



Transport Asset Holding Entity

Questions on Notice

Public Accountability Committee

Hearing Date – 8 November 2021

QUESTIONS ON NOTICE

QUESTION 1: page 33

The Hon. DANIEL MOOKHEY: Okay. I am going to ask you now only about the draft accounts, not the Auditor-General's opinion of them. You said that there has been downward revision?

Mr MORGAN: Yes.

The Hon. DANIEL MOOKHEY: In the accounts that you provided to the Auditor-General there was a downward revision. Did I hear you correctly?

Mr MORGAN: Correct.

The Hon. DANIEL MOOKHEY: What was the downward revision in the accounts you provided the Auditor-General?

Mr MORGAN: I would have to come back to you and take the question on notice because I do not have the draft accounts in front of me.

The Hon. DANIEL MOOKHEY: Would you term it as a significant revision downwards?
Mr MORGAN: Yes.

The Hon. DANIEL MOOKHEY: A revision as in more than \$5 billion down?

Mr MORGAN: Yes.

The Hon. DANIEL MOOKHEY: More than \$10 billion down?

Mr MORGAN: Yes.

The Hon. DANIEL MOOKHEY: Close to \$20 billion down? **Mr MORGAN:** Yes.

The Hon. DANIEL MOOKHEY: More than \$20 billion down?

Mr MORGAN: Well, not yet settled.

The Hon. DANIEL MOOKHEY: So somehow in the six months between 31 December 2020 and 30 June 2021, TAHE's assets are written down by up to \$20 billion. Is that correct?

Mr MORGAN: In the draft accounts, correct.

ANSWER:

The revaluation decrement in the fixed asset valuation at 30 June 2021 in the final financial statements was approximately \$20 billion, which arose due to the change in basis of valuation to an income-based approach.

QUESTION 2: page 34.

Mr MORGAN: For TAHE to comply with the requirements of the State Owned Corporations Act, and the accounting principles that apply to the Act, it is non-negotiable; it has to be done. At 31 December 2020 we were transitioning towards that outcome and we had adopted the cost method for that purpose because we did not have the information together at that point in time. Nor did we know at that point in time what the revenue streams would be associated with access and licence agreements.

The Hon. DANIEL MOOKHEY: Okay, I appreciate that—

Mr MORGAN: Sorry, just to be very clear on this: it is a not negotiable. We could not sit as a State-owned corporation under the Act in which it operates on the basis of the previous valuation methodology because the Auditor-General would qualify our audit opinion on that basis of not complying with an appropriate accounting standard.

The Hon. DANIEL MOOKHEY: Did you seek the advice of the Auditor-General before you made that change?

Mr MORGAN: The Auditor-General and our management team had been discussing this change throughout the year ended 2020-21.

The Hon. DANIEL MOOKHEY: Did you obtain any other independent advice from any other firm that supported the approach that the board took?

Mr MORGAN: We do not need any other independent advice. The answer is very clear.

The Hon. DANIEL MOOKHEY: Okay, I am not disputing, Mr Morgan, whether or not you needed it; I am asking you whether or not you did seek any advice from any accounting firm?

Mr MORGAN: I am not aware of any, but I can take that question on notice.

ANSWER:

The valuation methodology was considered internally including with the Audit and Risk Committee and was discussed in detail with NSW Treasury and KPMG, the Audit Office along with our independent valuers PWC.

QUESTION 3: pages 34-35.

The Hon. DANIEL MOOKHEY: On page 16 [of the half-year report] it reads, "TAHE has applied the modified retrospective transition option in accordance with NSW Treasury mandates." What does that mean?

Mr MORGAN: I will take the definition of that on notice but my understanding of it is that that means that it is a prospective valuation adjustment rather than going back into the past and adjusting prior sets of accounts which would be incorrect.

The Hon. DANIEL MOOKHEY: Okay, so TAHE has applied the modified retrospective transition options which actually means "prospective"?

Mr MORGAN: I will have to take that on notice to give you a precise definition of that.

ANSWER:

The modified retrospective approach was in relation to Service Concession asset recognition in accordance with NSW Treasury mandates. This means the service concession assets and related liabilities were recognised at the date of the initial application which is 1 July 2019, being the beginning of the comparative period for the FY20-2021 financial reports.

QUESTION 4: page 36.

The Hon. DANIEL MOOKHEY: Indeed. Did you recall receiving any like statements of expectations from the shareholding Ministers, either collectively or separately?

Mr MORGAN: The statement of expectations is not designed to come from the shareholding Ministers; it is designed to come from the portfolio Minister, in my understanding.

The Hon. DANIEL MOOKHEY: That is my understanding too.

Mr MORGAN: So the answer is no.

The Hon. DANIEL MOOKHEY: Yes. To the extent to which, therefore, under the State-owned corporations framework, there is communication between the shareholders, the Government and your organisation, it is fair to say it is expected through this letter. Is that correct? That is fair.

Mr MORGAN: There will be other communications but this is a formal communication, along with the operating the licence from the portfolio Minister.

The Hon. DANIEL MOOKHEY: Just by the by, has Mr Constance at any time attended the meeting of the board or did he discuss attending the meeting of the board in which this letter was discussed?

Mr MORGAN: No, he has not but I have formal meetings with the relevant Minister on occasions throughout the year and this would have been raised at one of those more recent meetings.

The Hon. DANIEL MOOKHEY: One of the more recent meetings. On notice will you provide the Committee with when you think that may have taken place?

Mr MORGAN: Yes.

ANSWER:

Our records show that there was no specific meeting organised between the Portfolio Ministers and the TAHE Board to discuss the Statement of Expectations.

QUESTION 5: page 39.

The CHAIR: At the time you signed off on those accounts in January 2021 the notes indicate that the total assets have increased by \$0.5 billion from \$40.9 billion as at 1 July 2020 to \$41.4 billion due to capital expenditure of \$1.2 billion offset by \$7 billion for depreciation, amortisation and asset impairment. Does that reflect your memory that the total assets that you acknowledged in January this year, at the end of last year total assets were \$41.4 billion?

Mr MORGAN: I do not have the accounts in front of me but I will have to take on notice those numbers but the logic is right.

ANSWER:

In the December 31 2020 half year accounts the total fixed assets were \$40.9 Billion, compared with \$40.4 Billion at 1 July 2020.

QUESTION 6: page 40.

The CHAIR: Mr Bourne, did you ever question the signing off on accounts at the end of last year ceding the assets at some \$38 billion, given that you must have known, I assume, that you were going through a process of radically reviewing the assets and, from what I can tell now, at least halving the value of them when you, as a board member, saw these accounts?

Mr BOURNE: My understanding was that those were prepared on the basis of one accounting standard and, in fact, during this transition year they would be treated in the same manner as other State-owned corporations are treated and that would, in fact, change the valuation.

The CHAIR: Where do we find that in the accounts, Mr Morgan—anywhere, at any point?

Mr MORGAN: Chair, I do not have them in front of me.

The CHAIR: I am happy for you to take it on notice.

Mr MORGAN: I am happy to take it on notice.

ANSWER

In the December 31 2020 half year accounts the fixed assets were valued on the basis of depreciated replacement cost methodology which was also the methodology used as at 30 June 2020. On page 16 of the half year accounts it is noted that “The appropriate valuation technique for TAHE’s assets is still considered to be current replacement cost after considering the limitations of the market and income approach.”

QUESTION 7: page 40.

Ms ABIGAIL BOYD: Mr Morgan, if we could just take a step back. I apologise for having less knowledge than you on accounting matters so if you can recap. From what I understand you are saying that when these half-yearly accounts were prepared it was on the basis of the accounting principles that were appropriate for something that was not a fully-fledged State-owned corporation at that time. Is that right? And then you subsequently became a State-owned corporation properly—I do not think that is the right wording but let us just go with that—on 1 July. So that is when the new accounting standards then took effect or was this a discretionary choice of accounting standards?

Mr MORGAN: TAHE was established as a State-owned corporation on 1 July 2020 so it was in transition in terms of operating policies and developing a range of matters. This is one example of where it was. I think you will find that the accounts for 31 December 2020 describe, in the basis of accounting or in the fixed asset node, the method on which the assets are valued. I cannot confirm where exactly because I will have to take that on notice.

ANSWER:

In the December 31 2020 half year accounts the fixed assets were valued on the basis of depreciated replacement cost methodology which was also the methodology used as at 30 June 2020.

On page 16 of the half year accounts it is noted that “The appropriate valuation technique for TAHE’s assets is still considered to be current replacement cost after considering the limitations of the market and income approach.”

QUESTION 8: page 41.

Mr MORGAN: The accounting standard is the accounting standard that needs to be developed for a State-owned corporation. The first audited set of these accounts will be 30 June 2021 and when you read those accounts you will see that we have properly applied the accounting standard in respect of valuation of assets. At the half year we were not in a position to do that so we retained the cost method. There is nothing more difficult or sinister in that, I assure you.

The CHAIR: Why did you not tell us that? Why is there no reference to that anywhere in your 31 December accounts? Why is the first we hear about it now?

Mr MORGAN: I would have to take that on notice. I have not got the accounts in front of me.

ANSWER:

On page 16 of the half year accounts it is noted that "The appropriate valuation technique for TAHE's assets is still considered to be current replacement cost after considering the limitations of the market and income approach."

QUESTION 9: page 43.

The Hon. DANIEL MOOKHEY: By the tenth year of your 10-year business plan, what is your expected return on equity?

Mr MORGAN: I am sorry. I will have to take that on notice. I do not have it in front of me.

The Hon. DANIEL MOOKHEY: Does the 1.5 per cent change at any time in your 10-year business plan?

Mr MORGAN: I cannot recall.

The Hon. DANIEL MOOKHEY: When did you complete the 10-year business plan in draft form?

Mr MORGAN: I could not say exactly; I would have to take that on notice. But it has been prepared over the last few months.

The Hon. DANIEL MOOKHEY: I think your management, when we last saw them, said that it was prepared as of the date that they saw us, but they made the point that they were then pending board approval. Has your board considered the 10-year plan recently?

Mr MORGAN: The board has reviewed it on the way through and had input to the plan. The plan cannot be finalised until the Auditor-General has finalised the position on the annual accounts.

The Hon. DANIEL MOOKHEY: Of course. But it is relatively recently that this 10-year plan has been agreed. Do you agree with that?

Mr MORGAN: Correct.

The Hon. DANIEL MOOKHEY: But you do not recall what your return on equity is meant to be at the end of the 10 years?

notice. Mr MORGAN: I do not have it in front of me. I cannot say for certain. I would have to take that on

The Hon. DANIEL MOOKHEY: But to the best of your recollection, to either you or Mr Bourne, does a return on equity ever rise above 1.5 per cent in the next 10 years?

Mr MORGAN: I have given you my answer on that.

The Hon. DANIEL MOOKHEY: Mr Bourne?

Mr BOURNE: The same.

The Hon. DANIEL MOOKHEY: You do not recollect either?

Mr BOURNE: We have discussed it but I do not remember; I do not have it in front of me. I will take that on notice.

The Hon. DANIEL MOOKHEY: You do not have any recollection whatsoever as to—

The Hon. TREVOR KHAN: He is entitled to take it on notice.

The Hon. DANIEL MOOKHEY: Okay, that is fine.

Mr BOURNE: It starts at 1.5.

The Hon. JOHN GRAHAM: Can I ask you to take on notice how you were advised—the form in which you were advised about that and when that occurred?

Mr MORGAN: I am happy to take that on notice.

ANSWER:

TAHE completed its draft 10-year Business Plan by 30 September 2021. It was then considered and approved by the Board and will be finalised once the Auditor-General finalises its position on the annual accounts.

The Statement of Corporate Intent states that TAHE is expected to earn up to 1.5% return on equity in its tenth year of operation, being 2030, however at this stage no returns from commercial activity have been incorporated.

The expectation of the 1.5% return was communicated by Government as part of the 2021-22 Budget Process.

QUESTION 10: page 47.

Mr MORGAN: I think it would be clearer to say without that letter of comfort, as an independent director with lots of experience I would not be signing off on that set of accounts on the assumption, because I will not assume that our debt requirements would be met by increases in Public Authorities (Financial Arrangements) Act [PAFA] limits or whatever, or that I would receive equity.

The CHAIR: That letter of comfort expired last week, did it not?

Mr MORGAN: Yes.

The CHAIR: Did you get a fresh one?

Mr MORGAN: We will. As part of the year-end process, before the accounts are signed for the current year there will be a letter of comfort for the same reason.

The CHAIR: Sorry, you have not got one yet?

Mr MORGAN: I cannot confirm today whether I have one, but I will be happy to take it on notice. There have been discussions with Treasury. I would be happy to take it on notice and provide information as to what we are doing on that front.

ANSWER:

Treasury have provided a Letter of Shareholder Support for the 12 months from the signing of the 2020-21 Financial Statements.

QUESTION 11: page 55.

The CHAIR: What are the known key risks and emerging contingent liabilities, as referenced in the statement of corporate intent?

Mr MORGAN: Let me take that on notice, if I could.

The CHAIR: Could you take on notice when they were disclosed?

Mr MORGAN: Certainly.

The CHAIR: Are you saying the only place we will find it is in the financial results that are currently in draft and sitting with the Auditor-General?

Mr MORGAN: I will take that on notice.

The CHAIR: Given this was a confirmation the board made, do you have a requirement in monthly board meetings to check if you are meeting the statement of corporate intent?

notice. Mr MORGAN: The board papers and the activities of the board will do that. But let me take that on notice.

ANSWER:

An Enterprise Risk Management Framework (ERMF) has been developed to support TAHE to make better risk-based decisions in pursuit of its strategic objectives. Underpinning this is the value created for our shareholders, customers and the communities within which we operate, in a safe and sustainable manner while being consistent with our risk appetite.

The ERMF comprises four key components of Risk Governance, Risk Elements, Risk Ownership, and Risk Capability and Awareness.

The ERMF forms part of the internal control and corporate governance arrangements for TAHE and as such applies to all functions and team members, including contractors and agents of TAHE. It applies to all operational and strategic risks across the business, supporting the identification, management and reporting of all risks. It further provides a framework for the reporting and escalation of financial related risks.

We have identified six material risk categories that may impact on our ability to achieve our strategic objectives. Risks within these categories must be assessed, monitored and reported on no less than annually. TAHE Material Business risk categories are:

1. Safety;
2. Strategic;
3. Operational;
4. Financial;
5. Compliance; and
6. Projects.

QUESTION 12: page 55-56.

The Hon. DANIEL MOOKHEY: And you said that you then went through an interview process by a panel.

Mr MORGAN: Yes.

The Hon. DANIEL MOOKHEY: Who was on the panel?

Mr MORGAN: I cannot recall exactly who was on the panel, but I do recall some of the members of the panel—Anne Hayes, who was to be the designated acting CEO was on it; there was certainly a representative from Korn Ferry; I would have to come back to you on notice to be accurate, but, typically, it is a representative from the Department of Premier and Cabinet, Treasury, Anne Hayes, as I mentioned.

The Hon. DANIEL MOOKHEY: Mr San Midha, the deputy secretary, I think has identified himself as being the chair of that panel. Does that accord with your recollection?

Mr MORGAN: I do not recall, although I have a feeling that I might have met with him separately to the panel for a separate interview, but, again, I would have to confirm that.

The Hon. DANIEL MOOKHEY: Okay. How many interviews did you have?

Mr MORGAN: One interview with the panel.

The Hon. DANIEL MOOKHEY: One interview with the panel and then a separate interview with Mr Midha. Yes?

Mr MORGAN: I believe so, but I would want to check that on notice.

The Hon. DANIEL MOOKHEY: Did you have a separate interview with Mr Pratt, the Treasury secretary at the time?

Mr MORGAN: I do not believe so.

The Hon. DANIEL MOOKHEY: On notice can you do a definitive check?

Mr MORGAN: Certainly.

The Hon. DANIEL MOOKHEY: And did you have any direct interviews with anybody from the Transport cluster?

notice. Mr MORGAN: I believe that I caught up with Rodd Staples, but, again, I would have to take that on notice.

ANSWER:

The Board recruitment panel included:

- Ms Anne Hayes former CEO of TAHE,

- Ms Amy Brown, former Deputy Secretary Department of Premier and Cabinet, and
- Mr San Midha, Deputy Secretary NSW Treasury.

During the recruitment process, Mr Bruce Morgan was interviewed twice during the recruitment process by:

- The Panel on 14 May 2020; and
- Mr Midha and Mr Michael Pratt, Secretary of NSW Treasury on 27 May 2020.

Mr Morgan requested a meeting with Mr Rodd Staples, Secretary of Transport for NSW at the time. Unfortunately, a meeting was not possible during this period.

An introductory meeting for incoming Board Members was held on 19 June 2020, with representatives from NSW Treasury and Transport for NSW. Mr Staples attended this meeting.

QUESTION 13: page 57.

The CHAIR: And there was a waiver on certain State taxes for TAHE as well.

Mr MORGAN: Yes, in recognition that the income base of the organisation, the primary income base had not been established. So it was definitely in respect of land tax and other taxes. I could not describe exactly which ones.

The CHAIR: Could you on notice provide a copy, if it is in the form of a document, the modified version of the commercial policy agreement as agreed with Treasury?

ANSWER:

TAHE no longer has any exemptions from the Commercial Policy Framework.

TAHE was granted a "State tax" exemption pursuant to Schedule 7, Part 30, clause 277 of the Transport Administration Act 1988 (TAHE State Tax Exemption) and the exemption has now been extended to 30 June 2023 by way of regulation.

As RailCorp (prior to 1 July 2020) was exempt from land tax as a government entity only some leased properties have been valued but the vast majority of land is yet to be assessed. A review of land, the relevant legislation and exemptions will need to be conducted before TAHE can estimate the land tax payable.

QUESTION 14: page 58.

The Hon. DANIEL MOOKHEY: But the reason I ask you this is do you know how long you have this exemption from land tax for?

Mr MORGAN: I believe that the commercial policy framework transition is about 18 months, but let me confirm that properly to you on notice, if I might.

The Hon. DANIEL MOOKHEY: Thank you. But the reason specifically now I am asking you about this, just to lay all the cards on the table, is have you ever obtained advice as to whether or not that exemption, which is a very valid point, constitutes a subsidy from the State?

Mr MORGAN: Not that I am aware.

The Hon. DANIEL MOOKHEY: As in you are not aware that you obtained that advice?

Mr MORGAN: No, I do not believe that anybody in the organisation has obtained advice, but I am very happy to ask.

The Hon. DANIEL MOOKHEY: Could you? Because one of the key tests that the ABS and the Audit Office applies to determine whether you are genuinely independent is whether or not you are receiving any subsidies from the State, and a land tax exemption on your asset base is worth a lot of money. I do wonder, therefore, whether, at least for the 18 months that you just described, that constitutes a subsidy. Can you shed any light on that or do you need to take it on notice? I probably need to pursue this with some other people as well.

Mr MORGAN: I am happy to take it on notice, but I would think also that in respect of assets that are in the transport system I would not be expecting land tax to be levied on that, but I may be proven wrong.

The Hon. DANIEL MOOKHEY: True, but, see, the ownership has changed and the ownership has changed to a for-profit organisation and it is meant to be competitively neutral. That is the difference about you obtaining the same exemption, however long, versus your predecessor organisation or the previous owner of the assets having it. It is fine for RailCorp to have had it because they were not required to earn a profit and be genuinely independent of government, but TAHE is. Are you aware of any other exemptions under that commercial policy framework in respect to any other taxes?

Mr MORGAN: I said to you I would be very happy to come back with a copy of whatever documentation we have that paints that story. But I mentioned earlier, of course, that the Treasury forwards us a grant to cover the cost of CRN, so not everything within the framework of TAHE in its integral parts—

ANSWER:

The transition period for aspects of the Commercial Policy Framework was principally for the first year – no exemptions continue to apply.

The exemption for State taxes including land tax comes from the founding legislation and the exemption has been extended to 2023. TAHE has not received any advice in relation to whether or not TAHE's land tax exemption constitutes a subsidy.

QUESTION 15: page 58.

The Hon. DANIEL MOOKHEY: I cannot see any declarations in the Gazette about the CSO or the community service obligations that you are subject to. Are you aware of any declarations that have been made in the Gazette about TAHE?

Mr MORGAN: No, I am not, but, again, that can be taken on notice. But I am not sure that is a declaration that TAHE is required to make.

ANSWER:

TAHE has not made any declarations in the NSW Government Gazette in respect to community service obligation since its inception on 1 July 2020.

QUESTION 16: page 59.

The Hon. DANIEL MOOKHEY: But we cannot find any. So your community service obligations, for example, to provide rail services in regional New South Wales, I presume it is indefinite. Yes?

Mr MORGAN: It is certainly government policy at this point in time unless I am advised otherwise.

The Hon. DANIEL MOOKHEY: Yes, unless someone was suggesting to you that we are withdrawing it. Have you made any inquiries about it? Are you expecting any further directions, because I could not see it in the Minister's letter of portfolio expectations that we were talking about earlier either?

Mr MORGAN: I am very happy to take it on notice and to find out what directions, if any, have been provided on that front.

ANSWER: TAHE is not aware of any Government position that would change the current arrangements.