# NSW rail policy – SPAD?

*Media reports claimed changes to NSW railways artificially inflated State Budget results. Yet ‘cooked books’ are the least of the concerns.*

## Introduction

A previous post at Mr Menadue’s Pearls and Irritations argued the central problem in transport is dumb ideas – such as pointing motorways to CBDs, or designing rail infrastructure to preclude operational flexibility and curtail access to central city areas.[[1]](#endnote-1)

Such stupidity is not redeemable by processes like the business cases, ‘independent’ reviews or cost-benefit analysis we have seen. Indeed, the risk is such processes – all behind closed doors – are debauched by pressures to cheer on the great concepts.

## The media controversy

The earlier post promised some observations about financial engineering in the rail ‘plan’ for Sydney. That was in light of media furore that arrangements involving the NSW Transport Asset Holding Entity may misrepresent the State’s financial position.[[2]](#endnote-2)

One side of the argument has independent observers, including a former Auditor General, claiming the arrangements are a sham – an accounting ‘gimmick’. On the other, a Treasury riposte called those claims ‘a complete fabrication’.[[3]](#endnote-3)

Amid this: a NSW Audit Office report said the arrangements are a ‘high risk’;

absence of any public explanation of what the Entity is supposed to do.[[4]](#endnote-4)

Which is great stuff for selling newspapers and smiting political and bureaucratic opponents. But, for transport it misses the point: real world effects.

It is impossible for observers to identify potential effects – because the available information is so deficient. Of itself reason for concern.

## Getting there

NSW arrived at this juncture via several steps.

The first step was to remove rail assets - fleet, tracks, stations etc. – from Sydney Trains, and place them in Transport for NSW. While Sydney Trains maintained and used the assets to provide transport services, it lost some control over them.

That was done around 2012 – same time, same place, the Sydney Metro idea started.

Prior, apart from one notorious exception (below), Sydney Trains’ predecessors owned and controlled the assets.

An implication: the change is not needed for transport.

Reasons behind the change likely include factors not yet mentioned. Among these: siderodromophobia - like Sydney Metro, part of the alleged bureaucratic war against Sydney’s railway; a belief trains and track are like buses and roads – the latter being Transport for NSW’s historic focus. Others: intention to franchise Sydney Train services; attempt to reduce spending on track maintenance, probably by contracting-out.

The second step – started in 2017 - involved shifting the assets out of the Transport portfolio. The assets were placed in the Treasury’s Entity. The Entity is a state-owned corporation, supposed to generate a profit. To do so it will operate ‘commercially’ only for its own benefit.

That the ‘operating model’ for the Entity had not been determined by end-2020 suggests a resultant turf battle. Which is hardly denied by the media furore, mentions of ‘whistle-blowers’ and the (still) unexplained sacking of the NSW Transport Secretary – which also removed him from the Entity’s Board.

## Another issue

There is an obvious issue with the second step. As the vast bulk of the Entity’s assets are for Sydney Trains, most of its revenue is likely to come from that source – under a supposedly ‘commercial’ contract. Without that revenue the Entity recorded a large loss for the first half 2020-21.[[5]](#endnote-5)

Yet Sydney Trains is reliant on subsidies – the NSW economic regulator recommended 70% of its efficient costs be covered by subsidies.

Hence the Entity’s financial fate depends on subsidies, cooperation of Sydney Trains in handing them over, and/or asset maintenance spending reductions that adversely affect Sydney Trains.

The result is hardly ‘commercial’. A bureaucratically inspired bad railway structure is compounded by misapplication of the *State Owned Corporations Act (1989).*

Problems arising should have been front and centre of advisers in NSW. The reason: NSW had already tried a virtually identical scheme which failed.

## Back to 1996

In 1996, NSW set up a profit seeking, track owning, state-owned corporation in the Treasury portfolio. Other organisations within the Transport portfolio, including Sydney Trains predecessors, variously ran trains and conducted track maintenance under ‘commercial’ contracts with it.

The scheme notably lacked the key safeguard of a similar Thatcher-era approach in the UK – proper processes for setting contract terms and resolving disputes.

Reversal was inevitable. It started after the Glenbrook accident (1999) Commission of Inquiry. In response to the Government requesting advice on industry structure, the Commission criticised the 1996 changes as ideological.

The Commission recommended the track corporation be changed to a statutory authority - taken from Treasury and put into Transport - and maintenance be brought back in house. Later urban trains, track, operations and assets were re-united in one organisation.[[6]](#endnote-6)

Elsewhere, not even the Kennett Government dared attempt the NSW 1996 foray when it started franchising Melbourne’s railway. Among reputed reasons: potential bidders for the franchises would not have a bar of it.

## What might go wrong with the recent changes?

There is no public evident the present NSW administration learned anything from the 1996 fiasco. Transport for NSW in 2012 probably assumed rail policy is as easy as running buses. Just as pre-1996, Treasury in 2017 may have assumed arrangements for utilities like water and electricity are easily, safely imposed on urban railways. Such assumptions are wrong.

Trains, unlike buses, closely interact with infrastructure. Some railway skills – including for maintenance - are orders of magnitude more specific than those used in buses and roads. They require great knowledge about vehicle-infrastructure interactions.

The economics of urban railways and utilities differ. The largest part of the rail operators cost structure is capital. Placing assets outside the operator’s organisation also places them outside its control – that is bad economics.

An even more obvious difference is the ‘need’ to greatly subsidise urban railways – 70% of costs in Sydney. In conjunction with vehicle-infrastructure interaction, this has important practical implications for urban rail organisational structures.

Funds flow through the urban rail sector because of subsidies, not market transactions. The more government organisations deal with each other – via ersatz commercial contracts - the greater the fights for shares of subsidies. In that environment, asking any government organisation to make profits is foolhardy.

The situation is worse if the organisations are in different portfolios. Then fights escalate to, and are attempted to be refereed by, bureaucratic machinations – not proper or expert processes - often with unanticipated operational and safety consequences.

The riskiest situation is: a profit seeking state owned corporation, owned by Treasury, needing ‘commercial’ dealings with another portfolio’s statutory authorities. Understandably, Treasury wants its corporation to prosper. However, this can be and has been sought at the expense of the rest of the sector. Then it becomes Treasurer versus Minister, Treasury against Department, the corporation against the rest of the industry and operational staff of one organisation against the staff of others.

Such fights are likely to start before industry structures are bedded down as antagonists seek to position themselves for forthcoming battles. Continual conflict is virtually guaranteed because nobody has powers matching supposed responsibilities.

Which may be the situation NSW faces.

## How to reduce the risks

Results to be expected include the disputation and the owner’s lack of knowledge about its assets described in the Glenbrook Inquiry report. An outcome is increased railway costs – attributable to the fact that operators no long have control over the most important costs.[[7]](#endnote-7)

In the early 2000s, the similarities – and timing – of these adverse effects in NSW were strikingly similar to what was seen in the UK. There, profit-seeking corporate track owner, RailTrack, failed after the Hatfield accident, the ensuing network meltdown and a direct rectification /compensation bill of $1.4bn. A subsequent accident, at Potters Bar, saw track maintenance brought back in house.[[8]](#endnote-8)

Short of abolishing the (state-owned) asset owning corporation, the solution is to put a single person in charge of all. They must be able to override everybody involved and especially ‘commercial’ - financial and operational - interactions between government organisations.

NSW desperately resorted to this in June 2000 when it appeared the Sydney Olympic Games might fail because of non-stop conflicts between Government rail organisations, bureaucracies and politicians started by the 1996 changes.[[9]](#endnote-9)

That single point accountability – the key governance principle for urban railways – was adhered to for many years. Is it now lost, a mistake not excused by glib expressions such as ‘commercial’ and uninformed opinions about where responsibilities should lie?

## Is the problem understood?

Does the Government – and its advisers – understand what they have done?

Perhaps not. Treasury’s riposte to the accounting sham claim doesn’t inspire confidence.

Its references to other public transport/ rail organisations - to argue the Entity should be a public non-financial corporation - are troubling in two respects.

First, nobody is arguing about that – because Sydney Trains is already such an organisation. Hence, that is no reason to create another rail organisation let alone a separate asset owner, least of all outside the Transport portfolio.

Second, the organisations referred to – other NSW public transport agencies, the Australian Rail Track Corporation, Queensland Rail and VicTrack – eschew key ideas behind the Entity. For each, the Transport Minister is an owner and can offer direction without Treasury approval – unlike the case for the Entity.

The Australian Rail Track Corporation is involved in long haul rail freight mostly outside urban areas. That sector is neither subsidised, nor engaged in urban passenger tasks. Interestingly, in acting commercially, the Corporation writes down assets created from government equity injections – in 2019-20 by around $860m, leading to a loss.[[10]](#endnote-10)

Queensland Rail’s urban passenger operations are vertically integrated – it owns and manages the track. It does not act ‘commercially’ in relation to, or seek to make a profit from, that segment.[[11]](#endnote-11)

VicTrack is an asset owner, restricted from involvement in urban passenger operations. It provides relevant assets to the Department of Transport, not to the Melbourne rail franchisee. Legislation requires these assets to be provided at a *‘nominal*’ consideration, not a ‘commercial’ charge.[[12]](#endnote-12)

That such examples were put forward in the context of defending NSW rail arrangements casts doubt on advice available to the Government. A doubt already seeded by what seems a latent belief financial and organisational arrangements might not affect the real world.

## Conclusions

While information and explanations in the public domain about the NSW rail arrangements are so deficient as to deny final conclusions, all the signals are red – in rail slang NSW is involved in ‘policy SPADs’.[[13]](#endnote-13)

The failure of a prior commercial-urban-railway-asset model in NSW, the debacle of a similar but vastly superior UK structure, and the aversion of (even) the Kennett Government to such ideas suggests plenty. As does non-application of the idea to Sydney Metro.

Among the suggestions: NSW rail policy is in the league of WestConnex and Sydney Metro idiocies with likely the same modus operandi – ideology, obfuscation, denial.

Here the competent advice must be like that for Sydney Metro: establish an open public inquiry into the structure and governance of rail in NSW.

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20 July 2021

1. <https://johnmenadue.com/australias-infrastructure-plans-why-cant-we-get-it-right/> [↑](#endnote-ref-1)
2. <https://www.smh.com.au/national/nsw/the-cover-up-of-a-financial-mirage-that-has-inflated-the-nsw-budget-and-may-put-rail-safety-at-risk-20210528-p57vy0.html>

   [↑](#endnote-ref-2)
3. <https://www.treasury.nsw.gov.au/sites/default/files/2021-06/NSW%20Treasury%20med%20rel%20-%20Statement%20on%20TAHE%20from%20Secretary%20of%20NSW%20Treasury%20Michael%20Pratt%20AM.pdf> [↑](#endnote-ref-3)
4. <https://www.audit.nsw.gov.au/sites/default/files/documents/D2024590%20%20FINAL%20REPORT%20-%20Transport%202020.pdf> [↑](#endnote-ref-4)
5. <https://www.parliament.nsw.gov.au/tp/files/79524/Attachment%20H%20-%20Transport%20Asset%20Holding%20Entity%20of%20NSW%20-%20Half%20Yearly%20Report%20-%202020-21.pdf> [↑](#endnote-ref-5)
6. [https://www.parliament.nsw.gov.au/tp/files/42517/GlenbrookInterim2[1].pdf](https://www.parliament.nsw.gov.au/tp/files/42517/GlenbrookInterim2%5b1%5d.pdf) [↑](#endnote-ref-6)
7. <https://www.parliament.nsw.gov.au/tp/files/50980/A9RB6AA.tmp.pdf> [↑](#endnote-ref-7)
8. <http://news.bbc.co.uk/2/hi/uk_news/4216830.stm> [↑](#endnote-ref-8)
9. <https://www.remtribunals.nsw.gov.au/sites/default/files/2020-12/2000_special_determination-soort-coordinator_general_of_rail.pdf> [↑](#endnote-ref-9)
10. <https://www.artc.com.au/uploads/ARTC-Financial-Statements_2019-20-final-version.pdf> [↑](#endnote-ref-10)
11. <https://www.queenslandrail.com.au/about%20us/Documents/QueenslandRail_AnnualReport_2019-20.pdf> [↑](#endnote-ref-11)
12. <https://www.legislation.vic.gov.au/in-force/acts/transport-integration-act-2010/078> [↑](#endnote-ref-12)
13. <https://www.onrsr.com.au/safety-improvement/signals-passed-at-danger>. [↑](#endnote-ref-13)