

Mr David Blunt  
Clerk of the Parliaments  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr Blunt

**Order for Papers – Transport Asset Holding Entity**

I refer to the resolution of the Legislative Council under Standing Order 52 made on 20 June 2019 and your correspondence of that date concerning the Transport Asset Holding Entity.

I am now delivering to you documents referred to in that resolution. The documents have been obtained from the:

- Office of the Minister for Transport and Roads;
- The Treasury;
- Department of Transport;
- Department of Premier and Cabinet; and
- RailCorp.

Enclosed at **Annexure 1** are certification letters from the following officers certifying that, to the best of their knowledge, either all documents held and covered by the terms of the resolution have been provided or that no documents are held:

- Chief of Staff of the Office of the Premier;
- Chief of Staff of the Treasurer;
- Chief of Staff of the Minister for Transport and Roads;
- Acting Secretary, Treasury;
- Acting Secretary, Department of Transport; and
- Acting Chief Executive of RailCorp.

I can also certify that to the best of my knowledge all documents held by the Department of Premier and Cabinet and covered by the terms of the resolution have been provided.

Enclosed at **Annexure 2** are indexes of all of the non-privileged documents that have been provided in response to the resolution.

In accordance with Item 5(a) of Standing Order 52, those documents for which a claim of privilege has been made have been separately indexed and the case for privilege has been noted. Enclosed at **Annexure 3** is an index of all privileged documents and submissions in support of the claim of privilege.

I note that submissions in support of a claim of privilege may sometimes reveal information that is privileged. To the extent that they do, such submissions should be considered to be subject to the same confidentiality as the documents over which the privilege claim is made.

Should you require any clarification or further assistance, please contact Ms Kate Boyd, General Counsel, on telephone (02) 9228 4393.

Yours sincerely



Tim Reardon  
Secretary

25 July 2019

Received on behalf of the Clerk of the Parliaments  
at 5.00 pm on Thursday 25 July 2019

4 boxes non-privileged  
4 boxes privileged



Mr Matt Richards  
A/Executive Director, Legal  
Department of Premier and Cabinet  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

**By Hand**

Dear Mr Richards

**Standing Order 52 – Order for Papers – Transport Asset Holding Entity**

I refer to Ms Kate Boyd's letter to me of 24 June 2019 in relation to the Transport Asset Holding Entity.

I certify to the best of my knowledge that no documents covered by the terms of the resolution and lawfully required to be provided are held by the Office of the Premier.

Please contact Mr David Bold of this office on (02) 8574 5000 if you have any questions in relation to this matter.

Yours sincerely



**Sarah Cruickshank**  
Chief of Staff



**The Hon. Dominic Perrottet MP**  
Treasurer

1 July 2019

Mr Matt Richards  
Acting Executive Director, Legal  
Department of Premier and Cabinet  
Level 14  
52 Martin place  
SYDNEY NSW 2000

Dear Mr Richards

I refer to a resolution under Standing Order 52 passed in the Legislative Council on 20 June 2019 regarding the Transport Asset Holding Entity (TAHE).

I certify to the best of my knowledge this office holds no documents covered by the terms of the resolution and lawfully required to be provided.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nigel Freitas', written over a faint blue circular stamp.

Nigel Freitas  
Chief of Staff





**Office of the Hon Andrew Constance MP**  
Minister for Transport and Roads  
Leader of the House

Mr Tim Reardon  
Secretary  
Department of Premier and Cabinet  
52 Martin Place  
SYDNEY NSW 2000

Dear Secretary,

I certify to the best of my knowledge that all documents held by the Office of the Minister for Transport and Roads that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

Documents HN17/00261 Transport Asset Holding Entity (TAHE) and HN 19/00048 Transport Asset Holding Entity (TAHE) are House Folder Notes, prepared to assist the Minister for Transport and Roads in answering questions that may be asked in Parliament.

Parliamentary privilege would apply to prevent documents of this kind from being produced to a court, or to another "place out of Parliament" within the meaning of Article 9 of the Bill of Rights 1689 (Imp).

It is not suggested that parliamentary privilege would apply to prevent these documents from being produced to, or from being published by, the Legislative Council in the exercise of its constitutional functions.

It is significant, however, that it has been accepted that requiring disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that:

"It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament."

The House may therefore wish to consider what impact any publication by it of such documents could have.

The House may also wish to consider what effect publication may have on the ability, in future legal proceedings, to claim parliamentary privilege on the basis identified in the extract above.

As the only documents found are House Folder notes prepared for the Minister for Transport and Infrastructure in April 2017 and for the Transport and Roads Minister in May 2019, we are seeking a claim of privilege

Yours sincerely,

 3/7/19

Stuart Wallace  
Chief of Staff  
Office of the Hon Andrew Constance MP



Treasury

Contact: Amy Newell  
Telephone: (02) 9228 3325  
Our reference: A4356799  
Your reference: A3039348

Mr Matt Richards  
Executive Director, Legal  
Department of Premier and Cabinet  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

Dear Mr Richards

**Standing Order 52 – Order for Papers – Transport Asset Holding Entity**

I refer to the Legislative Council's Standing Order 52 passed on 20 June 2019, calling for the tabling of all documents relating to the Transport Asset Holding Entity.

The required documents together with a schedule for those documents are attached.

A claim of privilege is proposed regarding a number of documents. Privilege is sought to preclude public disclosure on the grounds of public interest immunity. A submission to support the claim of privilege has been prepared and is enclosed.

I certify to the best of my knowledge that all documents held by NSW Treasury that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

If you require further information, please contact Ms Amy Newell on (02) 9228 3325 or at [amy.newell@treasury.nsw.gov.au](mailto:amy.newell@treasury.nsw.gov.au).

Yours sincerely

A handwritten signature in blue ink that reads 'Joann Wilkie'.

**Joann Wilkie**  
**Acting Secretary**

10 July 2019



Kate Boyd  
General Counsel  
Department of Premier and Cabinet  
Level 14, 52 Martin Place  
SYDNEY NSW 2000

Dear Ms Boyd

**Standing Order 52 – Order for Papers – Transport Asset Holding Entity**

I refer to your letter of 24 June 2019 regarding the above matter.

Enclosed in response to the Order for Papers is:

- An index list of non-privileged documents with copies of the original documents;
- An index list of documents over which a claim of privilege is made along with copies of the original documents, and
- Submissions in support of the claims of privilege made.

Physical copies of the documents referred to in the indexes referred to above have been provided to your office as requested.

I certify to the best of my knowledge that all documents held by the Department of Transport that are covered by the terms of the Order for Papers and are lawfully required to be provided have been provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Howard Collins', with a horizontal line underneath.

**Howard Collins**  
**Acting Secretary**  
**Department of Transport**

9 July 2019

cc Matt Richards, A/Executive Director, Legal



## Legislative Council Standing Order 52 - Transport Asset Holding Entity

### Certification

On Thursday, 20 June 2019, the Legislative Council agreed a resolution with terms including:

*That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents created since 1 July 2016 in the possession, custody or control of the Minister for Transport and Roads, the Premier, the Treasurer, the Department of Premier and Cabinet, the Treasury, Department of Transport or RailCorp:*

- (a) all documents relating to the classification of Transport Asset Holding Entity (TAHE) as a commercial public non-financial corporation,*
- (b) all documents relating to any commercial hurdle rates or rates of return for TAHE regarding its classification as a commercial public nonfinancial corporation,*
- (c) all documents relating to the classification of TAHE as a general government entity pursuant to the general financial statistics classification,*
- (d) all documents relating to the classification of RailCorp as a commercial public non-financial corporation,*
- (e) all documents relating to any commercial hurdle rates or rates of return for RailCorp regarding its classification as a commercial public nonfinancial corporation,*
- (f) all documents relating to the classification of RailCorp as a general government entity pursuant to the general financial statistics classification, and*
- (g) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.*

The index of documents provided under the terms of the resolution of Legislative Council is at **Attachment 1**.

I certify to the best of my knowledge that all documents held by Rail Corporation NSW (RailCorp) that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

**Endorsed by:**



**Peter Crimp**

A/Chief Financial Officer, RailCorp

Date:

10/7/19.

**Approved by:**



**Nev Nichols**

A/Chief Executive, RailCorp

10/07/19.

Date:

## TREASURY

### ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY

#### NON-PRIVILEGED

Document No.	Item	Document	Date of creation	Author	Privilege claim Y/N
1.	(a)	Email TAHE update papers for the February meeting of the Advisory Board	5/02/2018	Treasury	N
2.	(a)	Email: TAHE 2nd Reading Speech	Mar 2017	Treasury	N
3.	(a)	Email: TAHE: Australian Bureau of Statistics Engagement	19/12/2018	Transport	N
4.	(a)	Request For Proposal - Strategic Financial Modelling Advisor - Transport (v2.0 FINAL)	July 2016	Treasury	N
5.	(a), (d)	TAHE issues arising FINAL 02092016	2/09/2016	Deloitte	N
6.	(a)	Email: Fw: Proposed Response: TAHE Media Enquiry	18/12/2018	Treasury	N
7.	(a)	Email: FW: SMH -- TAHE -- deadline 4.30pm	18/12/2018	Treasury	N
8.	(a)	Email: FW: TAHE	13/12/2018	Treasury	N
9.	(a), (d)	Email: Re: Regional Rail accounting advice	18/04/2019	Treasury	N
9A.	(a), (d)	Attachment: Regional Rail accounting advice 180419	18/04/2019	Price Waterhouse Coopers	N
9B.	(a), (d)	Attachment: Regional rail accounting advice 180419 tracked changes	18/04/2019	Price Waterhouse Coopers	N

<b>Document No.</b>	<b>Item</b>	<b>Document</b>	<b>Date of creation</b>	<b>Author</b>	<b>Privilege claim Y/N</b>
10.	(d)	Email: Regional Rail final PWC advice	04/03/2019	Treasury	N
10A.	(a), (d)	Attachment: Regional Rail accounting advice 250219_ with DL Comments at 4-3-19	25/02/2019	Price Waterhouse Coopers	N
11.	(a), (d)	FW: TAHE	22/07/2017	Treasury	N

DEPARTMENT OF TRANSPORT

ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY

INDEX OF NON-PRIVILEGED DOCUMENTS



Document No.	Document ID	Category	Document	Date of Creation	Author	Privilege claim? Y/N
1.	TSW.500.003.2648	A, D, F	TAHE Steering Committee Paper – TAHE PNFC Classification	Unknown	Treasury	No
2.	TSW.500.007.9886	A	Presentation - TAHE ABS Milestones	March 2018	TfNSW	No
3.	TSW.500.008.1389	A, C	Email from Brenda Hoang to Matthew Dunn (et al) re TAHE: Australian Bureau of Statistics Engagement	19 December 2018	TfNSW	No
4.	TSW.500.010.5362	A, B, C	Treasury Update – TAHE ABS Reference Guide	15 September 2017	TfNSW	No
5.	TSW.501.001.8664	A, C, D, F	Presentation – TAHE Advisory Board – Key Discussion Points	5 September 2016	TfNSW	No
6.	TSW.501.003.0146	A, D, F	TAHE Advisory Board Paper - Revised ABS Milestones	17 October 2017	Treasury	No
7.	TSW.501.003.4702	A	Email from Peter Perdikos to Gareth Hughes re ABS Meeting Outcomes	19 December 2018	TfNSW	No
8.	TSW.501.004.1600	A, B	Presentation – TAHE ABS Steering Committee Discussion	26 July 2017	Treasury	No
9.	TSW.501.004.4603	A	TAHE Advisory Board Paper – TAHE Project Update	20 December 2016	TfNSW	No



Document No.	Document ID	Category	Document	Date of Creation	Author	Privilege claim? Y/N
10.	TSW.501.004.6900	A, B	Email from Jasmine Green to Andrew King (et al) re TAHE Scenario Variables Document	29 September 2017	TfNSW	No
11.	TSW.502.003.4544	A, B, C	TAHE Advisory Board Paper – Revised ABS Milestones	6 October 2017	Treasury	No
12.	TSW.502.003.7137	A, C, D, F	Email from Peter Perdikos to Clare Andrews re TAHE Program Re-alignment	7 March 2018	TfNSW	No
13.	TSW.504.004.4971	A, C	Email from Anne Hayes to Strategic Projects re TAHE: Australian Bureau of Statistics Engagement	19 December 2018	TfNSW	No
14.	TSW.504.005.8797	A, B, C	Email from Peter Perdikos to Magda Krawiec re ABS Meeting Outcomes	18 December 2018	TfNSW	No
15.	TSW.504.005.8891	A, C	Email from Brenda Hoang to Peter Crimp re TAHE: Australian Bureau of Statistics Engagement	7 January 2019	TfNSW	No
16.	TSW.505.001.8100	A	TAHE Advisory Board Paper – Business Definition Update	20 December 2016	TfNSW	No

**DEPARTMENT OF PREMIER AND CABINET**  
**ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY**

**NON-PRIVILEGED DOCUMENTS**

<b>Document No.</b>	<b>Item</b>	<b>Document</b>	<b>Date of Creation</b>	<b>Author</b>	<b>Privilege claim Y/N?</b>
Item 1	(a) All documents relating to the classification of TAHE as a commercial public non-financial corporation	TAHE Advisory Board – Meeting 20 December 2016 – Agenda Item 3: TAHE Project Update	20 December 2016	Strategic Projects, TfNSW	N
Item 2	(a) All documents relating to the classification of TAHE as a commercial public non-financial corporation	TAHE Fortnightly Program Status Report – 23 June 2017	23 June 2017	Strategic Projects, TfNSW	N
Item 3	(a) All documents relating to the classification of TAHE as a commercial public non-financial corporation	ABS Discussion paper	10 July 2017	Andrew Alam, NSW Treasury	N

ORDER FOR PAPERS - TRANSPORT ASSET HOLDING ENTITY  
NON-PRIVILEGE DOCUMENTS

Count	Categories	Document ID	Source	Title	Document Date	Document Type	Author	Privileged
1	Item 1 (a) Item 1 (b) Item 1 (c)	<a href="#">STR_500.001.1829</a>	STR.500.001.1828	2.2 Transport Asset Holding Entity.docx	10/11/2016	Attachment	RailCorp	No
2	Item 1 (a)	<a href="#">STR_500.001.2592</a>	STR.500.001.2590	20161124 RailCorp ARC - 2.2 TAHE - Comments.pdf	24/11/2016	Attachment	RailCorp	No
3	Item 1 (a) Item 1 (d)	<a href="#">STR_500.001.3563</a>		TAHE Advisory Board Papers	16/02/2017	Email	Sydney Trains, Irene Rusak	No
4	Item 1 (a)	<a href="#">STR_500.002.4821</a>	STR.500.002.4752	Agenda Item 6.1 - Treasury update - ABS Classification.docx	18/09/2017	Attachment	NSW Treasury, Saj De Silva	No
5	Item 1 (d)	<a href="#">STR_500.003.1289</a>		Fwd: Update on the Transport Asset Holding Entity (TAHE) Program	10/07/2017	Email	RailCorp, Howard Collins	No
6	Item 1 (a)	<a href="#">STR_501.001.0923</a>		20170215 Appendix C - 2016-17 Information on Emerging Issues - RailCorp.pdf	27/06/2019	Electronic File	NSW Treasury	No
7	Item 1 (a) Item 1 (d)	<a href="#">STR_501.001.2025</a>		Take ABS email P Crimp 20 dec 18.pdf	26/06/2019	Electronic File	Sydney Trains, Peter Crimp	No
8	Item 1 (a) Item 1 (c)	<a href="#">STR_501.001.2907</a>		TAHE steering committee 1.pdf	25/06/2019	Electronic File	Transport for NSW, Bobby Li	No
9	Item 1 (a)	<a href="#">STR_502.001.3066</a>		2.2 Transport Asset Holding Entity (2).pdf	2/12/2016	Electronic File	RailCorp	No
10	Item 1 (a)	<a href="#">STR_502.001.3080</a>		2.2 Transport Asset Holding Entity (5).pdf	9/09/2016	Electronic File	RailCorp	No
11	Item 1 (a)	<a href="#">STR_502.001.3092</a>		2.2 Transport Asset Holding Entity.pdf	12/09/2016	Electronic File	RailCorp	No



**Office of the Hon Andrew Constance MP**  
Minister for Transport and Roads  
Leader of the House



Mr Tim Reardon  
Secretary  
Department of Premier and Cabinet  
52 Martin Place  
SYDNEY NSW 2000

Dear Secretary,

I certify to the best of my knowledge that all documents held by the Office of the Minister for Transport and Roads that are covered by the terms of the resolution and are lawfully required to be provided have been provided.

Documents HN17/00261 Transport Asset Holding Entity (TAHE) and HN 19/00048 Transport Asset Holding Entity (TAHE) are House Folder Notes, prepared to assist the Minister for Transport and Roads in answering questions that may be asked in Parliament.

Parliamentary privilege would apply to prevent documents of this kind from being produced to a court, or to another "place out of Parliament" within the meaning of Article 9 of the Bill of Rights 1689 (Imp).

It is not suggested that parliamentary privilege would apply to prevent these documents from being produced to, or from being published by, the Legislative Council in the exercise of its constitutional functions.

It is significant, however, that it has been accepted that requiring disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that:

"It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament."

The House may therefore wish to consider what impact any publication by it of such documents could have.

The House may also wish to consider what effect publication may have on the ability, in future legal proceedings, to claim parliamentary privilege on the basis identified in the extract above.



As the only documents found are House Folder notes prepared for the Minister for Transport and Infrastructure in April 2017 and for the Transport and Roads Minister in May 2019, we are seeking a claim of privilege

Yours sincerely,

 3/7/19

Stuart Wallace  
Chief of Staff  
Office of the Hon Andrew Constance MP

**MINISTER FOR TRANSPORT AND ROADS**

**ORDER FOR PAPERS – STANDING ORDER 52 – TRANSPORT ASSET HOLDING ENTITY**

**PRIVILEGED DOCUMENTS**

<b>Document No.</b>	<b>Item</b>	<b>Document</b>	<b>Date of Creation</b>	<b>Author</b>	<b>Privilege claim Y/N?</b>
Item 1 (a)	All documents relating to the classification of Transport Asset Holding Entity (TAHE) as a commercial public non-financial corporation	HN17/00261 House Folder note for use by the Minister for Transport and Infrastructure.	4 April 2017	Matthew Dunn, Finance and Investment, TfNSW	Y
Item 1 (a)	All documents relating to the classification of Transport Asset Holding Entity (TAHE) as a commercial public non-financial corporation	HN19/00048 House Folder note prepared for the Minister for Transport and Roads	1 May 2019	Peter Perdikos, Corporate Services, TfNSW Brenda Hoang Corporate Service, TfNSW	Y

**SUBMISSION IN SUPPORT OF CLAIM FOR PRIVILEGE BY DEPARTMENT OF TRANSPORT  
IN RESPONSE TO  
ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY, 20 JUNE 2019**

**Introduction**

These submissions are made on behalf of the Department of Transport, in support of claims for privilege made pursuant paragraph 5 of Standing Order 52, for documents which have been returned to the Clerk. These submissions should be read together with the index of privileged documents.

**Parliamentary privilege**

**Documents prepared to assist a minister in Parliament**

The following documents were prepared in order to assist the Minister for Transport and Roads in providing information to Parliament:

***Draft second reading speech, and additional speech, in relation to the Bill***

- |                      |                      |
|----------------------|----------------------|
| 1. TSW.500.003.4424  | 5. TSW.501.002.7795; |
| 2. TSW.501.001.1521; | 6. TSW.501.004.7672; |
| 3. TSW.501.002.2715; | 7. TSW.501.004.7675  |
| 4. TSW.501.002.7792; |                      |

***Questions and answers relating to the Bill***

- |                      |                       |
|----------------------|-----------------------|
| 1. TSW.500.005.5601  | 8. TSW.501.002.7802;  |
| 2. TSW.500.022.4340; | 9. TSW.501.003.8169;  |
| 3. TSW.501.001.1375; | 10. TSW.501.004.5968; |
| 4. TSW.501.001.9129; | 11. TSW.502.001.2446; |
| 5. TSW.501.002.6502; | 12. TSW.502.001.2463; |
| 6. TSW.501.002.7100; | 13. TSW.505.001.8196; |
| 7. TSW.501.002.7762; | 14. TSW.507.002.5283. |

These include drafts, or working versions, of these documents.

Parliamentary privilege would apply to prevent documents of this kind from being produced to a court, or to another "place out of Parliament" within the meaning of Article 9 of the *Bill of Rights 1689* (Imp) <sup>1</sup>.

<sup>1</sup> See, for example, *Sportsbet Pty Ltd v Harness Racing Victoria (No 4)* [2011] FCA 196 at [20]-[22]; and *In the matter of Opel Networks Pty Ltd (in liq)* [2010] NSWSC 142; (2010) 77 NSWLR 128.

It is not suggested that parliamentary privilege would apply to prevent these documents from being produced to, or from being published by, the Legislative Council in the exercise of its constitutional functions.

It is significant, however, that it has been accepted that requiring disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that:<sup>2</sup>

“It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament.”

The House may therefore wish to consider what impact any publication by it of such documents could have.

The House may also wish to consider what effect publication may have on the ability, in future legal proceedings, to claim parliamentary privilege on the basis identified in the extract above.

---

<sup>2</sup> *Opel Networks* [2010] NSWSC 142 at [118]; (2010) 77 NSWLR 128 at 134.



**DEPARTMENT OF TRANSPORT**  
**ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY**  
**INDEX OF PRIVILEGED DOCUMENTS**

<b>Document No.</b>	<b>Document ID</b>	<b>Category</b>	<b>Document</b>	<b>Date of Creation</b>	<b>Author</b>	<b>Privilege claim LPP/PII?</b>
1.	TSW.500.003.4424	A, D	Draft Second Reading Speech – Transport Administration Amendment (Transport Entities) Bill 2017	unknown	TfNSW	PII – Parliamentary Privilege
2.	TSW.500.005.5601	A	Draft TAHE Q and A	27 March 2017	TfNSW	PII – Parliamentary Privilege
3.	TSW.500.022.4340	A	Draft TAHE Q and A	27 March 2017	TfNSW	PII – Parliamentary Privilege
4.	TSW.501.001.1375	A	Draft TAHE - Questions and Answers Index	27 March 2017	TfNSW	PII – Parliamentary Privilege
5.	TSW.501.001.1521	A, D	Draft Second Reading Speech – Transport Administration Amendment (Transport Entities) Bill 2017	29 March 2017	TfNSW	PII – Parliamentary Privilege
6.	TSW.501.001.9129	A	Draft TAHE - Questions and Answers Index	2 March 2017	TfNSW	PII – Parliamentary Privilege
7.	TSW.501.002.2715	A, D	Draft Second Reading Speech – Transport Administration Amendment (Transport Entities) Bill	28 March 2017	TfNSW	PII – Parliamentary

Document No.	Document ID	Category	Document	Date of Creation	Author	Privilege claim LPP/PII?
			2017			Privilege
8.	TSW.501.002.6502	A	Draft TAHE - Questions and Answers Index	4 October 2016	TfNSW	PII – Parliamentary Privilege
9.	TSW.501.002.7100	A	Draft TAHE - Questions and Answers Index	26 September 2016	TfNSW	PII – Parliamentary Privilege
10.	TSW.501.002.7762	A	Draft TAHE - Questions and Answers Index	4 October 2016	TfNSW	PII – Parliamentary Privilege
11.	TSW.501.002.7792	C	Transport Administration Amendment (Transport Entities) Bill 2017 - Additional Speech #3 – Freeing Up Operators	4 April 2017	TfNSW	PII – Parliamentary Privilege
12.	TSW.501.002.7795	A, C	Transport Administration Amendment (Transport Entities) Bill 2017 - Additional Speech #2 – ABS Engagement	4 April 2017	TfNSW	PII – Parliamentary Privilege
13.	TSW.501.002.7802	A	Draft TAHE - Questions and Answers Index	26 February 2017	TfNSW	PII – Parliamentary Privilege
14.	TSW.501.003.8169	A	Draft TAHE - Questions and Answers Index	Unknown	TfNSW	PII – Parliamentary Privilege
15.	TSW.501.004.5968	A	TAHE - Questions and Answers Index	24 March 2017	TfNSW	PII – Parliamentary Privilege

Document No.	Document ID	Category	Document	Date of Creation	Author	Privilege claim LPP/PII?
16.	TSW.501.004.7672	A, C	Transport Administration Amendment (Transport Entities) Bill 2017 - Additional Speech #1 – Financial Benefits (in mark up)	4 April 2017	TfNSW	PII – Parliamentary Privilege
17.	TSW.501.004.7675	A, C	Transport Administration Amendment (Transport Entities) Bill 2017 – Additional Speech #2 – ABS Engagement (in mark up)	4 April 2017	TfNSW	PII – Parliamentary Privilege
18.	TSW.502.001.2446	A	Draft TAHE - Questions and Answers Index	4 October 2016	TfNSW	PII – Parliamentary Privilege
19.	TSW.502.001.2463	A	Draft TAHE - Questions and Answers Index	28 September 2016	TfNSW	PII – Parliamentary Privilege
20.	TSW.505.001.8196	A	TAHE - Questions and Answers Index	26 February 2017	TfNSW	PII – Parliamentary Privilege
21.	TSW.507.002.5283	A	TAHE - Questions and Answers Index	26 February 2017	TfNSW	PII – Parliamentary Privilege

**Submissions of Rail Corporation New South Wales  
Order for papers – Transport Asset Holding Entity, 20 June 2019**

**Introduction**

These submissions are made on behalf of Rail Corporation New South Wales (“RailCorp”), in support of claims for privilege made pursuant paragraph 5 of Standing Order 52, for documents which have been returned to the Clerk. These submissions are to be read together with the index of privileged documents.

**Parliamentary privilege**

**Documents prepared to assist a minister in Parliament**

The following documents were prepared in order to assist the Minister for Transport in providing information to Parliament:

***Draft second reading speech, and additional speech, in relation to the Bill***

STR.500.003.6564

***Questions and answers relating to the Bill***

STR.500.003.6573

RailCorp submits that parliamentary privilege applies to documents of these types and this would prevent documents of these types from being produced to a court, or to another “place out of Parliament” within the meaning of Article 9 of the *Bill of Rights 1689* (Imp)<sup>1</sup>.

Parliamentary privilege does not prevent documents of these types from being produced to the Legislative Council or the Legislative Council from publishing them in the exercise of its constitutional functions.

However, disclosure of such documents could affect the quality of information that is made available to Parliament. It is to be noted that the Supreme Court has expressed the view that if briefings from public servants to parliamentarians for Question Time and parliamentary debate can be the subject of subpoenas, this could affect how public servants prepare their briefings. This will in turn affect the quality of information that is made available to Parliament<sup>2</sup>.

If the House wishes to publish these documents, it should consider the effects such publication may have on the ability to claim parliamentary privilege in any future legal proceedings.

***Party room briefing in relation to a Bill***

Documents STR.500.003.6569 and STR.500.003.6571 are briefing notes prepared for the Coalition party room in relation to the proposed Bill.

It has previously been accepted that public disclosure of party room briefings would infringe Parliamentary privilege<sup>3</sup>.

If the House wishes to publish this document, it should consider the effects such publication may have on the ability to claim parliamentary privilege in any future legal proceedings.

---

<sup>1</sup> See, for example, *Sportsbet Pty Ltd v Harness Racing Victoria (No 4)* [2011] FCA 196 at [20]-[22]; and *In the matter of Opel Networks Pty Ltd (in liq)* [2010] NSWSC 142; (2010) 77 NSWLR 128.

<sup>2</sup> *Opel Networks* [2010] NSWSC 142 at [118]; (2010) 77 NSWLR 128 at 134.

<sup>3</sup> *Gold and Copper Resources Pty Ltd v NSW Trade and Investment* [2016] NSWCATAD 267 at [81]-[98].



RAILCORP  
ORDER FOR PAPERS - TRANSPORT ASSET HOLDING ENTITY  
PRIVILEGE DOCUMENTS

Count	Categories	Document ID	Title	Document Date	Document Type	Author	Privileged	Privileged Basis
1	Item 1 (a) Item 1 (d)	STR.500.003.6564	Bill Folder - Tab 3 MP Speaking Points	30/06/2016	Electronic File	Unknown	Yes	PII (other)
2	Item 1 (a) Item 1 (d)	STR.500.003.6569	Bill Folder - Tab 6 Briefing Note for Party Room	30/06/2016	Electronic File	Unknown	Yes	PII (other)
3	Item 1 (a) Item 1 (d)	STR.500.003.6571	Bill Folder - Tab 7 Briefing Note for Cross Bench	30/06/2016	Electronic File	Unknown	Yes	PII (other)
4	Item 1 (a) Item 1 (d)	STR.500.003.6573	Bill Folder - Tab 8 Questions and Answers	30/06/2016	Electronic File	Unknown	Yes	PII (other)

**SUBMISSION IN SUPPORT OF CLAIMS FOR PRIVILEGE BY THE NSW  
TREASURY - DOCUMENTS RELATING TO THE NSW LEGISLATIVE  
COUNCIL RESOLUTION OF 20 JUNE 2019**

The documents catalogued in the privileged index have been produced in response to the notice of motion dated 20 June 2019 relating to the Legislative Council's Order for Papers – Transport Asset Holding Entity.

**Parliamentary privilege**

A claim of parliamentary privilege is made in relation to the following documents returned under the order:

**1-5.**

These documents were prepared to assist the Treasurer in conducting the business of Parliament, including answering questions that may be asked in Parliament:

Parliamentary privilege would apply to prevent documents of this kind from being produced to a court, or to another "place out of Parliament" within the meaning of Article 9 of the *Bill of Rights 1689* (Imp) <sup>1</sup>.

It is not suggested that parliamentary privilege would apply to prevent these documents from being produced to, or from being published by, the Legislative Council in the exercise of its constitutional functions.

It is significant, however, that it has been accepted that requiring disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that:<sup>2</sup>

"It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament."

It is noted that the disclosure of the documents catalogued in the index may, for the reasons set out by Justice Austin in the extract above, affect the quality of information available to Parliament:

- (a) **Documents 3 - 5** are drafts of a second reading speech in the Legislative Assembly, created by the Treasury, to be delivered by the Treasurer in relation to the *Transport Administration Amendment (Transport Entities) Bill 2017*.

---

<sup>1</sup> See, for example, *Sportsbet Pty Ltd v Harness Racing Victoria (No 4)* [2011] FCA 196 at [20]-[22]; and *In the matter of Opel Networks Pty Ltd (in liq)* [2010] NSWSC 142; (2010) 77 NSWLR 128.

<sup>2</sup> *Opel Networks* [2010] NSWSC 142 at [118]; (2010) 77 NSWLR 128 at 134.

(b) **Documents 1- 2** are House Folder Notes, created for the purpose of assisting and briefing the Treasurer to participate in Question Time regarding the Transport Asset Holding Entity.

The House may therefore wish to consider what impact any publication by it of such documents could have.

The House may also wish to consider what effect publication may have on the ability, in future legal proceedings, to claim parliamentary privilege on the basis identified in the extract quoted from Justice Austin above.

## TREASURY

### ORDER FOR PAPERS – TRANSPORT ASSET HOLDING ENTITY

#### PRIVILEGED

Document No.	Item	Document	Date of creation	Author	Privilege claim Y/N
1.	(a)	11. 03.01 - TAHE	April 2018	Treasury	Y
2.	(a)	House Folder Note: 2.23 - TAHE and Sydney Metro –	Aug 2018	Treasury	Y
3.	(a)	20141106 Transport Asset Holding Entity Draft - Updated with CommentsGWR	2017	Treasury	Y
4.	(a)	20141106 Transport Asset Holding Entity Draft - Updated with CommentsGWR	2017	Treasury	Y
5.	(a)	Draft 2 <sup>nd</sup> Reading Speech: Transport Asset Holding Entity	Mar 2017	Treasury	Y