some cost overruns. Would you describe it as shoddy work or incomplete work?

**JAN PRIMROSE:** Certainly that would be one of the options. It's not their main concern, but certainly they have raised that with us from time to time.

**The Hon. WES FANG:** Mr McFarland, in that instance, if they're raising concerns around shoddy work or incomplete work, wouldn't that then trigger within your organisation—being a union—that there's perhaps a safety issue there? Shouldn't those things be recorded? Shouldn't they be progressed by the union, where they're raised?

**ANGUS McFARLAND:** Yes, but I guess we're talking about a series of conversations that people have had with us that we're bringing to this inquiry in the context of your terms of reference. That's not to say that when people raise them with us at the time, we don't actually act on them in the appropriate ways you would as a union.

**The Hon. WES FANG:** That's the bit that I'm asking. Where those things happen, and there are statements that are made to you around incomplete or insufficient work of a mechanical or physical nature that is designed from a physical process point, I would imagine that that should raise, given the nature of Sydney Water, some concerns around safety. There should be a safety report. As a union, you should be following this up and actioning it, shouldn't you?

**ANGUS McFARLAND:** Whenever our members raise issues with us around safety, we of course support them on those matters—and to raise them. It depends on the particular issue—because you've just listed a whole bunch of hypotheticals.

**The Hon. WES FANG:** I appreciate that.

**ANGUS McFARLAND:** So it depends—

**The Hon. WES FANG:** But you're not providing any details, hence the reason why I have to put hypotheticals. I'm asking: There should be a register—you can provide that to us, can you not?

**ANGUS McFARLAND:** I've already answered your question before about the information you want, and I've given a commitment, based on Mr Latham's request. We do respond and support members on issues they raise with us, as you would expect, including safety.

**The Hon. WES FANG:** I appreciate that. However, what I'm asking is can you provide, on notice, the register where these concerns have been raised and that you have followed them up and actioned them? Because I imagine that—

**The Hon. Dr SARAH KAINE:** Point of order—

**The Hon. WES FANG:** —as a union, that is required.

**The CHAIR:** Order! I will hear the point of order.

**The Hon. Dr SARAH KAINE:** I think Mr McFarland and Ms Primrose have indicated that they will go back and provide the appropriate information. The particulars that Mr Fang is asking for are not at all related to what we are looking at. In fact, he has been badgering the witnesses, who are acquitting themselves very well, but it's not appropriate.

**The Hon. WES FANG:** I don't think it's for you to judge.

**The CHAIR:** I will rule on the point of order. I do think you were coming perilously close to badgering, Mr Fang.

**The Hon. WES FANG:** I was skirting the edges; I didn't cross the line.

**The CHAIR:** Are there any other questions?

**The Hon. MARK BUTTIGIEG:** Yes.

**The CHAIR:** Please, go ahead, Mr Buttigieg.

**The Hon. MARK BUTTIGIEG:** On a related issue, the evidence is, Ms Primrose, that the contractors are actually getting paid a higher rate in a lot of circumstances or in all circumstances, so it's actually costing Sydney Water more to do this work externally. Just related to Mr Fang's line of questioning, in terms of any history of penalties and breaches from Sydney Water, can you inform the Committee of where that may have occurred?

**JAN PRIMROSE:** Sure, I could give you some examples. Is that what you're after?

**The Hon. MARK BUTTIGIEG:** Yes.

**JAN PRIMROSE:** Keeping in mind that sometimes these things take a while to be processed through the relevant department, I can tell you about the most recent one, which was about half a million dollars and a requirement for a public apology. That related to 16 million litres of overflow of sewage at Naremburn. The penalty there was \$865,625 relating to a sewage overflow in 2020 at Naremburn creek.

**The Hon. MARK BUTTIGIEG:** Is this contractor work, is it?

**JAN PRIMROSE:** It's not specifically contractor work. These are environmental breaches and breaches of licence that have arisen. In some of those instances, there would have been consultants and contractors working on those sites, certainly. There is a list of those on the public record. I can list them or we can table it, but there is a long list of those. Is that what you were interested in?

**The Hon. MARK BUTTIGIEG:** Yes, that would be good.

**JAN PRIMROSE:** Certainly.

**The Hon. MARK BUTTIGIEG:** On this general theme of consultants and contractors supplanting the internal workforce, is that consistent across the capital works program and the maintenance as well?

**JAN PRIMROSE:** I couldn't give you a precise figure; that is not available publicly. But I can certainly tell you that our members have told us that it's a very significant problem, both across maintenance and capital works, certainly.

**The CHAIR:** Are there further questions?

**The Hon. Dr SARAH KAINE:** Mr McFarland, you mentioned contract variations in your opening statement. I just wondered if there was anything more that you wanted to add about that or, indeed, Ms Primrose?

**JAN PRIMROSE:** Only to reflect on what Mr McFarland said earlier, that our members have been concerned that on large capital works and maintenance projects there are significant cost overruns and also significant contract variations of multimillions of dollars. I should say, this stems from the fact that a large number of our members have worked at Sydney Water for quite a long time, and they are overwhelmingly proud of the work they do—overwhelmingly. They're really aware that what they're doing is delivering an essential service and they're very aware that Sydney Water has always had a good reputation for providing clean, safe water through fires and floods and COVID and so on. They are proud of the work they do, and that is where their concerns stem from.

**The Hon. MARK BUTTIGIEG:** On that and a related point, do you have reports from your members of having to go back and fix issues that contractors have created—

**JAN PRIMROSE:** Absolutely.

**The Hon. MARK BUTTIGIEG:** —because that's often a complaint in these situations?

**JAN PRIMROSE:** Absolutely. Their concern arises not only because as skilled workers they have pride in the work they do and they want it to be done to a high standard, but it also stems from that overwhelming pride they have in working for Sydney Water, and they genuinely believe it should be done properly and to a really high standard.

**The Hon. MARK BUTTIGIEG:** It's pretty galling to know that you have someone working side by side who is getting paid more, who then stuffs up and you have to go back and fix it.

**JAN PRIMROSE:** That's true. I might also say, nobody, including Mr McFarland or myself, would blame the workers who were employed by those contractors for being less than adequate workers. That is absolutely not what we're saying. But the circumstances in which they're working mean that jobs simply are not being done to the standard that I think the public would expect and the skilled workers who are working beside them would want to see done. It's not a criticism of the workers so much as the circumstances they're working in.

**The Hon. WES FANG:** In relation to those points that you have just indicated to Mr Buttigieg, can you provide some evidence of that as well—where work has been done by a contractor that has then required Sydney Water employees to go back?

**JAN PRIMROSE:** Absolutely.

**The Hon. WES FANG:** And the documentation around that, if you wouldn't mind?

**JAN PRIMROSE:** Certainly, on a confidential basis.

**The Hon. WES FANG:** Of course. Thank you.

**JAN PRIMROSE:** Certainly.

**The CHAIR:** That is, unfortunately, all we have time for today. Thank you very much for coming and giving us the benefit of your and your members' experience in relation to the use of contractors in Sydney Water in particular. To the extent questions were taken on notice, which they were, or there are supplementary questions, there will be 21 days to respond. The Committee secretariat will be in touch to discuss that.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr DAVID DEVERALL**, Chief Executive, NSW Treasury Corporation, affirmed and examined

**The CHAIR:** Welcome back. We welcome our next witness. Would you like to begin by making a short opening statement?

**DAVID DEVERALL:** Thanks for the invitation to provide evidence at the hearing. As background, TCorp is a New South Wales government public finance corporation, or PFC, that provides financial services to the New South Wales Government and exclusively to the Government. TCorp employs approximately 210 people and is governed by a board, which includes seven independent non-executive directors, two senior Treasury officials and the chief executive, me.

TCorp provides two key services. Firstly, since 1983, when we were founded, we have been the central financing authority for New South Wales. We raise debt from the financial markets on behalf of the State and, in turn, lend these funds to the New South Wales Government and its businesses. As at 30 June 2023, our liabilities were approaching \$150 billion. The second thing that we do is since 2015 we have been the State's investment manager. We manage 15 separate investment portfolios on behalf of the New South Wales Government and its agencies. These are managed within the risk and return parameters approved by the respective New South Wales government entity owners. As at 30 June 2023, investments under management were approximately \$106 billion.

TCorp is an entity that implements government policy; it does not set government policy. This is important context when considering TCorp's use of consultants under the inquiry's terms of reference. Despite our broad remit and our relatively small number of staff, TCorp does not consider itself to be a major user of consulting services. Where we do use them, we use them according to three criteria. Firstly, it must be strategic in nature, particularly where we want to understand global trends or best practice of other jurisdictions or other industries; secondly, it is outside our area of technical expertise or outside our industry; and/or, thirdly, we need an impartial opinion. With that, that is my opening statement. I'm happy to provide that and happy to take questions.

**The CHAIR:** Thank you very much. That's fabulous. Just looking through your disclosures in your annual reports, we have lists of consultants spend over \$50,000, and then we've also got the consultancies of less than \$50,000. I presume, by nature of the type of organisation that you are, that we don't have financial statements that set out total contractor and consulting spend—that I have in front of me, anyway. Are you able to tell us what—for example, if we've got 2022, we had consultants of around \$420,000, all up. What was the total line item for consultants and contractors?

**DAVID DEVERALL:** Thank you for the question. Yes. We do not separate that in the annual report, mainly because the contractor expend is immaterial. But I did ask my CFO before I came here what that number was for FY22. Contractors was \$622,000. That would mostly be, if not exclusively, for IT contractors, who—if we're doing an IT project, for example, and we need to have some short-term surge capacity, because they've got a specific set of skills, we'll hire IT contractors. That's essentially all we use them for.

**The Hon. MARK BUTTIGIEG:** Just on that, just out of interest, Mr Deverall, was that 620 for this FY?

**DAVID DEVERALL:** FY22.

**The Hon. MARK BUTTIGIEG:** When you say "surge", would that be like a software project or developing a model or something?

**DAVID DEVERALL:** Yes. A good example of that is that we're currently doing a major project to upgrade our Treasury management system. That's a fancy word for the computer system that allows us to manage the \$150 billion of liabilities. Our current system is effectively going to be out of—it's not going to be supported by the current vendor. So we are upgrading to a new system. In order to do that, there's a lot of IT work involved, and we need to bring in some short-term skill sets, don't want to bring them on as full-time employees, but they will work for us for six months, nine months, that sort of thing, and then leave.

**The Hon. MARK BUTTIGIEG:** In the time frame of, what, five years or something, would that be an unusual peak for IT contracting?

**DAVID DEVERALL:** It's hard. I don't have the numbers in front of me. But, generally, when people ask me about contractors—

**The Hon. MARK BUTTIGIEG:** Sounds like a big project.

**DAVID DEVERALL:** —it's immaterial, mostly.

**The CHAIR:** Something like the use of BlackRock Aladdin, where would that sit in the financial accounts?

**DAVID DEVERALL:** Given the example of BlackRock Aladdin, which we put in place about—it went live during the middle of COVID. So that was 2020 it went live. What we were doing is replacing a whole series of systems and spreadsheets and all the rest of it to bring BlackRock Aladdin in. We used contractors again to help us do that particular service. The actual expenditure on BlackRock Aladdin will be going through the funds management accounts, the \$106 billion of accounts, which are our clients'. Our clients own those accounts. That will be charged through to those particular 15 funds.<sup>1</sup>

**The CHAIR:** That's really interesting. Maybe I'll come back to the IT contractors in a minute to ask questions. I'm trying to get an understanding. I understand that, although what we have in front of us on the TCorp operational side is quite limited in terms of contractor use, when we're looking at the expenditure from those funds, presumably you also have investment management fees and all of that.

**DAVID DEVERALL:** Funds management, yes. That's right.

**The CHAIR:** And you wouldn't see that as a consultant spend.

**DAVID DEVERALL:** No.

**The CHAIR:** I understand there were three main funds. I understand there's sort of a one-portfolio approach that TCorp is pursuing. Is any of that fund management work able to be brought in house technically?

**DAVID DEVERALL:** Yes. A really good question—I'll try and answer that to the best that I can. When we look at the funds management side of things, the biggest decision a funds manager can make is what we call the asset allocation, the split between equities and bonds and credit and all of those sorts of things. We do all of that in house. The next question is, who do you get to execute that on your behalf? Do you do it in house or do you outsource? A lot of what we do we outsource. We outsource mainly because we don't have the specific expertise sitting here in Sydney and Australia to do some of that. For example, we might have a mandate with a manager to look after US bank loans, for example, which is an attractive way of generating investment returns, as identified by our portfolio construction team. We would then look to see who is the best in the world for the right price to do that, and we will appoint an external fund manager for that.

**The CHAIR:** Which is a clearly specialist role.

**DAVID DEVERALL:** Exactly. You could say, "Why don't you have an office in New York and London and all?" It's just too expensive, and what's our competitive edge? However, there are some areas that we do do it in house. Domestic cash and fixed income—we have an in-house team that looks after approximately \$15 billion of our funds under management. We do that because these people are acknowledged experts in their field and we believe it's much more sensible from a cost benefit point of view to have that capability sitting inside TCorp.

**The CHAIR:** Has that capability within TCorp increased? Are there records showing over time that reliance on external parties has reduced?

**DAVID DEVERALL:** Yes. It's an important aspect of bringing the three—because, I said, in 2015 there were different areas of government all doing their own investment management that was all centralised into TCorp. There were two driving factors behind that: one, you can probably generate better investment returns doing it that way. But you can also drive a lower cost outcome. We have been very much focused on driving costs down where possible. Two ways of doing that—either bringing things in house, doing more of cash and fixed income. Some of our real assets—we are doing more of those in house as well, but also moving to things like indexed approach to managing. Rather than paying 0.2 per cent, or 20 basis points, you're paying one basis point or two basis points. All of that is focused on driving costs out of the system as much as we can do. But we will only do things internally if we believe that there's a competitive edge that we can develop.

**The Hon. WES FANG:** Yesterday when we had other government entities here giving evidence, they indicated that, in effect, the structure around wages and the band that people can be employed under preclude someone with vast experience joining the public service because they can earn more in private work. How does your organisation get around that? Is there a wage structure that's different, or is it that these people would be making equivalent or similar money in the public service as they would the private sector?

**DAVID DEVERALL:** Really good question. "Getting around it" is probably not the word I would use, but how do we get to the point where we can have a number of professionals making these big decisions on either raising debt or investing money, but doing so on the public pay scales? TCorp has an exemption from the

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<sup>1</sup> In [correspondence](#) to the committee received 19 September 2023, Mr David Deverall, Chief Executive, NSW Treasury Corporation (TCorp), provided a correction to his evidence.

Government Sector Employment Act, and that exemption was given to TCorp many, many years ago on the grounds that there was an awareness that the people that would work at TCorp would come from the private sector. At TCorp, of our 200 or so people, the vast, vast, vast majority of them have come from two broad areas: banking, for our financial markets business; and investment management, for our investment management business.

Myself, I came from the private sector, where I'd worked all of my life, to start this job eight years ago. Therefore, what we do is we say to our people, "Come to government. Work for TCorp. There's a profound sense of purpose that you get here. You're not going to get paid as much as you would do in the private sector, but at the same time we're not going to hold you to the particular pay scales within government," which is a very strong pyramid structure. In order to get paid a lot of money by government standards, you have to be managing vast numbers of people. In our organisation some of my very, very best people don't manage anybody. They provide profound value to the Government but they don't manage anybody.

**The CHAIR:** It's such a perfect counter-example to what we were hearing yesterday.

**The Hon. WES FANG:** The obvious question that leads out of that evidence is that, given the success in relation to your model, is there perhaps a view that this could be rolled out across a number of other parts of the public service, if not on a broad scale, at least a limited scale where there's identified pressures from the public sector not having enough people and the private sector having these higher wages, where it could be acknowledged that there needs to be some flexibility in that banding and the scales?

**DAVID DEVERALL:** Potentially. But the one thing I would caution is you need very, very, very strong governance to do this, because we are extremely aware within TCorp of what we have, which is an exemption from the Government Sector Employment Act. We are extremely careful not to be seen to be not playing by the spirit of that—therefore, lots of governance, lots of input from various agencies. I mentioned before, we have the Secretary of Treasury, one of the deputy secretaries of Treasury sitting on our board, whose job is to really scrutinise to make sure that we are doing that to the absolute spirit of what the intention was.

**The Hon. WES FANG:** So it's not an unreasonable thing to do, then? It would just require the strengthening of the governance in relation to the setting of and employment of people with respect to this alternative policy, as opposed to the government sector wage bands.

**DAVID DEVERALL:** I would have thought so. You would have to think very deeply about it because there are unintended consequences of everything that can take place.

**The Hon. WES FANG:** Is it the case then that, because you only have 200 or so employees within your organisation, it's a manageable size for an exemption, whereas at somewhere like Transport, where you have thousands, it becomes a much larger and cumbersome issue to manage?

**DAVID DEVERALL:** Potentially, and there is the anonymity that goes with that as well. I know everybody at TCorp. The secretary and the Treasurer will size me up and say, "Who are these people? What do they do? Are they paid fairly?" We can provide that level of granularity, if that's the right word, because there are only 200.

**The CHAIR:** Can I ask, just drilling down into that, you mentioned before that the existing public sector pay scale is based around that management function, whereas what we are seeing where we have quite a big reliance on consultants is when they are being brought in for this expertise or specialist work. From what you are saying, TCorp obviously has a bunch of experts that have come in that it's able to pay on a competitive scale. To Mr Fang's point, in terms of the recommendations that we might make coming out of this inquiry, is there a case for looking at particular parts of the government apparatus where we have a reliance on experts sourced externally and changing the pay scale around for that, do you think?

**DAVID DEVERALL:** I am not qualified to talk about the whole of government, but my instinct would be yes. But you need amazing governance around it because government is so huge—we've got nearly 400,000 employees. You have to be very careful about that not leading to a cost blowout as a result of it. But there's a strong argument. If you want real specialists and if you want to pay them well, don't expect them to manage 15 people or 20 people. It's okay to have them managing nobody.

**The Hon. Dr SARAH KAINE:** I just wanted to ask a bit about governance because you have mentioned it in every answer you have given now about this potential alternative structure. You talk about cost blowouts, but are there other aspects of governance that either you think work well in your circumstance or that we would need to take into account? I note we are talking hypothetical.

**DAVID DEVERALL:** The number one governance thing that I think of is the level of Treasury oversight and awareness of what we do. Michael Coutts-Trotter probably wouldn't like me saying this because he sits on my board and he's a busy guy, but I think having someone very senior from Treasury sitting on your board and

having oversight and having that almost director's obligation to make sure that the right thing is done cannot be understated. That is probably one of the big things that I would speak to.

We spend a lot of time within TCorp making sure that these issues that have potential to be what we call social issues—it can upset people if they know that someone in TCorp is being paid more than them and this person doesn't manage anybody, whereas they have to manage 150 people or something. We do go to great lengths to keep our stakeholders very aware of what we are doing and why we are doing it. That's where I am getting to in governance. It's governance, but it's good bedside manner as well, if I could put it that way.

**The Hon. Dr SARAH KAINE:** So it's cultural as well?

**DAVID DEVERALL:** Exactly.

**The Hon. MARK BUTTIGIEG:** On a related question, obviously, in its inception you are not going to have the internal expertise because this is something where you want market-based expertise with a broad range of investing and raising debt on world markets. But, now that you've got the expertise inside, do you have a graduate program where you bring people in and mentor them in so that you can create that internal throughput?

**DAVID DEVERALL:** Yes. We don't have one ourselves, but we leverage off the Treasury Graduate Program. We have found that the Treasury graduates are keen to spend a bit of time cycling through TCorp and we've been lucky enough that a number of them have actually decided—at the end of the program, actually—to join TCorp, again not because of the pay but because of, we think, the interesting work.

**The Hon. MARK BUTTIGIEG:** But, in a sense, that would be a really good way to eventually wean yourself off externals, wouldn't it? If they're coming through and getting mentored with the skills of the pre-existing people who are there and they're likely to be quite attracted because the pay, relative to the rest of the public sector, is good, then from the perspective of preferring internals, that would be a virtuous cycle over time, wouldn't it?

**DAVID DEVERALL:** Yes. Definitely when we get to the example of consultants, as I said at the opening remarks, we're very, very, very, very careful—almost stingy—when it comes to spending money on consultants because we've got to manage a cost base. Unlike other government agencies where you either spend your cost budget and lose it for next year, for us we're driving a profit-loss outcome so we try not to spend any more money than we need to. We absolutely don't want to be repeatedly hiring the same consultant every time and we'll always be looking to bring that capability in house as much as we can.

On things like the funds management capabilities, that's something that we've studiously done over the last five or so years to do more of what we call real assets, which is infrastructure and property management and buying of those assets. We previously only had about three or four people in that team—very reliant on external entities to provide services for us. We've now built that team to roughly 20 or 25 and our spend on externals has gone down considerably as a result and we're bringing people at all different levels. The best culture is the sort of the homegrown one, so we don't want to always be bringing people in at the very high levels if you can bring them from lower down and promote them. That's very much our model.

**The Hon. SCOTT FARLOW:** But I imagine for you to be able to make that determination—so, for instance, in the building acquisition area—you would have to have an investment strategy which said that that was warranted.

**DAVID DEVERALL:** Correct.

**The Hon. SCOTT FARLOW:** And it would take a period of time, effectively, to come to that point in the strategy where you actually did say, "Okay, this is something we're going to be doing for the next five years. Let's have in-house capability." But you might be exploring with your portfolio over a period of time—let's say two, three years—and not sure that that's going to be the asset class you're going to invest in necessarily, and it may be advantageous at that point in time to use consultants.

**DAVID DEVERALL:** Yes. Well, like use an external fund manager; that's right.

**The Hon. SCOTT FARLOW:** An external provider, I should say, yes.

**DAVID DEVERALL:** Yes. Some are going to be your bricks-and-mortar part of your investments. You're always going to have equities. You're always going to have bonds. You're always going to have some form of property exposure. But the example I drew before, US bank loans—that's a very attractive opportunity. With the retreat of US banks out of capital markets or out of lending because of the constraints put on them by regulators, it has created a wonderful opportunity for asset owners such as ourselves to get into that space. That may not be there in five or 10 years' time so we will be more opportunistic in that. But the long-term allocations to those asset



classes, as I said before, will have us think, "Yes, let's think of an implementation plan to do that over the next five to 10 years and bring more of that in house," if we think we've got that edge to do so.

**The CHAIR:** Can we come back to the BlackRock Aladdin example?

**DAVID DEVERALL:** Yes.

**The CHAIR:** Where does the expense for that sit? Is it divided between funds, or—

**DAVID DEVERALL:** It's through the funds.

**The CHAIR:** Okay.

**DAVID DEVERALL:** That's the BlackRock Aladdin system. This is this, quite frankly, amazing system that Larry Fink and his team have designed at BlackRock and they now license that to asset owners around the world, including ourselves. It's been an enormously beneficial help to us to understand the risks at every level in our portfolio and then reporting it all up centrally. It's a great tool. The expense of that is a direct expense of the funds themselves, and so you will see those expenses come through the individual fund accounts.<sup>2</sup>

**The CHAIR:** Were there any contractors brought into TCorp that were then paid for by those funds? Do you have contractors who were not TCorp employees sitting within TCorp?

**DAVID DEVERALL:** Potentially. But they'd be a very small number of people. It would be a few. I do remember at the time when we were doing the implementation plan—in fact, it would be nice if I had my CFO next to me—some of those costs of putting it in place were borne by TCorp, as opposed to the trust. Once the thing is up and running, that's then borne by the trust. Remembering back to that project, there would've been a very small number of people—certainly less than five, and possibly less than three—that were brought in as contractors to assist on that transition.

**The Hon. WES FANG:** Did TCorp or anybody in New South Wales government have the expertise to do that work in relation to BlackRock Aladdin?

**DAVID DEVERALL:** No. There's some quite specialist skill sets there. BlackRock has got a number of clients all over the world. Future Fund uses them, and AustralianSuper—those sorts of organisations. So when we were doing it, we said, "Who's implemented BlackRock Aladdin in another client?" We found this person who had done it at firm XYZ or company XYZ—"Fantastic, we'd love to have you on board because you know BlackRock and you broadly know what we do. Let's bring it all together and let's have a seamless implementation." And thankfully, in that situation, it was. I remember we flicked the switch on, I think, 23 March 2020—the day we went into lockdown—which was the ultimate test of confidence that we were able to turn it on when we were all stuck at home.

**The Hon. SCOTT FARLOW:** You could all use it at home then.

**DAVID DEVERALL:** Exactly.

**The Hon. WES FANG:** So you recruited in the skills that you needed and then contracted in those that weren't able to be brought in house?

**DAVID DEVERALL:** That's right. The people we contracted, we then let them go and said, "Thanks. You've gone a great job. Off you go."

**The Hon. WES FANG:** So the total spend was potentially higher than having an internal person working on it but, ultimately, you didn't have to redeploy that person within the organisation.

**DAVID DEVERALL:** That's right. We have a thing called an EPMO, an enterprise project management office, which is permanently staffed by TCorp people because there's always projects going on. We have a finite number of people in that. When there is a major project, like BlackRock Aladdin three years ago or this current one we have got at the moment replacing the Treasury management system, we will bring in some surge capacity, but then we'll let them go. The core group of portfolio managers, we want to keep them because they can be used for a variety of other projects.

**The Hon. WES FANG:** It's interesting. You've got 200 employees or thereabouts, but you've got that flexibility because you have that team. Do you have instances where there is a contraction and you find that you've

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<sup>2</sup>

In [correspondence](#) to the committee received 19 September 2023, Mr David Deverall, Chief Executive, NSW Treasury Corporation (TCorp), provided a correction to his evidence.

got excess people? Has that happened a few times? What is the process then? Is it a redundancy or optional, voluntary—

**DAVID DEVERALL:** One of the good things about our business model, if that's the right way to put it, is that we have a relatively predictable stream of revenue. It's based upon the size of the liabilities book and the size of the funds under management. A contraction would occur if, all of a sudden, markets fell 50 per cent or something like that, or the Government decided to pay back \$75 billion worth of debt—those sorts of things. It's possible but highly unlikely. In terms of our budgeting cycle over three years, we can, with a reasonable degree of accuracy, forecast what our revenues are going to be and, therefore, what our cost base should be to support that.

**The Hon. WES FANG:** Somewhat facetiously, but in a genuine way, if you've got a change of government that perhaps has an infrastructure pipeline much smaller than the previous government, would you expect there to be contractions around that?

**DAVID DEVERALL:** It would be a slower rate of growth. I don't want to pre-judge the budget that comes out in about 10 days' time. I haven't seen any of the numbers. One might think that the level of borrowing that TCorp is required to do will be less than perhaps it was under the previous Government.

**The Hon. WES FANG:** It depends on the wages cap, really, but yes.

**DAVID DEVERALL:** It's just going to be a slower rate of growth. Again, it comes back to that predictability where we can forecast our revenues, which allows us to forecast our costs, which means the ability to bring people in, hold on to them and utilise them effectively.

**The Hon. WES FANG:** And the natural attrition which occurs might actually be enough to manage that smaller growth.

**DAVID DEVERALL:** Yes. We're fortunate in that our attrition is very small but, nevertheless, from time to time you can do that.

**The Hon. MARK BUTTIGIEG:** Thanks for highlighting the responsible fiscal management of the Government, Wes. In terms of the requirements for government agencies and departments to go through TCorp, is that universal? So if someone's got to raise debt or invest, TCorp is the intermediary or specialist agency that makes the decision?

**DAVID DEVERALL:** That's right.

**The Hon. MARK BUTTIGIEG:** Do you have any oversight on—in theory, then, there should be no need for consultancies in those sub-agencies or departments in that area because you guys are doing it all for them, correct?

**DAVID DEVERALL:** Good question. There's a thing called the Government Sector Finance Act, which basically says—I say this somewhat facetiously—"You can choose anybody you like, as long as it's TCorp." That comes back to the cultural issue I was talking about before, the bedside manner, because we have that monopoly provision of services and we don't take that lightly. We want to treat every single client as though they could walk out tomorrow. We give them good customer service, we hope.

**The Hon. MARK BUTTIGIEG:** That includes SOCs, doesn't it?

**DAVID DEVERALL:** Absolutely. For example, we have oversight over Sydney Water, Hunter Water, Essential Energy. A lot of the people who are coming along this afternoon are important clients of ours. And then what we offer them is a complete debt management service. We will do all of that for them, which reduces greatly their requirement to think about using any form of external consultants on the debt management side of their business.

**The Hon. MARK BUTTIGIEG:** There's no provision, is there, for a minority-owned entity like Ausgrid to use TCorp?

**DAVID DEVERALL:** No. We work exclusively for the New South Wales government family, as we call it. If you are part-owned by somebody else, you're not part of the family, from our definition.

**The Hon. WES FANG:** I think my parents say the same thing.

**The Hon. Dr SARAH KAINE:** Mr Deverall, in those—well, not quite negotiations but in those interactions with agencies or State-owned corporations, are consultants ever engaged by the agencies or State-owned corporations to engage with you?

**DAVID DEVERALL:** I don't know. It's a good question. At my level, I'm dealing more at the chief executive and chief financial officer level. I don't know.

**The Hon. Dr SARAH KAINE:** Could you take it on notice?

**DAVID DEVERALL:** Yes, I'm happy to do that. Maybe the Sydney Water or the Hunter Water people could answer the question.

**The Hon. Dr SARAH KAINE:** Yes, true. I'll ask them as well.

**DAVID DEVERALL:** I can certainly try to find out, but maybe the best place to ask is with those organisations.

**The Hon. Dr SARAH KAINE:** Thank you.

**The CHAIR:** This has been a really refreshing session. This is our ninth day of hearings and I think this is the first time we've spoken to a government department that seems to be using consultants where they're actually required. I've got a couple of questions though, just going back into the disclosures for consultants in the last five years. There's not a lot of detail on the use of a company called Towers Watson. There was about \$2.3 million spent in total across two years. Can you tell us what that project was?

**DAVID DEVERALL:** Yes. That was FY19, I think we did \$1.1 million, and in FY18 we did \$1.2 million for those. That was a really, really seminal piece of work where, in 2015 and 2016, basically three agencies came together to do their investment management. We had three different investment teams and three different approaches to managing money. Our view was that there was a better way of managing money, what we called a total portfolio approach, which is very much a risk-based approach rather than a return-focused approach. And so we wanted to have someone work with us to transition these three approaches to a single new approach.

The people at Willis Towers Watson were acknowledged global experts in that space; in fact, one of their people that worked for us ended up becoming the chief investment officer at the Future Fund following that. We used them very specifically for that particular project. Once that project was finished, we haven't used Willis Towers Watson since. But we very consciously made that choice because we were dealing with \$100 billion worth of funds under management. If we could generate returns even 0.2 per cent better or 0.5 per cent better, that would be worth it many, many multiples over.

**The CHAIR:** In 2018 BAE Systems Applied Intelligence did almost \$100,000 worth of work. What was that one for?

**DAVID DEVERALL:** BAE Systems has, until recently, been our provider of services on cyber-related things. We do a cyber health check on a regular basis, and that's what that's for. We bring people in to say, "These are the latest developments in cyber." What was relevant in cyber 12 months ago is no longer relevant. It's constantly evolving. So, "Could you please give us advice as to how we can strengthen our approach to cybersecurity?"

**The CHAIR:** Ernst and Young did work for you in 2018 and 2019—total of around \$650,000. What was that?

**DAVID DEVERALL:** The one in 2018 was—it's an important part of our remuneration approach. We have a scorecard—we call it the corporate report card—which looks at five different measures around client, government, operational, financial and people. The creation of that scorecard, of which management has some self-interest in—it was the board's decision that we should get an independent expert to work with management to come up with that system because, having designed that system, it then has an impact on the way in which they assess my performance, for example. So Ernst and Young have a very good people practice, and they assisted us through that particular process.

**The CHAIR:** That was 2018. What was 2019?

**DAVID DEVERALL:** In 2019, we had a very, very significant what we call culture project. You may remember at the time, we'd just had the Hayne royal commission, and it was all about culture, culture, culture. The board wanted to make sure that TCorp's culture was not showing any of the signs being identified by Commissioner Hayne. We asked EY to come in and do a culture audit for us, which they did, which was pleasingly positive. But that was the end of that project.

**The CHAIR:** Then finally last year we've got another EY for \$145,000, which was corporate report card review. So is that going back and looking at the work they did in 2018?

**DAVID DEVERALL:** Exactly. The board wants to make sure that our corporate report card is keeping in line with contemporary practice. They could go and ask management but there is a bit of self-interest involved

in that—getting that external perspective as to how has the financial services sector evolved over the last number of years.

**The CHAIR:** That's \$400,000 in total so far for this corporate card review to EY. From a layperson's perspective, that seems like a lot of money. Is that money well spent?

**DAVID DEVERALL:** I honestly believe it is. You heard me saying before I don't like spending money on consultants because it comes directly off our bottom line, but in something as important as remuneration, getting the reality and the optics right for everybody—and by "everybody" I mean our stakeholders within government, our people, and our board. It's really important to get that right so that you're in line with contemporary practice. I get your point. If you're going to do it every three years, perhaps you could have someone internally who could provide that capability, but you'll always be looking for an external opinion on something like that.

**The CHAIR:** So using a consultant in that case was about understanding what the rest of the market was doing in relation to a similar process within their own boards. Correct?

**DAVID DEVERALL:** Correct, yes. Because Hayne said, "You must do the following"; everybody said, "We'll do the following." Then we were observing actually a lot of organisations didn't do the following; they did something else. So then we'd have to make sure that where we were heading, which was generally in that direction—we trimmed the sails, so to speak, to go that way, because that's actually where the market was heading from an overall performance assessment point of view.

**The Hon. WES FANG:** Thank you for that insight. In relation to the remuneration structure that you have at TCorp, does it then feed into these surveys providing the opportunity for a bonus payment? Is there a bonus structure within the organisation? You do pay bonuses. Is that perhaps a way of providing cover for that bonus payment, as opposed to using another measure which perhaps doesn't require a consultant to sign off on, like a baseline percentage increase up or down in relation to what the rest of the market's doing? Do we need a consultant to do that?

**DAVID DEVERALL:** The payment of incentive reward is a really, really, really important thing within the financial services space.

**The Hon. WES FANG:** It's also quite controversial.

**DAVID DEVERALL:** It is a very, very rare thing. It is very standard in financial services; it is very rare within government. We are acutely conscious of that. For example, for myself—and I've given evidence in front of budget estimates 18 months ago, where I was asked what do I get paid. On the record, I get paid just a little bit over \$800,000 for my base, and I have access to a 60 per cent incentive reward. So that's the package which I've been brought into government on. In order to do that properly and faithfully and one where it's completely above board, you need to have an excellent method for assessing that. Again, asking management to come up with that is fraught with all sorts of conflicts, so that's why you would get a consultant to give the green light to the approach that you're using. But the actual implementation of it is completely owned by the board.

**The Hon. WES FANG:** Who sets the parameters with which you judge the performance of TCorp versus other management funds or the market in general? You're going to choose a level to compare yourself to. Who does that? Is it the board?

**DAVID DEVERALL:** Yes.

**The Hon. WES FANG:** The board will do that. Is it independent of government and the Minister?

**DAVID DEVERALL:** No. Well, the Minister has the power to provide directions to TCorp; that's written into the legislation. But the board makes that determination. So the board, as I said, has got seven non-executive directors and it's got two representatives from Treasury. The board gets its recommendation from our People and Remuneration Committee. The People and Remuneration Committee has, I think, three directors on it plus a representative from Treasury. So we're very, very conscious to make sure that that group is fully across all the criteria. And I've said there are five criteria: customer, government, operational, financial and people. There is a series of very objective measures that go into each of those, and that comes out at the end of the year with a board-assessed outcome.

**The Hon. WES FANG:** I'm impressed with how quickly you listed those off when it was first mentioned. Obviously it is a strong focus. My comparator for the way that you adjudge the measurement of bonus payments is an inquiry into icare, which I was chair of in the previous Parliament. Obviously there was a lot of consternation around how that occurred. Has the methodology that you have adopted been provided to the rest of the

Government through the Ministers and the board to provide a more robust way of determining and measuring that bonus payment structure?

**DAVID DEVERALL:** Good question. I don't know is the short answer to that.

**The Hon. WES FANG:** Should it be?

**DAVID DEVERALL:** I don't know, again. My comments before about the key to the things that we're talking about today are very strong governance—I'm a profound believer in the benefit that we get from having extremely senior people in Treasury sitting on our board, who have direct line of sight of what we're doing, because we think that the decisions that are being made are really, really important ones and are not to be hidden from anybody. You need to be completely transparent with your board and with the senior Treasury officials. Where it goes from there, I don't know. But that's the way the governance works within TCorp. I think it's a pretty good model. I don't want to hide anything. As I said, we are trying to balance the competing interests of people that—98 or 99 per cent of people—have joined TCorp from the financial services sector, where incentive reward payments are the norm, coming into a government environment where it's absolutely not the norm.

**The Hon. WES FANG:** It is interesting that there is criticism if there is employment of consultants to impartially look at the way that we structure these bonus payments in an entity which, we've acknowledged, needs to compete with the private sector. That almost directly correlates with the arguments that were made around bonus payments in icare, because, obviously, we're competing for executives within that insurance space, but there seemed to be a lot less governance and thought process in relation to the—

**DAVID DEVERALL:** I can't speak for icare, but one thing I will say, again, is that consultants are only hired to provide advice. The implementation and the ownership of it is completely owned by the board.

**The Hon. WES FANG:** Interesting. Thank you.

**The CHAIR:** Mr Latham, did you have any questions?

**The Hon. MARK LATHAM:** No. I do not think there is much to see here. Unlike other agencies, no news is good news.

**The CHAIR:** Mr Deverall, there was talk, when we had the issue a couple years back, around the investment in Russian equities.

**DAVID DEVERALL:** Yes.

**The CHAIR:** I thought, at the time, that there was talk of doing an ESG review.

**DAVID DEVERALL:** Yes.

**The CHAIR:** Was that done, and who did it?

**DAVID DEVERALL:** Thank you for the question. Yes, it was done, and it was done very thoroughly. It was done by a woman called Pru Bennett. I've just forgotten the name of the organisation she works for but she's an acknowledged expert in the field. That was completed and there were 21 recommendations. We are busily implementing those recommendations. Essentially the report said that the key to ESG is a culture of continuous improvement because ESG is evolving so rapidly. It's a bit like cyber; it's just constantly changing according to a whole range of different factors. So the key is to have that mindset of continuous improvement. There are a series of recommendations, as I said, and we're implementing them. One of the recommendations that we did implement was around the way in which we—and by "we" I mean not just TCorp but the entire industry—invest in some of those regimes, such as Russia, so that we're not caught in a situation like that ever again.

**The CHAIR:** The cost of that review—where would that appear?

**DAVID DEVERALL:** Treasury. That was Treasury done.

**The Hon. MARK LATHAM:** Which other regimes have you ruled out?

**DAVID DEVERALL:** A range. I'm happy to talk about our country governance risk framework in due course. I don't have a list of all the names right off the top of my head.

**The Hon. MARK LATHAM:** How many countries would be ruled out, like the Russians?

**DAVID DEVERALL:** I think there were around about 10 or 15 that were ruled out, I seem to recall. But that's a dynamic approach as well. Governments are doing good things and bad things in equal measure and changing their views on that, so it's a dynamic approach.

**The Hon. MARK LATHAM:** Who makes that decision as to what's a good country and a bad country?

**DAVID DEVERALL:** We ultimately do, using the framework we have.

**The Hon. MARK LATHAM:** And the Minister is notified of that?

**DAVID DEVERALL:** I'm providing a little bit more evidence today than my current Minister is perhaps on top of, so maybe at this point I will—he's been focused on the budget. I'd love to talk to you some more about this particular project; I was thinking maybe even in budget estimates.

**The Hon. SCOTT FARLOW:** You can tell us before Daniel. I'm sure he wouldn't mind.

**The Hon. WES FANG:** I am going to take you up on that offer but I'm curious now that it's been raised. What would occur in circumstances where TCorp identifies a regime or country that is hostile or unfriendly to our interests but somebody like the Treasurer or the Premier determines that for a wider reason—or whatever reason—they aren't going to share that view? Where does that delineation lie?

**DAVID DEVERALL:** Can I take that question on notice?

**The Hon. MARK LATHAM:** Along with taking on notice the list of companies—

**DAVID DEVERALL:** Yes, sure.

**The Hon. MARK LATHAM:** —that are totalitarian and wretched.

**DAVID DEVERALL:** Yes.

**The CHAIR:** I've got one final question around potential conflicts of interest—so another one that we've been looking at a lot in this inquiry. In the context of using other fund managers or investment managers, is that the main area where conflicts of interest would come up as a potential issue?

**DAVID DEVERALL:** Yes, that is a big area. Whenever we're doing a contractual negotiation with an entity—it could be a fund manager or it could be a provider of services of any other description—we go through extensive conflict-of-interest declarations.

**The CHAIR:** Do you tender for that work? Does it go out on a public tender?

**DAVID DEVERALL:** It depends on the nature of it. We're not captured by the NSW Procurement approach for a variety of reasons, but as far as we possibly can we use the approach used by the New South Wales Government as far as that's concerned. Tendering is a very common part of what we do, once you're above certain levels.

**The CHAIR:** In terms of the transparency, in order to then hold TCorp accountable around potential conflicts of interest and things like that, where is the record? What sort of public information is there for us to look at?

**DAVID DEVERALL:** We have an internal declaration around all the conflicts et cetera. It is held by my chief risk officer.

**The CHAIR:** Sorry, I meant in terms of the appointments of those fund managers. Where does that get reported? If I wanted to find out that TCorp has entered into a contract and paid this amount here, where would I find that?

**DAVID DEVERALL:** I don't know. I'd have to ask my chief risk officer. But my chief risk officer keeps a copy of all of the conflicts across all of the range of entities with which we deal.

**The CHAIR:** If you could come back to me with information on exactly where the—

**DAVID DEVERALL:** Where does it go?

**The CHAIR:** Yes, where it then appears. Because maybe that's a gap, from a transparency perspective. If we could have it written in annual reports or something, we can say, "Okay, this amount goes to this fund manager and this amount to this fund manager."

**DAVID DEVERALL:** Exactly. I mean, we do loads of declarations, particularly at board level. Everybody knows where everybody else's children are working, and all the rest of it, because of future or past conflicts. Where that information goes, I don't know, but I'm happy to provide that information to you.

**The Hon. Dr SARAH KAINE:** Thank you, Mr Deverall. Your evidence has been a very interesting counterpoint to quite a lot of the others that we have heard. It has been really useful.

**DAVID DEVERALL:** Thank you.

**The CHAIR:** Thank you very much. That has been very informative, and somewhat heartening to not have as much shock-horror. To the extent that questions were taken on notice, or there are supplementary questions, there will be 21 days to respond to those.

**(The witness withdrew.)**

**(Luncheon adjournment)**

**Mr PAUL PLOWMAN**, General Manager, Asset Lifecycle, Sydney Water, affirmed and examined

**Ms DENISHA ANBU**, General Manager, Governance and Assurance, Sydney Water, sworn and examined

**The CHAIR:** Thank you very much. Would you like to begin by making a short opening statement?

**PAUL PLOWMAN:** I'll share the statement with my colleague. Sydney Water appreciates the opportunity to participate and contribute to this inquiry. We would like to take this opportunity to provide the Committee with an overview of our operations and our approach to engaging consultants. Sydney Water is responsible for more than just providing people of Sydney with their water. Our operations extend to the management, operation and maintaining of wastewater, recycled water, desalinated water and some stormwater around the city. We have a very competent and capable workforce that completes this work daily.

Using the NSW Procurement Board direction definition of consultant, we engage consultants for a variety of reasons, including to support our organisational capabilities when they provide international and cross-sector insight and knowledge, third-party independent assurance, oversight and experience, specialist commercial and financial advice and advisory services in areas such as economics and regulation. This is to ensure we can continue to carry out the vital work we conduct for the betterment of our customers, which is everything that we do. Sydney Water also uses professional service contractors to supplement our capable workforce to deliver our significant infrastructure asset maintenance and renewals program, a pipeline that we forecast over the next decade to be in the order of \$34 billion.

**DENISHA ANBU:** Sydney Water discloses its spending on consultants in accordance with our enabling legislation, the Sydney Water Act. This Act requires that we disclose in our annual report each consulting engagement costing more than \$50,000, along with the project name, and the cost and name of the consultants used. The Act also requires that we disclose in the annual report the total number of consulting engagements that cost less than \$50,000 with the total value of the actual consulting costs. In the 2021-22 financial year, Sydney Water's total expenditure on consultants, as published in our annual report, was about \$2.1 million. This figure represents less than 1 per cent of our total operational expenditure. Our consultant spend has been consistently at this level for many years.

Where Sydney Water does use consultants, we ensure that they are selected from a competitive tender process, based on scope and deliverability. When the work is being undertaken, we keep consultants accountable for the work that they're completing and also ensure that deliverables are met according to our expectations. Follow-up sessions are held with consultants to understand progress made and to resolve any issues or delays in the work. Sydney Water is not looking to increase its reliance on consultants. Sydney Water will continue to use consultants only where specialist experience is required and an outside perspective is valuable. This helps ensure that we will always remain focused on our customers, allowing them to receive the best possible value-for-money services from Sydney Water. Thank you again for providing Sydney Water with the opportunity to appear before this Committee. We look forward to taking your questions.

**The CHAIR:** Thank you for coming along to answer those questions. Can we just start with understanding a bit more about the number of employees you have versus the number of consultants or contractors?

**PAUL PLOWMAN:** In 2023 we have approximately 3,200.5 full-time equivalent Sydney Water employees. We don't specifically measure the numbers of professional service contractors or consultants because they're temporary in nature.

**The CHAIR:** You must have a record, though, of how—

**PAUL PLOWMAN:** We certainly have a record of the amount we spend but not the numbers of people because they fluctuate.

**The CHAIR:** You must have a record, though, of how many people have passes or are allowed onto the premises to do work? That must be something that you could—

**PAUL PLOWMAN:** That is true, but it wouldn't necessarily be an accurate number that we could give. But what I can do is take something on notice and give you some approximate numbers—

**The Hon. MARK BUTTIGIEG:** Given you do have a dollar figure, can you give us the dollar figure and then an idea of what that would be, in full-time equivalent terms?

**DENISHA ANBU:** Yes. If we can clarify, we're talking about consultants, then we can give you a figure for consultants.

**The CHAIR:** And contractors.



**DENISHA ANBU:** And then a separate figure for contractors in terms of spend.

**The Hon. MARK BUTTIGIEG:** That would be great.

**DENISHA ANBU:** I'm happy to talk to the figure for consultant spend. As I mentioned, for FY21-22 the consultant spend was \$2.1 million.

**The CHAIR:** We have that.

**The Hon. WES FANG:** Mr Buttigieg doesn't seem to have it.

**The CHAIR:** No, he's not asking for consultants; he's asking for contractors.

**PAUL PLOWMAN:** I can answer that. Last financial year our total expenditure at Sydney Water was \$2.65 billion. That's our total expenditure as a business.

**The Hon. WES FANG:** Not on consultants.

**PAUL PLOWMAN:** No. I'm making absolutely clear that is not the case.

**The Hon. WES FANG:** No, I'm not specifying for you; it was more for Mr Buttigieg.

**The CHAIR:** Order!

**PAUL PLOWMAN:** Of that expenditure, \$100.99 million was spent on professional services spending. It's just under 4 per cent of—

**The Hon. MARK BUTTIGIEG:** \$100.99 million?

**PAUL PLOWMAN:** Yes.

**The CHAIR:** Some \$100 million on—

**PAUL PLOWMAN:** It is 101 million.

**The CHAIR:** Of that \$101 million spent on contractors—that's actually on professional services contractors?

**PAUL PLOWMAN:** That's right. That's people doing engineering activities, planning—mostly technical work.

**The Hon. MARK BUTTIGIEG:** It could be capital works, too, couldn't it? Maintenance, everything—

**PAUL PLOWMAN:** Yes, it is. That's all included.

**The Hon. MARK BUTTIGIEG:** What would be your average FTE wage? Call it 100? 90, maybe?

**The Hon. WES FANG:** Depends how good the union is.

**PAUL PLOWMAN:** Yes, about that—180 to 200. That equates to about 4 per cent of our expenditure every year.

**The CHAIR:** I'm not really interested in the percentages as a whole. We're looking at what the number of contractors are.

**PAUL PLOWMAN:** If you worked back from the numbers and made some very broad assumptions—we need to understand that they are broad assumptions—our expenditure on employee costs—that's the costs of the 3,200 staff that we have at the moment—was in the order of \$560 million. So if we spend about \$101 million on consultants, it's about one-sixth of the workforce.

**The CHAIR:** That's incredibly helpful. Thank you.

**PAUL PLOWMAN:** Of course, I need to make sure that the Committee knows that is very back-of-the—that is me doing calculations right now.

**The CHAIR:** Obviously. could you come back to us, though, with some further figures? It strikes me as unusual that you're not aware of how many people are on Sydney Water premises who aren't employees.

**PAUL PLOWMAN:** I'm personally not aware. I'm sure we are aware.

**The Hon. MARK BUTTIGIEG:** But if you just divide \$100 million by 100,000 on a wage on an FTE, that's like a thousand jobs, isn't it?

**PAUL PLOWMAN:** Well, what's one-sixth of 3,200?

**The Hon. MARK BUTTIGIEG:** No, my methodology was to divide the amount you spend—and obviously it includes all contractors. But let's just say hypothetically you wanted to insource everything. That would buy you 1,000 jobs, wouldn't it, at 100,000 each?

**PAUL PLOWMAN:** No, it wouldn't, because as I said before—

**The Hon. MARK BUTTIGIEG:** So what's the FTE with on-cost? Are you saying 150 or 200?

**PAUL PLOWMAN:** Let me just do some calculations.

**The Hon. MARK BUTTIGIEG:** Yes, of course.

**The Hon. SCOTT FARLOW:** I know you're going somewhere.

**PAUL PLOWMAN:** It's about 500.

**The Hon. MARK BUTTIGIEG:** Yes, about 500 a year. Thanks.

**PAUL PLOWMAN:** But that moves up and down, right?

**The Hon. MARK BUTTIGIEG:** Of course, yes.

**PAUL PLOWMAN:** And that's essentially one of the reasons why we have a percentage of our workforce being professional service contractors—so we can move and flex with the workload.

**The Hon. MARK BUTTIGIEG:** You might be able to elaborate on something that I asked the witnesses earlier. There are roughly 3,000 employed directly at the moment. In terms of a historical time line, do you have any numbers on that direct employment level going back 10, 15 or 20 years?

**PAUL PLOWMAN:** I don't have 10 or 15, but I did bring with me the last five years. In 2019 we had 2,417 direct employees, and we're now at 3,200. So over the last five years—

**The Hon. MARK BUTTIGIEG:** You've ticked up over five, but we don't have the 10 and the 15.

**PAUL PLOWMAN:** No, I don't have the 10, but that's sort of been the trend recently.

**The CHAIR:** Mr Plowman, are you honestly telling me that you don't know how many contractors Sydney Water has? Is that the evidence here today?

**PAUL PLOWMAN:** No, I said that I would take it on notice to give you the exact number.

**The CHAIR:** But when I first asked you, you were at pains to point out to me that it was very difficult for Sydney Water to know because they were contractors; they weren't employees.

**PAUL PLOWMAN:** Sorry, I should correct the record. What I'm saying is I don't personally know, and I haven't got a briefing here that tells me the answer. What I will do is provide that information on notice.

**The CHAIR:** Has Sydney Water not sent people who would be able to answer our questions here today?

**The Hon. WES FANG:** Point of Order: I think that question makes an implication against the witnesses that—

**The CHAIR:** It's a very simple question.

**The Hon. WES FANG:** I appreciate that. I just think that, for procedural fairness, the Chair should probably restrain themselves from asking questions in a manner at which a witness might take offence.

**The CHAIR:** Thank you, Mr Fang. This would strike me as quite basic information to be briefed with prior to an inquiry that's looking into contractors and consultants, especially given the evidence that was before us from the ASU today. Is your evidence today that you do not have a briefing—you have no information—on how many contractors Sydney Water has?

**PAUL PLOWMAN:** I can't give you an exact number today, but what I will do is undertake to take it on notice and provide you with that exact number.

**The Hon. SCOTT FARLOW:** Mr Plowman, you can't give us an exact number, but can you give us any number?

**PAUL PLOWMAN:** I would imagine that, based on my conversation before, there's in the order of about 500, against 3,200.

**The CHAIR:** Could you tell us how many contractors were working at Sydney Water during the 2022 financial year?

**PAUL PLOWMAN:** No, I cannot.

**The CHAIR:** Page 65 of the annual report has the number of recordable injuries for millions of hours worked by different types of employees within Sydney Water, so someone in the organisation must know how many contractors there were and how many hours they worked.

**PAUL PLOWMAN:** Yes.

**The CHAIR:** It's then calculating the number of injuries, so clearly this is something that Sydney Water has a record of in order to then prepare this in their annual report. Again, are you saying that you have not brought with you any information in relation to the numbers of hours worked by contractors in the 2022 financial year?

**PAUL PLOWMAN:** Thank you, that's an important point that you make there that I need to make sure is clarified. When I was talking about full-time equivalents and the numbers of staff we have, I was talking about the professional services contractors. The numbers that you've just quoted in terms of TRIFR rates and LTI rates are every contractor that we have in the organisation, from construction contractors to maintenance providers. That is all of the hours, which are all obviously booked, and there's a statutory process where contractors tell you and declare all of those hours and all of those injuries. So that is the calculation that's been put in the annual report.

**The CHAIR:** But that's what I was asking you: How many of those contractors that we're recording the hours for in the annual report does Sydney Water have?

**PAUL PLOWMAN:** They wouldn't be Sydney Water contractors per se in terms of the definition that you gave before around having a Sydney Water pass.

**The CHAIR:** Is Sydney Water paying for them?

**PAUL PLOWMAN:** Yes, under a construction contract.

**The CHAIR:** So they're contractors who are working within Sydney Water.

**PAUL PLOWMAN:** Construction workers who are working for a contractor.

**The CHAIR:** I don't mind what their particular job is. What I'm asking is how many contractors does Sydney Water have working for it, working with it or working on contract with it—or however you want to describe it?

**PAUL PLOWMAN:** I would have to take that on notice, and I would have to say that that would fluctuate significantly at any given point in time depending on what we've got in construction. So if I was to provide that number, how would the Committee like to see it—how many we had during a year or at a point in time?

**The CHAIR:** Sure, I'm happy for there to be a—even just the records from 2022 that clearly were available in order to do the analysis for the annual report.

**The Hon. Dr SARAH KAINÉ:** Chair, could I ask for some supplementary information? It might make it easier if you could provide us—we have been talking, what, over the last three years—with each of the projects, a list of all of the projects for which you have engaged outside contractors. It might then be easier to be able to ascertain how many people were employed on those.

**PAUL PLOWMAN:** Yes, sure.

**The Hon. Dr SARAH KAINÉ:** So I'd like a list of what they are, who undertook them and how many people were engaged.

**PAUL PLOWMAN:** Yes, I think you might be able to find most of that in the statement of corporate intent.

**The CHAIR:** Sorry, what would we find in the statement of corporate intent?

**PAUL PLOWMAN:** All of the projects that we have.

**The CHAIR:** But not the numbers of contractors?

**The Hon. Dr SARAH KAINÉ:** And it would be not just the projects but those companies engaged to undertake them with you there?

**PAUL PLOWMAN:** Yes.

**The Hon. Dr SARAH KAINÉ:** Fabulous. If you could provide them, that would be an easy one for you then.

**PAUL PLOWMAN:** Yes.

**The CHAIR:** Coming back to this table then that I'm looking at—because there were some statements made by representatives from the ASU earlier around the safety risks of having such a large contractor force. We look here at this figure and it shows consistently that the rate of injuries for contractors is significantly above that for employees. Does Sydney Water see that as an ongoing problem?

**PAUL PLOWMAN:** The numbers are relatively good in terms of benchmark performance, but that still means that people are getting injured every single day—or not every single day, obviously, because the numbers are not even close to that.

**The CHAIR:** But more so if you're a contractor than if you're an employee.

**PAUL PLOWMAN:** That's right, and that trend is normal, but it doesn't mean to say—

**The CHAIR:** When you say "normal", what do you mean?

**PAUL PLOWMAN:** You would normally expect—because our external workforce or our contractors are doing a majority of the more dangerous construction and maintenance activities that we do as a business. It doesn't mean to say that safety isn't the number one priority, whether you work for Sydney Water or you're a contractor for Sydney Water. We work constantly with our contractors to make sure that we are implementing best practice, and our reporting is very diligent in that respect. We have a whole bunch of our own resources, Sydney Water resources, making sure that we're doing our first, second and line assurance of our contractors around their safety performance.

**The CHAIR:** You've referred there to the term "external workforce". Had I used that term to begin with, when I asked you what the numbers, or even approximate numbers, of Sydney Water's external workforce are, would you be able to answer that more readily?

**PAUL PLOWMAN:** Given the terms of reference of the Committee, I didn't come prepared with those exact numbers, but I will provide them.

**The CHAIR:** Sorry, the terms of reference very clearly are relating to the use of consultants and firms—contractors. A main part of this inquiry has been looking into the definitions used around what is and is not a consultant. There has been some media just in the last couple of days in relation to the use of contractors, consultants—however you want to call it—by government.

**PAUL PLOWMAN:** Yes.

**The CHAIR:** Is your evidence today that you didn't come with this information because you didn't think it would be relevant?

**PAUL PLOWMAN:** No. I was looking at the discussions that had happened over the last few days in the Committee and I prepared for questions around professional services contractors. But the workforce for our construction and physical maintenance activity, which is workforces that we do not directly manage or directly engage, we have a construction contract and they manage their workforce as they see fit to build what we have contracted them to do, so those numbers I don't know.

**The CHAIR:** I understand the difference now. But in terms of the professional services consultants, you were prepared for that?

**PAUL PLOWMAN:** Yes.

**The CHAIR:** How many do you have?

**PAUL PLOWMAN:** As I said, they fluctuate, and I have calculated there are approximately 500.

**The CHAIR:** You must have an idea though, an average, of how many professional services consultants or contractors you have?

**PAUL PLOWMAN:** Yes. That's it: approximately 500, based on the calculations I made here.

**The CHAIR:** But you have just made those in real time in front of us?

**PAUL PLOWMAN:** That's right.

**The CHAIR:** Did you not know before how many—

**The Hon. WES FANG:** That was quite impressive, I thought.

**The Hon. SCOTT FARLOW:** I must say, Ms Anbu seems to be—

**PAUL PLOWMAN:** I think I have put on the record that I will provide you with the information, so I will.

**The CHAIR:** But you said you'd come today prepared to answer questions about professional services contractors and yet you can't tell us how many professional services contractors you have?

**The Hon. WES FANG:** I will take a point of order.

**The CHAIR:** I'll hear the point of order.

**The Hon. WES FANG:** Noting that I was somewhat chastised previously for badgering the witness, I might just indicate that the witness has indicated that he will take the question on notice. It might be helpful that we continue.

**The CHAIR:** Thank you, Mr Fang. Did any other members of the Committee think I was badgering the witness?

**The Hon. PETER PRIMROSE:** No.

**The CHAIR:** I certainly was not intending to.

**The Hon. SCOTT FARLOW:** If I could just suggest, Madam Chair, that potentially Ms Anbu might have some information as well.

**The CHAIR:** Thank you. That would be great.

**DENISHA ANBU:** I don't have any additional information to add. I'd like to support my colleague in the calculation of that number, based on the information that we have around professional service contractor spend. So we did come prepared with that information, not on the numbers—

**The Hon. SCOTT FARLOW:** In terms of dollar figures?

**DENISHA ANBU:** Not in terms of the numbers of professional service contractors but we did come armed with the information on the amount of spend.

**The Hon. SCOTT FARLOW:** Thank you.

**The Hon. Dr SARAH KAINE:** Thank you, Mr Plowman and Ms Anbu. I have a question that relates quite specifically to a consultant engagement in 2021-22. It is \$256,000-odd to Bowery Consulting and the contract description is "Option analysis for various projects". Could you give a bit more information about what that is and what it might be referring to? It's quite an opaque description.

**PAUL PLOWMAN:** Bowery Consulting is a consultant that we use to do detailed cost estimating for capital projects, and that engagement was numerous projects that we had independent cost reviews done for. We used that independent review to undertake an options assessment of which might be the best solution to solve the problem.

**The Hon. Dr SARAH KAINE:** Is it possible to get a bit more detail, on notice, of that? As I said, I would just like to understand a bit more what that covered.

**PAUL PLOWMAN:** Yes, sure.

**The Hon. Dr SARAH KAINE:** Of the consultants that are listed—and the Chair alluded to a discussion we have been having in an ongoing way in this Committee about the conflation of various definitions—let's again take the last three years, have there been consultants that have done work, engaged as consultants, who have then gone on to do work in the professional services or in any other area of contracting for Sydney Water?

**PAUL PLOWMAN:** Not that I'm aware of.

**The Hon. Dr SARAH KAINE:** Not that you're aware of—so you would need to check?

**PAUL PLOWMAN:** I don't believe that's the case. Could you give an example of what you—

**The Hon. Dr SARAH KAINE:** Let's take PwC as a well-known example. We have seen it before where PwC is contracted to do some consulting work but then also do some project delivery work.

**PAUL PLOWMAN:** Yes.

**The Hon. Dr SARAH KAINE:** Are there any examples that you can think of?

**PAUL PLOWMAN:** No, I can't think of any examples. I would take the opportunity to explain how I would be comfortable in making that assertion, because we have fairly clear processes by which we engage

consultants. I think here is a good example. Your biggest area where you may have people moving into some of those things is in possibly your professional service contractors as opposed to consultants that you get in, like Bowery, for example. They trade on their independence, so they're unlikely to move into a contracting gig, I suppose, later on. But most of our professional services contractors are under an agreement with us that wouldn't allow them to go and move and do one of those jobs.

For example, we have a planning partnership, which is the agreement that we have with an engineering services firm. When they do planning work for us, the output of that planning work goes through a whole bunch of rigorous internal selection processes and all of the stuff. But if we decide to invest in something and go forward with a project that came out of the planning process, that would go either two vehicles—through our major projects vehicle or through our regional delivery consortia—and our PSCs that we use for our planning work are not part of the consortia that deliver the work.

**The Hon. MARK BUTTIGIEG:** How long have SUEZ had a relationship with Sydney Water? Do you know?

**PAUL PLOWMAN:** A very, very long time—before me coming to Sydney Water 10 years ago.

**The Hon. MARK BUTTIGIEG:** Yes, and the current MD was the previous CEO of SUEZ—correct?

**DENISHA ANBU:** Yes, up until 2015.

**The Hon. MARK BUTTIGIEG:** So he has come on board in 2015 to Sydney Water, has he?

**DENISHA ANBU:** Incorrect. He joined Sydney Water in 2019 as our managing director after a tenure at SA Water.

**The Hon. MARK BUTTIGIEG:** SA Water?

**DENISHA ANBU:** Yes.

**The Hon. MARK BUTTIGIEG:** Okay. Are they privatised now?

**DENISHA ANBU:** No.

**The Hon. MARK BUTTIGIEG:** Can I ask you if you are familiar with the Treasury accounting standards—the NSW Treasury codes for consultants, contractors, temporary employees, capital program delivery? It's a whole range of codes. Is Sydney Water aware of those codes?

**DENISHA ANBU:** Sydney Water would be aware of those codes. I'm not personally aware of those codes. That's outside my area of expertise.

**The Hon. MARK BUTTIGIEG:** Do you know if you use those codes when you're reporting back to Treasury?

**The Hon. WES FANG:** Is there a suggestion they don't?

**PAUL PLOWMAN:** Sorry, which code—I wouldn't know the codes. Can you explain what those codes are? Then I can tell you.

**The Hon. MARK BUTTIGIEG:** Sure. There's a requirement for State government agencies and State-owned corporations to prepare financial statements in line with AASB, which is the Australian Accounting Standards Boards, and Treasury actually specify a whole list of quite specific codes. AE is the common nomenclature. AE208020001, for example, is "Consultant Expenses"; AE208040001 is "Contractor Expenses". Then there's a whole list that goes through. I just want to know if Sydney Water is complying with that specification from Treasury so, when it goes back to Treasury, Treasury has a like-for-like snapshot of what's going on in the contractor/consultant space.

**PAUL PLOWMAN:** Yes. I'm not the CFO, so I didn't do the attestation of it, but, yes, we would, as a general comment, comply with everything that the Treasury would ask us to do.

**The Hon. MARK BUTTIGIEG:** That being the case, then that information should be already available for the Committee because they'll all be broken down into codes. Could you provide that for us on notice?

**PAUL PLOWMAN:** Yes.

**The Hon. MARK BUTTIGIEG:** Thanks.

**The Hon. SCOTT FARLOW:** Mr Plowman, I might just pick up on that question about SUEZ as well. The ASU came in earlier and made some statements in terms of SUEZ and the manager director's former relationship with SUEZ, which, as you outlined, dates back eight years. Has there been any uptick in terms of

work, since the managing director has come to Sydney Water, to SUEZ over the time of his appointment from 2019 until now?

**PAUL PLOWMAN:** I don't believe so.

**The Hon. SCOTT FARLOW:** Can you provide any information on notice in terms of the work of SUEZ, potentially, over the past 10 years?

**PAUL PLOWMAN:** We can provide all of that information.

**The CHAIR:** Just looking back, I've got the last four years from your annual reports, in relation to the use of consultants, the consultant engagement bit. I'll direct this question to you, Ms Anbu. Of the four years that I have in front of me, two of them appear to include discrepancies. I'll just take you to the first one. In 2021 we have in the usual note on consultants—in this case, it's note 21. It says "financial statements, page 62" or "annual report, page 185". It says that the total amount paid or payable to consultants engaged by the corporation during the reporting period was \$1.3 million. But then, when we look at the amount that you've got in the actual consultant engagements table, we have an amount that adds up to, by my calculations, about \$1.6 million. We have a similar thing in 2019 and 2020, financial year '20, where the figure is off by about \$1.4 million between those two recordings. Are you able to explain why that is?

**DENISHA ANBU:** I have in front of me, for FY21-22, table 21.

**The CHAIR:** I'm looking at '20 and '21—'21 financial year. So go back.

**DENISHA ANBU:** Yes. That would be table 23 of the annual report?

**The CHAIR:** Yes.

**DENISHA ANBU:** As I articulated earlier, in my opening, we outline each of the engagements that are over \$50,000. That is listed in the table. Then, according to our reporting obligations, we total the number of consultants that are less than \$50,000 and provide that total cost, which is listed there at about \$356,000. The total of those two is \$1.6 million.

**The CHAIR:** That's right. Then, if you go to note 21 on those accounts—it says "\$1.3 million". It's like a \$300,000 difference between those two figures.

**DENISHA ANBU:** I don't have an explanation for that for you today. I'm happy to take it on notice.

**The CHAIR:** Similarly, if you look at financial year 2020, we have a total figure of disclosed consultant engagements of about \$1.3 million. Then, in note 20, it says it should be \$2.7 million. So, again, if you could, come back to us on why there's a \$1.4 million discrepancy.

**The Hon. Dr SARAH KAINE:** I just wanted to add to that. It seemed that 2016, 2017—the same kind of thing.

**The CHAIR:** Financial year '17 as well. Just if there's another piece missing out of that that's normally disclosed somewhere else. If you could clarify that for us, that would be very useful.

**DENISHA ANBU:** Sure.

**The Hon. Dr SARAH KAINE:** You've already undertaken to provide for us a list which you say is already available, but you've kindly said you'll provide us a list of projects for the past three years, undertaken at Sydney Water. I wondered if I could ask you also to check with regards to either the consultant spend, the professional service contracts or those other projects. We've already started questioning about the SUEZ connection. Could you check if Mr Cheroux has any current or previous relationships with any of those providers and let us know on notice, please?

**DENISHA ANBU:** Yes.

**The Hon. MARK BUTTIGIEG:** This was socialised a little bit in evidence this morning: In terms of the ability for internal workforce to put forward a competing bid for work, whether it be capital or maintenance, can you just walk us through that process and how it works? The evidence this morning was that, whilst there is information provided, the intellectual infrastructure, if you like, to be able to allow those internal employees to put together a decent—is quite scant. Therefore, they feel they're at a disadvantage to be able to put in a competing bid. Can you talk us through, firstly how thorough that process is and how often it happens and commentary around that evidence?

**PAUL PLOWMAN:** Can you help me understand what a competing bid might look like so I can answer that a bit better?

**The Hon. MARK BUTTIGIEG:** Traditionally what would happen in these organisations—and I know because I have personal experience, having been through it at Ausgrid—is that you set up this tension with the internal workforce by contracting work out, and to be quite frank it upsets the internal employees for obvious reasons, because they see their work going out the door and in this case, allegedly to higher paid contractors. But leaving that aside, what you would normally do is give—sometimes via the industrial instrument, sometimes voluntarily—the employees internally the opportunity to say, "We think we can do that." But in order for them to do that—they're not accountants; they're not project managers—they need the wherewithal to be able to put it together. They need the information pertaining to the project, but they also need people to help them put together an alternative proposal. Has that happened, to your knowledge in Sydney Water?

**PAUL PLOWMAN:** Hopefully I'll answer this question if I give you a bit of context and history about what's happened in the last five to 10 years. Some 10 to 12 years ago a similar process went with our mechanical and electrical maintenance activities, which were outsourced to contractors to be done, before my time. Then more recently we have actually benchmarked our internal workforce for civil maintenance activities—people that are out in everyone's street repairing water mains, unplugging blocked sewers and things like that. We obviously retained that workforce because it was competitive. The principles that we always go by are how we actually deliver our services for as much value for money for our customers it can be. That's the frame of reference that we assess those opportunities.

**The Hon. MARK BUTTIGIEG:** That's in a generalised sense. Presumably that's a desktop analysis of we think our people can do it so let's just keep it in.

**PAUL PLOWMAN:** Yes.

**The Hon. MARK BUTTIGIEG:** What about where there's a proposal to contract out work? Are the internal employees given the opportunity to say, "We think we can do it for as cheaply or as effectively or better quality or whatever it is"? Is there any rigour around that process—a template approach to doing that—or is it just desktop analysis from management: "No, that's going out"?

**PAUL PLOWMAN:** It is desktop analysis and we understand the input costs and all of those things to come to that conclusion.

**The Hon. MARK BUTTIGIEG:** But do you think that having employees working internally, who in some cases live and breathe this stuff over a period of 40 years, and from a morale, cultural point of view, it might be good to ask them if they think they can do the work and give them the opportunity to prove why they can do it as effectively and cheaply?

**PAUL PLOWMAN:** Effectively that has happened in the civil workforce, yes.

**The Hon. MARK BUTTIGIEG:** There is a formal process for it?

**PAUL PLOWMAN:** It's not a formal process, but we are engaging with employees all the time and we understand their capabilities, the productivity that we get and we work with them every day to have that conversation to make sure—

**The Hon. Dr SARAH KAINE:** Do they get input into that desktop review then?

**PAUL PLOWMAN:** No.

**The Hon. Dr SARAH KAINE:** Okay. Which I think is where we—

**The Hon. MARK BUTTIGIEG:** There is no—okay.

**PAUL PLOWMAN:** Yes.

**DENISHA ANBU:** Chair, may I just pick up on Dr Kaine's question, which we will take on notice, about links of our MD to consultants listed in the annual report? I feel it would be remiss if I didn't let the Committee know how robust our conflict-of-interest and ethical decision-making guidelines are at Sydney Water. Would it be worthwhile outlining what our processes are, Chair?

**The CHAIR:** Perhaps if you put them on notice.

**DENISHA ANBU:** Sure.

**The CHAIR:** I suspect they're—

**The Hon. Dr SARAH KAINE:** Similar to others.



**The CHAIR:** —similar to a lot of the other guidelines. Unless you've got some instances of those guidelines being enforced or monitored in any way with any real-life examples of the action taken in relation to potential conflicts of interest.

**DENISHA ANBU:** We'll include it in the material to respond to the question on notice.

**The Hon. Dr SARAH KAINE:** I ask about your threshold or assessment for how you determine which projects across any of the categories that we have been talking about—consultants, professional services or contractors. What are your thresholds, what is your process for determining that you engage external services?

Let's start with that.

**PAUL PLOWMAN:** I think the first thing is that we don't seek to contract or use consultants for things that are absolutely fundamental and core to us providing services to customers. There are critical roles around the business, both maintaining what we would call an intelligent client and certain roles that just shouldn't be—they are Sydney Water decision roles. From a governance perspective, they need to maintain Sydney Water. So that's the first consideration. The second consideration is how specialised the skills are and whether we would need to have that resource full-time. There are lots of different specialist skills that, if we had a person that had those skills, we wouldn't be using them all the time, so therefore it's more efficient to get a contractor to do that work.

**The Hon. Dr SARAH KAINE:** Sorry, can I just stop you for a supplementary question on that, with two examples? In the use of consultants in 2021-22, there are several—

**PAUL PLOWMAN:** Consultants or contractors?

**The Hon. Dr SARAH KAINE:** Consultants, in this case. There are several that are about support for developing business cases.

**PAUL PLOWMAN:** That's right.

**The Hon. Dr SARAH KAINE:** That would seem like something that is a fairly standard business requirement.

**PAUL PLOWMAN:** Yes.

**The Hon. Dr SARAH KAINE:** Again, let's go to professional services, for example. I think you said there were 500-odd people across those. We were doing rough estimates. It seems to me that that's a lot of specialised people. What kind of overall analysis has Sydney Water done to look at gaps in skills and capabilities, and is there a live plan for not having to fill those gaps?

**PAUL PLOWMAN:** Yes. In my opening statement, I mentioned a forecast of \$34 billion of investment over the next 10 years. That does open up the opportunity to think about the capabilities and type of workforce we will need to manage a volume of investment like that. We are undertaking a strategic workforce plan at the moment, which would go through some of the criteria that I have just talked about. The example you gave about business cases is an interesting one. At the moment, we have somewhere between 1,500 and 2,000 projects. All of them have a business case, so you are correct to say that is part of our core capabilities—to be able to make an investment case and decide how we are going to deliver something. That's 100 per cent correct.

Where it gets interesting and where we have engaged specific expertise is to help us with economic assessment and also going through the requirements that government has for very large investments that we've got. That comes into the category of "Would we need someone?" Because we don't do those business cases all the time, we need to leverage the specialist expertise of some of the consultants that have been mentioned there. We wouldn't do that type of business case all the time.

**The Hon. Dr SARAH KAINE:** It's just that you seem to have already included that differentiation. There are some who are associated with economic advice, economic modelling and scenario modelling and those that are business case support or development. So you seem to have already differentiated those but still have some left over, which seem to be business case. Is that just that they've been mislabelled?

**PAUL PLOWMAN:** There are some people that are doing economic analysis, which is quite technical, and there are other people that we've used to help us write the business case.

**The Hon. Dr SARAH KAINE:** For those two that I can see for the last year on business case development—NineSquared and Sense Strategy—might we get on notice the project scope for them as well as the Bowery?

**PAUL PLOWMAN:** Yes.

**The Hon. MARK BUTTIGIEG:** Would you have a list of capital projects and maintenance projects since Mr Cheroux has been at the helm?

**The Hon. WES FANG:** What is the relevance?

**The Hon. MARK BUTTIGIEG:** I think it was 2019 that you said he came on board.

**PAUL PLOWMAN:** Sure. Is there a broader question that I can help you answer with that?

**The Hon. MARK BUTTIGIEG:** Well, no, simply the list of capital works projects commenced since 2019.

**The Hon. WES FANG:** Point of order: I'm struggling to understand how that fits into the terms of reference.

**The Hon. Dr SARAH KAINE:** To the point of order: We want to know what the projects are. We're wanting to get a sense of the overall allocation of projects across these three areas because, in our experience so far—and it hasn't been proven otherwise today—there is some conflation of those different categories. We have already asked for a list of projects for the last three years. So I suspect that there is a link.

**The CHAIR:** On the point of order, I rule it does appear relevant to the list of consultant engagements we have in front of us. On that basis, I rule it in order.

**The Hon. WES FANG:** The only point I would make is that, in putting the question, Mr Buttigieg may well have actually been better off or better served by indicating a date range as opposed to projects under a certain person.

**The CHAIR:** He did.

**The Hon. MARK BUTTIGIEG:** Well, 2019 is a date, Einstein.

**The CHAIR:** Order!

**The Hon. WES FANG:** Thank you for acknowledging my superior intellect, but I'd suggest that it's probably not appropriate.

**The CHAIR:** Mr Primrose, please ask your question.

**The Hon. PETER PRIMROSE:** I've been quietly sitting here listening to all the information you've provided, and I note that there are a number of things that you've taken on notice. I was wondering if you'd just be able, also on notice, to give us a list of the senior executive and the various positions they have within Sydney Water in case the Committee may decide, for example, that it wishes to call back people. We need to identify who'll actually be able to answer and provide some of the information that you haven't been able to. I know you've taken things on notice, but it makes it very difficult for us to engage in any sort of cross-examination in relation to gaining the information that we're seeking that's pertinent to this inquiry, if you're unable to deliver it.

**The Hon. WES FANG:** Chair, I'm going to take a point—

**The Hon. PETER PRIMROSE:** My simple request is if you could please, on notice, just provide us with that list of senior people within the organisation so if we choose to continue this, we might be able to call those people back.

**The Hon. WES FANG:** Chair, I will take a point of order on that question as well.

**The CHAIR:** I will hear the point of order.

**The Hon. WES FANG:** Thank you. That list, the minute it is produced, is automatically dated in relation to the relevancy of those positions. I think that—

**The CHAIR:** Thank you. Just in the interests of time—

**The Hon. WES FANG:** I haven't finished my point of order. The time at which we then decide that we may or may not wish to recall witnesses is when we should be seeking to identify those—

**The CHAIR:** If you could please let me now rule on the point of order, I'm sure that the witnesses are capable of returning the position names rather than the names of the people in those positions in order to address that concern. In the time we have left available, which isn't very much—and I understand if you need to take this on notice—I notice that there's a lot of consultant spend on Aboriginal cultural heritage and heritage assessments.

**PAUL PLOWMAN:** Yes.

**The CHAIR:** I also understand that the organisations listed as having performed those services are not necessarily, or don't appear to be, First Nations led or staffed with First Nations identifying people. Are you able to tell us on what basis those consultants are selected for that type of work?

**PAUL PLOWMAN:** Yes. We have a panel of consultants that would undertake the fieldwork, but of course they would follow the legislation that we've got in respect to that.

**The CHAIR:** How was the panel selected?

**PAUL PLOWMAN:** Competitive tender process.

**The CHAIR:** And as part of that, was there consideration given as to whether or not these people had First Nations expertise?

**PAUL PLOWMAN:** Yes.

**The CHAIR:** But you still managed to hire people that don't have any First Nations experience.

**PAUL PLOWMAN:** I'm not sure that that's the case, is it?

**The CHAIR:** I'm talking about companies that are not Aboriginal led or owned where work is being undertaken in relation to Aboriginal cultural heritage by people who don't have Aboriginal heritage. Is it a criterion to get onto that panel that you have that sort of experience?

**PAUL PLOWMAN:** I'd have to take that specific question on notice, having a look at whatever the selection criteria at that time was, because I wasn't part of that process.

**The CHAIR:** Thank you. That will be very useful., that is all we have time for. Thank you very much for attending and answering our questions. Any questions on notice and supplementary questions, you'll have 21 days to respond and the Committee secretariat will be in touch.

**(The witnesses withdrew.)**

**Mr DARREN CLEARY**, Managing Director, Hunter Water, affirmed and examined

**Ms JENNIFER HAYES**, Executive Manager Finance and Business Partner, Hunter Water, sworn and examined

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

**DARREN CLEARY:** Yes, thank you, Chair. Good afternoon. Thank you to the Committee for requesting that Hunter Water participate in this hearing. Briefly, and by way of background, Hunter Water is a 130-year-old entity. We have expanded considerably since 1892, enabling the growth of our region to more than 620,000 people through the provision of high-quality water, wastewater and some stormwater services. Hunter Water was corporatised in the early 1990s as New South Wales' first State-owned corporation. We are governed in accordance with the Hunter Water Act 1991 and the State Owned Corporations Act. Hunter Water's State ownership was recently enshrined, as you'd be well aware, in the New South Wales Constitution via the first bill of this term of Parliament.

Under the State Owned Corporations Act, Hunter Water is required to operate as a successful business that operates at least as efficiently as any comparable business and maximises the net worth of the State's assets. We have an independent board of directors which sets our strategy, ensures we meet our regulatory commitments and oversees our governance, including via our audit risk committee. We are audited annually by the Auditor-General. As a commercial entity, we pay tax, dividends and commercial financing fees to the New South Wales Government. We are self-funded, with our customers funding our activities through their water bills. As a monopoly service provider, we are regulated principally by the Independent Pricing and Regulatory Tribunal, or IPART. IPART recommends our operating licence to the New South Wales Government, undertakes an annual audit of our performance against that licence and determines our prices in four- to five-yearly blocks, known as a price path. We are currently preparing for our next price path, which will commence from 1 July 2025.

This preparation involves significant customer and community engagement and planning works to ensure our services deliver on the expectations of our customers. As our pricing regulator, one of IPART's core functions is to ensure that our business operates prudently and efficiently. IPART undertakes an expenditure review of Hunter Water during each regulatory period to ensure that Hunter Water's customers pay no more than the efficient cost of the services they receive. During our current regulatory period, IPART has applied a 0.8 per cent efficiency requirement on our business, which we support. This compounds to a saving of \$7.5 million for Hunter Water customers.

I understand from earlier hearings that there has been commentary regarding State-owned corporations seeking exemptions from some reporting requirements. I wish to assure the Committee that Hunter Water has not sought such an exemption and publishes consultancy expenditure as part of our annual report, tabled in Parliament and available on our website. For consistency in reporting, we apply the definition of "consultant" as outlined by the NSW Procurement Board. Hunter Water is a complex business that requires the specialist advice of consultants to inform key decisions and support operations. Recently, this has included consultants required to support our 15-yearly major safety review at Chichester Dam, assistance in improving the cybersecurity of our business and improving our customer experience outcomes.

Across each consultancy, Hunter Water acts as an informed client, utilising our internal expertise to ensure engagements deliver value for our organisation and for our customers. This is reinforced by our procurement policies and practices. Our consultant expenditure has remained stable since the 2012-13 financial year, averaging \$3.95 million per annum, equating to approximately 1.3 per cent of our operating expenditure over that period. We welcome any questions you may have.

**The CHAIR:** Thank you very much. I start by thanking you for two different reasons; one is for having the managing director and CFO attend. I'm sure you will be able to answer our questions, so thank you for taking the time out at that senior level. Secondly, thank you for not having sought those exemptions and for providing annual reports that have a level of detail around your use of consultants already. One issue, though, that I'd like to bring up with you is that under the tables—at least for the last three years—under "consultancies", under the heading "consultant", when we get to the project level, on at least one occasion in every year you've written "various consultancy services", which is not particularly useful. We already know that they're consultants sitting under a consultancies table. For example, GHD was the largest consultancy spend in 2020 at \$1.6 million, and it just says "various consultancy services". What can you tell me about that?

**DARREN CLEARY:** I can take that on notice and provide a more detailed breakdown. The reason that it is aggregated—and it goes to this issue which was raised in the previous questioning, and I'm not trying to be difficult—is the definition between "professional service" and "consulting". GHD is a major service provider for

Hunter Water, providing services across a range of activities, including things we would identify as professional services—for example, design services—through to advisory services such as our dam safety work and providing expert advice on dam safety risk assessments. So the aggregation is because it's across a range of services. In some cases, it could be one engagement that covers both consulting services and professional services. I don't have the specifics so I'll take it on notice and we can provide a more detailed breakdown.

**The CHAIR:** That would be very useful. Would that be under one contract that you have with GHD?

**DARREN CLEARY:** No. It's unlikely to be under one contract with GHD. We'd have a number of different engagements with GHD.

**The CHAIR:** So you have aggregated them all together rather than having them split out?

**DARREN CLEARY:** Correct. That's right.

**The CHAIR:** Are you able to tell us how many professional services contractors you have working at Hunter Water?

**DARREN CLEARY:** In terms of the number of people, the answer is no. I don't have that information readily available. The reason being is, frankly, we don't track it. To the earlier questioning, obviously we track who comes into our building. But if we're talking about a professional service contract, many of the people, for example, working on a design for us—they don't come to our building. And it goes up and down; it fluctuates. I'm not trying to be difficult, but in terms of the number of people at any one time working for us, it's not a number that we specifically track. What we could do is get the total expenditure. And, of course, we can come up with an estimate based upon an averaging of a salary, so we can provide that information. But we don't track the numbers of people for that reason.

**The CHAIR:** That's very interesting. That's useful, because I think we're talking at cross-purposes then. What we're interested in here is the numbers of people who are basically sitting within Hunter Water next to employees, who would otherwise look and smell like employees. I don't know what employees smell like. They would otherwise appear to be an employee but actually, because of the specialty that they're providing or some other reason, they're technically on a contract.

**DARREN CLEARY:** That's fine. What I can do—and we will have to come back with some specifics. We do have a number of arrangements where we do have those sorts of arrangements in place. For example, in our capital delivery part of the business, we have an engagement with WSP. They supplement our capital delivery team—project managers, inspectors, some technical advice. We have an internal team that manages the capital delivery works. WSP supplement that workforce, and they sit alongside our people.

**The CHAIR:** Perfect example.

**DARREN CLEARY:** I apologise. I didn't bring the numbers.

**The CHAIR:** That's okay.

**DARREN CLEARY:** We have Veolia operating and maintaining our wastewater and water treatment facilities. They have a substantial workforce and they provide that core function to us. They have for the last nine years. We're about to go to market to renew that contract. Again, I apologise I don't have the specific numbers, but we absolutely have those arrangements in place.

**The CHAIR:** I think then we understand the problem I was having with the last witness, because it would seem relatively clear that, for example, if you're hiring PwC to do something and they all sit somewhere else at PwC doing their work, I don't expect you to know how many of them are doing the work you have asked for that they're contracted to do for you. But if you've got people sitting within Hunter Water who are providing services alongside employees, I would expect you to know how many there were—not off the top of your head, I appreciate that. But, yes, if you could come back to us with that, that would be very useful.

**DARREN CLEARY:** Will do, yes.

**The Hon. SCOTT FARLOW:** That example you gave of Veolia—nine years managing the wastewater treatment. Why is it that you outsource something like that? What are the benefits for Hunter Water in doing so and not doing it in house? Do you not have the capabilities? What's the rationale?

**DARREN CLEARY:** The rationale at the time—and, of course, these are all about a point in time and where the business is at. At that point in time we had the operations of our treatment facilities run by a subsidiary business of Hunter Water Corp, which we've since sold, and we were maintaining those assets. It was clear that we needed to increase the overall capability of the business. We weren't providing the level of service that was

required. We had some compliance issues and we had some safety issues, and we were spreading our maintenance workforce very thin across both areas of maintaining our network assets and our treatment assets.

We did a strategic review around how do we best deliver that service efficiently. At that point in time the decision was made that certainly the capability we had was very strong in the network part of our business; we were doing that very efficiently. In the treatment part of the business, our internal workforce wasn't performing particularly efficiently and there was certainly external expertise operating across the country and internationally that we thought could bring that expertise to bear and provide value to our customers. We think the outcome of that contract demonstrates that that's the case. So we did get significant operational cost savings from that contract. The safety performance, importantly, and the compliance performance of those facilities has improved over the course of that contract. That's a point in time. It is not a philosophical perspective. It's really an assessment of where is the workforce at? What's the service we have to deliver for our customers and how do we best meet that?

**The Hon. SCOTT FARLOW:** So it's a fairly pragmatic decision in that regard; you've seen that that's had benefits. But you haven't taken a path where you've sought to now insource that or thought about what's the trajectory to come back to operating that sort of operation of your business yourselves?

**DARREN CLEARY:** No, we haven't sought to insource that arrangement. As I said, we are in the process of going through a market process to re-engage that contract. Again, we see that the expertise and the potential value that can be added, particularly in the area of big data—these assets are our most expensive assets to operate. They're also where we spend majority of our capital expenditure, so getting that view in to our organisation to help us make better decisions we see as a potential benefit, and to continue that very high-level performance. Us insourcing that arrangement, we would miss out on and it would be harder to engage that potential in a truly incentivised way of sharing the benefit. It would create a significant challenge for the business to do that as efficiently as those businesses that have those systems developed over decades.

**The CHAIR:** You mentioned before WSP providing some of those services where people are actually sitting within Hunter Water. How are they differentiated from employees, if they are at all? If I was an employee of Hunter Water, would I know who else within the organisation was a direct employee and who was a contractor?

**DARREN CLEARY:** Obviously, from an employment perspective, there is a very clear differentiation, but in terms of within the office, there is no—deliberately, we are not trying to differentiate people. We are trying to form one team. Does everybody know? Of course they do. All of the employees know who's employed by them, but deliberately, culturally, we're trying to build them as part of the team delivering the capital works expenditure.

**The CHAIR:** How long is the average contractor there for? Like someone from WSP, how long would they be within Hunter Water?

**DARREN CLEARY:** We do have some people that have been there for the duration of the contract, but that part of the workforce does tend to have a higher turnover. That is part of the advantage of the arrangement and the relationship.

**The CHAIR:** What is the length of contract then?

**DARREN CLEARY:** It was an eight-year contract, and we have just extended.

**JENNIFER HAYES:** The second term of that contract.

**The CHAIR:** If I am from WSP or wherever and am sitting within Hunter Water for eight years, and there is no real differentiation between me and an employee of Hunter Water, then, presumably, I am getting the information that everyone else is getting. Is there nothing in place to stop somebody contracted from another entity from taking that information and using to get further work from Hunter Water?

**DARREN CLEARY:** There is. Under the terms of the contract, WSP can only provide those project management services. So we have made it contractually bound that they can't then go and compete, for example, for design services, or work either for us directly or for one of our contractors. That is part of the terms of the contract. Clearly, that would present a conflict of interest, so the terms of the contract prohibit that work from occurring.

**The CHAIR:** But when it came to the renewal, you had a bunch of people who were already there and had the experience of eight years or whatever working within Hunter Water. Did that then make it hard to get somebody else to fill that role?

**DARREN CLEARY:** We've extended the contract. In terms of going back out to the market and whether we will get a competitive offer, I'm confident that we will. Sorry, I should go back a step. We haven't made the strategic decision yet about how we continue to procure those services—indeed, whether we in-house. The reason

that we outsourced that function in the first place was about managing peaks and troughs in capability. Particularly, at the scale of organisation we are, we can have large projects come in, have a big impact on our workforce and then, once they're complete, we have a trough. So we are using WSP to help manage that peak and trough in workload. So we haven't made a decision yet about the future, about how we provide that capability in the organisation, whether we recontract that service or whether we seek to do it back in house. That's a decision yet to be made.

**The CHAIR:** Are you saying some of those people have been there eight years?

**DARREN CLEARY:** Most haven't. We have turnover in that workforce, and we have people that come just for one project; we have people that leave. As I said, they're being used to help manage the peaks in workloads.

**The CHAIR:** Sometimes there are more of them.

**The Hon. MARK LATHAM:** Are they with labour hire companies?

**DARREN CLEARY:** No, they're not with labour hire companies.

**The Hon. MARK LATHAM:** You have not got any labour hire?

**DARREN CLEARY:** No, they're not labour hire. The advantage of that arrangement, in trying to manage those peaks and troughs, is that they do have somebody that is employing them that deploys them in other work.

**The CHAIR:** They are consultants. They are from a consulting firm.

**The Hon. MARK LATHAM:** Are they contractors?

**DARREN CLEARY:** Yes, a consulting or contracting firm. WSP provides that service to multiple clients.

**The Hon. Dr SARAH KAINE:** Just to clarify a bit further, it is just the concept of peak and trough. That seems like quite a long wave: eight years. Are you saying that is not the case and that actually, within that, there are peaks and troughs? Didn't you say the contract was for eight years?

**DARREN CLEARY:** It is. They're helping to manage peaks and troughs, but, absolutely, we have people that are in the organisation all of the time. Obviously, with any professional service organisation, the ability to go and call on people when you need them depends upon how committed they are to your organisation. If they're not working for us at all, they have no knowledge of us, our systems or how we work or even certainty of getting work, and then we say to them, "In three months' time we've got a big tender going out and we need a project manager,"—particularly in the current market—the likelihood of getting somebody is very small. So the way that we have structured the arrangement is by saying, "We'll have a baseload of work that you'll help us to deliver. You will be embedded in our team. We are managing it. We are the decision-makers." They work for our managers, but they supplement our team. Then, when we need specialist advice or we have a peak in workload that we need to fulfil, they're much more capable of providing that resource.

**The Hon. MARK LATHAM:** Is the peak in workload due to infrastructure failure? You cannot predict when pipes bust, can you?

**DARREN CLEARY:** You can't predict when pipes bust, but it is also the time of getting things to market. When contractors building work—so jobs run late, for example. We have had a lot of wet weather. We had lot of delays in construction contracts.

**The Hon. MARK BUTTIGIEG:** I am struggling with this concept. I understand that you have peaks and troughs, but you have a workforce. You have these people on the drip just in case there is a peak in demand for work, but they are there for eight years. Like, you're either going to bring them on to answer a peak or not. You can't have your cake and eat it too, can you? You can't have them on the books.

**DARREN CLEARY:** What I'm saying is that the work load is variable. It goes up and down. So we get multiple benefits. Over an eight-year period, our workload absolutely goes up and down, as you can see if you look at—

**The Hon. MARK BUTTIGIEG:** When it goes down, that means you've got people on the books doing nothing?

**DARREN CLEARY:** No, when it goes down we say to WSP, "This project's going to finish in three months' time"—or six months' time—"and so we won't need this person anymore." The advantage of the arrangement is WSP does the planning and they go, "Well, we can use this person somewhere else in the organisation." They can go and work in mining or the other sectors that they service. They're not simply working for Hunter Water. Frankly, from our perspective, we see it as a very efficient way of providing that resource and

doing it in a way that is quite respectful of the people who are working for us because if you do it by labour hire, for example—

**The Hon. MARK BUTTIGIEG:** In other words—what is the acronym again?

**The CHAIR:** WSP.

**DARREN CLEARY:** WSP, the company.

**The Hon. MARK BUTTIGIEG:** They just vary their charging to you based on how many employees you need, yes?

**DARREN CLEARY:** The total fee depends upon—that's right, the rates are agreed as part of the contract.

**The Hon. MARK BUTTIGIEG:** Isn't there another way to address a peak? I don't know what the relative rates are and oncosts and everything, but often organisations like yours will use overtime to address that with internal labour.

**DARREN CLEARY:** We do use some overtime but that's not sustainable. When you've got a large peak in workload you have wellbeing issues. People can't consistently work long, long rates of overtime.

**The Hon. MARK BUTTIGIEG:** Being an SOC you'd have fatigue management policies in place, wouldn't you?

**DARREN CLEARY:** Indeed you do but it's not just about fatigue management. My view is—very strongly—overtime is not a sufficient tool and this is a clear strategic decision we have made and, again, I stand by it. It is an effective way of delivering the capital works program. I am happy to demonstrate and provide the information to show this arrangement is delivering value for money. It provides a number of benefits. It's about managing peaks and troughs. It also provides our project managers with exposure to project management practices across a range of sectors in quite an effective way. So you're working with project managers who have worked in mining or electricity and you've got that cross-fertilisation. It also allows us, at times, access to expertise from some of the other sectors that that consulting service has that isn't as easy to access. We see a number of benefits to it and we think it's a key part of us being an informed client. Having these integrated teams, I think, is a very effective way of making sure that we're providing good professional development for our people and being an informed client by getting that cross—

**The Hon. MARK LATHAM:** If you did everything with permanent full-time staff, what would it add to your cost structure? Estimate?

**JENNIFER HAYES:** An extra \$11 million a year.

**The Hon. MARK LATHAM:** That's passed on to customers?

**JENNIFER HAYES:** Yes.

**DARREN CLEARY:** That's passed on to customers. That's exactly right. And as I said, I think it's got professional development opportunities as well.

**The Hon. MARK LATHAM:** So flexibility saves money.

**DARREN CLEARY:** Correct.

**The Hon. MARK LATHAM:** It is important for this cost-of-living issue as well.

**DARREN CLEARY:** Indeed, and it does so in a way that is respectful of the people who are working for us because they have somewhere to go back to.

**The Hon. MARK BUTTIGIEG:** On evidence this morning, we heard that some of the contractors at Sydney Water are actually getting paid a lot more than the internals. Is that similar for Hunter Water?

**DARREN CLEARY:** Look, there would be—

**The Hon. MARK BUTTIGIEG:** I mean, if they're paying contractors more than internals and they're charging you, how do these companies make a profit? I don't understand the maths.

**DARREN CLEARY:** The hourly rate, obviously, would be higher because they've got to recover their costs and make a profit. Yes, some of these contractors would be getting paid more than our people but they're under different employment arrangements and they're working for a different business. So some of them are but—

**The Hon. MARK BUTTIGIEG:** I would like to see the spreadsheet, but anyway.



**DARREN CLEARY:** Of course. And the advantage of the WSP arrangement is that, like I said, if we don't need the workers—if something happens—they go back to WSP. That's a significant advantage.

**The CHAIR:** Can I just clarify? We have a variable number of employees under this contract—I understand that. But over the length of the contract, what is the minimum number of WSP contractors who have sat within Hunter Water that whole time?

**DARREN CLEARY:** The exact number who have been there the whole time, I'd have to take on notice.

**The CHAIR:** But it's not zero?

**DARREN CLEARY:** No, it's not zero.

**The CHAIR:** So there is a number of them that have been there the entire time. Some of them are peak and trough—I understand that's for the excess—but there is still a minimum number who have been sitting there the entire time.

**DARREN CLEARY:** Well, there is a minimum number of roles. In some of those cases we've had turnover in those roles, as we have turnover in our own business. In terms of the number of roles that have been there for the entire time of the contract, I would have to take that on notice but we can provide the information.

**The CHAIR:** Thank you.

**JENNIFER HAYES:** Madam Chair, if I can add—importantly, this is about infrastructure. This is about building infrastructure. We use WSP to help us deliver infrastructure. At times we have new plants that we're building, at times we are doing plant upgrades and at times we don't. They have also had turnover within their business and they will upscale and downscale within their own organisation to meet the needs of our contract and infrastructure delivery.

**The CHAIR:** I guess the concern here is that we're not using contractors where we could otherwise be using employees. I absolutely understand what you're saying. Sometimes there is a peak and you need to get more people on. But to the extent that under this contract we have people who are—similar to what we heard yesterday—working for year after year within an organisation where otherwise perhaps that could be an employee, that's something we are very interested in. So if you could maybe just come back on notice.

**JENNIFER HAYES:** We will.

**DARREN CLEARY:** I understand. We can provide that information on WSP.

**The Hon. MARK BUTTIGIEG:** At a bottom line level, you're confident that if you were to try and conduct the same exercise on overtime rates with internal staff, within the fatigue management, it just wouldn't be sustainable?

**DARREN CLEARY:** No, that's correct.

**The Hon. MARK BUTTIGIEG:** Based on a financial analysis?

**DARREN CLEARY:** Based upon a wellbeing analysis.

**The Hon. MARK BUTTIGIEG:** No, I said within the fatigue management policy, because you have fatigue management for a reason. Presumably if you have parameters around—what is it at Sydney Water—56 hours a week, that's there for a reason. If you don't exceed 56 hours, you're okay. How many hours do you work in a week, Mr Cleary?

**DARREN CLEARY:** How many hours do I work a week?

**The Hon. WES FANG:** Are you responsive to the fatigue management policies, as management? No. You wouldn't be, would you?

**DARREN CLEARY:** We are, from the perspective—I mean, technically. The key thing about fatigue management—yes, we are, to an extent. But obviously the hazard, in terms of the fatigue management policy—we don't operate heavy machinery or get in hazardous situations.

**The Hon. MARK BUTTIGIEG:** But you drive a car home. Can I ask you—

**DARREN CLEARY:** To that point, we are, from that perspective. To your point, that's where we are—absolutely.

**The Hon. MARK BUTTIGIEG:** I'm not sure if you heard my question about the Treasury standard accounting codes. I think in your opening statement you indicated that you comply with all of those. Is that how you report back?

**DARREN CLEARY:** I'll pass over to Jennifer.

**JENNIFER HAYES:** Yes, we do. I am absolutely familiar with the financial reporting codes—

**The Hon. MARK BUTTIGIEG:** You're doing better than Sydney Water.

**JENNIFER HAYES:** —particularly TPG23-03 in terms of the definitions around consultants and contractors and employees. Our accounts are prepared in accordance with those. As part of my CFO attestation, I attest to that and the controls around that. And our accounts are audited. So they also go through a rigorous audit.

**The Hon. MARK BUTTIGIEG:** If we were to ask you for a breakdown based on codes, you would be able to give that to us on notice?

**JENNIFER HAYES:** There are a lot of codes. But in terms of that reporting code specifically around consultants and contractors, yes: TPG23-03.

**The Hon. MARK BUTTIGIEG:** Can I just ask you, out of interest—you mentioned in the opening statement—what are you paying back to government, now? You're paying, presumably, a dividend and then tax equivalence?

**DARREN CLEARY:** And a government guarantee fee, correct. That is—

**JENNIFER HAYES:** Equivalent interest on our debt to be commercially competitive. We borrow through TCorp, the New South Wales Treasury Corporation, and we pay an equivalence of what a commercial entity would pay in a government guarantee fee, which for us is about twenty-ish million dollars per year.

**DARREN CLEARY:** That's the principle of competitive neutrality.

**The Hon. MARK BUTTIGIEG:** So \$20 million on interest to TCorp. What about a tax equivalence?

**JENNIFER HAYES:** Yes, that's about \$16 million to \$17 million per year.

**The Hon. MARK BUTTIGIEG:** And dividends?

**JENNIFER HAYES:** Last year was \$26 million to 27 million.

**The Hon. MARK BUTTIGIEG:** Thanks, that's very helpful.

**The CHAIR:** Just back on WSP quickly, does WSP give advice to any of your contracting partners or anyone that you contract with?

**DARREN CLEARY:** As I stated previously, under our contractual agreement with WSP they are not to provide advice to any of the parties that work for us with respect to Hunter Water projects. They are not to provide any of that information that they gain and then work on—or provide any of that information to contractors or work for those contractors on Hunter Water projects.

**The CHAIR:** Okay, and that's just a blanket rule that they're not allowed to do that.

**DARREN CLEARY:** That's right. Sorry, just to clarify, they may work for those contractors on other clients' work, but not on Hunter Water projects.

**The CHAIR:** I guess it's still possible that they would give—that they could. Not that they would, but they could. I'm just thinking about the PwC example. When we're looking at potential misuse of information and the way it can then be used by contractors or consultants to get more work or to impress their own clients, is there a potential for information to be taken from Hunter Water and used by WSP for the benefit of clients—that although that client has gone somewhere else for the particular tender to work for Hunter Water, it is still a client of WSP?

**DARREN CLEARY:** We certainly have, obviously, no evidence of that and I would say the likelihood of that would be very remote because we are still managing those bids coming back in. The information is very specific to Hunter Water and our designs and our jobs. It would be hard to contemplate how they would be providing that without it then becoming noticeable through the tender assessment and the review process that we have with those clients. It would be corruption on a fairly grand scale.

**The CHAIR:** Under that contract, if Hunter Water was to let WSP go and get somebody else into that role, would there be anything stopping them using the information they'd gained at Hunter Water after the contract had ended?

**DARREN CLEARY:** The obligations for the time, for the information that they gained while they were working with this, would continue to apply post that engagement.

**The CHAIR:** I understand they've got general confidentiality obligations et cetera, but in terms of the contractual—

**DARREN CLEARY:** But there's a legal obligation that goes post that, and obviously it's project specific and related. With time, that risk diminishes as the projects are completed. But there is still a legal obligation for them to keep that information, as you said, confidential.

**The CHAIR:** Under the contract?

**DARREN CLEARY:** Under the contract, yes.

**The Hon. Dr SARAH KAINE:** That was going to be my question. What is the implementation mechanism? So it's a contractual. It's not a policy—well, it is a policy but it's expressed through your contracts?

**DARREN CLEARY:** It is a contractual obligation, yes.

**The CHAIR:** Thank you very much for your attendance. In relation to questions taken on notice and supplementary questions, you will have 21 days to respond.

**(The witnesses withdrew.)**

**(Short adjournment)**

Mr JAMES HAY, Chief Executive, Energy Corporation of NSW, sworn and examined

Mr SHAUN SMITH, Chief Operating Officer, Department of Planning and Environment, on former affirmation

Mr ANDREW LEWIS, Acting Deputy Secretary, Office of Energy, Climate Change and Sustainability, affirmed and examined

**The CHAIR:** I now welcome our next witnesses, our final panel for the day. Would you like to begin by making a short opening statement?

**JAMES HAY:** I do have one, Chair. Thank you for the opportunity to appear before this Committee today. Despite being legislated for in 1987, EnergyCo, or Energy Corporation of NSW, is actually a new and different entity within the New South Wales Government and national electricity market structures. It operates within complex regulatory and funding arrangements. This context is important for this inquiry, so with your forbearance I will give you a bit of background on that.

EnergyCo is legally a statutory authority. It was created under the Energy and Utilities Administration Act 1987. It was set up, broadly speaking, to investigate, plan, coordinate and promote energy infrastructure development in New South Wales and advise the government of the day on those. One of its particular factors is that it has the power to acquire land. EnergyCo lay dormant until the Electricity Infrastructure Investment Act 2020. It had one property in Lightning Ridge, for no apparent reason. It was re-established to support implementation and delivery of the New South Wales Electricity Infrastructure Roadmap under the Electricity Infrastructure Investment Act 2020. Under that Act, the primary role for EnergyCo is as infrastructure planner for the five renewable energy zones and, currently, two priority transmission projects. Those are the Waratah Super Battery and the Hunter Transmission Project.

Under section 63 of the Electricity Infrastructure Investment Act, the infrastructure planner is responsible for investigating, planning and coordinating investment in generation storage and network infrastructure in each renewable energy zone. It is also responsible for designing, implementing and operating network access schemes—these are the rules by which generators can connect to the new networks—and community engagement and benefit programs. EnergyCo, along with other roadmap entities, is tasked with delivering the objectives under the Electricity Infrastructure Investment Act, particularly the 12 gigawatts of renewable energy by 2030 and the two gigawatts of long-duration storage by the same date. But the overall objectives are for clean, reliable and affordable electricity in New South Wales, as well as ensuring social and economic benefits to the host communities.

As infrastructure planner, those three core functions: We plan and procure the delivery, funding and operation of the major infrastructure projects; we design and manage network access schemes for generators to access that network so they can get connected fast and stay connected, which has been a major issue in the national electricity market; and we coordinate local community and employment, engagement and benefit programs to support joined-up delivery of this major infrastructure and the delivery of benefits for those communities.

Our projects are funded by the New South Wales electricity consumers under a closely regulated set of processes overseen by three independent regulators and the Australian Energy Market Operator. Our funding reflects this, and it is not the same as other New South Wales infrastructure delivery entities. The direct development and construction costs of EnergyCo's current program of "deliver now" network projects is estimated in our *NSW Network Infrastructure Strategy*, which we published in May, at just under \$9 billion. That's the direct building costs and the cost of getting to the point of building. This excludes finance, generator connection assets, system strength costs—that's a part of the network that keeps the quality of the network running—and it's presented in that way so it's comparable to the numbers that are used in the national electricity market. Those latter costs would typically be extra costs on top and would add another 70 per cent to 100 per cent of the costs, because those are the costs of connecting the generators and the costs of providing quality in the electricity system. In addition to that, we have the \$900 million Waratah Super Battery project. That's on time and on cost, and due to be completed next year.

Since our re-establishment we've grown from zero employees. Technically EnergyCo is not allowed to employ anyone, so we all are employed by our host department—currently the Treasury. It's grown to a current staff comprising 195 people—74 employees, 23 contingent labour team members and 98 contractors. To support our growth and move to a mature business model, we will continue to procure more employees, and we will judiciously use consulting firms' specialist skills and other professional services as required to support this \$9 billion program.

New South Wales has not seen investment in substantial new grid for 40 years, and at that stage it owned and controlled the fuel and set prices. Since 2020 the full scope of work has become clearer in the context of new

industry ownership and regulatory structures and, more importantly, current community expectations. EnergyCo published its first assessment of the costs and time lines to deliver the key network projects in May 2023 in our network infrastructure strategy. Prior to then, the market relied on figures supplied primarily from Transgrid and incorporated in AEMO's integrated system plan. Our network infrastructure strategy dovetails with two other statutory documents: the statement of objectives from the Consumer Trustee about how the targets in the Act will be met and AEMO's integrated system plan.

Why engage consultants? As we set up these projects, many of them have six- to eight-year delivery time frames. To start, the first phase of a project is the development phase. That's typically a two- or 2½-year phase. It's about getting started; it's about understanding what goes. It's about aligning a whole lot of different resources in the community and having a very wide number of diverse conversations. The delivery phase of major infrastructure projects commences once you've got to the final investment decision and you have got the contract in place and you're managing the contractor through to completion and delivery.

Typically, you have one group of people who are very skilled at the development phase and another group you phase in over time, and they tend to be your longer term employees over time, to do that delivery over that longer term part of the contract. We're in that phase of just about to transition in some of our projects. Waratah Super Battery is the exception; that's already in delivery. But the other projects are moving through the development phase. Central-West Orana is at that point of getting very close to transitioning, and so we have a plan over time to have a long baton change between the initial people we've employed to get the project up and running, to do the development phase, and those who'll be accountable for the actual delivery.

Our organisation is designed around four key functions: planning and engagement, which is the community engagement and obviously planning processes; technical, which is the hardcore electrical engineering; regulatory, which are the very bespoke processes that we have to go through with our three independent regulators; and projects, the projects themselves. The core intellectual property we develop is in those first three areas. That's the intellectual property that transcends all the projects, so we tend to have employees in that area and embed them in the projects. As we get set and as we move into a more mature state, we will populate at a greater level right throughout the projects, and so you'll hear that theme from us.

Consultants, as you've heard from many people, are there to address specific needs—in our case, getting into business and then moving into a stable state. We've been running for 2½ years, and many of our projects are slightly shorter than that. Key areas where we use consultants are network infrastructure; technical design; procurement and financing; network access scheme design—that's some technical work which we look at from overseas and all sorts of other jurisdictions; detailed project management and implementation; transaction management and market engagement; and—initially and sometimes specifically for particular issues—organisational design, accounting and performance. Sometimes we need external reliance on figures—like an audit needs to be external. We leverage the technical specialists, industry insights, international sector practices—and remembering that many of these projects have not been done for 40 years, and the technology that we are now building them with, the generation technology, has changed dramatically.

We look to retain knowledge and build it across through those core designs of our organisation—those core functions. I will just quickly finish the last things. It's important to understand the regulatory structures that we work under. We expect 100 per cent of the direct costs of our projects to be recovered from electricity consumers over time. In order for that to happen, we have three main processes we go through. The first is we have to go to the Consumer Trustee, who was set up under the Electricity Infrastructure Investment Act and who is responsible for reviewing what we recommend is the right network to build, with Parliament having set that there shall be five renewable energy zones and the initial size is indicated in the Act. We come up with options to deliver that.

The Consumer Trustee looks at that from a consumer's point of view and says, "Is that the right recommendation?" and "What's the maximum cost consumers can pay for that?" After that, we then go to the Australian Energy Regulator to review the actual costs we are proposing to spend on that asset. They have to be less than the amount set by the Consumer Trustee. So all of our costs are subject to that independent regulation. Finally, IPART reviews all the activities that we do under the Electricity Infrastructure Investment Act. So we have those three independent regulators. In that process we are also working consistently with Transgrid as the jurisdictional planner and AEMO as the national electricity market operator. It's really important to break that down.

Just one final point: For our overheads, clearly some overheads are attributable to those direct costs, so we also attribute those to the projects and seek to recover those over time. There are some costs, such as my appearance here today and costs that are just part of being part of government, so they are funded by the taxpayer. They account for about 20 per cent of our costs.

**The CHAIR:** Thank you, Mr Hay. That was very useful information. There is a lot to get into. I want to ask you about one contract and then I will pass to Mr Latham, who is seeking the call. I just wanted to ask—and I think this is probably a question for you, Mr Smith—in relation to the Marsden Jacob report in relation to the New South Wales Electricity Supply and Reliability Check Up, the eTendering record shows this being published on 16 August. It says that it was a limited tender. Can you tell us who else was considered in terms of who else tendered for this?

**SHAUN SMITH:** It's probably a question for Mr Lewis, I believe.

**ANDREW LEWIS:** There were three pre-qualified firms that were approached: Boston Consulting Group, EY Port Jackson Partners and Marsden Jacob Associates.

**The CHAIR:** It says here that 50 per cent of the weighting of the evaluation criteria was on non-price factors. What was it that pushed Marsden Jacob over the line?

**ANDREW LEWIS:** The primary factor that led to Marsden Jacob Associates being selected was the price criteria. They were significantly lower than the other two quotes that were received from the other two firms. More generally, those three firms were approached because of their extensive knowledge and experience of the energy market, the electricity market and the electricity market in New South Wales.

**The CHAIR:** This is \$217,800 for one month of work. It's contract duration—so 5 June, this was entered into, until 5 August. Two months of work—my apologies. When we look at the price, it says here, "Summary of the criteria against which the various tenders were assessed"—I'm looking at the eTendering record. It says that price was only 50 per cent of that. So my question is really what the non-price considerations were that accounted for 50 per cent of the decision to use Marsden Jacob.

**ANDREW LEWIS:** The non-price considerations were, primarily, knowledge and ability in relation to electricity—the electricity markets.

**The CHAIR:** And were you aware that Cameron O'Reilly would be the person writing the report? Was that part of the tender?

**ANDREW LEWIS:** He was the lead partner within—sorry, not partner, associate within Marsden Jacob Associates who responded to the request.

**The CHAIR:** So when we're talking about knowledge and experience, was there consideration given to the general approach or ideological settings of this particular individual?

**ANDREW LEWIS:** No.

**The CHAIR:** Who was the decision made by, ultimately, as to who to go for?

**ANDREW LEWIS:** Ultimately, the decision was made by the Secretary of Treasury, under advice, and I was the primary provider of that advice.

**The CHAIR:** Mr Hay, did Mr O'Reilly talk to you about the report at all?

**JAMES HAY:** We had one session with him and then one follow-up session—relatively short sessions.

**The CHAIR:** Was any draft report provided to you for your consideration?

**JAMES HAY:** No.

**The CHAIR:** And the session that you did have, how long did that go for? What was that?

**JAMES HAY:** I would have to check, but I'm thinking about an hour. I think there may have been one follow-up session, relatively short.

**The CHAIR:** What sort of questions were you asked? Were you actually asked questions or was it an overall discussion?

**JAMES HAY:** I think there was a bit of presentation of what we did, not dissimilar to what I probably just ran through with you. I don't recall a specific line of questioning. But I can go back and—

**The CHAIR:** Were your views sought in relation to the matters that the report finally gave recommendations on?

**JAMES HAY:** I saw the final report.

**The CHAIR:** During your discussion with Mr O'Reilly, were you asked your views on any of the issues that have ended up forming recommendations in this report?

**JAMES HAY:** With Mr O'Reilly, no.

**The Hon. MARK LATHAM:** Mr Lewis, wasn't Cameron O'Reilly in the department working on the electricity roadmap in the first place, which is a pretty important skill set and experience, isn't it?

**ANDREW LEWIS:** Yes, that is correct. He was employed in the New South Wales Government in the then Department of Planning, Industry and Environment, I believe from 2018 to 2021. One of his responsibilities as the principal energy adviser in the department was some of the initial stages of development of the electricity roadmap.

**The Hon. MARK LATHAM:** Yes. So he had that specialised knowledge and experience, plus the lowest price, so who else could you pick? That's obviously the decision that was made. Coming to that electricity roadmap, Mr Hay, how many consultants were used in its development and how do you now explain—from Minister Sharpe, the O'Reilly report and other commentary—the failure to deliver on the early promise, particularly the way in which these renewable energy zones are hopelessly over time and over budget?

**JAMES HAY:** Just to be clear, Mr Latham, you are asking how many consultants were used in the development of the policy?

**The Hon. MARK LATHAM:** The development of the electricity roadmap.

**JAMES HAY:** Of the policy—okay.

**The Hon. MARK LATHAM:** They set up the framework you now operate, including EnergyCo.

**JAMES HAY:** As you may recall, at that stage I was the deputy secretary.

**The Hon. MARK LATHAM:** You were.

**JAMES HAY:** So I would answer in that capacity, not as the EnergyCo chief executive. I would have to take that on notice, in terms of the—

**The Hon. MARK LATHAM:** Right. Was one of the consultants Danny Price?

**JAMES HAY:** Not to my recollection, but I would have to check.

**The Hon. MARK LATHAM:** Did Danny Price forecast that the roadmap would bring forward the closure of coal-fired power stations, which is now the Eraring problem that we've got?

**JAMES HAY:** There was some work done by Frontier Economics, of which Danny Price is a member. I'd have to look at that.

**The Hon. MARK LATHAM:** You'll take that on notice?

**JAMES HAY:** Yes.

**The Hon. MARK LATHAM:** If we can just go to Minister Sharpe's comments made publicly and, obviously, what is in the O'Reilly report about the slow development of the renewable energy zones, you mentioned earlier that EnergyCo started with no staff. Yet, somehow, it was to be responsible for a \$9 billion construction program. Minister Sharpe is saying the easements aren't sorted, the housing supply for the workers, there are labour supply shortages, skill shortages, public opposition to transmission corridors, the gas peaking at Kurri Kurri and Tallawarra is over time, there is no pumped hydro investment—just some studies out there—and, of course, the Snowy 2.0 debacle. Looking back, wasn't it just true that a project of this dimension, which is to effectively rebuild the entire electricity grid and rewire the State, was going to take 20 or 30 years to do it properly, rather than 10?

**JAMES HAY:** Projects do take a long time, Mr Latham, you're right, and we have acted as early as possible to address those issues. There is a 20-year plan under the Electricity Infrastructure Investment Act to deliver the energy transition, so that is in accordance with the timeline you have indicated. There are some urgent actions, some of which came after the policy was intervened, including the announced intention to retire Eraring early. That was well after the Act was passed.

**The Hon. MARK LATHAM:** But it was forecast by consultants and others.

**JAMES HAY:** That was not anticipated in the same way—certainly not at that level, no.

**The Hon. MARK LATHAM:** In terms of the decision to negotiate or engage with Origin about extending the life of Eraring, it seems that the main issue is firming capacity, isn't it? It's a question of how do you back up the intermittent renewables. On the firming capacity side, gas peaking plants are over time and there is no pumped hydro investment. So what are you relying on—some batteries?

**JAMES HAY:** In relation to that, that's about the engagement that has been referred to with Origin, out of the O'Reilly report. I will pass that to Mr Lewis because he is now leading that.

**ANDREW LEWIS:** Sorry, Mr Latham. Could you please repeat the first part?

**The Hon. MARK LATHAM:** The firming capacity is the main problem, isn't it? There is enough investment in the pipeline for actual renewables—wind and solar farms. But when the sun is not shining and the wind is not blowing, what keeps the lights on? Isn't that the fundamental problem that we've got?

**ANDREW LEWIS:** That's one of the issues that we are looking at and working through. With the Australian Energy Market Operator's recent electricity statement of opportunities, AEMO has indicated that if all the projects that are currently known and in progress are completed on time and at their capacity, AEMO is not forecasting any reliability or security risk for New South Wales. However, there is the risk element of if they are not on time or at capacity, and that is what we are looking at as part of the engagement that will occur with Origin Energy. We will be looking at what the true level of risks are, what the likelihood is that some of those projects may not proceed according to the time frame that they have currently been taken into account by AEMO, and looking at that level of risk and determining to what extent Eraring may or may not need to be kept in the market.

**The Hon. MARK LATHAM:** What are the consultants saying about the likelihood of pumped hydro in New South Wales?

**ANDREW LEWIS:** Sorry, which consultants?

**The Hon. MARK LATHAM:** Well, any of the consultants or experts who you are using or contractors, anyone, about the likelihood of pumped hydro. The O'Reilly report has submitted that there are feasibility studies and inquiries being made but actually no investment in new pumped hydro, and we know that original consultant report said that they were relying on Snowy 2.0 to be finished in 2025, which of course is now a pipe dream. What are the consultants saying about the likelihood of pumped hydro being developed as firming capacity?

**ANDREW LEWIS:** Pumped hydro is still identified as a feasible firming technology in New South Wales. There is not only the Snowy Hydro 2.0 project; there are a number of other projects that we are aware of.

**The Hon. MARK LATHAM:** Which ones have been approved for development?

**ANDREW LEWIS:** Mr Hay, maybe given that the pumped hydro program sits partly with you at the moment—

**JAMES HAY:** Yes, I might add to that. We have run a program for feasibility studies for pumped hydro. There were six projects in that who were successful bidders for that funding. One has chosen to discontinue, although it is seeking to extend its grant, so they may still wish to continue. The other projects are still continuing with their feasibility studies. So, to our knowledge, they still think those projects are viable. They are pushing on with them.

**The Hon. MARK LATHAM:** Are the feasibility studies finished or are they continuing?

**JAMES HAY:** No, the feasibility study—

**The Hon. MARK LATHAM:** How do you know they are viable if the studies are not finished?

**JAMES HAY:** The feasibility studies are on track, and they're meeting their milestones. They have not finished the studies.

**The Hon. MARK LATHAM:** After 2½ years, though, you haven't got anything approved?

**JAMES HAY:** To issue the grants takes time, Mr Latham, as you know, and we have to follow process. I will come back to you with the dates on which the grants were issued, but I just don't have that. I might be able to get that whilst we are in the meeting.

**The CHAIR:** Just coming back, Mr Lewis, in relation to this contract and the way in which the tender was run, you said before the other two firms were Boston and EY Port Jackson, is that right, that were invited?

**ANDREW LEWIS:** Yes.

**The CHAIR:** Those two firms, neither of them is part of the standard commercial framework. So you would expect them to come in as a more expensive tender than for Marsden Jacob. Isn't that correct?

**ANDREW LEWIS:** They have not agreed to the standard government terms and conditions and fees. However, under the procurement framework, they are allowed to be approached or invited to tender, and there are separate approval processes if they are considered to be an effective or a suitable consultant to be used.



**The CHAIR:** But Marsden Jacob is part of the SCF.

**ANDREW LEWIS:** Yes.

**The CHAIR:** We know from our inquiries so far that the companies or firms that are part of the SCF will put in cheaper tenders by matter of course. Did you deliberately select three companies or three firms, knowing that two of them were going to come in with a more expensive tender?

**ANDREW LEWIS:** No.

**The CHAIR:** Was it the decision or was there any instruction to you, or did you off your own bat decide to prefer Marsden Jacob as the firm for this work before the tenders came in?

**ANDREW LEWIS:** No.

**The CHAIR:** Given that Mr O'Reilly is on record as being very much in favour of privatisation of the national energy market—he wrote an entire opinion piece in *The Mandarin*, arguing for market privatisation, in 2015; he did his master's in privatisation of the energy market—and given the change in government, do you think that that was the appropriate choice for writing a report of this kind?

**ANDREW LEWIS:** Marsden Jacob Associates was approached as one of the three companies that we approached because of their significant experience and expertise in relation to energy market issues. It was not known that Mr O'Reilly would be the Marsden Jacob Associates associate that would be leading the response to the tender.

**The CHAIR:** I thought in your evidence just before you said that one of the reasons they were selected was because Mr O'Reilly was going to be—

**ANDREW LEWIS:** No. My evidence was that Marsden Jacob was approached because of the firm's experience, of which Mr O'Reilly is one of a number of associates that have experience in the energy and electricity markets.

**The CHAIR:** The tender that Marsden Jacob then put in to the department didn't say who was going to be working on the project?

**ANDREW LEWIS:** It did. The tender came back with Mr O'Reilly as the lead, who wrote the response on behalf of the firm.

**The CHAIR:** Presumably, it said that he would be the one who was going to be working on the report if you were to hire Marsden Jacob.

**ANDREW LEWIS:** There were three identified associates of Marsden Jacob: Mr O'Reilly, Ms Veronika Nemes and Mr Rod Carr.

**The CHAIR:** Was Mr O'Reilly identified as being the lead partner or the lead associate on that?

**ANDREW LEWIS:** He was.

**The CHAIR:** So you were faced with a bid that came in, that was, obviously, going to be lower than the others and that had Mr O'Reilly in the driving seat. Again, was it thought appropriate in these circumstances where we have a change of government, where this particular government has been talking for some time about the regrets that it has over privatisation and has rallied or railed against the privatisation of our energy assets in the past—why was it thought appropriate to appoint a firm to write this report led by someone who is on record as being so fervently in favour of a privatised energy market?

**ANDREW LEWIS:** I would answer that by saying privatisation was not part of the terms of reference for the engagement and is not a relevant factor for consideration.

**The CHAIR:** You don't think that it influences at all the recommendations in this report?

**ANDREW LEWIS:** Mr O'Reilly has extensive experience in the energy sector, in a number of different roles, including working for the New South Wales Government and having been one of the officials who set in place the roadmap process, so he and the firm that he currently works for were deemed to be suitable from an experience and a knowledge perspective. That was one of the main factors in approaching and seeking their quote in response to this piece of work that we were asked to do.

**The CHAIR:** It then makes sense that this report really does continue the ideology of the previous Government, doesn't it?

**ANDREW LEWIS:** I can't comment on your opinion.

**The Hon. MARK LATHAM:** The Government before that had a Premier and a Treasurer who pursued electricity privatisation to their political cost, so it's not unusual inside the Labor Party to have those advocates.

**The Hon. SCOTT FARLOW:** Was the Treasurer or the Minister for Energy consulted on the appointment of Mr O'Reilly before that was confirmed?

**ANDREW LEWIS:** They were advised and being kept up to date, but they did not have a decision-making role.

**The CHAIR:** Did they express a preference at any point?

**ANDREW LEWIS:** No, not that I can recall.

**The CHAIR:** Mr Hay, I asked you before about what your level of involvement in this report was. On page 18 of the report, it states that the report:

... was based on existing information, resources, known developments and structures, including:

- targeted interviews with NSW Government agencies ...

Do you believe that EnergyCo had a targeted interview with Marsden Jacob?

**JAMES HAY:** We certainly provided a lot of information. As it says, it relied on existing information. And we provided very specific comments to Mr O'Reilly about what was needed moving forward. That was the targeting that we chose and we expected from that report.

**The Hon. MARK LATHAM:** Do you have any objection to his chief recommendation about engaging with Origin to keep Eraring open, in that your first renewable energy zone, Orana, won't be starting up until 2027? What is the alternative to keeping Eraring going to keep the lights on in New South Wales?

**The Hon. WES FANG:** Nuclear.

**JAMES HAY:** As the EnergyCo Chief Executive, that's not part of—and my engagement, it's out of the question. That was not one of the questions that I was—

**The Hon. MARK LATHAM:** No, but I'm asking you now, in light of the O'Reilly report. What's the alternative to keeping Eraring open? We all sort of pedal?

**JAMES HAY:** Those are questions for government policy, not for me, Mr Latham.

**The Hon. MARK LATHAM:** They must be questions for you. You run EnergyCo, which is supposed to keep the lights on in New South Wales. You can't duck the question. What's the alternative to keeping Eraring open? You've got no pumped hydro, you haven't started Orana until 2027, two years after the slated closure for Eraring, the gas peaking plants are over time, Snowy 2.0 won't be happening any time soon, maybe 2030. What's the alternative here?

**JAMES HAY:** Mr Latham, EnergyCo is responsible for delivering the renewable energy zones and the priority transmission projects.

**The Hon. MARK LATHAM:** You don't take any responsibility for keeping the lights on? That's reassuring. You are paid a lot of money to do that.

**JAMES HAY:** We are a key participant in helping keep the lights on. But that isn't—

**The Hon. MARK LATHAM:** Helping.

**JAMES HAY:** Our role is to be very focused on delivering the projects that contribute to that outcome.

**The Hon. MARK LATHAM:** You haven't been able to identify an alternative to Eraring continuing. There is none, is there? It's trying to turn the Queen Mary around on a five cent piece—you just can't do it.

**JAMES HAY:** My job is to deliver the renewable energy projects and priority transmission projects.

**The Hon. MARK LATHAM:** When does the first of those renewable energy zones start up? When will it actually be operational?

**JAMES HAY:** In 2027-28.

**The Hon. WES FANG:** When will they be connected to the grid?

**ANDREW LEWIS:** Mr Latham, as Mr Hay mentioned before, under the roadmap the target is 12 gigawatts of new renewable capacity and two gigawatts of firming. I think we are already a third of the way towards that 12 gigawatt target. Since the roadmap was implemented there has been, I think, over 4,000 megawatts

of new renewable generation that has been built in New South Wales. Also the process is being undertaken in terms of the firming tenders. The first round of those has been completed. A second, I believe, is currently underway and that is bringing forward projects as well. To answer part of your question—

**The Hon. MARK LATHAM:** Which projects are being brought forward?

**ANDREW LEWIS:** I can't recall off the top of my head, but it is publicly available and listed from AEMO Services. There are a range of new generation projects and new storage and firming projects that are being built as part of the replacement for the existing coal fleet in New South Wales.

**The Hon. MARK LATHAM:** Can you take on notice those that are being built and give us their projected completion dates?

**ANDREW LEWIS:** Yes.

**The Hon. MARK LATHAM:** Thank you.

**The Hon. WES FANG:** In relation to those renewable energy zones, when will they be connected to the grid—not only the grid but be able to supply metropolitan areas?

**JAMES HAY:** Central-West Orana is the first of the renewable energy zones. It will be connected to the grid in 2027-28. We are working as—our role under section 63 of the Act is to coordinate, as I mentioned before, the investment in not just the network but the generation that comes onstream with that. We are working closely with the generators who are developing projects in that area. They then have to go through a separate process to be awarded access and, if they need them, long-term energy service agreements from the consumer trustee. The whole objective is to bring them on at the same time so that we get—the original policy objective. It goes to your point, Mr Latham, about bringing these projects in time is about the practical coordination of generation, transmission, storage and firming.

**The Hon. WES FANG:** Is it EnergyCo's role to plan the construction of the transmission aspects of the renewable energy zones to the main metropolitan and area grids or is it effectively just the construction?

**JAMES HAY:** If you see our network infrastructure strategy, what you will see is that the first stage of Central-West Orana is timed and sized to use existing capacity in the existing network so that it can get to the load centres.

**The Hon. WES FANG:** You might guess where I am going with a lot of this. To save time, I'll come straight out. There are obviously two ways that we can look at these proposals: You can have overhead and underground. We have just had an inquiry that has been looking at those issues and aspects. In relation to consultants that are engaged to look at these works, where does EnergyCo sit in relation to looking at the transmission projects and looking at the different roles with which you can transmit power, either overhead or underground, and how much investment has gone into looking at both of those solutions?

**JAMES HAY:** Of comparing underground to overground?

**The Hon. WES FANG:** Yes.

**JAMES HAY:** That is part of our core role. We have looked at those in some detail. Undergrounding is very difficult—of large-scale high voltage transmission. The diameter of the cables is roughly 30 centimetres for underground because they have to be protected and armoured. The cable for overhead is much smaller. That then means that whenever you come to a dip in the terrain you have to build a bridge because the cable can't follow the terrain. Moreover, the cables need to be roughly two metres deep and two metres apart from each other, and they carry less transmission. Even though they are much bigger, they conduct less electricity.

**The Hon. WES FANG:** Are you talking AC or DC now?

**JAMES HAY:** This will be AC at this stage.

**The Hon. MARK LATHAM:** It is five times more expensive.

**JAMES HAY:** It would be at least that.

**The Hon. MARK LATHAM:** And your policy is 100 per cent cost recovery from consumers, so this policy is an increase in electricity prices.

**JAMES HAY:** As is the national electricity market. All transmission projects that are shared network are recovered from electricity—

**The Hon. MARK LATHAM:** Recovered from consumers. So if you want to put them underground, people have to pay for it—people who are 300 kilometres from the transmission corridor. Everyone has to pay.

**The Hon. WES FANG:** Since we are talking about questions and not statements—

**The Hon. MARK LATHAM:** That was a question. Everyone has to pay.

**The Hon. WES FANG:** That sounds like more of a statement.

**The CHAIR:** Order!

**The Hon. WES FANG:** I digress. In relation to AC transmission—

**The Hon. PETER PRIMROSE:** I am very interested in this, but I still don't know what it has to do with our terms of reference.

**The Hon. WES FANG:** I'm just wondering, given that we are talking about consultants, if we have actually engaged—

**The Hon. PETER PRIMROSE:** I have just been through the same inquiry as you, Wes.

**The Hon. WES FANG:** You should be really interested, Mr Primrose.

**The Hon. PETER PRIMROSE:** I'm fascinated.

**The Hon. WES FANG:** Good. We have the experts here—two birds with one stone.

**The Hon. PETER PRIMROSE:** I just don't know what it has to do with the terms of reference. I will leave that to the Chair to decide.

**The CHAIR:** I have been waiting for a point of order to be taken.

**The Hon. PETER PRIMROSE:** I won't take a point of order.

**The Hon. WES FANG:** He is as interested as I am.

**The Hon. PETER PRIMROSE:** I am interested; I just don't know what it has to do with the terms of reference.

**The Hon. WES FANG:** Obviously, we are talking about AC undergrounding. What about DC undergrounding? That has obviously been shown to be more efficient, easier to install, perhaps more cost effective than AC undergrounding and effective for long distances, which is what we would be talking about between the renewable energy zones and the metropolitan grids. Have we spent any money at all looking at that?

**JAMES HAY:** I have had quite significant experience in my career, coming from New Zealand, in dealing with HVDC. There is an HVDC line that runs from the centre of the South Island to Wellington, including going under the water. HVDC is particularly characterised by the fact that you can't connect into it; it is a point-to-point connection. For a renewable energy zone, it is not the appropriate technology because the renewable energy zone is there to connect generators and it will have multiple points of connection. So it's not an option for that. It may well be for very long connections if you were to develop major solar inland. But, again, the point is undergrounding creates serious issues because finding the fault is very, very difficult.

**The Hon. WES FANG:** Well, that's, I guess—we heard evidence that was outside of that.

**The Hon. Dr SARAH KAINE:** Point of order: Chair, my colleague might want to continue with this, but I really think we should return to the terms of reference, given that we have limited time and I suspect that there are other members who have questions to ask, which do actually relate to the terms.

**The Hon. WES FANG:** Well, I was leading to that, and I've got one more question, if that's okay.

**The CHAIR:** I will allow you to ask one more question then I will go to other members. If there is more time at the end, you can ask these less relevant questions.

**The Hon. WES FANG:** In relation, then, to HVDC underground, have we done the work? Have we got consultants, perhaps, who are able to price that work in? Because I know communities don't particularly want these overhead lines to become pseudo-REZs and being able to tap in along the way with further renewable energy projects. I think a point-to-point connection with DC is actually a much more equitable solution, given that it's going from REZ to zone. Have we not got consultants that can perhaps provide an answer on this—tangentially, within the terms of reference, I would say.

**The Hon. Dr SARAH KAINE:** Appreciate that, Wes.

**The Hon. WES FANG:** I tried.

**JAMES HAY:** As the Committee will appreciate, there are consultants who provide an answer to any question you ask.

**The Hon. WES FANG:** I know. They might even provide the answer you want. But, I guess, in relation to this, are we doing the work to support a model the Committee wants as opposed to the overheads which might benefit metropolitan areas but aren't benefiting those in the rural and regional areas.

**JAMES HAY:** We've done a lot of work on the feasibility of options, particularly—I re-emphasise the initial stages of renewable energy zones are utilising the existing transmission network. To the extent that we are supplementing that with the Hunter transmission project, it goes through terrain that would make undergrounding unfeasible. As I said to you, these cables do not bend; they do not follow the terrain.

**The Hon. WES FANG:** The AC ones do but the DC ones are much smaller.

**JAMES HAY:** The DC would be very difficult.

**The Hon. SCOTT FARLOW:** Mr Lewis, I might just return to the engagement of Marsden Jacob and I apologise for saying O'Connor Marsden previously. That's another firm I think had local government engagement with and was in my mind. You outlined with Marsden Jacobs that it was of course Mr O'Reilly who was put up as the lead associate on that engagement. One of the things we've heard throughout this inquiry has been the relationship when it comes to consulting of people who've worked within government and then taken that experience outside of government and been able to secure work from government in that environment. Of course, Mr O'Reilly worked for the government from, I believe, 2018 to 2020. When it came to the Boston Consulting bid and the EY Port Jackson Partners bid, did they have people who were put forward as the team who had relevant government experience and had worked inside New South Wales government as well?

**ANDREW LEWIS:** Yes.

**The Hon. MARK BUTTIGIEG:** I'm just trying to get a handle on the remit, I suppose. You're a coordinating agency and established to carry out the planning and coordination of the renewable energy zones, and there's consultancy, presumably, on how to tender for the generation and where it'll go and all that sort of thing. Is that the expertise that we're getting in?

**JAMES HAY:** So we have the role of coordinating the investment in renewable energy zones and the priority projects. We also take those projects, the network part of those projects, to market, so we do a lot of work to get the concept designs of the network solutions. We have to recommend that concept design to the consumer trustee for approval and that's when they set the maximum sum, so we have to do a lot of technical work. So we do require very specialist technical advisory services to help with those designs, as would anyone else doing it—Transgrid or anyone else, AEMO. So we do that work. That's a large portion of our work. We also do a lot of work on the environment. We are the planning authority so we're seeking the planning permissions for these projects, so that means we run the EIS processes. So we have all the scientific advisers and the environment advisers to work on that, the biodiversity offset advisers, so there's another big tranche of consultancy in that space.

**The Hon. MARK BUTTIGIEG:** What are we talking about here in terms of the source energy? Is it solar charging up batteries largely? Is it wind charging up batteries?

**JAMES HAY:** In Central West Orana we would say that the majority would be wind, but what we're seeing now is an increasing amount of projects wanting to do batteries onsite as well but also—batteries have this ability to be put wherever they're needed. A lot of the projects are looking at what we call battery electric storage systems. They are looking at combining that with—this is part of the firming that Mr Latham was referring to. They can make better use of the network connection that they've got and the quality of the network they're connected to. We're seeing that incentive to optimise that and deliver that firming faster and through market processes.

**The Hon. MARK BUTTIGIEG:** What did we say the spend was on consultants to advise on this? How many employees are we talking about that are directly government-employed in EnergyCo?

**JAMES HAY:** I'll just make sure I get the numbers right.

**The Hon. MARK LATHAM:** It was 195, wasn't it?

**JAMES HAY:** We've got 195. It's made up of employees, contingent labour and contractors—not consultants. I think the number, just referring to my notes—

**The Hon. Dr SARAH KAINE:** You had 98 contractors and 20-something contingent—

**JAMES HAY:** It was 74 employees, was it? That's as at today, if you like.

**The Hon. MARK BUTTIGIEG:** It strikes me that there would be a lot of resident expertise in some of these utilities—Essential Energy, for example. Transgrid has been sold off now, but you've got a lot of engineering capacity there. Were there any opportunities explored in that cross-fertilisation from those pre-existing engineering—

**JAMES HAY:** Transgrid wears a number of hats in this capacity. It's the jurisdictional planner, we're the infrastructure planner and AEMO is the national planner. We work very closely. We have days when we have planning conversations with those parties, and some of our costs incurred is reimbursing Transgrid, particularly, for some of those costs. Transgrid is also an asset owner, and it wants to bid to build these projects, whether it does contestedly or they're awarded directly to it. We have to separate those conversations.

**The Hon. MARK BUTTIGIEG:** On that point, in terms of asset ownership, the transmission lines—which, as we've heard, are likely to be overhead—will be owned by whom at the end of the day, once the connectivity happens?

**JAMES HAY:** Each project we look at, one of our recommendations to the Consumer Trustee is who would be the right network operator for that particular investment. We recommend two things: What's the right project to meet the target—in the case of Central-West Orana, the capacity expressed in the Act, and New England. So it's what's the right project to do that and how would you phase it over time. The second one is who is the right person to build, own, operate and finance that. Because we don't build, own, operate or finance anything.

**The Hon. MARK BUTTIGIEG:** Transgrid might put in a bid for the transmission lines, which means they'd own the asset and charge for the wheeling of it through—

**JAMES HAY:** Yes. Their costs will be recovered—

**The Hon. MARK BUTTIGIEG:** Or it could be someone else.

**JAMES HAY:** Yes. It could be someone else.

**The Hon. MARK BUTTIGIEG:** What about the generation assets?

**JAMES HAY:** The generation assets are pursued by generation developers. They are private parties. Some of them are the parties you know—the Origins and the AGLs. But there are other developers as well, who are Tilt and other parties. There's a raft of them. In Central-West Orana there are 12 candidate foundation generators, as we call them. They cover the broad spectrum of investors and developers.

**The CHAIR:** Just looking at the 2022 financial year accounts as they appear within the Treasury accounts, it's showing EnergyCo as having around about a \$408,000 consultancy expenditure. Does that sound right to you?

**JAMES HAY:** These are the ones that were for the financial year ended 30 June 2022. We were part of the Treasury for a period from April through to June.

**The CHAIR:** Are you able to tell us what the unaudited figures will look like, approximately, for 2023?

**JAMES HAY:** Yes, very much unaudited at the moment for 2023. The figures you're asking about are for contractors and consultants, is it?

**The CHAIR:** Yes. Separately, if you could let us know consultants and then contractors. And contingent labour would also be useful.

**JAMES HAY:** The projected total expenditure on consultants for 2022-23—and I'll give a breakdown between what's going to be capitalised into the projects and what is opex as well—is \$46,517,000. That's for consultants. For contractors, it will be \$27,872,000, and these are very unaudited numbers at this point.

**The CHAIR:** Understood.

**JAMES HAY:** Contingent workers, \$4,159,000. We separate out, for the reasons we have been talking about, fees and amounts that we pay to market bodies, because we are required under the Act to consult with them. So we don't include in that those numbers.

**The CHAIR:** Okay. What gets capitalised?

**JAMES HAY:** As with all accounting questions, there is a first layer and a second layer. So the direct costs of those that we have incurred, in the same order—consultants, \$43,965,000; contractors, \$16,011,000; contingent workers, \$964,000.

**The CHAIR:** So those are the amounts that represent your operating, functional costs?

**JAMES HAY:** Those were the capital—

**The CHAIR:** Those are the capitalised amounts?

**JAMES HAY:** Those are the capex numbers. Of our opex numbers, I can give you those as well—consultants, \$2,552,000; contractors, \$11,861,000; contingent workers \$3,194,000. Of those numbers, we would expect, even though they are categorised as opex, some of those costs—a good proportion, maybe more than 50 per cent—are also attributable, because they are overhead attributable to the direct capital costs. So they are legitimately part of the project cost.

**The CHAIR:** Under the operating expenditure, the \$3 million on contingent workers—can you give us a flavour of what kind of contingent workers they would be?

**JAMES HAY:** Of the operating cost?

**The CHAIR:** Yes.

**JAMES HAY:** These are people we have needed to bring in at short notice whilst we look at longer term recruitments, typically, or they might be very highly specialist people who are working for us as part of our team for a period of time. To give you an example, a regulatory specialist whilst we are doing what we call an authorisation application to the Consumer Trustee—we might want someone who has worked at the AEMC or in one of the big law firms who just has done this day in, day out. This is incredibly detailed work and you need people who know how it has worked in the National Electricity Market to know how it should work under the regulatory environment that we are working in. That is the kind of person we might use.

Equally, there might be very specialist planning resources to help with preparation of NEIS that help manage the external advice of the scientists that are doing the environmental surveys. So, in order to meet the spring survey timeline, we might need to get someone on very, very quickly over time. Depending on the nature of where we are working on this environmental survey, you are so much further ahead if you have got someone who has actually done surveys in that area before and knows what flora and fauna you are dealing with. So that's where sometimes you just need that specialist and you need to see what you can get.

**The CHAIR:** What is the difference then between a contingent worker and a contractor? I would have expected environmental surveyors and stuff to be—

**JAMES HAY:** Contractors are also brought in from professional services to help with some of those skills. A lot of it depends on which organisation they are coming from or how they can go. So where we bring contractors in to be part of our teams, we run procurement processes in accordance with the work, which my colleague Mr Smith helps us with. Contingent labour has its own processes. I can talk to you about that, but many people have. We look to see who is available and what is the right way to get them on.

**The CHAIR:** What does your workforce look like then in terms of direct employees assigned to EnergyCo versus contractors?

**JAMES HAY:** I gave you those breakdowns before, so 74 employees. Twenty-three are contingent labour; the balance is 98 contractors. The contractor number will change day to day, because we are bringing people in and we're moving them on. What I really emphasise, again, is the phasing of projects. Especially through the development phase, you do lots of specific work on stuff that you won't come back to in the project, so you want people in for that phase to be the expert.

There are a lot of handovers, and what we are doing now is looking to the procurement phase. So the delivery of Central-West Orana is scheduled to start from June next year, once we get through financial close and finalise all those regulatory processes I was talking to you about. At that stage and well before then, we will start ramping up the delivery people who will be there for the duration of the delivery through to 2027-28 and, in fact, the defects liability thereafter.

**The Hon. MARK BUTTIGIEG:** What happens when all of the REZs are complete, we have reached nirvana and everything is connected? What happens to EnergyCo then?

**JAMES HAY:** We have a number of things. The access rights that we administer run for 35 years or 33 years from project completion. So we are the administrator of the access rights. At one level, that is about a registry of who holds them and where they go, and, as part of the administrator of the access scheme, one of our jobs is to continually evaluate the performance of the network. Can we let more people connect? The basic premise of an access right is a promise to the generators that, within the renewable energy zone, we won't connect more generators beyond a certain level.

Because what happens in the National Electricity Market is new generators can come and connect and write off the value of the existing—depending, electrically, they can get into place the effects—generators who are already on the grid. So the access right is a way of helping generators be confident, over the life of their

investment that they will be able to export the energy that their generators are producing. That is a 35-year scheme. The generators pay an access fee over that period, and it includes contributions to community and employment benefits. We administer those grant schemes as well, which we are looking at. So there is quite a bit there, Mr Buttigieg.

**The Hon. MARK BUTTIGIEG:** Your contractor spend will wind down as these projects come to fruition.

**JAMES HAY:** Yes.

**The Hon. MARK BUTTIGIEG:** And you just have a permanent residual date.

**JAMES HAY:** That's right. One of the ideas of the community benefit scheme and the employment benefits is to deliver those benefits at the time the projects are happening—not 10 years down the track—and to work very closely with the communities and First Nations communities to really look at what's actually needed. All of the projects will give out hi-vis jackets and sponsor new barbeques and do all that sort of stuff that projects do. This is much more about maintaining and enhancing services in the area and looking at what the communities actually want to achieve, long term, out of the benefits of these projects.

**The CHAIR:** Do you use any external parties to run community consultation?

**JAMES HAY:** We do. We have many types of community consultation. Some of our community consultation is quite specialist on environmental issues; some of it is quite specialist on land issues. We do bring parties in. We also want to and are increasingly looking to recruit locally, but often that means we need to employ through contractors as opposed to employees, at least initially, to get up. We have a surge of community engagement; when we launch a project, there's a surge. We are employing, as employees, liaison officers for First Nations. We are employing regional representatives as employees who are based in the communities and are a local presence. You will see that growing quite substantially.

Some of the times, just to get in there—and we advertised for some of these roles immediately pre-COVID. One of the features of EnergyCo is, at our very early stages, we were absolutely gazumped by COVID, and our community engagement really was affected by that, clearly. We advertised and we didn't get much response to the jobs. Now we are going back with the deeper relationships we have built with the communities to really drive those in, diversify them and have our presence in a long-term sustainable employment way, particularly around these community benefits which are there for the life of the projects.

**The Hon. WES FANG:** Would you be getting consultants in to do some work on nuclear energy, by any chance?

**JAMES HAY:** No. Nuclear projects aren't—

**The Hon. MARK LATHAM:** It was banned in New South Wales. You voted to keep the ban.

**The Hon. WES FANG:** Did I? No, I think I spoke pretty passionately about removing the ban.

**The CHAIR:** Order!

**The Hon. WES FANG:** It is just a suggestion. It is just a question.

**The CHAIR:** Was it a performative question, or do you want an answer?

**The Hon. WES FANG:** Given all the problems we've got around transmission and renewable energy zones and the like, shouldn't we just put small modular reactors everywhere where the—

**JAMES HAY:** I'll let my colleague jump in in a moment but there's no proven small modular nuclear technology anywhere in the world, and if it was to come it would be for the next generation.

**The Hon. WES FANG:** Well, I think there was—

**The CHAIR:** Order! We're letting the witness answer.

**ANDREW LEWIS:** The only thing I would add is that you would still need to build the transmission to connect up from the locations to the load centres.

**The Hon. WES FANG:** Not really. It depends where you put them. You can add them closer to the metropolitan centres and then—

**The CHAIR:** Any other questions?

**The Hon. WES FANG:** It was a valid point.



**JAMES HAY:** That's not a community engagement I'd like to lead.

**The Hon. WES FANG:** I'll have one in my backyard.

**The Hon. MARK BUTTIGIEG:** If you could just you indulge me a little bit, Chair. It's a bit off the terms of reference. One of the things that's always been proffered to me by engineering people who are in this game is the issue of how to operate under a fault condition with batteries, wind and solar. Has that technical issue been overcome? In other words, when you get a fault on the cable, it's hard to generate the necessary impedance to trip like you would on a traditional AC coal fired. Is that still an issue?

**JAMES HAY:** At a very specific level on the impedance and those things, I'd have to get you a more technical answer but, at a more general level, we're working very closely with Transgrid and AEMO around what we call system strength—which I referred to earlier—and how a lot of what we've had to do in designing the renewable energy zone has been about how we meet those reliability standards. So the resilience, the number of circuits, the way we've have put them and how, that's where the really—you're right. It's a very big issue and it's where a lot of our focus has been.

**The Hon. MARK BUTTIGIEG:** Are the AER ultimately telling you how much you can spend on these networks?

**JAMES HAY:** Yes, the AER's role under the roadmap is to approve the actual proposed expenditure, so with Central-West Orana—

**The Hon. MARK BUTTIGIEG:** You did say this, yes.

**JAMES HAY:** With Central-West Orana we've run a contestable process. We've had three bidders shortlisted. They've put their bids in. We are now at the first ranked. AER has sat in on all of those evaluation sessions and all of those meetings, so when we go to them they will know the costs that we've delivered are market-sourced costs.

**The CHAIR:** Unfortunately, that's all we have time for. Thank you very much for your attendance and answering our questions. To the extent there were questions taken on notice, or there are supplementary questions, there will be 21 days to respond. The Committee secretariat will be in touch.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:35.**