

INQUIRY INTO THE LEASING OF ELECTRICITY INFRASTRUCTURE

Supplementary questions

Questions to Hon Gladys Berejiklian MP, Treasurer

The NSW Government's submission states: "The transaction is expected to lead to a significant improvement in the State's financial position over the forward estimates period including the elimination of the General Government Sector's Net Debt position...."

- 1. How will the elimination of the Total Government's Sector's Net Debt be achieved? This position will only last until the debt of the companies is paid and spending from the proceeds occurs, yes?**
The elimination of Total General Government Sector's Net debt will be achieved over the forward estimates from the proceeds of the transaction.
Over the longer term, the full Rebuilding NSW infrastructure investment program is rolled out in the context of a growing economy and the Government's track record for responsible fiscal management and a responsible fiscal strategy as required by the Fiscal Responsibility Act 2012.
- 2. Are any of the proceeds of the transaction to be used to retire General Government debt?**
No.
- 3. If not, why not?**
The Government has committed the net proceeds of the transactions to Restart NSW.
- 4. If so, how much of the proceeds will be applied to the retirement of General Government debt?**
See previous response.
- 5. Will the existing debt of the electricity companies to be the subject of the proposed transactions be taken over by any purchaser/lessee, or will the debt be paid out by the State from the transaction proceeds?**
The businesses' existing debt will be paid out as part of the transaction.
- 6. Would the taking over the debt by the purchaser(s)/lessee(s) not be more financially advantageous to the State of NSW, given its immediacy?**
No.
- 7. In its written submission to this Committee, the NSW Government says the proposed transaction will reduce Total Government debt by \$30 billion. How was this figure calculated? How will this be achieved and over what time period will it be achieved?**

This figure took into account the transaction proceeds and Commonwealth incentive upon the conclusion of the lease transactions.

8. **What is the total of the existing employment liabilities (including annual leave, sick leave, long service leave, superannuation) of the electricity companies subject to the proposed transaction, by company? Can you please provide the amount of each individual liability, by company?**

See the companies' annual reports.

9. **How are defined benefit superannuation liabilities accounted for in this process?**
Consistent with past transactions the State will arrange for defined benefit schemes to be fully funded as at the date of transfer.

After completion of the transaction, any employer contribution towards future service liabilities will be an obligation of the new employer.

The superannuation fund will continue to be administered by the trustees on behalf of beneficiaries. The trustees are required to ensure that future liabilities are funded by the relevant employer on an ongoing basis.

10. **Will the lessees take on the existing employment liabilities of the electricity companies subject to the proposed transaction? If not, will the existing employment liabilities be paid out from the proceeds of the transaction? If not, how will employee entitlements be protected? Where will responsibility for meeting these liabilities sit?**

Refer to Question 9.

In your evidence at p89 of the transcript you stated that no one in NSW can know the timeframe over which the debt of Ausgrid and Endeavour will be paid out, until the transaction occurs.

11. **Why do you not have this information, given that the NSW Government and its agencies have been working on the proposed electricity transactions for many months?**

At the date of transaction, the State Owned Corporation will repay TCorp the market value of their debt as at the time of transaction. The transaction has the effect of reducing NSW Net Debt as TCorp has a financial asset (cash from transaction proceeds) which offsets its financial liabilities (typically NSW State Bonds). Subject to market opportunities, TCorp repurchases State Bonds from debt investors. This repurchasing reduces NSW Gross Debt.

The timeframe that TCorp uses takes to apply the financial asset (cash from transaction proceeds) to repurchases State Bonds from debt investors is subject to market conditions. This is to ensure value for money for taxpayers when reducing Gross Debt.

12. **Does the lack of this information not reflect poorly on the preparedness of the NSW Government for the proposed transactions?**

No, see above.

13. **How much debt does each electricity company to be subject to the proposed transaction presently have?**

See the companies' annual reports:

<http://www.transgrid.com.au/aboutus/pr/Pages/AnnualReports.aspx>
<http://www.ausgrid.com.au/Common/About-us/Corporate-information/Corporate-reports/Annual-reports.aspx>
<http://www.endeavourenergy.com.au/wps/wcm/connect/EE/NSW/NSW+Homepage/aboutUsNav/Media+centre/Publications/Annual+reports>

14. **What interest rate is payable on this debt, by each company? If different rates of interest apply to different amounts of debt, can you please provide the rate of interest payable on each parcel of debt, by company?**
See the companies' annual reports for more details.
15. **What is the repayment date on each parcel of debt, by company?**
See the companies' annual reports for more details.
16. **What penalties are payable for early payment, by each parcel of debt, by each company? If there is a range of penalties, can you please provide the full details?**
There are no penalties for early payment.
17. **If the answer to any of these questions are said to be confidential, what is the basis of that claim? Can you please provide full details of that claim in writing?**
Not applicable.
18. **If the answer to any of these questions are said to be confidential, can you please provide the information to the Committee on a confidential basis?**
Not applicable.
19. **How much was Deloitte paid for the production of its 2014 Report on the economic impacts of the transaction?**
Deloitte was engaged by Infrastructure NSW. Details of adviser engagements can be found on the relevant government website.
20. **What engagement(s) does Deloitte have in connection with the proposed electricity transactions?**
None.
21. **Which transaction(s) is/was Deloitte engaged with (Transgrid, Endeavour, Ausgrid, or more than one)?**
None.
22. **What is the estimated total value of any engagement Deloitte has in connection with the proposed electricity transactions?**
None.
23. **How much has Deloitte been paid to date?**
NSW Treasury has not retained Deloitte in relation to the electricity network transactions
24. **Why has Treasury not done, or commissioned, any modelling on the impacts of the transaction on the Budget? Would this not be a prudent step to take?**

See NSW Government submission to inquiry.

25. **Will the NSW Government commission an independent financial analysis of the impact on the NSW State Budget, with particular regard to the impact on the Budget of the loss from recurrent revenues of the dividends, tax-equivalent payments and the fee paid to government from the electricity businesses that compensate the State for the risk of guaranteeing the electricity networks' debt? If not, why not?**

See above.

26. **At page 9 of the written NSW Government submission, it states: "The loss of the government fee from the businesses that compensate the State for the risk of guaranteeing the electricity networks' debt is the largest component of the reduction in revenue." How much has been paid, by each electricity company, in each financial year from 1996-1997 to the most recent financial in which payments have been made?**

The full statement from page 9 of the NSW Government written submission is: *"The loss of the government fee from the businesses that compensates the State for the risk of guaranteeing the electricity networks' debt is the largest component of the reduction in revenue. As the Government will no longer be guaranteeing this debt, there is a significant reduction in risk for the State's balance sheet. This is likely to lead to reduced borrowing costs for the State. In Victoria's case, which no longer owns its electricity utilities, borrowing costs have averaged around 3 basis points less than NSW over 2014"*

See the companies' annual reports for finance costs for each business:

<http://www.transgrid.com.au/aboutus/pr/Pages/AnnualReports.aspx>

<http://www.ausgrid.com.au/Common/About-us/Corporate-information/Corporate-reports/Annual-reports.aspx>

<http://www.endeavourenergy.com.au/wps/wcm/connect/EE/NSW/NSW+Homepage/about/USNav/Media+centre/Publications/Annual+reports>

27. **How much is projected to be lost each financial year, by company, to 2036-2036?**

There is no amount that is "projected to be lost" on a risk-adjusted basis.

In relation to fees paid for the guaranteeing the electricity networks' debt, this reduction of these fees results in a commensurate reduction in risk.

28. **If this work has not been done, how can you ensure the proposed transactions do not negatively impact the State budget?**

See Question 24.

29. **It is correct that these payments have been received and spent by governments of both sides of politics over the last two decades, like other sources of government revenue? These payments have not been set aside into any risk contingency fund or the like, have they?**

The Government Guarantee Fee compensates the State for taking on risk of lending money. The reduction in this risk is likely to lead to reduced borrowing costs for the State.

The 'Government Guarantee Fee Policy for Government Businesses' aims to replicate how the market would price the risk-related cost of debt those businesses would face if they were required to borrow funds based on their stand-alone credit rating. This detailed

Treasury policy, including criteria and methodology of calculation, is available on the NSW Treasury website.

30. **If these were truly payments to mitigate against risk to the State, surely they would have been set aside and saved for any need to draw on them?**
No. That is not the purpose of the payments. The Government Guarantee Fee purpose is to compensate the State for taking on risk of lending money in that period (given the associated higher risk and therefore higher cost of capital for the State).
31. **If the revenue from this source has been spent by government like any other source of revenue, why should its loss not be included in the calculation of the retention value of the electricity companies to be the subject of the proposed transactions?**
Retention value seeks to capture the value to the State as owner of the business.
Government Guarantee Fee income relates to the State's role as financier, not owner, of the business.
32. **Regarding the NSW Government submission at pages 2-3 - will your government provide the details/draft legislation regarding these commitments before this Committee reports on 2 June 2015? If not, why not?**
The Government will be tabling the legislation as soon as possible.
33. **Regarding the NSW Government submission at point 7 "Terms of Lease", will you provide the full details of the lease or leases before this Committee reports on 2 June 2015? If not, why not?**
The Government will be tabling the legislation as soon as possible.
34. **What will the lease(s) provide for regarding the responsibilities of any lessee(s) to maintain, improve and replace infrastructure?**
The lease can be terminated for several reasons, including failing to operate or maintain the network in accordance with good operating practice and the regulatory regime, the network ceases to be used as an electricity network, insolvency of the lessee, the revocation of a major authorisation such as National Electricity Market (NEM) registration or the NSW operating licence.
In addition, licence conditions set reliability standards that must be adhered to, and reliability incentives (and disincentives for poor reliability) form part of the Australian Energy Regulator's suite of revenue measures. Refer to the separate report at https://www.nsw.gov.au/sites/default/files/initiatives/houstonkemp-final_report_2_september_2014.pdf for details. The network will need to be kept in good shape in order for the operator to meet mandated reliability standards and to avoid adverse revenue consequences.
35. **What will the leases (or any of the broader set of transaction documentation between any State-owned corporation, Minister, agency or representative of the NSW Government and the lessees) provide for regarding customers' access to and exit from the network?**
The current arrangements for disconnection will not be changed as a result of the transaction.

36. **Regarding the NSW Government submission at point 10 "Step in Rights", will the NSW provide this Committee with the detail/draft legislation before this Committee reports on 2 June 2015? If not, why not?**
Subject to the date legislation is introduced.
37. **What are the structures and arrangements by which the proposed transactions will be effected?**
See NSW Government submission to inquiry.
38. **Will the information sought in the above six questions be publicly available before the legislation to facilitate the proposed electricity transactions is voted on by the Parliament? If not, why not?**
The legislation will be made public when it is introduced to Parliament.
39. **How will the price guarantee ensure the full value of any reduction in network costs are passed to consumers?**
The price guarantee will be binding on the leased networks.
40. **Will the Auditor General be involved in reviewing the sale before it is entered into? Will the Auditor General be given access to the retention value and scoping study before the transactions are entered into? If the answer to either question is no, why not?**
The Auditor General has the discretion to review the lease transactions.
41. **Will the NSW Government ensure that any private operator with majority control of the electricity companies the subject of the proposed transactions does not engage in profit-shifting arrangements with related overseas entities, minimising the payment not only of company tax but also dividends returned to the NSW Government? If yes, what precise steps will the NSW Government take to ensure this?**
Corporate taxation administration is the role of the Australian Tax Office (ATO) whose role is to ensure that companies do not engage in illegal tax arrangements.
The NSW Government will work with the ATO as necessary.
42. **What advice does the NSW Government have that it can retain a share of the tax equivalent payments it currently receives from the electricity companies proportionate to its retained interest after the proposed transactions take place? Who has provided that advice? Can you please provide a copy of that advice to the Committee? If not, why not? If the basis of refusal is confidentiality, will the NSW Government provide that advice to the Committee confidentially?**
Treasury has received advice from EY, the State's Accounting and Taxation adviser on the Electricity Networks Transactions. The advice is commercial-in-confidence.

The State has had an ongoing dialogue with the Australian Taxation Office (ATO) on the key taxation implications.
43. **How will the NSW Government ensure it will receive a proportionate share of the tax equivalent payments from the electricity businesses after the transactions?**
See Question 42.

44. Why does the written NSW Government submission to this Committee not include the claim by the Premier in his presentation that the proposed electricity transactions will increase NSW Government revenues by over \$4 billion by 2035-36?
The committee should consider both verbal and written submissions.
45. In South Australia and Victoria, at times of peak demand electricity is stopped from flowing to certain locations for periods of time, to protect the integrity of the network. These are not 'outages' and are not regarded as system failures, and so are not regarded as failures in reliability. How will the NSW government protect NSW customers from the practice of "load shedding" under a privately operated network?
The license conditions for distribution enforce existing operations in NSW, and the incentive and penalty schemes for transmission and distribution administered by Australian Energy Regulator remain unchanged.
46. The Premier's media release of 10 June 2014 said: "All net proceeds will be invested in new productive infrastructure." - Net of what, exactly? Transaction costs, company debt, - can you please detail what is to be netted off? What is the estimate of these costs?
The Government restated the Conditions of the Transaction in the Rebuilding NSW update released on 18 December 2014. It is publicly available on the Rebuilding NSW website.
47. The Premier's media release also said: "The jobs of permanent award employees will be protected and treated consistently with previous transactions." Does the Government stand by this commitment? Can you provide more detail on what this assurance actually means? What sale conditions are to be imposed to meet this commitment? What is the financial cost of this commitment? Will the NSW Government bear this cost? If not, who will bear the cost?
Refer to Question 46.
48. The Premier's media release also said: "The regional presence of the network businesses will be maintained." Does the Government stand by this commitment? Can you explain in more detail what this commitment means? Will all regional depots, jobs and offices be maintained? What sale conditions are to be imposed to meet this commitment? What is the cost of this commitment?
Refer to Question 46.
49. The Premier's media release said: "Electricity prices will be discounted by 1 per cent off the forecast regulated prices until 2019." Given that the Government is likely to appeal the regulator's determination, should we assume that the Government has walked away from this commitment? If the answer to this question is no, how will the NSW Government effect this discount and what will this cost the NSW Government?
Refer to Question 46.
50. In her evidence (p79) regarding the drafting of legislation for the transactions, the Treasurer said, "Obviously the Government had to consider some issues that are still outstanding in the regulatory environment." What issues in the regulatory environment are still outstanding? When will they be resolved?

The regulatory issues being resolved in the drafting of the legislation will be set out in the Bills when they are introduced to Parliament.

- 51. How will asbestos related compensation be protected and who will be responsible for meeting asbestos related claims?**
Employees will continue to be able to make claims. Claims will be able to be made either against the successful lessee, or if the relevant liabilities are retained, against the relevant State-owned entity.
- 52. What research or modelling has Treasury undertaken or commissioned regarding the likely impact of the transactions on customers generally?**
NSW Treasury and the Department of Premier and Cabinet have commissioned a range of research and modelling. These are available from the Rebuilding NSW website at <https://www.nsw.gov.au/rebuilding>.
- 53. What research or modelling has Treasury undertaken or commissioned regarding the likely impact of the transactions on customers' access to and exit from the network?**
The current arrangements for (connection or) disconnection will not be changed as a result of the transaction.
- 54. Has any other government agency undertaken or commissioned such research or modelling? If not, why has this work not been undertaken or commissioned? If yes, can you please provide it to the Committee? If not, why not? If the reason is confidentiality, can you provide it to the Committee confidentially?**
Refer to Question 52.
- 55. Where will the ownership of infrastructure that has been upgraded and/or replaced lie - with the NSW Government or with the private operator(s)?**
New or upgraded infrastructure that forms part of the relevant electricity network will become owned by the Government Owned lessor.
- 56. What will be the process of returning to State control and operation the electricity transmission and distribution businesses and the associated infrastructure at the end of the lease(s)?**
At expiry of the lease, the lessee must hand back the leased network, as well as all upgraded and/or replaced infrastructure.
- 57. Will the NSW Government or any of its agencies have to make a payment of any money at the end of the lease(s) before the transmission and distribution businesses and assets subject of the lease(s) return to State control and operation? If yes, what is that amount of money? If there is a formula to determine the amount, what is that formula?**
The lease transaction document will need to be developed for each transaction party.
- 58. What research or modelling has Treasury undertaken or commissioned regarding the impact of the lease(s) on employment in the electricity transmission and distribution businesses, particularly in rural and regional NSW? Has any other government agency done this? If no such research or modelling been undertaken or commissioned, why not?**

Rebuilding NSW will create 120,000 jobs.
Essential Energy is not being leased.

59. **Regarding the Premier's answer to question 1 taken on notice, can you detail what the "preferred structures presented by the State" are to this Committee? If not, why not?**

The transaction team will continue dialogue with the Australian Tax Office.

60. **The feasibility of earning \$5 billion in interest on the \$13 billion sale proceeds and \$2 billion incentive payments has been questioned. To remove doubt, could the Treasurer please provide just one indicative spending pattern (i.e. amount drawn out of the fund each year) and interest rate to demonstrate that it is possible to earn \$5 billion?**

The Parliamentary Budget Office reviewed this methodology and considered it to be "reasonable and conservative".

61. **Each of the businesses proposed to be subject to leases or partial leases has a number of liabilities in excess of their borrowings, including employee entitlements and defined benefits superannuation costs? Which party or parties in the transaction will take responsibility for these liabilities and how will the responsibility be apportioned?**

Some of these liabilities will be absolved prior to the transaction.

The lease transaction document will need to be developed for each transaction. The assumption of each liability will depend upon the nature of the liability and the transaction.

62. **The Government's submission (p. 2) claims:**

"This \$20 billion investment in infrastructure is only made possible by releasing capital locked up in the electricity network businesses."

Please provide a list of each of the other methods of capital raising that the NSW government has explored and an explanation as to why it was rejected.

It is important the State acts in a way consistent with the maintenance of the AAA credit rating as required by the Fiscal Responsibility Act.

63. **The Treasurer referred to the transaction as a "once in a lifetime opportunity". Given that much of the need for \$20 billion investment has been based on population growth and that the state's population is forecasted to continue to grow, what other assets does that state have that can be "recycled" when population growth has fully utilised the new infrastructure and more investment is needed?**

This will be subject to population growth over the long term, the nature of the government in the future, government assets in the future and various other factors.

64. **On page 9 of the government's submission, it is claimed that:**

"the Budget result will benefit from Commonwealth incentive payments and earnings on the investment of the proceeds which will more than

offset the reduction in revenue from distributions from the businesses and the impact of the additional infrastructure investment program."

- (i) Is it correct that both the incentive payments and earnings on the investment will be paid into a special fund for the purposes of paying for the Rebuilding NSW plan and will thus not be available for general budgetary use?
- (ii) Is this statement not deeply misleading?

- (i) Yes.
- (ii) No.

65. The Treasurer referred to the risk that the value of the assets might decline in the future, stating (Transcript, Monday 18 May 2015, p. 73) that:

"Arguably there is a greater risk to taxpayers if we do not ensure greater involvement by the private sector in these businesses. Now is the time to proceed with these transactions."

In making the assertion that "now is the time" does the Treasurer rely on the private sector bidders overvaluing the assets or the state undervaluing them?
Neither.

66. The dividends paid to the NSW government are projected to substantially fall. Please explain why this is so and why the factors that contribute to the decline do not imply that the price prepared to be paid by private bidders would not also decline?

The dividends paid to the NSW government are projected to fall as a result of the AER determination. This was outlined in the Government's submission and tabled documents.

67. Has the NSW government prepared contingency plans for alternative fund raising or changed Rebuilding NSW plans, in the event that one of the following occurs? If so, please provide details.

- (a) The price paid for the leases is less than the projected \$13 billion?
- (b) Interest rates fall below the forecast level that justified a \$5 billion return on investment
- (c) The incentive payments from the Commonwealth do not materialise because of an ongoing failure of the Abbott government to pass the Asset Recycling Fund legislation through the Senate?

As per the Rebuilding NSW update released publicly on 18 December 2014. The Government has separately reserved \$2 billion from existing Restart NSW funds to provide additional assurance for the delivery of Rebuilding NSW.

68. On which date did the government provide drafting instructions for the Bill to enable the transactions?

Preparation for the transaction was authorised by Cabinet at the time it considered the scoping study. A large amount of preparatory work is required before proceeding to drafting instructions.

69. **Has the government received any drafts of the legislation to enable the transactions? If so, on which dates did the government receive those drafts?**
Given the nature of the proposed legislation and the extent of the legislative drafting exercise, it is inevitable there will be multiple iterations of draft legislation.
70. **When does the government intend to release a draft of the enabling legislation for the transaction?**
The legislation will be made public when it is introduced to Parliament.

Questions NSW Treasury

71. **At page 77 of the transcript the following exchange occurred:**

The Hon. ADAM SEARLE: What are the inhibitions to paying out that [debt] immediately?

Mr SPENCER: It is the ability to efficiently repay that debt, retail that debt in the market, because it is a significant amount and it needs to be done in the most efficient way. As I say, that is an issue which will be worked out by TCorp.

What did you mean by "efficiently repay that debt, retail that debt in the market"?

Please refer to Question 11 and 72 for additional background. Additionally, a Hansard correction replaces "retail" for "repay".

TCorp is the State's central borrowing authority. TCorp coordinates the issuance and retirement of all State debt. TCorp will seek to retire debt, subject to market opportunities, in an orderly manner, and consistent with maximising value for money for NSW taxpayers given its expertise as issuer in the Government bond markets.

72. **Why is it not simply a case of repaying the debt owed from the transaction proceeds? In your answer, can you please precisely address each separate factor that would prevent an immediate payout of the debt of each of Ausgrid and Endeavour on receipt of the transaction proceeds?**
The majority of NSW's existing debt is in the form of Benchmark Bonds issued by TCorp which are not callable debt instruments. TCorp is required to repurchase bonds from investors when retires State debt. Where State bonds can be immediately repurchased, TCorp will apply funds it receives from gross proceeds to do this. In some circumstances, it may however take TCorp some time to repurchase State Bonds from investors. This is all subject to market conditions.
73. **What are the financial costs of not paying out the debt of each of Ausgrid and Endeavour upon completion of the transactions?**

From the date of completion, TCorp manages its interest rate risk position by either immediately repurchasing State Bonds, or by matching interest rate exposures until the market allows the required amount of State bonds to can be fully repurchased.

74. **If the debt of Ausgrid and Endeavour are not paid out after the transactions are completed for a period of time, where will the funds come from to service those debts?**

At the completion of the transaction, TCorp effectively receives the market value of debt out of gross transaction proceeds. TCorp then applies these proceeds to the immediate retirement of State Bonds or to financial assets to As such, TCorp's balance sheet position is neutral as the market value of its assets matches the market value of its liabilities. No additional funds are required.

75. **If the funds to service the Ausgrid and Endeavour debt until the debt is paid out are to come from the transaction proceeds, will that not diminish the value of the transaction proceeds? How much of the transaction proceeds will be spent in this way? If the answer is not yet known, why not given the size and importance of these transactions?**

The cost to retire the debt will depend upon the prevailing interest rates at the time the each contract is signed.

Questions taken on Notice from the transcript

Responses to the questions taken on notice during the hearing have been covered in the above supplemental questions.

Question 1 (page 76/77 of transcript): Refer to supplemental questions 11 and 71 – 75.

Question 2 (page 79/80 of transcript): Refer to supplemental questions 68 – 70.

Question 3 (page 80/81 of transcript): Refer to supplemental questions 42, 43 and 59.

Question 4 (page 86 of transcript): Refer to supplemental questions 13 – 16.