



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas

Interim report



Report 15

February 2023

Public Accountability Committee

Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas

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**New South Wales. Parliament. Legislative Council. Public Accountability Committee.
Report no. 15.**

Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas
"February 2023".

Chair: Ms Cate Faehrmann, MLC.



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Terms of reference

1. That the Public Accountability Committee inquire into and report on the appointment of Senior Trade and Investment Commissioners, including the former Deputy Premier Mr John Barilaro as the Senior Trade and Investment Commissioner to the Americas, including:
 - (a) the circumstances leading up to the appointments,
 - (b) the process undertaken to make the appointments,
 - (c) the probity and integrity measures that were undertaken as part of the appointments, and
 - (d) any other related matter.

The terms of reference for the inquiry were self-referred by the committee on 23 June 2022,¹ and amended by resolution of the committee on 8 August 2022.²

¹ *Minutes*, NSW Legislative Council, 23 June 2022, pp 3518-3519.

² *Minutes*, NSW Legislative Council, 9 August 2022, p 3550.

Committee details

Committee members

Ms Cate Faehrmann MLC	The Greens	<i>Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Hon Wes Fang MLC	The Nationals	
Hon Scott Farlow MLC	Liberal Party	
Hon John Graham MLC	Australian Labor Party	
Hon Courtney Houssos MLC	Australian Labor Party	
Hon Daniel Mookhey MLC**	Australian Labor Party	
Hon Peter Poulos MLC	Liberal Party	
Hon Penny Sharpe MLC**	Australian Labor Party	

* The Hon Wes Fang MLC substituted for the Hon Scott Barrett MLC from 23 June 2022 for the duration of the inquiry.

** The Hon Daniel Mookhey MLC and the Hon Penny Sharpe MLC are participating members from 29 June 2022 for the duration of the inquiry.

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Chair's foreword

This interim report focuses on the appointment of former Deputy Premier Mr John Barilaro as Senior Trade and Investment Commissioner (STIC) to the Americas.

The appointment of Mr Barilaro as STIC to the Americas has all the trademarks of a 'job for the boys' position. Despite assurances from senior public servants and ministers that the appointment process was conducted by the public service under a merit based process, it is clear that the process was flawed and that the Executive was not at arm's length from the process.

The key issues covered in this interim report explore the circumstances around the two rounds of recruitment for the STIC to the Americas position and the change of Government policy in converting the STIC positions from public sector appointments to ministerial appointments.

This interim report details a lack of transparency and integrity in the way in which a public sector recruitment process was conducted. As a result of the committee's pursuit of this issue, the inquiry uncovered how a preferred candidate was selected and offered the STIC to the Americas position to only then be discarded in the guise of a nonsensical change of Government policy. The inquiry also revealed the many 'intersection points' between a senior public servant and the then Minister for Trade Mr Stuart Ayres MP which were all highly inappropriate and unacceptable.

The committee found that when it comes to the Senior Trade and Investment Commissioner recruitment processes, there was a pattern of Ministerial interference and lack of transparency conducted by the Government. The committee will continue to investigate this issue, in particular the Agent General appointment process, in the final report.

On behalf of the committee, I'd like to thank all those who participated in the inquiry, in particular those who gave evidence which assisted the committee in revealing a true picture of how Mr Barilaro was appointed as STIC to the Americas position. I acknowledge that there was significant media attention on this inquiry which would have placed additional stress on witnesses in giving evidence. Nonetheless, their evidence assisted the committee's work immensely.

I also thank my committee colleagues, particularly the Opposition members, for their extensive contributions, and the secretariat and Hansard for their assistance in this important inquiry.



Cate Faehrmann MLC
Committee Chair

Findings

- Finding 1** **44**
That the former Deputy Premier Mr John Barilaro's proposal to convert the STIC appointments to ministerial appointments:
- was brought without a reasonable basis and was pursued with unnecessary haste;
 - failed to disclose the selection of former Deputy Secretary of Investment NSW Ms Jenny West to the New York position;
 - caused confusion in Investment NSW; and,
 - created a vacancy in the New York position, which Mr Barilaro then applied for.
- Finding 2** **44**
That former Minister for Trade Stuart Ayres MP's discussions with Mr John Barilaro about the New York Trade positions following his Ministerial resignation showed poor judgement and was inappropriate.
- Finding 3** **45**
That the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas has all the trademarks of a 'job for the boys' position.
- Finding 4** **45**
That the former Minister for Trade Stuart Ayres MP was not at arm's length during the recruitment process for the STIC to the Americas position.
- Finding 5** **45**
That when answering questions on the appointment of Mr John Barilaro to the STIC Americas position, former Minister Stuart Ayres misled the public. It is a matter for the Legislative Assembly as to whether former Minister Ayres misled the Parliament.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 23 June 2022 and amended by resolution of the committee on 8 August 2022.

The committee held 12 public hearings: 11 at Parliament House in Sydney and one at the State Library of New South Wales.

Inquiry related documents are available on the committee's website, including hearing transcripts, tabled documents and answers to questions on notice.

Procedural issues

There are a number of procedural issues to note in the conduct of this inquiry. These are discussed in turn below.

Documents produced to the House

Prior to and during the course of the inquiry, the Legislative Council made a number of orders for the production of documents under standing order 52 relating to the appointment process of the Senior Trade and Investment Commissioners. The returns to these orders helped inform committee members ahead of the committee's hearings. The documents did not strictly form part of the evidence to the inquiry, except for those documents which were specifically tabled by a committee member during hearings.

Publication of in camera evidence

During the course of the inquiry, part of an *in camera* transcript from a hearing held on 29 June 2022 was published in *The Australian* newspaper. In addition, the article quoted that the authors had obtained a copy of the *in camera* transcript of 29 June 2022.

Following the publication of the article, the committee met to discuss the unauthorised disclosure of the *in camera* transcript. The committee resolved to write to all persons who had access to the original *in camera* transcript to ask whether they were responsible for the disclosure. In response, no person declared that they were responsible for the unauthorised disclosure.

In light of the responses, the committee resolved to prepare a special report to the House, recommending that the matter be referred to the Privileges Committee for inquiry and report as to the examination into the unauthorised disclosure of the *in camera* transcript of 29 June 2022.

The Public Accountability Committee's special report can be found on the Parliament's website.

Chapter 1 Background

The announcement that the former Deputy Premier Mr John Barilaro was appointed as the Senior Trade and Investment Commissioner to the Americas created significant controversy, including allegations that this was a 'jobs for the boys' appointment. In response, this report of the Public Accountability Committee reviews the appointment of Mr Barilaro, as well as other Senior Trade and Investment Commissioner (STIC) positions. This chapter begins with the origin of the inquiry and a summary of key events that led to the establishment of the Senior Trade and Investment Commissioner positions. A general overview of the STIC appointment process is then provided, including legislative and policy frameworks that underpins integrity and probity measures in the public sector, which provide context for matters that are explored later in this report.

Origin of the inquiry

- 1.1 Former Deputy Premier Mr John Barilaro was announced as STIC to the Americas on 17 June 2022.³
- 1.2 Soon after, this inquiry was self-referred by the Public Accountability Committee on 23 June 2022.⁴
- 1.3 The initial terms of reference of the inquiry focused on the appointment of Mr Barilaro as the STIC to the Americas, including:
 - a. the circumstances leading up to the appointment,
 - b. the process undertaken to make the appointment,
 - c. the probity and integrity measures that were undertaken as part of the appointment, and
 - d. any other related matter.⁵
- 1.4 During the inquiry, the committee's terms of reference were expanded to examine the appointment process of all STICs.⁶

Establishment of the Senior Trade and Investment Commissioners

- 1.5 This section outlines the establishment of the STIC positions including a timeline of key events that are relevant to the inquiry. This includes background information about the 'Global NSW' strategy which incorporated the newly dedicated STIC positions and the events leading up to the STIC appointments.

³ Media release, Investment NSW, 'NSW appoints final two Senior Trade Investment Commissioners', 17 June 2022.

⁴ *Minutes*, NSW Legislative Council, 23 June 2022, pp 3518-3519.

⁵ *Minutes*, NSW Legislative Council, 23 June 2022, pp 3518-3519.

⁶ *Minutes*, NSW Legislative Council, 9 August 2022, p 3550.

Global NSW strategy

- 1.6 On 4 December 2019 the NSW Government released the 'Global NSW' strategy, with the aim to 'unlock international investment into New South Wales' and 'create high quality local jobs'.⁷
- 1.7 As part of the strategy, the New South Wales trade and investment network would be 'revamped' and include appointments for an Agent General in London and five Senior Trade and Investment Commissioners, to be located in Mumbai, New York, Shanghai, Singapore and Tokyo.⁸

Timeline of key events

- 1.8 The Global NSW strategy was developed and managed from a section within NSW Treasury, which was the Department responsible for the State's trade and investment functions including the initial STIC appointment process.⁹ However, as the timeline of key events below shows, the responsibility of trade and investment, including the Global NSW strategy, was transferred to a newly created agency called Investment NSW in March 2021. The key events pertinent to this inquiry are as follows:
- In 2019, NSW Treasury developed the Global NSW strategy and was the Department responsible for the State's trade and investment functions including the initial STIC appointment process.¹⁰
 - At the time, the Secretary of NSW Treasury was Mr Michael Pratt AM, who held this position until February 2022.¹¹
 - Deputy Premier and Minister for Trade John Barilaro was the responsible Minister for the State's trade functions.¹²
 - In December 2019, NSW Treasury engaged NGS Global, an executive search and leadership advisory firm, to assist with the executive search for the STIC positions. Dr Marianne Broadbent, Managing Partner, was the lead consultant from NGS Global for all the STICs positions.¹³

⁷ Media release, Premier Gladys Berejiklian, Deputy Premier and Minister for Trade John Barilaro and Treasurer Dominic Perrottet, 'Going Global: Putting NSW on the World Stage', 4 December 2019.

⁸ Media release, Premier Gladys Berejiklian, Deputy Premier and Minister for Trade John Barilaro and Treasurer Dominic Perrottet, 'Going Global: Putting NSW on the World Stage', 4 December 2019.

⁹ Evidence, Ms Jenny West, former Deputy Secretary, Trade and International, Investment NSW, 11 July 2022, p 37. See also: Evidence, Ms Amy Brown, former Secretary, Department of Enterprise, Investment and Trade (DEIT), and Chief Executive Officer (CEO), Investment NSW, 29 June 2022, p 2; Evidence, Mr Michael Pratt, former Secretary, NSW Treasury, 14 November 2022, pp 2-4.

¹⁰ Evidence, Ms West, 11 July 2022, p 37. See also: Evidence, Ms Brown, 29 June 2022, p 2; Evidence, Mr Pratt, 14 November 2022, pp -3-4.

¹¹ Evidence, Mr Pratt, 14 November 2022, p 3.

¹² *NSW Government Gazette*, No 30, 2 April 2019, p. 1088-1090.

¹³ Evidence, Dr Marianne Broadbent, Managing Partner, NGS Global, 18 August 2022, pp 2-4.

- In October 2020, Ms Jenny West began her role as Deputy Secretary, Trade and International, NSW Treasury and led the initial appointment process for the STIC positions.¹⁴
- In March 2021, a new government agency called Investment NSW was created and sat within the Department of Premier and Cabinet (DPC). Subsequently, the trade and investment functions moved from NSW Treasury to Investment NSW.¹⁵
- Ms Amy Brown was appointed the CEO of Investment NSW, and Ms West's position transferred from NSW Treasury to Investment NSW where she reported to Ms Brown.¹⁶
- On 4 October 2021, Mr Barilaro resigned from Parliament.¹⁷
- Following a subsequent cabinet reshuffle on 5 October 2021, the Hon Stuart Ayres MP was appointed as Minister for Jobs, Investment, Tourism and Western Sydney, and Minister for Trade and Industry.¹⁸
- On 21 December 2021, a subsequent rearrangement of the Ministry appointed Mr Ayres as the Minister for Enterprise, Investment and Trade, the Minister for Tourism and Sport, and as the Minister for Western Sydney.¹⁹ On the same day, the Department of Enterprise, Investment and Trade (DEIT) was created.²⁰
- On 31 January 2022, Ms Brown was appointed Secretary of DEIT whilst maintaining her position of CEO, Investment NSW. Soon after, Investment NSW moved to sit within DEIT.²¹
- On 17 June 2022, Mr Barilaro was announced as the STIC to the Americas.²²

Senior Trade and Investment Commissioner positions

1.9 As part of the Global NSW strategy there are six senior trade and investment commissioners. These are formally known as the Agent General UK and STIC Europe & Israel, STIC ASEAN, STIC Greater China, STIC North Asia, STIC Americas and STIC India and Middle East. According to Investment NSW, each of the STICs reported to the Deputy Secretary, Trade,

¹⁴ Evidence, Ms West, 11 July 2022, p 25. See also: Evidence, Ms Amy Brown, former Secretary, DEIT, and CEO, Investment NSW, 3 August 2022, p 13; Evidence, Mr Pratt, 14 November 2022, p 3.

¹⁵ Evidence, Ms Brown, 3 August 2022, p 50; Answers to written questions, Mr Michael Pratt, former Secretary, NSW Treasury, p 2

¹⁶ Evidence, Ms West, 11 July 2022, p 2; Evidence, Ms Brown, 3 August 2022, p 50.

¹⁷ Evidence, Mr John Barilaro, former Deputy Premier, 8 August 2022, p 10. See also: P. Cockburn, 'John Barilaro resigns as NSW Deputy Premier, triggers by-election in seat of Monaro', *ABC News*, 4 October 2021.

¹⁸ New South Wales, *Government Gazette of the State of New South Wales (Parliament, Ministerial, Courts and Police)*, number 507, 5 October 2021.

¹⁹ New South Wales, *Government Gazette of the State of New South Wales (Parliament, Ministerial, Courts and Police)*, number 662, 21 December 2021.

²⁰ Evidence, Ms Brown, 29 June 2022, p 24.

²¹ Evidence, Ms Brown, 29 June 2022, pp 16, 23-24.

²² Media release, Investment NSW, 'NSW appoints final two Senior Trade Investment Commissioners', 17 June 2022.

Investment NSW, who then reports to the CEO of Investment NSW.²³ However, as of February 2022 the STICs report to the Managing Director, Trade and Investment, Investment NSW.²⁴

- 1.10** This section sets out an overview of the Senior Trade and Investment Commissioner positions and the current status of the STICs.
- 1.11** The STIC positions are described by the government as 'senior positions' that have key performance indicators, requiring 'measurable economic returns'.²⁵ Ms Amy Brown, then CEO, Investment NSW, stated that the STICs are required to:
- identify business leads that align with New South Wales Government's social and economic priorities
 - account manage and service these businesses 'at the CEO level'
 - ensure that they land deals for the State in terms of the inbound investment
 - advise New South Wales businesses on how to sell to the regional market and
 - connect New South Wales businesses directly with consumers and buyers.²⁶

Current status of the Senior Trade and Investment Commissioners

- 1.12** Currently, five out of the six STIC positions are filled, with their status as follows.
- 1.13** Mr Stephen Cartwright OAM is the Agent General UK, STIC Europe and Israel (Agent General UK). He was appointed in July 2021, took office in January 2022 and is based in London, United Kingdom.²⁷
- 1.14** The committee was advised that the position and title of the Agent General UK is equivalent to the other STIC positions. The title 'Agent General' comes from a historical reference related to Australia's ties to the Commonwealth. As part of the re-establishment of the Agent General UK, the position was expanded to include Europe and Israel regions.²⁸

²³ Investment NSW, *Annual report 2020-2021*, 30 November 2021, p 73.

²⁴ Evidence, Ms Kylie Bell, A/Managing Director, Trade and Investment, Investment NSW, DEIT, 5 August 2022, p 35, Tabled document, Ms Kylie Bell, A/Managing Director, Trade and Investment, Investment NSW, DEIT, *Trade and Investment Group Executive Structure*, 5 August 2022, pp 1-2.

²⁵ Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, Ms Amy Brown, then CEO, Investment NSW, 27 October 2021, p 31.

²⁶ Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, Ms Brown, 27 October 2021, p 31.

²⁷ Answers to questions on notice, Ms Kylie Bell, A/Managing Director, Trade and Investment, Investment NSW, 30 August 2022, p 4.

²⁸ Evidence, Ms Brown, , 3 August 2022, p 49. See also: Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, the Hon. Stuarts Ayres, Minister for Minister for Jobs, Investment, Tourism and Western Sydney, and Minister for Industry and Trade, 27 October 2021, p 36; Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, Ms Kylie Bell, then Executive Director, Trade and Investment, Investment NSW, 8 March 2022, p 80.

- 1.15** Mr Michael Newman is the STIC North Asia. He was appointed in July 2021, took office in January 2022 and is based in Tokyo, Japan.²⁹
- 1.16** Mr Andrew Parker is the STIC ASEAN. He was appointed on 10 November 2021, took office in early 2022 and is based in Singapore.³⁰
- 1.17** Mr Vishwesh Padmanabhan is the STIC India and Middle East. He was appointed on 10 November 2021 and is based in Mumbai, India.³¹
- 1.18** Ms Helen Sawczak is the STIC Greater China. Her appointment was announced on 17 June 2022 and is based in Shanghai, China.³²
- 1.19** Mr John Barilaro was appointed as the STIC to the Americas in June 2022.³³ The STIC to the Americas role is based in New York, USA. However, Mr Barilaro has since withdrawn from the STIC to the Americas position.³⁴ The committee was advised that the current status of the STIC to the Americas position is on hold due to this inquiry.³⁵

Remuneration and additional expenses of the STICs

- 1.20** The remuneration of the STICs is equivalent to a grade 3 senior executive, in line with other senior officials within the New South Wales Government and in accordance with the *Statutory and Other Offices Remuneration Act 1975*.³⁶

²⁹ Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, Answers to questions on notice, Ms Amy Brown, CEO, Investment NSW, 24 November 2021, p 18.

³⁰ Answers to questions on notice, Ms Amy Brown, Secretary, DEIT and CEO, Investment NSW, 30 August 2022, pp 3-4. See also: Media release, the Hon Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney and Minister for Trade and Industry, 'NSW appoints ASEAN, India & Middle East trade and investment commissioners', 16 December 2021.

³¹ Answers to questions on notice, Ms Brown, 30 August 2022, pp 3-4. See also: Media release, the Hon Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney and Minister for Trade and Industry, 'NSW appoints ASEAN, India & Middle East trade and investment commissioners', 16 December 2021.

³² Media release, the Hon Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney and Minister for Trade and Industry, 'NSW appoints ASEAN, India & Middle East trade and investment commissioners', 17 June 2022. See also: Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, Answers to questions on notice, Ms Bell, 4 April 2022, p 44.

³³ Evidence, Ms Brown, 29 June 2022, p 3.

³⁴ Answers to questions on notice, Ms Amy Brown, former Secretary, DEIT, 25 July 2022, p 3.

³⁵ Evidence, Ms Kylie Bell, 5 August 2022, p 36.

³⁶ Evidence, Ms Brown, 29 June 2022, p 3. See also: Answers to Supplementary Questions - Portfolio Committee No. 1 – Premier and Finance, Inquiry into Budget Estimates 2020-2021, 24 November 2021, p 5.

- 1.21 The committee heard that the salary for a grade 3 senior executive in the New South Wales public sector is approximately \$487,000.³⁷ In addition to their annual salary, STICs are entitled to an additional cost of living allowance if the cost of living in their home base is found to be higher than Sydney.³⁸
- 1.22 Investment NSW advised that in 2021-2022, the total expenditure of the international network was \$12.7 million.³⁹

Probity and integrity measures of public sector appointments

- 1.23 Central to this inquiry is the way in which the appointment process for all the STIC positions were developed and managed by the relevant government departments, public servants and Ministers. Probity and integrity measures of public sector appointments are enshrined in legislation and policy frameworks, which are reviewed in this section.

Legislative framework

- 1.24 The *Government Sector Employment Act 2013* (GSE Act) is the statutory framework for New South Wales government employment and workforce management.⁴⁰ Part 2 of the Act sets out the objectives of the Act which:

(a) recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day, and

(b) establishes an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.⁴¹

- 1.25 The STIC positions were created as public sector appointments under the GSE Act.⁴² The employment arrangements for all STICs are further subject to clause 10A of the Government Sector Employment Regulation 2014 (GSE Regulation), which amongst other things regulates the appointment of overseas trade employees. The pertinent parts of the regulation are set out below.

10A Overseas trade employees

(1) In this clause:

overseas trade employee means a person who:

³⁷ Evidence, Ms Brown, 29 June 2022, p 3.

³⁸ Evidence, Ms Brown, 29 June 2022, p 3; Evidence, Ms Brown, 3 August 2022, p 55.

³⁹ Answers to questions on notice, Ms Bell, 30 August 2022, p 3.

⁴⁰ NSW Public Service Commission (PSC), *Government Sector Employment Act*, <https://www.psc.nsw.gov.au/legislation-and-policy/government-sector-employment-act>

⁴¹ Section 6, *Government Sector Employment Act 2013*.

⁴² Evidence, Ms Brown, 29 June 2022, p 2.

(a) is employed in the Department of Premier and Cabinet (the Department) to work in the area of international trade and investment, and

(b) ordinarily resides and works in a country other than Australia while so employed.

(2) The employment under the Act of an overseas trade employee is subject to such arrangements as may be determined by the Secretary of the Department in respect of the employee.

...

(5) Persons may be employed as overseas trade employees without compliance with the government sector employment rules on merit-based employment. However, any decision to employ a person as an overseas trade employee must be based on the person's appropriateness for the role concerned having regard to the nature of the role and the person's qualifications, skills and experience.⁴³

1.26 Ms Brown confirmed that the STIC positions are overseas trade employees employed under clause 10A of the GSE Regulations and that the positions were 'selected based on the person's appropriateness for the role concerned, having regard to the nature of the role and the person's qualifications, skills and experience'.⁴⁴

1.27 Ms Brown explained that the recruitment process under clause 10A of the regulation differs from the processes required under the GSE Act, in that it allows for a flexible approach to recruitment compared to the strict capability-based, merit-based selection process for other government sector employment roles.⁴⁵

1.28 Ms Kathrina Lo, Public Service Commissioner, NSW Public Service Commission also noted that recruitment under clause 10A of the Regulation is still a merit assessment because the process includes looking at qualifications, skills and experience of a candidate in relation to the role.⁴⁶

Code of Ethics and Conduct for New South Wales Government Sector Employees

1.29 The Code of Ethics and Conduct for New South Wales Government Sector Employees (the Code) identifies mandatory requirements and best practice conduct for all government sector employees which is consistent with Part 2 of the GSE Act. The Code sets out obligations that apply to government sector employees.⁴⁷

⁴³ clause 10A of the Government Sector Employment Regulation 2014.

⁴⁴ Evidence, Ms Brown, 3 August 2022, p 9.

⁴⁵ Evidence, Ms Brown, 3 August 2022, pp 9-10.

⁴⁶ Evidence, Ms Kathrina Lo, Public Service Commissioner, NSW Public Service Commission (PSC), 5 August 2022, p 85.

⁴⁷ PSC, *The Code of Ethics and Conduct for New South Wales Government Sector Employees*, p 5.

- 1.30** In 2015 the Public Service Commissioner required that the Code be implemented across the government sector via a direction given under the GSE Act.⁴⁸ At the time of writing, the Public Service Commissioner provided an updated direction in relation to the Code.⁴⁹
- 1.31** The Code is typically incorporated into an individual agency's Code where its elements are set out in a way that is most appropriate for that agency.⁵⁰ The Code sets out that all government sector employees must uphold the government sector's core values of 'Integrity, Accountability and Excellence in Service' and their principles in their actions, decisions, and dealings with colleagues, clients, stakeholders and the government of the day.⁵¹
- 1.32** As outlined in an earlier section, the responsible agency for the STICs transitioned between Departments. Prior to the development of Investment NSW's Code of Ethics and Conduct in July 2021, the recruitment process for the STICs would have been subject to NSW Treasury and DPC's Code of Ethics and Conduct respectively.⁵²

Ministerial Code of Conduct

- 1.33** The Ministerial Code of Conduct is the key instrument governing the conduct of Ministers of the Crown. It is an applicable code under the *Independent Commission Against Corruption Regulation 2017*, which means that a substantial breach of it could result in a finding of corrupt conduct by the Independent Commission Against Corruption.⁵³
- 1.34** The purpose and objectives of the Ministerial Code of Conduct are outlined in its preamble, pertinent elements to this inquiry are as follows:

Preamble

(1) it is essential for the maintenance of public confidence in the integrity of Government that Ministers exhibit, and be seen to exhibit, the highest standards of probity in the exercise of their offices, and that they pursue, and be seen to pursue, the best interests of the people of New South Wales to the exclusion of any other interest.

...

⁴⁸ PSC, *Public Service Commissioner Direction No 1 of 2015 Under the Government Sector Employment Act 2013*, 20 April 2015.

⁴⁹ PSC, *Public Service Commissioner Direction No 2 of 2022 Under the Government Sector Employment Act 2013*, 19 August 2022.

⁵⁰ Department of Premier & Cabinet (DPC), *DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas*, 12 August 2022, p 6.

⁵¹ PSC, *Public Service Commissioner Direction No 2 of 2022 Under the Government Sector Employment Act 2013*, 19 August 2022.

⁵² Investment NSW's Code of Ethics and Conduct was approved in July 2021, Investment NSW, *Investment NSW-Code of Ethics and Conduct*, July 2021. See also: DPC, *DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas*, 12 August 2022, pp 47-48; NSW Treasury, *NSW Treasury Code of Ethics and Conduct*, April 2021; DPC, *DPC Code of Conduct*, July 2019 (updated February 2022).

⁵³ Section 9, *Independent Commission Against Corruption 1988*.

(5) Ministers also have a responsibility to ensure that they do not act in a way that would place others, including public servants, in a position that would require them to breach the law or their own ethical obligations including those prescribed in the *Government Sector Employment Act 2013*.

1.35 The Code also clarifies what constitutes a lawful direction to the public service and the requirements of a Minister to declare conflicts of interest.⁵⁴ The Code is the basis for the Government's review into a Minister's conduct in relation to the STIC to the Americas appointment process, which is explored in greater detail in Chapter 2.

Key events in the STIC appointment process

1.36 This section provides a broad overview of the events and emerging issues regarding the STIC appointment process.

Overview of recruitment process

1.37 Dr Broadbent explained that the STIC recruitment process involved the following key steps:

- Targeted executive search by NGS Global and responses to advertisements of the roles published in the media
- Pre-screening by NGS Global of candidates to be presented to panel members to decide on who to interview
- Interviews by a selection panel made up of members that are at an equivalent level or higher (for the STIC selection panels, as the positions were band 3 role, the panels had at least one Department Secretary), an independent panel member and NGS Global as the scribe
- Reference checks for appointable candidates
- Candidate ranking in a final selection panel report that represented the considered views of the panel
- Appointment to the role.⁵⁵

Issues in the initial appointment process (Agent General UK and STIC North Asia)

1.38 Despite established processes for the recruitment of the STIC positions, there were emerging issues regarding the initial appointments. This section provides an overview of these irregularities.

⁵⁴ Section 5 in Appendix NSW Ministerial Code of Conduct, Independent Commission Against Corruption Regulation 2017.

⁵⁵ Evidence, Dr Broadbent, 18 August 2022, p 3; See also: Evidence, Ms Bell, 5 August 2022, p 43.

Cabinet appointments

- 1.39** During the course of the inquiry it became apparent that a fundamental issue was the interplay between the recruitment of the STIC positions as public servants under the GSE Act and the 'approval' role of Ministers and Cabinet. Ms Brown explained to the committee that the STIC appointment process has 'evolved imperfectly'. During her opening statement to the inquiry, she gave evidence to the committee regarding the initial appointment process:

[T]he appointment process for the Agent General and Senior Trade and Investment Commissioners has evolved imperfectly. Early advice contemplated by NSW Treasury when the program was first launched in 2019 recommended that the Agent General and STICs ... be appointed as public servants under the GSE Act rather than statutory officers appointed by a Minister. However, the approval process NSW Treasury developed and Investment NSW later inherited did not reflect how those appointments should be made under those laws and regulations. This has since been rectified and was corrected well before Mr Barilaro applied for the role.⁵⁶

- 1.40** The initial STIC recruitment process began in late 2019/2020 for the Agent General UK and STIC North Asia positions. While the recruitment for these roles followed the process as described by Dr Broadbent in paragraph 1.37, the recommended candidates were submitted to Cabinet for approval despite the positions' requirements to be appointed under the GSE Act,⁵⁷ (which meant that no Cabinet approval was required).
- 1.41** Ms Brown stated that she identified the error of the first two positions being referred to Cabinet for approval while preparing for the recruitment of the subsequent STIC positions (Americas, ASEAN, India and Middle East, Greater China).⁵⁸ Ms Brown stressed that since this discovery, no formal approval of any Minister or the Premier was sought prior to the appointment of the remaining STICs.⁵⁹

Issues with preferred candidate for the Agent General UK position

- 1.42** The committee received evidence regarding the selection of the preferred candidate for the position of Agent General UK. In December 2020, Mr Paul Webster was identified as 'preferred candidate' for this position.⁶⁰ However by late February 2021, a new candidate, Mr Stephen Cartwright OAM, was considered for the position and was subsequently appointed as Agent General UK.⁶¹
- 1.43** The final report will explore the key issues relating to the Agent General UK position.

⁵⁶ Evidence, Ms Brown, 29 June 2022, p 2.

⁵⁷ Evidence, Ms Brown, 29 June 2022, p 32.

⁵⁸ Evidence, Ms Brown, 29 June 2022, p 32.

⁵⁹ Evidence, Ms Brown, 29 June 2022, p 2.

⁶⁰ Tabled document, the Hon. Daniel Mookhey MLC, 'Tender bundle 001 (P. Webster)', 31 October 2022, pp 2-7.

⁶¹ Evidence, Dr Broadbent, 18 August 2022, p 47; Evidence, Mr Stephen Cartwright, Agent General UK and STIC Europe and Israel, Investment NSW, 2 November 2022, pp 3-4, 5.

Issues in the STIC to the Americas appointment process

1.44 This section provides an overview of the emerging issues in relation to the STIC to the Americas appointment process.

Key events relating to the STIC to the Americas appointment process

1.45 By early 2021, the recruitment process for the STIC to the Americas, STIC ASEAN and STIC India and Middle East, STIC Greater China were underway.⁶² By 4 August 2021, Investment NSW had identified preferred candidates for the STIC to the Americas, STIC ASEAN and STIC India and Middle East positions.⁶³

1.46 In respect to the STIC to the Americas, the preferred candidate was Ms Jenny West.⁶⁴

1.47 By late September 2021, a cabinet submission considered and approved converting the STIC positions from public sector appointments to ministerial appointments.⁶⁵

1.48 However, the committee heard that the preferred candidates for STIC ASEAN and India and Middle East were 'grandfathered' or 'transitioned into the new regime', without reopening the recruitment process.⁶⁶ The STIC to the Americas position on the other hand was reopened to the market.⁶⁷

1.49 Although the STIC appointment process were now confirmed as ministerial appointments, no action was taken to implement this, and the second round for the STIC to the Americas underwent a public sector recruitment process as outlined in paragraph 1.37.⁶⁸

1.50 Following the second round of recruitment, former Deputy Premier Mr John Barilaro was the successful candidate for the STIC to the Americas position.⁶⁹

1.51 The details of the STIC to the Americas appointment process will be examined in further detail in Chapter 2 of the report.

⁶² Evidence, Ms Brown, 29 June 2022, p 12. Tabled document, Dr. Marianne Broadbent, *Submission to the Public Accountability inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, pp 1-2.

⁶³ Tabled document, the Hon. Daniel Mookhey MLC, *Tender bundle*, 29 June 2022, pp 37-38.

⁶⁴ Evidence, Ms Brown, 29 June 2022, p 13. See also: Tabled document, the Hon Daniel Mookhey MLC, *Tender bundle*, 29 June 2022, p 1.

⁶⁵ Evidence, Ms Brown, 29 June 2022, p 13. See also: Answers to questions on notice, Ms Brown, , 25 July 2022, p 5.

⁶⁶ Evidence, Ms Brown, 3 August 2022, p 4. See also: Tabled document, the Hon Daniel Mookhey MLC, *Email from Nghia Nguyen-Le to Kylie Bell and Chris Carr, titled 'Minister update on International Network roll out – next steps' dated 12 October 2021*, 3 August 2022, p 1.

⁶⁷ Evidence, Ms Brown, 3 August 2022, p 4. See also: Tabled document, *Email from Nghia Nguyen-Le to Kylie Bell and Chris Carr, titled 'Minister update on International Network roll out – next steps' dated 12 October 2021*, 3 August 2022, p 1.

⁶⁸ Evidence, Ms Brown, 3 August 2022, p 7.

⁶⁹ Evidence, Ms Brown, 29 June 2022, p 2.

Chapter 2 Key issues relating to the STIC to the Americas appointment process

This chapter sets out the major issues relating to the STIC to the Americas recruitment, in particular the change of Government policy from public sector appointments to ministerial appointments and the circumstances regarding the two rounds of recruitment for the STIC to the Americas position. The chapter also provides Mr John Barilaro's evidence to the inquiry as well as the outcomes of the Government's inquiries in relation to the STIC to the Americas position.

STIC to the Americas recruitment: round one

2.1 From the outset of this inquiry, it emerged that there were two rounds of recruitment for the STIC to the Americas position. This section highlights the key issues regarding the first round of the STIC to the Americas recruitment process including a preferred candidate selected in round one, the circumstances around the change of Government policy for all STICs appointments from public sector appointments under the *Government Sector Employment Act 2013* (GSE Act) to ministerial appointments.

Preferred candidate selected in round one

2.2 As noted in Chapter 1, the recruitment process for the STIC to the Americas position began in earnest in early 2021. A recruitment selection panel was comprised of Ms Amy Brown, then Secretary of Department of Enterprise, Investment and Trade, Mr Jim Betts, incoming Secretary, Department of Premier and Cabinet, and independent panel member the Hon Warwick Smith AO, with support provided by Dr Marianne Broadbent, NGS Global. Following a recruitment process, including interviews, two candidates were considered suitable and proceeded to reference checks. Dr Broadbent advised that subsequently, Ms Jenny West was declared the Panel's preferred candidate, and the other, Mr Rob Fitzpatrick, was described as a strong candidate and placed in a talent pool.⁷⁰

2.3 However, according to the government, the first recruitment process for the STIC to the Americas did not identify a suitable candidate.⁷¹ Indeed, throughout the duration of the inquiry, Ms Brown maintained that by the end of the first recruitment process, 'no suitable candidate had been found'.⁷²

2.4 In contrast, according to Ms West, she was told that she was the successful candidate for the STIC to the Americas position by Ms Brown on 12 August 2021.⁷³ Indeed, Ms Brown sent her a text confirming that she was successful in the role, and Ms West also advised that she had

⁷⁰ Tabled document, Dr Marianne Broadbent, *Submission to the Public Accountability Committee inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, p 3; Evidence, Ms Amy Brown, former Secretary, DEIT and CEO of Investment NSW, 3 August 2022, p 2.

⁷¹ *Hansard*, NSW Legislative Assembly, 22 June 2022, pp 30-31 (the Hon Dominic Perrottet, Premier).

⁷² Evidence, Ms Amy Brown, former Secretary, DEIT, and CEO, Investment NSW, 29 June 2022, p 21. Evidence, Ms Brown, , 3 August 2022, p 2.

⁷³ Evidence, Ms Jenny West, former Deputy Secretary, Trade and International, Investment NSW, 11 July 2022, p 2. See also: Evidence, Ms Brown, 29 June 2022, pp 24-25.

received a copy of the briefing note sent to the Premier noting that she was identified as the 'successful candidate for the STIC [to the] Americas role'.⁷⁴

2.5 Ms West explained that in the following weeks between August and September 2021, she was in contract negotiations with Investment NSW regarding her upcoming position as the STIC to the Americas. Ms West elaborated on the events that followed after she was verbally offered the position:

On 14 August 2021 Ms Brown approved my request regarding my contract terms. I was so excited about the appointment. I immediately shared the news with my family and friends. They were so happy for me. I began taking steps to relocate and had engaged a relocation company. I looked at rental accommodation in New York and researched colleges for my family. I thought I would be starting the new role in a matter of weeks and I wanted to have my affairs in order. Over the next four weeks I followed up on my written contract with human resources and legal. I was told that there were delays as Investment NSW was awaiting US taxation advice.⁷⁵

2.6 The committee received an abundance of evidence which confirmed Ms West as the preferred candidate following the recruitment process for the STIC to the Americas role. This included:

- Copies of the selection panel report, ranking Ms West as the preferred candidate.⁷⁶
- Briefing note titled 'A successful candidate for the role of [STIC] to the Americas has been identified' from Ms Brown to the Premier Hon Gladys Berejiklian, Deputy Premier Hon John Barilaro, Treasurer Dominic Perrottet and Minister Stuart Ayres.⁷⁷ All ministers signed off on the briefing note, except for the Treasurer's office which noted the contents in return email.⁷⁸
- Emails and text messages between Ms West and Investment NSW staff regarding salary negotiations about the role.⁷⁹

⁷⁴ Evidence, Ms Jenny West, 11 July 2022, p 9. See also: Tabled document, Ms Jenny West, *Documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed*, 11 July 2022, p 22; Evidence, Ms Brown, 29 June 2022, pp 24-25, 29.

⁷⁵ Evidence, Ms Jenny West, 11 July 2022, p 2.

⁷⁶ Tabled document, the Hon Daniel Mookhey MLC, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, p 274; See also: Evidence, the Hon Warwick Smith AO, independent panel member – Selection Panel, STIC to the Americas, 18 August 2022, p 37.

⁷⁷ Tabled document, *Documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed*, 11 July 2022, p 22, Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 267-269; Tabled document, the Hon Daniel Mookhey MLC, *Tender bundle 001 – B. Black*, 22 November 2022 pp 31-32, 37. See also: Evidence, Ms Brown, 29 June 2022, p 22; Evidence, Mr Bran Black, Chief of Staff, NSW Premier, 22 November 2022, pp 70-71.

⁷⁸ Tabled document, *Documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed*, 11 July 2022, p 22; Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 1-2, 267-268; Tabled document, *Tender bundle 001 – B. Black*, 22 November 2022 pp 35-38; Evidence, Mr Black, 22 November 2022, pp 70-71.

⁷⁹ Tabled document, *Documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed*, 11 July 2022, pp 24-34. See also: Tabled

- 2.7 Ms Brown acknowledged that Ms West was verbally offered the position but asserted that no contract or written offer was made to Ms West regarding the STIC to the Americas position.⁸⁰ Furthermore, Ms Brown also advised that the initial delay in offering a written contract was due to tax structuring issues regarding establishing Investment NSW as a foreign office in the US jurisdiction.⁸¹
- 2.8 This was further substantiated by Mr Chris Carr, General Counsel, DEIT, who told the committee that:

I felt there were material contract terms that had not yet been finalised, particularly as to tax. In my experience tax issues usually have cost implications that individuals seek to negotiate. Further, and relevantly, because of matters related to Investment NSW's US structure, Investment NSW was not in a position to issue any contract or offer to any candidate prior to mid-December 2021. Until the agency signs an agreement, countersigned by an applicant, a person remains an applicant. My understanding is that Ms West was well advanced in the process but not at the end of it.⁸²

Change of appointment process from public sector appointments to ministerial appointments

- 2.9 While the first recruitment process for STIC to the Americas was underway, the committee heard evidence that there were discussions taking place regarding changing the STIC appointment process from public sector appointments under the GSE Act to ministerial appointments. This section highlights the issues identified in the lead up to the change of appointment process.
- 2.10 In June 2021, Deputy Premier John Barilaro commenced discussions with his ministerial staff about the legislative requirements of changing the STIC appointment process from public sector appointments into ministerial appointments.⁸³ Mrs Siobhan Hamblin, former Chief of Staff to the Deputy Premier, advised:

I remember a conversation—and it's a vague recollection—in June prior to the lockdowns ... it was general in nature—about how these appointments are made, what the process looks like and by what other means they could be appointed.⁸⁴

- 2.11 On 2 July 2021, Ms Brown sent an email to the Deputy Premier's office, titled 'Investment NSW and statutory officers', advising on a number of issues regarding Investment NSW and other statutory roles within the public sector.⁸⁵

document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 319-321.

⁸⁰ Evidence, Ms Brown, 29 June 2022, pp 11, 20.

⁸¹ Evidence, Ms Brown, 29 June 2022, p 20.

⁸² Evidence, Mr Chris Carr, General Counsel, DEIT, 19 July 2022, p 2.

⁸³ Evidence, Mrs Siobhan Hamblin, former Chief of Staff, Office of the Deputy Premier, 5 August 2022, pp 28-29; Evidence, Mr John Barilaro, former Deputy Premier, 8 August 2022, p 11.

⁸⁴ Evidence, Mrs Siobhan Hamblin, former Chief of Staff, Office of the Deputy Premier, 5 August 2022, pp 28-29.

⁸⁵ Evidence, Ms Brown, 29 June 2022, p 10; Evidence, Mr Brayford, 19 July 2022, p 3. Tabled document, the Hon Daniel Mookhey MLC, *Tender bundle – Joseph Brayford*, 19 July 2022, pp 16-17.

2.12 In particular the email outlined the following details:

- Investment NSW's status as an executive agency within DPC, clarifying that the agency does not have statutory functions unlike other government agencies such as Infrastructure NSW and the Greater Sydney Commission.
- Confirming that legislation would need to be introduced and enacted in order for Investment NSW to have its own Act.
- General benefits of maintaining the STICs appointment process as public sector appointments in terms of employment contracts, purpose and operational performance.⁸⁶

2.13 Around September 2021, Investment NSW received a request from the Deputy Premier's office to provide advice regarding the STIC appointment process.⁸⁷ All interactions between Investment NSW and the Deputy Premier's office in relation to the STIC appointments were through Mr Joseph Brayford, Senior Policy Advisor, Industry and Trade, Office of the Deputy Premier.⁸⁸

2.14 Ms Brown advised the committee that Mr Brayford made it clear that the Deputy Premier wanted to know the various mechanisms for which STICs could be appointed.⁸⁹

2.15 In September 2021, the Deputy Premier asked Mr Brayford to prepare a cabinet submission regarding changing the STIC appointments from public sector appointments to ministerial appointments.⁹⁰

2.16 Investment NSW clarified that they prepared the initial cabinet submission regarding changing the STIC appointments process but it was then an 'iterative process' between their office and the Deputy Premier's office. Ms Brown further confirmed that 'the submission itself is then finalised and signed off on by the responsible Minister, which was the Deputy Premier at the time'.⁹¹

2.17 The committee heard that this cabinet submission is the basis for the change of Government policy regarding the converting STIC appointments as ministerial appointments.⁹²

2.18 In relation to the advice provided by Investment NSW, Mr Chris Carr, General Counsel, DEIT, gave evidence to the committee. During the hearing, Mr Carr stated:

I was then asked to provide advice in relation to a policy question, being: Why is it that in New South Wales the law provides that these appointments go through the public

⁸⁶ Tabled document, *Tender bundle – Joseph Brayford*, 19 July 2022, pp 16-17.

⁸⁷ Evidence, Ms Brown, 29 June 2022, pp 9-11. See also: Tabled document, the Hon Daniel Mookhey MLC, *Bundle of correspondence from the Standing Order 52 order for papers*, 29 June 2022, pp 44-45.

⁸⁸ Evidence, Mr Joseph Brayford, Senior Policy Advisor – Industry and Trade, Office of the Deputy Premier, 19 July 2022, p 3; Evidence, Mrs Hamblin, 5 August 2022, p 28.

⁸⁹ Evidence, Ms Brown, 29 June 2022, p 11.

⁹⁰ Evidence, Mr Brayford, 19 July 2022, pp 9-11.

⁹¹ Evidence, Ms Brown, 3 August 2022, pp 69-70; Answers to questions on notice, Mr Chris Carr, General Counsel, DEIT, 12 August 2022, p 5.

⁹² Evidence, Ms Brown, 29 June 2022, pp 14-15; Answers to questions on notice, Ms Brown, 25 July 2022, p 5.

service and what would it take to change that to ministerial appointments? I understand that what happened next was, through his advisers, the Minister then sought that advice from the Investment NSW CEO in early September, who then asked me to prepare advice on that question. The advice I provided—while legal advice, essentially—then formed the basis for Cabinet deliberations on policy.⁹³

2.19 More specifically, the committee received evidence regarding an internal email from Mr Carr to an Investment NSW colleague, dated 21 September 2021, setting out the policy advice to the Deputy Premier's office. Mr Carr clarified that the email was an expanded version of the 'initial' advice that would have been sent by Ms Brown to the Deputy Premier's Office.⁹⁴ The email outlined the following issues:

We are now asked to consider whether there are alternative methods that STICs could be employed. Specifically we have been asked whether there is an option for Ministerial appointments.

...

We are asked whether an amendment to Regulation 10A [GSE Regulations] is feasible to provide for the relevant Minister to make recommendations to the CEO of Investment NSW on the appointment of the STICs outside Regulation 10A(5). That is, if possible there may be a desire for these positions to remain in the Public Service and subject to various codes of conduct and employment terms but that their appointment is subject to a ministerial recommendation.⁹⁵

Concerns from Investment NSW about changing the STIC appointment process

2.20 The committee heard evidence from Investment NSW regarding their concerns in changing the STIC appointment process, specifically around the complexity of the legislative requirements in changing the appointment process, the impact on the ongoing arrangements for appointed STICs (namely the Agent General UK and STIC North Asia) and the pathway for finalising the recruitment for the other STIC positions (i.e. STICs to the Americas, ASEAN, India and Middle East and Greater China).⁹⁶

2.21 According to Ms Brown, there were two mechanisms in order to convert the STIC positions from public service appointments to ministerial appointments. These were:

- to convert them to statutory officers under a particular Act, for which legislative amendment would be required,
- OR
- amending the GSE Act, specifically clause 10A of the Regulations, which sets out the appointment process of trade employees.⁹⁷

⁹³ Evidence, Mr Chris Carr, General Counsel, DEIT 19 July 2022, p 2. See also: Evidence, Ms Brown, 29 June 2022, p 9.

⁹⁴ Evidence, Mr Carr, 19 July 2022, p 20.

⁹⁵ Tabled document, the Hon. Daniel Mookhey MLC, *Tender bundle - Chris Carr*, 19 July 2022, p 16.

⁹⁶ Evidence, Ms Brown, 3 August 2022, pp 71-72; Tabled document, the Hon Daniel Mookhey MLC, *Tender bundle – Chris Carr*, 19 July 2022, pp 16-17.

⁹⁷ Evidence, Ms Brown, 29 June 2022, p 9.

2.22 As outlined in paragraph 2.11, Investment NSW sent an email to Mr Brayford regarding the STIC appointment process. In particular, the email outlined 'the complexity around STICS being statutory officers which may make it more appropriate to retain their status as public servants'. The email continued:

The day-to-day activities of the STICs are subject to the direction and control of the CEO of Investment NSW and each STIC will have strong KPIs around their outputs and performance. Statutory officers appointment to a Minister are not subject to the direction and control of an agency CEO, making those KPIs difficult to monitor and enforce. Additionally, all the staff supporting the STICs offshore in NSW Government offices will continue to be public servants. Their reporting lines will be difficult to maintain where the STIC is an independent statutory officer but their staff are not.⁹⁸

2.23 When asked about her concerns about the content of the advice in the cabinet submission, Ms Brown expressed the view that it was 'really complicated'.⁹⁹ Indeed, Ms Brown advised that she had a Teams call with then Secretary of Department of Premier and Cabinet Mr Tim Reardon and outlined Investment NSW's concerns about the cabinet submission. The main concerns were:

- the practical and legal implications of converting the STICs into ministerial appointments
- strategic requirements in which ministerial appointments are not subject to the direction and control of the Secretary which then makes it difficult to monitor KPIs
- operational implications regarding work health and safety concerns and the difference of employment arrangements between the STICs and their staff
- foreign relations issues, including visa requirements
- compensation claims for unwinding contracts.¹⁰⁰

Consideration of the cabinet submission

2.24 Mr Barilaro's office pursued the change in the appointment process of the STIC positions and lodged a cabinet submission to that effect on 16 or 17 September 2021.¹⁰¹ On 27 September 2021, the cabinet submission to convert the STIC positions into ministerial appointments was considered and approved.¹⁰²

2.25 The committee heard that in reaching its decision, Cabinet was not informed that Ms West had already been offered the STIC to the Americas position.¹⁰³

⁹⁸ Tabled document, *Tender bundle – Joseph Brayford*, 19 July 2022, pp 16-17.

⁹⁹ Evidence, Ms Brown, 3 August 2022, p 71.

¹⁰⁰ Evidence, Ms Brown, 3 August 2022, p 71.

¹⁰¹ Tabled document, the Hon Daniel Mookhey MLC, *Tender bundle (J. Brayford)*, 19 July 2022, p 35. See also: Evidence, Mr Brayford, 19 July 2022, pp 10-11; Evidence, Mrs Hamblin, 5 August 2022, p 18.

¹⁰² Evidence, Ms Brown, 29 June 2022, p 13. See also: Answers to questions on notice, Ms Brown, 25 July 2022, p 5.

¹⁰³ Evidence, Mr John Barilaro, former Deputy Premier, 8 August 2022, p 56.

- 2.26** Furthermore, the committee also heard that the consideration for the issue was treated in an urgent manner.¹⁰⁴ For instance, Mr Brayford advised that he received a text from the Deputy Premier asking him to contact Ms Brown to prepare a cabinet submission converting the STIC positions to ministerial appointments – with the text including a timeframe for the submission to be done 'ASAP'.¹⁰⁵
- 2.27** When asked about providing time frames in the advice, Ms Brown confirmed to the committee that Investment NSW did not provide timeframes for the submission and clarified that the urgency of a submission would be the 'prerogative' of the Minister.¹⁰⁶
- 2.28** In responding to questions about the cabinet submission and the timeframes of approval, Mrs Hamblin could not recall the specifics about the timing of the submission but provided her experience in general about the submission process. Mrs Hamblin told the committee that:

I can't recall the specifics in and around that time but what I will say is that, while it's common practice for Cabinet submissions, the process is about a month and it's an iterative process. Having been involved in politics and government for over eight years, while that being the usual practice, it is not uncommon that things are brought on urgently to Cabinet. To see a Cabinet submission come up in any form that is of some form of urgency, while not usual practice, it is not uncommon.¹⁰⁷

Outcome of STIC to the Americas recruitment: round one

- 2.29** Ms Brown advised that with the proposed change in the recruitment process to ministerial appointments she effectively stopped the process of appointing Ms West to the STIC to the Americas position:

Between 11 August 2021, when the Premier and three Ministers received briefs reflecting the outcome of the interview process, and 1 October 2021—when I, as hiring manager, determined that the full recruitment process was closed—a number of factors had changed. ... Those factors include: One, the 27 September 2021 decision of Government to change the basis of appointment of STICs from public servants to ministerial appointments meant that I needed to close the recruitment process currently underway and still subject to contract.¹⁰⁸

- 2.30** Ms Brown also stated that another factor that influenced her decision not to proceed with Ms West was that she became aware of performance issues with Ms West. She explained to the committee that:

... with respect to Ms West, from mid-September I began to be made aware of serious performance issues that would likely result in a need to have her performance managed. On that basis, it would be unwise to appoint her to an overseas role, as I would need to be confident that these issues would not continue.¹⁰⁹

¹⁰⁴ Evidence, Mr Brayford, 19 July 2022, p 10; Evidence, Mrs Hamblin, 5 August 2022, p 18.

¹⁰⁵ Evidence, Mr Brayford, 19 July 2022, p 10 - 11.

¹⁰⁶ Evidence, Ms Brown, 29 June 2022, p 70.

¹⁰⁷ Evidence, Mrs Hamblin, 5 August 2022, p 18.

¹⁰⁸ Evidence, Ms Brown, 3 August 2022, p 2.

¹⁰⁹ Evidence, Ms Brown, 3 August 2022, p 2.

2.31 However, in response to these comments, Ms West stated that until this inquiry she was never told about Ms Brown's concerns regarding her professional performance. She told the committee:

I have never been told that my appointment to the STIC to the Americas role had been withdrawn because of concerns about my professional experience or performance. I had received no explanation from Ms Brown or Investment NSW other than what I have outlined today. I am genuinely surprised by the matters raised now by Ms Brown in her evidence before this inquiry.¹¹⁰

2.32 The committee was advised that on 27 September 2021, the same day that the cabinet submission was approved, Ms Brown called Ms West informing her that 'Cabinet had endorsed the request for the STIC positions to become political appointments' and that Investment NSW was looking into the impact of the Cabinet decision regarding the outcome of the STIC to the Americas: round one.¹¹¹

2.33 Some two weeks later, on 14 October 2021, Ms Brown called Ms West to advise that she would not be getting the STIC to the Americas position, that her substantive Deputy Secretary position would be abolished and therefore Ms West would be made redundant.¹¹²

2.34 Ms West gave evidence to the committee that she was terminated from the New South Wales public service pursuant to section 41 of the GSE Act from 30 November 2021.¹¹³

Conflict of interest regarding Ms West applying for the STIC to the Americas position

2.35 As outlined in Chapter 1, Ms West began her role in October 2020 whereby she was initially responsible for the STIC recruitment process, excluding the first round of interviews for the Agent General UK position.¹¹⁴

2.36 Ms Brown advised the committee that the STIC process was 'established by Ms West', including creating the role descriptions. Ms Brown stated that:

[Ms West] engaged NGS Global and prepared the role descriptions for all the [STIC] roles. She was on the panel for the first two [Agent General UK and STIC North Asia]. She saw the first list [of candidates in the STIC to the Americas] ... Ms West was running the recruitment process, as was her job.¹¹⁵

¹¹⁰ Evidence, Ms West, 11 July 2022, pp 2-3.

¹¹¹ Evidence, Ms West, 11 July 2022, p 2. See also: Tabled document, *Documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed*, 19 July 2022, p 6.

¹¹² Evidence, Ms West, 11 July 2022, p 2; Tabled document, *Tabled document*, 19 July 2022, p 7.

¹¹³ Tabled document, *Tabled document*, 19 July 2022, p 76. See also: Section 41 of the GSE Act.

¹¹⁴ Answers to specific written questions, Ms Jenny West, former Deputy Secretary, Trade and International, Investment NSW, received 13 September, p 2. See also: Evidence, Ms West, 11 July 2022, p 25; Evidence, Ms Brown, 3 August 2022, p 13; Evidence, Mr Pratt, 14 November 2022, p 3.

¹¹⁵ Evidence, Ms Brown, 3 August 2022, p 13.

- 2.37** The committee received evidence that on 12 May 2021, Ms West applied for the STIC to the Americas position.¹¹⁶ According to Ms Brown, applications closed for the STIC to the Americas recruitment: round one on 26 April 2021.¹¹⁷
- 2.38** In response to the potential for a conflict of interest in applying for the STIC to the Americas position, Ms West provided a written statement to the committee. Ms West declared that she was 'quite aware of a potential for a conflict of interest at the time' and took measures to make it known that she 'thought there could be a conflict of interest and for Ms Brown to disqualify my application if she saw fit'.¹¹⁸ A summary of her statement is outlined below:
- Ms West advised that she raised her intentions to apply for the STIC to the Americas position to Ms Brown prior to applying and that Ms Brown was supportive of her applying for the role. Ms West asserted that it was Ms Brown's right to refuse her application if the window to apply was closed.
 - Ms West denied that she did not make relevant declaration while applying for the STIC to the Americas position. Indeed, she advised that she met with Mr Reardon and Ms Brown prior to sending her application and that Mr Reardon made recommendations around how to make relevant declarations.
 - Ms West advised that she did not interview any candidates for the STIC to the Americas position that were short-listed by NGS Global.¹¹⁹

STIC to the Americas recruitment: round two

- 2.39** Following the change of Government policy in converting the STIC positions from public sector appointments to ministerial appointments, Investment NSW closed the recruitment then underway and began a second round of recruitment for the STIC to the Americas position.¹²⁰ It is pertinent to recap that Mr Barilaro announced his retirement from Parliament on 3 October 2021, and that the incoming portfolio Minister for Trade from 5 October 2021 was the Hon Stuart Ayres MP.
- 2.40** This section outlines the key issues regarding the STIC to the Americas recruitment: round two, including the interactions between Ms Brown and Minister Ayres in relation to the recruitment, issues raised regarding the selection panel reporting process and the treatment of another preferred candidate.
- 2.41** The selection panel for the second recruitment was comprised of Ms Brown (panel chair), Ms Kylie Bell, Acting Managing Director, Investment NSW, the Hon. Warwick Smith AO and Ms Kathrina Lo, Public Service Commissioner, Public Service Commission. Mr Smith and Ms Lo were the independent panel members and Dr Broadbent was also present in the interviews as scribe.¹²¹

¹¹⁶ Evidence, Ms West, 11 July 2022, p 2. See also: Evidence, Ms Brown, 3 August 2022, p 14.

¹¹⁷ Evidence, Ms Brown, 3 August 2022, p 14.

¹¹⁸ Answers to written questions, Ms West, 13 September 2022, p 5.

¹¹⁹ Answers to written questions, Ms West, 13 September 2022, pp 5-6.

¹²⁰ Evidence, Ms Brown, 3 August 2022, p 2.

¹²¹ Evidence, Ms Brown, 3 August 2022, p 8; Evidence, Ms Kylie Bell, Acting Managing Director, Investment NSW, DEIT, 5 August 2022, p 35; Evidence, Ms Kathrina Lo, Public Service

- 2.42 Dr Broadbent advised that the recruitment process for the second round followed a similar process as the first. Candidates who had previously applied were able to apply again – and in fact one of the candidates who were shortlisted and placed in the talent pool – Mr Rob Fitzpatrick, did apply again.¹²² Mr Fitzpatrick was subsequently shortlisted again by the panel in the second round, however the panel chair determined that he did not need to be re-interviewed.¹²³
- 2.43 After interviews the selection panel determined that there were two strong candidates who should be progressed to the next stage – Mr John Barilaro and Ms Kimberley Cole. NGS Global was tasked with completing referee checks and drafting up the selection report.¹²⁴
- 2.44 The rest of this section of the chapter canvasses issues that arose from this recruitment process, including 'input' from Minister Ayres, shortlisted candidates not being interviewed and variations to the panel report.

'Intersection points' between Minister Ayres & Ms Brown regarding the STIC appointment process

- 2.45 A topic of interest through the course of the inquiry was whether any Minister applied pressure to secure the appointment of Mr Barilaro to the STIC Americas position. This was strenuously denied by all stakeholders, but it is worth exploring the 'intersection points' between Ms Brown and her responsible Minister – Hon Stuart Ayres MP, Minister for Trade. Ms Brown explained that rolling out the Global NSW network was a priority for the Minister and he was therefore interested in the updates of the STIC positions.¹²⁵
- 2.46 Ms Brown explained that given the STIC positions were possibly going to become ministerial appointments, it was prudent to touch base with Minister Ayres regarding updates to the recruitment process. Ms Brown gave evidence to the committee explaining her interactions with Minister Ayres regarding the STIC positions. Ms Brown stated:

As is customary with high-profile, external-facing, Band 3 senior executive roles, informal opinions of the responsible Minister are often sought. For the [STICs], from 27 September 2021 onwards I thought it prudent to have a degree of confidence that appointees would be capable of transitioning into a ministerial appointment regime if the change was eventually implemented. Any conversations I had with Minister Ayres were therefore, to a degree, influential on my decision. But, in my view, it did not

Commissioner, PSC, 5 August 2022, p 77; Evidence, the Hon Warwick Smith AO, Independent Panel Member, 18 August 2022, p 32; and Evidence, Dr Marianne Broadbent, Managing Partner, NGS Global, 18 August 2022, p 2.

¹²² Tabled document, *Submission to the Public Accountability Committee inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, p 3

¹²³ Tabled document, *Submission to the Public Accountability Committee inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, p 3.

¹²⁴ Evidence, Ms Brown, 3 August 2022, p 23; Evidence, Ms Bell, 5 August 2022, p 56; Evidence, Ms Lo, 5 August 2022, pp 87-86; Evidence, Dr Broadbent, 18 August 2022, pp 13-14; Evidence, Mr Smith, 18 August 2022, p 46.

¹²⁵ Evidence, Ms Brown, 3 August 2022, pp 3, 6-7.

amount to undue influence because at all times I felt that the decision was ultimately mine to make.¹²⁶

2.47 However, when asked about her views on Minister Ayres' involvement in the STICs process, Ms Brown considered that the Minister was not 'arm's length from [the] process [and that] there were multiple intersection points throughout'.¹²⁷ These points are discussed in greater detail below.

2.48 Ms Brown also acknowledged that she initiated a lot of the intersection points because she felt the need to keep checking the Minister 'partly because of the grey area ... around public service or ministerial [appointments] ... [and that she] wanted to make sure he was comfortable'.¹²⁸

Public sector appointments or ministerial appointments: lack of clarity regarding which appointment process to follow

2.49 The first 'intersection point' was regarding the lack of clarity of the STIC appointment process. Ms Brown explained that whilst government policy was for the STIC positions to be ministerial appointments, legislation to put this into effect had not been drafted, and hence the recruitment process was via the GSE Act, with the knowledge that this could be transitioned to a ministerial appointment in the future. Ms Brown explained the difficulties that this produced:

I was clear that at that moment in time they were [GSE] Act appointments because there had never been an instrument to change them, I knew that I was the decision-maker. But there are two layers to that. There's the fact that they could transition at some point. ... but that creates an uncertainty, despite the fact that I'm the decision-maker. You don't want to then make a decision that will then be reversed in, you know, five minutes or a long time and cost taxpayers' money, but it also confused my organisation because we're a big organisation and so these messages had to cascade accurately through the organisation—very hard to do. ... So that's why there was a lot of confusion.¹²⁹

2.50 Indeed, Ms Brown confirmed that the Government did not revert the policy from ministerial appointments to public sector appointments. She described the situation as 'strange' where there was no legislation drafted in relation to the change of Government policy therefore the GSE Act process would be followed but at the same time the process could change at any time to ministerial appointments.¹³⁰

2.51 Ms Brown also added that she heard that Minister Ayres advised the Strategy Committee of Cabinet, a sub-committee of Cabinet, that the implementation for the STIC positions to be ministerial appointments would be delayed.¹³¹

2.52 According to the Government's inquiry into the STIC to the Americas process (also known as the Graeme Head inquiry), Minister Ayres advised that he notified StratCo about

¹²⁶ Evidence, Ms Brown, 3 August 2022, p 2.

¹²⁷ Evidence, Ms Brown, 3 August 2022, pp 30-31.

¹²⁸ Evidence, Ms Brown, 3 August 2022, p 31.

¹²⁹ Evidence, Ms Brown, 3 August 2022, p 8.

¹³⁰ Evidence, Ms Brown, 3 August 2022, p 8.

¹³¹ Evidence, Ms Brown, 3 August 2022, p 41.

'recommencing the old process [public sector appointments]'.¹³² However, the Graeme Head inquiry also noted that:

Having reviewed the record of the 8 November [Stratco] meeting, it is not at all clear to me that Cabinet has formally reconsidered the policy it made on 27 September. There is no formal submission to reconsider the policy, nor is there a decision that formally overturns it.¹³³

2.53 During the hearing, Ms Brown stressed that it was her preference for this decision to be written down and so that she could 'know that [she] had the right delegated authority and [make] the right decisions in the right circumstances'.¹³⁴

2.54 The Graeme Head inquiry will be discussed later in this chapter.

Minister's views on the pending STIC positions following the change of Government policy

2.55 The second intersection point was the views Minister Ayres put forward regarding the status of the other STIC positions following the change of Government policy.

2.56 The committee heard that the preferred candidates for STIC ASEAN and India and Middle East were 'grandfathered' or 'transitioned into the new regime', without reopening the recruitment process.¹³⁵

2.57 When asked about the first meeting between Minister Ayres and Ms Brown following the change of Government policy regarding the STIC appointments, Ms Brown told the committee that the Minister was impressed with the preferred candidates for STIC ASEAN and India and the Middle East and 'would be minded [moving] them into ministerial appointments'.¹³⁶

2.58 In relation to the STIC to the Americas position, Ms Brown told the committee that she advised the Minister that due to the ongoing tax issues regarding the position, Investment NSW would be unable to 'put a contract on the table for anyone just yet'. Therefore, Ms Brown and the Minister concluded that the recruitment process should be closed and reopened at another time.¹³⁷

2.59 However, when asked if the Minister expressed a certain view about Ms West, Ms Brown told the committee that when she asked the Minister about Ms West he advised that 'she wouldn't be suitable' and therefore this meant that the Minister would 'not have her confidence' as the STIC to the Americas.¹³⁸

¹³² Department of Premier and Cabinet (DPC), *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 32.

¹³³ DPC, *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 32.

¹³⁴ Evidence, Ms Brown, 3 August 2022, p 41.

¹³⁵ Evidence, Ms Brown, 3 August 2022, p 4. See also: Tabled document, *Email from Nghia Nguyen-Le to Kylie Bell and Chris Carr, titled 'Minister update on International Network roll out – next steps' dated 12 October 2021*, 3 August 2022, p 1.

¹³⁶ Evidence, Ms Brown, 3 August 2022, p 4.

¹³⁷ Evidence, Ms Brown, 3 August 2022, p 4, 6.

¹³⁸ Evidence, Ms Brown, 3 August 2022, pp 29-30.

- 2.60** Ms Brown told the committee that the tax issues for the STIC to the Americas position was resolved by 8 December 2021 and that on 17 December 2021, the STIC to the Americas position was readvertised.¹³⁹

Minister involvement regarding the shortlisting of candidates

- 2.61** Another intersection point between the Minister and Ms Brown was when Ms Brown showed the shortlist and longlist of candidates for the STIC to the Americas position to Minister Ayres.¹⁴⁰ Ms Brown explained:

I believe I showed him on my phone. I said, "This is who we are considering interviewing," or, "This is who has made the short list." Next to it was the long list, and he said, "What about that person?" And I said, "Yes, I think they're really good," because I had some exposure to them in a prior role, "but the circumstances under which they left their last job was a little bit controversial, so I assume that's not where we want to be." And he said, "I don't see why not." If it wasn't for the controversy around them leaving their previous appointment, I would've put them on. I had assumed that would deter us from interviewing them, but he disagreed.¹⁴¹

- 2.62** However, Ms Brown maintained that it was her decision to put a candidate in the shortlist, asserting that she was 'capable of owning my decisions. It was my decision to put that person on the short list, but I wanted his opinion ... he did not direct me'.¹⁴²

Informal meeting with the Minister

- 2.63** As previously noted, following interviews the recruitment selection panel ranked two top candidates - Mr Barilaro and Ms Cole.¹⁴³ Ms Brown advised that each candidate brought different skill sets to the role, and that because Ms Cole did not have a lot of experience with dealing with Government, she organised an informal interview between her and Minister Ayres.¹⁴⁴ Other panel members were not informed of this meeting by Ms Brown.

- 2.64** Ms Brown advised the committee that she felt that the outcome of the meeting was 'disappointing and that the person would not have the confidence of the Minister'.¹⁴⁵ Hence Ms Cole was no longer considered a suitable candidate and was advised that she was unsuccessful in getting the role. This meant that there was only one candidate left in the recruitment process – Mr Barilaro.¹⁴⁶ As explained in the next section, Ms Brown 'sense checked' Minister Ayres about the suitability of appointing Mr Barilaro.

¹³⁹ Evidence, Ms Brown, 29 June 2022, pp 20, 29.

¹⁴⁰ Evidence, Ms Brown, 3 August 2022, pp 20-21.

¹⁴¹ Evidence, Ms Brown, 3 August 2022, p 21

¹⁴² Evidence, Ms Brown, 3 August 2022, pp 21-22.

¹⁴³ Evidence, Ms Brown, 29 June 2022, pp 10-11, 23. See also: Evidence, Ms Brown, 3 August 2022, p 23; Evidence, Ms Bell, 5 August 2022, p 56; Evidence, Ms Lo, 5 August 2022, pp 87-86; Evidence, Dr Broadbent, 18 August 2022, pp 13-14; Evidence, Mr Smith, 18 August 2022, p 46.

¹⁴⁴ Evidence, Ms Brown, 3 August 2022, p 23.

¹⁴⁵ Evidence, Ms Brown, 3 August 2022, p 23.

¹⁴⁶ Evidence, Ms Brown, 3 August 2022, p 23.

Updates to Minister Ayres about Mr Barilaro applying for the STIC to the Americas position

- 2.65** Another 'intersection' point between Ms Brown and Minister Ayres was regarding the multiple updates to the Minister about Mr Barilaro's status as an applicant for the STIC to the Americas position.¹⁴⁷ The committee received evidence of the following interactions:
- Minister Ayres tells Ms Brown about Mr Barilaro's interest in the role,¹⁴⁸
 - Ms Brown advised Minister Ayres that Mr Barilaro applied for the STIC to the Americas role and Minister Ayres expressed positive comments about Mr Barilaro.¹⁴⁹ Ms Brown acknowledged that Minister Ayres' positive comments 'carried some weight' as part of the recruitment process,¹⁵⁰
 - Ms Brown advised Minister Ayres about the top two preferred candidates for the STIC to the Americas role, one of which was Mr Barilaro, following the selection panel interviews. During this conversation, Ms Brown told the committee that she 'sense checked' with Minister Ayres about potentially appointing Mr Barilaro as STIC to the Americas and 'wanted to test whether there was anything [the Minister] would tell [Ms Brown] to dissuade [her] from making such a decision',¹⁵¹
 - Ms Brown advised Minister Ayres that Mr Barilaro was appointed as STIC to the Americas, prior to Mr Barilaro signing the contract.¹⁵²
- 2.66** Ms Brown advised the committee that Minister Ayres had informed his colleagues in Cabinet about Mr Barilaro's appointment.¹⁵³

Issues identified in the selection panel reporting process

- 2.67** Another key issue identified in the second round of the STIC to the Americas recruitment was regarding the selection panel reporting process. This section outlines the issues identified in the circumstances regarding this process.

Issues with various versions of the selection panel reports

- 2.68** The committee received evidence that there were three versions of the selection panel report. The first, drafted by Dr Broadbent of NGS Global, was sent only to Ms Brown and Ms Bell on 25 March 2022.¹⁵⁴ In this report, Ms Cole was ranked above Mr Barilaro.¹⁵⁵ However, Ms Brown

¹⁴⁷ Evidence, Ms Brown, 3 August 2022, p 30.

¹⁴⁸ Evidence, Ms Brown, 3 August 2022, pp 17-18, 30.

¹⁴⁹ Evidence, Ms Brown, 3 August 2022, pp 18-19, 30.

¹⁵⁰ Evidence, Ms Brown, 3 August 2022, p 19.

¹⁵¹ Evidence, Ms Brown, 3 August 2022, p 23.

¹⁵² Evidence, Ms Brown, 3 August 2022, p 31.

¹⁵³ Evidence, Ms Brown, 3 August 2022, p 39.

¹⁵⁴ Tabled document, , *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 279-284. See also: Evidence, Ms Lo, 5 August 2022, p 81; Evidence, Mr Smith, 18 August 2022, p 45.

¹⁵⁵ Evidence, Ms Brown, 3 August 2022, p 48; Tabled document, , *Tabled document*, 3 August 2022, p 279.

asserted that this draft did not reflect the panel discussions following the interviews. Ms Brown stressed that:

in my view, it did not reflect the content of the discussions accurately, and the ratings that NGS had included in the report did not actually reflect the capability of the candidates in light of the overseas Trade employee role....¹⁵⁶

2.69 In support of this view, other panel members gave evidence to the committee that the first draft selection panel report was 'incorrect'.¹⁵⁷ For example, Ms Bell told the committee that: 'we had agreed at that meeting that we were completely torn between the two candidates. That's why we went to get reference checks on both of them'.¹⁵⁸

2.70 When asked about her understanding of the panel discussions that day, Dr Broadbent gave evidence to the committee that the first selection panel report was her recollections at the time but that 'there are other recollections on that day'.¹⁵⁹

I would think it's fair to say they were both considered strong candidates at the time. ... Other panel members had a different recollection, as it turned out, and I guess I was doing the best to assess what I believed to be the case at the time. I may have got it wrong, but I did my best to assess it and with the added feature that Ms Cole was going to meet a Minister. And so preparing a draft report is exactly what—one way to do that and then that is for discussion and that is for review of the chair. It is not a final document. First drafts are exactly that—they're first drafts. Then you often have a second draft and then a final. It's not that unusual.¹⁶⁰

2.71 Furthermore, the committee heard from the other selection panel members that it is usual practice for the recruitment consultant (in this case NGS Global) to draft a selection panel report and provide the first draft to the panel chair for review before then submitting the report to other panel members for their comment and/or endorsement.¹⁶¹

2.72 However, the committee received evidence of Ms Brown responding to Dr Broadbent's email containing the first draft selection panel report. The email did not indicate any of her concerns regarding the inaccuracies with the selection panel report.¹⁶² Indeed, Dr Broadbent informed the committee that she never received any dissatisfaction with the work of NGS Global from Investment NSW regarding any of the STICs recruitment processes.¹⁶³

¹⁵⁶ Evidence, Ms Brown, 3 August 2022, p 65.

¹⁵⁷ Evidence, Ms Bell, 5 August 2022, p56, Evidence, Ms Lo, 5 August 2022, p 82.

¹⁵⁸ Evidence, Ms Bell, 5 August 2022, p 56.

¹⁵⁹ Evidence, Dr Broadbent, 18 August 2022, p 14.

¹⁶⁰ Evidence, Dr Broadbent, 18 August 2022, p 14. See also Tabled document, Dr. Marianne Broadbent, *Submission to the Public Accountability inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, , pp 3-7.

¹⁶¹ Evidence, Ms Lo, 5 August 2022, p 85. See also: Evidence, Dr Broadbent, 18 August 2022, p 2.

¹⁶² Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'* 3 August 2022, pp 281-284.

¹⁶³ Evidence, Dr Broadbent, 18 August 2022, p 3.

- 2.73** The second selection panel report was drafted by Dr Broadbent and again was only sent to Ms Brown and Ms Bell on 28 May 2022.¹⁶⁴ The selection panel report ranked Mr Barilaro as the preferred candidate, noting that Ms Cole was now ranked second.¹⁶⁵
- 2.74** Dr Broadbent told the committee that the second draft of the selection panel report was written following a conversation with Ms Brown who advised that Ms Cole's meeting with the Minister 'hadn't gone well'.¹⁶⁶ Dr Broadbent was also asked to let Ms Cole know that she was not appointable and was not successful in the STIC to the Americas recruitment.¹⁶⁷
- 2.75** However, Ms Brown denied that Ms Cole's informal meeting with the Minister (or indeed informal references supporting Mr Barilaro) were factors influencing the updates to the selection panel report. Ms Brown asserted that:
- I can wholeheartedly confirm that they were not because I would never ask panel co-members to sign a report that factored in conversations that they were not part of. The formal references for Mr Barilaro strengthened our collective view that he could succeed in the job and were factored into the report. The formal references for the female candidate also strengthened our view that while she had an excellent reputation in Asia, this does not by extension mean she would be successful in the US, and this was factored into the report. Whilst it would have been prudent for me to inform the other panel members of my informal due diligence, which did influence my decision to appoint Mr Barilaro, the panel report did not factor in these conversations and I did not mislead the other panel members by asking them to sign the report in that form.¹⁶⁸
- 2.76** The third and final version of the selection panel report, which recommended Mr Barilaro as the successful candidate, was sent to all panel members on 15 June 2022.¹⁶⁹ According to Ms Brown, the final selection panel report was a slightly updated version of the second draft.¹⁷⁰
- 2.77** The committee heard that Mr Barilaro signed his contract on 9 June 2022, which was six days before the final selection panel report was sent to the independent panel members Mr Smith and Ms Lo.¹⁷¹ Dr Broadbent told the committee that she was asked to follow up with the other panel members 'with a rush to "please sign it"'.¹⁷²

¹⁶⁴ Evidence, Dr Broadbent, 18 August 2022, p 15; Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 288-289

¹⁶⁵ Evidence, Ms Brown, 3 August 2022, pp 60-61, 64; Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 288-289.

¹⁶⁶ Evidence, Dr Broadbent, 18 August 2022, pp 14-15.

¹⁶⁷ Evidence, Dr Broadbent, 18 August 2022, pp 14.

¹⁶⁸ Evidence, Ms Amy Brown, former Secretary, DEIT and CEO, Investment NSW, 8 August 2022, pp 63-64.

¹⁶⁹ Evidence, Ms Brown, 3 August 2022, p 65; Evidence, Ms Lo, 5 August 2022, pp 79-80. See also: Tabled documents, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 306-307.

¹⁷⁰ Evidence, Ms Brown, 3 August 2022, p 64. See also: Evidence, Dr Broadbent, 18 August 2022, p 15.

¹⁷¹ Evidence, Ms Brown, 3 August 2022, p 63; Evidence, Mr John Barilaro, former Deputy Premier of New South Wales, 8 August 2022, p 19. See also: Tabled documents, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, *Tender bundle*, 3 August 2022, pp 306-307.

¹⁷² Evidence, Dr Broadbent, 18 August 2022, p 15. See also: Evidence, Mr Smith, 18 August 2022, p 33.

2.78 Ms Brown acknowledged that it was an error to offer Mr Barilaro the STIC to the Americas position and commence contract negotiations prior to the selection panel report being signed by all panel members.¹⁷³ Ms Brown told the committee that:

My decision was based on a discussion I had with Commissioner Lo prior to her commencing leave, where we agreed that Mr Barilaro was the first-ranked candidate; the fact she was not returning from leave until 6 June; and the pressure I was under to finalise contract negotiations so that the appointment could be announced by 4.30 p.m. on Friday 17 June. But as Commissioner Lo and Mr Smith had not seen the contents of the final panel report, I should have resisted such pressure and waited. I can confirm that with respect to the second recruitment process, I did my best under trying circumstances. The way these roles were set up—as public service appointments but with a high degree of ministerial interest—made it difficult to run an optimal process. While there were flaws in the process, I can confirm the process was in my view fair and that the most suitable candidate in that process was offered the role.¹⁷⁴

Change of ranking of preferred candidate Mr Rob Fitzpatrick

2.79 The committee heard that there was another candidate, Mr Rob Fitzpatrick who was listed as the second ranked candidate after Ms West in the STIC to the Americas recruitment: round one.¹⁷⁵ Ms Brown told the committee that Mr Fitzpatrick reapplied for the STIC to the Americas recruitment: round two but was not reinterviewed.¹⁷⁶

2.80 Ms Brown advised that while it was intended that Mr Fitzpatrick would be placed in a talent pool after the first recruitment, he was never put in one as the 'process was ceased' following the change of Government policy.¹⁷⁷

2.81 Furthermore, Ms Brown advised that she determined 'he was not suitable for the role' and maintained that by the end of the STIC to the Americas recruitment: round one, there were no suitable candidates for the position.¹⁷⁸

2.82 However, independent panel members Ms Lo and Mr Smith, as well as Dr Broadbent, raised concerns with the treatment of Mr Fitzpatrick as part of STIC to the Americas recruitment process round two.¹⁷⁹

2.83 Ms Lo gave evidence to the committee that Mr Fitzpatrick was not interviewed at the suggestion of the panel chair (Ms Brown) but that it was her 'expectation that the panel would rely on the first panel's assessment and that would simply be carried over and reflected in the second panel's report'.¹⁸⁰

¹⁷³ Evidence, Ms Brown, 8 August 2022, p 64.

¹⁷⁴ Evidence, Ms Brown, 8 August 2022, p 64.

¹⁷⁵ Evidence, Ms Lo, 5 August 2022, p 89. See also: Tabled document, the Hon Daniel Mookhey MLC, *Tabled document (Katrina Lo)*, 5 August 2022, pp 4-5

¹⁷⁶ Evidence, Ms Brown, 29 June 2022, p 31.

¹⁷⁷ Evidence, Ms Brown, 3 August 2022, p 2.

¹⁷⁸ Evidence, Ms Brown, 3 August 2022, p 2.

¹⁷⁹ Evidence, Ms Lo, 5 August 2022, p 70; Evidence, Dr Broadbent, 18 August 2022, p 29; Evidence, Mr Smith, 18 August 2022, pp 33-34.

¹⁸⁰ Evidence, Ms Lo, 5 August 2022, p 79.

2.84 However, the final selection panel report did not reflect Mr Fitzpatrick's ranking from his STIC to the Americas recruitment: round one selection panel report.¹⁸¹ When questioned about this inaccuracy, Ms Lo explained to the committee that:

I ... learnt that the commentary in relation to the candidate was edited to make it more negative. I had trusted that the first assessment would be carried over, and, with the benefit of hindsight, I should've asked to see the first panel's report, and I deeply regret not doing so and I've learnt a hard lesson there.¹⁸²

2.85 Mr Smith told the committee that as the independent panel member in the STIC to the Americas recruitment: round one, he considered Mr Fitzpatrick a strong candidate for the STIC to the Americas position. Furthermore, Mr Smith asserted that he only signed the final selection panel report: round two, based on the understanding that he was only considering the candidates that appeared for an interview, namely Mr Barilaro and Ms Cole.¹⁸³

2.86 Dr Broadbent also raised concerns about the treatment of Mr Fitzpatrick and the selection panel reporting process that took place. She told the committee that:

Mr Fitzpatrick should've been interviewed by the second selection committee because it was a different committee and a different process. Ms Brown decided not to do that. Secondly, then at the time of preparing the report, I asked about how Mr Fitzpatrick was to be treated and she advised he was not appointable. I asked about him being in the talent pool and she said, "No, he's not appointable." I did not have any basis for that, but I was asked to indicate that in the selection report.¹⁸⁴

2.87 In response to the issue regarding the treatment of Mr Fitzpatrick, Ms Brown asserted that she gave no instructions to NGS Global to change the ratings or commentary from the selection panel report in the STIC to the Americas recruitment: round one to the selection panel report in the STIC to the Americas recruitment: round two. Ms Brown told the committee that:

Whilst I reviewed the second panel report prior to signing it and noticed that this candidate had been included, I made an incorrect assumption that the ratings and commentary regarding him would be a straight copy and paste from the first report. Only in preparation for my parliamentary hearing in late June did I learn that the first report and the second report had significant discrepancies. I agree with Commissioner Lo that this is appalling. I gave no instructions to the external recruitment firm to change the ratings or commentary and assumed that the ratings and commentary had not changed. If it had been brought to my attention at any time prior to me signing it, I would not have signed the report in that form and would have insisted that the ratings and commentary be identical to the first report.¹⁸⁵

¹⁸¹ Evidence, Ms Lo, 5 August 2022, p 79. See also: Tabled document, the Hon Daniel Mookhey MLC, *Tabled document (Kathrina Lo)*, 5 August 2022, pp 4-5, 29-31.

¹⁸² Evidence, Ms Lo, 5 August 2022, p 79.

¹⁸³ Evidence, Mr Smith, 18 August 2022, p 34. See also, Tabled document, the Hon Daniel Mookhey MLC, *Documents labelled 'Tender bundle – W Smith'*, 18 August 2022, p 32.

¹⁸⁴ Evidence, Dr Broadbent, 18 August 2022, p 29. See also: Tabled document, *Submission to the Public Accountability inquiry into the Appointment of Mr John Barilaro as STIC to the Americas*, 18 August 2022, pp 3-4.

¹⁸⁵ Evidence, Ms Brown, 8 August 2022, p 63.

Other concerns raised from the independent selection panel members

2.88 The independent panel members for the second recruitment process also raised other concerns. In her opening statement, Ms Lo expressed the view that while no pressure was placed on her to achieve a particular outcome, she would not have endorsed the final selection report if she knew about the issues from the STIC to the Americas recruitment process that have been identified as a result of this inquiry.¹⁸⁶ Ms Lo declared that:

I have recently become aware, including through evidence given at hearings of this inquiry and through media reports, of various matters relating to this recruitment process. This includes the degree of ministerial involvement, including input into shortlisting and provision of an informal reference. I was not aware that informal references were sought for any candidate, nor was I aware that the Minister met with Ms Kimberley Cole. I have also recently become aware that the treatment of the third-ranked candidate [Mr Fitzpatrick] in the report did not accord with what I believed would occur. Had I known on 15 June what I know now, I would not have endorsed the report.¹⁸⁷

2.89 In support of this view, Mr Smith also told the committee that he '100 percent agrees with [Ms Lo]' and he too would not have signed the final selection panel if he knew about the issues identified in the STIC to the Americas recruitment process as a result of this inquiry.¹⁸⁸

2.90 Mr Smith expressed the view that he and Ms Lo were both 'bypassed' and that 'he was not very happy with it'.¹⁸⁹ During the hearing, Mr Smith elaborated on his views about the process:

having been through all the other processes ... when you're thinking they would come back, and then to get a note one day that says, "Please sign here", nearly two months after you had had the interview, anyway, it seemed to me to be used or being taken for granted.¹⁹⁰

2.91 Furthermore, Ms Lo also emphasised that her role in the selection panel was an independent panel member and not as a probity advisor. She told the committee that:

It would be a conflict for a person to be both a panel member and the panel's probity adviser. Every panel member must have regard to probity and fulfil their responsibilities. ... As Public Service Commissioner, I should not be viewed as cover for a recruitment process or as a way for other panel members or the hiring agency to avoid accountability.¹⁹¹

2.92 Despite her concerns with the second process, Ms Lo when asked by the committee during her evidence, if she believed Mr Barilaro would have been successful in the STIC to the Americas role, had he taken up the position, she told the committee '... Based on what I had seen to date, by the time I was asked to sign the report, I would say yes.'¹⁹²

¹⁸⁶ Evidence, Ms Lo, 5 August 2022, p 77.

¹⁸⁷ Evidence, Ms Lo, 5 August 2022, p 77.

¹⁸⁸ Evidence, Mr Smith, 18 August 2022, p 34.

¹⁸⁹ Evidence, Mr Smith, 18 August 2022, p 33.

¹⁹⁰ Evidence, Mr Smith, 18 August 2022, p 33.

¹⁹¹ Evidence, Ms Lo, 5 August 2022, p 77.

¹⁹² Evidence, Ms Lo, 5 August 2022, p 91.

Outcome of STIC to the Americas recruitment: round two

- 2.93** As outlined in Chapter 1, following the STIC to the Americas recruitment: round two, Mr John Barilaro was appointed as STIC to the Americas.
- 2.94** Ms Brown explained that, following the meeting between Ms Cole and the Minister and after reflecting on Mr Barilaro's formal reference checks with former Premier Barry O'Farrell, former Ambassador to the US Arthur Sinodinos and former Regional NSW Secretary Gary Barnes and individual discussions with the selection panel, Mr Barilaro 'would do a better job' as STIC to the Americas.¹⁹³
- 2.95** Ms Brown outlined the key factors that supported Mr Barilaro's claim to the position:
- [H]is strong knowledge of New South Wales industry strengths and capabilities and having a strong network within Government, industry and business, and being able to use that network, and also understanding what the potential is in terms of New South Wales' competitive advantages and how we can leverage them into the US. Mr Barilaro showed superior knowledge of that and we, as the panel, had more confidence that he would be able to get outcomes in that market.¹⁹⁴
- 2.96** In addition, the independent panel members, Mr Smith and Ms Lo also supported the merit of Mr Barilaro's experience for the STIC to the Americas position and that based on his interview, Mr Barilaro performed well.¹⁹⁵

Mr John Barilaro's response to the inquiry

- 2.97** As part of the inquiry, Mr Barilaro gave evidence to the committee about the many issues raised regarding the STIC to the Americas recruitment process. This section discusses the key issues in relation to the questions raised around his time as Minister for Trade regarding the STIC appointment process and then as an applicant for the STIC to the Americas recruitment: round two.
- 2.98** Mr Barilaro strongly denied any suggestion of his involvement in the creation of the STIC to the Americas position, changing the appointment process for his benefit or receiving any 'special treatment' as an applicant in the STIC to the Americas recruitment process. During the hearing, Mr Barilaro declared that:

Let me make this clear: I applied for a public service job as a private citizen. Nothing excluded me in doing so. I followed the exact same process that was afforded to others. I went through several interviews, psychometric testing and a police check. I was offered a job. I accepted the job. I then withdrew from this job. From that moment, I've endured what can only be described as a personal hell—unfair and unjust.¹⁹⁶

¹⁹³ Evidence, Ms Brown, 3 August 2022, pp 13, 23.

¹⁹⁴ Evidence, Ms Brown, 29 June 2022, p 31.

¹⁹⁵ Evidence, Ms Lo, 5 August 2022, p 91; Evidence, Mr Smith, 18 August 2022, p 49.

¹⁹⁶ Evidence, Mr John Barilaro, former Deputy Premier, 8 August 2022, p 2.

Events in relation the STIC to the Americas recruitment: round one as Minister for Trade

- 2.99** This section will outline Mr Barilaro's response regarding the key issues that have emerged from the inquiry during his time as Minister for Trade, in which he was the responsible Minister for Investment NSW and the changes to the STIC appointment process.

Change of the STIC appointment process

- 2.100** Mr Barilaro confirmed that the discussions about changing the STIC appointment process began in June 2021. However, the COVID Delta wave occurred at the same time, where according to Mr Barilaro, the priorities for the Government changed.¹⁹⁷
- 2.101** By September 2021, Mr Barilaro acknowledged that the Government leadership team had further discussions about the STIC appointment process.¹⁹⁸ Mr Barilaro also confirmed that during this time, he asked Mr Brayford to get advice from Investment NSW about how to make the STIC positions into statutory appointments.¹⁹⁹
- 2.102** During the hearing, Mr Barilaro explained to the committee that the reasons for changing the appointment process came about from discussions between Ministers and the Government leadership team to elevate the STIC positions similar to ambassadorial roles.²⁰⁰ Mr Barilaro told the committee that:

We [Ministers] wanted to attract a different calibre of candidate. We wanted to elevate the status of those trade commissioner roles to ambassadorial—a higher level—as we started to see clearly that we were in a very competitive environment, especially against Victoria and Queensland, who have been beating us to the punch with trade commissioners, especially Victoria, who have got a large network. It was an idea that had been around for months and, eventually, a Cabinet submission that was supported by all Cabinet members bar one.²⁰¹

- 2.103** When asked about why there was such urgency for the cabinet briefing to be considered, Mr Barilaro told the committee that he was 'pleasantly surprised' that the cabinet submission was considered quickly.²⁰² Mr Barilaro responded that:

Everything's ASAP. I don't sit back. I'm a Minister that just gets on with the job ... I was pleasantly surprised that the department was able to turn around the Cabinet submission so quickly. Sometimes, if the agendas are light, you can get things onto the agenda quickly. As I said, the Premier has to sign off on this getting onto the Cabinet agenda. So, by luck or chance, this particular [cabinet submission] got onto the agenda and approved by the Cabinet.²⁰³

¹⁹⁷ Evidence, Mr Barilaro, 8 August 2022, pp 10-11.

¹⁹⁸ Evidence, Mr Barilaro, 8 August 2022, pp 10-11.

¹⁹⁹ Evidence, Mr Barilaro, 8 August 2022, pp 10-11.

²⁰⁰ Evidence, Mr Barilaro, 8 August 2022, pp 11-13.

²⁰¹ Evidence, Mr Barilaro, 8 August 2022, p 13.

²⁰² Evidence, Mr Barilaro, 8 August 2022, p 11.

²⁰³ Evidence, Mr Barilaro, 8 August 2022, p 11.

- 2.104** Furthermore, Mr Barilaro objected to the view that the change of appointment process would have benefitted him. Mr Barilaro argued that:

If [the Government] continued on with the ministerial appointment or the statutory appointments ... this still had to go through the Parliament. There was no guarantee. I recall even in the Cabinet submission and the debate in Cabinet the issue was, "Could this actually get through Parliament?" ... But the appointment, it didn't benefit me that it became a public service appointment, because what you are saying is somehow I would have been able to influence then the Minister to influence apolitical public servants—not one, not two, not three, not four, but half a dozen and an external recruiter. I mean, that's ludicrous. Absolutely not. I applied for a job, fair and square, and went through a process and was offered a job. That's what I did.²⁰⁴

Knowledge of the outcome of STIC to the Americas: round one

- 2.105** When asked about his knowledge about the outcome of STIC to the Americas: round one, Mr Barilaro denied any knowledge of Ms West as the preferred candidate. Although, Mr Barilaro acknowledged that the change of Government policy 'clashed' with timing of the outcome of the STIC to the Americas recruitment: round one.²⁰⁵
- 2.106** Furthermore, Mr Barilaro told the committee that he did not direct any public servants during his time as Minister about rescinding the offer to Ms West.²⁰⁶ The committee also heard that Investment NSW confirmed that they did not have any direct interaction with Mr Barilaro regarding the change of the STIC appointment process.²⁰⁷
- 2.107** However, as noted in paragraph 2.6, Mr Barilaro signed the 11 August 2021 briefing noting that the 'preferred candidate [Ms West] has been identified, interviewed and endorsed by the selection panel'. The committee also received evidence regarding emails from Mr Brayford and Ms Brown acknowledging that Mr Barilaro noted the briefing.²⁰⁸
- 2.108** In response to questions about the signed briefing, Mr Barilaro told the committee that he did not recall seeing the briefing and advised that the brief has a digital signature. Mr Barilaro responded that:

That brief has a digital signature on it. I don't recall actually seeing that brief myself. It is possible that I gave instruction to my staff to sign the brief on my behalf. But that has a digital signature on it. It hasn't got my personal signature on it.²⁰⁹

- 2.109** When asked further by the committee about his office's practices about using his digital signature, Mr Barilaro maintained that he did not recall seeing the briefing 'but that it did not mean he did not give instructions to sign it'.²¹⁰

²⁰⁴ Evidence, Mr Barilaro, 8 August 2022, p 52.

²⁰⁵ Evidence, Mr Barilaro, 8 August 2022, pp 11-12 12.

²⁰⁶ Evidence, Mr Barilaro, 8 August 2022, p 22.

²⁰⁷ Evidence, Ms Brown, 29 June 2022, p 10; Evidence, Mr Carr, 19 July 2022, p 2.

²⁰⁸ Tabled document, *Documents relating to appointment of STIC – Americas, labelled 'Tender bundle'*, 3 August 2022, pp 267-268.

²⁰⁹ Evidence, Mr Barilaro, 8 August 2022, p 12.

²¹⁰ Evidence, Mr Barilaro, 8 August 2022, p 12.

Timing of resignation from Parliament and interest in the STIC to the Americas position

- 2.110 When questioned about the timing of his resignation and the change of Government policy to make the STIC roles ministerial appointments, Mr Barilaro objected to the suggestion that the timing of the cabinet submission prior to his resignation was pre-planned.²¹¹ Mr Barilaro told the committee that the cabinet submission was a 'business as usual' submission.²¹²
- 2.111 Mr Barilaro told the committee that he became interested in the position after the announcement of his resignation from Parliament in October 2021. Mr Barilaro also denied that he was offered the position if he left politics. Mr Barilaro told the committee that:

Late last year after I resigned and left as Deputy Premier and trade Minister. I was thinking about my future and one of those options, and an idea, was would I be interested in something like a trade role overseas, especially as it was a portfolio that I had actually been part of and something that I believed was beneficial to this State. So late last year I probably would have had my first inkling that this was something I'd like and would be interested in.²¹³

Events regarding the lead up to Mr Barilaro's application for the STIC to the Americas position

- 2.112 This section will outline Mr Barilaro's response regarding the key issues that have emerged from the inquiry after his resignation from Parliament and when he applied for the STIC to the Americas position.

Interactions with Ministers about the STIC to the Americas position

- 2.113 Mr Barilaro told the committee that he spoke to Minister Ayres and the Premier about the STIC to the Americas position after he resigned from Parliament.²¹⁴ In particular, Mr Barilaro acknowledged that he spoke to Minister Ayres about the process of applying for the position and told the committee that:

It's been already publicly noted that I reached out to Minister Ayres in early December in relation to what the process would be, and he sent me a copy the STIC [to the] Americas advertisement on 17 December, on the very same day that it was advertised in the AFR, which I saw it in the AFR, but he sent me that on that day, and I had a conversation previously in late November, when I thought about this role, in a passing comment with the Premier of New South Wales.²¹⁵

- 2.114 When asked about if he knew that the positions were vacant in November 2021, he advised that he did not know the status of the positions which was why he reached out to the then Minister Ayres.²¹⁶

²¹¹ Evidence, Mr Barilaro, 8 August 2022, pp 45-47.

²¹² Evidence, Mr Barilaro, 8 August 2022, p 46.

²¹³ Evidence, Mr Barilaro, 8 August 2022, p 2.

²¹⁴ Evidence, Mr Barilaro, 8 August 2022, pp 3-7

²¹⁵ Evidence, Mr Barilaro, 8 August 2022, p 4.

²¹⁶ Evidence, Mr Barilaro, 8 August 2022, p 4.

- 2.115** Additionally, Mr Barilaro also confirmed that he expressed his interest in the STIC Americas role in a conversation with Premier Dominic Perrottet in November 2021 and in late January or early February 2022 he saw the Premier in Martin Place and communicated that he had applied for the position.²¹⁷
- 2.116** Mr Barilaro objected to the view that his inquiries with Minister Ayres regarding the STIC positions would have caused a conflict of interest for the Minister and also the public servants involved in deciding the STIC to the Americas appointment.²¹⁸ In response to the committee's questions about his interactions with Minister Ayres, Mr Barilaro told the committee that:
- I also was looking at other options outside of politics at the time. I was looking at other options for employment so, no. It was a query in relation to that role and left it at that. It was that simple.²¹⁹
- 2.117** Furthermore, Mr Barilaro expressed that view he was 'surprised' when he learnt about the 'intersection' points between Ms Brown and Minister Ayres about the STIC to the Americas recruitment: round two. Mr Barilaro added that 'if I knew what I know now, I wish I never had applied.'²²⁰
- 2.118** Mr Barilaro withdrew from the STIC to the Americas position on 30 June 2022.²²¹

Requirements under the Ministerial code of conduct

- 2.119** As outlined in Chapter 1, Ministers of Parliament are required to follow the Ministerial Code of Conduct (the Code). The Code also outlines the requirements of a Minister when leaving office. Under the Code, a Minister must:

24 Offers of employment received after leaving office

(1) A Minister who, within 18 months after ceasing to hold office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Adviser.

(2) This clause does not apply to any offer of post-separation employment by the State of New South Wales or any agency representing the State.²²²

- 2.120** Mr Barilaro told the committee that his application for the STIC to the Americas position complied with the Code.²²³ Mr Barilaro told the committee that he sought the advice from the Parliamentary Ethics Advisor for other positions he was interested in after his resignation to

²¹⁷ Evidence, Mr Barilaro, 8 August 2022, pp 3, 8.

²¹⁸ Evidence, Mr Barilaro, 8 August 2022, pp 5, 52-53.

²¹⁹ Evidence, Mr Barilaro, 8 August 2022, p 5.

²²⁰ Evidence, Mr Barilaro, 8 August 2022, p 15.

²²¹ M. McGowan and P. Hannam, 'John Barilaro withdraws from New York trade role due to 'media attention', *The Guardian*, 30 June 2022. See also: Answers to questions on notice, Ms Brown, 25 July 2022, p 3.

²²² Part 5 (section 24) in Appendix NSW Ministerial Code of Conduct, Independent Commission Against Corruption Regulation 2017.

²²³ Evidence, Mr Barilaro, 8 August 2022, pp 23, 34.

Parliament, as required under the Code.²²⁴ However, Mr Barilaro maintained that as the STIC to the Americas position was a public sector job, the advice of the Parliamentary Ethics Advisor was not required as outlined in s.24 (2) of *the Ministerial Code of Conduct*.²²⁵

Government response

2.121 The committee sought a response from Mr Stuart Ayres MP, former Minister for Trade, regarding his role in the STIC to the Americas appointment process. At the time, Mr Ayres's office advised that he was on leave and would provide a response upon his return. However the committee has yet to receive a response.²²⁶

2.122 During a public interest debate in the Legislative Assembly, Mr Ayres, as Minister for Trade, argued against a motion calling for Mr Barilaro's appointment to be halted until this Committee reported, and instead put forward an amendment as follows:

(1) Notes the recruitment process for the Senior Trade and Investment Commissioner – Americas, was independent and at arm's length of executive government.

(2) Notes the recruitment for this role was conducted in accordance with the Government Sector Employment Act and Regulations.²²⁷

2.123 Mr Ayres then put forward arguments supporting his amendment. He also told the Legislative Assembly:

It is important to recognise that at the end of the first round of recruitment there was no suitable candidate identified.²²⁸

2.124 Similarly, the Premier Hon Dominic Perrottet MP told the Legislative Assembly:

I met with the Minister for Enterprise, Investment and Trade this morning and I was advised the following; here are the facts. The first recruitment process did not identify a suitable candidate. As such, a second recruitment process was undertaken. That process was independent and led by a third-party recruiter.

...

Further, I want to make it clear that it would not have been lawful for me as Premier to intervene in any step of the process.²²⁹

2.125 In response to the community interest generated with the appointment of Mr Barilaro, the Government announced two 'independent' inquiries in relation to the appointment process. These were:

²²⁴ Evidence, Mr Barilaro, 8 August 2022, p 34.

²²⁵ Evidence, Mr Barilaro, 8 August 2022, pp 23, 34.

²²⁶ Correspondence, Email from the Office of the Hon Stuart Ayres MP to the Secretariat, 18 July 2022.

²²⁷ *Hansard*, NSW Legislative Assembly, 22 June 2022, p 59.

²²⁸ *Hansard*, NSW Legislative Assembly, 22 June 2022, p 59.

²²⁹ *Hansard*, NSW Legislative Assembly, 22 June 2022, p 30.

- Department of Premier and Cabinet Inquiry: Appointment of STIC to the Americas (also known as the Graeme Head inquiry), dated 12 August 2022.²³⁰
- Inquiry regarding compliance with the Ministerial Code of Conduct, dated 7 September 2022.²³¹

2.126 This section outlines the key findings and recommendations of these inquiries.

Graeme Head inquiry

2.127 This inquiry was conducted under Section 83 of the GSE Act, whereby the Government appointed an external consultant, Mr Graeme Head AO, EY Port Jackson Partners to inquire into the STIC to the Americas appointment process.²³²

2.128 The focus of the Graeme Head inquiry was to examine whether the ethical framework, as set out in the GSE Act, regarding merit-based appointments and the ability of public servants to impartially serve the elected government of the day, was applied in relation to the STIC to the Americas appointment process.²³³

2.129 As such, the inquiry emphasised that it did not investigate findings in respects of ministerial conduct, rather it described interactions that occurred 'so that appropriate consideration of those questions can occur through a process properly empowered to do so'.²³⁴

2.130 Generally, the inquiry found that the STIC to the Americas appointment process did not meet the public's expectations regarding the process to have been conducted in a merit-based way and that the public servants impartially served the elected Government officials of the day.²³⁵

2.131 In addition, the inquiry highlighted that the attention from this issue 'has likely brought the integrity of the Public Service recruitment process into some disrepute'²³⁶ and that some people's experiences was part of the STIC to the Americas recruitment process has been 'sub-optimal' whereby as a consequence of the public interest in this process, information about their candidacy and other private information has been put in the public realm.²³⁷

Key conclusions

2.132 A summary of the key conclusions is outlined below:

- In both rounds of the STIC to the Americas recruitment processes, Investment NSW met the requirements of the GSE Act and GSE Regulations regarding the recruitment process.

²³⁰ DPC, *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022

²³¹ DPC, *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022.

²³² *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 11.

²³³ *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 3.

²³⁴ *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, pp 11-12.

²³⁵ *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 5.

²³⁶ *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 5.

²³⁷ *DPC Inquiry: Appointment of [STIC] to the Americas*, 12 August 2022, p 5.

However, the inquiry found that there were concerns on whether both processes took into account the *Code of Ethics and Conduct*.²³⁸

- In terms of the STIC to the Americas recruitment: round one, the inquiry found that there were concerns in relation to Ms Brown accepting a late application from Ms West who had access to information about other candidates as part of her normal course of duties. Although the inquiry did not make any findings about Ms West.²³⁹
- The inquiry also found that there were suitable candidates at the end of the first recruitment process. However, the inquiry found that Ms Brown believed that there were no suitable candidates at the time of briefing the Premier and Minister Ayres and did not intend to mislead. This belief is due to the change of Government policy and concern about Ms West's suitability for the role.²⁴⁰
- The impact of the change of Government policy regarding the STIC appointment process terminated any STIC appointments that were 'on foot at the time of the decision' and Ms Brown's ability to make any STIC appointments.²⁴¹ However, it was outside the terms of reference of the inquiry to 'examine the motivations and timing of for this decision'.²⁴²
- In terms of the STIC to the Americas recruitment: round two, there was no evidence that the Government overturned the appointment process from ministerial appointments back to public sector appointments.²⁴³ In addition, the inquiry found that Ms Brown could have 'done more to be absolutely certain about the status of the policy [but] there was genuine confusion on her part as to the policy status'.²⁴⁴
- In relation to the second recruitment process, the inquiry found that Ms Brown failed to disclose to the panel members her interactions with Minister Ayres regarding discussing the candidate shortlist, arranging an informal meeting between the Minister and Ms Cole, discussing Mr Barilaro's suitability for the role and initiating Mr Barilaro's contract negotiations prior to the panel signing the final selection panel report.²⁴⁵
- The inquiry also found that 'there was an apparent lack of due care and diligence in ensuring that the selection panel report properly reflected the considered view of the panel'. However, the inquiry did not make any adverse findings regarding any individuals from this issue.²⁴⁶

2.133 In addition, the Graeme Head inquiry also addressed whether or not the STIC to the Americas: round two process was 'arm's length' from Government. The report concluded that the STIC to the Americas: round two process did not establish 'a specific and transparent mechanism for

²³⁸ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, pp 6-7.

²³⁹ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, pp 24, 28.

²⁴⁰ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, pp 25-29.

²⁴¹ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 26,

²⁴² DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 7.

²⁴³ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 7.

²⁴⁴ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 7.

²⁴⁵ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 8.

²⁴⁶ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, p 8.

consulting the responsible minister at the appropriate point in the process' and therefore the process did not occur at arm's length from the then Minister.²⁴⁷

Key recommendations

2.134 A summary of the key recommendations from the inquiry were as follows:

- Consideration of the DPC Secretary to take appropriate action, if any, to take in respect of the conclusions regarding the conduct of Ms Brown as part of the STIC to the Americas recruitment process.
- Amendments to the GSE Act in particular:
 - including a specific reference that a Secretary or Head of Agency is not subject to the direction of a Minister in respect of any of their employer functions.
 - amending Section 10A of the GSE Regulations so that it applies the full GSE Rules-based process to the future selection of STICs
 - codifying the *Code of Ethics and Conduct* for the public service as part of the GSE Act.
- Amendment to the Ministerial Code of Conduct to ensure that lawful directions to a public servant exclude a minister from seeking to influence a Secretary or Agency Head in respect of their employer functions except through the provision of performance feedback in accordance with the relevant Public Service Commission policy or GSE Rules, or the provision of a formal reference where that is appropriate.
- Strengthening guidance on cabinet decisions to ensure that all Secretaries, Agency Heads and Executive level Band 3s understand how to clarify the standing decision of Government where there is doubt.²⁴⁸

Government response to the Graeme Head inquiry

2.135 In response to the Graeme Head inquiry, the Government announced that it would support all recommendations except for the proposed amendment to the Ministerial Code of Conduct.²⁴⁹ The Government considered that the current Code has sufficient provisions when it comes to Ministers from seeking to influence Secretaries in relation to their employer functions.²⁵⁰

2.136 In addition to the recommendations of the Graeme Head inquiry, the Government announced taking additional actions to 'further increase transparency'. These were:

- Making a change to the Ministerial Code of Conduct to prevent Ministers for a period of 18 months from accepting any offer of employment within a public sector agency that reported to them within the last two years of Ministerial office;
- Senior public servants who leave their employment to work in the private sector will have to seek ethics advice where that employment relates to their previous role; and

²⁴⁷ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, pp 44, 46-47.

²⁴⁸ DPC Inquiry: *Appointment of [STIC] to the Americas*, 12 August 2022, pp 8-10.

²⁴⁹ Media release, the Hon. Dominic Perrottet, The Premier of New South Wales, 'Response to Graeme Head Inquiry', 16 August 2022.

²⁵⁰ Media release, 'Response to Graeme Head Inquiry', 16 August 2022.

- All trade commissioner roles will be appointed through the GSE Act, consistent with the GSE processes outlined in the Graeme Head Review. They will not be statutory appointments.²⁵¹

- 2.137** Amendments to the GSE Act in response to the Graeme Head inquiry were subsequently assented to on 28 November 2022.
- 2.138** On 16 August 2022, Mr Coutts-Trotter, Secretary, Department of Premier and Cabinet, announced that following his review of the Graeme Head inquiry, Ms Brown will no longer hold office as Secretary of DEIT, 'in accordance with section 41 of the GSE Act'.²⁵²
- 2.139** Mr Ayres resigned from Cabinet on 3 August 2022 following a briefing received by the Premier from the Secretary of Department of Premier and Cabinet regarding the relevant sections in the Graeme Head report that raised concerns on whether Mr Ayres complied with the Ministerial Code of Conduct.²⁵³

Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct

- 2.140** The second inquiry was commissioned by the Governor on behalf of the Executive Council to appoint Mr Bruce McClintock SC to report on his 'legal opinion' on whether Mr Stuart Ayres MP 'complied with his obligations under the New South Wales Ministerial Code of Conduct in connection with the employment of the STIC to the Americas'.²⁵⁴
- 2.141** As part of the terms of reference of Mr McClintock's report, his review also considered the findings in the Graeme Head inquiry.²⁵⁵
- 2.142** In summary, Mr McClintock found that Mr Ayres complied with his obligations under the Ministerial Code of Conduct.²⁵⁶ More specifically, the report clarified that:

Mr Ayres did not give any direction relevantly to Ms Brown. Thus, there is no basis for any conclusion that Mr Ayres breached clause 6 of the Code by directing or requesting any person to act contrary to the law or any of the other matters referred to in that clause.

...

²⁵¹ Media release, 'Response to Graeme Head Inquiry', 16 August 2022.

²⁵² Media release, DPC, 'Media statement by NSW DPC Secretary', 19 September 2022.

²⁵³ Heath Parkes-Hupton and Jessica Kidd, New South Wales Trade Minister Stuart Ayres resigns after inquiry into John Barilaro appointment, *ABC News*, 3 August 2022.

²⁵⁴ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, p 1. See also: Letters Patent, the Hon. Margaret Beazley AC KC, Governor of New South Wales to Mr Bruce McClintock SC, 10 August 2022.

²⁵⁵ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, p 1.

²⁵⁶ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, p 1.

I can see no basis for the suggestion that Mr Ayres found himself in a conflict of interest in relation to the appointment of Mr Barilaro. It is true that Mr Ayres and Mr Barilaro, while from different parties, had been Cabinet and Parliamentary colleagues for some years, but there does not appear to have been any other relationship or connection between two men, any form of personal relationship, so far as I can determine. In my view, the mere fact of simultaneous membership of Cabinet and Parliament in the past (albeit recent past) does not have the "potential to influence a Minister in relation to the decision or action", as referred to in clause 7(3)(b) of the Ministerial Code of Conduct.²⁵⁷

- 2.143** In particular, Mr McClintock noted the concerns in the Graeme Head inquiry regarding the interactions between Ms Brown and Mr Ayres. Mr McClintock considered that the Graeme Head finding where the process was not at 'arm's length' does not establish any breach of the Ministerial Code of Conduct.²⁵⁸ In his report, Mr McClintock considered that:

accepting Mr Head's finding that the process was not "arm's length", does not establish any breach of the Ministerial Code of Conduct by Mr Ayres. There is nothing in that conclusion that suggests any request that a public servant act unlawfully (Code clause 5), any dishonesty on the part of Mr Ayres (Code clause 6) nor any conflict of interest on his part (Code clause 7).

...

whatever the meaning of the words "arms length" ... it seems to me, is that the ultimate decision be genuinely that of the public official in whom the law or the process adopted has vested the power to make the decision in question. That does not mean that that person cannot take account of the views of others. ... In this case, that public official was Ms Brown. There is nothing in Mr Head's Report, nor in the documents produced by Investment [NSW] or [DEIT] which I have inspected that suggests that the decision to appoint Mr Barilaro was not genuinely a decision made by Ms Brown, whatever the flaws in the process that led to that decision as identified by Mr Head.²⁵⁹

Committee comment

- 2.144** The committee finds that the recruitment process for the Senior Trade and Investment Commissioners has been significantly flawed.
- 2.145** It is clear to the committee that the first recruitment round for the STIC to the Americas position identified Ms Jenny West as the preferred candidate. The fact that the Premier and Ministers signed off on a briefing note to this effect is ample evidence to support this claim. The statement by Investment NSW, and indeed the Premier, that by the end of the first recruitment round no preferred candidate was identified is misleading and unfair to the initial successful candidate.

²⁵⁷ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, pp 7-8.

²⁵⁸ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, p 7.

²⁵⁹ *Report of Bruce McClintock SC – Compliance of former Minister Stuart Ayres with the Ministerial Code of Conduct*, 7 September 2022, p 7.

- 2.146** The committee accepts the evidence that Minister Ayres advised Ms Brown that Ms West was not suitable for the role of STIC to the Americas. With this ministerial intervention, contract negotiations with Ms West ceased, she was informed that she would no longer be offered the STIC to the Americas role, and that in fact her position as Deputy Secretary would be made redundant. The committee finds the treatment of Ms West by Investment NSW was unfair, unprofessional and sends a terrible message to others applying for these types of roles in the future. The committee acknowledges the tremendous stress that Ms West was under in cooperating with this inquiry, and thanks her not only for her assistance, but also for her contribution to the New South Wales public sector.
- 2.147** The committee finds the change of policy of the STIC appointments from GSE appointments to ministerial appointments was flawed. The committee was provided with no satisfactory explanation as to why the appointment process was changed, nor why it was done with what appeared to be urgency. It is important to note that the Cabinet decision to convert the STIC appointments was taken on 27 September 2021, the last Cabinet meeting attended by John Barilaro. At this time, NSW was still in lockdown because of the COVID pandemic. The committee notes that the government persisted with the change in policy even after receiving the advice of Investment NSW that it would create numerous difficulties. The ongoing ministerial interference in the process surrounding the Global NSW strategy was unhelpful and led to confusion in relation to the STIC positions throughout the public service.
- 2.148** The committee finds the second round recruitment process of the STIC to the Americas position flawed. It is highly improper that Ms Brown showed Minister Ayres the 'short list' and 'long list' of candidates, and sought comment from the Minister about the candidates. It was improper for Mr Ayres to discuss the position with Mr Barilaro as it was also improper that he forwarded him a copy of the advertisement for the position. The committee concludes that Minister Ayres improperly influenced the recruitment outcomes of the STIC to the Americas positions.
- 2.149** The committee notes that the selection panel for the second recruitment round for the STIC to the Americas position found that two candidates – Ms Kimberley Cole and Mr John Barilaro - should progress to 'referee checks'. Without consulting or notifying other selection panel members, Ms Brown organised for Ms Cole to informally meet Minister Ayres. Following this meeting, Ms Brown determined that Ms Cole was not suitable for the position. The committee finds that this informal meeting with the Minister to be highly improper, and the fact that it was not disclosed to other panel members is again indicative of a fundamentally flawed process.
- 2.150** The committee also notes that Mr Rob Fitzpatrick was placed in the talent pool for the STIC to the Americas role after the first recruitment, and that he also reapplied for the second round. However, despite it being a different selection panel for the second recruitment, he was not reinterviewed and he was essentially written out of contention. The committee considers the treatment of Mr Fitzpatrick by Investment NSW unacceptable.
- 2.151** The committee also considers it unacceptable that Mr Barilaro was offered the position of STIC to the Americas and contract negotiations with him had concluded before the independent panel members were asked to sign off the final selection report. This 'back to front' approach is another demonstration of the flawed nature of the recruitment process.
- 2.152** The appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas was a flawed process. The committee notes that whilst both recruitment processes

followed the relevant GSE requirements, there were consistent irregularities outside of the formal recruitment processes and touches of Ministerial involvement that question any integrity regarding the final appointment of the STIC to the Americas.

- 2.153** The committee considers that without this inquiry, issues such as transparency and impartiality in senior public sector appointments would not have been addressed by the Government. This inquiry has raised serious questions about the level of influence that Ministers exerted on senior public servants such as Secretaries and Heads of Executive Agencies over what should be independent recruitment decisions.
- 2.154** The committee acknowledges the Government's inquiries regarding the STIC to the Americas appointment process, however, it was the committee's pursuit in shining a light to this issue that resulted in the Government commissioning these inquiries.
- 2.155** The committee concurs with the decision to dismiss Ms Brown as Secretary, Department of Enterprise, Innovation and Trade and CEO, Investment NSW. The committee also finds it appropriate that Mr Ayres was removed from his ministerial responsibilities.
- 2.156** The committee finds that Mr Barilaro's proposal to convert the STIC appointments to ministerial appointments was brought without a reasonable basis and was pursued with unnecessary haste; failed to disclose the selection of Ms West to the New York position; caused confusion in Investment NSW and created a vacancy in New York, to which Mr Barilaro applied for.

Finding 1

That the former Deputy Premier Mr John Barilaro's proposal to convert the STIC appointments to ministerial appointments:

- was brought without a reasonable basis and was pursued with unnecessary haste;
- failed to disclose the selection of former Deputy Secretary of Investment NSW Ms Jenny West to the New York position;
- caused confusion in Investment NSW; and,
- created a vacancy in the New York position, which Mr Barilaro then applied for.

-
- 2.157** The committee also finds that former Minister Ayres discussion with Mr Barilaro about the New York trade positions showed poor judgement and was inappropriate.

Finding 2

That former Minister for Trade Stuart Ayres MP's discussions with Mr John Barilaro about the New York Trade positions following his Ministerial resignation showed poor judgement and was inappropriate.

-
- 2.158** The committee was not able to conclude its questioning of John Barilaro. This has impeded the ability of the committee to ascertain the facts and reach certain conclusions in the case of the

STIC Americas appointment and the UK Agent General appointment. Accordingly, this report is being issued as an interim report.

- 2.159** Nevertheless, the committee finds that the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas has all the trademarks of a 'job for the boys' position.

Finding 3

That the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas has all the trademarks of a 'job for the boys' position.

-
- 2.160** A theme through this inquiry was the confusion in the leadership of Investment NSW on whether candidates for the STIC positions should be approved by executive government – either formally via Cabinet or informally via individual Ministers approval of candidates. This is unacceptable, and the committee notes that the former Minister for Trade Stuart Ayres MP did not seek to clarify the issue with the CEO of Investment NSW and completely remove himself from the recruitment process. The committee finds that the former Minister was heavily involved in the recruitment process of the STIC positions and therefore was not at 'arm's length'.

Finding 4

That the former Minister for Trade Stuart Ayres MP was not at arm's length during the recruitment process for the STIC to the Americas position.

-
- 2.161** Finally, the committee notes the contributions of Mr Ayres and Premier Perrottet to parliamentary debate about the STIC appointments in the Legislative Assembly. Both members argued that during the first recruitment round no suitable candidate was found – a claim already debunked by this committee. Mr Ayres also argued that the recruitment process was held at arm's length of executive government, and that the normal processes of the Government Sector Employment Act were followed. Our inquiry has found these claims to be nonsense, and finds that when answering questions on the appointment of Mr John Barilaro to the STIC Americas position, former Minister Stuart Ayres misled the public. It is a matter for the Legislative Assembly as to whether former Minister Ayres misled the Parliament.

Finding 5

That when answering questions on the appointment of Mr John Barilaro to the STIC Americas position, former Minister Stuart Ayres misled the public. It is a matter for the Legislative Assembly as to whether former Minister Ayres misled the Parliament.

Appendix 1 Witnesses at hearings

Date	Name	Position and Organisation
Wednesday 29 June 2022 Preston-Stanley Room Parliament House	Ms Amy Brown	Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW
Monday 11 July 2022 Jubilee Room Parliament House	Ms Jenny West	Former Deputy Secretary, Trade and International, Global NSW, Investment NSW
Tuesday 19 July 2022 Jubilee Room Parliament House	Mr Chris Carr	General Counsel, Department of Enterprise, Investment and Trade
	Mr Joseph Brayford <i>(in camera)*</i>	Former Senior Policy Advisor, Office of Mr John Barilaro
Wednesday 3 August 2022 Jubilee Room Parliament House	Ms Amy Brown	Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW
Friday 5 August 2022 Room 814/815 Parliament House	Mrs Siobhan Hamblin	Former Chief of Staff for Deputy Premier Mr John Barilaro
	Ms Kylie Bell	Managing Director, Investment NSW
	Ms Kathrina Lo	Public Sector Commissioner, Public Sector Commission
Monday 8 August 2022 Jubilee Room Parliament House	Mr John Barilaro	Former Deputy Premier NSW

*Mr Brayford agreed for his in camera evidence to be published.

	Ms Amy Brown	Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW
Thursday 18 August 2022 Macquarie Room Parliament House	Dr Marianne Broadbent	Managing Partner, NGS Global
	The Hon Warwick Smith AO	Panel Member for the Senior Trade and Investment Commissioner to the Americas recruitment
Monday 31 October 2022 Room 814-815 Parliament House	Mr Paul Webster <i>(via videoconference)</i>	Trade and Investment Commissioner, UK and Europe, Investment NSW
Wednesday 2 November 2022 Macquarie Room Parliament House	Mr Stephen Cartwright OAM <i>(via videoconference)</i>	Agent General UK, Senior Trade and Investment Commissioner Europe and Israel, Investment NSW
Monday 14 November 2022 Macquarie Room Parliament House	Mr Michael Pratt AM	Former Secretary, NSW Treasury
Tuesday 22 November 2022 Macquarie Room Parliament House	Mr Stephen Cartwright OAM <i>(via videoconference)</i>	Agent General UK, Senior Trade and Investment Commissioner Europe and Israel, Investment NSW
	Mr Bran Black	Chief of Staff, Premier of NSW
Friday 2 December 2022 Dixson Room State Library of NSW, Sydney	Ms Kylie Bell <i>(via videoconference)</i>	Managing Director, Trade and Investment, Investment NSW, Department of Enterprise, Investment and Trade

Appendix 2 Minutes

Minutes no. 80

Wednesday 23 June 2022

Public Accountability Committee

Members' Lounge at 7:53 pm

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang (substituting for Mr Barrett)

Mr Farlow

Mr Graham

Mrs Houssos

2. Apology

Mr Poulos

3. Previous minutes

Resolved, on the motion of Mrs Houses: That draft minutes no. 79 be confirmed.

4. Consideration of terms of reference

The Chair tabled a letter proposing the following self-reference:

Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

That the Public Accountability Committee inquire into and report on the appointment of the former Deputy Premier Mr John Barilaro as the Senior Trade and Investment Commissioner to the Americas, including:

- (a) the circumstances leading up to the appointment,
- (b) the process undertaken to make the appointment,
- (c) the probity and integrity measures that were undertaken as part of the appointment, and
- (d) any other related matter.

Resolved, on the motion of Mr Graham: That the committee adopt the terms of reference.

5. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

5.1 Initial hearing

Resolved on the motion of Mr Graham: That the committee invite Ms Amy Brown, CEO, Investment NSW, to a hearing in the week of 27 June to 1 July 2022, at a time to be determined by the committee, with two hours allocated for opposition and cross-bench questions, and 15 minutes reserved for government questions, if required.

6. Adjournment

The committee adjourned at 7:58 pm, *sine die*.

Stephen Frappell
Committee Clerk

Minutes no. 81

Wednesday 29 June 2022

Public Accountability Committee

Preston-Stanley Room, Parliament House, Sydney at 9.48 am

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Mr Poulos

Mr Mookhey (participating)

Ms Sharpe (participating)

2. Previous minutes

Resolved, on the motion of Mr Borsak: That draft minutes no. 80 be confirmed.

3. Correspondence

The committee noted the following correspondence:

Received:

- 23 June 2022 – Email from Office of Government Whip to the secretariat, advising that the Hon Wes Fang will be substituting for the Hon Scott Barrett for the duration of the Barilaro inquiry.

4. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

4.1 Sequence of questioning

The committee noted that, as previously resolved, the sequence of questions to be asked during the hearing to alternate between opposition and crossbench members, with 15 minutes reserved for government questions, if required.

4.2 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW.

Mr Mookhey tendered the following documents:

- bundle of correspondence from the Standing Order 52 order for papers
- Document entitled 'Statement from Investment NSW'.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.02 pm.

Resolved, on the motion of Mr Graham: That the committee proceed to take evidence from Ms Brown in camera.

The public and the media withdrew.

The public hearing concluded at 12.08 pm.

The Committee proceeded to take in camera evidence.

Persons present other than the Committee: Mr Stewart Smith, Ms Helen Hong, Ms Ros O'Brien, Mr Stephen Frappell, and Hansard Reporters.

The evidence concluded and the witness withdrew.

The *in camera* hearing concluded at 12.20 pm.

4.3 Additional hearings

Mr Graham moved: That, notwithstanding the committee activity free week from 4-8 July 2022, on Wednesday 7 July 2022 a further hearing be held as follows:

- Ms Jenny West, former Deputy Secretary, Trade and International, Global NSW, to appear for three hours, and that Ms West be invited to provide to the Committee the 45 page document which was sent to the Department of Premier and Cabinet and all other documents relevant to her appointment which she considers could be useful to the committee;
- Mr Chris Carr, General Counsel, Department of Enterprise, Investment and Trade, to appear for 90 minutes;
- Ms Alex Engel-Mallon, Chief of Staff, Office of the Chief Executive, Investment NSW, to appear for 90 minutes;
- At the conclusion of each of the above witness's time, government members be provided with the opportunity to ask questions for 15 minutes.

To which Mr Fang moved: That the motion be amended by removing all references to Ms West being invited to provide any documents.

The committee divided.

Ayes: Mr Fang, Mr Farlow

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos

Question resolved in the negative.

Original question put.

The committee divided.

Ayes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos

Noes: Mr Fang, Mr Farlow.

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That in the event that Ms West refuses the committee's invitation to appear as a witness and provide the requested documents, the Chair issue a summons for her to appear, and request the documents in the summons letter.

4.4 Tended documents

Resolved, on the motion of Mr Graham: That the committee accept and publish the documents tendered by Mr Mookhey.

5. Adjournment

The committee adjourned at 12:50 pm, *sine die*.

Helen Hong
Committee Clerk

Minutes no. 82

Wednesday 6 July 2022

Public Accountability Committee

via Webex at 10.01 am

1. Members present

Ms Faehrmann, *Chair*
Mr Borsak, *Deputy Chair*
Mr Fang
Mr Farlow
Mr Graham
Mrs Houssos
Mr Poulos (until 10.37 am)

2. Correspondence

The committee noted the following correspondence:

Received:

- 1 July 2022 – Email from Ms Jenny West, Former Deputy Secretary, Investment NSW to secretariat, accepting invitation to give evidence and requesting a copy of the *in camera* transcript from 29 June hearing.

3. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

3.1 Request for *in camera* transcript

Mr Fang moved: That the committee publish the *in camera* transcript from 29 June and provide it to Ms Jenny West to publicly respond to it in the 11 July hearing.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Question resolved in the negative.

Mr Graham moved: That the committee:

- provide a copy of the *in camera* transcript to Ms Jenny West
- ask for her response on whether she wishes to respond to it in an *in camera* or public hearing
- notify Ms Amy Brown that a copy of the transcript has been provided to Ms West.

Question put.

The committee divided.

Ayes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

3.2 Allocation of questioning

Resolved, on the motion of Mr Fang: That the sequence of questions to be asked during the hearing on 11 July to alternate between opposition, crossbench and government members, with 20 minutes allocated to each round.

3.3 Additional hearing

Mr Graham moved: That a further hearing be held on the week commencing 18 July 2022 inviting the following witnesses:

- Mr Chris Carr, General Counsel, Department of Enterprise, Investment and Trade, to appear for 2 hours;
- Mr Joseph Brayford, Former Senior Policy Advisor, Office of Mr John Barilaro, to appear for 90 minutes;
- Mr Mark Connell, Former Chief of Staff of Mr John Barilaro, to appear for 90 minutes.

Question put.

The committee divided.

Ayes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

3.4 Invitation to Ministers

Mr Graham moved: That the Chair, on behalf of the committee, write to the Hon Dominic Perrottet, Premier and the Hon Stuart Ayres, Minister for Enterprise, Investment and Trade:

- advising the committee's intention to invite them to give evidence to the inquiry
- ask for their cooperation and assistance in making themselves available.

Question put.

The committee divided.

Ayes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow.

Question resolved in the affirmative.

4. Adjournment

The committee adjourned at 10:42 am until Monday 11 July 2022 (public hearing).

Helen Hong
Committee Clerk

Minutes no. 83

Thursday 7 July 2022

Public Accountability Committee

via Webex at 3.02 pm

1. Members present

Ms Faehrmann, *Chair*
Mr Borsak, *Deputy Chair*
Mr Fang
Mr Farlow
Mr Graham
Mrs Houssos

Mr Poulos
Ms Sharpe (participating)

2. Correspondence

The committee noted the following correspondence:

Received:

- 6 July 2022 – Email from Ms Jenny West, Former Deputy Secretary, Investment NSW to secretariat, requesting a short *in camera* session before the public hearing on 11 July 2022.

3. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

3.1 Unauthorised disclosure of *in camera* transcript from 29 June

The committee discussed the unauthorised disclosure of the *in camera* transcript from the hearing on 29 June 2022.

Resolved on the motion of Mr Graham: That:

1. the Chair write to all persons who had access to the original *in camera* transcript and ask them to advise whether the person was responsible for the disclosure or is able to provide any information that may be of assistance in determining the source of the disclosure, and
2. on receipt of the responses, the committee to decide whether the unauthorised disclosure is of sufficient seriousness as to constitute a substantial interference with the work of the committee, or the Legislative Council committee system, with a view to the committee making a special report to the House recommending that the unauthorised disclosure be referred to the Privileges Committee for inquiry and report.

3.2 Ms Jenny West – request to be accompanied by her legal representation

Resolved on the motion of Mr Borsak: That:

- the four members of Ms West's legal team be allowed to accompany and be seated at a table behind her at the hearings on 11 July, and
- Ms West be offered to have one member of her legal team seated at the witness table with her.

3.3 Ms Jenny West – request for *in camera* session

Resolved, on the motion of Mr Graham: That:

- Ms West give evidence *in camera* from 10.00 to 10.10 am on Monday 11 July
- there be a 5-minute break allowing media entry and setup, and
- the public hearing commence at 10.15 am.

4. Adjournment

The committee adjourned at 3.25 pm until Monday 11 July 2022 (public hearing).

Helen Hong
Committee Clerk

Minutes no. 84

Monday 11 July 2022

Public Accountability Committee

Jubilee Room, Parliament House, Sydney at 9.48 am

1. Members present

Ms Faehrmann, *Chair*
Mr Borsak, *Deputy Chair*

Mr Fang
 Mr Farlow
 Mr Graham
 Mrs Houssos
 Mr Poulos (via Webex)
 Mr Mookhey (participating)
 Ms Sharpe (participating)

2. Previous minutes

Resolved, on the motion of Mr Borsak: That draft minutes no. 81, 82 and 83 be confirmed.

3. Correspondence

The committee noted the following correspondence:

Received:

- 23 June 2022 – Email from Office of Opposition Whip to the secretariat, advising that the Hon Penny Sharpe and Hon Daniel Mookhey will be participating members for the duration of the Barilaro inquiry
- 30 June 2022 – Email from Mr Ian Young, Director, Government Relations, Office of Secretary, Department of Enterprise, Trade and Investment to the secretariat, advising of Mr Chris Carr, General Counsel's unavailability to appear at proposed 6 July hearing
- 30 June 2022 – Email from Ms Jenny West, Former Deputy Secretary, Investment NSW to secretariat, advising of unavailability to appear at proposed 6 July hearing
- 2 July 2022 – Email from Ms Gaye Tindall, Private individual to committee, regarding Mr Barilaro's personal relationship
- 2 July 2022 – Email from Mr Maurice Oldis, Private individual to committee, regarding Mr Barilaro's personal relationship
- 2 July 2022 – Email from Mr Darren Clark, Private individual to committee, regarding Mr Barilaro's personal relationship
- 2 July 2022 – Email from Mr Darren Robinson, Private individual to committee, regarding Mr Barilaro's personal relationship
- 2 July 2022 – Email from Quang Dao, Private individual to committee, regarding Mr Barilaro's personal relationship
- 2 July 2022 – Email from Mr Darian Zam, Private individual to committee, regarding Mr Barilaro's personal relationship
- 3 July 2022 – Email from Ms Alice McQueen, Private individual to committee, regarding Mr Barilaro's personal relationship
- 3 July 2022 – Email from Ms Adrienne Riddell, Private individual to committee, regarding Mr Barilaro's personal relationship
- 3 July 2022 – Email from Ms Debbie Berry, Private individual to committee, regarding Mr Barilaro's personal relationship
- 4 July 2022 – Email from Mr John Telford, Secretary, Victims of Financial Fraud, to secretariat, regarding legal terms in matters of financial fraud
- 7 July 2022 – Letter from Ms Zoe Brindle, Lawyer, Carroll and O'Dea Lawyers to the committee, requesting that Ms Jenny West's legal team be present with her at the hearing on 11 July
- 8 July 2022 – Email from Zoe Brindle, Lawyer, Carroll and O'Dea Lawyers to the committee, requesting that Ms Jenny West be accompanied by three support people during her *in camera* hearing on 11 July.

Resolved, on the motion of Mr Graham: That the committee keep Ms Zoe Brindle's correspondence, dated 7 July 2022, confidential, as per her request.

Resolved, on the motion of Mr Graham: That the committee defer consideration of the correspondence it received regarding Mr Barilaro's personal relationship.

4. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

4.1 Allocation of questioning

The committee noted that, as previously resolved, the sequence of questions to be asked during the hearing to alternate between opposition, crossbench and government members, with 20 minutes allocated to each round.

4.2 Attendance of support people

Resolved, on the motion of Mrs Houssos: That the following individuals attend the *in camera* hearing as Ms West's support people:

- Ms Carolyn Oddie – sister
- Ms Sue Oddie – sister
- Ms Jane Wilder – friend.

4.3 Attendance of work experience student

The committee noted that Ms West's legal team included a work experience student and had requested that he also attend the *in camera* hearing.

Resolved, on the motion of Mr Graham: That the four members of Ms West's legal team and three support people attend the *in camera* hearing only.

4.4 Further hearing – 19 July 2022

Resolved, on the motion of Mr Borsak: That the committee hold its next public hearing on Tuesday 19 July 2022.

4.5 *In camera* hearing

Persons present other than the committee: Mr Stewart Smith, Ms Helen Hong, Ms Ros O'Brien, Ms Carolyn Oddie, Ms Sue Oddie, Ms Jane Wilder, Ms Diana Tang, Ms Zoe Brindle, Mr Martin Slattery.

The Chair made an opening statement regarding the confidentiality of proceedings and other matters.

The following witness was sworn and examined:

- Ms Jenny West, Former Deputy Secretary, Trade and International, Global NSW, Investment NSW.

The evidence concluded at 10.07 am and the witness withdrew.

4.6 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters, including the unauthorised disclosure of the *in camera* transcript from 29 June.

The following witness was sworn and examined:

- Ms Jenny West, Former Deputy Secretary, Trade and International, Global NSW, Investment NSW.

Ms West tendered the following documents:

- folder of documents regarding the application, recruitment process for the Senior Trade and Investment Commissioner to the Americas role and the events that followed.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.58 pm. The public and the media withdrew.

4.7 Tended documents

Resolved, on the motion of Ms Houssos: That the committee accept and publish the documents tendered by Ms West, subject to the secretariat reviewing and redacting personal information.

4.8 *In camera* transcript from 11 July

Resolved, on the motion of Mr Graham: That the committee authorises the publication of the transcript of *in camera* evidence given on 11 July 2022.

4.9 *In camera* transcript from 29 June

Resolved, on the motion of Mr Borsak: That the secretariat:

- write to Ms Jenny West, Former Deputy Secretary, Trade and International, Global NSW, Investment NSW, requesting her views on making the *in camera* transcript from 29 June public
- write to Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW, requesting her views on making the *in camera* transcript from 29 June public.

4.10 Provision of transcript to ICAC

Resolved, on the motion of Mr Graham: That the committee forward a copy of today's transcript of the public hearing to the Independent Commission Against Corruption for their information, noting the contents of the witness' opening statement.

5. Adjournment

The committee adjourned at 1.09 pm until Tuesday 19 July 2022 (public hearing).

Helen Hong
Committee Clerk

Minutes no. 85

Tuesday 19 July 2022

Public Accountability Committee

Jubilee Room, Parliament House, Sydney at 9.49 am

1. Members present

Mr Borsak, *A/Chair*

Mr Fang

Ms Higginson (substituting for Ms Faehrmann)

Mrs Houssos

Mr Poulos

Mr Martin (substituting for Mr Farlow)

Mr Mookhey (participating)

Ms Sharpe (substituting for Mr Graham)

2. Apologies

Ms Faehrmann

Mr Graham

3. Previous minutes

Resolved, on the motion of Mr Poulos: That draft minutes no. 84 be confirmed.

4. Correspondence

The committee noted the following correspondence:

Received:

- 13 July 2022 – Email from Mr Joseph Brayford, Former Senior Policy Advisor to Mr John Barilaro to the secretariat, requesting to give evidence *in camera* on 19 July

- 13 July 2022 – Letter from _____ to the Chair, supporting request to give evidence *in camera*
- 14 July 2022 – Letter from _____ to the Chair, supporting request to give evidence *in camera*
- 15 July 2022 – Letter from the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption (ICAC) to the Chair, advising that ICAC is considering the information from 11 July hearing
- 15 July 2022 – Email from Ms Amy Brown, Secretary, Department of Enterprise, Trade and Investment and Chief Executive Officer, Investment NSW to the secretariat, providing her views on the potential publication of the *in camera* transcript from 29 June
- 17 July 2022 – Email from Mr Mark Connell, Former Chief of Staff to Mr John Barilaro to secretariat, declining to give evidence at the hearing on 19 July
- 18 July 2022 – Letter from Mr Mark Connell, Former Chief of Staff to Mr John Barilaro to secretariat, providing confidential information to the inquiry
- 18 July 2022 – Email from Mr Joseph Brayford, Former Senior Policy Advisor to Mr John Barilaro to the secretariat, requesting for support person to attend *in camera* hearing on 19 July.

Sent:

- 12 July 2022 – Email from the secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, providing a copy of the transcript from the hearing on 11 July
- 12 July 2022 – Letter from the Chair to the Hon Dominic Perrottet MP, Premier, advising of the committee's intention to invite him to give evidence to the Barilaro inquiry
- 12 July 2022 – Letter from the Chair to the Hon Stuart Ayres, Minister for Enterprise, Investment and Trade, Minister for Tourism and Sport, and Minister for Western Sydney, advising of the committee's intention to invite him to give evidence to the Barilaro inquiry
- 13 July 2022 – Email from secretariat to Ms Jenny West, Former Deputy Secretary, Investment NSW, providing transcript of hearing and requesting her views on potential publication of *in camera* transcript from 29 June
- 13 July 2022 – Email from secretariat to Ms Amy Brown, Secretary, Department of Enterprise, Trade and Investment and Chief Executive Officer, Investment NSW, requesting her views on potential publication of *in camera* transcript from 29 June
- 14 July 2022 – Letter from Mr Stewart Smith, Director – Committees, to members, staff and Hansard, requesting response on unauthorised disclosure of *in camera* transcript from 29 June
 - Ms Cate Faehrmann MLC
 - Hon Robert Borsak MLC
 - Hon Wes Fang MLC
 - Hon Scott Farlow MLC
 - Hon John Graham MLC
 - Hon Courtney Houssos MLC
 - Hon Peter Poulos MLC
 - Hon Penny Sharpe MLC
 - Hon Daniel Mookhey MLC
 - Mr Stewart Smith, Director – Committees
 - Ms Helen Hong, Principal Council Officer – Committees
 - Ms Ros O'Brien – Administration Officer – Committees
 - Mr Ben Cronly
 - Mr Jacob Miller
 - Mr Robert Despotoski
 - Mr Stephen Larsson
 - Ms Senada Bjelic
 - Ms Bo Ok

- Mr William Olive
- Ms Lizzie Butterworth
- Ms Amanda Rose
- Ms Siobhan Armson-Graham
- Ms Laura Akkari
- Mr Nicholas Smerdely
- Mr Haris Strangas
- Mr William Coates
- Ms Georgia Smyth
- Hon Mark Buttigieg MLC
- Ms Ciahn Pertz
- Ms Cara Punch
- Ms Kath Cummins
- Ms Peta Waller-Bryant
- Ms Phoebe Fuller
- Mr Jaymie Pope – Hansard
- Ms Natalie Tipping – Hansard
- Ms Sallyanne Brown – Hansard
- Ms Katie Keeling – Hansard
- Mr Harshad Pandharipande – Hansard
- Ms Eliza Amery – Hansard
- Mr Robert Brown – Hansard.

5. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

5.1 Consideration of unauthorised responses

Committee deferred consideration of the responses received by the secretariat regarding unauthorised disclosure and consideration of preparing a special report to the House.

5.2 Timing of questioning

Resolved, on the motion of Mr Fang: That the timing of questioning for today's hearing be as follows: 20 minutes each for opposition, crossbench and government members with the remainder divided evenly.

5.3 Distribution of *in camera* evidence and confidential statement

Copies of Mr Mark Connell's correspondence, dated 18 July 2022, were distributed to the committee, noting his request for confidentiality.

Resolved, on the motion of Ms Sharpe: That:

- the secretariat write back to Mr Mark Connell and ask for his views on publishing his confidential correspondence, received 18 July 2022
- the Chair forward a copy of Mr Mark Connell's correspondence to the Independent Commission Against Corruption.

Mr Martin, Mr Poulos and Mr Fang returned their hard copy of Mr Connell's correspondence.

5.4 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Chris Carr, General Counsel, Department of Enterprise, Investment and Trade.

Mr Mookhey tendered the following documents:

- bundle of documents regarding the appointment of the Senior Trade and Investment Commissioner to the Americas, sourced from the order for papers.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.03 pm.

The public and the media withdrew.

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following document tendered during the public hearing:

- bundle of documents regarding the appointment of the Senior Trade and Investment Commissioner to the Americas, sourced from the order for papers.

5.5 Attendance of support person

Resolved, on the motion of Mr Fang: That Mr Joseph Brayford's partner, Mr Graham Moore, attend the *in camera* hearing in his capacity as support person.

5.6 *In camera* hearing

Persons present other than the committee: Mr Stewart Smith, Ms Helen Hong, Ms Ros O'Brien, Mr Graham Moore and Hansard reporters.

The Chair made an opening statement regarding the confidentiality of proceedings and other matters.

The following witness was sworn and examined:

- Mr Joseph Brayford, Former Senior Policy Advisor, Office of Mr John Barilaro.

Mr Mookhey tendered the following documents:

- bundle of documents regarding the appointment of the Senior Trade and Investment Commissioner to the Americas, sourced from the order for papers.

The evidence concluded at 2.34 pm and the witness withdrew.

Resolved, on the motion of Ms Sharpe: That the committee accept and publish the following document tendered during the *in camera* hearing:

- bundle of documents regarding the appointment of the Senior Trade and Investment Commissioner to the Americas, sourced from the order for papers.

5.7 Publication of *in camera* transcript

Resolved on the motion of Ms Sharpe: That:

- the *in camera* transcript be published on the inquiry webpage as soon as it is available
- the secretariat inform Mr Brayford of its decision to publish.

5.8 Publication of confidential statement

The committee noted Mr Connell's response regarding publication of his statement.

Ms Sharpe moved: That:

- Mr Connell's statement be published on the inquiry webpage at 9.00 am, Wednesday 20 July 2022
- a copy of Mr Connell's statement be sent to Mr John Barilaro, providing him with an opportunity to reply, make a submission to the inquiry, or appear as a witness at a future hearing.

Mr Fang moved: That the motion of Ms Sharpe be amended by omitting 'at 9.00 am, Wednesday 20 July 2022' and inserting instead 'immediately'.

Amendment of Mr Fang put and negatived.

Original question of Ms Sharpe put and passed.

6. Adjournment

The committee adjourned at 2.48 pm, *sine die*.

Helen Hong
Committee Clerk

Minutes no. 86

Friday 22 July 2022
Public Accountability Committee
via Webex at 4.45 pm

1. Members present

Ms Faehrmann, *Chair*
Mr Borsak, *Deputy Chair*
Mr Fang
Mr Farlow
Mr Graham
Mrs Houssos
Mr Poulos
Mr Mookhey (participating)

2. Apologies

Ms Sharpe (participating)

3. Previous minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 85 be confirmed.

4. Correspondence

The committee noted the following correspondence:

Received:

- 18 July 2022 – Email from Ms Annabel de Mestre, Parliamentary Liaison Adviser, Office of the Hon Stuart Ayres MP, Minister for Enterprise, Investment and Trade, to the secretariat, advising of a delay in the Minister's response to the Chair's correspondence dated 12 July 2022
- 20 July 2022 – Letter from Dr Peter Phelps, Executive Director – Parliament, Office of the Premier, to the Chair, advising that the Premier declines the invitation to give evidence to the inquiry
- Correspondence received from members, staff and Hansard, responding to unauthorised disclosure of committee proceedings:
 - Ms Cate Faehrmann MLC
 - Hon Robert Borsak MLC
 - Hon Wes Fang MLC
 - Hon Scott Farlow MLC
 - Hon John Graham MLC
 - Hon Courtney Houssos MLC
 - Hon Peter Poulos MLC
 - Hon Penny Sharpe MLC
 - Hon Daniel Mookhey MLC
 - Mr Stewart Smith
 - Ms Helen Hong
 - Ms Ros O'Brien
 - Mr Ben Cronly
 - Mr Jacob Miller
 - Mr Robert Despotoski
 - Mr Stephen Larsson

- Ms Senada Bjelic
- Ms Bo Ok
- Mr William Olive
- Ms Lizzie Butterworth
- Ms Amanda Rose
- Ms Siobhan Armson-Graham
- Ms Laura Akkari
- Mr Nicholas Smerdely
- Mr Haris Strangas
- Mr William Coates
- Ms Georgia Smyth
- Hon Mark Buttigieg MLC
- Ms Ciahn Pertzelt
- Ms Cara Punch
- Ms Kath Cummins
- Ms Peta Waller-Bryant
- Ms Phoebe Fuller
- Ms Jaymie Pope
- Ms Natalie Tipping
- Ms Sallyanne Brown
- Mr Harshad Pandharipande
- Mr Robert Brown.

Sent:

- 19 July 2022 – Email from secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, attaching a copy of Mr Mark Connell's statement (received 18 July 2022) for its information
- 20 July 2022 – Email from secretariat to Mr John Barilaro, Former Deputy Premier, advising of publication of Mr Mark Connell's statement and inviting a response.

Resolved, on the motion of Mr Graham: That the following pieces of correspondence be published on the inquiry webpage:

- 18 July 2022 – Email from Ms Annabel de Mestre, Parliamentary Liaison Adviser, Office of the Hon Stuart Ayres MP, Minister for Enterprise, Investment and Trade, to the secretariat, advising of a delay in the Minister's response to the Chair's correspondence dated 12 July 2022
- 19 July 2022 – Email from secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, attaching a copy of Mr Mark Connell's statement (received 18 July 2022) for its information
- 20 July 2022 – Letter from Dr Peter Phelps, Executive Director – Parliament, Office of the Premier, to the Chair, advising that the Premier declines the invitation to give evidence to the inquiry
- 20 July 2022 – Email from secretariat to Mr John Barilaro, Former Deputy Premier, advising of publication of Mr Mark Connell's statement and inviting a response.

5. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

5.1 Consideration of unauthorised responses

Resolved, on the motion of Mr Graham: That the correspondence received from members, staff and Hansard regarding the unauthorised disclosure of the *in camera* transcript be kept confidential.

Resolved, on the motion of Mr Graham: That the unauthorised disclosure of the *in camera* transcript of 29 June 2022 is of sufficient seriousness as to constitute a substantial interference with the work of the committee and the Legislative Council committee system, and therefore the committee:

- produce a special report to the House for consideration by the Privileges Committee

- provide a copy of the Special Report to Ms Amy Brown and Ms Jenny West.

5.2 Further hearing

Mr Fang moved: That the committee invite the following witnesses to appear at a public hearing on Tuesday 26 July 2022:

- Mr John Barilaro, Former Deputy Premier
- Ms Kathrina Lo, Public Service Commissioner.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Question resolved in the negative.

Mr Fang moved: That the committee issues a summons to Mr Mark Connell, Former Chief of Staff to Mr John Barilaro, to appear at a public hearing on Tuesday 26 July 2022.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Question resolved in the negative.

Resolved on the motion of Mr Graham: That the Chair write a letter to Mr John Barilaro:

- inviting him to make a written submission to the inquiry
- advising that the committee is waiting for the Government to comply with the SO 52 return of documents to the Upper House,
- advising him that it is the committee's intention to invite him to give evidence at a public hearing in the near future.

6. Adjournment

The committee adjourned at 5.16 pm, *sine die*.

Helen Hong

Committee Clerk

Minutes no. 87

Thursday 28 July 2022

Public Accountability Committee

Via Webex at 9.01 am

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Ms Sharpe (*participating*)

Mr Mookhey (*participating*)

2. Apologies

Mr Poulos

3. Previous minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no.86 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- Answers to questions on notice from Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade – received 25 July 2022

5. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

5.1 Further hearing

Mr Fang moved: That the committee invite Mr John Barilaro to appear at a public hearing on Tuesday, 2 August:

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Fang

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Question resolved in the negative.

Resolved, on the motion by Mr Graham: That the committee invite the following witnesses to appear at a public hearing:

Wednesday 3 August, 10.00 am – 4.30 pm

- Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW

Friday 5 August, 10.00 am – 4.30 pm

- Mrs Siobhan Hamblin (nee McCarthy)
- Ms Kathrina Lo, Public Service Commissioner.
- Mr Gary Barnes
- Ms Kylie Bell, Investment NSW
- Ms Evelina Polura, Investment NSW
- Ms Nghia Nguyen-Le, Investment NSW
- Mr Chris Carr, Investment NSW

Monday 8th August, 10.00 am – 4.30 pm

- Mr John Barilaro

Friday 12th August, 10.00 am – 4.30 pm

- Mr John Barilaro
- Mr Mark Connell

6. Other business**7. Adjournment**

The committee adjourned at 9:30am, *sine die*.

Frances Arguelles
Committee Clerk

Minutes no. 88

Wednesday, 3 August 2022

Public Accountability committee

Jubilee Room, Parliament House, Sydney at 9.48 am

1. Members present

Ms Faehrmann, *Chair*

Mr Fang

Mr Farlow

Mr Graham (*until 3 pm*)

Mrs Houssos

Mr Poulos

Ms Sharpe (*participating until 3pm, substituting for Mr Graham from 3 pm*)

Mr Mookhey (*participating*)

2. Apologies

Mr Borsak

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 87 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- Letter from Mr Jamie Parker MP to the Chair attaching correspondence from Mr Ryan Mitchell – received 28 July 2022.
- Email from Mr Ian Young, Director, Government Relations, Office of Secretary, Department of Enterprise, Trade and Investment to the secretariat, advising of Mr Chris Carr, General Counsel's unavailability to attend the hearing scheduled on 5 August 2022 – received 29 July 2022.
- Email from Ms Siobhan Hamblin to the committee, requesting to appear in camera when giving evidence on the hearing scheduled on 5 August 2022 – received 1 August 2022.

5. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner**5.1 Timing of questioning**

Resolved, on the motion of Mr Graham: That the timing of questioning for today's hearing be as follows: 20 minutes each for opposition and crossbench, with remaining time divided equally between them, and 15 minutes kept at the end of each session for government questions, if required.

5.2 Alteration to hearing schedule

Resolved on the motion of Mr Graham: That the hearing of 3 August 2022 commence at 10.30 am, rather than the scheduled 10.00 am, and that the secretariat make this change known via the website and social media.

5.3 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined on their prior oath:

- Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW.

Mr Mookhey tendered the following documents:

- Emails from Nghia Nguyen-Le to Kylie Bell and Chris Carr, titled 'Minister update on International Network roll out – next steps', dated 12 October 2021.
- Documents relating to appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tender bundle', dated 3 August 2022, comprising 356 pages.
- Media articles relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tender bundle 002', dated 3 August 2022, comprising 25 pages.
- Email correspondence from the office of the Minister for Trade and Industry to Office of the Chief Executive, Investment NSW, titled "Fwd: STICs update request", Dated 8 and 9 November 2021
- Email correspondence between the Secretary of the Department of Regional NSW and NGS Global, regarding a referee check for Mr Barilaro, dated 17 March 2022.

Ms Houssos tendered the following document:

- News article by Linda Silmalis published in the Daily Telegraph, titled 'Kerry Chikarovski was considered for New York Trade commissioner role', dated 23 July 2022

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.31 pm.

The public and the media withdrew.

5.4 Tendered documents

Resolved, on the motion of Ms Houssos: That the committee accept and publish the following documents tendered during the public hearing, subject to the secretariat reviewing and redacting personal information.

- Emails from Nghia Nguyen-Le to Kylie Bell and Chris Carr, titled 'Minister update on International Network roll out – next steps', dated 12 October 2021, tendered by Mr Mookhey
- Documents relating to appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tender bundle', dated 3 August 2022, tendered by Mr Mookhey
- Media articles relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tender bundle 002', dated 3 August 2022, tendered by Mr Mookhey
- Email correspondence from the office of the Minister for Trade and Industry to Office of the Chief Executive, Investment NSW, titled "Fwd: STICs update request", Dated 8 and 9 November 2021, tendered by Mr Mookhey
- Email correspondence between the Secretary of the Department of Regional NSW and NGS Global, regarding a referee check for Mr Barilaro, dated 17 March 2022, tendered by Mr Mookhey
- News article by Linda Silmalis published in the Daily Telegraph, titled 'Kerry Chikarovski was considered for New York Trade commissioner role', dated 23 July 2022, tendered by Ms Houssos

5.5 Future Hearings and Witnesses

Resolved, on the motion of Ms Sharpe: That the committee adopt the following schedules for public hearings on the 5, 8 and 12 August, and excuse other witnesses previously invited:

Friday 5 August 2022

- Mrs Siobhan Hamblin (nee McCarthy), appearing from 10.00 am until 12.30 pm.
- Ms Kylie Bell, appearing from 1.30 pm until 4.00 pm
- Ms Kathrina Lo, appearing from 4.15 pm until 5.15 pm

Monday 8 August 2022

- Mr John Barilaro, appearing from 10.00 am until 12.00 pm, and from 1.00 pm until 2.30 pm
- Ms Amy Brown, appearing from 2.45 pm until 4.45 pm

Friday 12 August 2022, 10.00 am until 4.30 pm

- Mr John Barilaro
- Mr Mark Connell

Resolved on the motion of Ms Sharpe: That the secretariat advise Ms Hamblin that the committee would be happy to receive further information from Ms Hamblin to support her request to give evidence in-camera.

5.6 Report no. 14 – Special report to the house

Resolved on the motion of Mrs Houssos: That the special report on the unauthorised disclosure of *in camera* evidence be circulated to the committee for review, be discussed at the committees' next meeting on Friday 5 August 2022, and remain confidential until such time.

6. Adjournment

The committee adjourned at 4.51 pm, until 9.45 am Friday 5th August 2022 in Room 814/815.

Frances Arguelles
Committee Clerk

Minutes no. 89

Friday, 5 August 2022

Public Accountability Committee

Room 814-815, Parliament House, Sydney at 9.50 am

1. Members present

Ms Faehrmann, *Chair*
Mr Fang
Mr Farlow
Mrs Houssos (participating via videoconference until 2.45 pm)
Mr Poulos
Mr Mookhey (substituting for Mrs Houssos)
Ms Sharpe (substituting for Mr Graham)

2. Apologies

Mr Borsak, Mr Graham

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 88 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- Correspondence received from members, staff and Hansard, responding to unauthorised disclosure of committee proceedings:

- Kate Keeling, Acting Subeditor, Hansard
 - Eliza Amery, Reporter, Hansard
- Correspondence from Mr Martin Slattery representing Ms Jenny West – received 3 August 2022 with the following attachments:
 - Answers to questions on notice from the hearing held on 11 July 2022
 - Clarifications of Ms West's transcript of evidence from the hearing held on 11 July 2022
 - Copy of a letter from Harmers Workplace Lawyers on behalf of Ms West to Amy Brown dated 19 October 2021.

5. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Consideration of Special Report

Resolved on the motion of Mr Fang:

That:

The draft report be the report of the committee and that the committee present the report to the House;

The correspondence relating to the inquiry be tabled in the House with the report;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The Chair to table the report on Tuesday 9 August 2022.

5.2 Timing of questioning

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: 20 minutes each for opposition and crossbench, with remaining time divided equally between them, and 15 minutes kept at the end of each session for government questions, if required.

5.3 Public Hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mrs Siobhan Hamblin, former Chief of Staff to Mr John Barilaro.

Mr Mookhey tendered the following documents:

- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 69 pages.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Kylie Bell, Acting Managing Director, Investment NSW.

Ms Bell tabled the following document:

- Document titled 'Trade and International Group – Executive Structure (1 Oct 2021).

Mr Mookhey tendered the following documents:

- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 153 pages.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Kathrina Lo, Public Service Commissioner, Public Service Commission.

Mr Mookhey tendered the following documents:

- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 47 pages.

The evidence concluded and the witness withdrew.

The public hearing concluded at 5.10 pm.

The public and the media withdrew.

6. Adjournment

The committee adjourned at 5.11 pm, until 9.45 am Monday 8 August 2022 in the Jubilee Room, Parliament House.

Frances Arguelles
Committee Clerk

Minutes no. 90

Monday 8 August 2022

Public Accountability Committee

Jubilee Room, Parliament House, Sydney, at 9.46 am

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Mr Mookhey (participating and substituting for Ms Houssos from 3.45pm)

Mr Poulos

Ms Sharpe (participating, and substituting for Mr Graham from 4.10 pm)

2. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

2.1 Terms of reference

Mr Graham moved: That the terms of reference for the inquiry be amended as follows:

1. In paragraph (1) insert "of Senior Trade and Investment Commissioners, including" after "the appointment".
2. In paragraph (a) omit "appointment" and insert instead "appointments".
3. In paragraph (b) omit "appointment" and insert instead "appointments".
4. In paragraph (c) omit "appointment" and insert instead "appointments".

Amendment of Mr Graham put.

The Committee divided.

Ayes: Ms Faehrmann, Mr Borsak, Mrs Houssos, Mr Graham.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

2.2 Order of Questioning

Resolved on the motion of Mr Graham: That the timing of questioning for today's hearing be as follows: 20 minutes each for opposition and crossbench, with remaining time divided equally between them, with government members asking clarifying questions as the need arises, and with 15 minutes kept at the end of each session for government questions, if required.

2.3 Public Hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr John Barilaro, Former Deputy Premier of NSW

Mr Mookhey tendered the following documents:

- Compilation of 6 news articles published between 28 June 2022 and 3 August 2022, labelled 'Tender bundle 001', dated 8 August 2022, comprising 11 pages
- Documents relating to Mr Barilaro's application to, and selection for, the Senior Trade & Investment Commissioner - Americas role the role, labelled 'Tender bundle 002', dated 8 August 2022, comprising 17 pages.

Mr Graham tendered the following document:

- The first and last page of a document titled 'Applicant's Outline of Evidence' submitted to the Federal Court of Australia, dated 24 September 2021 and comprising 2 pages.

Mr Mookhey tendered the following documents:

- Briefings regarding the outcome of the selection process for the STIC candidate for the Americas, labelled A5056478 and A5067290 respectively, comprising 3 pages.
- Documents relating to the appointment of Mr Barilaro as Senior Trade and Investment commissioner to the Americas, labelled 'Tender bundle 003' dated 8 August 2022, comprising 70 pages.

The evidence concluded and the witness withdrew.

The following witness was examined on their prior oath:

- Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.30 pm.

The public and the media withdrew.

2.4 Tendered documents

Resolved, on the motion of Ms Sharpe: That the committee accept and publish the following documents tendered during the public hearing held on Friday 5 August 2022, subject to the secretariat reviewing and redacting personal information.

- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 69 pages, tendered by Mr Mookhey
- Document titled 'Trade and International Group – Executive Structure (1 Oct 2021), tendered by Ms Bell

- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 153 pages, tendered by Mr Mookhey
- Documents relating to the appointment of Senior Trade & Investment Commissioner – Americas, labelled 'Tendered bundle', dated 4 August 2022, comprising 47 pages, tendered by Mr Mookhey

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing, subject to the secretariat reviewing and redacting personal information.

- Compilation of 6 news articles published between 28 June 2022 and 3 August 2022, labelled 'Tender bundle 001', dated 8 August 2022, comprising 11 pages, tendered by Mr Mookhey
- Documents relating to Mr Barilaro's application to, and selection for, the Senior Trade & Investment Commissioner - Americas role, labelled 'Tender bundle 002', dated 8 August 2022, comprising 17 pages, tendered by Mr Mookhey
- The first and last page of a document titled 'Applicant's Outline of Evidence' submitted to the Federal Court of Australia, dated 24 September 2021, comprising 2 pages, tendered by Mr Graham
- Briefings regarding the outcome of the candidate selection process for the Senior Trade & Investment Commissioner for the Americas, labelled A5056478 and A5067290 respectively, comprising 3 pages, tendered by Mr Mookhey
- Documents relating to the appointment of Mr Barilaro as Senior Trade and Investment commissioner to the Americas, labelled 'Tender bundle 003' dated 8 August 2022, comprising 70 pages, tendered by Mr Mookhey.

Resolved on the motion of Mr Mookhey, with regards to the copy of the letter from Harmers Workplace Lawyers on behalf of Ms Jenny West addressed to Ms Amy Brown dated 19 October, that the secretariat:

- write to Ms West noting the committee's wish to publish the correspondence after having redacted paragraphs 2.21, 2.25, 2.27, and seeking her comments on this proposal with a request for her to respond prior to Friday 12 August.

2.5 Future Hearings and Witnesses

Resolved on the motion of Mr Mookhey, that the secretariat write to Mr Mark Connell:

- advising that he is no longer requested to appear to give evidence at the public hearing on Friday 12 August
- inviting Mr Connell to respond to evidence in the transcript from the public hearing held on 8 August 2022 if he so wishes.

Mr Fang moved: That Mr Connell be summoned to appear at the public hearing on Friday 12 August 2022.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos

Noes: Ms Faehrmann, Mr Borsak, Mr Mookhey, Ms Sharpe.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That Mr John Barilaro be invited to appear as a witness on Friday 12 August 2022:

- from 10.00 am until 12.00 pm,
- from 1.00 pm until 2.30 pm and
- from 2.45 until 4.00 pm.

Resolved on the motion of Ms Sharpe: That the committee hold a public hearing on Thursday 18 August 2022.

3. Adjournment

The committee adjourned at 4.44 pm until 9.45 am, Friday 12 August 2022, Macquarie Room, Sydney.

Frances Arguelles
Committee Clerk

Minutes no. 91

Friday 12 August 2022

Public Accountability Committee

Macquarie Room, NSW Parliament House, Sydney, at 9.50 am

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang (via videoconference)

Mr Farlow

Mr Graham

Mrs Houssos (via videoconference until 10.00 am, then in person)

Mr Mookhey (participating via videoconference from 10.03am)

Mr Poulos (via videoconference)

Ms Sharpe (participating)

2. Previous minutes

Resolved on the motion of Mr Borsak: That draft minutes no. 89 and no. 90 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 4 August 2022 – Letter from Commissioner Patricia McDonald SC, Independent Commission Against Corruption to the Chair, confirming receipt of the emails from the secretariat with a copy of the transcript from the hearing on 11 July 2022 and a copy of Mr Mark Connell's written statement
- 12 August 2022 – Email from Mr John Barilaro advising that he is not in a position to attend the 12 August 2022 hearing due to mental health reasons.

4. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

4.1 Cancellation of public hearing

The committee noted that the hearing scheduled for 12 August 2022 was cancelled following receipt of correspondence from Mr Barilaro.

Resolved, on the motion of Mr Graham: That the committee keep the email from Mr Barilaro received 12 August 2022, confidential.

5. Future hearings

Resolved, on the motion of Mr Graham: That the committee invite the following witnesses to the public hearing on 18 August 2022, for 90 minutes each with an additional 15 minutes for Government questions at the end:

- Warwick Smith, appearing from 11.00 am until 12.45 pm
- Marianne Broadbent, appearing from 1.30 pm until 3.15 pm
- Evelina Polura, appearing from 3.30 pm until 5.15 pm.

6. Adjournment

The committee adjourned at 10.16 am until 9.45 am, Thursday 18 August 2022, Macquarie Room, Sydney (public hearing).

Frances Arguelles
Committee Clerk

Minutes no. 92

Tuesday 16 August 2022

Public Accountability Committee

Via videoconference at 1:02 pm

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Barrett (substituting for Mr Fang)

Mr Farlow

Mr Poulos

Mr Mookhey (substituting for Mr Graham)

Ms Sharpe (substituting for Mrs Houssos)

2. Apologies

Mrs Houssos

Mr Graham

Mr Fang

3. Correspondence

The committee noted the following items of correspondence:

Received

- 11 August 2022 – Email from Mr Mark Connell to the secretariat, advising that he does not wish to respond to the evidence given on 8 August
- 15 August 2022 – Email from Dr. Marianne Broadbent, Managing Partner, NGS Global, declining the invitation to appear at the committee's hearing on 18 August 2022
- 15 August 2022 – Email from Mr Ian Young, Director, Government Relations, Department of Enterprise, Investment and Trade advising that Ms Evelina Polura was employed as contingent labour through a recruitment agency and therefore Investment NSW is unable to forward the secretariat's invitation to appear at a hearing directly to her.

4. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

4.1 Answers to questions on notice

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Mr Joseph Brayford, received 10 August 2022
- Answers to questions on notice from Mr Chris Carr, received 12 August 2022

4.2 Scheduled public hearing on 18 August 2022

Resolved, on the motion of Ms Sharpe: That the secretariat write to:

- The Honourable Warwick Smith AO, requesting that he reconsider the invitation to appear at a public hearing on Thursday 18 August 2022, noting that the committee may also seek to summon him to appear.

- Dr Marianne Broadbent, Managing Partner, NGS Global, requesting that she reconsider the invitation to appear at a public hearing on Thursday 18 August 2022, noting that the committee may also seek to invite or issue a summons to Ms Kym Fletcher, Partner, NGS Global.

5. Adjournment

The committee adjourned at 1.15 pm until 10.30 am, Wednesday, 17 August 2022, via teleconference (private meeting), if necessary.

Frances Arguelles

Committee Clerk

Minutes no. 93

Thursday 18 August 2022

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 1.15 pm

1. Members present

Ms Faehrmann, *Chair*

Mr Barrett (substituting for Mr Fang)

Mr Farlow

Mr Graham

Mrs Houssos (until 2.15 pm)

Mr Mookhey (participating, substituting for Mrs Houssos from 2.15 pm)

Mr Poulos (from 3.30 pm)

Ms Sharpe (participating)

2. Apologies

Mr Borsak

Mr Fang

3. Previous minutes

Resolved on the motion of Mr Farlow: That draft minutes nos. 91 and 92 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 12 August 2022 – Email from Mr Martin Slattery, Partner, Carroll & O'Dea Lawyers, on behalf of Ms Jenny West, again requesting that the copy of the letter titled 'Letter from Harmers Workplace Lawyers on behalf of Ms Jenny West addressed to Ms Brown dated 19 October (*previously circulated and reattached*) to be kept confidential or alternatively to redact either:
 - The entirety of the letter from Part B (top of page 5) to the signature blocks on page 10 be redacted on the basis that the information contained in those sections relate to private, civil rights which Ms West may have against the State and fall outside the Terms of Reference of the Inquiry; or
 - Further redactions be applied to preserve Ms West's privacy by removing paragraphs 3.1(c), the sub-paragraphs (a) to (e) of 4.1, 4.2, 4.3, 9.1 and 9.2.
- 15 August 2022 – Email from the Hon. Warwick Smith AO, declining the invitation to appear at the committee's hearing on 18 August 2022
- 17 August 2022 – Email from Dr. Dr. Marianne Broadbent, Managing Partner, NGS Global accepting the committee's invitation to appear at the committee's hearing on 18 August 2022

- 17 August 2022 – Email from The Hon. Warwick Smith AO accepting the committee's invitation to appear at the committee's hearing on 18 August 2022 but requesting to appear at another time due to his availability on Thursday 18 August 2022.

Sent

- 10 August 2022 – Email from the secretariat to Mr Martin Slattery acting on behalf of Ms Jenny West, Partner, Carroll & O'Dea Lawyers, advising the committee's resolution to publish the correspondence titled: Letter from Harmers Workplace Lawyers on behalf of Ms Jenny West addressed to Ms Brown dated 19 October after redacting paragraphs 2.21, 2.25 and 2.27
- 16 August 2022 – Email from the secretariat to the Hon. Warwick Smith inviting him again to appear at the committee's hearing on 18 August 2022
- 16 August 2022 – Email from the secretariat to the Dr. Marianne Broadbent, Managing Partner, NGS Global inviting her again to appear at the committee's hearing on 18 August 2022.

5. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Allocation of questioning

Resolved on the motion of Mr Farlow: That the timing of questioning for today's hearing be as follows: the time for each witness be divided equally between the opposition and crossbench, with 15 minutes at the end of each witness for government questions, if required.

5.2 Public Hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Dr Marianne Broadbent, Managing Partner, NGS Global

Mr Mookhey tendered the following document:

- Selection of media articles, comprising 3 pages.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- The Honourable Warwick Smith, AO

Mr Mookhey tendered the following document:

- Documents labelled 'Tender bundle – W Smith', comprising 47 pages

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.54 pm.

The public and the media withdrew.

5.3 Tended documents

Resolved, on the motion of Mr Graham: That the committee accept and publish the following document tendered during the public hearing:

- Documents labelled 'Tender bundle – W Smith', comprising 47 pages, tendered by Mr Mookhey.

5.4 Other documents

Resolved, on the motion of Mr Mookhey: That:

- the secretariat write to Dr Broadbent, explaining that after careful consideration the committee has resolved to publish her submission in full
- the secretariat publish the document at 4.30 pm on Friday 19 August 2022 after providing the above notice to Dr Broadbent.

Resolved on the motion of Mr Graham: That the committee publish the letter from Harmers Workplace Lawyers on behalf of Ms Jenny West' addressed to Ms Brown dated 19 October, supplied by Ms West to the committee as an annexure to answers to questions on notice, with the following redactions:

- redacting the sub-paragraphs (a) to (e) of 4.1
- redacting paragraphs 2.21, 2.25, 2.27, 3.1(c), 4.2, 4.3, 9.1 and 9.2.

5.5 Future hearings

Resolved, on the motion of Mookhey: That the committee set aside 12 and 19 September 2022 for future hearing dates, and that consideration of appropriate witnesses be deferred until a later time.

5.6 Questions to other stakeholders

Resolved on the motion of Mr Graham: That the following individuals be invited to respond to specific written questions, with members to email the secretariat their proposed questions by 5 pm Wednesday 24 August, that the collated questions be emailed to the committee to provide members 24 hours to object to any questions:

- Mr Mike Pratt
- Mr Tim Reardon
- Ms Jenny West
- Ms Gladys Berejiklian.

6. Adjournment

The committee adjourned at 5.08 pm, until Monday 12 September 2022 (public hearing).

Frances Arguelles

Committee Clerk

Minutes no. 94

Monday 31 October 2022

Public Accountability Committee

Room 814/815, Parliament House, Sydney, 7.49 am

1. Members present

Ms Faehrmann, Chair

Mr Farlow

Mr Graham

Mr Mookhey (*substituting for Mrs Houssos*)

Mr Poulos (*via videoconference*)

2. Apologies

Mr Borsak, Mr Fang, Mrs Houssos, Ms Sharpe (participating)

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 93 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 18 August 2022 – Emails from Ms Jasmine Antonius, Director, Office of The Hon. Warwick Smith, providing clarifications for Mr Smith's evidence from the hearing on 18 August 2022

- 24 August 2022 – Email from Mr Andrew Sheridan, VP, Regulatory & Public Affairs, Optus, responding to the secretariat's request for Ms Berejikian to contact the secretariat in order to respond to specific questions from the committee
- 6 September 2022 – Email from Mr John Barilaro, to the secretariat, declining the invitation to appear on 12 September 2022
- 7 September 2022 – Letter from Ms Gladys Berejikian, to the secretariat, providing answers to specific questions from the committee
- 9 September 2022 – Email from Mr Michael Pratt, to the secretariat, declining the invitation to attend the public hearing scheduled for 19 September 2022
- 12 September 2022 – Email from Mr Ian Young, Director, Government Relations, Investment NSW to the secretariat, regarding Mr Paul Webster and Mr Stephen Cartwright's invitation for the scheduled public hearings
- 12 September 2022 – Letter from Mr Tim Reardon, former secretary, NSW Department of Premier and Cabinet, to the secretariat, providing responses to specific questions from the committee
- 12 September 2022 – Email from Mr Michael Pratt AM, former NSW Treasury Secretary, to the secretariat, providing responses to specific questions from the committee
- 13 September 2022 – Email from Martin Slattery, Partner, Carroll & O'Dea Lawyers, to the secretariat, providing responses on behalf of Ms Jenny West to specific questions from the committee and further response to statements made to the committee made by Ms Brown and Mr Carr
- 13 September 2022 – Email from Mr John Barilaro to the secretariat, requesting assurances that further information provided to the committee regarding his health status will not be published
- 18 September 2022 – Email from Mr Ian Young, Director, Government Relations, Department of Enterprise and Trade, to the secretariat, asking if the committee would consider alternative dates or times to receive evidence from Mr Cartwright and Mr Webster, and asking for guidance on giving evidence via videoconference
- 20 September 2022 – Email from Mr Charlie Cheng, applicant to STIC Greater China position, offering to assist the committee
- 20 October 2022 – Email from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, on behalf of Mr Michael Pratt AM, advising that Mr Pratt has declined to appear at the proposed public hearing on 24 October 2022
- 20 October 2022 – Email from Mr Ian Young, Director, Government Relations, Department of Enterprise and Trade, to the secretariat, advising that Mr Paul Webster is unable to attend the proposed public hearing on 24 October 2022 due to leave
- 24 October 2022 - Email from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, on behalf of Mr Michael Pratt AM, to the secretariat, in response to the email dated 20 October 2022
- 24 October 2022 - Email from Mr Ian Young, Director, Government Relations, Department of Enterprise and Trade, to the secretariat, asking if the committee would consider alternative times to receive evidence from Mr Cartwright and Mr Webster; if Mr Cartwright can appear *in camera*; and general guidance on giving evidence via videoconference

Sent

- 19 August 2022 – Email from the secretariat to Dr Marianne Broadbent, Managing Partner, NGS Global, advising that after careful consideration the committee has resolved to publish her submission in full on the inquiry webpage
- 18 August 2022 – Email from the secretariat to Martin Slattery, Partner, Carroll & O'Dea Lawyers, advising that the committee has resolved to publish the letter from Harmers Workplace Lawyers on behalf of Ms Jenny West addressed to Ms Brown dated 19 October, supplied by Ms West to the committee as an annexure to answers to questions on notice, with some redactions
- 24 August 2022– Email from the secretariat to Optus Media Centre requesting to contact Ms Berejikian to provide answers to specific questions from the committee
- 26 August 2022 – Emails from the secretariat to Mr Pratt, Mr Reardon, and Ms West inviting them to respond to specific written questions

- 29 August 2022 – Email from the secretariat to Optus Media Centre requesting to forward the specific written questions to Ms Berejiklian
- 9 September 2022 – Email from the secretariat to Mr John Barilaro, seeking further information regarding his health status, and advice as to whether he anticipates being in a position to appear before the committee by the end of the year
- 9 September 2022 – Email from the secretariat to Mr Andrew Sheridan, VP, Regulatory & Public Affairs, Optus, advising that the committee has resolved to publish Ms Berejiklian's responses to specific questions from the committee
- 13 September 2022 – Email from the secretariat to Mr Tim Reardon, former Secretary, NSW Department of Premier and Cabinet, thanking him for his responses to specific questions from the committee, and advising him that they will be published by the committee (*attached*)
- 14 September 2022 – Email from the secretariat to Mr Michael Pratt AM, former Secretary, NSW Treasury, confirming the dispensation of his invitation to appear at a public hearing on 19 September 2022, and advising that his responses to specific questions have been published by the committee
- 14 September 2022 – Email from the secretariat to Mr John Barilaro, providing clarification regarding the committee's request for further evidence of his health status (*attached*)
- 16 September 2022 – Email from the secretariat to Mr Slattery, Partner, Carroll & O'Dea Lawyers, advising that the responses to specific questions from Ms Jenny West will be published by the committee
- 21 September 2022– Email to Mr Ian Young, Director, Government Relations, Investment NSW, in response to his email dated 18 September 2022 (*attached*)
- 20 October 2022 – Email to Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, on behalf of Mr Michael Pratt AM, requesting for Mr Pratt to reconsider the invitation to appear at a public hearing
- 20 October 2022 - Email to Mr Ian Young, Director, Government Relations, in response to his email dated 20 October 2022

5. Inquiry into appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Answers to questions on notice

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, received on 30 August 2022
- Answers to questions on notice from Ms Kylie Bell, Acting Managing Director, Investment NSW, received on 30 August 2022
- Answers to questions on notice from Mrs Siobhan Hamblin, Former Chief of Staff for Mr John Barilaro, received on 29 August 2022
- Answers to questions on notice from Dr Marianne Broadbent, Managing Partner, NGS Global, received on 11 September 2022
- Answers to questions on notice from the Hon Warwick Smith AO, received on 12 September 2022

5.2 List of specific questions agreed to by the committee

Resolved, on the motion of Mr Graham: That the committee authorise the publication of the following documents:

- specific questions put to Ms Gladys Berejiklian, former Premier of New South Wales, and her responses, received on 7 September 2022
- specific questions put to Mr Tim Reardon, former Secretary, NSW Department of Premier and Cabinet, and his responses, received 12 September 2022
- specific questions put to Mr Michael Pratt AM, former Secretary, NSW Treasury, and his responses, received 12 September 2022
- specific questions put to Ms Jenny West, former Deputy Secretary, Trade and International, Investment NSW, and her responses, received 13 September 2022.

5.3 Witness invitation

Resolved, on the motion of Mr Graham: That the committee authorise:

- writing to Mr Barilaro:
 - seeking further evidence regarding his health status, given that the committee has required other witnesses to provide the same
 - seeking advice if he anticipates being in a position to appear before the committee by the end of the year.
- the publication of Mr Barilaro's recent correspondence, dated 6 September 2022, on the inquiry's website.

Resolved, on the motion of Mr Graham: That the committee keep the following correspondence confidential:

- Email and attachment from Mr John Barilaro, received 16 September 2022
- Email and attachment from Mr John Barilaro received 28 September 2022.

5.4 Allocation of questioning

Resolved, on the motion of Mr Graham: That the timing of questioning for today's hearing be as follows: the time for the witness be divided equally between the opposition and crossbench, with 15 minutes before the end of hearing for government questions, if required.

5.5 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

• Mr Paul Webster, Trade and Investment Commissioner, UK and Europe, Investment NSW
Mr Mookhey tendered the following documents:

- Documents labelled 'Tender bundle – P. Webster', comprising 34 pages.

The evidence concluded and the witness withdrew.

The public hearing concluded at 10.15AM.

The public and the media withdrew.

5.6 Tendered documents

Resolved, on the motion of Mr Graham: That the committee accept and publish the following documents tendered during the public hearing held on Monday 31 October 2022, subject to the secretariat reviewing and redacting personal information:

- Documents labelled 'Tender bundle – P. Webster', comprising 34 pages.

6. Other business

6.1 Future hearings

The committee considered a request from Mr Ian Young, Director, Government Relations, Investment NSW, on behalf of Mr Stephen Cartwright dated 31 October 2022 regarding his scheduled appearance on Wednesday 2 November 2022.

Resolved, on the motion of Mr Graham: That the committee

- Amend the scheduled hearing on Wednesday 2 November 2022 from 8.00AM to 1.00PM to 8.00AM to 11.00AM
- Invite Mr Cartwright to give further evidence on Tuesday 22 November 2022 at 8.00AM to 11.00AM

- Reserve the remainder of Tuesday 22 November 2022 for other witnesses, with the consideration of appropriate witnesses be deferred to a later time.

7. Adjournment

The committee adjourned at 9.30AM until 7.45AM, Wednesday 2 November 2022, Macquarie Room, Sydney.

Frances Arguelles
Committee Clerk

Minutes no. 95

Wednesday, 2 November 2022

Public Accountability Committee

Macquarie Room, NSW Parliament House, Sydney, 7.50 am

1. Members present

Ms Faehrmann, Chair
Mr Farlow
Mr Graham
Mr Mookhey (substituting for Mrs Houssos)
Mr Poulos (*via videoconference until 9.59am*)
Ms Sharpe (participating)

2. Apologies

Mr Borsak
Mr Fang
Mrs Houssos

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 94 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 31 October 2022 – Email from Mr Ian Young, Director, Government Relations, Investment NSW, on behalf of Mr Stephen Cartwright regarding his scheduled appearance on Wednesday 2 November 2022
- 31 October 2022 Email from Mr Ian Young, Director, Government Relations, Investment NSW, confirming Mr Cartwright's attendance for the public hearing scheduled on Wednesday 2 November 2022

Sent

- 26 October 2022 – Letter from Chair to Mr Michael Pratt, care/of Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers requesting to inform the committee when he will be within jurisdiction
- 31 October 2022 – Email from the secretariat to Mr Ian Young, Director, Government Relations, Investment NSW, on behalf of Mr Stephen Cartwright, advising him of the amended hearing times on Wednesday 2 November and inviting Mr Cartwright to a further hearing on Tuesday 22 November 2022

5. Inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Allocation of questioning

Resolved, on the motion of Mr Graham: That the timing of questioning for today's hearing be as follows: the time for the witness be divided equally between the opposition and crossbench, with 15 minutes before the end of the hearing for government questions, if required.

5.2 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined.

- Mr Stephen Cartwright OAM, Agent General UK, Senior Trade and Investment Commissioner Europe and Israel, Investment NSW.

Mr Mookhey tendered the following documents:

- Document labelled 'Tender bundle 001 – S. Cartwright', comprising 99 pages.

The evidence concluded and the witness withdrew.

The public hearing concluded at 11.00 am.

The public and the media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing held on Wednesday, 2 November 2022, subject to the secretariat reviewing and redacting personal information:

- Document labelled 'Tender bundle 001 – S. Cartwright', comprising 99 pages.

5.4 Witness invitation – Mr Michael Pratt

Resolved, on the motion of Mr Mookhey: That the Chair write to Mr Michael Pratt, former Secretary of NSW Treasury, noting the power of the committee to issue a summons and inviting him for the second time to appear at a public hearing to respond to evidence that he provided to the committee and other evidence received by the committee, and advise him that if he declines to attend or fails to provide a response by the due date, the committee authorises the Chair to lodge a notice of motion in the House to refer him to the Privileges Committee.

Mr Graham moved: That the committee authorise the Chair to lodge a notice of motion in the House to refer Mr Pratt to the Privileges Committee if he declines to give evidence before the committee or fails to provide a response to the committee's request by 5pm Monday, 7 November 2022.

The notice of motion is as follows:

'That the Public Accountability Committee, during its inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas, received the following evidence:

- An email from Ms Jenny West, Deputy Secretary, Trade, Global NSW, NSW Treasury to Mr Michael Pratt, Secretary, NSW Treasury, dated 21 December 2020, noting for review and endorsement by the NSW Treasurer the appointment of Mr Paul Webster as NSW Agent-General UK.
- The email stated:
*'Applicant recommended for endorsement by the Treasurer
Following the interview process the panel recommends that the Treasurer endorse the appointment of Mr Paul Webster to the role of UK Agent General.'*
- Acknowledgement of the above email by Mr Michael Pratt, dated 28 December 2020, thanking Ms West and noting that the next step is to brief the Treasurer and set up an interview.
- An email from Mr Michael Pratt, Secretary, NSW Treasury, to Ms Jenny West, dated 22 December 2020, which stated:

'Subject: Paul Webster

Please now move ahead with Paul, great that he is still very keen.

After Christmas –

- *1st interview with Treasurer*
- *Then Premier and Deputy Premier separately in whatever order you can arrange, please ensure you advise DP that we have a strong candidate and are lining up for him to meet early new year...*

This may all take approx. 2-3 months so time not an issue given Paul's current commitments...so perhaps he starts 'quietly' with big announcement in July. Also Treasurer may want to be in London for the announcement so with Covid etc who knows at this point.

Cheers Mike'

- In response to written questions from the committee, Mr Michael Pratt, former Secretary, NSW Treasury, dated 9 September 2022 stated:

'Q1. The selection process which led to the selection of Mr Paul Webster as the preferred candidate for the role of NSW Agent-General to the United Kingdom

I was a member of the selection panel. I am not clear on what this question asks. Preferred by whom, and when?

Q2. The selection process which led to the replacement of Mr. Paul Webster as the preferred candidate for the role of Agent-General to the United Kingdom with Mr. Stephen Cartwright

The premise of the question is incorrect as there was no "replacement" of Mr Paul Webster with Mr Cartwright as set out in Question 1. Both candidates were put through the selection process.'

The committee notes that the written response of Mr Pratt to the committee dated 9 September 2022 is clearly contradictory to the evidence received in the above emails, and authorises the Chair to lodge a notice of motion in the House to refer the issue to the Privileges Committee to inquire and report if Mr Pratt is in contempt of the committee.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mr Mookhey.

Noes: Mr Farlow

Question resolved in the affirmative.

5.5 Upcoming hearings

Mr Graham moved: That the committee hold another hearing on 22 November 2022, and invite Mr Cartwright to appear from 8:00 am to 11:00 am.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mr Mookhey.

Noes: Mr Farlow

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That the Premier be invited to appear at the public hearing on 22 November 2022 from 11.30 am, and that he be given until 8 November 2022 to respond to the invitation.

6. Adjournment

The committee adjourned at 11.13 am until 7.45 am, Tuesday 22 November 2022, Macquarie Room, Sydney.

Frances Arguelles
Committee Clerk

Minutes no. 96

Monday, 14 November 2022

Public Accountability Committee

Macquarie Room, NSW Parliament House, Sydney, 9.06am

1. Members present

Ms Faehrmann, Chair

Mr Fang

Mr Farlow

Mr Graham

Mr Mookhey (substituting for Mrs Houssos)

Mr Poulos (*via videoconference until 10.15am*)

Ms Sharpe (participating)

2. Apologies

Mr Borsak

Mrs Houssos

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 95 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 7 November 2022 – Email from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, acting on behalf of Mr Michael Pratt, responding to the Chair's letter dated 3 November 2022.
- 9 November 2022 – Emails from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, acting on behalf of Mr Michael Pratt, responding to the committee's invitation to appear at a public hearing on Monday, 14 November 2022

Sent

- 3 November 2022 – Letter from the Chair to Mr Michael Pratt, care/of Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers noting the power of the committee to issue a summons and inviting him for the second time to appear at a public hearing and advising him that if he declines to attend or fails to provide a response by the due date, the committee authorises the Chair to lodge a notice of motion in the House to refer him to the Privileges Committee
- 3 November 2022 – Email from the secretariat to the Premier inviting him to appear at a scheduled hearing on Tuesday, 22 November 2022

5. Inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner**5.1 Allocation of questioning**

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: the time for the witness be divided equally between the opposition and crossbench, with 15 minutes before the end of the hearing for government questions, if required.

5.2 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined.

- Mr Michael Pratt AM, former Secretary, NSW Treasury.

Mr Mookhey tendered the following documents:

- Document labelled 'Tender bundle 001 – M. Pratt', comprising 59 pages.

The evidence concluded and the witness withdrew.

The public hearing concluded at 10.58 am.

The public and the media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing held on Monday, 14 November 2022, subject to the secretariat reviewing and redacting personal information:

- Document labelled 'Tender bundle 001 – M. Pratt', comprising 59 pages.

5.4 Upcoming hearings

Mr Graham moved: That the committee invite the Mr Bran Black, Chief of Staff, Premier of NSW, to appear at a scheduled hearing on Tuesday, 22 November 2022:

- From 11.15 am – 12.30 pm, and
- From 1.30pm – 3.00pm.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mr Mookhey.

Noes: Mr Fang, Mr Farlow.

Question resolved in the affirmative.

Mr Graham moved: That the committee schedule another hearing at a future date that is suitable to the committee and invite the following witnesses to appear:

- Ms Amy Brown, former Secretary, Department of Enterprise, Investment and Trade and CEO, Investment NSW.
- Ms Kylie Bell, A/Managing Director, Investment NSW.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mr Mookhey.

Noes: Mr Fang, Mr Farlow.

Question resolved in in the affirmative.

6. Adjournment

The committee adjourned at 11.05 am until 8.00am Tuesday 22 November 2022, Macquarie Room, Sydney (public hearing).

Frances Arguelles
Committee Clerk

Minutes no. 97

Tuesday, 22 November 2022

Public Accountability Committee

Macquarie Room, NSW Parliament House, Sydney, 7.48am

1. Members present

Ms Faehrmann, Chair
 Mr Fang
 Mr Graham
 Mr Martin (substituting for Mr Farlow)
 Mr Mookhey (substituting for Mrs Houssos)
 Mr Poulos (*via videoconference*)
 Ms Sharpe (*via videoconference*)

2. Apologies

Mr Borsak
 Mr Farlow
 Mrs Houssos

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 96 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 11 November 2022 – Email from Mr Ian Young, Director, Government Relations, Investment NSW, confirming Mr Cartwright's attendance for the public hearing scheduled on Tuesday, 22 November 2022.
- 15 November 2022 – Email from Mr Taylor Gramoski, Senior Advisor – Cabinet & Legal, Office of the Hon. Dominic Perrottet MP, Premier of NSW, confirming Mr Bran Black's attendance for the public hearing scheduled on Tuesday, 22 November 2022.

5. Inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner**5.1 Allocation of questioning**

Resolved, on the motion of Mr Graham: That the timing of questioning for today's hearing be as follows: the time for the witness be divided equally between the opposition and crossbench, with 15 minutes before the end of the hearing for government questions, if required.

5.2 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn on their prior oath and examined.

- Mr Stephen Cartwright OAM, Agent General UK, Senior Trade and Investment Commissioner Europe and Israel, Investment NSW.

Mr Mookhey tendered the following documents:

- Document labelled 'Tender bundle 001 – S. Cartwright', comprising 50 pages.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Bran Black, Chief of Staff, Premier of New South Wales.

Mr Mookhey tendered the following documents:

- Document labelled 'Tender bundle 001 – B. Black', comprising 148 pages.

The public hearing concluded at 2.47 pm.

The public and the media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing held on Tuesday, 14 November 2022, subject to the secretariat reviewing and redacting personal information:

- Document labelled 'Tender bundle 001 – S. Cartwright', comprising 50 pages.
- Document labelled 'Tender bundle 001 – B. Black', comprising 148 pages.

6. Upcoming hearings

Resolved, on the motion of Mr Graham: That the committee hold a hearing on Friday, 2 December 2022 and invite the following witnesses to give evidence to the committee:

- Ms Amy Brown, former Secretary, Department of Enterprise, Investment and Trade and former CEO, Investment NSW from 9am to 11.15am (inclusive of 15 minutes at the end for Government questions).
- Ms Kylie Bell, A/Managing Director, Investment NSW from 12pm to 2pm (inclusive of 15 minutes at the end for Government questions).

7. Adjournment

The committee adjourned at 2.51pm until 8.45am, Friday 2 December 2022, State Library of NSW, Dixon Room.

Frances Arguelles
Committee Clerk

Minutes no. 98

Friday, 2 December 2022

Public Accountability Committee

Dixon Room, State Library of NSW, Sydney at 9.32 am

1. Members present

Ms Faehrmann, Chair
Mr Fang
Mr Farlow
Mr Graham
Mr Mookhey (substituting for Mrs Houssos)
Mr Poulos (*via videoconference*)
Ms Sharpe (participating, from 10.10am)

2. Apologies

Mr Borsak, Deputy Chair
Mrs Houssos

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That the draft minutes no. 97 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 24 November 2022 – Email from Ms Gael Duplouich, Associate Director, Government Relations, Office of the Secretary, Department of Enterprise, Investment and Trade (DEIT) to the secretariat

advising that the Department is not in a position to forward the committee's invitation to Ms Amy Brown, former Secretary, DEIT to appear at a public hearing scheduled on 2 December 2022.

- 28 November 2022 – Email from Ms Amy Brown, former Secretary, DEIT to the secretariat, declining the committee's invitation to appear at a public hearing scheduled on 2 December 2022 due to personal reasons.

Sent

- 23 November 2022 – Email from the secretariat to Mr Ian Young, Director, Government Relations, DEIT, requesting if the Department could forward the committee's invitation to Ms Brown to appear at a public hearing scheduled on 2 December 2022.

5. Inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Mr Stephen Cartwright OAM, Agent General UK and Senior Trade and Investment Commissioner Europe and Israel, received on 25 November 2022.

5.2 Allocation of questioning

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: the time for the witness be divided equally between the opposition and crossbench, with 15 minutes before the end of hearing for government questions, if required.

5.3 Public hearing

The witness, public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn on her previous oath and examined:

- Ms Kylie Bell, Managing Director, Trade and International, Investment NSW, Department of Enterprise, Investment and Trade.

Mr Mookhey tendered the following documents:

- Documents labelled 'Tender Bundle 002 (K. Bell)', comprising 30 pages.

The evidence concluded and the witness withdrew.

The public hearing concluded at 11.33am.

The public and the media withdrew.

5.4 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing held on Friday, 2 December 2022, subject to the secretariat reviewing and redacting personal information:

- Documents labelled 'Tender Bundle 002 (K. Bell)', comprising 30 pages.

5.5 Interim Report – deliberative date

Mr Graham moved: That the committee hold an interim report deliberative on Tuesday, 31 January 2023.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mr Mookhey.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

6. Adjournment

The committee adjourned at 11.35am until Tuesday, 31 January 2023.

Frances Arguelles
Committee Clerk

Draft minutes no. 99

Tuesday, 31 January 2023

Public Accountability Committee

Via WebEx at 10.06 am

1. Members present

Ms Fachrmann, Chair
Mr Fang
Mr Farlow
Mr Graham
Mrs Houssos
Mr Mookhey (participating)
Mr Poulos
Ms Sharpe (participating)

2. Apologies

Mr Borsak

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 98 be confirmed.

4. Inquiry into the Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

4.1 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice which were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Mr Bran Black, Chief of Staff, Premier of NSW received on 7 December 2022
- Answers to questions on notice from Mr Stephen Cartwright OAM, Agent General UK and Senior Trade and Investment Commissioner Europe and Israel, Investment NSW received on 14 December 2022
- Answers to questions on notice from Ms Kylie Bell, Managing Director, Trade and Investment, Investment NSW, Department of Enterprise, Investment and Trade received on 20 December 2022

4.2 Consideration of Chair's draft report

The Chair submitted her draft interim report entitled 'Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner – interim report', which, having been previously circulated, was taken as being read.

Chapter 2

Resolved, on the motion of Mr Farlow: That the following new paragraph be inserted after paragraph 2.7:

'This was further substantiated by Mr Chris Carr, General Counsel, DEIT, who told the committee that:

I felt there were material contract terms that had not yet been finalised, particularly as to tax. In my experience tax issues usually have cost implications that individuals seek to negotiate. Further, and relevantly, because of matters related to Investment NSW's US structure, Investment NSW was not in a

position to issue any contract or offer to any candidate prior to mid-December 2021. Until the agency signs an agreement, countersigned by an applicant, a person remains an applicant. My understanding is that Ms West was well advanced in the process but not at the end of it. [FOOTNOTE: Evidence, Mr Chris Carr, General Counsel, DEIT, 19 July 2022, p 2]

Resolved, on the motion of Mrs Houssos: That paragraph 2.24 be amended by omitting 'was not aware' and insert instead 'was not informed'.

Mr Farlow moved: That the following new paragraph be inserted after paragraph 2.52:

'It was confirmed to the committee by Ms Brown that despite the Cabinet determination, at no time was there any instrument or legislative change to change the STIC positions to a ministerial appointment process and it was not a realistic possibility during the process of appointing the Americas STIC. [FOOTNOTE: Evidence, Ms Amy Brown, Secretary, Department of Enterprise, Investment and Trade, and Chief Executive Officer, Investment NSW, 3 August 2022, p 13-14]

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mrs Houssos: That paragraph 2.62 be amended by inserting at the end: 'Other panel members were not informed of this meeting by Ms Brown'.

Resolved, on the motion of Mr Fang: That the following new paragraph be inserted after paragraph 2.90:

'Despite her concerns with the second process, Ms Lo when asked by the committee during her evidence, if she believed Mr Barilaro would have been successful in the STIC to the Americas role, had he taken up the position, she told the committee '... Based on what I had seen to date, by the time I was asked to sign the report, I would say yes. [FOOTNOTE: Evidence, Ms Kathrina Lo, Public Service Commissioner, Public Service Commission, 5 August 2022, p 91]

Resolved, on the motion of Mrs Houssos: That paragraph 2.92 be amended to insert 'with former Premier Barry O'Farrell, Former Ambassador to the US Arthur Sinodinos and former Regional NSW Secretary Gary Barnes' after 'formal reference checks'.

Resolved, on the motion of Mr Graham: That the following new paragraph be inserted after paragraph 2.112:

'Additionally, Mr Barilaro also confirmed that he expressed his interest in the STIC Americas role in a conversation with Premier Dominic Perrottet in November 2021 and in late January or early February 2022 he saw the Premier in Martin Place and communicated that he had applied for the position. [FOOTNOTE: Evidence, Mr John Barilaro, Former Deputy Premier NSW, 8 August 2022, pp 3, 8]

Resolved, on the motion of Mr Farlow: That paragraph 2.117 be amended by inserting at the end: 'as outlined in s.24 (2) of *the Ministerial Code of Conduct*'.

Mr Farlow moved: That paragraphs 2.118 – 2.121 be omitted.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Farlow: That paragraph 2.137 be amended by omitting 'General' after 'Governor'.

Mr Farlow moved: That paragraphs 2.141 – 2.155 including Findings 1, 2 and 3 be omitted.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mrs Houssos moved: That paragraph 2.141 be amended by inserting 'significantly' before 'flawed'.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mrs Houssos moved: That paragraph 2.142 be amended by omitting 'nonsensical' and instead inserting 'misleading and unfair to the initial successful candidate.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Fang moved: That paragraph 2.143 be amended by omitting 'The committee finds the treatment of Ms West by Investment NSW as abhorrent. The committee acknowledges the tremendous stress that Ms West was under in cooperating with this inquiry, and thanks her not only for her assistance, but also for her contribution to the New South Wales public sector' after 'would be made redundant'.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mrs Houssos: That paragraph 2.143 be amended by omitting 'abhorrent' and inserting instead 'unfair, unprofessional and sends a terrible message to others applying for these type of roles in the future' after 'the treatment of Ms West by Investment NSW as'.

Resolved, on the motion of Mrs Houssos: That paragraph 2.144 be amended by inserting 'It is important to note that the Cabinet decision to convert the STIC appointments was taken on 27 September 2021, the last Cabinet meeting attended by John Barilaro. At this time, NSW was still in lockdown because of the COVID pandemic' before 'The committee notes that'.

Mrs Houssos moved: That paragraph 2.144 be amended by omitting 'The fact that the change was never followed through indicates to the committee that the 'high level' thinking and implementation of the Global NSW strategy was half-baked non-sensical policy.' and instead insert 'The ongoing ministerial interference in the process surrounding the Global NSW strategy was unhelpful and led to confusion in relation to the STIC positions throughout the public service.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mrs Houssos moved: That paragraph 2.145 be amended by inserting 'It was improper for Mr Ayres to discuss the position with Mr Barilaro as it was also improper that he forwarded him a copy of the advertisement for the position' before 'The committee concludes'.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Fang moved: That paragraph 2.153 be omitted: 'Is is noteworthy that of all the senior trade and investment commissioner roles, it was only the American role that was 'interfered' with. The committee finds that the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas has all the trademarks of a 'job for the boys' position' and the following new paragraph be inserted instead: 'Despite what, at times, was a flawed GSE selection processes, the committee accepts that Mr Barilaro's selection and appointment, as the preferred candidate then appointee for the STIC to the Americas position, was one based on merit and this view was supported by all panel members, including the independent members.'

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That paragraph 2.153 be amended to omit the first sentence: 'It is noteworthy that of all the senior trade and investment commissioner roles, it was only the American role that was 'interfered' with.

Mr Graham moved: That the following new findings be inserted before Finding 1:

'Finding X

That the former Deputy Premier Mr John Barilaro's proposal to convert the STIC appointments to ministerial appointments:

- was brought without a reasonable basis and was pursued with unnecessary haste;
- failed to disclose the selection of former Deputy Secretary of Investment NSW Ms Jenny West to the New York position;
- caused confusion in Investment NSW; and,
- created a vacancy in the New York position, which Mr Barilaro then applied for.

Finding X

That former Minister for Trade Stuart Ayres MP's discussions with Mr John Barilaro about the New York Trade positions following his Ministerial resignation showed poor judgement and was inappropriate.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Fang moved: That Finding 1 be amended to omit 'has all the trademarks of a 'job for the boys' position.' and insert instead 'was a merit based appointment after a competitive GSE selection process, endorsed by all panel members.'

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Ms Faehrmann, Mr Graham, Mrs Houssos.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Graham moved: That a new paragraph be inserted before Finding 1 by inserting:

'The Committee was not able to conclude its questioning of John Barilaro. This has impeded the ability of the committee to ascertain the facts and reach certain conclusions in the case of the STIC Americas appointment and the UK Agent General appointment. Accordingly, this report is being issued as an interim report.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Graham moved: That paragraph 2.155 be amended to insert 'and finds that when answering questions on the appointment of Mr John Barilaro to the STIC Americas position, former Minister Stuart Ayres misled the public' after 'claims to be nonsense'.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Graham moved: That Finding 3 be omitted: 'That former Minister Stuart Ayres MP was incorrect to assert that that the recruitment process for the STIC to the Americas position was independent of executive government, and that the normal processes of the Government Sector Employment Act were followed', and the following new finding be inserted instead:

'Finding X

'That when answering questions on the appointment of Mr John Barilaro to the STIC Americas position, former Minister Stuart Ayres misled the public. It is a matter for the Legislative Assembly as to whether former Minister Ayres misled the Parliament.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Graham moved: That

- The draft interim report as amended be the report of the committee and that the committee present the interim report to the House;
- The transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled with the Clerk on Monday 6 February 2023;
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5. Other business

Mr Graham moved: That the committee write to Mr Barilaro to re-issue the invitation to appear before the committee.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

6. Adjournment

The committee adjourned at 11.21 am, *sine die*.

Vanessa O'Loan
Committee Clerk

Appendix 3 Dissenting statement

The Hon Wes Fang MLC, The Nationals, Hon Scott Farlow MLC and Hon Peter Poulos MLC, Liberal Party

This report is nothing short of a politically motivated hit job in the lead up to an election. Everything contained within this report should be seen through that lens.

The reality is that the matter that is the subject of this report was investigated by two separate independent inquiries by Mr Graeme Head PSC, former Public Service Commissioner and Mr Bruce McClintock SC, former Inspector of the Independent Commission Against Corruption.

This was not the ‘jobs for the boys’ appointment that has been alleged by this partisan report. Panel members asserted, while the process was imperfect, Mr Barilaro was appointed by a competitive GSE selection process, which was endorsed by all panel members.

It was clear from Mr McClintock’s report that he determined that any failure of maintaining ‘arms-length’ from decision making were of “process not substance” as a minister could hardly be expected to have no contact with the Secretary of their department.

He found that there was no evidence to suggest that the appointment of Mr Barilaro was not a decision taken by the Secretary of the Department.

There has been no evidence presented to the committee that the Member for Penrith wilfully misled Parliament or the public. The Member for Penrith simply provided the information that was available to him at the time, which would have been supplied by his officials.

Mr McClintock in his report found that the Member for Penrith did not breach the Ministerial Code of Conduct.

This Committee’s report ignores this finding in an attempt to score political points and its findings should be rejected.

The Hon Wes Fang MLC

The Hon Scott Farlow MLC

The Hon Peter Poulos MLC

