



**Under Treasurer**

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Ms Lia Finocchiaro  
Chair  
Public Accounts Committee  
Attn: Mr Russell Keith  
PO Box 3721  
DARWIN NT 0801

Dear Ms Finocchiaro

**RE: DEPARTMENT OF TREASURY AND FINANCE RESPONSE TO PUBLIC  
ACCOUNTS COMMITTEE INQUIRY INTO STRUCTURAL SEPARATION OF THE  
POWER AND WATER CORPORATION**

On Monday 28 April 2014, I appeared before the Public Accounts Committee (PAC), with Mr Craig Graham, in regards to the structural separation of the Power and Water Corporation. As a result of this appearance, I wish to follow up on a number of issues.

A copy of a draft transcript of our appearance was provided to me for correction, with instructions that only errors may be corrected in the transcript. Consistent with this direction, please find corrections to the transcript at Attachment A.

On reviewing the transcript, it came to my attention that I need to clarify an answer to a question on the costs incurred by the Department of Treasury and Finance (DTF) for structural separation. My response took into account DTF's costs for the entire reform program, being both regulatory and structural separation aspects. In regards to structural separation alone, DTF has spent \$124 000 to the end of March 2014, with \$336 000 estimated to the end of the financial year.

Further to our appearance, the PAC has requested that I address one question on notice and provide advice on the PAC's concerns regarding privatising PWC's assets and businesses. The response to these items is at Attachment B.

Please contact if you need any further assistance.

Yours sincerely

Jodie Ryan

Under Treasurer

2 May 2014

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**1. Will the government owned corporations (GOC) have to pay Goods and Services Tax (GST) to each other for services provided?"**

In the short term, due to the existing integrated IT systems owned by the Power and Water Corporation (PWC), the Power Generation Corporation and Power Retail Corporation will be grouped for GST purposes with PWC. GST grouping means that GST will not be charged between the GOCs. However, the GOCs will still report and be audited as separate entities with their own Australian Business Number (ABN).

Consistent with Government's intention that dealings between the monopoly and contestable businesses operate independently, it is expected that over time, the GOCs will adopt their own IT systems at which time, the treatment of GST between the corporations will change as required by the Australian Taxation Office.

**2. A continuing issue of concern raised before the Committee is the potential for privatising Power and Water Corporation assets and businesses. While it is clear there is currently no intention to privatise, questions have nevertheless been raised about the potential for privatisation in future.**

***It would therefore assist the Committee if you could provide any advice on the limits on the ability to sell Power and Water Corporation assets and businesses under existing legislation and under the proposed amendments.***

As recognised by the Committee, there is no intention to privatise the Power and Water Corporation (PWC) and as such, the legislative amendments have not been drafted with this intent. In drafting the legislation to implement the structural separation of PWC, the intention is to transfer assets, liabilities, rights or instruments from PWC to the two new government owned corporations (GOC) only, which are being established as part of the legislative package. The legislation has not been drafted to privatise PWC or the new GOCs. From the Department of Treasury and Finance's (DTF) perspective, there is nothing in the proposed amendments that makes it easier to sell assets or businesses.

New section 53B(1) of the *Government Owned Corporations Act* (the Act) states that "Regulations may be made under this section for the purpose of effecting the transfer of all or part of the business of a Government owned corporation to a relevant entity." A relevant entity is defined in section 53A to include GOCs, their subsidiaries, statutory corporations, the Territory, or "a corporation (as defined in the *Corporations Act 2001*), or other body corporate, that is owned by the Territory." As such, the new provisions only allow for regulations that provide for transfers to entities already owned by the Territory Government.

In terms of the existing legislation, section 38 of the Act provides that a GOC cannot dispose of capital or financial investments above a threshold without the approval of the shareholding Minister. This constrains the ability of a GOC to sell assets, but clearly envisages that a disposal of capital or financial investments could occur above

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that threshold if approved by the Minister. Whether it is technically possible for significant assets or businesses to be sold without further legislative amendment, is both a legal and commercial question, and could not be definitively answered without both legal and commercial advice in the context of a defined sale.

In practice, DTF considers it extremely unlikely that a sale of a significant asset or business could be effected without legislative amendment. Amendments would be necessary, among other things, to confirm to the purchaser that the Minister has the power to sell the assets or business; to deal with any residual assets or liabilities and, if relevant, the winding up of any government entity holding the business; to deal with taxation matters, including the liability for transfer duties; to deal with employment transfers as required; and to deal with any licensing requirements. Most of these matters would be pre-conditions for any buyer.

Further, in previous cases where the Northern Territory Government has sold assets, it has always entered into sale specific legislation, for example the *Sale of the NT TAB Act 2000* and the *Ayers Rock Resort (Sale) Act 1997*.

The Act is considered to be generic legislation, intended to apply to all current and future GOCs. On drafting the amendments to enable the structural separation of PWC, including provisions dealing with restructuring and transfers, it was considered prudent that the amendments to the Act should deal with all possible forms of restructuring.

If the due diligence exercise identifies the need to transfer instruments, contractual rights or obligations, or assets etc to a body within Government (either a statutory body such as the Utilities Commission, or an agency such as the Department of Mines and Energy), the legislation has to be wide enough to account for this possibility.

Separately, there is a process for establishing the wholesale market arrangements that will apply to the electricity generation market in the Northern Territory. This may see the establishment of an independent system control function and wholesale market operator. The governance and structure of such a body is not known. For example, it could be a GOC or a statutory body. In the National Electricity Market, the equivalent body, the Australian Energy Market Operator, is established as a company limited by guarantee under the Corporations Act. As such, it is prudent that the legislation be established to allow a wide range of options.