



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: 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**

**THURSDAY, 14 JUNE 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).

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## **The committee met at 2.04 pm.**

**BARTOS, PROFESSOR STEPHEN**, Director, National Institute of Governance, University of Canberra

**THE CHAIR:** We are resuming our inquiry into Auditor-General's report No 5 of 2006, *Rhodium Asset Solutions Ltd*. I welcome Professor Bartos. Before we start, I have to read you a short statement to explain the procedures.

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.

Before we invite members of the committee to ask questions, would you like to make an opening statement or give some observations in relation to the matters before our committee?

**Prof Bartos:** I am appearing here at the invitation of the committee. I should make a very brief opening statement. I think that the main way I can help the committee is by dealing with your questions, but I should start with the proviso that there are a couple of separate questions in relation to this whole question of the conduct of Rhodium. One is about matters of fact in relation to conduct. There, other people will have vastly more expertise than me, including, in particular, the auditors who looked at it and this committee itself. I do not want to make any claims or observations in relation to what may or may not have been done by whom, when and how. I do not think that that is the reason why the committee has invited me here.

What I can talk about is the broader governance issues in relation to a territory-owned corporation such as this. One of the things that strikes me immediately in relation to Rhodium is that it is not an unprecedented set of circumstances. It has been noted in the past—in relation, for example, to the former businesses that the commonwealth owned through the former Department of Administrative Services—that there had been a tendency on the part of some of them to think that operating commercially meant adopting all of the trappings of sponsorship, art collections, offices and such. It

was a case of confusing the show with the substance of operating commercially. To my mind, there is no rule that says that engaging in that sort of activity makes you commercially successful; in fact, there might even be argued to be a reverse correlation.

One of the unfortunate characteristics of firms in the public sector is that they are not, in many cases, subject to the same sorts of disciplines as firms operating wholly within the private sector. In particular, if the government is left with the residual risk of ownership of the corporation, the government is entitled to expect that standards that apply to other public sector operations also apply to that type of corporate activity. It almost leads one to a conclusion, and it is a view I hold, that a halfway house is a very dangerous place to be—that organisations are better off being either entirely within the public sector, and operating according to the rules, requirements, policies and culture that applies to public sector organisations, or being put out altogether.

I note from the Auditor-General's report that the government is contemplating the sale of this organisation. There has been for many years in the commonwealth a view that a government business enterprise is really an oxymoron—that it should be either government or business, and that the government business enterprise structure is really a halfway house for organisations that are in the process of being sold. Clearly, from what is revealed in the Auditor-General's report, there were issues to do with behaviours within this organisation that did not conform with public sector norms, while at the same time the ACT government was in effect picking up the risk of the operation because it remained a territory-owned corporation. It is an illustration of that problem of a very uneasy halfway house.

That is by way of a very broad, general introduction. I am sure the committee would like to explore some of the specific governance issues involved.

**THE CHAIR:** Thank you for that. Just taking up that point—I have a few other questions—what I think I am hearing you say is that they are really better off being a fully controlled operation or being sold out rather than being in no-man's land.

**Prof Bartos:** Yes, either fully controlled or privatised.

**MS MacDONALD:** Would you apply that to all territory-owned corporations?

**Prof Bartos:** It has to be a matter of judgement that takes account of community expectations as well. For example, take one that we are all hugely familiar with at the commonwealth level, a government business enterprise that is operating as if it is a corporation and that neither side of politics would suggest should be sold—Australia Post—because the community expectation is that it should not be. But with an organisation like this—which is operating as if it is a competitor to other providers but which is still owned by the government, and the government is taking up the risk, there is a real problem. If you look at territory-owned corporations, you can probably make a distinction between those that expected to operate simply as in effect a substitute for other possible commercial providers—in which case you ask why the government has them—and those that have a role such that the community thinks it is important that they be retained in government.

I would not argue for blanket rules, because the moment you put in place a blanket rule, you come across an exception. But that might give you some idea of the principles that could apply.

**MS MacDONALD:** We had ACTTAB appear before us yesterday. When ACTTAB became a territory-owned corporation under the previous Carnell government, I was not in the Assembly but I was the union organiser involved. There were arguments against it then. There are a number of people in the community who do not understand why the government would own a betting agency. There are a number of people within the community who would prefer that betting agencies did not exist at all. But equally there were at the time—and still are—approximately 200 people employed by that organisation. They rely on that organisation. If it was not for the government, those people would most probably lose their jobs. Do you want to comment on that?

**Prof Bartos:** I am not sure whether it would be the case that, if it were not owned by the government, those people would lose their jobs. That is where it comes down to—this is not really an inquiry into ACTTAB—

**MS MacDONALD:** No.

**Prof Bartos:** If the same people were employed, but employed in an industry structure where they had better career paths to other parts of a broader organisation, employees might be better off if it were not in government hands. On the other hand, if the issue for the owner as government is that it is there for employment creation purposes, one of the questions that the government should be asking itself is whether that is the best employment creation option. Just because these people are employed in that corporation—it may well be that, if the concern is employment, there are other, better ways for the government to meet that concern.

**THE CHAIR:** Do you see any benefits in TOCs or, if you do not believe there are, what do you believe are the perceived arguments in favour of TOCs.

**Prof Bartos:** In a situation where a government is expecting an entity that it owns to operate for profit and is expecting it to compete with other privately owned corporations, there is an argument that putting it on a similar footing (1) ensures fair competition—what is called competitive neutrality, and that is a positive—and (2) enables that organisation to be more competitive in that marketplace. There is a range of different types of corporations, though, and one should distinguish between them. A corporate form that is used in a number of cases for government enterprises is the one used for the newly formed Canberra Glassworks out at the old power station. It has been formed as a company limited by guarantee—which gives it a corporate form, sets out some expectations for it and allows it to put in place governance arrangements such as a board—but it is not expected to make a return to shareholders. It is an arrangement that you find quite commonly in arts organisations or some kinds of community service organisations in state and territory governments around Australia. I think there is less of a case for a company limited by shares—as Rhodium was—and operating under the Corporations Act 2001. What it comes down to is this. If the only purpose of having the body is the financial purpose of making a return to shareholders, you have to wonder why it is in government at all. Those two different types of corporate form have to be considered.

With some corporations, governments set them up properly, own them properly and have them at arm's length as a corporation; and operating as a company limited by guarantee works fine. That issue of independence as an arm's-length responsibility is one of the key arguments for territory-owned corporations: that in some cases it is desirable for governments to have organisations not within the fold but at arm's length, for reasons of distancing them from the day-to-day operations of that corporation.

**THE CHAIR:** There have been some questions on and possibly some confusion over the role of shareholders in territory-owned corporations. I am not sure if you have seen any of the evidence we have had so far. I am wondering what kinds of steps you believe should normally be taken to ensure that the roles of shareholders and ministers are well known to the board of a territory-owned corporation—or maybe you could elaborate on what you regard as best practice.

**Prof Bartos:** The situation within government is a little different from the situation that applies to shareholders in relation to, say, a publicly listed company, where there is normally a larger, more diverse group of shareholders. Here we have a fairly concentrated group of shareholders. In terms of the formal Corporations Act responsibilities, the shareholders have to meet annually at an AGM and elect the directors. They are entitled to receive information from the company, but, beyond the election of the company directors, there is not that much that shareholders necessarily have to do in the normal listed company situation. There are things that they can do, such as pass resolutions, call a special general meeting and so on; in some corporations shareholders have in effect minimal directive involvement.

In the case of a territory-owned corporation such as this, shareholders have a more directive role potentially available to them in that they can give an indication to the board of the broad strategic directions they want this corporation to take. Again, they do not have to, legally, but I would suggest that the expectation of government and the expectation if I was being appointed as a director to a body like this would be that I would get some guidance from my shareholder minister as to the kinds of things they expected this organisation to achieve.

**THE CHAIR:** I do not know if you noticed it, but page 25 of the Auditor-General's report says:

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 evidence we received subsequently, on 28 March, at page 3 of our transcript, the Chief Minister referred the committee to legal advice he had received—which I think came through Actew Corporation—on the responsibilities of shareholders. The advice stated:

It would ... 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.

I am wondering if you agree with this legal statement.

**Prof Bartos:** Yes. It would be considered quite unusual for shareholders to get involved with a matter that would commonly be up to a board—essentially to guide the CEO and the senior management of the corporation on their strategic directions.

**THE CHAIR:** You did say that if you were a board member you would have thought they would be wanting to take advice from the minister on the direction proposed.

**Prof Bartos:** There are, I suppose, levels of direction. One way to conceive of this is to think of the situation where you were put in the position of being approached by a minister in the ACT government and asked, “Will you go on the board of this corporation?” You would want to consider carefully, you would want to find out from the minister why they wanted you on that corporation and you would want to get some guidance in a broad sense. But it would be not just unusual but almost improper for the minister to then say, “And I want you to direct the CEO to do the following 12 specific things.”

**THE CHAIR:** I understand that on the mechanical day-to-day matters, but in terms of a strategic direction do you think that it is appropriate for the minister to provide that or do you think that is not appropriate? I am not talking about day-to-day management issues.

**Prof Bartos:** I think it is appropriate for the minister doing the appointment of a director to give that director a steer for the kinds of expectations that the minister has, but it is then the director’s responsibility to do the strategic direction setting for the organisation. Otherwise, there is no real point in them being there as a director.

**THE CHAIR:** So you would think it was unusual that, when we were taking evidence from Mr Samarcq, who was chairman of Rhodium, he told the committee that Mr Quinlan, who was then Deputy Chief Minister, requested the draft business plan in December 2004 but never approved that plan? Given that the minister specifically requested Rhodium to provide him with a draft business plan, do you think that imposes any responsibility to provide strategic direction?

**Prof Bartos:** I think “responsibility” is probably too strong a word. The situation—and this is one of the tensions—with a government-owned corporation is that ministers can be as involved or as little involved as they choose to be. As the owners, they have a perfect right, in the same way as shareholders in a company could choose to get more involved or choose to stay well back. It is really something that is pretty much optional for ministers as shareholders. It is quite analogous to the way in which shareholders in an ordinary company might act. We can think about some of the examples that the committee might well be familiar with. For example, Rupert Murdoch can choose to get involved in some of the operations of News Corporation or he can choose to stand back. In his shareholding role, he has those options.

**THE CHAIR:** Mr Samarcq went on to say that he felt the board was getting informal mixed messages from the shareholders rather than formal responses. I am just wondering what kind of formal procedures and communications you would expect to see between the shareholders and board members. Am I hearing you correctly that

you are saying that it is up to the minister of the day, or would you say, given that this is identified as an issue by the Auditor-General—the board chairs told us that they were getting mixed messages about the future of the company—that there ought to be more precision in the direction given?

**Prof Bartos:** It is a factual question for the committee to work out whether or not there were mixed messages being received by the board. In principle, getting mixed messages from the owner is a bad thing for governance. If the committee finds that that was what in fact was happening, I would suggest that that is an undesirable situation. I would also suggest that, to the extent that ministers got too involved, they would be running the danger of turning themselves into what is known in the law as a shadow director—that is, taking over the director responsibilities from the directors that they have appointed. Again, that is undesirable. Ministers, having appointed a board, should be trying to give that board a reasonably coherent mandate rather a mixed one—but not in a level of detail that makes the ministers themselves effectively directors.

**THE CHAIR:** Is there a best practice point that you would favour from your experience.

**Prof Bartos:** I suppose that a good point of reference—I am sure the committee has come across this already—was a review of government business enterprise, GBE, arrangements done by the former chair of the Australian Stock Exchange, Richard Humphrey, which sets out some good principles that I think constitute best practice here.

**THE CHAIR:** I have one last question before I give my colleagues a go. Given some of the things that have appeared in this report, I am wondering what safeguards you would expect normally to be in place to ensure that a CEO does not act beyond the authority conferred on that CEO by their board. There are a hundred things, I suppose, but just the general principles that you subscribe to.

**Prof Bartos:** Normal safeguards include a strong, independent audit function—an audit function that reports direct to an audit committee of the board and is not under the thumb of the CEO. The other very important safeguard is a high degree of transparency—extensive reporting rather than things being done secretly or without disclosure: reporting to the board and reporting through the board to ministers in this Assembly. Those are some of the key safeguards. Having said that, I should say that some of our biggest corporate governance failures in Australia have been because managements have successfully hidden materials from boards and shareholders. It is something where even the very best safeguards in the world cannot provide you with a 100 per cent guarantee that it will not happen.

**THE CHAIR:** From reading this report, are there obvious things that you think should have been put in place that might have avoided the situation deteriorating to the extent it did?

**Prof Bartos:** One thing that strikes me continually when reading the Auditor-General's report is the extent to which it was assumed that a carryover of arrangements from Totalcare into Rhodium would be fine. In hindsight, one of the



lessons out of this concerns conducting what is called a due diligence—that is, examining what skeletons there might be in the closet, how procedures are operating, all of the financials, all of the assets and so on for a company when it is being set up. Even if it is being spun off from another one, it might have been a desirable step here, because one of the things that the board has said in its response to this report—and I imagine also in its evidence to you—is that part of the issue was that this was very much a carryover operation as opposed to a brand-new start-up. If it was a start-up, there would have been that sort of due diligence.

**DR FOSKEY:** I want to go back a bit to first principles. One of the things I want to ask about is why the ACT government might decide to maintain those three—as far as I know—territory-owned corporations, Actew, ACTTAB and Rhodium. What is in it for the government? All these bodies, with their sponsorships, their entertainments and so on, may in fact be assisting government in a way. For instance, Rhodium supported the Brumbies; Actew sponsors a lot of events—community events and community organisations; and ACTTAB runs big entertainment items for the government. I am just wondering to what degree that would be an issue. It puts it at one remove from government, but nonetheless it serves government.

**Prof Bartos:** You have to ask whether it is necessarily in the interests of the government to have that sort of sponsorship activity or community engagement activity. Who gets the credit? Is it the corporation or is it the government? Could the government do it in a better way? If it was its own decision, would the government necessarily choose, for example, to sponsor the Brumbies? One would suggest maybe not. There are real problems with an argument that says that, by having these corporations within government, we get some benefits that government could not necessarily get on its own. In terms of the implications for the democracy, who actually takes the decisions? Is it appropriate, if government wants a certain set of community activities to be supported, for example, for that to be effectively done almost at the whim of a territory-owned corporation or should government be taking those decisions and holding itself accountable for whatever decisions it does take? If government does want to support a community organisation or an activity, I have a preference for it to do so through the budget process, which is transparent, open and accountable.

**DR FOSKEY:** One of the pieces of information that we have that Actew actually commissioned is some advice from Mallesons in regard to the legal obligations of territory-owned corporations. It seems to me that there is a gap between the way an organisation would operate if it was a government agency, and what it is expected to do, and what a corporation would do. According to Mallesons' advice, territory-owned corporations are meant to pursue profits—that is their main game rather than the public interest. That would mean that sponsorship should have a clear profit interest, one would assume; yet that clearly is not the case. As citizens of Canberra, would we be better off if they were subject to very clear guidelines that people knew. We are talking to a third territory-owned corporation this afternoon. We find that they all have different ways of operating. Would it be better if we just had a very clear set of guidelines that they all had to follow?

**Prof Bartos:** One problem, though, with a set of guidelines that apply to all of them is that they are operating in very different markets. For example, if you consider—and I

am sure Michael Costello and Jim Service, who I notice are appearing this afternoon, will cover this off—the reasons why Actew might want to be doing sponsorships in a market where other providers are seeking to take market share, it might be to establish themselves as an important part of the Canberra community and retain market share. In the case of something like Rhodium—which is not looking to get its business from your average person in the street; its business was coming from government leasing—the motivations would be very different. I think that one uniform set of guidelines would be problematic for that reason.

I also think that guidelines do not get to something that the Auditor-General has very rightly covered in this report, and that is the cultural issues. One of the big problems with Rhodium was simply inappropriateness of cultural behaviour, as identified by the Auditor-General. Guidelines will never really cover off whether people behave in a culturally appropriate way.

One of the other things to mention is this. You were talking about one of the purposes of territory-owned corporations being to make profits. It is worth noting that Rhodium had an absolutely shockingly uncommercial rate of return on assets, and it is implied in the Auditor-General's report that that was quite deliberate—that it was not its intention to make profits. That makes you wonder in the first place whether there was some sort of inherent contradiction in its establishment. If it is not meant to make profits, why would you establish it as an arm's-length territory-owned corporation?

**DR FOSKEY:** Good question.

**MS MacDONALD:** I think I had my five minutes before, and I will continue that conversation at another point.

**THE CHAIR:** Going back to the issue of ensuring that the CEO does not act beyond authority, you talked about the importance of a vigorous, independent audit and probably the absence of suitable due diligence when elements of Totalcare turned into Rhodium. I am just wondering this: one of the things that interested our committee that has emerged in evidence from the chair is the issue of reporting. There seemed to be a lot of things that happened that apparently they were not across. I am wondering what sort of procedural reporting mechanism you would expect to see if you were involved in designing or advising that might have avoided some of these issues getting out of hand. Is that a question you are able to take?

**Prof Bartos:** Yes, I can, though again I get back to the issue that more prescriptive guidelines might not necessarily help. For example, one area where I might take issue with the Auditor-General's report is the notion that there needed to be guidelines on credit card usage. To my mind, that is the sort of thing that no corporate board really should get involved with; that is a management matter. How staff use their credit cards is something that is not of major strategic importance. I do not think that putting in more guidelines in response to perceived failings is the right answer. It is a question of the board having faith in a CEO—that the CEO is reporting honestly and diligently—but also having very good backup mechanisms by way of separate scrutiny mechanisms that go to the board separately from the CEO.

One of the issues here is that that is going to be a lot easier in a large corporation like

Actew than it is in something tiny like Rhodium, where it is much easier for a small, dominant personality to come to the fore and effectively carry all of the people involved. I am not suggesting that it is directly analogous, but you will recall the problems in Victoria with something called the national safety council and Mr Friedrich, who was a dominant personality in a small organisation who racked up vastly larger bills than were ever incurred in the Rhodium case. From corporate governance history, it does seem to be partly also a function of size. With a very small corporation, it is very hard to get those sorts of independent checks and balances in place.

**THE CHAIR:** Do you have a view about the practice of putting part-time, effectively non-executive, directors on these territory-owned corporations? Do you think that that is inhibiting the level of interest that might be applied to these things?

**Prof Bartos:** I do not think so—in fact, the contrary. Having a non-executive director who does not have a stake in the organisation and can be one step removed and a bit independent in their thinking is usually regarded as a desirable thing for governance.

**THE CHAIR:** I know that you do not want to adjudicate on the facts before the Auditor-General per se, but, from examining the report and evidence, do you have a view of whether the board has acted as best it could under the circumstances—from the material that is in the public domain?

**Prof Bartos:** That is really a factual thing for the committee and the auditor to look at. The principle that I would draw your attention to is what is known as the business judgement rule, which is incorporated in section 180 of the Corporations Act 2001. Provided directors act in good faith and provided they act on any information that they receive—that they do not just ignore it—they are discharging their directors' duties properly. Whether or not they did so in this case is more a factual issue than anything else. I do not see anything in the Auditor-General's report that suggests that they ignored information—in fact, to the contrary: the Auditor-General suggests that, once information was brought to their attention, they did act on it.

**THE CHAIR:** Thank you. I appreciate you giving up your time to be here. I have found your evidence today most informative.

**LAI, MR MICHAEL**, Senior Audit Manager, ACT Auditor-General's Office  
**NICHOLAS, MR ROB**, Director, Performance Audits and Corporate Services,  
ACT Auditor-General's Office  
**PHAM, MS TU**, Auditor-General  
**SHEVILLE, MR BERNIE**, Director Financial Audits, ACT Auditor-General's  
Office

**THE CHAIR:** Ms Tu Pham, I think that you and your officers are familiar with the advice that we give to witnesses. It is spelt out. Are you comfortable with that and knowledgeable of the requirements?

**Ms Pham:** Yes, thank you.

**THE CHAIR:** Thank you. That saves us reading it all. Ms Tu Pham, before we discuss the report in more detail, is there anything that you would like to put on the record in terms of setting out your observations on this particular inquiry for the benefit of the committee?

**Ms Pham:** I hope that during the process I will have the opportunity to respond to some comments made by the Chief Minister. At this stage, I certainly would like to take questions from the committee and see if I have an opportunity to come back and make some more comments on his comments.

**THE CHAIR:** I might make that easy by noting the following finding at page 25 of your report:

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.

Could you inform the committee what responsibility you think the shareholders had regarding the provision of strategic direction? Also, what kind of strategic direction would you have expected to be provided by the shareholders?

**Ms Pham:** I think it is quite clear that, under the Corporations Act, the directors on the board are legally responsible for the strategic direction of the company. However, there is a role for the shareholders to play in providing strategic guidance to the board, input to the board, on the government's views about the future of the corporation so that the board can take into account that input from the shareholders in the preparation of their strategic direction for the company. I think that, in terms of Rhodium, it is clear that the Rhodium board was confused about the future of Rhodium going forward.

The evidence that we collected during the audit clearly showed that the board had on a number of occasions requested some input from the shareholders regarding Rhodium's future, because they needed that input to be able to prepare their strategic direction. Nothing in the legal responsibilities of the directors of the board would conflict with the expectation that the shareholders should provide some strategic guidance or input on the government's view of the future of Rhodium to the board.

If I could go to some of the information that we gathered during the audit that would provide you with the context of our comment in the report, in December 2004 the board requested urgent direction and clarification of the shareholders' intent for Rhodium because they were somewhat confused about the future of Rhodium, given the mixed views or diverse views expressed.

**THE CHAIR:** Could you just explain to whom that was directed and in what form?

**Ms Pham:** Yes. The board communicated with the shareholders in writing.

**THE CHAIR:** To Mr Stanhope at that stage?

**Ms Pham:** Yes, to the shareholders, I think both Mr Quinlan and Mr Stanhope.

**Mr Nicholas:** This was a letter that was communicated to the shareholders.

**THE CHAIR:** So we are talking about a time, December 2004, when Mr Quinlan was the deputy.

**Mr Nicholas:** It was on 1 December 2004 when a number of governance issues were raised with the shareholders, settling in or bedding down the basic direction for Rhodium. That was 1 December 2004.

**Ms Pham:** Because the board itself, a new board of a newly established company, was confused about the direction of the company going forward. Again, in November 2005—

**THE CHAIR:** Sorry, just before you go on, what was the response to that request to the shareholders?

**Mr Nicholas:** We get to that, I guess. There was a series of communications from the shareholders to the board, to Mr Samarcq, later in December talking largely about the need for the board to prepare a business plan.

**THE CHAIR:** Right.

**Ms Pham:** What I am trying to say is that on a number of occasions the board expressed concern to the shareholders regarding Rhodium's future as a TOC. So clearly there was an expectation from the board that they needed some strategic guidance or input from the shareholders to enable them to prepare the business plan or the statement of corporate intent, and that guidance was not forthcoming in the time frame required by the board before they finalised their statement of corporate intent to be tabled in line with the requirements under the TOC Act.

In my mind, and I refer back to the Chief Minister's comments, there is nothing in the legal responsibilities of the board in providing strategic direction for the company that would conflict with the role of the shareholders to provide input and strategic guidance to the board. I am at a bit of a loss to understand why the Chief Minister believed that providing such guidance sought by the board would put him in the

position of being in breach of the Corporations Law. There is nothing in the Corporations Law or indeed under the TOC Act which would stop the shareholders, if they wanted to, providing that input to the board. In this particular circumstance, given that it was a new company, given that the board wasn't sure, given some uncertainty about the future of Rhodium, it makes sense for the shareholders to give that input to the board.

**THE CHAIR:** Have you had an opportunity to examine the legal advice that I mentioned earlier and that Dr Foskey mentioned that was sourced from Actew Corporation and prepared by Mallesons?

**Ms Pham:** Yes, I do. We do not have a problem with that advice. The advice simply said that the legal responsibility under the Corporations Act for setting a strategic direction for a corporation lies with the board, and we agree with it. Indeed, in our report we recognised that that was what the board needed to do, but then there is a process where the board can seek input from the government to be able to do so and do a good job.

Indeed, in some of the correspondence from the shareholders to the board regarding a request for the board to prepare a business plan there was an expectation that the government would help facilitate that process so that there would be alignment of the government's objectives and the board's objectives for the company. That is important for government business enterprises, because boards do have the responsibility to set the strategic direction for the company but the objective of the company may or may not align with the objective of the government for the public interest. Indeed, the TOC Act, consistent with the Corporations Act, provides an opportunity for the shareholders to work with the board so that the board's strategic direction is in line with the government's objective, taking into account public interest.

**THE CHAIR:** I take you back to Mr Stanhope's evidence on 28 March, when he referred to that legal advice. He said the advice stated that it would "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". Do you agree with that or take issue with that?

**Ms Pham:** I think the advice clearly said if you misconstrue what the report said. What we said was that the government should give strategic guidance, especially in a case where the board was asking for it and was waiting for that input. There is no legal responsibility for the shareholders to provide the input sought by the board. Legally the shareholders can decide to give input or not to give input. There are various provisions under the TOC Act for the shareholders to give direction to a board to do certain things.

We have to remember that Rhodium is a government-owned public enterprise and, in my mind, the minister or the shareholders owe duties to the public in overseeing the performance of a TOC and are accountable to the Assembly for the performance of the TOC. In that sense, I think the shareholders could not stay away from certain involvement, especially at that broad level, to ensure that the board's strategic direction reflects the objective of the government.

Let me give you an example. The board's direction and the board's strategy may be very different, depending on what they understand to be the government's intention for Rhodium. If the board understand that the government would like to sell Rhodium within one year, they may not invest a lot of money in fixing the IT system of the company because a lot of money would be spent and you would not get the return until four or five years down the track. That would be a waste of money if Rhodium is to be sold within a year, but if there is a future for Rhodium as a TOC for the next five to 10 years the board may make a decision to effect a new IT system for Rhodium. So a lot of the decisions of the board would depend on how they understood the government's intention for that particular government business.

In this case, the government did not provide that expectation or that view to the board. I had a discussion with the board chair. I talked to directors of the board during the audit. I talked to the former CEO. Clearly, they felt that they were not aware, as they should be, of the intention of the government for Rhodium's future. That does not mean that they stop and do nothing. They can still run the company, but it will be with a short-term focus rather than proper long-term planning to get a maximum return for the shareholders.

**DR FOSKEY:** The shareholders can set strategic direction and give advice, but is the board under any compulsion to take notice of that?

**Ms Pham:** Yes, under the TOC Act the board should consider the input of the shareholders.

**DR FOSKEY:** Consider, but not necessarily—

**Ms Pham:** Even if it is not specified legally under the TOC Act, clearly there was an expectation that it would be an agreed strategic direction between the shareholders and the board, but final legal responsibility still remains with the board.

**DR FOSKEY:** The main thing is that these shareholders were actually representing the government and that gave them greater power than any other share owners.

**Ms Pham:** The shareholders have power under the act to give direction to the board to take certain activity. There are provisions under the TOC Act, consistent with the Corporations Act, to give a direction to the board, for example, not to perform certain functions. For example, I think recently the government gave a direction to the board that they should separate the ACT fleet business and have a cost-recovery approach for the ACT fleet business. So there are ways and means for the shareholders to provide that direction under the act, both the Corporations Act and the TOC Act, to the board, to influence the board's direction and the board's decisions. Would you like to add anything?

**THE CHAIR:** So that I am quite clear on what you are saying, you are acknowledging that there is not a legal obligation on the shareholders to provide strategic direction, but you feel that, given the repeated requests for strategic direction, there was an obligation on the shareholders to respond and provide that strategic advice that had been sought; is that correct?

**Ms Pham:** Yes, that is correct.

**THE CHAIR:** I also ask in the same context before moving to Mr Sheville: how, in your view, did the failure to provide the strategic advice manifest itself in problems that beset Rhodium?

**Ms Pham:** I do believe that if the board had a clearer idea about the government's intentions and the government's view of the future of Rhodium, they would have been in a better position to make long-term decisions beneficial to the company. It was difficult for the directors of the board as well as the former CEO to operate within some degree of uncertainty. As they said, the uncertainty did not stop them managing the company and continuing to provide services as required, but, from my discussions with the board's chair and members, it certainly did affect their ability to plan for the long term.

**THE CHAIR:** Were there any specific examples that you might recall that would identify where that uncertainty influenced their decision making and may have compounded these issues.

**Ms Pham:** I believe that at some stage the board had the intention to expand the company to include other lines of business, for example, leasing mining equipment, to expand their business further afar.

**THE CHAIR:** Was that the board or Ms Clark?

**Ms Pham:** The board. That was the board's intention. However, I understand that that direction was not supported by at least one shareholder, I believe Mr Ted Quinlan, but that was not formally communicated because of the mixed views of the shareholders.

**THE CHAIR:** Are you saying that Mr Stanhope favoured expansion and Mr Quinlan did not favour expansion, or is that jumping to conclusions?

**Ms Pham:** We don't know who favoured what. We know the board talked to us about mixed messages.

**THE CHAIR:** From the shareholders.

**Ms Pham:** From the shareholders.

**THE CHAIR:** Different views from the two shareholders.

**Ms Pham:** Yes, and that made it hard for them to know which way to go. The second thing is that there were a number of short-term appointments. We don't know whether or not, if the board were clearer about the long-term future of Rhodium, they may have made other commitments regarding long-term appointments to key senior management positions.

**THE CHAIR:** Do you think that that had any bearing on the allegations of nepotism; that, because of the uncertainty going forward, the former chief executive brought in



people that she knew, given that they did not know the future, or was that unrelated to that factor?

**Ms Pham:** No, I don't think so. I don't think we can make that link. I don't think that the shareholders can be responsible for bad management practice.

**THE CHAIR:** No, that is not what I am saying. I am just saying that with the appointments that you are talking about, given that there appeared to be some measure of nepotism in there, did that have any relationship with the uncertainty going forward?

**Mr Nicholas:** If I may comment, chair, the former chief executive officer herself was appointed on several relatively short-term contracts, which may have indicated a concern about the longer-term prospects of the organisation and the ability to recruit at the appropriate level to that. A number of the other senior appointments were also relatively short term, as we understand it. Again, whether that was directly related to some lack of strategic direction or otherwise, it is a fact that that occurred. I guess we would argue that that is not necessarily a good practice for an organisation. It certainly creates a continuing degree of uncertainty regarding the overall management and direction of the organisation.

**MS MacDONALD:** But it does not necessarily follow that, because there is a level of uncertainty, you will therefore go and employ your family members.

**Mr Nicholas:** No, I don't think I am suggesting that at all, but if one is only capable of employing someone for a relatively short period, six months or nine months, there is a limited field of applicants.

**THE CHAIR:** That was my point.

**MS MacDONALD:** But it still does not follow that they have to be family members.

**Mr Nicholas:** I was certainly not trying to imply that.

**Ms Pham:** We can't say definitely that the lack of input from the shareholders would create the problems we identified in the report. What we can say is that it was clearly in the mind of the board's chair and the board members that they did find difficulty in their planning for the future of Rhodium without that clear direction from the shareholders. I think that it was clearly communicated to us during the audit, and also in board minutes and board letters to the shareholders, that they were concerned about the ambiguity as to the future and the lack of direction. They clearly communicated to the shareholders that they were waiting for input and it was not forthcoming.

**THE CHAIR:** Can you give the committee a better picture on the issue with the IT project? I think that a substantial capital investment was made and—tell me if I am wrong—it was abandoned at some point at some considerable loss. Are you or is one of the officers able to brief us a bit more on that?

**Mr Nicholas:** I think Rhodium had identified for some while that there was a mismatch between a number of their systems—their finance systems, the financial

management systems and, I guess, their asset tracking systems and so on—and sought to try to redress that by creating a package that would suit all the needs that they had. It appears to have been a fairly ambitious project and one that I think the chair has since described as being more than they possibly needed, but it was a project that they wished to pursue. They certainly invested a fair sum of money in it. It got to the stage where the potential outcome was far less certain than they had expected, that it would require further significant investment of moneys to achieve the goals that they expected, but with no certainty that those goals would be achieved. So they took a management decision or a business-related decision to terminate the project.

**THE CHAIR:** How much had been expended, do your recall, at that point?

**Mr Nicholas:** We have reported in here somewhere in the vicinity of \$490,000 for the abandoned project. That is on page 11, the second dot point on that page. We say that there was a low probability of successful implementation within the current budget allocation—the budget allocation at the time was \$1.5 million—and that the abandoned project had cost Rhodium around \$490,000.

**THE CHAIR:** What was the problem? Was it their poor design of their specifications for this project or was it the suppliers? What would you see as the fundamental problem?

**Mr Nicholas:** I don't know if I can quite answer that.

**Ms Pham:** I think that it reflected the management of the project, the specifications for the project, the change in personnel managing the project. Within a short term you may have had two or three different people managing that IT project. It seems that problems occurred at various stages of the project, from the specifications to project management, to the level of safety and value of the contract. I think we explained it quite clearly in the report.

**Mr Nicholas:** We have explained it. It was partly perhaps because there wasn't a proper risk analysis done or assessment of the requirements done in the first place. They may not have identified the real likelihood of a successful outcome there. I think that, as mentioned earlier, they may have bitten off a bit more than they could chew, that they sought a fairly high-level solution to a problem that may not have required that level of investment or that level of technology perhaps.

**THE CHAIR:** How much was the board across what was going on with this in your view from your audit?

**Mr Nicholas:** It was certainly a matter that was raised quite frequently at board meetings and I think that the board had a fairly significant interest in it. There was a number of indications in the minutes of the board meetings that they sought further detail on the status of the project, where it was up to and how it was tracking. Whether that detail was provided it is a bit difficult to say. The minutes are not as expansive as we might want in that respect. But it is certainly fairly obvious that it was a matter that was entertaining the board quite consistently. Were they across the whole contract and exactly where it was at? Perhaps not.

**THE CHAIR:** Mr Samarcq gave evidence on 10 May, pages 33 and 34 of the transcript, and he told the committee that the board had authorised the CEO to spend up to \$100,000, but she exceeded this amount and, if I am reading correctly, spent over \$500,000. The committee was interested to know why ongoing reporting to the board did not prevent that. I know we have talked in private hearings and so on but, for the record, could you give us an overall assessment of your view of the standard of ongoing reporting to the board? Related to that, could you identify the deficiency in the procedures or reporting which seemed to allow the former chief executive to exceed her authority so drastically?

**Ms Pham:** From examining the records of the board minutes, there was evidence that the board did have concerns regarding the expenditure and the information provided to the board.

**THE CHAIR:** How far back did those concerns start to appear in the minutes?

**Mr Nicholas:** It would probably be in late 2005 that there were significant questions being asked.

**Ms Pham:** When, for example, the Brumbies deal was brought to the board's attention.

**THE CHAIR:** That was after the deal, effectively, had been cut.

**Ms Pham:** Yes, that is right. So the board did ask questions and did ask the former CEO to provide more information, more explanation. I believe the issues were that the board did not in a proactive way follow up to the end to be sure that its concerns were addressed. They may have raised them at the meetings. They may have asked questions of the chief executive officer at the time, but they should have really vigorously followed up to get information supplied to their satisfaction.

**THE CHAIR:** Do you not share the Chief Minister's view that the board did all within its power that could be reasonably expected in terms of overseeing the corporation? I know that is a bit of a loaded question. Maybe I will ask it in a slightly different way. Do you believe the board should have done more to prevent what I know is now hindsight, which is always easy, but do you believe that they should have been doing more at the time and that that may have prevented some of the problems that you identified?

**Ms Pham:** Certainly we communicated to the members of the board that we believed that they should have been more proactive in following up their concerns with the CEO.

**THE CHAIR:** At what point in the proceedings? Was this when you eventually went to them?

**Ms Pham:** Indeed, we also said it in our report. If you look page 61 of the report, we did express our concern that the board was not aware of many key decisions made by Rhodium management, paragraph 5.91. We also say:

A more proactive approach by the Board may have avoided some of the corporate excesses and accountability breakdowns examined in this audit.

So we do believe that the board could have done better, especially when it came to the board's attention that there were delays in the CEO delivering a number of policy guidelines requested by the board, and these are important to governance arrangements for a newly established company. So there was delay, a time line was not met and the board was concerned but did not follow up with more clear actions on this issue.

**MS MacDONALD:** Just on that, I find it quite amazing. It is often remarked on how small a town Canberra is and that you really cannot get away with a lot of things. Do you find it surprising that the board did not become aware of these things sooner or become alarmed sooner?

**Ms Pham:** Certainly the chair has regular meetings with the CEO outside the regular monthly meetings. You would expect that in these regular meetings with the CEO the chair would have formed a view about how things were going at the time. But if the former chief executive intentionally withheld information or hid certain information, it would be more difficult for the chair to discover it.

**THE CHAIR:** Have you formed a view on that?

**Mr Nicholas:** A number of the briefings that we have seen—to the board—are quite brief. They are brief briefings.

**THE CHAIR:** Do you know what the oral account was, though, that they were presented with?

**Mr Nicholas:** No. It is very difficult to see that. The board minutes, whilst they are minutes, are not transcripts; it is quite difficult to form a strong view on the depth in which matters were discussed.

**THE CHAIR:** Did anyone take notes for their own benefit?

**Mr Nicholas:** We have not pursued diary notes or anything like that. But, as we have said, I think there are some indications that the board could have been far more vigorous in terms of their follow-up on particular activities. The development of policies and guidelines, for example, was one of the key performance indicators or performance measures that the former chair was expected to complete as part of her contract.

**THE CHAIR:** The former chief executive?

**Mr Nicholas:** Yes, sorry; the former chief executive. They did not eventuate within the time frame required, yet we find that in November 2005 the board assessed Ms Clark as performing very well under difficult circumstances. There is obviously a degree of information that is going forward, but not necessarily the full story.

**MS MacDONALD:** I accept that Ms Clark and possibly others have concealed

information from the board, but my question went more to Canberra being a small town and the level of spending that was going on, that did not get back to the board.

**THE CHAIR:** Sponsorships and largesse of various sorts.

**Ms Pham:** During the audit there was conflicting information provided to us in terms of the former CEO's views and the board's views. There was no way for us to know how to assess the conflict.

**THE CHAIR:** Can you expand on what the conflicting messages were?

**Ms Pham:** For example, on certain issues, when we asked the CEO why the information was not available to the board, the CEO said, "Oh, yes, I advised the board." Yet minutes of the meeting did not indicate that advice was given. The former CEO also advised that certain matters were discussed with the chair or the board at informal meetings and that, in her view, the chair was aware of these matters.

**THE CHAIR:** This is corporate sponsorship, hospitality and things that Ms MacDonald has alluded to?

**Ms Pham:** A number of issues. The CEO advised us that, yes, the board was aware of it and, yes, she had advised the board at an informal meeting or regular meeting with the chair, but they had no documentation to indicate to us one way or another, so it was hard for us to know who actually—

**THE CHAIR:** Was telling the truth.

**Ms Pham:** Yes, telling the truth.

**Mr Nicholas:** A perfect example of that is the recruitment of the chief operating officer. The board says that the COO—the chief operating officer—reported directly to the chief executive officer. The chief executive officer has told us that that position reported directly to the board. One might be able to say, "If you have position descriptions et cetera, we could identify where that came from," but there was no position description with the contract, so we do not—

**THE CHAIR:** Did the contract of employment spell that out?

**Mr Nicholas:** It is pretty sparse. That level of detail is not available to us, so we can only report that there are differences of opinion.

**DR FOSKEY:** We found out yesterday that with ACTTAB's hospitality and events list half of the participants were members of the board. I am wondering if that could have been the case in Rhodium's situation too—that board members were also recipients and beneficiaries of some of the events. Did you find that?

**Mr Nicholas:** We did not pursue that in any particular detail, but it would be reasonable to assume that that occurred from time to time. I believe that, at the attendance at Woman of the Year, there were a large number of members of Rhodium and Rhodium staff involved. So there is certainly a fair bit of spin in that respect. But

in most of those corporate engagements there was no list of attendees provided. Again we go back to what is available through Rhodium, and Rhodium's details are basically a fifty-fifty split on FBT issues and that is about it.

**DR FOSKEY:** I am asking because there might have been perceived benefits from some of this largesse, and that may have been a reason—I am just exploring this with you.

**THE CHAIR:** While you are looking at the papers, let me ask this, in the same vein as Dr Foskey's question. I am particularly interested in all these premium events interstate—formula one, the Australian Open and there may have been a grand final or two there. Who were the beneficiaries? Can you identify any of the beneficiaries of all these activities?

**Mr Nicholas:** No, we do not have these details.

**Ms Pham:** And we have no list.

**THE CHAIR:** No records whatsoever?

**Mr Nicholas:** And therefore no list.

**Ms Pham:** It was quite common in other TOCs—lack of information about attendees at these corporate functions.

**THE CHAIR:** You would think, though, that if you are taking—I think the formula one was one event people were taken to, wasn't it? Or the Australian Open? I am sorry to be vague.

**Mr Nicholas:** Certainly the NRL and AFL grand finals.

**THE CHAIR:** Surely it would be pretty easy to work out who has flown down to the AFL grand final. Wouldn't there be records of flights?

**DR FOSKEY:** Just for the record, I want to say that the transcript of our hearing with Mr Moore indicates that he said:

To my knowledge, no politician and no board director has been entertained through the Brumbies agreement.

**THE CHAIR:** Yes. That was just the corporate box arrangement.

**DR FOSKEY:** Mr Samarcq said:

Let me just say in terms of most of the corporate entertainment, if not all the corporate entertainment, the board didn't participate. One could argue that they should have participated, they may have got a better flavour of what was happening, but the policy was that it was to be used for clients.

**Ms Pham:** To answer that question, we did not have information or evidence to be able to say who the attendees at these functions were.

**DR FOSKEY:** I just have—

**THE CHAIR:** Just before you go on to another thing, I think that in the toing and froing you did not actually get to my question about the standard of ongoing reporting. I guess you said that the minutes were brief, but did you look at the actual methods of reporting as well—apart from what is recorded in the minutes? Is there any observation you would like to make on that?

**Ms Pham:** There are monthly reports from the former chief executive at board meetings. As Rod said, some of these reports were quite brief in content. Whether or not the chair followed up with more information during other discussions outside the board—again, we did not know. We knew there were meetings, but we did not know what was discussed—what information was provided, again because of lack of documentation.

**Mr Nicholas:** I think that is a fair summation of it. We did see a regular briefing going from the CEO to the board at the monthly meeting.

**THE CHAIR:** So the reporting was of a standard that you do not believe was adequate for what you would expect to see in a TOC or even a department?

**Mr Nicholas:** The reporting was light on in a lot of respects. There was not a great deal of detail provided. I do not believe that things like the sponsorship were reported in a manner that would have provided the board with the opportunity to assess whether the \$100,000 limit, for example, was being met or not.

**THE CHAIR:** Did they get monthly management accounts?

**Mr Nicholas:** They did, but I understand that that was a single line item and was reported in much that way. If we have a requirement that says, “Here’s a maximum of \$100,000 that you can spend on sponsorships,” one might expect that there would be a regular update that would say, “\$100,000—now spent \$50,000; have \$50,000 left.” And it would go like that.

**THE CHAIR:** There is not even periodic reporting of the management account?

**Mr Nicholas:** It does not appear. I do not believe we found anything, no. We did not find anything like that.

**THE CHAIR:** That would be a fairly odd situation, wouldn’t it, with accounts?

**DR FOSKEY:** There is no doubt in my mind, reading between the lines of your report, that there are some quite damning observations made. But nonetheless I do not find you making firm statements. For instance, on pages 55 to 56, you say:

In the absence of adequate documentation, and given that many of the items are still unused, Audit considers the decision—

to buy them—

lacked prudence and may not have represented value for money.

Under what circumstances could it have represented value for money, in your opinion?

**Mr Nicholas:** Value for money in something like promotional products turns up if you can demonstrate that it has achieved some good for the organisation—that it has encouraged further sales or leases or that it has encouraged a client who might be considering leaving the organisation or moving his business away to stay with the company. And so on and so forth. What we see is some \$32,000 or \$33,000 worth of expenditure that is sitting basically in the cupboard.

**THE CHAIR:** Is it still there? I was a bit confused as to that.

**Mr Nicholas:** We have not followed that one up, I am sorry. I do not know.

**Ms Pham:** I think at some stage the new management tried to return some of the product to the supplier and that was unsuccessful.

**THE CHAIR:** So there are some wonderful Waldorf china and Waterman pens there.

**Mr Nicholas:** I think it was the Royal Doulton glassware and glass decanters that were not wanted.

**Ms Pham:** I think that one of the problems for audit was that often certain decisions were made by a government business enterprise and justified on the basis that “we are commercial and we have to do some marketing to increase branding or corporate image”.

**DR FOSKEY:** Except that it was not as though it could have expanded its customer base, because its customer base was quite limited.

**Ms Pham:** In our position, we are not always able to say whether or not an improved image of the company or corporate branding of the company leads to increased sales. We are not expert in that link. What we can say is that it is not in the business case to support certain decisions or that the business case to support the decision is pretty brief.

**Mr Nicholas:** Flimsy.

**Ms Pham:** But that is how private or commercial companies sometimes make decisions.

**DR FOSKEY:** I realise that we might be talking about a language that I am not used to that is used by auditors, but another example is on page 56. In point 5.59, it mentions that discretionary expenses on sponsorship, promotional products, hospitality and entertainment exceeded \$500,000. Then it says:

This amount is considered excessive, when considering the Rhodium estimated



profit of \$435 000 in the same year.

In other words, expenses were higher than the profit. But the addition of the words “is considered” takes the edge off it. It is as though you do not quite want to go there by actually saying that it is excessive. It leaves open the question of who considers it excessive. It does not even indicate that the auditor considered it excessive. I realise that this may be a language thing, like diplomatic language where an inference has a great deal more potency than it does in ordinary language. Perhaps you could explain the convention.

**Mr Nicholas:** I would say that it is us considering it excessive. We have assessed the expenditure, we have looked at the circumstances under which it has been incurred, and it is the view of the Auditor-General, expressed in the Auditor-General’s report, that it is excessive. We are always careful with our language.

**Ms Pham:** If you read the report as a whole report rather than taking it in isolation, I think the message comes out quite clearly and quite sharply—that we believe that expenditures in the company were not proven and were not in accordance with care and diligence in using taxpayers’ money. That message comes out quite clearly. Often when we assess certain matters it is a matter of judgement rather than hard fact: we know that \$100,000 is acceptable and \$200,000 is not, or whatever. That is why sometimes we use this term—because it is very difficult to quantify our judgement, our observation.

**THE CHAIR:** Can I take you back to all these sporting events—and the formula one is one of them, I see. You are able to identify the percentage of guests who attended; you have all the varying percentages even though they use the fifty-fifty rule for calculation of FBT. How did you work out the percentage of guests if we do not have any records of them?

**Mr Lai:** I am Michael Lai from the audit office. It is based on the number of guests in the total number attending. For example, for the first one, the FIFA World Cup qualifier, the number of guests attending was seven and the number of staff attending was three, so we decided upon a percentage based on that.

**THE CHAIR:** I understand how you calculated the percentage, but I am curious to know how, if you did not have lists of the people who attended, you managed to work that out.

**Mr Lai:** It is based on Rhodium’s submission to the ATO, the Australian tax office, in the FBT claim.

**THE CHAIR:** In the FBT return you extrapolated the percentage of non-staff entertainment.

**Mr Lai:** Yes, that is what we did.

**THE CHAIR:** But there are no supporting papers there as to how they reached those calculations.

**Mr Lai:** No.

**THE CHAIR:** There must be somewhere, surely.

**Mr Lai:** We asked for documentation. They assessed based on what they thought by talking to people at the time. The staff attending the meeting said that there were about seven guests.

**THE CHAIR:** Did you believe that, Mr Lai?

**Mr Lai:** That was the best we could do based on the lack of information.

**THE CHAIR:** I am not being critical of you. I am just wondering if you really accept that you could compile a FBT return with such precision and then not have any record of who the people were that went.

**Mr Lai:** It was not for me in my position to assess whether I believed them or not. I just believed the documentation in front of me. All I can do is form a judgement based on what people say to us.

**THE CHAIR:** Were there no diaries of travel movements?

**Mr Lai:** No, I don't believe that they had a proper record.

**Ms Pham:** Again, in some cases they had names, but not all the time and not for all events.

**Mr Lai:** No; sometimes they referred to the name of a dealer, for example, but we did not know exactly whether it was actually a dealer or not.

**THE CHAIR:** Were there ever people involved in government procurement entertained, could you ascertain from what little information you were given?

**Mr Lai:** I did not get involved in that at this stage.

**Mr Nicholas:** We have seen no documentation on that.

**THE CHAIR:** But you knew they were car dealers or you were told that they were car dealers, some of them.

**Mr Nicholas:** Yes. What was on the documentation for these things in most cases we had to take. If you are talking about attendances, one of the examples that I can give is that we have documentation here that refers to the Telstra businesswoman event in Melbourne. According to this note, there were 28 people invited for some three tables and I counted up 14 people who were members of or related to members of Rhodium staff. So half of those 28 people there were Rhodium staff.

**THE CHAIR:** And you do not know who the other half would have been, for example.

**Mr Nicholas:** I don't have documentation of that on this document. There was a range of documents available to us, but mostly they were not very convincing in terms of providing details of who was attending these events.

**THE CHAIR:** Do you think that some of these problems would have been avoided if territory-owned corporations used external auditors? Is that something that you would recommend?

**Ms Pham:** We are their external auditors as far as the financial statements are concerned. We are also their external auditors if we decide to do a performance audit on them. The company also has an internal audit function. Most TOCs would also have an audit and risk committee, with a number of the directors sitting on that committee. They often have an auditor from one of the big firms winning a tender to carry out some internal audit for them. So it is already happening. Again, it is up to the committee to develop a good internal audit program. Actually, they could employ an external auditor from another company to do the auditing, depending on the work of the internal audit committee. That could provide a very good check and balance for TOCs.

**THE CHAIR:** As to the KPMG and Ernst and Young special audits, was one of them on your behalf and one on behalf of the board? Am I right in recalling that there was a KPMG audit and an Ernst and Young audit, one of which was commissioned by your office and the other by the board?

**Mr Sheville:** Bernie Sheville, Director Financial Audits. KPMG was the internal auditor commissioned by the board to do internal audit work following the credit card transactions. Ernst and Young was acting for the audit office in performing the external audit of Rhodium in 2005-06.

**Ms Pham:** But you are right: prior to that, in 2004-05 KPMG was the auditor doing the work on our behalf. So there were two companies in the last two years working as a contractor of the Auditor-General.

**Mr Sheville:** In fact, KPMG were selected, once their contract had finished with us, in part because they had previous involvement with the company in the audit of Totalcare prior to that, so they seemed to be a reasonable choice for conducting that internal audit.

**THE CHAIR:** One of the lines that the board used is that they blamed some of these things on what they called embedded practices that had been handed over by Totalcare. How much weight do you give to that, given that it was a new corporation established by the Assembly in December 2004, to commence in January 2005? Do you accept that view or do you take issue with that view?

**Ms Pham:** It is a new company and one of the responsibilities of the board is to ensure that policy and procedure relevant to Rhodium are in place to help internal control and help the running of the company. Rhodium, or the ACT fleet, was a very small part of Totalcare and policy applicable to Totalcare at the time may not have been relevant to Rhodium under the new structure and the new corporation arrangements, so to rely on Totalcare policy and procedure and assume that they

suited Rhodium was not a wise decision.

**Mr Sheville:** In relation to Totalcare, in the financial audit reports that we have prepared, these are the reports that we write to the audit committee of the board, issues were identified in the 2004-05 audit of Rhodium, but the extent of those issues was significantly greater in the subsequent year. That would suggest, certainly in relation to the financial systems, that things deteriorated after the operations had left Totalcare. It may not in fact have related to what was happening at Totalcare at the time. As Ms Pham has indicated in relation to Totalcare itself, the fleet part of Totalcare comprised about 20 per cent of Totalcare's business, so there was quite a deal of more significant areas to look at in relation to the auditing of Totalcare at the time. I agree with Ms Pham: when all the policies and procedures that were relevant to Rhodium as a new business were in place, that would be an assumption that the board really should not have been making.

**Mr Nicholas:** That said, though, I understand that a fair number of the staff that started off with Rhodium came from the Totalcare business, including the former chief executive officer. So, if we are talking about cultural and attitudinal approaches, it is possible that that shifted over as well. We have no direct evidence on that, though.

**Ms Pham:** The board clearly recognised the need to develop new policies, procedures and guidelines for the new company. Indeed, the board instructed the former CEO to do so by a certain time line and that did not happen. The board did recognise that it had a role in insisting that new policies be developed, that a new code of conduct and new governance policies be developed for the new company. They did not follow up to the delivery end.

**DR FOSKEY:** Did you do any cross-jurisdictional comparisons? For instance, did you compare Rhodium's profit to entertainment budget ratio with that of territory-owned corporations in other states or territory to see whether there was any benchmark there to guide you?

**Ms Pham:** No, not in this audit.

**DR FOSKEY:** Given that the Rhodium management appears to have actively misled the board in terms of its entertainment expenses and executive vehicles, in the Auditor-General's Office's opinion would it be open to the shareholders to bring legal action under the Corporations Law or any other laws against the Rhodium management? Are those the sorts of grounds under which that could be justified?

**Ms Pham:** I did not consider the issue before, so I think I may have to take that on notice and give it more consideration before I give you a proper answer.

**Mr Nicholas:** I could comment, though, that these matters, particularly in relation to Ms Clark, were referred by Rhodium to the Australian Federal Police, and the Australian Federal Police have chosen not to pursue any legal action. Matters were also referred by us to ASIC, and ASIC has chosen not to pursue this issue any further. The other comment I would make perhaps is that we do not necessarily approach our audits with a view to determining whether there is sufficient evidence to pursue legal action if that is required.

**DR FOSKEY:** It is just whether it would be open to that. Do they have that avenue? I am not asking whether they should or not.

**Ms Pham:** The board had considered the issue and, as far as we understand, they took certain action regarding follow up, with the matter being referred to the police. We have an obligation as an auditor to report to ASIC, a commonwealth body, if we believe that a company may have breached the Corporations Act by not having proper internal controls in place, and we did that to fulfil our obligations under the Corporations Act.

**Mr Sheville:** Under what are called section 311 notifications of the Corporations Act. It was a section introduced to improve reporting by auditors and, where you have reason to suspect that a breach may have occurred or could have occurred and you believe it is a significant breach of the Corporations Act, you now need to advise ASIC as part of your reporting process.

**DR FOSKEY:** Mandatory reporting.

**Mr Sheville:** Yes. And we did report to ASIC that there may have been such a breach by officers within the company. The specific sections of the act were the ones relating to the duties and powers of directors and particularly officers of the company. Sections 180, 181, 182 and 184 of the Corporations Act were the ones that we flagged that there may have been breaches of. As Mr Nicholas indicated previously, our understanding is that ASIC has decided not to take it any further.

**DR FOSKEY:** As I think you have remarked, the Chief Minister has been supportive of the performance of Rhodium's directors. Given the comments in your report, do you think that such unqualified support for what appears to be at the very least a suboptimal governance performance sends a desirable message to the directors of other territory-owned corporations as to what are acceptable or desirable governance standards?

**Ms Pham:** I think there were two stages of the board's activity. One was after the board was aware of the issues brought to the board's attention by the whistleblower. At this stage, I believe the board's action was very good. They took action right away. They kept everyone informed, including us, the shareholders, the head of the Chief Minister's Department and the head of Treasury. On that aspect, I think the board's behaviour was very good and according to good practice.

Before that, as I said before, we formed the view that the board collectively could have done better, could have been more proactive, and could have minimised some of the management problems that were later to become obvious to everyone. So we won't be saying that the board did not and should not share responsibility for some of the issues happening at the company. I think the Chief Minister has his own reasons to provide support to the board and I do not think that that is something I would like to comment on.

**DR FOSKEY:** I am sure that is the case.

**THE CHAIR:** I know that you have used some external help on this, but to whom have you actually talked? You have mentioned that you have spoken to some or all of the directors. With whom else have your inquiries actually brought you into contact with the Rhodium inquiry?

**Ms Pham:** I talked to the chair and all the directors of the board. Was it all the directors?

**Mr Nicholas:** Yes, we spoke with all the directors. I had an opportunity to have a discussion with Navee Aslam, the former COO. We invited him to make a submission to us. We received no submission.

**THE CHAIR:** No response.

**Mr Nicholas:** I had no submission. I can't recall whether I got a response, but I have certainly spoken with him. We have spoken with Frontier, the people who provide the HR work and associated with the IT infrastructure project. We sought their comment and we received a formal response from them. So there has been a wide range and that is not including, obviously, the current chief executive officer and staff of Rhodium and a few others.

**THE CHAIR:** Do you mean Mr Moore?

**Mr Nicholas:** The current chief executive officer.

**THE CHAIR:** Did you actually get a meeting with Ms Clark?

**Mr Nicholas:** Yes, we had a number of meetings with Ms Clark.

**THE CHAIR:** Can you characterise that meeting? Did you feel that it was frank and forthcoming or did you feel that information was not forthcoming?

**Ms Pham:** We had a meeting with Ms Clark. She came with the support of her husband. She did request that her husband come along and we were more than happy to agree to that. We discussed the findings of our audit. I think Ms Clark was upset because, in her mind, she had worked really hard to bring the company from a very new stage to a growing business with a lot of potential. She was critical of the board to the extent that she did not think the board was well briefed and understood the business of Rhodium. She was also quite adamant that the board was aware of many issues, contrary to our audit finding that there was evidence to indicate that that information was not forthcoming or was not presented to the board.

**Mr Nicholas:** I think that they were fairly open and robust discussions. We also received a couple of written responses from Ms Clark on various matters, including the interim report that you may recall we provided to the public accounts committee and our draft report, our proposed report. So we had a fair amount of information from that source as well.

**THE CHAIR:** Do you know how the debt recovery issue has gone, or have you bought out of that now?

**Mr Nicholas:** I can only see what was in the recent hearing.

**THE CHAIR:** Finally, who else have you interviewed within the employment of the organisation? Have you gone any further?

**Mr Nicholas:** Within Rhodium itself?

**THE CHAIR:** Yes.

**Mr Nicholas:** We would have spoken at one stage or other with most of the management team involved, particularly Mark Thomas, who was acting chief executive officer for a while.

**THE CHAIR:** Who is the chief financial officer? You don't hear much of the CFO. Do they have a CFO?

**Mr Nicholas:** The CFO at the time was Robert Lara. We spoke with him.

**Mr Lai:** The former one had already left.

**Mr Nicholas:** There were a couple of key players who had left the organisation before we got to it.

**THE CHAIR:** Did they have a similar view to Ms Clark that the board was in the loop and that they had really acted correctly? Was that the general sentiment of other senior managers?

**Mr Nicholas:** We have a view, and we have expressed it in the report, that there were a number of other senior managers who were involved in some of the credit card-type expenditures and attended these functions et cetera, so there is also a concern there.

**THE CHAIR:** But did they corroborate the view that the board was probably better in the picture?

**Mr Nicholas:** No, they didn't provide evidence in that regard.

**Ms Pham:** Clearly the former chief executive indicated that it was a difficult time for the new company, with lack of expertise with the new board and clearly also lack of direction from the government. It was Ms Clark's view that, because of that, the board spent a lot of time trying to sort out where the strategic direction of the company should go, and that could be down, at the expense of paying more attention to the running of the company as such.

**THE CHAIR:** It would be hard to accept the view that the board lacked expertise, though. From my recollection of the board, they were reasonably well qualified.

**Mr Nicholas:** Speaking more of the staff rather than the board.

**THE CHAIR:** Oh, the staffing, sorry.

**Mr Nicholas:** The other thing one might suggest is that the decision to engage a chief operating officer and to disengage that officer or to make that position redundant and to go back to a CFO-type arrangement indicates that they were not quite settled on the organisational structure or the administrative structure. It does lend credence to the view that it was an organisation that was still going through some teething issues at best and certainly was not as settled as one might have wanted it to be.

**THE CHAIR:** You obviously give a lot of weight to the lack of strategic direction in all this saga. Ms Tu Pham and your officers, I appreciate your attendance again today and thank you for the frankness of the briefing.

**Meeting adjourned from 3.54 to 4.38 pm.**



**COSTELLO, MR MICHAEL**, Managing Director, Actew Corporation Ltd  
**SERVICE, MR JIM**, Chair, Actew Corporation Ltd Board

**THE CHAIR:** I thank you for making yourselves available to meet with the committee this afternoon. I know that both of you gentlemen have appeared before, so I will not go through the statement which is beside you, but I trust that you are comfortable with the requirements under the procedures for the committee.

**Mr Service:** Certainly.

**THE CHAIR:** Mr Costello, we received some material from you for the benefit of this inquiry. Before we take any questions, would you or Mr Service like to make some opening remarks or observations?

**Mr Service:** I might speak very briefly, if I may. The important point I should make is that in respect of Rhodium itself, of course, we know no more than is in the Auditor-General's report or was published in the press. In the direct sense of Rhodium, I am not sure that we can be of much value to the committee. However, we did very carefully consider the Auditor-General's report in respect of matters which might be important from Actew's perspective. I am certainly comfortable that we have got control processes and governance processes in place which would make it very unlikely that any of those difficulties would arise in Actew. In fairness to Rhodium, I should say that we have the advantage, even in our present guise, of having been around for 12 years. In that time, you are able to build up processes, controls and so on that Rhodium may well not have had the time to do. Factually, I do not know whether that is true or not, but certainly it is for us.

**THE CHAIR:** Mr Service, to help the committee understand, could you give us a bit of an idea—or maybe you want to refer this to Mr Costello—of some of the controls that exist in your corporation to ensure good governance and the like.

**Mr Service:** Certainly. I am very happy to do that. First, of course, we do have an audit committee, and have done for some years. That audit committee conducts its own inquiries. We also have an internal audit process which we share with ActewAGL. That is a very thorough process which gives us a good deal of comfort: it is not only about control; internal audit is also a tool, if you like, for management to ensure that they are doing the things that we would want them to do. That is part of the process.

The second part is that, in terms of governance matters like control of credit cards, expenses and those sorts of things, we have formal processes which are enforced thoroughly. There are regular reports to the board on things like sponsorship, for example. The board settles the sponsorship budget and gets a regular report on how that is spent; if I or any of my colleagues are uncomfortable with any of the particular sponsorships, we would expect Mr Costello to give us the reasons why they were undertaken. I must say that the detail of managing sponsorships we regard as management's responsibility; our job is to make sure that management undertakes that responsibility.

We restrict the issue of credit cards. They are done for two purposes. One is for small-time buying of what I might call routine stuff where they have to go and buy some pencils or things of that kind. The other is for use by particularly the chief executive but also other senior executives when they have to travel or when they entertain. We are not very much in the entertainment business, I have to say. Given that our water business is a monopoly business, we do not see much value in entertaining. However, of course, we need to remember that, as half-owners of ActewAGL, where most of our profit comes from, we do have some interest in maintaining relationships with other utilities around Australia and with all the consulting people that we use for all sorts of purposes. But entertaining is one of our smallest expenses, I would imagine, Michael.

**Mr Costello:** It is modest, but we do some entertaining sometimes in relation to the water business and sometimes in relation to the energy business. We do extensive sponsorships, as you know. Our annual budget for sponsorships, as we have explained to the estimates committee, is about \$300,000 a year. The board has just increased that, for the first time in five years, to about \$350,000 overall. Most of that—our biggest sponsorship—is of the science festival, which has been going now for many years. We have a focus on the Canberra Symphony Orchestra as well. And then there are many small ones. There is a broad policy on sponsorships, and I am required to report on each of the sponsorships to the board on a regular basis—which I do. And, of course, I am accountable to the Assembly and the estimates committee for that too.

**THE CHAIR:** You have probably seen some of the evidence that we have taken in relation to the Rhodium saga and the way in which sponsorship agreements seem to have proceeded in a different direction from that of the board's apparent wish and quite in excess of that. I think it is fair to say that they appear to be playing catch-up with the decisions being made by the CEO. Within Actew Corporation, what is the delegated level of authority on deciding sponsorships? I am sure that you are not approving every postage stamp that is issued to some organisation, but is there one annual budget and then it is left to management to differentiate? How does it work?

**Mr Service:** The starting point is the board's approval of the budget. That is debated every year—as to the quantum. As the CEO said, it has taken us five years to increase it despite the immense pressures that there are on us and everybody else in Canberra to provide sponsorships. The use of it in principle is the responsibility of management. However, if Mr Costello expected to spend a significant amount with any one sponsorship, I would expect him at the very least to consult me, and he has always done that. If he wanted to spend \$50,000 or \$75,000 with item X, I would expect him to talk to me about that. If he wanted to spend \$1,000 or \$2,000, that is his problem. But when he produces the list for the board's consideration, if we thought that what he has done is stupid, we would, I can assure you, tell him so—and perhaps once or twice have done.

**Mr Costello:** Not yet. For example, we require a submission from the science festival to justify what they are doing—and a report on it. The board requires a submission, because it is a big one. The board itself has looked at that and approved that before we as management approve it—because it is our most significant sponsorship, about \$90,000 a year, which is quite a lot of money. I think this year it has been reduced to \$75,000, but it is still a large amount of money. For something like that, I would go to

the board. For significant amounts—other amounts lower than that—I would normally talk to the chairman. But that is the biggest amount and that one has gone to the board on a regular basis.

**THE CHAIR:** There is not a set figure then as to where you activate?

**Mr Costello:** No.

**THE CHAIR:** You just exercise some judgement.

**Mr Costello:** Yes.

**THE CHAIR:** In terms of the issues that arise with entertainment, you have explained that there is not a lot of virtue in entertaining water customers. In terms of entertainment, do you have guidelines within the corporation or how do you apply those sorts of policies?

**Mr Service:** With most of the significant entertainment we might undertake—and when I say significant, the largest we would probably ever do is lunch for five or six people at the most—Mr Costello’s expense accounts come to me for approval every month, so I personally see most of the significant expenses. If any of his senior staff undertake entertainment, he approves that himself.

**Mr Costello:** If it is of any significant size, yes.

**THE CHAIR:** I am sorry; I was distracted there. You said that you oversee the entertainment, Mr Service?

**Mr Service:** Mr Costello’s. That is where most of the expense is. If we are going to spend a couple of hundred dollars on entertaining X, I would normally expect that that will probably be by the CEO—otherwise why are we bothering to do it? All his expenses come to me for approval.

**THE CHAIR:** How many credit card holders would there be within the corporation?

**Mr Costello:** At the moment, there are eight.

**THE CHAIR:** I want to take you to another issue. The Auditor-General’s report said at page 33 that Rhodium had “a corporate culture that did not encourage care and diligence in spending taxpayers’ funds”. In particular, the report found at page 34, para 4.6:

Rhodium senior management has not consistently met community expectations regarding due care and integrity.

Do you agree with this assessment?

**Mr Service:** I cannot really comment so far as Rhodium is concerned. I can tell you that in Actew I would be absolutely appalled if there was any evidence of that attitude. In fact, once or twice my board colleagues have said, “We’re all a bit miserable in this

organisation.” If we are going to err on the wrong side of anything, I would prefer to err on the slightly miserable side. Our people are very responsible. If they were not, I can assure you that the Actew board would be doing something about it.

**THE CHAIR:** So in terms of what might have created this corporate culture, do you form a preliminary view—I know that you are not across the fine points, but do you think that the board may not have been sending the same message as you do to your people?

**Mr Service:** I think that is probably not quite the case. I can perhaps repeat something I said earlier: Rhodium was a very new organisation which had been kind of torn out of a bigger one. I do not think that anybody had had sufficient time or maybe even sufficient understanding of Rhodium’s real functions to establish a whole lot of control processes—the sorts of things every business, in my experience, needs. If they had had another two years, they certainly ought to have got there. I would have imagined that the first time the Auditor-General did the annual audit a lot of these issues would have come to the fore. The Auditor-General’s practice, quite rightly—like all senior auditors do—is to not only issue the audit certificate but also issue a management letter which says, “You are probably not doing this quite correctly” or “Have you thought about this?” That is standard stuff.

**THE CHAIR:** Standard procedure.

**Mr Service:** And it is a very good warning. Certainly Actew gets that kind of letter every year. We have never yet—touch wood—had one that has caused me real concern, but we have had them. They have pointed out fairly minor things, but even the minor things ought to be fixed. Perhaps the Rhodium board was not in a position of having had the benefit of that. Again, I am guessing, but that would be my quick judgement, having read the Auditor-General’s report—that the first management letter might have said to the board, “Hey, there are a whole lot of things here that are not only not culturally correct but perhaps not even legally or ethically correct.”

**THE CHAIR:** Could you explain to the committee what steps you at Actew take to encourage a corporate culture of diligence and prudence?

**Mr Service:** Hopefully, first of all we do it by setting an example in the board. Certainly, since I have been there I have tried to do that, effectively or otherwise. I hope it has had some influence. And in choosing CEOs, in particular, and senior executives in general, one of the things that the board considers very important is character. It is not just intelligence and experience; it is character. We place a lot of emphasis on finding out a lot about what other people think about the character of senior appointees before they ever get the task—because a lot of that kind of leadership does come from the head, and you cannot expect people to behave properly if their bosses do not behave properly.

**THE CHAIR:** Indeed. Has the experience with Rhodium provided any lessons or prompted any review of procedures within Actew of corporate procedures or governance?

**Mr Service:** I do not think it has really prompted any changes. It certainly did prompt

us to go back and look at what we do about all the issues that the Auditor-General raised, and we did that quite thoroughly—Mr Costello, the internal auditor and others. The outcome of that was—I would not say we are perfect; I wish I could but we are human beings—that we were pretty satisfied that we did have a reliable control environment.

**THE CHAIR:** Have you had that reviewed externally—by your auditors or anybody?

**Mr Service:** No, because we do, to an extent, rely on the Auditor-General’s audit—or the agent that she appoints to conduct that. The audit committee does have private conversations with the auditor without management present—indeed, without me present—to see if there are issues that the Auditor-General or the Auditor-General’s agent want to raise that they think inappropriate at that point to put on paper. My understanding is that there has never been such an issue raised—that is, there has never been anything raised that could not be raised with management present. But that process is a very important process.

**THE CHAIR:** You provided opinion or legal advice to the Chief Minister in relation to the general matter of strategic guidance from the shareholders. Do you receive strategic guidance from the shareholders?

**Mr Service:** I do not think that is quite the description I would apply to it. The process, indeed the TOC Act, requires us to consult with the government—that is the two shareholders in effect—and the responsible minister in respect of any major undertaking that we propose. That is absolutely proper. We hold those consultations—I was going to say regularly, but they are quite erratic times, because it depends when matters arise.

I would expect the shareholders, particularly the responsible minister, to express views about the policies that we are proposing to follow—and they do that. We have never—I have been on the Actew board since the middle 1990s—had a direction from any government, but quite frequently ministers have expressed a view and said, “Perhaps you might think about doing X?” or “Why haven’t you done Y?” That seems to be an absolutely proper relationship, because ultimately it is the government and the Assembly in general that are responsible to the electors, not us.

We follow that process. The government or the minister does have the capacity to issue us with a formal direction, which is a public process. That has never happened, and it has never even been suggested that it would happen, but it is a reserve power. I think it is quite right that the power is there, because we might go mad. It is possible. I hope not, but it is possible.

**DR FOSKEY:** Thank you for coming today. You sent us, along with your submission, the advice that you got from Mallesons, from Stephen Skehill. It states fairly strongly that territory-owned corporations are not bound by public service standards and that directors could be in breach of their duties under the corporation laws if they pursue public service goals and standards rather than free market, profit focused directions. I would like a comment on this. Many people would find it inappropriate for our water utility, providing a most essential resource and service, to treat the community as customers rather than—there are all kinds of ways of looking at water: the right to

water, the need for water and so on. But the use of the word “customers” indicates that there is some choice about the use of water and where it is purchased. I am just wondering how Actew resolves that where you have advice that says you should primarily pursue profit and a community expectation that is otherwise.

**Mr Service:** Can I just remind us all that there are several obligations under the TOC Act that apply to Actew, and indeed to all government-owned corporations. They include a responsibility to provide a proper return to government—and I am using the word “government” loosely; it is the shareholders—and a responsibility for us to act as efficiently as any other comparable enterprise. And of course they put an obligation on us, quite properly, which I will loosely call sustainability; I think the words in the act are slightly different, but that is what they are all about.

One of the tasks of the board is clearly to balance those responsibilities. We could be much more economic if we had fewer staff and provided a lower standard of service, but we do not think that that is a sensible way to go and I am not aware of any ACT government which has expressed a different view.

The government, quite understandably, seeks for us to earn a commercial return on the \$800-odd million of taxpayers’ money that it has invested with us. We are perhaps the largest single asset that this government has. Our contribution to the overall territory budget is very significant.

So we do to a degree have a balancing act, and we have to reflect that in our behaviour. Again, I would not say that we are perfect but I think that we have done reasonably well in achieving that. Sometimes there are circumstances that are difficult—like the present one, when we do not actually have much water to supply to the customers.

The concept of us behaving more like the public service is a concept that all governments of all political persuasions throughout Australia have consistently adopted with all their trading enterprises—that they should be separate from the public service because they have to live in a competitive world. For example, the expert staff that we have to have for our water division are in very short supply in Australia at the moment—hideously short supply. I have to tell you, quite frankly, that, if we were just offering them public service salaries, we would not have any senior staff; we would not be able to operate.

The constraints that apply to the public service are entirely proper in the public service. I am not in any sense critical of them. But many of them simply do not work in a commercial enterprise, which is required by the law to behave commercially.

**MS MacDONALD:** Mr Service, can I just ask you this. You said that you can operate more efficiently with fewer staff, but no government had expressed that.

**Mr Service:** I would not say more efficiently—more cheaply. There is a considerable difference.

**MS MacDONALD:** I am sorry; I might be misquoting you. But that just brings this to mind. It is not as though Actew is a huge employer; it has a very small organisation

staff—14, isn't it?

**Mr Costello:** Not now.

**Mr Service:** It is true that Actew directly has a very small staff, because Actew is a policy, strategy, asset-owning business. The actual operation is done by agreement with ActewAGL under a very complex agreement that took us two years of fighting with ActewAGL to achieve. There are hundreds of people—even just in the water division—involved there. ActewAGL overall has just over 1,400 staff now. So in fact I think it is the biggest non-government employer in the ACT. Actew has only two groups of people. One is the very senior executives who are involved in strategy and policy making—and there is the small task force, which we used to call the drought task force, which is directly responsible for managing water restrictions. When you think about us, even if you are thinking of just the water division, you should think of several hundreds of people—and I wish we had more, quite frankly.

**DR FOSKEY:** Do you think that employing external auditors, which you do, is essential for a territory-owned corporation to comply with appropriate governance standards?

**Mr Service:** Absolutely.

**DR FOSKEY:** Do you think that an external audit would have picked up the irregularities and improprieties happening in Rhodium, and picked them up a lot sooner?

**Mr Service:** I would have hoped so. Again, that is without knowing the precise detail of the Rhodium problems, but some of them are—how can I put it?—surprising when one reads the report.

**DR FOSKEY:** Who do you think external auditors should report to?

**Mr Service:** The standard practice is a very good practice for corporations throughout Australia—they report to the directors but normally they report through an audit committee. If, for example, Actew was a listed corporation on the stock exchange, the constitution of the audit committee would require at least one person with substantial financial expertise so that the audit committee is capable of, if you like, being critical, asking the right questions and so on. We, happily, have an audit committee that is structured that way even though we are not formally obliged to do so. Then the audit committee reports to the board, and so do the auditors.

**Mr Costello:** And there is the Auditor-General's report, isn't there?

**Mr Service:** The Auditor-General's report? It is published in our annual report.

**DR FOSKEY:** Going back to the earlier line I was pursuing, regarding Mallesons' advice and the goal being to pursue profits rather than providing a service, I was wondering how you think Mallesons would consider the kinds of events, donations, financial support and scholarships et cetera that Actew provides. How do you think Mallesons would regard that?

**Mr Service:** You can ask Mr Skehill if you want to, because he is here, but I would not think Mallesons would have any view on it at all. It is not a matter for them; it is a matter which is the board's responsibility. Ultimately, if the shareholders do not like what the board does, their capacity is to remove the board—and it is proper that they should have that power.

**DR FOSKEY:** Even though those sorts of expenditures seem on the surface to be inconsistent with the advice that we were given from Mallesons?

**Mr Service:** With respect, I do not think they are inconsistent at all. I have the honour of being a director of a number of companies larger than Actew, and making donations is absolutely standard practice. But it is governed by making donations that boards think are in the interests of the organisation. That is the ultimate test that all directors face: they have to act in the interests of the organisation of which they are directors. The organisation is not necessarily just the corporation; it is the stakeholders in general. For example, in my view, if any board behaves unfairly or improperly to its employees, it is not doing its duty, because they are stakeholders and the behaviour of the employees is very important to the success of the corporation.

**DR FOSKEY:** Thank you.

**THE CHAIR:** Thank you. I appreciate your attendance today. I know that you are busy looking after water issues, but it was helpful to have your perspective.

**The committee adjourned at 5.28 pm.**