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## 0. Summary

This article is about cancellation of Sydney commuter rail services on 7 and 21 February 2022. The cancellations are the third unmissable pointer to cancer afflicting NSW transport policy.

On 7 February all services on the Airport line were cancelled. This was Sydney Trains’ response to the absence of a single employee.

On 21 February, services on all lines were shut-down. This was Sydney Trains’ response to a ‘risk assessment’ about limited industrial action by the Rail Bus and Tram Union.

The Government claimed the shut-down was caused by industrial action. There were attempts to depict it as a *‘strike’* and to whip-up hysteria by words like *‘co-ordinated attack’* and *‘terrorist’*.

The facts – the Fair Work Commission did not accept the Government’s bid to outlaw the industrial action; staff arrived ready for work on February 21 - make the shut-down a lock-out. Employees were stopped from working. Even big-end-of-town paper, the Financial Review was critical, implying the Government was creating mass public disruption to prove a point.

The Government’s responses to questions about the shut-down were widely condemned as confused. The Government expressed more concern about its internal machinations, bad publicity and blaming unions than problems for the public.

The Government initially refused to produce the risk assessment which supposedly required the shut-down. That suggested a lack of confidence in it, or belief it was embarrassing. Eventually tabled in Parliament, the assessment points to issues about management of Sydney Trains.

There are commonalities between these events and two other transport policy disasters: Sydney Metro and the Transport Asset Holding Entity. These include hidden agendas, incompetent advice, public misinformation.

Sydney’s commuter railway, operated by Sydney Trains, has been damaged by Government policies since 2012 – notably for Sydney Metro and the Entity. Its capacity has been reduced. Its ability to retain and attract skilled staff, management, morale and internal cohesion has likely suffered.

In those circumstances, the closure of a line because of a single absentee - and network because of limited industrial action - are not as surprising as they should be. If Sydney Trains is unable or unwilling to deal with such events without closing, it may face safety risks even on the best of days.

The shut-down was a major strike action, but not in the way the Government wants people to believe. It was a strike by Government and management against the people who keep Sydney Trains functioning and the public more generally. It was the third such major strike after Sydney Metro and Transport Asset Holding Entity. The maxim: three strikes and you’re out should be applied.

At the very least there should be a commission of inquiry into transport policy.

Subsequent agreement by the Minister and unions about industrial action does not change any of the above.

## 1. Introduction

This is an article about cancellation of Sydney commuter rail services on 7 and 21 February 2022.

The latter involved a shut-down of the entire network. Initially depicted as a union strike, it was ordered by Sydney Trains management.

The Premier and Minister claimed the shut-down to be the right decision. However, amid public outrage, they were portrayed by the media as recanting on – quibbling about - that. The Premier expressed great displeasure, blamed the relevant union, sought a ‘dossier’ about the decision, ordered an inquiry into why the Minister and himself (supposedly) were not told in advance by transport officials, and offered the public discounted tickets.

In my view that is way short of what needs to be done. The events, like others, suggest deep administrative cancer within the NSW Government and bureaucracy. They point to transport policy stricken by clandestine motives, partiality, contempt for the truth, promulgation of falsehoods and disregard of the public.

Cancer or not, there is no doubt transport policy is causing substantial damage to the public interest.

At the least, the shut-down should be among matters reviewed by a special commission of inquiry into transport policy.

Following is a short explanation of that view.

## 2. The shut-down

Even with the current pandemic, Sydney’s commuter trains carry over 600,000 passengers on a week day. The economic and social utility of this task is far greater, not least for mitigating road traffic congestion that otherwise would occur. In 2018, the Government had claimed a shut-down would cost $90m. In the present case, Government sources expected costs to be $33m per day.[[1]](#footnote-1)

The commuter trains are operated by Sydney Trains. On 21 February 2022 they did not run. Among the results: financial losses by business and individuals; much travel times; ‘huge’ traffic jams.[[2]](#footnote-2)

The reason for trains not running was a decision to suspend all rail services. Initially this was attributed to Sydney Trains’ Chief Executive.[[3]](#footnote-3)

At first, it was claimed the decision was made in the early morning.

A first train was prevented from departing Central at 12.43am. An hour later the media was told via a Transport for NSW press release – which is no longer publicly available.[[4]](#footnote-4)

The Minister claimed to become aware of the situation at around 4.30am. The Premier claimed to become aware shortly thereafter. [[5]](#footnote-5)

The Premier said the reason for the decision was Sydney Trains management had been *‘backed into a corner’* by industrial action of train drivers from the Rail Bus and Tram Union, with a shut-down being the *‘only option’*. It was said a ‘*risk assessment*’ indicated passenger safety would be compromised by operation of trains while industrial action was underway that day.[[6]](#footnote-6)

The Premier referred to the industrial action as akin to ‘*wildcat*’ strikes. He said it was a *‘co-ordinated attack’* by the unions and Labor Party (NSW Opposition) to cause *‘mass disruption’* across Sydney. The Minister claimed the supposed strike to be ‘*terrorist-like’*.[[7]](#footnote-7)

The Prime Minister chipped in to support the Premier. Their disappointment was heightened by cessation of all rail services in Sydney– including to Australia’s principal international airport - on the first day the country re-opened to the world.[[8]](#footnote-8)

Accepting the story of management, Premier and Minister, most initial media reports had the trains stopped because of a strike. However, the ABC seeded early doubts via a photo of train drivers assembled at Central station, ready for work (below). As this gradually seeped into media consciousness, questions started to be asked about the real reason for the network shut-down.[[9]](#footnote-9)



## 3. Lock-out

There was no strike. The facts show a lock-out of workers by Sydney Trains. This was a response to ongoing industrial action restricting non-regular work done by union members.

Significant events leading to the shut-down were: claims of a strike in early February; Government opposing the industrial action in the Fair Work Commission; Government withdrawal of its case. The last of these raises questions about the risk assessment said to require the shut-down.

### 3.1 Airport line

On 7 February, 7NEWS Sydney carried a headline claiming a strike had stopped train services on the Airport line. The story cited a Government statement: services Glenfield-Sydenham were suspended due to industrial action. It referred to overtime bans etc. expected for the next two weeks.[[10]](#footnote-10)

The strike headline and story were placed on 7NEWS social media. They attracted many comments to the effect there was no strike, merely an overtime ban - implying the cause was inadequate staffing. One comment said it was due to the absence of a signaller who dealt with a line segment.[[11]](#footnote-11)

That was later confirmed by Sydney Trains in Budget Estimates:

*‘The first day of the previous round of action, which, from memory, was around about Monday 7 February, we had exactly that case. We had an overtime ban in place. We had a signaller in our Revesby signal complex who took ill while on shift and could not be replaced. We closed one of our signal panels, and then we could not operate that section of the line for the whole day.’[[12]](#footnote-12)*

However, a key part of that story appears to conflict with the reason given for the 21 February network wide shut-down. That reason is a ‘risk assessment’ document which says there was no overtime ban for signal box workers:

*‘from 06 February 2022 to 21 February 2022, signal box workers were deemed exempt from any overtime ban’.[[13]](#footnote-13)*

### 3.2 Fair Work Commission proceedings

On 18 February, the Government commenced proceedings in the Fair Work Commission to prevent the union from undertaking its intended industrial action.[[14]](#footnote-14)

The proceedings had a precedent. In 2018, Mr Perrottet as Industrial Relations Minister initiated identical proceedings against the union. Then, the Commission accepted his case that the contemplated industrial action would cause undue disruption to Sydney’s rail services and the city.[[15]](#footnote-15)

For its 2021 case, the Government lodged various documents and affidavits. These included estimated economic costs of a 14-day shutdown. That implied the Government – and a variety of portfolios - had considered a shut-down of that duration. The Government’s 2021 case also referred to a risk assessment said to underpin concerns operation of trains would compromise public safety.[[16]](#footnote-16)

Notwithstanding claims of costs and risks, on Saturday 19 February - two days before the shut-down - the Government and union accepted limited industrial action to permit running a certain timetable.

The next day in the Commission – Sunday - Sydney Trains’ barrister argued the ‘agreed’ timetable would be *‘nonsensical’* because it had fewer trains operating. The Commission observed fewer trains did not make the timetable nonsensical, even if the Government now didn’t want that timetable. When asked by the Commission whether a shut-down was contemplated, the Government’s barrister hedged. One report said *‘it was unclear what the Government wanted from the Commission’*.[[17]](#footnote-17)

The fact of the shut-down shows the Commission did not accept the Government’s case, implying:

* in the Commission’s view, there were options other than suspension of all rail services;
* those options included the timetable agreed on Saturday;
* the case presented by the Government was not as compelling as in 2018.

### 3.3 Withdrawal of proceedings

During the shut-down, the Government re-energised its case in the Commission. Indeed, the Financial Review suggested the Government hoped to use the shut-down to bolster its case.[[18]](#footnote-18)

Further hearings in the Commission were held the afternoon of the shut-down - Monday. Reports had the union then asking for the risk assessment. Three times, in vain.[[19]](#footnote-19)

Further hearings were scheduled for Wednesday 23 February. To prepare, on Tuesday the unions subpoenaed the risk assessment. An hour later the Government, *‘on the advice of senior counsel’,* withdrew from the Commission. It sought to portray this as an act of good will and faith.[[20]](#footnote-20)

## 4. Aftermath

### 4.1 The truth?

The truth of the situation took some time to emerge – if it has fully emerged. The story initially put into the public domain – the union caused the shut-down - fell apart as facts became known. Public scepticism and Government embarrassment were heightened by initial rantings about terrorism etc.

The Government’s later reactions didn’t help its story. The Minister claimed to not have been told in advance about the shut-down– because he was asleep when the decision was made. The Premier chastised him. Doubts were raised about the completeness of the timeline. The Opposition leader claimed there was some relevant communication between Transport for NSW and the Minister’s private staff prior to midnight – before the Minister fell asleep.[[21]](#footnote-21)

Despite a show of outrage, the Premier claimed the shut-down was justified. The outrage appeared limited to not being told, rather than about there being a shut-down. The Minister complained he didn’t get ‘*sufficiently precise*’ information. Headlines had him blaming ‘*poor communication for Sydney Trains fiasco’*.[[22]](#footnote-22)

The Premier then said he was seeking a ‘dossier’ about the decision and advice about the process leading to the shut-down. This was upgraded to *‘advice on whether the decision broke the law’.*

That apparently was intended to placate the Opposition who claimed the law required Sydney Trains to advise the Minister, in advance, of all major operational changes.[[23]](#footnote-23)

With commotion not abating as he hoped, reports had the Premier asserting this would not happen again. He seemed to be referring to (supposedly) not being told rather than a shut-down.[[24]](#footnote-24)

However, the Minister went further:

*‘Those senior transport bureaucrats were told in a meeting today any major decisions need to be subject to “written briefing and written endorsement”, Mr Elliott said.[[25]](#footnote-25)*

The Premier and Minister were subject to robust questioning in Parliament. Later, the Minister and senior officials were questioned in Budget Estimates. However, a key official involved had been directed to take leave by the Secretary of Transport for NSW and thus did not attend.[[26]](#footnote-26)

### 4.2 Risk assessment context

While the Minister and Premier insisted the shut-down was justified, they admitted to not having seen the risk assessment on which the shut-down was supposedly based.[[27]](#footnote-27)

Doubts were soon voiced about the risk assessment. Professor McCrystal wrote:

*‘the inability of management to articulate this threat speaks volumes about the credibility of the claim itself, and casts a serious cloud over management’s decision to shut down the network’.[[28]](#footnote-28)*

It emerged there had been two risk assessments by Sydney Trains. The first, completed 16 February, was said to have been overseen and approved by Sydney Trains’ risk manager. A second appears to have been completed later with some uncertainty about whether the risk manager approved it and whether it was referred to the Commission.[[29]](#footnote-29)

A bona-fide risk assessment would identify safety issues. The people most directly exposed to – and probably well placed to mitigate - risks of those issues would be the workforce, including union members. The union had observed:

*‘“Running a safe rail network is our number one concern*.*….. If there’s a safety issue, we need to know about it.’[[30]](#footnote-30)*

Moreover, the union stated that worker safety – and continuation of services - were among the reasons for its industrial action:

*‘Among the key sticking points….are:*

* *Privatisation – workers want a commitment that no train services or lines will be lost in the event of privatisation;*
* *Safety claims – workers want a guarantee that any changes to our services will leave them as safe or safer’*

The law regulates railway activities to seek to ensure safety. A foundation principle of that law is for rail (safety) workers to participate in, and be consulted about, measures to manage risks.[[31]](#footnote-31)

The law requires parties responsible for the operation of trains to be accredited – licenced – by the National Rail Safety Regulator. Accreditation requires, among other things, demonstration that safety risks are appropriately mitigated including via consultation and participation of the workforce.

The existence of any ‘risk assessment’ of train operations is germane to that.

Among the issues:

1. The above suggests Sydney Trains does not have a single process for risk assessments.
2. What are Sydney Trains processes to conform with the principles of the national law regarding communicating etc with rail safety workers measures to manage risks?
3. Was the national regulator told about risks so severe as to justify suspension of all services?
4. Why were train operations were permitted after the risk assessment of 16 February? What had changed such that a re-assessment of risk permitted resumption of services on 22 February?

These issues have so far escaped media attention. However, they should be of interest to the Government, the National Regulator and the NSW Office of Transport Safety Investigation.

On 4 March, at Budget Estimates, Sydney Trains tabled the 16 February risk assessment.[[32]](#footnote-32)

### 4.3 Risk assessment – content

The 16 February assessment listed specifics of proposed industrial actions 21 February - 7 March. There were nine actions including: ban on overtime, altered working, working from ‘foreign’ depots, with non-Sydney Trains employees; train crew sign on at home-depot; work to master roster.

Represented impacts were against criteria: customer experience and operations; reputation; finance. They were rated in a matrix of likelihood/negative consequence, supposedly after possible mitigation actions.

Subject matter areas at risk were: network operations; degraded network operations; fleet maintenance; fleet cleaning; network maintenance and major works; network maintenance etc. financial; train crewing; service experience; Trainlink; freight; senior leadership fatigue. For each area, except service experience, the proposed actions were rated as creating an unacceptable risk.

Summary matrices were provided for the criteria. Customer experience and operations were rated at the highest possible risk – extreme for both likelihood and negative consequence. Reputation risk was rated as extreme for likelihood and high for negative consequence. Financial risk was rated at very high likelihood and extreme negative consequence – over $50m.

A factor for these risks is the timetable to be operated. A slower or less dense timetable would reduce risk. The assessment said while the current or an alternative timetable were possible, both would result in line/network closures. It recommended continuation of the current timetable as it:

*‘can result in a planned and safe closure of the network’.*

and:

‘*is in line with the Minister’s public commitment to uplift (another timetable) on 28 February’*.

The assessment also recommended Sydney Trains:

*‘pursue a suspension of the notified actions through an application to the Fair Work Commission’.[[33]](#footnote-33)*

It noted suspensions are at the discretion of the Commission which has a high evidentiary burden.

Irrespective of views about the realism of the assessment of risks, there are significant visible problems with the document. For example:

* it is not a controlled document – e.g., it lacks page numbers;
* the text for financial risk does not match the matrix;
* it was not (clearly) approved by two of the three claimed signatories - the Chief Executive Sydney Trains, A/g Chief Executive Trainlink;
* it was not signed by Sydney Trains’ risk manager;
* the combination of customer experience and operations is not justified and apparently contradicted by different risk ratings;
* there is ‘double presentation’ of at least fleet and network maintenance ‘risks’;
* it omits reputational risks (which came to fruition) of its recommendations;
* it says it had been discussed with the ‘*key stakeholders and subject matter experts within Sydney Trains’* etc. however, it had not been discussed with either of the two key stakeholders – the Minister or the union, between its inception on 9 February and the shutdown;
* reflecting that, it does not specify mitigating actions;
* it fails to say the best mitigations would be to discuss matters with the Minister and the union.

At different points the assessment presents different recommendations:

* **‘. Recommendation:**’ continuing the timetable and seeking suspension of the industrial action in the Fair Work Commission;
* **‘Recommendations’** Sydney Trains etc. executives note the operational impact and confirm the operational response.

The document does not support its conclusion and recommendations in two senses:

* the only proper conclusion on what is presented would be: need to discuss the assessment with those held most capable of mitigating risk i.e., Minister and union; and therefore
* Sydney Trains would likely fail to meet the ‘evidentiary burden’ of the Commission, hence there should not have been a recommendation to seek the Commission’s suspension of industrial action prior to such discussions.

There are further problems with the document. For example, its claims:

* signal box workers were exempt from overtime bans on February 6;
* significant crowding on trains and stations are (part of) an unacceptable risk;
* some individuals are employed by TfNSW giving rise to potential for disobedience;
* potential for passengers to need to ‘detrain mid-section’ – apparently between stations;
* about freight;

warrant better explanation to be regarded as credible.

Overall, the supposed risks arise from employees working standard conditions of employment. That is: in Sydney Trains’ daily operations, risks are mitigated by employees working overtime, not adhering to rosters, being switched between locations with little notice etc.

### 4.4 Allowing a return to work

Train services resumed on Tuesday 22 February. The lock-out, shut-down lasted for a single day.

Circumstances surrounding the resumption were outlined in Budget Estimates. The issue put to Government representatives was:

*‘The Hon. DANIEL MOOKHEY: So it was safe to operate the rail network on 22, 23, 24, 25, 26, 27, 28 February and until today under these same bans but it was not safe to operate it on Monday?’* [[34]](#footnote-34)

Sydney Trains Chief Executive responded that on Tuesday 22 February, and subsequently, trains operated to a different timetable than 21 February. That timetable was discussed with the union which agreed to modify some actions to ensure it would work. It was agreed and put together in a matter of hours, and seven of the nine industrial actions remained on foot.

An explanation was sought about why Sydney Trains did not undertake similar actions – such a timetable, and discussions with the union - in the five days between completion of the risk assessment and the shut-down. This was prefaced by observations that Sydney Trains’ ability to undertake such actions was not mentioned in the Commission and:

*‘the RTBU's counsel, in multiple instances ..was asking your legal representatives to disclose whether there was anything that the RTBU could do. The RTBU made it very clear that it was open to … any adjustment to their bans that would facilitate the ongoing running of the network. Given that you were able to do this in a day on Monday, why was it not presented as an option in the Fair Work Commission on Saturday or Sunday?’*

To which the Chief Executive replied:

‘*I cannot comment on the transcript of Fair Work. I was not in the Fair Work process. That was managed by our industrial relations team. I am happy to take that on notice…’ [[35]](#footnote-35)*

Given the resort to a documented risk assessment to provide a reason for a lock-out, it was reasonable to ask whether there was a similar or modified document to support the resumption of services. The answer by the Chief Executive was, in effect, ‘no’.[[36]](#footnote-36)

## 5. Observations

The above story suggests confusion and incompetence within the NSW Government and bureaucracy. Their stated excuse for the shut-down was public safety.

Yet credibility of their statements about public safety had already been damaged by the ‘narrative’ around the Transport Asset Holding Entity. That narrative includes continuing fundamental misrepresentations – to Cabinet, Parliament and the public – about the Glenbrook and Waterfall crash Commissions and basic misapprehension about rail safety principles.[[37]](#footnote-37)

The story here looks no better.

### 5.1 Airport line

The shut-down of the Airport line - 14 days prior to the network shut-down - is disturbing.

The claim of it being due to a single absentee suggests Sydney Trains’ inability or lack of interest in safely operating trains.

Transport for NSW’s attempt to blame the Airport line suspension on industrial action ought to be viewed in the context of the later attempt to use the same excuse for an entire network shut-down.

Even were the facts - of suspension of the line serving the airport and the later suspension of all services to the airport the day normal flights resumed - accepted as coincidence, the former could easily be seen as a trial of manipulating media and public reaction to a lock-out of the workforce.[[38]](#footnote-38)

Its sole saving grace – that Macarthur trains continued to operate – was only possible because the Bankstown line has not been converted to Sydney Metro. The conversion, preventing use of the line by Sydney Trains, is going ahead despite a Parliamentary inquiry recommending otherwise for reasons including a case such as this.[[39]](#footnote-39)

The 7 February Airport line suspension must be investigated.

### 5.2 Network shutdown

Turning to the 21 February network shutdown: while depicted as a form of workforce strike, the evidence has it being a lock-out by management.

There is confusion as to who was responsible. While direct responsibility was claimed by Sydney Trains’ Chief Executive, legislation has that position subject to direction from Transport for NSW. The Secretary of Transport for NSW ‘*endorsed*’ Sydney Trains’ decision. The Premier later met with the Secretary to set conditions for such a decision in future. The union claimed the events constituted *‘doing an Allan Joyce on us’*, probably a reference to a previous job of the Secretary.

The Secretary informed the head of the Premier’s Department of a shut-down before Sydney Trains ‘made’ the decision. This was after his(?) meeting of executives that started soon after the Government hedged in the Commission about a possible shut-down.[[40]](#footnote-40)

A lock-out decision effectively made ‘higher-up’ than Sydney Trains, by Transport for NSW, would be consistent with the strange structure of rail tasks in NSW. There Transport for NSW sets out the railway’s product – the timetable – contrary to recommendations of the Glenbrook commission, and its employees have some (unspecified) role in train crew rostering.[[41]](#footnote-41)

The Premier and Minister seemed unaware of the legality of the decision, who made it, who is supposed to be in charge and the supposed reason it was made – Sydney Trains’ risk assessments. Their initial explanation of the shut-down as a sort-of-strike was not believable and not believed. Their claim to be taken by surprise is regarded with scepticism.

They showed more concern about (supposedly) not being told in advance and negative publicity than about the shut-down itself, inconvenience to the public or what the risk assessments revealed.

The behaviour of Government (parties) – seeming to ‘run dead’ in the Fair Work Commission etc. – has the appearance of wanting to be seen to be avoiding a shut-down but, in reality, either not caring about - or seeking - such an outcome.

The Minister said his not being told in advance did not affect the outcome as he would not go against a risk assessment produced by Sydney Trains.

While plausible, that raises a question of whether anybody else – such as Transport for NSW or the Chief Executive - would go against the risk assessment. If not, the shut-down decision was effectively made when the risk assessment was completed – on 16 February, five days before the shut-down.

That would be consistent with subsequent behaviour – such as not providing the assessment to the union and not engaging with the union about modification of the actions until after the shutdown. It is suggestive of an ‘ambush’ of the union and perhaps the Commission by Government parties. It may also have blindsided the Minister who, not seeing the risk assessment, may have been unaware of its implication.

### 5.3 Risk assessments

Failure to provide the risk assessments to the union - when such provision is necessary for satisfactory management-workforce relations, virtually required under National Rail Safety law principles and is a matter of simple common sense – reinforces that appearance. Among the obvious possible reasons for this failure are that one or both assessments were not considered credible and/or contained information embarrassing to Government parties.

The former would be a serious safety matter. There are problems with the assessment tabled in Parliament. The document should be carefully examined by independent rail operational and safety experts and by the National Regulator. As should the reasons for apparently not documenting the change in risks that allowed resumption of services.

The latter – embarrassing information – also appears to be the case.

In essence, the supposed risks identified in the assessment arise when the workforce does what is required in ordinary employment. The assessment implies Sydney Trains functionality is entirely dependent on substantial overtime, working outside rosters, signing-on and working away from ‘home’ depots etc. And that otherwise, management is under too much stress. That is consistent with inferences to be drawn from the 7 February situation of a line being shut-down because of a single absentee.

That invites suggestions: staffing is inadequate; supervision is weak; skills are deficient; there is poor morale and mistrust within the organisation; management is not sufficiently competent; there is undue tension with Transport for NSW. Any of which would be an indictment of this Government’s rail policies.

Also concerning is the contrast between the apparent eagerness to produce and rely on a risk assessment document to shut-down the network, and the failure to update it for re-opening the network. That concern is exacerbated by the shut-down being contemplated for at least five days, but the re-opening occurring in a rush. At the least that would leave Sydney Trains, Transport for NSW and the Government legally exposed were an incident to occur after the re-opening.

Like some other aspects of the story, the Government’s claim it will supervise all major rail decisions disregards the safety framework and risk assessment. This is made worse by what could be seen as fearmongering hyperbole. The risk of that is real safety risks will be underestimated – much like ‘crying wolf’.[[42]](#footnote-42)

### 5.4 Overall

The impression is of pursuit of hidden agendas with indifference to consequences and no regard to what Parliament or the public is told – which includes multiple falsehoods. The same could be said of Sydney Metro and the Transport Asset Holding Entity.

In all three cases, advice from the bureaucracy on pivotal issues appears to have been grossly deficient – beyond simple mistakes like buying trains too wide for existing infrastructure. There should be questions about its veracity.[[43]](#footnote-43)

Among the reasons for such questions is that rail policy since 2012 has undermined Sydney’s commuter railway - which is operated by Sydney Trains - for reasons yet to be publicly disclosed.

Timetabling – the core function of the railway - was transferred to Transport for NSW. Commuter rail operations, Sydney Trains, will be forever constrained by needless ‘features’ of Sydney Metro. Sydney Trains was stripped of its assets around the time of the Sydney Metro decision – contrary to what Parliament was assured. This present episode reveals another Sydney Trains responsibility – for rostering – was partly moved to Transport for NSW, directly contributing to the network shut-down.[[44]](#footnote-44)

The Government’s and bureaucracy’s misrepresentations to Parliament and the public about rail policy have precedents. The Sydney Metro saga includes: fabrications about capacity and reasons for decisions; preposterous propositions; misleading commentary in a Parliamentary inquiry; (supposedly) not-disclosing to even Ministers a multi-billion-dollar cost blowout until after a State election. The design of Sydney Metro seems intended to jeopardise the capacity and future of the commuter railway and Sydney Trains.[[45]](#footnote-45)

Government stories about Transport Asset Holding Entity include: falsehoods about Special Commissions of inquiry into rail safety issues and about financial matters; compromising the transport accident investigator; actions inconsistent with the philosophy underpinning rail safety regulation; use of slippery words such as ‘endorse’ (like in the present case). The Government offers a fundamental pretence about policy for the Entity: it can have control without responsibility. A current Parliamentary inquiry has identified other issues about evidence from officials - the word ‘hubris’ was mentioned.[[46]](#footnote-46)

It is possible, even likely, there have been other moves undermining the commuter railway including stripping capacity and capability from Sydney Trains. Together with bizarre Government claims – like much of the network was shutdown because of a toy balloon, infrastructure is built be-spoke for particular trains, single and double deck trains cannot operate on the same tracks - these must have adversely affected morale within Sydney Trains and its the ability to retain and attract staff.

Attitudes displayed by leaders invariably become reflected in their organisations. With that in mind, a without-notice shut-down of the Sydney rail network, via locking-out the workforce, to make a point – as suggested by the Financial Review - would not be the surprise it ought to be.

Similarly closure of the Airport line due to a single absentee would not be completely unexpected.

Moreover, confusion, distractions and false flags for both would not be novel. The question about whether the Minister was told in advance by the Department is a red-herring. Some evidence suggests the Minister was isolated from Government decision making:

* the risk assessment, started on 9 February, was approved by Sydney Trains on 16 February;
* it said a timetable wanted by the Minister was a key factor in recommending a shut-down;
* indeed, it said the purpose of continuing that timetable was to facilitate a shut-down;
* it inferred the Minister was one of only two parties who could act to avoid the shut-down;
* it implied neither Minister – nor the other party, the union - were told or consulted about it;
* it was not provided to the Minister until after the shutdown.

The direction to a relevant senior official to take leave and therefore not answer a Parliamentary committee’s relevant questions about the shutdown is also not the shock it should be. It is to be hoped such direction was not necessitated by the personal pressure the official is under because of dreadful policy mistakes of others.[[47]](#footnote-47)

While such actions by Government parties might not surprise the cynical, they should be unacceptable. Worse, they – like policies behind Sydney Metro and the Transport Asset Holding Entity - indicate at least a lack of interest in public service. Eventually, organisations holding such attitudes believe their own falsehoods, giving rise to real danger.

In summary, the shut-down due to a workforce lock-out is the latest in a long series of pointers to administrative cancer affecting NSW rail policy. Unaddressed, it is likely to affect operations. The visible flaws in the risk assessment tabled in Parliament suggest this is occurring already.

The postscript – of ongoing industrial action – and the Minister claiming the union was unwilling to work with the Government is a natural consequence of the above. After a decade of the Government undermining the commuter railway that is to be expected.

That is among the reasons there should be an inquiry, with special commission powers, into rail policy in NSW.

J Austen

12 March 2022

## Post script

By mid-March, there were reports of some common-sense being reinstated within the transport portfolio. The Minister and union agreed to a period in which certain industrial action would be undertaken. The Minister agreed – probably ordered – that Sydney Trains and Transport for NSW consult the union on risk assessments and on things like the design of trains.[[48]](#footnote-48)

That will reduce the prospects of the Government procuring trains too wide for tunnels etc. However, it will not address the central issue identified in this article – cancerous problems in transport – that become manifested in issues like the shut-down/lockout.

What the public can see is bad enough. The overt debacles suggest there are latent issues yet to surface. The problem: improper strategy since mid-2012. As is the case with strategic failures in other fields, it is likely to continue to have increasing but unpredictable adverse consequences for the public until policy is put on a proper footing.

The Minister’s actions, commendable as they are, fall far short of what is needed to address risks arising from the accretion of bad decisions from mid-2012.

## Appendix 1: Legislation

### A1.1: Transport Administration Act 1988[[49]](#footnote-49)

The Act requires Sydney Trains to keep the Minister informed:

***36I Sydney Trains to supply information to Minister***

*Sydney Trains must—*

*(a)  supply the Minister or a person nominated by the Minister with any information relating to its activities that the Minister or person may require, and*

*(b)  keep the Minister informed of the general conduct of its activities and of any significant development in its activities.’*

The Act puts Sydney Trains and Transport for NSW under the (potential) control of the Minister:

***3B Ministerial responsibility and delegation***

*(1)  The Transport Secretary and the chief executives of the following bodies are, in the exercise of their functions, subject to the control and direction of the Minister—*

*(f)  Sydney Trains…’*

The Act puts Sydney Trains under the potential control of Transport for NSWNSW power over Sydney Trains:

***3G Directions by TfNSW to public transport agencies***

*(1)  TfNSW may, for the purpose of exercising its functions, give directions to the following bodies in relation to the exercise of their functions—*

*(f)  Sydney Trains,’*

### A1.2: Rail Safety National Law (NSW) 2012[[50]](#footnote-50)

The national law is administered by the Office of the National Rail Safety Regulation. The basis of the law includes principles such as for responsibility:

***50******Principles of shared responsibility, accountability, integrated risk management, etc***

*(1)  Rail safety is the shared responsibility of—*

*(a)  rail transport operators; and*

*(b)  rail safety workers; and……..*

*(2)  The level and nature of responsibility that a person …… has for rail safety is dependent on the nature of the risk to rail safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate those risks.*

*(3)  The persons and classes of persons referred to in subsection (1) should—*

*(a)  participate in or be able to participate in; and*

*(b)  be consulted on; and*

*(c)  be involved in the formulation and implementation of,*

*measures to manage risks to safety associated with railway operations.*

*(4)  Managing risks associated with the carrying out of rail infrastructure operations or rolling stock operations is the responsibility of the person best able to control those risks.’*

1. $90m: <https://www.smh.com.au/national/nsw/serious-hole-in-claim-that-safety-demanded-sydney-s-train-shutdown-20220222-p59yhj.html>. $33m: <https://www.abc.net.au/news/2022-02-24/government-was-preparing-for-train-shutdown-last-week-docs-show/100857252>. The latter estimated 150,000 workers would be affected. In comparison with the number of commuters who travel by train, that appears to be a very low estimate. [↑](#footnote-ref-1)
2. <https://www.news.com.au/technology/motoring/on-the-road/commuters-on-roads-public-transport-facing-huge-delays-amid-industrial-dispute/news-story/d513425260d532e7a0e943ddb33c05e1> [↑](#footnote-ref-2)
3. Initially: <https://www.theguardian.com/australia-news/2022/feb/22/nsw-transport-minister-went-to-bed-before-train-shutdown-decision-was-made> Later: <https://www.theaustralian.com.au/breaking-news/commuters-left-stranded-after-sydney-trains-shutdown-could-receive-compensation/news-story/d03f0cac7e7308d68a09103b68ba19df> [↑](#footnote-ref-3)
4. <https://www.9news.com.au/national/sydney-trains-shutdown-update-nsw-premier-dominic-perrottet-david-elliott-transport-decision/5ca08fdb-9c75-4e83-8fc7-de40dac987d6>; <https://www.transport.nsw.gov.au/news-and-events/media-releases> [↑](#footnote-ref-4)
5. For example: <https://www.theguardian.com/australia-news/2022/feb/24/five-key-questions-about-the-sydney-train-network-fiasco> [↑](#footnote-ref-5)
6. <https://www.news.com.au/travel/travel-updates/commuters-left-stranded-after-sydney-trains-shutdown-could-receive-compensation/news-story/d03f0cac7e7308d68a09103b68ba19df> [↑](#footnote-ref-6)
7. According to one report the Premier said: ‘This is a co-ordinated attack by the Labor party and the labour movement. This is no accident. This is a concerted campaign by the unions and the Labor party to cause mass disruption across our city. The first day when we have international arrivals in… many people, as a result of our announcement last week, returning to work, the unions were intent on causing chaos. “This is going back to the wildcat strikes, that’s what this is.”

 <https://www.brisbanetimes.com.au/national/australia-news-live-billionaire-launches-agl-takeover-bid-sydney-s-train-network-suspended-clive-palmer-spends-31-million-on-political-advertising-20220220-p59y44.html?post=p53d0i> [↑](#footnote-ref-7)
8. <https://www.theaustralian.com.au/breaking-news/scott-morrison-blasts-sydney-train-drivers-union-for-carrying-on/news-story/f4e01f21d0a85ccc73174a95873218a1> [↑](#footnote-ref-8)
9. <https://www.abc.net.au/news/2022-02-22/nsw-sydney-train-shutdown-analysis/100849986> [↑](#footnote-ref-9)
10. <https://7news.com.au/news/nsw/when-will-sydney-train-services-resume--c-5773477> [↑](#footnote-ref-10)
11. <https://www.facebook.com/page/108878629136279/search/?q=airport%20line>

Government: *“Due to Industrial Action there are suspended services between Glenfield and Sydenham in both directions. Replacement bus services have been ordered, no eta of arrival. Macarthur City Services will now be operating via Bankstown Line’*

Comment: *‘……Due to the over time ban they were down a signaller to cover part of a line and were unable to move trains safely through that section. Stop calling the industrial action “strikes”. Management have known about this protected industrial action for weeks and yet again have failed to provide the public with adequate and timely information…. etc.’* [↑](#footnote-ref-11)
12. Chief Executive Sydney Trains at [https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport,%20Veterans%20-%204%20March%202022.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport%2C%20Veterans%20-%204%20March%202022.pdf) p.88. [↑](#footnote-ref-12)
13. <https://www.parliament.nsw.gov.au/lcdocs/other/16778/7%20-%20Risk%20assessment%20-%20operational%20impacts%20associated%20with%20Protected%20Industrial%20Action.pdf> network operations at fourth page. [↑](#footnote-ref-13)
14. <https://www.transport.nsw.gov.au/news-and-events/media-releases/application-to-fair-work-seeks-to-halt-industrial-action-from> [↑](#footnote-ref-14)
15. Professor McCrystal said Mr Perrottet, as Industrial Relations Minister in 2018: *‘obtained an order….in the Fair Work Commission suspending proposed action by the same union, citing the desire to avoid the very same chaos that descended on Monday. …(the Commission) relied on evidence presented by the NSW government that the proposed (similar) action threatened the welfare of commuters, would increase road congestion, reduce waste collection, not to mention a purported $90million hit to the economy’.*

Shae McCrystal, *Was safety really behind trains shutdown*? Sydney Morning Herald 23 February 2022. [↑](#footnote-ref-15)
16. <https://www.abc.net.au/news/2022-02-25/nsw-train-crisis-came-down-to-just-four-words/100857186> [↑](#footnote-ref-16)
17. <https://www.abc.net.au/news/2022-02-25/nsw-train-crisis-came-down-to-just-four-words/100857186>

<https://www.afr.com/work-and-careers/workplace/the-politics-of-the-sydney-train-strike-that-wasn-t-20220224-p59zep> [↑](#footnote-ref-17)
18. *‘The transport body was expected to use*[*its shutdown of the train network*](https://www.afr.com/work-and-careers/workplace/commuter-chaos-as-rail-worker-ban-shuts-down-sydney-trains-20220221-p59y6e)*on Monday in response to the union’s planned action to bolster its argument.’* <https://www.afr.com/work-and-careers/workplace/twist-in-sydney-trains-dispute-as-government-backs-down-20220222-p59yjp> [↑](#footnote-ref-18)
19. See note 16. [↑](#footnote-ref-19)
20. See note 16, and <https://rtbuexpress.com.au/nsw-government-drops-its-case-in-fair-work-commission-after-union-demands-to-see-risk-assessment/> [↑](#footnote-ref-20)
21. [https://www.theguardian.com/aust ralia-news/2022/mar/01/nsw-transport-official-placed-on-leave-before-hearing-on-rail-system-shutdown](https://www.theguardian.com/aust%20ralia-news/2022/mar/01/nsw-transport-official-placed-on-leave-before-hearing-on-rail-system-shutdown); <https://www.9news.com.au/national/sydney-trains-shutdown-update-nsw-premier-dominic-perrottet-david-elliott-transport-decision/5ca08fdb-9c75-4e83-8fc7-de40dac987d6> [↑](#footnote-ref-21)
22. <https://www.theguardian.com/australia-news/2022/feb/23/sydney-trains-shutdown-nsw-premier-dominic-perrottet-rebuke-transport-minister-david-elliott> [↑](#footnote-ref-22)
23. <https://www.abc.net.au/news/2022-02-23/sydney-trains-closure-premier-says-should-have-been-told/100853596>

Presumably this relates to Transport Administration Act – see Appendix 1. [↑](#footnote-ref-23)
24. <https://www.theguardian.com/australia-news/2022/feb/23/sydney-trains-shutdown-nsw-premier-dominic-perrottet-rebuke-transport-minister-david-elliott> [↑](#footnote-ref-24)
25. <https://www.aap.com.au/news/limited-nsw-trains-back-on-track/> [↑](#footnote-ref-25)
26. <https://www.theguardian.com/australia-news/2022/mar/01/nsw-transport-official-placed-on-leave-before-hearing-on-rail-system-shutdown> [↑](#footnote-ref-26)
27. <https://www.theguardian.com/australia-news/2022/feb/21/sydney-trains-cancelled-due-to-industrial-action-with-warning-of-very-difficult-day-ahead> [↑](#footnote-ref-27)
28. See note 16. [↑](#footnote-ref-28)
29. Reports had the head of train crewing people advising Sydney Trains Chief Executive after midnight to give the shut-down order after consulting with other executives. The risk manager *‘did not appear to be involved in the decision’.* <https://www.afr.com/work-and-careers/workplace/the-politics-of-the-sydney-train-strike-that-wasn-t-20220224-p59zep> [↑](#footnote-ref-29)
30. <https://rtbuexpress.com.au/nsw-government-drops-its-case-in-fair-work-commission-after-union-demands-to-see-risk-assessment/> [↑](#footnote-ref-30)
31. National rail safety law s.50 – see Appendix 1.

 [↑](#footnote-ref-31)
32. <https://www.parliament.nsw.gov.au/lcdocs/other/16778/7%20-%20Risk%20assessment%20-%20operational%20impacts%20associated%20with%20Protected%20Industrial%20Action.pdf> [↑](#footnote-ref-32)
33. <https://www.parliament.nsw.gov.au/lcdocs/other/16778/7%20-%20Risk%20assessment%20-%20operational%20impacts%20associated%20with%20Protected%20Industrial%20Action.pdf> twelth page [↑](#footnote-ref-33)
34. [https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport,%20Veterans%20-%204%20March%202022.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport%2C%20Veterans%20-%204%20March%202022.pdf) pages 87-89. [↑](#footnote-ref-34)
35. See note 34 at p.88 [↑](#footnote-ref-35)
36. *‘The Hon. DANIEL MOOKHEY: Let me simplify it. On the Monday, prior to you adopting measures that would facilitate the return of some services on the Tuesday, did you update the risk assessment?*

*MATT LONGLAND: We discussed the risk assessment, but we did not provide a published version of a new risk assessment, no. The Hon. DANIEL MOOKHEY: Between Monday and Tuesday, Transport does not update or does not document an update to the risk assessment that would facilitate the return of the network on Tuesday.*

*MATT LONGLAND: We presented a train plan, as I said, that was the basic level of service. We took that to the RTBU delegates …….’*

See note 34 at p.88 [↑](#footnote-ref-36)
37. <https://www.thejadebeagle.com/policy-spad-update-2-background.html> [↑](#footnote-ref-37)
38. The media announcements of either shut-down are not available at the Transport for NSW media site: <https://www.transport.nsw.gov.au/news-and-events/media-releases> [↑](#footnote-ref-38)
39. <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2551/Report%20No%2011_PC%206_Sydenham-Bankstown%20line%20conversion.pdf> [↑](#footnote-ref-39)
40. [https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport,%20Veterans%20-%204%20March%202022.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2873/Transcript%20-%20UNCORRECTED%20-%20PC6%20-%20Transport%2C%20Veterans%20-%204%20March%202022.pdf) at p33-34.

The Government’s hedging about a shut-down was in the Commission hearing adjourned at 8.54pm. <https://www.abc.net.au/news/2022-02-25/nsw-train-crisis-came-down-to-just-four-words/100857186>

The Secretary advised Estimates the meeting with the (Transport for NSW) executive re the decision to shut-down started at 9.30pm. [↑](#footnote-ref-40)
41. Matt O’Sullivan, Lucy Cormack, *Transport chief warns of train strain as full timetable starts*, Sydney Morning Herald 28 February 2022. ‘Endorse’ can mean to authorise an action, or to publicly express approval of a decision made by another. The Government’s use of the term in the Transport Asset Holding Entity debate (see notes 34, 35) and by the Minister (note 27) implies the former to be the case here.

Transport Asset Holding Entity – see: <https://www.thejadebeagle.com/policy-spad-update.html>; <https://www.thejadebeagle.com/policy-spad-update-2-background.html>

 Allan Joyce: <https://www.theguardian.com/australia-news/2022/feb/21/sydney-trains-cancelled-due-to-industrial-action-with-warning-of-very-difficult-day-ahead>.

Previous employment: <https://www.afr.com/work-and-careers/workplace/the-politics-of-the-sydney-train-strike-that-wasn-t-20220224-p59zep>

Leadership team: <https://www.transport.nsw.gov.au/about-us/who-we-are/leadership-team>

Timetable: The Glenbrook Commission recommended: *3. That SRA be responsible for the control and management of timetabling and train movements and other functions of network control within the area of operation of the present CityRail network.’*

SRA being the then operator of commuter trains. [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) [↑](#footnote-ref-41)
42. Fearmongering: <https://www.thejadebeagle.com/happy-new-fear.html> [↑](#footnote-ref-42)
43. <https://www.abc.net.au/news/2021-11-14/sydney-transport-woes-despite-billions-spent-of-infrastructure/100618634> [↑](#footnote-ref-43)
44. Timetable: see note 38.

Sydney Metro: see, for example, <https://www.thejadebeagle.com/dogs-breakfast-for-all.html>

Transport Asset Holding Entity: see, for example, <https://www.thejadebeagle.com/policy-spad-update.html>

Parliament was told: 2nd reading speech: *‘The existing publicly owned transport service providers will continue to own and maintain the assets, liabilities, rights and obligations to their transport services’*

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-44451/link/1> [↑](#footnote-ref-44)
45. <https://www.thejadebeagle.com/dogs-breakfast-for-all.html>;

<https://www.thejadebeagle.com/updated-comments-on-sydenham-bankstown-metro-conversion.html> [↑](#footnote-ref-45)
46. <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2819#tab-hearingsandtranscripts>

 [↑](#footnote-ref-46)
47. <https://www.theguardian.com/australia-news/2022/mar/01/nsw-transport-official-placed-on-leave-before-hearing-on-rail-system-shutdown> [↑](#footnote-ref-47)
48. https://thewest.com.au/news/rail-union-agrees-to-six-weeks-of-intense-negotiation-with-nsw-government-in-pay-dispute-c-6109229 [↑](#footnote-ref-48)
49. <https://legislation.nsw.gov.au/view/html/inforce/current/act-1988-109#sec.36I> [↑](#footnote-ref-49)
50. <https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-82a#sec.50> [↑](#footnote-ref-50)