



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: Inquiry into Auditor-General's report No 5 of 2006:  
Rhodium Asset Solutions Ltd)**

**Members:**

**MR R MULCAHY (The Chair)  
DR D FOSKEY (The Deputy Chair)  
MS K MacDONALD**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 28 MARCH 2007**

**Secretary to the committee:  
Ms A Cullen (Ph: 6205 0136)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**WITNESSES**

**BULLESS, MR NEIL**, Acting Executive Director, Finance and Budget Division,  
Department of Treasury ..... **1**

**HAYS, MR TONY**, Senior Manager, Budget Management and Analysis Branch,  
Finance and Budget Division, Department of Treasury ..... **1**

**MOORE, MR KEN**, Acting Chief Executive Officer, Rhodium Asset Solutions Ltd... **1**

**SAMARCQ, MR BOB**, Chair, Rhodium Asset Solutions Ltd ..... **1**

**SMITHIES, MS MEGAN**, Acting Under Treasurer, Department of Treasury ..... **1**

**STANHOPE, MR JON**, Chief Minister and Treasurer ..... **1**

**The committee met at 2.03 pm.**

**STANHOPE, MR JON**, Chief Minister and Treasurer

**BULLESS, MR NEIL**, Acting Executive Director, Finance and Budget Division, Department of Treasury

**HAYS, MR TONY**, Senior Manager, Budget Management and Analysis Branch, Finance and Budget Division, Department of Treasury

**SMITHIES, MS MEGAN**, Acting Under Treasurer, Department of Treasury

**MOORE, MR KEN**, Acting Chief Executive Officer, Rhodium Asset Solutions Ltd

**SAMARCQ, MR BOB**, Chair, Rhodium Asset Solutions Ltd

**THE CHAIR:** Good afternoon. This public hearing is an inquiry into Auditor-General's report No 5 of 2006 concerning Rhodium Asset Solutions Ltd. I welcome the Chief Minister and Treasurer, the officials and other witnesses, and my colleagues. Before we commence, I need to read the preamble for witnesses.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

To assist Hansard, witnesses should state their name and the capacity in which they appear on the first occasion that they respond to questions. It would be appreciated if the people present ensure that their mobile phones are turned off. I understand, Chief Minister, that you can only spare us 30 minutes today.

**Mr Stanhope:** I can extend that a little. I hope that is not too inconvenient. My hope was that Rhodium and Treasury would be able to answer any questions that weren't directly relevant to my role as minister or a shareholder, but I don't wish to complicate the life of the committee. I was hopeful that we could get through any questions you might have of me in, say, the first 45 or 50 minutes.

**THE CHAIR:** All right. We will see how we go. That is a bit better than we heard.

**Mr Stanhope:** I accept that.

**THE CHAIR:** It may be that there are some people that we will be calling later in their own right who are here today, less likely officials but probably some of those directly associated with Rhodium. That is the committee's anticipation, I believe.

**Mr Stanhope:** I must say that it was my understanding or expectation that perhaps there will be no role for me to play in questions that you ask.

**THE CHAIR:** We will find a role for you, Chief Minister; that is no problem.

**Mr Stanhope:** No, I mean in terms of questions to, say, members of the board of Rhodium. I just thought that there would be no real role for me in that they are issues beyond my ken, experience or knowledge. That was my mindset at the time that I accepted the invitation. I don't wish to be disrespectful to the committee, but I was perhaps not fully au fait with the way in which you had proposed to conduct the hearing. But if that is a problem for the committee then I am in your hands.

**THE CHAIR:** Okay. I appreciate that extra information. Before we talk about the report, would you care to outline some thoughts, Chief Minister and Treasurer, on this particular episode?

**Mr Stanhope:** Thank you, chair. I didn't anticipate or intend to make any opening remarks. Of course, as I have just indicated, I am happy to assist the committee in any way that I am able, as, of course, are my officials and indeed the chairman of the board of Rhodium. I don't have an opening statement. I am happy to respond to questions.

**THE CHAIR:** I might lead off in the time we have. If I could just take your attention to page 25 of the Auditor-General's report. It is stated there:

Rhodium has been facing uncertainty since its establishment due to a lack of clear strategic direction from the Shareholders. Consequently, it was difficult for Rhodium to provide and commit to appropriate long-term strategic planning to achieve its business objectives and maximise the returns to the Shareholders.

In particular, the report found at page 29 in paragraph 3.18:

... the Board had developed and presented to the Shareholders a draft business plan in April 2005. The Board advised that the Shareholders had not approved the draft business plan, as the Government had not yet decided the future directions of Rhodium's business operations.

I am just wondering if you could inform the committee what, if any, strategic directions the government gave to Rhodium prior to the concerns being raised about the operation of the company by its former chief operating officer in February 2006.

**Mr Stanhope:** Chair, to go to the first issue you raised, the issues around a lack of clear strategic direction, I must say my quite clear interest in attending today was to address that particular comment by the Auditor-General, a comment which I must say does take me by some surprise and causes me some disquiet. That disquiet, I think, is confirmed by the only legal advice that I have available to me in relation to this, and that, of course, is the advice which Mallesons Stephen Jaques provided to Actew in

relation to an appropriate view of the legal relationships applying to a territory-owned corporation, particularly having regard to the operations of the Corporations Act 2001 and the fact that territory-owned corporations are subject to the Corporations Act.

I haven't taken legal advice from the ACT Government Solicitor on this aspect of the Auditor-General's report and her interpretation or the comments that she makes in relation to what she describes as a lack of clear strategic direction, but I do urge the public accounts committee to have regard to the only legal advice that we do have available, legal advice which I respect—namely, from Mallesons Stephen Jaques to Actew—and it was because I was aware that this advice had been received that I didn't pursue the matter otherwise.

I respond to your question by referring to the legal advice of Mallesons Stephen Jaques prepared by Stephen Skehill, a very eminent lawyer. He says:

It would involve a fundamental misconception of the law, and could promote a breach of the duties of a TOC's directors under the Corporations Act ... if readers were to interpret various comments made by the Auditor-General as requiring TOCs to adopt and not depart from public service norms on matters such as employment terms and conditions, sponsorships, etc.

It would similarly—

this is the paragraph most particularly that I refer to in response to your question and the legal advice available to me—

involve a fundamental misconception of the law to interpret comments made by the Auditor-General as requiring the voting shareholders of a TOC to determine the corporate direction and strategies of a TOC.

That is my view. That is the view which I have always adopted and pursued as a shareholder of the territory's corporations, and it is a position I stand by. I think it is very important for this committee to clarify this particular issue because if you, in your deliberations on this matter and on this particular comment of the Auditor-General, are to come to some conclusions and are to take notice of the only legal advice that I have available to me, and I would presume available to you—

**THE CHAIR:** We have it as a confidential submission. It hasn't been authorised—

**MS MacDONALD:** No, it has been.

**THE CHAIR:** It has been authorised. That is what I was asking.

**Mr Stanhope:** You will see as you read the totality of that legal opinion—a detailed legal opinion from one of Australia's leading legal firms by one of Australia's leading lawyers—that it suggests essentially in legalese and very politely that the Auditor-General's Office has misconstrued in a legal sense the nature of the relationship between a territory-owned corporation and the shareholders, to the point where, if one weren't careful in one's interpretation of the comments which the Auditor-General has made, there is a serious prospect of both shareholders and directors of our territory-owned corporations being in breach of the law.

I think that something that this committee could do that would be incredibly helpful would be to clarify the law in relation to this particular issue, because I as a shareholder and directors of territory-owned corporations have been operating on a particular understanding of how the Corporations Act operates and of our respective roles and responsibilities under the Corporations Act. The Auditor-General, with great respect to the Auditor-General, in the view of Mallesons Stephen Jaques, is actually, if one were not careful in one's interpretation of the words she uses, basically encouraging what Mallesons Stephen Jaques regards as a fundamental misconception of the law.

**THE CHAIR:** Chief Minister, I gather from what you have said that you haven't at any point sought legal advice on that issue other than what Actew Corporation has chosen to solicit.

**Mr Stanhope:** No, I haven't. I must say it was an issue that concerned me, and I think you would be aware, chair, as a result of responses to questions that I gave on this matter, I think even from you, that—

**THE CHAIR:** No, I don't think I did ask questions on this. It is my other hat.

**Mr Stanhope:** Perhaps some of your colleagues in a different place have raised this issue. I think you would be aware of my responses at that time. I guess the point I am making is that the report which the Auditor-General makes in relation to Rhodium applies in precisely the same terms to all of our territory-owned corporations; so it applies to ACTTAB and it applies to Actew in the way that it would, in the view of the Auditor-General, apply to Rhodium.

It was on that basis, I think you would recall, that after the Auditor-General's report was received, because it went to issues of directors' duties and responsibilities and the law applying to territory-owned corporations, I invited each of our territory-owned corporations to provide me with advice on whether or not the Auditor-General's report raised issues that they perhaps might need to address. It was in that context that the board of Actew said, "We had better get legal advice on some of the issues that have been raised by the Auditor-General in this report."

They then went to Mallesons Stephen Jaques. Mallesons Stephen Jaques came back with this opinion, which was provided to me as a shareholder of Actew and provided in response to a request by me of them for certain assurances in relation to the Auditor-General's report and its recommendations. This advice, which is dated 16 October 2006, was provided to me and painted very clearly, in fact, a position which I had adopted in relation to my responsibilities as a shareholder which isn't necessarily consistent with that that the Auditor-General has adopted in relation to the operation of the Corporations Act and its application to our territory-owned corporations.

It has raised some concern, I know, amongst the boards of our corporations. They now think, "Here is the Auditor-General implicitly criticising certain behaviours that we believe we are legally bound to adopt or pursue in relation to our responsibilities as directors." Indeed, I adopt the same attitude in relation to my responsibilities as a

shareholder, and that is to ensure that I don't interfere with the operation of a territory-owned corporation in a way which, most particularly, not puts me at some risk perhaps of breaching the Corporations Act, but perhaps creates a dreadful conflict of interest for a board which is at arm's length, which is operating under the Corporations Act, which is not part of the public service, and established for the very reasons that we didn't believe it would optimally operate as a government instrumentality, that we believed—and this is why we create territory-owned corporations—that it was necessary for it to have that degree of separation from government arrangements, and that is what we did here.

And then the auditor says, “We think this should operate with a governance strain which is consistent with the operations of government.” We say, “No. If we wanted that then we wouldn't have created it as a corporation.” I believe there is an issue here that has been raised by the Auditor-General that needs to be resolved, quite clearly, and I am hoping that your report can do that, because I believe it creates an area of potentially serious confusion around our respective roles and responsibilities and, most seriously, raises an issue for the directors of our boards.

I can't understate the seriousness to me. These aren't particularly well-paid positions. We have a range of territory-owned corporations. It is in the context of the amount of money which we as a government pay the directors of our boards. I can't afford an environment in which potential appointees to ACT government territory-owned corporations simply say when I approach them to serve on one of our boards, “You are not paying much. I am doing this out of a sense of civic duty and responsibility and you are now asking me to enter into this particular appointment in an environment of genuine confusion around exactly what my perceived role or responsibilities are.”

I am concerned, particularly with reports that create some ambiguity, such as I believe this one does, at my capacity or the capacity of future governments to attract the highest calibre candidates to serve on the boards of our corporations. I have to tell you I have been approached by people or I have had conversations with people who say, “You would have to have rocks in your head to accept one of these appointments. You are on a hiding to nothing.” That is not good for us.

**THE CHAIR:** Can I just ask you to explain to the committee why, then, they were submitting to you as the shareholder, or the shareholder in trust, I guess, a business plan as far back as April 2005 if your relationship is one, as you have categorised it today, that seems to be an understanding or an expectation, given that it was a draft business plan, that you would have a degree of say over that, and surely that is consistent with the concern.

**Mr Stanhope:** I guess that is my point. The answer to that is no, this is a question—

**THE CHAIR:** But did you go back and advise them that you didn't believe that it was appropriate for you as the shareholder to—

**Mr Stanhope:** I don't recall a conversation in those particular terms. I met reasonably regularly with the board.

**THE CHAIR:** How often would that be, Chief Minister?

**Mr Stanhope:** It needs to be understood—let me just go back one step—that in the context of our administrative arrangements, chair, the Treasurer is the minister—

**THE CHAIR:** Yes, okay.

**Mr Stanhope:** You should understand that the Treasurer is the minister responsible for the TOCs and at this particular stage the then Treasurer was the minister with responsibility, in an administrative sense, for Rhodium and was also a shareholder, as was I, but I didn't have administrative responsibility for any of our TOCs.

**THE CHAIR:** But you have since Mr Quinlan's retirement.

**Mr Stanhope:** But now that I am Treasurer, I have administrative responsibility and I continue as a shareholder—

**THE CHAIR:** Along with Ms Gallagher.

**Mr Stanhope:** And Ms Gallagher is the second shareholder. But at the time in history that we are discussing, the responsible minister was Mr Quinlan and I was the second shareholder, and now I am the responsible minister and Ms Gallagher is the second shareholder. So Mr Quinlan would have met more frequently than I.

**THE CHAIR:** I am thinking post his retirement as to how regular was the practice.

**Mr Stanhope:** All of these events, of course, were pre his retirement, Mr Mulcahy. All of these events occurred prior to that—well, almost of all of them. All of these events in the context of this particular report predate Mr Quinlan's retirement. I would have to look at my records to answer exactly the question you asked, but there were a number of meetings and they were meetings over and above meetings that Mr Quinlan would have had. But I had a number of meetings. I do certainly recall the issue in terms of the future. I guess this is what underpins the comment which the Auditor-General makes. Certainly, at that time, Rhodium—its chairman and its board—did have a view about the future of Rhodium which wasn't necessarily enthusiastically matched by Treasury, by the then Treasurer and subsequently by myself. There were, as there are in most issues, different views on—

**THE CHAIR:** Are you saying you had the same concerns as the Treasurer had and Treasury?

**Mr Stanhope:** We had a slightly different view. I think you know the history of the establishment of Rhodium. It grew out of Totalcare.

**THE CHAIR:** You are speaking of my first speech after being elected.

**Mr Stanhope:** Yes, that's right. But it was a creature of Totalcare. Totalcare, as you know, was essentially dysfunctional when we took government. We sought to address some of that dysfunction across the board, not just in relation to Rhodium. The fleet business was an aspect or a part of Totalcare that we believed did, at that point, have a future as a territory-owned corporation. We established Rhodium. It is very much a



creature of Totalcare. It was created as a separate entity from Totalcare, or the fleet, as a result of decisions we took to address major losses by Totalcare. I think that Totalcare, over the five years prior to the change of government, had accumulated losses in excess of \$20 million.

**THE CHAIR:** Could I just take you back to the question.

**Mr Stanhope:** Yes, sure. I don't mean to digress too broadly, but context is often very important, chair, and we do need to know why Rhodium was born and the circumstances in which it was born. It was perhaps a difficult birth. I think, to be fair, perhaps there was not unanimity across government in relation to the extent to which Rhodium as a business would optimally achieve the government's policy imperative. In other words, Treasury had a view that this was a business—

**THE CHAIR:** That you shouldn't be in the business of car leasing.

**Mr Stanhope:** I don't wish to verbal anybody or finger anybody particularly, but there was a range of views, and the government was receiving advice about whether or not this was a business that the government should be in. I must say I had something of a concern, having established the business, within a year or two to be then considering its future. There certainly was a view within government—a strong view among some officials, not agreed to by all officials—that this was a business that the government might give consideration to leaving. But when the chair and the board were perhaps seeking in the context of the extent of government support for expansion or other activities there was perhaps some hesitation. So around discussions around a business plan there was a view, "How hard do we drive this? What is the future?" With the then minister certainly adopting increasingly a view that perhaps this isn't a business we should be in at all, of course there was at that point a disinclination to hasten.

**THE CHAIR:** But where did the board understand things were at? They had given you a business plan in April 2005 and the Auditor-General has taken the view that the uncertainty contributed to the dramas that were associated with Rhodium. Did you get back to them promptly and say, "Look, we've got real issues"?

**Mr Stanhope:** That's what we did.

**THE CHAIR:** Or your line of argument about the Corporations Law.

**Mr Stanhope:** We accepted the statement of corporate intent.

**THE CHAIR:** But in terms of the business plan that was submitted to you.

**Mr Stanhope:** Well, the strategic direction—

**THE CHAIR:** You have just told us the corporations power—you had real concerns about interfering in the running of it; that was the responsibility of the directors—

**Mr Stanhope:** It is.

**THE CHAIR:** But, of course, that was on Mallesons' advice.

**Mr Stanhope:** And in a formal sense, in a legislative sense and in a governance sense the board's duty and responsibility were reflected through the statement of corporate intent. That is the concern I now have with this notion. We have a formal arrangement. We require of our territory-owned corporations that they develop a statement of corporate intent which the relevant minister tables in the Assembly as a reflection of that corporation's strategic direction, and then over and above that there is a suggestion: "That's not enough. We believe that the shareholders need to be given strategic direction over and above that which is incorporated within the statement."

**THE CHAIR:** But that has come from the board, surely, to you. They've asked you to give input on a business plan.

**Mr Stanhope:** No, the formal nature of the relationship and expectations is reflected in the statement of corporate intent.

**THE CHAIR:** I understand that, but they have come to you with a business plan.

**Mr Stanhope:** That's it: "This is our business plan."

**THE CHAIR:** As a draft. I think the committee would be keen to know what the response was from the shareholders.

**Mr Stanhope:** Sure. On any given day the board responds and acts according to its statement of corporate intent, and the government accepts that that is the position on that day. The board then comes and says, "What about we pursue this direction?" The shareholders say, "Well, yes, we'll think about that."

**THE CHAIR:** Is that what you said—"We'll think about it"? Was that the response they got?

**Mr Stanhope:** I don't know whether we made that response, but that was certainly our attitude.

**THE CHAIR:** Can you enlighten us as to what the response was to the draft business plan back in April 2005, because this is identified as a factor in the whole process?

**Mr Stanhope:** I think the government's response, and my attitude and the attitude of the minister was: "You've got a business. You've got a tabled statement of corporate of intent which you provided and which we've tabled."

**THE CHAIR:** So you've told Mr Samarq and his directors that—

**Mr Stanhope:** Not in so many words. Don't look for words that I haven't utilised.

**THE CHAIR:** I am just anxious to know what you did.

**Mr Stanhope:** I am saying in the context of understandings and expectations, rather than in words used or expressed, because I can't remember those. These were

discussions

**THE CHAIR:** Was there no formal communication back on that?

**Mr Stanhope:** There would be some, but the formal nature of the relationship is as expressed through the statement of corporate intent.

**THE CHAIR:** Right.

**Mr Stanhope:** And the board's obligations under the Corporations Act.

**THE CHAIR:** Is there a possibility you could supply us with the response to that April 2005 draft business plan?

**Mr Stanhope:** I don't know whether there was a formal response. I'd have to check that, but certainly there were conversations.

**THE CHAIR:** Are you suggesting that maybe it was conveyed just orally?

**Mr Stanhope:** Most certainly there were conversations and meetings. I remember those discussions.

**THE CHAIR:** So you believe the board fully understood that they were to get on with the job and not be looking for direction from the shareholders. Is that how you would characterise the relationship?

**Mr Stanhope:** In the context of the day-to-day operation of the company, yes. But I do find it quite remarkable that the government says that it is thinking maybe it will sell this business and that is then characterised as a lack of strategic direction. It's a lack of forward strategic direction perhaps, but it is not a lack of strategic direction. The minister was making it quite clear in conversation that he had a view about how vigorously the government would resource this particular business. But nevertheless in the interim, in the context of the need to conduct this business and to conduct it optimally to return the greatest possible benefit to the shareholders, which nobody was under any misapprehension about, the chairman and the board were under no misapprehension that this government expected it to actually produce a profitable company and return to the greatest extent with its resources and its business plan and its corporate intent to conduct that business as well as it could, and optimally in all the circumstances. That was our expectation.

I could say the same about Telstra today. Is there any suggestion that Telstra has lacked strategic direction because over the last five years the government has waxed and waned about how much of it it will flog off? It's out there, everybody knows what is going on, but Telstra is getting on with the business of running the company as well as it can in an environment where it knows the government's intention over the last 10 years has been to flog it off. So, what, it lacks strategic direction because there is a view that it might be privatised? That is just nonsense.

**THE CHAIR:** We legislated for Rhodium in December 2004 and I think it came into operation in January. Since its inception, has there been any strategic direction given

by your government in any formal way to the board? Were they given any kind of direction at the time of appointment as to what the expectation was or was it just a general thing—get on with the job?

**Mr Stanhope:** Yes, to the extent that the government has accepted its statement of corporate intent—

**THE CHAIR:** Right. But that was all that has been formalised?

**Mr Stanhope:** That is all we do with Actew. That is all we do with ACTTAB. Our relationship to Rhodium is exactly the same, in the context of direction and strategic direction, as it is for Actew, and exactly the same as it is for ACTTAB. We have established corporations with a certain operational ambit and we have appointed very learned, experienced executives to run those corporations on behalf of the people of the ACT. We have at all stages complied with the legislated arrangements in relation to each of those territory owned corporations and we have not distinguished between any of them in the context of the extent to which we interfere in their day-to-day arrangements.

If we wanted to change the role of Rhodium in the context of its business or its business plan, we would have taken advice on whether what it was proposing was consistent with its corporate responsibilities and the law and, subject to whether or not we thought it was a good idea, we would have agreed or disagreed. Essentially, we require of each of our territory owned corporations the development of a statement of corporate intent. I table each of them annually for the information of members of this place and we have, through that process, sent to those corporations our expectations in relation to their behaviour and their conduct. We, of course, from time to time seek assurances, as we have through this particular process, in relation to their governance, the stringency of their governance arrangements and assurances that they meet all of their corporate obligations.

But to impose, over and above those, over and above the responsibilities that the directors of any corporation assume on accepting responsibility for the management of that corporation, this nebulous notion that we then have to provide some other form—that we have to oversight it, that we have to inveigle ourselves into the corporate structure, and separately from the corporate structure, and, according to Mallesons Stephen Jaques, in a way that perhaps undermines the Corporations Law and obligations under it, is a notion which concerns me.

**THE CHAIR:** I understand that, but I am puzzled then why a business plan would have been submitted to you in draft form in April 2005 and in a report dated September 2006 the Auditor-General told the Assembly and this committee that the board of Rhodium advised that the shareholders, you and the Deputy Chief Minister, had not approved the draft business plan.

**Mr Stanhope:** The draft business plan was revised in May 2006. That particular business plan was revised, presumably as a result of discussions with the then minister and perhaps including me. A revised business plan was submitted in May 2006, by which time of course the government had taken decisions in relation to the future of Rhodium and had indeed initiated the scoping study, so—

**THE CHAIR:** It does suggest you did get involved with the business plan from what you are now saying. Earlier on you told the committee that the role was for them to get on with the job, not to be involved in management, and the statement of corporate intent was adequate.

**Mr Stanhope:** Actually, we are at cross-purposes here. The board is responsible for the day-to-day management of the company. It does that irrespective of potential changes in direction. It has a job to do and it does that job, whilst at the same time, as any corporation would, looks for, say, other business opportunities, saying: “Look, government, this is what you’ve asked of us. You’ve asked us to run this fleet but we think here’s a nice little sideline that we might just get into. Do you think we should? At this stage our central business is to provide a car fleet for the ACT government but we believe this great opportunity is out here in the private sector. Do you think we should? If you give us perhaps some support through a loan facility, say, increasing our risk, we might just whip off into the side here and we might pursue a little private sector operation as part and parcel of our core business of providing a fleet for the ACT government.”

We say: “Well, look, we’ll have a think about that. We’ll have a think about whether or not we are prepared to extend our line of credit to you or not. We’ll have a think about whether or not this is an additional risk we should accept. But, in the meantime, get on with the business of providing the ACT government with a fleet and maximise the opportunities and the return to the ACT government through the business that you have accumulated to this point.”

Actew are constantly suggesting different opportunities that they might pursue and they discuss those with the minister and the shareholder—but they do not stop providing water and sewerage services. They think about how they might broaden the nature of their business to improve the dividend to the government, just as Rhodium did. And the government says to Actew: “That is an interesting idea. I am going to send the idea off to Treasury and see what Treasury think of it and I’ll get advice back. I’ll get advice on the risk and I’ll get advice on whether or not this is appropriate.”

That is what Rhodium did, and the government responded in exactly the same way. We said: “We’ll have a think about that. We’ll get a bit of advice. We’ll think about whether or not we want you to branch off into another business. And, indeed, we’ll think about whether or not this is a business that we should continue to own.” So there is no contradiction here. This happens all the time. Actew come to me. ACTTAB come to me and say: “Here’s a new gaming product that perhaps we could pursue through TABs. What do you think?” We say: “We’ll have a bit of a think about the extent of that and the extra risks that imposes. We’ll get advice from Treasury. We’ll have a look at what other TABs are doing around Australia and we’ll get back to you. But in the meantime keep taking bets on horses and dogs and trotters. Just keep doing your job, but think about how to maximise the opportunities.”

But to suggest that because we hesitated and said, “Well, we’ll think about that” they have come back with a revised business plan in May 2006—we put the budget together, in the budget we announced a scoping study with a view to determining the future of Rhodium, and the rest is history.

**THE CHAIR:** I will just take you to the issues that were raised about the former CEO of the organisation in February 2006. Can you enlighten the committee as to when these matters were brought to your attention and what steps you took, and what date, if possible?

**Mr Stanhope:** I will have to look at the records. I am sure I could find the exact date. But I think those are questions for Treasury. According to these notes, I was first advised in a letter of 21 February 2006 that the board was investigating allegations of impropriety involving the then chief executive officer. That was on 21 February 2006. On 14 March I was advised that the board had accepted the resignation of the chief executive officer.

I think you can get a slightly more coherent answer, in terms of what was then done, from somebody with a slightly fresher memory of the range of steps that were taken immediately by, most particularly, the board. The board acted immediately and promptly. It instituted a detailed audit. The government was kept advised at every step. There was close personal contact between the chairman of the board and the then Under Treasurer and, indeed, involving the Auditor-General.

The Auditor-General was involved almost from—I would have to defer. Immediately the board took a range of steps around audits. I believe it was almost at the same time that the Auditor-General was informed and involved and the shareholders were kept informed of every step that was taken. At no stage did I have any concerns around the way in which the matter was handled. It was handled rigorously and immediately and appropriately.

**THE CHAIR:** Did you meet with the chairman and directors of Rhodium, Chief Minister?

**Mr Stanhope:** Yes, at different times. I would have to look at my diary to see when I met, but I met on a number of occasions. I would say that I met with the chairman—I wouldn't mind betting if I looked at my appointments register I would find a meeting within that week. I certainly met with the Under Treasurer immediately. I met with the chairman of the board on a number of occasions and I met with the full board as well.

**THE CHAIR:** You have taken issue with the Auditor-General's weighting she has given to you—the role in terms of the shareholders—and you feel that that is not supported by the Corporations Law and the legal advice that you talked about today. Do you feel that the board have acted appropriately throughout this management of Rhodium since its inception? Do you have confidence that they observed all the appropriate practices and procedures, and that it is purely the fault of employees that have caused these problems, or do you think the board have not been as diligent as they should have been?

**Mr Stanhope:** The board has my full support, chair. I believe the board has at all times acted appropriately. I must say the response of the chairman and the board immediately the allegations were raised has been exemplary and what one would expect. I have no doubt, were you to ask the chairman of the board if there are things

or processes that he now wishes might have been in place, he would probably say, “Yes, in retrospect, I now regret that perhaps we didn’t do this.” I think the chairman is probably better placed to answer that question. But I have absolute and utter faith in Mr Samarcq and each of the members of the board. I think they have managed this company appropriately, and most certainly since the issues of the impropriety and inappropriate behaviour have been raised their response has been textbook.

**THE CHAIR:** So you would accept it was the CEO really who—

**Mr Stanhope:** I do.

**THE CHAIR:** should accept responsibility for all these problems?

**Mr Stanhope:** I do. These are difficult issues. Issues of staff, particularly at senior levels, in whom one perhaps has invested absolute trust and faith, and that trust and faith is not, as events unfold, returned or justified, raise incredibly difficult issues for any manager—particularly difficult issues for the directors of the board, particularly difficult issues for any person in a supervisory capacity, but I believe particularly difficult in relation to a corporation and its chief executive, in whom one has invested enormous trust and faith, to have that trust and faith simply ignored and then after the event to be told: “Well, you should have known. You shouldn’t have trusted your chief executive. You should have been suspicious.” I just do not think we behave that way and our structures do not operate in a way—

**THE CHAIR:** I am not passing a judgment. I am just keen to know whether you have that view.

**Mr Stanhope:** The trouble is that it is difficult. It is so easy to pass judgments, and judgments are so easily passed, in relation to these matters, and I think particularly unfairly. It is easy to do that, but then when one puts oneself in that particular position at times it is incredibly difficult. I am sure that with the benefit of hindsight—and I am sure you will ask Mr Samarcq the question—each of us would say the same. Each of us that has had an employee who has not behaved in the way that we might have hoped they would behave would think, “I could have done this” or “I could have done that.”

To the extent that the Auditor-General has investigated all of these matters in detail it is relevant that the Auditor-General has found that the governance structures in place were essentially sound and appropriate, whilst raising some issues in relation to some aspects of governance. But the Auditor-General herself has found that the governance arrangements were appropriate.

**DR FOSKEY:** While we are on the topic of governance policies, it says here in the Auditor-General’s report that the governance policies were not formalised until June 2006. Just confirm—I believe that you said—that the board advised you that they were investigating the CEO in February 2006?

**Mr Stanhope:** Yes.

**DR FOSKEY:** So what we find is that there were not in fact any formal governance

policies until June 2006, which is after the time that the concerns became evident to the board. If Rhodium was established in January 2005, that is a very long time to go without governance policies. Does that indicate that the chief executive officer may have been acting within a vacuum of requirements for how she should report and so on? There is no blame here, but it would seem to me that one thing a CEO would truly value is a structure within which to operate, and that is what governance policies should have done, and they were not around until June 2006, last year.

**Mr Stanhope:** I will just respond briefly but I cannot answer these questions. These are internal issues. All I can say is that, at one level, that is probably a role or a responsibility that the chief executive officer herself should have fulfilled. I would imagine it was probably her responsibility to provide for the board's approval that particular framework. Mr Samarcq might be able to assist you better. But these are matters of internal company management around which the government has no involvement. We have certain expectations in terms of the management of our corporations; but we do not manage them. That is why we have created them as separate, distinct from the government, because they operate in a different environment and under different governance arrangements. That is why we do it—and at no stage do we interfere in those internal arrangements, other than, of course, to continually express our hope and our expectation that they will be conducted to the highest standards.

I will defer to Mr Samarcq but I had hoped to get away by about 3.00 pm and to leave this line of questioning of the board to you and to Mr Samarcq and to Treasury officials. But are there any other questions that would be specific to me as minister or shareholder?

**THE CHAIR:** I did want to ask a little bit about the tender process. Maybe we could hear from Mr Samarcq. Have members got other questions for the Chief Minister?

**DR FOSKEY:** I think this one is for the Chief Minister, and it is probably related to yours as well.

**Mr Stanhope:** Well, I will wait while Mr Samarcq—

**THE CHAIR:** Okay.

**Mr Stanhope:** I do not wish to be difficult, chair, but if you have questions for me perhaps you could just knock me off.

**DR FOSKEY:** We don't want to knock you off, Mr Stanhope. It was the government that made the decision to sell the TOC in this case. I know you have said why, but I always believe there may be other reasons why the response to this situation was to immediately put Rhodium up for sale. I think there were perfectly good reasons to look at those issues of management and retain it because of the services it provides. I read recently in the *Canberra Times* that there are some problems with the tender process about conditions—presumably those are about conditions put on the sale—and I would like to know whether, if you do not get an appropriate buyer at the appropriate price, those conditions will be weakened or will Rhodium be withdrawn from sale.



**Mr Stanhope:** As you are aware, Dr Foskey, we did pursue a scoping study into the future of Rhodium and the results of that were such that the government took a decision that in the context of this particular business the reasons for selling, in the context of the government's perhaps priorities, were stronger than the arguments for maintaining it.

Some of the issues that we took into account in deciding to sell Rhodium were that we believed that through selling it we would optimise the financial return for the government. Rhodium is a young company; I accept that. However, it is yet to pay any dividends and we felt that it would be unlikely in the near future that it would pay a dividend and indeed that, in order to grow and to expand, it would incur additional costs to the government.

We also believed that the interest payments that we could achieve by investing the sale proceeds in the short-term money market, together with cost savings derived from the reduced ACT government fleet management fees, would provide an immediate financial return to the government. We believe that selling Rhodium minimises the government's exposure to ongoing commercial risk and, indeed, a key factor in the success of small and medium companies is their ability to grow and to be innovative. Managing the growth and development phase does require very special and, in some regards, extensive skills.

A range of issues identified in the Auditor-General's report point to other issues that justify the decision that the government has taken to sell. Generally, Dr Foskey, we believe, in relation to the history of the business, extending beyond just its emanation as Rhodium, and indeed during this period with Totalcare, issues around the extent of the risk that the government faced in running a small fleet business, and our interpretation of its future prospects, led us to that decision.

Just briefly on the other issue you raised around the tender process, certainly, and I think regrettably, aspects of the tender arrangements have been made public in an environment where I do not believe that is particularly helpful and, indeed, in a circumstance where we do not know where the information came from—whether it was from—

**THE CHAIR:** Why would you be worried about simply the terms outlining conditions of tender being kept secret?

**Mr Stanhope:** Mr concern, chair, is that if the information were leaked from inside the ACT government service—and I have no reason to assume that it necessarily was—it is of grave concern to me

**THE CHAIR:** I can understand that, but if it is the people who have sought expressions of interest, I am not sure if the—

**Mr Stanhope:** That is right, but the difficulty I have is that I do not know. I do not know whence the information came. If it came from inside the ACT government service, it is a matter of grave concern to me. The integrity of contractual tendering arrangements is paramount. We as a major contractor cannot afford for there to be any

suggestion that our processes are not absolutely rigorous.

**THE CHAIR:** No, obviously. No-one would take issue with that, but I suspect that once you have sent out the terms of the expressions of interest to various parties, however many there were, it is not likely to stay confidential for long.

**Mr Stanhope:** I must say it is of lesser concern to me. I think one can be somewhat cynical about the basis or the reasons for somebody that received the tender documentation saying, “I don’t much like the look of this. I’ll try and embarrass the government by inflating particular concerns I have that I won’t be able to maximise my particular return under these tender conditions and, indeed, if I get the business I’ll be able to actually drag a bit more out of the government for the service that it will be dependent on.”

**THE CHAIR:** Are you worried about the point Dr Foskey has raised—that you might be driving away business, prospective purchasers—and what will you do if that happens?

**Mr Stanhope:** I have a difficulty in responding to those questions, in that this is a live tender process. I am not in a position where I can just go to my officials and say, “What’s going on? The suggestion was raised publicly that nobody will bid; you won’t get a buyer.” I am in a difficult position. I am not going to go to the tender board, or those of my officials. I am not going to go to Procurement Solutions. I have not once in government approached Procurement Solutions or anybody involved in a contract or a tender and asked for information. I have never once asked a single question—and I never will. In order to respond to you fully, I would need to have a meeting. I would need to turn to Ms Smithies and say: “Have these concerns come home to roost? Are there any bidders? Are they any good? What’s their name? Perhaps I’ll have a word to them. Are any of them my mates?” I do not know and to ask questions around a tender process before the tender process is complete puts me in a difficult position. All I can say is we just have to wait and see.

**THE CHAIR:** All right. What’s your time frame for this?

**Mr Stanhope:** I can answer that question.

**THE CHAIR:** I understood you were going to try and get rid of this by June.

**Mr Stanhope:** I can ask that question: what is the time frame?

**Mr Bulless:** At the moment we are in the stage 1 process, which is a short-listing exercise. We have to have that completed this week. We then have about a month after that for the stage 2 exercise, which essentially is the provision of a binding offer to the territory. Based on our current timing, that evaluation process will be undertaken at the end of April and the actual decision around the offer provided by the respondent or respondents will be provided to the government some time in May. The ultimate aim is to have the sale executed by the end of June.

**THE CHAIR:** So that is your original timetable. You are still on track on that.

**Mr Bulless:** Yes. We are still tracking to that.

**THE CHAIR:** Take us back to the inquiry in particular. I think, Treasurer, you were going to have Mr Samarcq respond in more detail to Dr Foskey's question about this code of conduct in governance not getting signed off until July 2006. Can we just finish off that issue?

**Mr Samarcq:** Yes, the reference there is to the governance policy. The draft governance policy is a broad policy. As noted in the Auditor-General's report, a draft was presented to us in January 2005 and, as it notes there, was refined over the ensuing months. In fact, that governance policy was a standing item on the board papers throughout that period and there would be no doubt that management and the CEO were aware that that is the policy we were operating on. When we said "formalised", that was something that was suggested to us at some point—that we should formalise it. But the policy itself was a dynamic document. It was on the table, on the board, and the board and management were certainly aware of it, acting on it, and I do not think there would be any doubt that the CEO at the time was aware of the contents and the obligations that are established by that policy. But, as I say, that was in relation to a broad governance policy.

**DR FOSKEY:** During that time when you say that you believe the CEO as well as the board would have been aware that though it was a draft it was still the framework within which the business was being conducted, were you aware that in fact that framework was being followed by the CEO? Clearly you were not.

**Mr Samarcq:** As I said, it is a broad governance policy and most of it was. I think the issue really goes to a level below that, in terms of particular policies and procedures that relate to a whole range of governance behaviour of management. But it related basically to how the board related to the CEO. Then there were a range of policies under that which underpinned it, including some of the contentious ones that are obviously the subject of the report, including credit card entertainment and other policies.

**DR FOSKEY:** Are you able to provide us with a copy of the governance policy?

**Mr Samarcq:** Yes. I would not have a problem with that.

**DR FOSKEY:** Thank you.

**THE CHAIR:** If we could go back, Treasurer, just before you leave us: you said one of your officials had a better ability to refresh us on the sequence of events after you were notified of the problems at Rhodium. Were you about to hand over to Ms Smithies or Mr Bulless or—

**Mr Stanhope:** Yes. I just cannot remember—Mr Samarcq could assist too—when the auditors were contacted, which auditors were contacted, when the Auditor-General was contacted. I am just aware of the process and I do not have the details. But I think both Mr Bulless and Mr Samarcq could probably assist in just exactly what happened after 21 February, or on and from.

**THE CHAIR:** It would be helpful just to get the basic sequence of who came into the equation.

**Mr Samarcq:** As the Chief Minister has said, we informed the Chief Minister as soon as we were in a position to do so, on 21 February 2006. Subsequent to that we briefed both the Under Treasurer and the head of the Chief Minister's Department and the Auditor-General. There are a series of letters, of communication, which the Auditor-General obviously was privy to, because she was party to that exchange and the provision of that correspondence to the Chief Minister and the other shareholder at the time.

So in the period between February 2006 when our first letter went to the Chief Minister and the other shareholder, we probably have half a dozen letters that were provided to the Chief Minister and the other shareholder, detailing progress on our various investigations, including the three KPMG reports and, subsequent to that, obviously the Auditor-General's report.

**THE CHAIR:** You had KPMG do a report. Was that on the specific issues that had been raised by the former COI?

**Mr Samarcq:** Yes, we initially—

**THE CHAIR:** And was it Ernst and Young or are they doing your regular audit—

**Mr Samarcq:** No, Ernst and Young were doing the regular audit.

**THE CHAIR:** on behalf of the Auditor-General?

**Mr Samarcq:** Yes, that is right. KPMG prepared three reports, initially on the issue of the advance, then in relation to the CEO and other corporate expenditure, and then the third one basically covering behaviour by management right across the board, just to make sure that we had caught most things.

**THE CHAIR:** And when did you call in KPMG to do this work for the board?

**Mr Samarcq:** I can remember it clearly—a Friday evening after we had briefed the shareholders that we were going to do so. In fact, I may have actually called KPMG in the Friday before, which would have been somewhere around 18 February.

**THE CHAIR:** Okay. And you brought in another consulting firm to sort of run the place, didn't you, at some point, on a caretaker basis or—

**Mr Samarcq:** We did not bring in another consultant firm; we engaged an acting CFO.

**THE CHAIR:** And an acting CEO?

**Mr Samarcq:** We acted a CEO from within the management team for a few months and subsequently Mr Moore, who came from Maximus, was made acting CEO. I have not got the dates in front of me, but I think it was around June 2006.

**THE CHAIR:** Mr Moore is still in that role, isn't he?

**Mr Samarcq:** That is right.

**THE CHAIR:** Do you have anything else for the Treasurer at the moment, Dr Foskey?

**DR FOSKEY:** Probably nothing at this point. I am just wondering, Treasurer, whether the committee might be able to call on you, perhaps at the end of our deliberations?

**Mr Stanhope:** Yes, sure.

**THE CHAIR:** I think it would be productive because there is a range of people we would like to talk with and issues may emerge—

**Mr Stanhope:** I would be happy to return; I would be happy to do that, chair. If it is inconvenient, I will remain, but I do have some pressing—

**THE CHAIR:** I think we have things but I think—

**Mr Stanhope:** I will be happy to return.

**THE CHAIR:** Okay. We will break for afternoon tea now and resume in about 10 minutes.

**Meeting adjourned from 3.03 to 3.19 pm.**

**THE CHAIR:** Ladies and gentlemen, we will resume now but only really for the purpose of adjourning this. The Chief Minister has agreed to return to the committee and meet with us again after we have taken further evidence. Mr Samarcq and Mr Moore have both indicated they are happy to come back, because we were hoping to invite them in their own right for a session with the committee to raise matters. I thank the Treasury officials, and the other people from Rhodium, for being here and being available this afternoon.

**The committee adjourned at 3.20 pm.**