

**Investigation into allegations of improper conduct by
officers at Goulburn Murray Water**

October 2018

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The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Investigation into allegations of improper conduct by officers at Goulburn Murray Water*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish at the end.

Deborah Glass OBE
Ombudsman

3 October 2018

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Foreword

'He thinks everything that happens to him between seven in the morning to when he goes to bed is necessarily an expense incurred relating to Goulburn Murray Water'

– Witness in Ombudsman investigation

Goulburn Murray Water has ridden some rapids in recent years. To paraphrase Oscar Wilde, to lose one director may be regarded as a misfortune, to lose multiple board members, chairs and managing directors since 2011 looks like carelessness. So it was with some concern that we began an investigation late last year into allegations that its managing director was inappropriately claiming expenses, which were being approved by its then chair.

The allegations were substantiated. They included that the managing director used a \$20,000 relocation allowance for household items, including a high-end barbecue and cookbook, while choosing to retain a residence in Melbourne. Yet at the same time he pursued a 'living away from home allowance' to reduce his personal tax, despite advice that he was ineligible, resulting in Goulburn Murray Water spending over \$17,000 on professional fees. He was also reimbursed over \$21,000 in a year, making a series of inappropriate expense claims for meals and drinks, including alcohol and hotels stays in Melbourne.

All of the claims had been approved by the chair, who was also the subject of this investigation. She failed to confirm the business need for much of the expenditure and ignored advice from staff.

Given the over 4 billion dollars managed by Goulburn Murray Water, allegations that its managing director was inappropriately claiming expenses in the thousands of dollars may seem minor. But to a community facing years of hardship because of the drought and dairy crisis, and with an organisational message that GMW needs to cut costs and lower debt, this conduct seems particularly out of line with public expectations.

It was not our role to judge the competence of the people we were investigating in leading a multi-billion-dollar water corporation, and I make no findings about that. But our investigation did raise, not for the first time, the values gap between the public and private sector. What may be acceptable behaviour in a corporate environment - 'you'd claim for everything', we were told - is simply not acceptable when the shareholders are the public.

Public sector codes, rooted in core public sector values of integrity and accountability, exist for a reason. We do not expect our senior officials to be housed, fed and watered on the public purse, on top of a generous salary. We do not expect to pay for relationships to be lubricated by alcohol.

This investigation has exposed failings both with individuals and the systems that support them. Both need to do better to maintain public trust.

Deborah Glass

Ombudsman

Background

The protected disclosure complaint

1. On 12 September 2017, the Independent Broad-based Anti-corruption Commission (IBAC) referred a matter to the Victorian Ombudsman for investigation pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). IBAC had determined it to be a 'protected disclosure complaint' under the *Protected Disclosure Act 2012* (Vic). The protected disclosure complaint included allegations that:
 - Patrick Lennon, the now former Managing Director (the MD) of Goulburn Murray Water (GMW) submitted, and Joanne Anderson, the now former Chair of the GMW Board (the Chair) approved (in May 2017) a 'relocation expense' claim of \$20,000, including items for household assets, which could not reasonably be considered as 'relocation expenses'.
 - The MD misused his position to obtain, and the Chair approved (in September 2017), a 'Living-Away-From-Home-Allowance' (LAFHA) despite advice that he was not eligible; and having already received a 'relocation expenses' reimbursement of \$20,000.
 - The MD misused his position to submit, and the Chair approved, a series of expense claims relating to day-to-day expenses, not reasonably incurred in the performance of the MD's duties.
2. On 24 July 2018, the Corporate Secretary of GMW requested he be identified as 'the discloser' in this report, and provided written consent in accordance with section 53(2)(a) of the Protected Disclosure Act.
3. The investigation acknowledges the cooperation of the Corporate Secretary and the Chief Financial Officer (CFO) throughout this investigation. Their evidence indicated their attempts to remediate these issues internally were thwarted by the former Chair and MD, to whom each reported.

Goulburn Murray Water

4. GMW is a water corporation established by the Minister for Water under section 85 of the *Water Act 1989* (Vic). According to its 2017–18 Annual Report, GMW is responsible for the use, conservation and management of 70 per cent of Victoria's stored water resources, and half of Victoria's ground water supplies. GMW is required under the Water Act to encourage and facilitate community involvement in the performance of its functions.
5. During the period examined, there were nine non-Executive Directors (including the Chair) on the GMW Board, each of whom was appointed by the Minister. The MD is appointed by the Board and becomes its tenth member and only Executive Director.
6. Under the Water Act, the Board is responsible for GMW's strategic planning, and the *Board Charter* sets out its responsibility for governance including:
 - setting the broad strategy, objectives and performance targets for GMW
 - ensuring the preparation and approval of strategic plans, annual reports, key procedures and policies
 - notifying the Minister of known risks to the effective operation of the Board
 - ensuring GMW operates within its establishing legislation, delegations, rules and procedures relating to the use of public funds

- overseeing the management of GMW by the Managing Director to ensure it is operating effectively, has a culture of compliance and best practice business performance in areas of financial, human resource, risk management and asset management
- fostering a culture and set of values with reference to the duties and values detailed in the *Public Administration Act 2004* (Vic)
- applying the GMW Directors Code of Conduct.

- assisting members understand their roles, responsibilities and accountabilities (which includes providing access to all GMW policies)
- leading Directors' inductions
- managing the performance of the MD.

- The Chair reports directly to the Minister and is required to keep the Minister informed of significant issues and events.
- The Chair has the financial delegation to approve the MD's personal expense and petty cash reimbursement claims. The Corporate Secretary is responsible for approving the Chair's expense claims.
- Prior to her role, the Chair worked extensively in the public sector. After a career in local government as both a CEO and Administrator, she undertook leadership roles in the water industry including as Board Chair and Director at North East and Western Water, respectively.

The subjects of the investigation

Board Chair

- On 1 September 2016, the Minister for Water appointed Joanne Anderson as the GMW Chair. The Minister extended her appointment from 1 December 2016 to 30 September 2019, with an annual remuneration of \$80,419.
- On 27 July 2018, the Chair resigned from her position; and in accordance with the Water Act, the then Deputy Chair acted in the role. On 1 September 2018, the Minister appointed a new Chair, Diane James AM, then Chair of Southern Rural Water.
- On 21 September 2018, the MD ceased employment at GMW and an interim Managing Director was appointed.
- All references in this report to the Chair and MD refer to former Chair, Joanne Anderson, and former Managing Director, Patrick Lennon, (the subjects of the investigation), unless otherwise stated.
- As the presiding member of the Board, the role of the Chair includes:
 - informing Board members about developments in government policy
 - ensuring the Board is effective with the necessary skills and capabilities

Managing Director

- The Board appointed Patrick Lennon as the MD from 24 October 2016 to 24 October 2021, commencing with an annual salary of \$384,000, with a potential bonus of up to six per cent. On 1 July 2017, the Board approved an increase of the MD's Total Remuneration Package (TRP) to \$401,525 (excluding other benefits detailed in his contract). This was the maximum amount permissible without approval by the Government Sector Executive Remuneration Panel (GSERP).

16. The key responsibilities defined within the MD's Position Specification were as follows:

- overall responsibility for developing (with the Board of Directors), the medium and long term strategic direction for GMW
- ensure achievement of short-term objectives (budget, annual business plan) as well as medium/long-term objectives as defined by the strategy agreed with the Board
- provide Leadership and Guidance to the leadership team and workforce – inspiring people across the organisation and fostering teamwork and innovation as a cultural differentiator
- represent the company as its Chief Executive with external and internal stakeholders
- role model customer centricity and HSE [health safety environment] awareness
- successfully lead and build on an innovative cultural transformation underpinning the company's growth agenda
- lead a cost focused culture, embedding it as a 'way of life' across the operations.

17. The Position Specification required an 'unquestioned reputation for integrity with an ability to engender trust', and noted it was 'essential for the new Managing Director [to have] a strong grasp of effective governance'.

18. In addition to these responsibilities, the MD was also the 'Accountable Officer', per the *Financial Management Act 1994* (Vic). As Accountable Officer, the MD must ensure GMW develop policies and procedures to address travel, personal expense reimbursement, and ex-gratia payments.

19. The MD started his career as an engineer in the public sector, working for a decade at the State Electricity Commission until 1991 and then in business development, project management and consulting roles for both public and private enterprises, in the energy sector in Australia and the United States.

Methodology

20. On 4 December 2017, the Ombudsman notified the Minister for Water, the Hon Lisa Neville MP, of her intention to investigate the protected disclosure complaint.

21. The Ombudsman's jurisdiction to investigate protected disclosure complaints is derived from section 13AAA of the *Ombudsman Act 1973* (Vic), which provides that the Ombudsman has the function to investigate protected disclosure complaints about conduct by or in an authority or protected disclosure entity.

22. GMW is a public statutory body within the meaning of Schedule 1, Item 13 to the Ombudsman Act and therefore an 'authority' within the meaning of the Act.

23. In reaching the factual findings in this report, the investigation has been guided by the civil standard of proof, the 'balance of probabilities', taking into consideration the nature and seriousness of the conduct in question, the quality of the evidence, and the gravity of the consequences for the persons involved in the matters under investigation.

24. The investigation involved:

- examining relevant state legislation, government policies and rules, and GMW policies, including:
 - o *Public Administration Act 2004* (Vic)
 - o *Water Act 1989* (Vic)
 - o *Financial Management Act 1994* (Vic)
 - o *Standing Directions of the Minister for Finance 2016* (Standing Directions)

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- o *Instructions supporting the Standing Directions Instructions of the Minister for Finance 2016* (Standing Directions Instructions)
 - o *Code of Conduct for Directors of Victorian Public Entities 2016* issued by the Victorian Public Sector Commission (VPSC)
 - o *Victorian Public Sector Code of Conduct for Public Sector Employees 2015* issued by the VPSC
 - o *Policy on Executive Remuneration in Public Entities* (issued in 2000, updated June 2017) issued by the VPSC
 - o *Victorian Public Service Executive Employment Handbook 2016* issued by the VPSC
 - o *GMW Corporate Governance Manual*
 - o *GMW Financial Management Compliance Framework Procedure* (June 2014 and June 2017)
 - o *Appendix 18 of the Corporate Governance Manual, Remuneration and Expenses Directors policy, October 2016* (Appendix 18)
 - o *GMW Board Charter* (issued March 2013, updated February 2017)
 - o *Gifts, benefits and hospitality Policy framework, October 2016* issued by the VPSC
 - o *GMW's Gifts Benefits and Hospitality Board Policy* (reviewed 28 June 2017)
 - o *Compliance Attestation checklist 2017-18 for the Standing Directions of the Minister for Finance 2016* (February 2018) issued by the Department of Treasury and Finance (DTF)
 - examining documents held by GMW and the Department of Environment, Land, Water and Planning (DELWP) including:
 - o staff emails (October 2016–January 2018)
 - o financial records (including relocation claims, expense claims, allowances and purchase orders)
 - o legal advice
 - o Board minutes (October 2016–December 2017)
 - o Remuneration Committee¹ minutes (March 2016–November 2017)
 - o employment records including the MD's Position Specification, Candidate Report and Contract of Employment
 - o induction and training records
 - o *Governing the Victorian Water Industry guide issued by DELWP* (February 2017)
 - consulting with:
 - o Australian Taxation Office (ATO)
 - o Victorian Public Sector Commission (VPSC)
 - o Department of Premier and Cabinet
 - o Department of Treasury and Finance (DTF)
 - o Victorian Auditor-General's Office (VAGO)
 - issuing two confidentiality notices under section 26C of the Ombudsman Act
 - providing a draft report to affected parties for comment and incorporating these comments, where relevant, into this report.

¹ In March 2017, the Remuneration Committee became the People and Culture Committee. For the purposes of the investigation, the Committee is referred to as the Remuneration Committee throughout this report.

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25. Six interviews were conducted as part of the investigation. Two of those interviews were voluntary;² and the remaining four interviews were compulsory.³
 26. The MD and the Chair were accompanied by legal representatives at interview.
 27. This report includes adverse comments about the MD, Patrick Lennon, and the Chair, Joanne Anderson. In accordance with section 25A(2) of the Ombudsman Act, each person was provided with a reasonable opportunity to respond to the draft report.
 28. Specifically, the draft report was provided to both the MD and the Chair on 31 July 2018, requesting a response by 14 August 2018.
 29. The Chair's representative submitted a response on 14 August 2018.
 30. At the request of the MD's representatives, the Ombudsman granted an extension to 21 August 2018 for the MD to respond to the draft report. The Ombudsman also provided the MD's representatives with access to a majority of the documents cited in the draft report, except for those that contained sensitive information; revealed the identity of third parties; or for which the information relied upon was already set out in the draft report.
 31. The MD's response to the draft report was received on 21 August 2018.
 32. The MD's and the Chair's responses have been fairly set out in this report.

² A 'voluntary appearance' means the appearance of a person before an Ombudsman officer in the course of or in relation to the performance of the Ombudsman's functions under the Ombudsman Act or any other Act; other than a compulsory appearance.

³ A 'compulsory appearance' means the appearance of a person before the Ombudsman in accordance with a witness summons or in which a person is examined under section 18 of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) as in force immediately before its repeal.

33. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are identified as the Ombudsman is satisfied that it is necessary or desirable to do so in the public interest, and that identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.

Relevant legislation, policies and codes of conduct

Public Administration Act

34. The *Public Administration Act 2004* (Vic) sets out the obligations of Victorian Public Sector organisations and employees in relation to accountability and integrity. It also sets out the public sector values of responsiveness, integrity, impartiality, accountability, respect, leadership and human rights. In accordance with section 7 of the Public Administration Act, public officials must act in a manner that is consistent with these values. Section 61 requires the VPSC to issue a code of conduct to promote adherence to these values.

Victorian Public Sector Commission codes of conduct

35. The VPSC has issued two codes of conduct relevant to the conduct of the MD and the Chair: the *Code of Conduct for Victorian Public Sector Employees* (the Employee Code), and the *Code of Conduct for Directors of Victorian Public Entities* (the Directors Code). As a Director and the most senior employee of GMW, the MD is bound by both codes; whereas only the Directors Code applies to the Chair.

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36. The duties, values and expectations of public sector officers are similar in both codes, although the Directors Code sets out only the behaviour expected of Directors. That is, to demonstrate leadership and stewardship, particularly given their relationship with Ministers, departmental and public entity staff, and the community.
37. Among other things, the Directors Code stipulates that Directors must:
- act in good faith in the best interests of the public entity
 - not allow their personal or professional interests or relationships to influence their judgement
 - behave in a way that reflects well on their standing as a Director and on the reputation of the public entity
 - use their position to promote the best interests of the public entity
 - not use their position to seek an advantage for themselves or another person or to cause detriment to the public entity
 - act in a financially responsible manner
 - exercise care in relation to public funds and assets and, if applicable, comply with the Standing Directions of the Minister for Finance and the rules of the Financial Management Compliance Framework
 - act with honesty and integrity
 - comply with laws, policies and generally accepted standards of behaviour
 - be open and transparent in their dealings.
38. The Directors Code states, 'A failure to behave in the ways described in the Code of Conduct may be considered misconduct and in the most serious cases may lead to suspension or removal from office'.
39. Under the Employee Code, public sector employees 'use their power in a responsible way'; that is, they must not use their position 'to provide a private benefit to themselves, their family, friends or associates ... they exercise power in a way that is fair and reasonable'. Additionally, they must 'observe the highest standards of integrity in financial matters ... [and] maintain a strict separation between work-related and personal financial matters'.
40. GMW has its own Code of Conduct for Directors which reflects various provisions of the VPSC Directors Code. In this case, the investigation focused on the standards set out in the Directors Code issued by the VPSC to consider the alleged conduct of the MD and the Chair.
41. The Corporate Secretary inducted the Chair and MD upon commencement of their roles, which included advice about these codes of conduct in the introduction to GMW's Corporate Governance Manual.

Financial Management Act

42. GMW and its Board must comply with the Financial Management Act. The purpose of the Act is to improve financial administration in the public sector and provide governance and accountability arrangements, including annual reporting to Parliament by public sector organisations.
43. The Act authorises the Minister for Finance to issue Directions to public sector organisations to assist in the Act's implementation. These Standing Ministerial Directions have the force of legislation. GMW is expected to develop its own policies, procedures, and financial and risk management frameworks to ensure compliance.

Remuneration and Expenses Directors policy

44. All GMW employees must adhere to the Corporate Governance Manual, which sets out the governance framework for the corporation. One Board policy, Appendix 18 of the manual, details Director expense claims and provides:

Directors are eligible for reimbursement of all expenses reasonably incurred in the discharge of office. Travelling and other allowance or expenses are paid at the rates that apply for employees of GMW.

45. Appendix 18 also sets out requirements for Director claims, including:

Reimbursement will be paid on production of a paid tax invoice or receipt only (attach receipt to form)

...

Alcohol is not claimable [original emphasis]

There are maximum claimable rates for meals and accommodation, refer below.

46. Directors must adhere to the allowable limits (detailed in the policy) for the reimbursement of meals and accommodation.
47. In response to the draft report, the MD's representatives stated '[A]ppendix 18 did not apply to Mr Lennon in his capacity as Managing Director. It applied to the non-executive Directors'. In asserting this, they referenced GMW's Corporate Governance Manual 'terms of office', which details appointments of non-executive Directors by the Minister under section 98 of the Water Act.

48. However, section 95 of the Water Act defines that a Board of Directors consists of 'not less than 2 and not more than 9 directors ... and the managing director of the water corporation'. Furthermore, the 'Remuneration and expenses' section of the Corporate Governance Manual, which refers to Appendix 18, does not exclude its applicability to the Managing Director, unlike other sections of the Manual, such as the 'terms of office', which only refers to non-executive Directors.
49. The MD's representatives also asserted that this position was confirmed by the Chair in her evidence (detailed later in the report) that limits in Appendix 18 *should not* [investigation's emphasis] apply to the MD, only other Directors. However, when expressing her views, the Chair relied on the importance of the MD's role as the chief executive and his need to engage stakeholders, rather than any explicit exclusion supported by the Corporate Governance Manual, his contract or the legislative obligations embedded in the MD's engagement.
50. The investigation is of the view that Appendix 18 does apply to the MD. He is a Director of the Board and the policy does not explicitly exclude him. Furthermore, both the Chief Financial Officer (CFO), who has acted on multiple occasions as the MD, and the Corporate Secretary, advised the investigation that this is the applicable policy for the MD's expense reimbursements. The Corporate Secretary also delivered the induction program for both the Chair and the MD in 2016, which included a discussion of Appendix 18. Regarding expenses, the GMW *Director Induction and Exiting Program* states 'what is claimable ... not tips/gratuities, alcohol'.
51. As already noted by the investigation, Appendix 18 states, 'Travelling and other allowances are paid at the rates that apply for employees of GMW', so the same limits apply to everyone at GMW regardless.

Investigation

The MD's relocation claim

The MD submitted, and the Chair approved, a 'relocation expense' claim of \$20,000. The claim was for the maximum amount permitted in the MD's employment contract. However, it was alleged the claim included items for household assets, which would not reasonably be considered 'relocation expenses'.

The MD's right to request reimbursement

52. The Position Specification for the Managing Director of GMW stated the role was based at GMW offices in Tatura. This was also reflected in the MD's Candidate Report and his Contract of Employment, which provided that 'duties are currently based in the Tatura Office'. The MD's contract specified his right to request reimbursement for reasonable expenses, including for his relocation to Tatura:

Subject to obtaining the appropriate prior authority, the Executive will be reimbursed for such expenses as are **reasonably incurred** [investigation's emphasis] in the performance of the Executive's duties including relocation expenses to the GMW irrigation area. Relocation expenses will be reimbursed to a maximum total of \$20,000.

53. The MD signed his contract on 10 October 2016 and commenced in his position on 24 October 2016.

The MD's claim

54. On 30 April 2017 (six months after his commencement), the MD submitted to the Chair via email a list of expenses and scanned copies of receipts totalling \$21,927. The email requested reimbursement for his 'partial list of our "relocation expenses"'. The claim included a duplicate item of furniture and \$20.50 of alcohol that was identified and removed by GMW's Finance team before processing. Removal of these items brought the total to \$21,596.61. An itemised list appears in Table 1 on the next page. Of the remaining 16 receipts for dinner purchases for the MD and his wife, ranging from \$38 to \$135.20, the amount of alcohol reimbursed could not be determined as EFTPOS slips covered the itemised restaurant receipts.

Table 1: Items claimed by MD as relocation expenses		
No.	Item	Cost
1	Breakfasts	\$118.10
2	Lunches	\$44.00
3	Dinners (including alcohol)	\$1,484.47
4	Kitchen items	
	Miscellaneous – dinner set, pots, pans, trays	\$268.40
	Miscellaneous – step ladder, grill etc	\$136.92
	Miscellaneous – grater, scissors, spatula etc	\$79.50
	Miscellaneous – pots, pans, cutlery	\$764.47
	BBQ cookbook	\$29.95
5	Miscellaneous household items	
	Purchases from 'Bed, Bath and Table' [items illegible]	\$310.83
6	Whitegoods	
	Including kettle and fridge	\$2,050.00
7	Wall print	\$60.25
8	Linens	
	Mattress topper	\$143.97
	Goose down quilt	\$299.95
	Linens	\$192.95
	Bed Linen	\$455.80
9	Rugs - wool hallway	\$200.00
10	TV	
	TV Kitchen	\$360.00
	TV wall mount (42 inch) and call-out fee	\$150.00
11	Bedroom furniture	
	Two Diana crystal table lamps	\$199.00
	Queen bed head natural linen & delivery	\$249.00
	Delivery	\$60.00
	Two bedside tables	\$550.00
12	Furniture	
	3.5 seater lounge	\$1,960.00
	Saratago 9 piece dining set	\$2,180.00
	Buffet	\$960.00
	Chiro Essential queen ensemble bed	\$999.00
	Regal Splendour queen mattress	\$3,220.00
	Delivery	\$100.00
13	Outdoor balcony set (3 piece)	\$599.00
14	BBQ and BBQ setting	
	9 piece outdoor dining setting	\$1,699.00
	BBQ, rotisserie, gas bottle, charcoal & assembly	\$1,672.05
Total		\$21,596.61

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55. On 8 May 2017, the Chair approved the MD's claim for \$20,000 in an internal memorandum, noting, 'In accordance with DELWP advice, the Chair may approve such relocation expenses'.
 56. In addition, the MD's Executive Assistant submitted, and the Corporate Secretary's Executive Assistant approved, payment of invoices for the MD's temporary accommodation at Quest apartments for six and a half weeks, totalling \$8,687.70.
 57. Thus, the total claim for relocation costs exceeded the allowable limit in the MD's contract by \$8,687.70. The investigation found no evidence the Chair sought approval from GMW's Remuneration Committee or the Board to exceed the contractual limit, or that the Executive Assistants who booked and approved the accommodation were informed that this stay at Quest was a 'relocation expense' that required the Chair's approval.

Relevant legislation, policies and codes of conduct

58. In submitting and approving the relocation claim, the MD and the Chair were required to comply with legislation, policy, and codes of conduct. The investigation examined these documents and the advice provided to the MD to determine if the expenses reimbursed were 'reasonably incurred', as required by the MD's contract.

GMW policy

59. GMW does not have a specific policy for executive relocation claims. The only direction to staff about relocation claims is provided for in GMW's *Enterprise Agreement 2014* (EBA), which states:

Subject to prior management approval, Employees who are required to relocate as a result of the business needs of the Corporation shall be reimbursed the actual and reasonable cost of removal including legal expenses, estate agents commission, stamp duty, registration fees, selling and purchasing of a comparable residence, including compensation for market differentials, and the depreciation of furniture and fittings.

60. The EBA does not apply to the MD or other Directors at GMW.

DELWP guidance

61. Similarly, DELWP does not have a specific policy to guide water corporations with respect to 'relocation expenses'.
62. At interview on 20 April 2018, a DELWP Governance Manager told the investigation that it is not his role to advise water corporations about contract conditions. However, he said if he was asked about relocation, he would look to the EBA where appropriate and seek guidance from the Victorian Public Sector Commission (VPSC) about what it considers 'reasonable relocation expenses'.

The Handbook

63. The *Victorian Public Service Executive Employment Handbook 2016* (the Handbook) is binding on the public service. The Handbook states that it provides 'guidance to executives and employers in the public sector on executive employment and remuneration policy standards' and contains 'the standard employment conditions for public service executives'.

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64. The VPSC advised it had completed a review of executive remuneration arrangements in the public sector in June 2018. The review indicated that, to reduce the risk of inappropriate practices and enhance accountability of the public sector, a dedicated public entity handbook should be developed, drawing on the approach adopted in the existing Handbook.
65. At the time of the MD's claim, the Handbook was not binding on the broader public sector, including GMW.
66. Notwithstanding this, the VPSC told the investigation it used the Handbook to educate and advise the public sector about the accepted standards of behaviour for public sector employees.
67. While accepting the Handbook is not binding on GMW, the investigation was guided by the policy framework for 'relocation expenses' in the Handbook, in the absence of GMW policy that would have been binding and guided the Chair and Board when making decisions about the MD's expenses. The Handbook is also consistent with well-adopted governance principles for public life as detailed in the Public Administration Act and relevant codes of conduct, which are binding on GMW.
68. Appendix B of the Handbook details what are 'necessary and reasonable' relocation expenses, including:

- economy airfares for staff member and immediate family;
- accommodation costs incurred during travel;
- removal expenses relating to furniture, motor vehicles and effects including comprehensive insurance cover; and
- storage costs.

The Handbook also lists expenses that may be considered 'optional', which an Agency Head can approve:

- costs associated with the sale of existing residence, including estate agents' fees, legal costs, stamp duty and fees relating to the discharge of a mortgage

- costs associated with permanent accommodation in Victoria including legal costs, stamp duty, mortgage transfer, buyer's advocate and valuation fees – an appropriate depreciation allowance may also be paid
- monthly return economy airfares from Melbourne for visits for a limited period while immediate family continues to live interstate – this benefit would be subject to fringe benefits tax
- reimbursement of initial short-term accommodation costs such as:
 - an allowance to cover actual cost of reasonable accommodation
 - reimbursement for breakfast, dinner and incidental expenses for an initial period of up to, and not exceeding, three weeks – a hotel that offers a government discount should be preferably used
 - reimbursement of reasonable actual cost of accommodation for a further period of up to 10 weeks after commencement of appointment.

69. The Handbook does not cite reimbursement for alcohol, household goods or asset purchases as 'necessary and reasonable expenses' or as 'optional expenses'.
70. From the MD's \$21,596.61 worth of items submitted for reimbursement (not including those items removed by Finance), a maximum of \$1,602.57 would be considered reasonable 'relocation expenses' pursuant to the Handbook – these being his breakfasts and dinners within the first three weeks of his relocation. The undetermined amount of alcohol which the investigation understands was included in the dinners reimbursed would further reduce this calculation. Therefore, according to the Handbook (noting that it is not binding), the Chair approved GMW reimbursing the MD at least \$18,397.43 for items not reasonably considered relocation items.

The VPSC's and Department of Premier and Cabinet's role and advice

71. When the investigation consulted with the VPSC on 31 May 2018, the VPSC raised concerns about GMW not having a specific policy on 'relocation expenses'. The VPSC stated that it expects public sector employees and employers to use the Handbook for guidance in developing their own policies and when considering 'what is reasonable'. The VPSC said the Handbook:

... (which is the VPSC's basis for advising on government executive employment policy where organisations do not have their own policies), does not give employers unlimited discretion to provide reimbursement for the kinds of items described in [the MD's] case (apart from the meals).

72. The VPSC informed the investigation that when advising an organisation about 'relocation expenses', it is 'ultimately up to the Board to make a decision about reasonable and appropriate costs, in line with the Directors Code and the Employee Code'. The VPSC also stated:

... reimbursements should normally be made for actual costs only, on the production of receipts. Employers should not offer 'allowances', which imply a guarantee of a certain value and encourage the executive to spend to the limit rather than to their actual needs. As a rule, the VPSC would not advise that entities pay 'compensation' to executives for any reason – executives are compensated for the performance of their duties via their TRP, and for specific business-related expenditure by reimbursement under relevant policy.

73. The VPSC considered GMW's payment of the MD's Quest accommodation was a reasonable use of a relocation allowance. However, the accommodation cost of \$8,687.70 was not deducted from his relocation entitlement; it was additional.

74. As part of the investigation, advice was sought from the VPSC on 13 April 2018 about the relocation claim of a 'public sector executive'. This request was referred to the Department of Premier and Cabinet, which is responsible for the policy (the Handbook) and its interpretation. The department provided an opinion on 4 May 2018 that only breakfasts and dinners (if agreed by the department or agency) and delivery of items could be reimbursed as acceptable relocation expenses.
75. The department also advised that 'an EFTPOS slip without details of items cannot verify that the purchase was related to items outlined in Appendix B of the Handbook'.
76. This report also details additional advice from the VPSC on the range of the MD's claims.

Directors Code

77. The Directors Code mandates that Directors 'not use their position to seek an advantage for themselves or another person or cause detriment to the public entity' and 'act in a financially responsible manner ... exercis[ing] care in relation to public funds'.

Internal advice provided to the MD

78. In addition to the above policies and the Directors Code, the investigation considered advice provided to the MD by GMW's Corporate Secretary and the CFO about what GMW considers 'reasonable' relocation expenses. The MD purchased a substantial number of the items of his relocation claim *after* he received this advice.

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79. In November 2016, GMW's Corporate Secretary emailed the MD referring to advice obtained from GMW Human Resources about the items the organisation would cover for relocation, listing:
- payment for the movers, packing and unpacking of items
 - cleaning the new dwelling if not done properly
 - if a person is moving themselves then the hiring of the truck, petrol etc.
80. In April 2017, the CFO emailed the MD an example of a previous executive's relocation claim, approved in April 2015. The expenses included removalist costs, cleaning, insurance, flights, accommodation, car hire, petrol and airport transfers; amounting to approximately \$12,000. The CFO wrote in this email, 'unless there are specific details in your contract, the reasonability of your costs to relocate is between yourself and the Board Chair'.
81. At interview on 16 February 2018, the CFO said that 'asset-type things which end up in the private ownership of an individual are generally not a relocation expense'.
82. Similarly, the Corporate Secretary said at interview on 16 February 2018 that the MD's claimed items (excluding all meals) 'are not about relocation ... they're also not expenses, they're assets'.
83. In his response to the draft report, the MD's representatives stated that:
- ... Both the Corporate Secretary and the Chief Financial Officer are not qualified to be proffering such opinions ...
- at no time did the Chief Financial Officer or the Corporate Secretary raise the EBA, Handbook or Directors Code with Mr Lennon.

The MD's evidence

84. At interview on 7 and 8 May 2018, the MD said when he negotiated his contract with the Chair, he expressed an expectation of a \$400,000 Total Remuneration Package (TRP). The MD said the Chair only offered him \$384,000, but advised him at the time, '\$10,000 for relocation wasn't nearly enough' and so they discussed a '\$20,000 kind of allowance' in the context of the expectation that he relocate to the Goulburn Murray irrigation region. The MD said:
- I took it from that conversation that she was talking about increasing it to recognise the cost of moving. There was no conversation about any detail on it, there was no, how can I put it, restrictions involved ... I certainly understood that the offer was going to be subject to finalisation, \$20,000 for establishing myself in the region which I'd taken to be ... just a straight-out figure.
85. The MD said when he received his contract, it reflected a limit of \$20,000 for relocation costs, commenting:
- We figured it would be [\$25,000] or \$30,000 modestly to kind of set [ourselves] up ... but also the word, 'reasonable' was in there.
86. The MD said the word 'reasonable' 'bugged' him, though he did not challenge this condition in his contract because it was 'not a great way to start a relationship'. The MD said that, in his view, when he negotiated relocation reimbursement with the Chair, it was not subject to being 'reasonable'.
87. At interview, the MD told the investigation that he did not sell his Melbourne house or rent it out, but left it fully furnished for his son. He said he therefore took very few personal belongings to Shepparton. When asked to comment on the investigation's view that his Position Specification required him to relocate to the Tatura irrigation region, and effectively it was his choice to maintain a house in Melbourne, the MD responded:

I accepted the deal on the basis that I was going to be compensated for that cost ... I'm not sure I would have taken the job if that hadn't been part of the deal.

He went on to say:

The advice from my accounting firm was to maintain that residence [Melbourne]. That's your largest investment, you'll get, you know, much greater capital gain from there ... it didn't make sense to be selling that. [The accountant] didn't say that we couldn't buy something in Northern Victoria, but ideally renting because the message on buy was you won't even get one per cent capital gain ... ultimately ... we did buy because we found a location we thought, in retirement, that would be nice ...

88. The MD advised he and his wife 'never intended to relocate', despite earlier acknowledging that he had agreed to relocate when he accepted the position and signed his contract.
89. Speaking about the Corporate Secretary's advice regarding 'reasonable' relocation costs, the MD said at interview:

[the Corporate Secretary] thought that the assets that we were buying wouldn't be covered ... but ... [he] wasn't HR ...

The MD also said of the advice:

[it] didn't reflect my contract. It wasn't the deal I'd done with [the Chair] ... it seemed very unprofessional ...

90. Regarding the CFO's advice, which included an example of reimbursements paid to another executive for relocation, the MD said, 'I saw that as a very different situation to me, and not reflecting the deal I had with [the Chair]'. The MD noted, for example, that the executive had rented her interstate house out, which he did not do as his accountant had advised if his Melbourne residence was rented, 'you're subject to capital gains [tax]'.
91. In response to the draft report, the MD's representatives added that the two executives were 'very different' as the MD 'never intended to relocate indefinitely'.

92. The investigation notes that neither executive sold their original residence when relocating, and the MD purchased a property in the local area for retirement.

93. The investigation put to the MD at interview that the advice provided by the Corporate Secretary and the CFO was consistent with the conditions set out in his contract and what the Handbook defines as 'reasonable and necessary' relocation expenses. The MD again stated that these advices were 'inconsistent with the deal [he] had in that contract'.

94. In response to the draft report the MD's representatives stated that this:

... is misleading as it conflates a requirement that the expenses claimed be "*reasonable and necessary*" ... his contract mandated the requirement that the expenses for which reimbursement was sought be "*reasonable*". At no time did the CFO or Corporate Secretary refer to the Handbook.

95. The investigation assessed that most of the items in the MD's relocation claim were inconsistent with the guidance in the Handbook and put this to the MD at interview, to which he stated, 'I would say that there's a fair confusion between the agreement I have with [the Chair] ... on the contract ... and the application of this document, which I think is fairly self-explanatory'. The MD went on to state:

What was the reason for me agreeing, you know, not hanging on to the 400,000 mark ... if there was no benefit, financial benefit between 10 and 20,000 on relocation? I doubt that you could scratch 10,000 to relocate a ... home from Melbourne to here. I doubt it'd cost you that ... I'm just gobsmacked to be honest that a document [the Handbook] ... wasn't raised by successive members, the CFO, the Corporate Secretary ...

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96. When asked to comment on how his claim was compliant with the Handbook, and by extension, the Directors Code, the MD said:

I guess all I can say is that I had a contract. I did seek to develop a better understanding of 'reasonable' and as to whether there was some background policy, that I hadn't been given. Nothing was discussed with me at the time of agreeing [to] a deal and subsequently the contract didn't develop anything and despite asking I wasn't provided with anything ... I certainly hadn't knowingly, you know, made ... a wrong claim.

97. Leaving aside the non-binding nature of the Handbook, the MD conceded, after reading the Handbook, that he considered his claim 'doesn't align ... with the VPSC guidelines'. Later at interview, the MD's legal representatives submitted the Handbook was not binding on the MD because he was in the public sector and not the public service; a submission the investigation accepted.
98. In response to the draft report, the MD's representatives clarified the MD made these comments about the Handbook 'when ... he had not received advice on its applicability'.
99. The MD also said he had never read the three codes of conduct that were applicable to him, although he acknowledged the VPSC website would likely contain this documentation. The MD stated he did not know these codes of conduct were binding on him. The Directors Code states that 'Directors must familiarise themselves with this Code ... additionally a Director who improperly uses their position to gain an advantage for themselves ... will be liable for their actions under both civil and criminal law'.

100. At interview, the MD told the investigation he did speak with the Chair about internal advice he had received, and stated 'the business had a different view', specifically 'they didn't think household items could be claimed'. The Chair responded to him, 'no, that wasn't the deal we had' and further, 'how would they know what I was thinking [when negotiating the MD's contract]?' The MD said the Chair also told him he could claim alcohol, a Weber barbeque, prints, a hallway runner, knives and forks, telling him, 'you've got to live in it'.
101. Regarding his Quest accommodation payments that were not included in his \$20,000 reimbursement, the MD told the investigation he queried this expense with the Chair and was advised it was not part of his \$20,000 relocation claim.

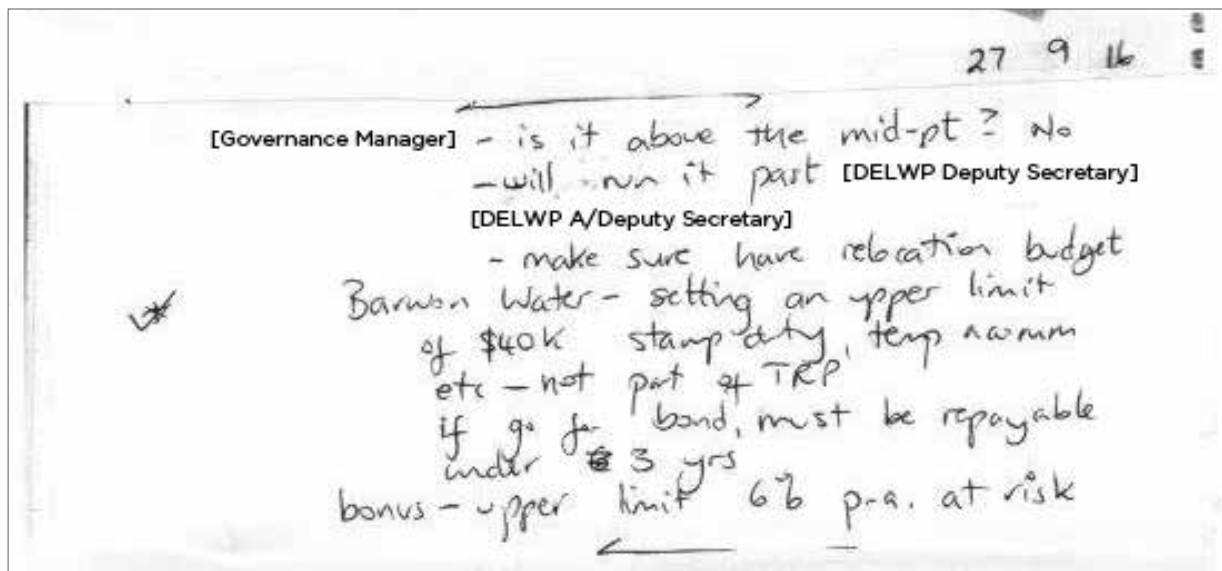
The Chair's evidence

102. At interview, the Chair confirmed her approval of the MD's \$20,000 relocation claim. While the Chair said she was not familiar with the Handbook, after reviewing the document she commented that all the items claimed by the MD were compliant with the Handbook and were 'reasonable'. The Chair said:
- ... the Managing Director was required to relocate to the Goulburn Murray Water irrigation district ... to set up a non-primary residence is to me to set up a residence and so therefore that requirement to me indicated that there were a range of things needed in the residence and that would include kitchen items, miscellaneous household items ... whitegoods ... wall print ... linens ... rugs ... barbeque and barbeque setting.
103. The Chair did not accept the investigation's view that it was the MD's choice to retain a property in Melbourne, and that there should be no cost to the public for this choice. The Chair said, in her view, it was reasonable for the MD to set up a secondary residence:

... given that he was returning to Melbourne he needed to retain that property and given the size of his role he needed to have a proper home where he was living, not just a Quest apartment or a tent in the backyard ...

104. At interview, the Chair stated she negotiated the MD's contract to be below the mid-point, offering a salary of \$384,000 based in part on advice from DELWP that this was the maximum salary that should be offered. The midpoint (median) is the 'point at which 50 per cent of organisations pay less for positions of equivalent size and 50 per cent pay more' as determined by the Government Sector Executive Remuneration Panel (GSERP). By comparison, at the time of his departure in May 2016, the former MD of GMW was paid a salary between \$360,000-\$369,000.
105. The investigation spoke with senior staff at DELWP who were unable to confirm this advice had been provided, but stated it was not unusual for water corporations to contact the department about salary ranges. When providing such advice, DELWP said it considered the size of the organisation compared to other water corporations; the tasks the manager was being asked to undertake; the size of capital programs; and other industry and regional considerations.
106. The VPSC confirmed to the investigation the GSERP Secretariat spoke with the Chair and confirmed that the proposed remuneration level did not require GSERP approval. However, if the Chair considered the MD required a higher salary, it was open to her to apply to GSERP for approval. GSERP would have also considered the merits of any submission, including any formal advice from DELWP about an appropriate salary.
107. The Chair said she also spoke with the DELWP Governance Manager about the MD's contract, who advised the MD could receive a relocation allowance, in addition to his TRP. At interview the Chair said the Governance Manager told her she could offer 'up to \$40,000' for relocation but no greater. She said she was 'pretty sure I was told it was at the Chair's discretion', which she interpreted to mean authority to approve any goods or services as relocation items.
108. The Chair produced a handwritten note (Exhibit 1 on the next page), which she said supported the detail of this conversation.
109. The note did not appear to confirm the Chair was informed by the Governance Manager that she had 'discretion' to approve anything as a 'relocation expense', nor is it clear that the notation about Barwon Water relocation claim practices was provided by the Governance Manager.
110. In response to the draft report, the Chair's legal representative reiterated the evidence given at interview and submitted that during her discussion with the DELWP Governance Manager, the Chair was not referred to any guidance material.
111. At interview, the DELWP Governance Manager confirmed the Chair had contacted him to advise of the MD's pending appointment but said he did not provide advice about 'relocation expenses'. He said, 'I did not have that discussion at all', noting that he had no role in advising water corporations about salaries and contract conditions.
112. In response to the draft report, the Chair's legal representative said the Chair's notes 'make it clear that the DELWP governance officer did provide advice about both the TRP range and relocation expenses'.

Exhibit 1: Handwritten note provided by Chair



113. Regarding the Chair's approval of specific items as 'relocation expenses', the DELWP Governance Manager stated at interview:

... you've got to set the tone from the top ...
 this is about the proper use of your position
 ... there's a poor reflection of leadership if
 ... these sort of deals have been agreed to
 ... how do you get public trust when you're
 agreeing to these sort of [deals] ...

114. In response to the draft report, the MD's representatives stated:

The bargain struck with the Chair, Ms Anderson, at arms-length, was that Mr Lennon would be paid \$384,000 per annum plus \$20,000 for relocation expenses (as opposed to the \$400,000 per annum being sought by Mr Lennon). The commercial reality is that the agreement reached resulted in a lesser cost to GMW over a 5-year period.

115. The Chair stated at interview that she did not know what her own notation about a 'bond' repayable under 3 years' referred to and did not query this advice. The investigation obtained written advice from a DELWP Human Resources Manager to the DELWP Governance Manager in September 2016 regarding relocation of a Barwon Water executive in which

the Human Resources Manager stated:

The relocation may be better expressed as a "relocation bond" i.e. the person accepts a bond to the organisation linked to the relocation expenses for a specified period (i.e. 2-3 years) and would be required to pay some or all of the relocation costs back if they resigned during that period.

The idea of capping the relocation costs to a budget i.e. \$30,000 is a good idea.

116. The MD's representatives stated the Barwon Water executive advice was 'irrelevant to the subject matter of the draft report', given that it related to a different water corporation and did not explore the terms of employment of the Barwon Water Executive, or their position.
117. GMW did not attach a condition to the MD's contract requiring him to repay any relocation reimbursements if he left the organisation within a certain period.

Further comments from the Chair and MD in response to the draft report

Temporary accommodation

118. In response to the draft report, the Chair's legal representative said the Chair was not aware of the Quest temporary accommodation claims totalling \$8,687.70 and that she 'does not recall being made aware that the Executive Assistants booked and approved the Quest temporary accommodation claim'. The Chair's legal representative stated, 'had [the Chair] known she would have undertaken the necessary steps to ensure that the relocation expenses were capped at \$20,000 as per the contract'.
119. However, the Chair's position is contradicted by the MD, whose representatives stated in response to the draft report:
- The only mention made of temporary accommodation leading up to Mr Lennon signing his Contract of Employment was when the Chair said to him that it would be arranged by GMW ...
- ... [the MD] confirmed with the Chair, Ms Anderson, prior to making his claim for relocation expenses that the cost of the Quest accommodation was not included in the amount of \$20,000 ...
120. The MD's representatives maintained that, prior to receiving the draft report, the MD 'had no such knowledge' of the actual Quest costs, or that his Executive Assistant had submitted the accommodation invoices. The response went on to say that to include the accommodation costs as part of the MD's \$20,000 limit is 'illogical'.

Compliance with relevant legislation, policy and codes of conduct

121. The MD's representatives asserted that 'prior to his employment, and becoming an executive of a public entity, an arms-length bargain was struck between GMW and Mr Lennon', negotiated by the Chair, and that the 'draft report fails to recognise the existence of this contractual term'.

122. The MD's representatives submitted that from the discussions the MD had with the Chair prior to signing his contract, he understood that his 'relocation expenses would not be subject to any particular restriction'.
123. The investigation does not accept the MD had an entitlement to be reimbursed for 'relocation expenses' that were not reasonably incurred, or in excess of \$20,000.
124. Both the Chair's and the MD's representatives questioned the need for the MD's relocation expenses to be 'reasonable' or 'necessary'.
125. The Chair's representative responded:
- ... the requirement is that the relocation expenses be reasonably incurred – not that the expenses themselves be reasonably considered relocation expenses.
126. The MD's representatives stated that:
- [The MD's] Contract of Employment does not refer to "*reasonable and necessary*" and nor does it define what constituted "*relocation expenses*". It mandates that "*subject to obtaining the appropriate prior authority*" – which is exactly what Mr Lennon sought and obtained from Ms Anderson ..." [original emphasis]
127. The MD's representatives emphasised that the GMW EBA 'does not apply' [original emphasis] ... , 'that the Handbook does not apply' [original emphasis]; that the MD's 'arms-length' agreement and 'express approval' of his claim by the Chair means that 'there is no misuse of his position or financial irresponsibility'; and concluded that:
- The upshot of all of this is that Mr Lennon did not contravene the EBA, the Handbook or Director's Code when being reimbursed for relocation expenses.

The MD's Living-Away-From-Home-Allowance

The MD misused his position to obtain, and the Chair approved, a 'Living-Away-From-Home-Allowance' (LAFHA) despite advice that he was not eligible, and having already received a relocation expenses reimbursement of \$20,000.

128. For Fringe Benefits Tax (FBT) purposes, a LAFHA is tax free treatment of part of an employee's salary that can be provided to an employee who, according to the Australian Taxation Office (ATO), is 'temporarily required to live away from their normal place of residence to perform employment duties'. To be eligible for a LAFHA, the ATO requires (in compliance with the *Fringe Benefits Tax Assessment Act 1986* (Cth)):

- the employee maintains a home in Australia in which they usually reside ('usual residence') and that the home is available for immediate use while living away from home (in a 'temporary residence')
- the employee provides a declaration about living away from home and can substantiate all expenses to the ATO
- the LAFHA is claimed within the first 12 months of living at the temporary residence.

129. The table on the next page sets out the chronology of key events leading to the MD's receipt of a LAFHA. This allowance meant the MD effectively saved \$11,129.85 in tax.⁴ GMW spent \$17,059.90 on legal advice to resolve this issue.

The MD's personal accounting advice

130. The MD pursued a LAFHA based on advice he said he received from his personal accountants about his eligibility; and it was his accountants who contacted GMW in January 2017 to arrange the LAFHA.

131. The MD was unable to provide the investigation with any written advice from his accountants. At interview, he acknowledged they had advised him the ATO may form a contrary view about his eligibility for the LAFHA. There is no evidence the MD disclosed this to GMW.

132. In response to the draft report, the MD's representatives stated, 'implicitly such a risk will always exist' and that the MD had provided an indemnity.

⁴ Assuming the top marginal tax rate for 2017/18 of 45 cents in the dollar. See, Australian Government, *Individual income tax rates* (10 August 2017) Australian Taxation Office <<https://www.ato.gov.au/Rates/Individual-income-tax-rates/>>.

Table 2: Chronology of the MD's LAFHA claim and communications

Date	Event
23 January 2017	The MD's accountants contacted GMW requesting to 'package his salary', as a LAFHA.
January-June 2017	The Corporate Secretary provided verbal advice to the MD that he thought the MD was not eligible for a LAFHA.
20 February 2017 21 March 2017 4 April 2017 12 April 2017 4 May 2017 27 June 2017 24 July 2017	The CFO provided verbal advice to the MD that he thought the MD was not eligible for a LAFHA; a travel allowance/reimbursement of expenses was proposed as more appropriate.*
16-19 June 2017	The CFO sought tax advice from Deloitte, which advised the MD was not eligible to claim a LAFHA as: - the MD was paid \$20,000 to relocate to the Tatura region (Shepparton) - Shepparton is the MD's 'usual place of residence' - a travel allowance or reimbursement for expenses as they are incurred, are the options for the MD to claim costs for business travel to Melbourne. The MD did not accept this advice.
26 July 2017	The CFO, the MD and the Chair met about the MD's request for a LAFHA [expenses meeting]. At this meeting, the Chair advised the MD to stop pursuing the LAFHA.
26 July 2017	The MD emailed the CFO to cease paying his salary until the LAFHA was 'resolved'.
20 August 2017	The MD emailed the CFO again to cease paying his salary.
21 August 2017	The MD approached GMW's Legal Counsel requesting he obtain external advice about his eligibility to receive a LAFHA. He did not disclose the Deloitte advice or his \$20,000 relocation claim. Legal Counsel sought advice from Maddocks.
24 August 2017	GMW received advice from Maddocks.
24 August 2017	The MD advised GMW's Legal Counsel about his receipt of a \$20,000 relocation claim and about Deloitte's advice. GMW's Legal Counsel advised that, due to this new information, he would need to seek additional advice from Maddocks.
28 August 2017	GMW received updated advice from Maddocks that the MD could claim a LAFHA but the ATO may disagree and MD's contract does not permit LAFHA.
8 September 2017	Maddocks advised GMW's Legal Counsel that it had spoken with the MD's Accounting Firm which proposed renegotiating the MD's contract so he could be paid a LAFHA and again stated 'there remains a risk' the ATO would disagree that the MD is eligible.
11-12 September 2017	Legal Counsel, the Chair and the MD exchanged emails about the MD's eligibility to receive a LAFHA; the Chair encouraged the MD agree to contract changes for a LAFHA. The Board was not informed and did not authorise a new contract.
13 September 2017	GMW Finance processed the MD's LAFHA payments.

*A travel allowance was one option considered to reimburse the MD. This allowance is a *per diem* flat rate reimbursement for meals and accommodation that could be paid to an employee when travelling; such an allowance would be paid under the *Income Tax Assessment Act 1997* (Cth).

Internal advices

133. The MD and Chair subsequently received advice from members of their executive team, on various occasions, that the MD was not eligible for a LAFHA.

GMW Corporate Secretary

134. At interview, the Corporate Secretary said his concerns were that payment of a LAFHA seemed contradictory after the MD had been paid to relocate to the Tatura irrigation area. The Corporate Secretary said he told the MD repeatedly, 'no I didn't believe we should progress this'. He said the MD would then talk to other staff and receive similar responses and would come back to him.
135. The Corporate Secretary said that, at one point, the MD insisted GMW cease paying his salary until the LAFHA was paid, and the CFO refused for legal reasons.
136. In response to the draft report, the MD's representatives stated the MD 'cannot recall the Corporate Secretary providing advice to him regarding eligibility of a LAFHA', or that it should not progress. The response went on to say that the MD considered the Corporate Secretary's opinion 'wrong' in any case, and that the advice from Maddocks confirmed this.

GMW Finance

137. At interview, the CFO told the investigation about advice he provided to the MD regarding his ineligibility to claim a LAFHA:
- ... being relocated here ... you've applied for a job based here. It's not that we've required you [to move] after being employed here ... I don't believe [the LAFHA] would be applicable ...

138. The CFO said he also commented to the MD:

... it's not just whether it's technically correct, it's how it looks ... we're in the public sector, it's public money ... there are different standards ... and I just think on balance, if in doubt don't do it.

139. The CFO said the MD 'didn't want to hear it'.

140. In response to the draft report, the MD's representatives stated:

The statement with respect to "*public money*" is misleading as it infers there is a net cost to GMW. This is not the case as it is a form of concessional tax treatment ... If Mr Lennon was entitled to it, then it is unclear why he should be excluded from exercising his lawful rights just because the CFO has a different opinion as to "how it looks".

141. The investigation notes that obtaining advice was a cost that was directly incurred by GMW. The CFO's contemporaneous notes of the expenses meeting on 26 July 2017 record that the CFO referred the Chair and the MD to the Deloitte advice that he was not eligible for a LAFHA. His notes state:

Jo turned to Pat and agreed, stating, "better give up on that one Pat." ...

(Note - Later in a phone call, Pat is still pursuing his accountants to seek a contrary advice - in his favour).

142. At interview, the Chair and the MD denied the Chair said this. However, the day after the meeting, the CFO reiterated the Chair's decision to both parties (see Exhibit 2 on the following page).

143. In response to the draft report, the MD's representatives stated:

... the purported contemporaneous notes prepared by the CFO do not accurately record the substance of [the expenses meeting].

144. Neither the Chair nor the MD created their own personal records of this meeting.

External advice

145. The MD did not accept the internal advice from the CFO and Corporate Secretary about his eligibility. Subsequently, the MD arranged for GMW to seek external legal advice on three occasions to resolve this issue.

Deloitte

146. On 16 and 19 June 2017, at the request of the CFO, Deloitte provided advice to the GMW Finance team, advising the MD was not eligible to claim a LAFHA because it considered Shepparton to be the MD's usual place of residence (rather than a 'temporary residence'). Further, the MD's job with GMW did not change during his employment, rather he accepted a new position and agreed to relocate to the Tatura region. Deloitte advised a travel allowance for business related travel to Melbourne (or elsewhere) could be paid to compensate for these expenses. This advice was consistent with that of the CFO and Corporate Secretary.

147. In response to the draft report, the MD's representatives stated the 'CFO had provided inaccurate instructions to Deloitte in which they formed their view'. They cited the CFO's statement that 'it was not a company requirement to relocate to the region, though beneficial to do so'. Additionally, the response stated:

it was presented to Deloitte that Mr Lennon would be travelling to Melbourne weekly and Deloitte was not instructed on Mr Lennon's intention of returning to Melbourne. Deloitte was also reportedly not advised that his home would be available for 'immediate use'.

148. The investigation notes the instructions to Deloitte were prepared by other officers in GMW's Finance team, not the CFO, and considers that accurate information was provided. The statement made in seeking the advice that it was not a requirement to relocate is factually correct, as while the advertised position stated the MD's duties would be in the Tatura region, it was open to the MD to reside anywhere. However, he agreed to relocate.

Exhibit 2: Email from CFO to MD and Chair about the LAFHA

-----Original Message-----

From: CFO

Sent: Thursday, 27 July 2017 8:46 AM

To: Lennon, Pat; Anderson, Joanne

Subject: RE: LAFHA

Hi Pat,

I have a diary note from the meeting with the Board Chair yesterday. After reviewing the tax advice GMW has received from Deloitte, in the context of having paid a relocation expense, Jo expressed to you that she thought the claim could go no further.

According the contract structure of GSERP, I understand your pay could not be stopped without the authority of the Board.

regards

CFO
Chief Financial Officer
Goulburn-Murray Water

149. Furthermore, preliminary advice sought from Deloitte as early as 7 June 2017 (attached to Deloitte's final advice) showed:

- eligibility for a LAFHA or a travel allowance had already been requested
- no statement about the MD's intentions post his contract was made
- a comment that the employee 'chooses to stay at their own home' when in Melbourne.

Maddocks

150. On 21 August 2017, GMW's Legal Counsel sought external advice, with the MD's 'concurrence'. This was because the MD was still pursuing the LAFHA, despite the advice from Finance that he was not eligible. On 24 August 2017, when the Maddocks advice was received, the MD informed Legal Counsel that Deloitte had earlier provided contrary advice, in part because of his relocation reimbursement. This necessitated the Legal Counsel to seek updated advice from Maddocks.

151. In response to the draft report, the MD's representatives stated that it was GMW's Legal Counsel:

... who, in the first instance, suggested that Maddocks be engaged to provide independent advice to GMW – this was after the Chair had requested an interpretation of the legal advice provided by [the MD's Accounting Firm].

152. The MD's representatives continued:

... the Legal Counsel knew from the outset that there had been a removal and storage payment (i.e. \$20,000 payment), as documented in the [MD's Accounting Firm] advice in the first instance, dated 8 August 2017.

153. This advice was provided to the investigation on 8 May 2018, but no evidence was provided to show that it was shared with GMW's Legal Counsel. At interview the MD stated, 'I would assume ... our Legal Counsel would have had access, because he was talking to [MD's Accounting Firm]'. The MD's relocation reimbursement did not contain any removal or storage costs, nor does this advice state that, or refer to any payment of \$20,000.

154. In response to the draft report, a representative for GMW's Legal Counsel referred to the seeking of advice from Maddocks as a 'request' from the MD. He stated he did not think the request was unreasonable, nor was he 'directed' to obtain advice only in support of the MD's eligibility for a LAFHA.

155. The investigation found both advices from Maddocks indicated GMW was seeking specific advice about the intention to pay a LAFHA. Maddocks stated it had received a request from the Legal Counsel on 21 August 2017 for 'advice as to the fringe benefits tax (**FBT**) [original emphasis] consequences of providing Mr Lennon with a LAFHA'. Maddocks referred to the background facts provided by Legal Counsel:

1.7 It is proposed that GMW will pay a living-away-from-home allowance (**LAFHA**) [original emphasis] to Mr Lennon to compensate him for additional expenses incurred as a result of living away from the Melbourne Property.

156. On 28 August 2017, the final Maddocks advice stated that the MD 'should' be entitled to a LAFHA, in part because of his stated intention to return to Melbourne at the end of his contract with GMW, but that his employment contract did not contain any such entitlement. However, Maddocks stated:

... the Commissioner [of Taxation] may take an alternate view. In particular, the substantial costs incurred by [the MD] to furnish the Shepparton Property may indicate that [the MD] has relocated to Shepparton (rather than simply living away from his home in Melbourne).

157. In response to the draft report the MD's representatives said the statement from Maddocks was 'in many ways, the obvious – that the Australian Taxation Office may take an alternative view on the interpretation of legislation'.

Payment of the LAFHA

Variation to MD's contract

158. On 11 September 2017, GMW's Legal Counsel emailed the Chair and advised that an 'agreed position' had been 'achieved' between Maddocks and the MD's Accounting Firm which proposed 'for the MD's contract to be amended to allow him to be paid a LAFHA ...'. The email continued, stating that:

There remains a risk (albeit low) that the ATO could take a contrary view and possibly characterise the proportion of the LAFHA referable to past periods as not being a legitimate allowance and thus not subject to concessional tax.

159. The Legal Counsel seemingly considered the risk was limited to the ATO not accepting back-payment of the LAFHA, rather than the risk raised by Deloitte that the ATO may deem the MD entirely ineligible for a LAFHA.

160. GMW's Legal Counsel suggested the MD sign an undertaking that if the ATO considered his LAFHA was not legitimate, he would personally reimburse GMW for income tax and any penalties. On 11 September 2017, the Chair emailed the MD and Legal Counsel advising she would approve \$24,732.98 of the MD's salary to be substituted for a tax-free LAFHA of the same amount, saving him \$11,129.85 in tax, if the MD agreed to the undertaking.

161. Before the payment was made, on 12 September 2017, the MD agreed via return email to the Chair and GMW Legal Counsel that he would accept responsibility for additional tax and ATO penalties as requested.

162. The variation clause in the MD's employment contract provides, 'this contract shall not be changed or modified in any way after its execution except in writing signed by both the Employer and the Executive'. The MD's Accounting Firm emailed a letter to the MD, that he subsequently provided to GMW's Finance team. The letter stated both the MD's Accounting Firm and Maddocks 'confirm that a LAFHA can be paid in accordance with the new employment agreement' and that 'we understand that [the MD] accepts as his risk any changes to the tax treatment that the ATO may reasonably apply'.

163. However, it appears the LAFHA was paid without the required variation to the MD's contract. The investigation was provided with an unsigned copy of a 'Variation to Total Remuneration Package', dated 20 September 2017 (after the LAFHA was paid), that the MD insisted at interview he had never seen, or signed.

164. Neither the MD nor the Chair informed the Remuneration Committee (which she chaired) or the Board of the required variation to the MD's contract, or the payment of the LAFHA. The Board 'holds the relevant employment powers under the Water Act and are the only body authorised to make the decision' to vary the MD's contract.

165. At interview, the Chair said she did not consider informing the Remuneration Committee or the Board because she had, what she believed, was clear legal advice. The Chair said she was so comforted by the advice of GMW's Legal Counsel that she did not consider it necessary to go to the ATO for clarification. Conversely, the MD said at interview that, in hindsight, the LAFHA matter should have gone to the Remuneration Committee:

I think it would've protected me. Like I feel really exposed ... I feel like I've tried to do the right thing and ... I rely on the people around me ... to make sure that I'm taking the right steps and this is a really good example of ... we've just missed it.

166. In response to the draft report, the MD's representatives stated the MD's contract was 'varied through the exchange of emails between Mr Lennon, as MD, and Ms Anderson on 12 September 2017'.

167. However, the investigation does not accept the MD's contract was appropriately varied as it did not entail the requisite signed variation, endorsement by the Remuneration Committee, and approval of the Board.

VPSC advice

168. The VPSC advised the investigation that it:

... does not consider it reasonable to provide a long-term or ongoing LAFHA to an executive in the Victorian public sector who has relocated within Victoria for the term of a standard five-year contract.

169. The VPSC considered that should additional remuneration be required to make a regional Victoria position 'more attractive', then this should be considered by the Board during TRP negotiations and approved by the GSERP. Regarding the MD's LAFHA claim, the VPSC advised the investigation that it was effectively an increase in his TRP as well as a variation to his contract, which required referral to GMW's Remuneration Committee and the Board.

170. The MD's representatives stated in response to the draft report that the VPSC's opinion was 'irrelevant to Mr Lennon's circumstances' as he did not receive an ongoing LAFHA. The response also refuted that the allowance increased his TRP and asserted that it was open to the MD to negotiate a salary sacrifice arrangement.

171. As detailed in this report, a LAFHA is not a salary sacrifice arrangement made under the Income Tax Act. It is a concessional tax treatment of an allowance paid to an employee under the FBT regime. The VPSC states in its GSERP 'Frequently asked questions', dated 4 July 2018, that TRP 'includes cash salary, allowances, benefits, superannuation, and Fringe Benefits Tax'.

172. The VPSC also advised that GMW is required to report on executive salaries at the end of each financial year, including 'additional benefits or fringe benefits tax'. Therefore, the payment of the LAFHA must be reported at the end of the 2018 financial year.

Processing of the LAFHA

173. On 12 September 2017, Finance staff advised the GMW Financial Controller that they were 'not comfortable' paying the MD's LAFHA 'unless he has returned his relocation allowance'. They also queried if expert advice should be sought about how they could legally indemnify GMW for processing a payment they considered was unlawful. Owing to these concerns, the CFO and GMW's Financial Controller processed the payment for the MD's LAFHA themselves.

174. At interview, the CFO said he felt their jobs were at risk if the payment was not processed, despite his advice about eligibility, in part because of the Maddocks advice and:

an assumption that the Board Chair had right authority to approve it, Pat had indemnified us by email, we thought.

175. In response to the draft report, the MD's representatives stated that these concerns were not raised with him by the CFO, and that legal advice from two firms confirmed the 'LAFHA was not disqualified by reason of payment of the \$20,000 relocation sum'.

Payment of advices

176. The table below shows GMW's payment for advices regarding the LAFHA.

Table 3: Legal advice expenses	
Organisation	Cost of advice
MD's Accounting Firm	\$2,750
Deloitte	\$5,197.50
Maddocks – first advice	\$7,856.09
Maddocks – supplementary advice	\$1,256.31
Total	\$17,059.90

177. On 28 October 2017, the MD emailed GMW's Legal Counsel and copied in the Chair, seeking reimbursement of his personal tax accountant fees:

I have discussed this with Jo and she has confirmed GMW should pay the attached [MD's Accounting Firm] invoice as the services relate to GMW's own investigations into its staff's option to claim a LAFHA ...

178. GMW's Legal Counsel approved this payment. Payment of the MD's personal accounting advice, in addition to the Deloitte and two Maddocks advices, meant that GMW paid a total of \$17,059.90 to determine the MD's eligibility to claim a personal tax-free benefit.

179. At interview, when asked whether it was reasonable to have spent over \$17,000 on advice for his eligibility to claim a LAFHA, the MD said:

... it's important for us as a business not just for me, it was to attract good executives to the region we need to be able to offer – this [LAFHA] is not costing GMW a cent. It's not on top of your salary, it's a salary sacrifice.

180. The Chair expressed similar views about the need to attract people to the region and that this was her motivation to approve the LAFHA, stating 'I'm looking particularly at our difficulty in attracting women ... I think it is reasonable'. The investigation asked whether this view was reasonable, given the MD had already been attracted to and accepted the role, and this was an allowance being paid nine months later.

181. The Chair said she was 'looking at the longer term, strategically for the business' and said that, despite the costs to GMW in paying for multiple advices for one staff member, she would approve GMW incurring the same costs again if another executive sought to claim a LAFHA and clarification about their eligibility was required.

182. The MD's representatives stated in response to the draft report:

[The MD] had no knowledge of the professional fees incurred by Deloitte and Maddocks. Furthermore, neither the Legal Counsel nor the CFO from GMW suggested to Mr Lennon that advice should be obtained, in the first instance, from the ATO.

ATO opinion

183. Without disclosing the MD's identity to the ATO, the investigation requested advice about his LAFHA. The ATO subsequently formed the view that the MD was not eligible. On 16 February 2018 the ATO provided the following advice to the investigation:

... despite a fixed term contract of 5 years, the Executive [the MD] has not been transferred temporarily to the regional location, as the Executive is not guaranteed a permanent role in Melbourne at the conclusion of the contract.

The employer organisation is only based in the regional location. When applying for the role, the Executive knew the job was based at the regional location ...

The ATO view is that the Executive is not living away from home, but rather has relocated to the regional location to undertake the new role.

... the requirements of section 30 of FBTAA [*Fringe Benefits Tax Assessment Act 1986* (Cth)] had not been satisfied and therefore the payment of \$24,732.99 cannot be considered a LAFHA.

184. The ATO provides free early engagement interpretive assistance for income and FBT taxes to individuals and businesses so it can 'gain a clear understanding of your circumstances and address any issues for you as early as possible'.⁵

185. The investigation asked the MD why he did not obtain free advice from the ATO, noting the Handbook explicitly states, 'employers should seek information relating to tax matters from the Australian Taxation Office (ATO) or another expert adviser', to which the MD responded, 'I think you would find any advice coming from the ATO would not be qualified [or reliable]'.

186. The MD said he only pursued the LAFHA because he had been reassured on multiple occasions that he was eligible. The MD said that given his accountants were experienced in this area of tax law, in that they deal with 'sports people ... and a lot of corporates', the MD did not think it was necessary to obtain free advice from the ATO about his eligibility.

187. When asked at interview about the reputational risk to GMW in light of the ATO's contrary view about the MD's LAFHA eligibility, the Chair said:

I would not consider them to be significant for a reputational risk ... reputational risk for a business as large and complex as this is – can be huge. And, so I would say that on the scale of things, this would not be what I would consider to be huge ... I mean if - if dams fail we kill people. That's slightly more important.

Further comments from the Chair and MD in response to the draft report

188. In response to the draft report, the Chair's legal representative submitted that when the LAFHA matter was originally put to her, 'she didn't think a LAFHA was applicable given that a relocation expense had been provided'. The response continued, saying that 'she didn't understand that the LAFHA wasn't actually an allowance, but rather a salary sacrifice for tax purposes, at no cost to the business', reiterating her interview evidence where she denied telling the MD at the expenses meeting to stop pursuing the LAFHA.

⁵ Australian Government, Interpretive assistance – early engagement (20 July 2016) Australian Taxation Office <<https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/The-right-services/Engage-with-us-for-advice/Interpretive-assistance---early-engagement/>>; Private Rulings (7 May 2018) Australian Taxation Office <[https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-\(rulings\)/private-rulings/](https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-(rulings)/private-rulings/)>.

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189. Similarly, the MD's representatives submitted that 'this was not, to the best of Mr Lennon's recollection, the Chair's position on the matter'.
190. Neither the Chair nor the MD provided any explanation regarding the CFO's email to them on the day immediately following the expenses meeting, in which the CFO stated, 'the Chair expressed to you that she thought the claim could go no further'.
191. In responding to the draft report, the MD's representatives stated:
- the nature of the complaint, itself, is flawed because it suggests that by reason of the relocation expense reimbursement of \$20,000 Mr Lennon did not have an entitlement to a LAFHA.
192. His representatives also submitted:
- LAFHA is, in effect, a salary sacrifice that is treated at a concessional tax rate. It did not result in GMW being "out of pocket" in paying a LAFHA to Mr Lennon. Clause 2.4 of Mr Lennon's Contract of Employment expressly permitted salary sacrifice arrangements to be agreed between him and the Chair.
193. The investigation considers, however, that the fact in issue is the MD's eligibility to claim the LAFHA, and not his eligibility to salary sacrifice. The cost to GMW in obtaining advices is also noted.
194. The MD's representatives went on to say the MD acted in accordance with his own advice, and that provided by Maddocks.
195. However, all advice was qualified with reference to the ATO potentially forming a contrary view regarding his eligibility.
196. The MD's representatives further asserted the CFO and Corporate Secretary have 'no qualifications to provide such opinions [on the LAFHA]'. The response went on to state the investigation provided 'inadequate instructions to the ATO', and referred to the ATO's statement that 'there is no evidence of an intention for the Executive to return to Melbourne at the conclusion of his contract' as evidence of this.
197. On 10 May 2018 the MD's representatives were provided with a copy of the investigation's communications with the ATO regarding this advice, which did not include an opinion or statement about his intentions post-contract. The ATO independently arrived at their conclusion.
198. In response to the ATO's advice contained in the draft report, the MD's representatives were of the view that the advice was flawed, selectively quoted and that 'even if the ATO proffers a view ... Such a matter is to be determined by a Court of law'. They stated:
- The entitlement to claim LAFHA is a matter affecting the Commonwealth of Australia and not something the Victorian Ombudsman has jurisdiction over to proffer an opinion.
199. The investigation, however, has focused solely on whether the MD misused his position to obtain the allowance.
200. The MD's representatives also stated that 'obtaining external advice was the prudent and conservative approach to be adopted by GMW', dismissing 'free "early advice" [original emphasis]' that could have been obtained from the ATO. They stated, 'any binding advice from the ATO would have ultimately required a private binding ruling, which would have resulted in substantial legal fees'.
201. The investigation notes that a taxpayer does not require a lawyer to submit a request for a private ruling. The ATO's website contains a form that can be submitted online and notes that, 'If you are not a tax professional, you do not need to refer to the law'.

The MD's day to day expenses

The MD misused his position to submit, and the Chair approved, a series of expense claims for day to day expenses, not reasonably incurred in the performance of his duties.

Policy, code and contract conditions

202. Legitimate business expenses are those which are directly related to a person's work and reasonably incurred in the performance of their official duties. The MD's contract provided him with access to reimbursement 'for such expenses as are reasonably incurred in the performance of [his] duties'.
203. The Directors Code states that Directors must 'act in a financially responsible manner' and comply with the Standing Directions; 'promote the best interests of the public entity'; and 'not use their position to seek an advantage for themselves'.
204. GMW's Board policy for Director reimbursement (Appendix 18) details conditions for expense claims, including that alcohol is not claimable, and that tax receipts must be provided with all claims. It also sets limits on meal and accommodation reimbursements. This is outlined in Exhibit 3 on the next page.
205. Neither the Directors Code nor the Board policy defines what 'reasonable' expenses are.
206. To assess the reasonableness of the MD's everyday expenses, the investigation considered relevant legislation, policies, standards, and examples of other public body practices.
207. The Australian Master Tax Guide states, 'The cost of meals or accommodation is generally a non-deductible private expense ... unless the occasion of the outgoing gives the expenditure the essential character of a working expense'. The guide also provides that two concepts inform tax-deductible meal expense reimbursements:
- In the first place, such a [private] expense is a cost of living, a cost of maintaining life – and the human body is not regarded as part of a man's plant or equipment ... and in the second place, what meal a man has, and when he has them and how much he spends on them are, for the most part, matters of his own personal choice and inclination.
208. In response to the draft report, the MD's representatives stated that the relevance of the Australian Master Tax Guide is unclear, as what is tax deductible and what is 'reasonable' are different concepts.
209. The investigation maintains, however, that relevant tax law about the deductibility of work-related expenses should inform organisations about what are reasonable expenses they should consider reimbursing – particularly from public funds.

Exhibit 3: GMW Reimbursement schedule in Appendix 18

Reimbursement schedule (from 1 October 2015)			Amounts inclusive of GST	
Meals:	Breakfast	Lunch	Dinner	Alcohol is not claimable
Capital City	\$24.59	\$41.35	\$55.88	
Country	\$22.35	\$33.52	\$45.82	Receipts must be provided
Accommodation:				
Melbourne and other capitals	\$232.47 per night maximum (excluding meals)			
Country	\$181.06 per night maximum (excluding meals)			
Other:				
AICD Membership	GMW will reimburse the annual cost of membership to the Australian Institute of Company Directors			

The claims process

210. The process for the MD's reimbursement claims was as follows:

October 2016 to July 2017⁶

- The MD provided details of his expense claims and receipts to his Executive Assistant.
- His Executive Assistant summarised his expenses into a summary spreadsheet, based on the information the MD provided, and forwarded this to the Chair (with receipts).
- The Chair reviewed and approved the MD's claims.
- The MD's Executive Assistant forwarded the summary and receipts to Finance for processing.

July 2017 onwards

- The MD provided details of his expense claims and receipts to his Executive Assistant.
- His Executive Assistant summarised his expenses into a summary spreadsheet, based on the information the MD provided, and forwarded this to the Corporate Secretary (with receipts).
- The Corporate Secretary reviewed and 'endorsed'⁷ the MD's expenses, with some exceptions as detailed in the report and discussed these with the Chair, and forwarded the summary (with receipts) to the Chair. The Corporate Secretary retained a copy of the receipts.
- The Chair approved all of the MD's expenses, including those not endorsed by the Corporate Secretary, and returned the claims to the MD's Executive Assistant.
- The Executive Assistant forwarded the summary (without receipts) to Finance for processing. Original receipts were returned to the MD.

⁶ The process was changed by the MD and Chair in July 2017; expenses incurred from and including July 2017 were endorsed by the Corporate Secretary from August 2017.

⁷ It was not the Corporate Secretary's role to, nor did he, approve the MD's claims.

The MD's overall expense claims

211. The investigation examined all expense claims submitted by the MD from 1 November 2016 to 30 November 2017. In that period, the MD claimed a total of \$21,688.18.⁸ This was separate from his 'relocation expenses' reimbursement of \$20,000, and temporary relocation accommodation of \$8,687.70 as detailed earlier in this report.

212. In the 13 months examined, during the period November 2016–November 2017:

- The MD claimed expenses on 54.18 per cent of work days, and up to 74 per cent in August 2017.
- On 40 occasions, the MD claimed more than one meal or drink per day.
- The MD claimed and was reimbursed for as little as \$1 for a carpark and \$1 for UNICEF donations made at the Sheraton Hotel in Melbourne, to as much as \$1,079.50 for an Executive team lunch.
- On 32 occasions, the cost of the MD's claimed meals exceeded the allowable limits; nevertheless, the Chair approved the expenses.
- Out of 12 hotel stays, 10 exceeded the allowable limits (by a total of \$585.14). Nine of these stays (which exceeded the allowable limit) were for hotel stays in Melbourne. This is despite the MD claiming Melbourne as his usual place of residence for the purposes of his LAFHA eligibility, and that under the LAHFA his house must be immediately available for his use.
- In a sample of three months of the MD's claims, he was reimbursed for coffee on 14 occasions, and breakfast on 13 additional occasions. He provided no tax receipts for 78 per cent of these claims.

213. The MD did not submit any claims for personal expenses after being notified of the Ombudsman's investigation in March 2018.⁹

214. In response to the draft report, the MD's representatives provided a range of calculations based on the MD's own 'estimates', stating he:

- made an average of five claims per week (289 claims in total)
- made monthly claims of \$1,063 '(excluding airfares, accommodation and communications)', which 'was approximately 5% below the average expenditure of the Managing Director of GMW for 2015/2016' (recognising that this figure should be adjusted for CPI)
- claimed for meals with an average cost of \$11.45 for breakfast; \$11.85 for lunch; and \$61.50 for dinner
- claimed only six 'drinks only' events with an average cost \$9.93 per head
- claimed alcohol for 'MD dinner/lunch' with an average cost per head of \$25.21
- claimed seven Board and Director dinners at an average cost per head of \$56.29 and with an average alcohol consumption of \$16.88
- accommodation in Melbourne hotels claimed was \$289 on average.

8 Of this \$21,688.18, \$3,023.30 related to some of the pre-board dinners/drinks for himself and other Directors, claimed via his personal expenses.

9 As at 21 June 2018, the last expenses GMW Finance reimbursed were for transactions up until 31 January 2018.

215. Regarding, these 'estimates', the investigation notes:

- the MD did not similarly remove 'excluded' items ('airfares, accommodation and communications) from the former MD's expenditure before making his own comparison
- in the GMW Pre-Board dinner and drink expenses claimed or approved by the MD (Table 4 on page 51), there were 11 Board-related hospitality events claimed or approved by the MD, costing from \$16.25 to \$105.20 per head
- the MD's average hotel expenditure of \$289 per night exceeds the allowable GMW limits by \$55.42 for stays in a capital city.

The MD's evidence

216. When asked to comment on his expense claims in the first 13 months of his employment, the MD said at interview:

Well, it was work related ... I have sought the advice there of the Chair ... I haven't gone out and done things that she hasn't been aware of.

217. The MD said the Chair advised him about alcohol expenditure, for example, and that it needed to be 'reasonable' consumption. The MD continued:

... I mean, you can see that I've got out of the hotel and I'm buying a \$10/\$12 breakfast ... You know, I have claimed a coffee, not coffee and cake, but a coffee and that's because I'm sitting in somebody's café working ... you can't sit there and not buy a cup of coffee. And by the way I don't usually buy coffee during the day. I'd have one in the morning.

218. The MD said that on occasions he will ask accounting or law firms for somewhere to work for a few hours; or he finds a foyer to sit in. When he cannot find somewhere to work, he will use a café. Speaking about his decision to claim for meals during work hours, the MD said:

I have certainly tried to develop a relationship with the executive and so I've worked through lunch ... on occasions a couple of the guys in Tatura have come, we've gone out and had a sandwich for lunch ... it's not a social thing ... we've been working.

219. The MD commented that when he worked at the State Electricity Commission and Hydro Tasmania, 'you'd claim for everything', and claiming lunch while conducting 'business related activity' is what he has always done. The MD said:

I've tended to do that but ... I've made a genuine effort to avoid, you know, costs.

...

I've been making what I've thought to be reasonable decision[s] from a work environment where you know, I'm interacting [with] the DELWP and the Minister's office and, and other people in town ... I've got up very early in the morning and made a genuine effort to minimise those costs. I've caught the train many times [to Melbourne] [instead of driving and parking in the City for the day] ...

220. The MD said there were multiple occasions where he could have claimed reimbursement, but did not, giving examples such as carparking, vehicle kilometre use (despite having free use of a GMW pool car), and 'nights over at [the MD's Melbourne residence]'. The MD commented:

... don't look at me as someone who's trying to get paid \$3.50 for a coffee, it's just the process I've got ... it's, you know, there's actually some large expenses there that I'm not pursuing ...

221. The MD said, 'I could have put in place a process ... where I was entitled to ... \$378' a day – referring to the maximum amount claimable per Appendix 18 for any day he travelled for work, irrespective of actual costs incurred.

222. The investigation asked the MD when he pays for his own coffees or meals during business hours, to which he responded: 'more often than not I do ... typically I'm buying my own lunch ... I'd say hardly ever would I have a coffee'.

223. The MD agreed to provide the investigation a sample of one month of his personal expenditure (from his bank records) to substantiate his claim. The investigation accepted 10 of these transactions as evidence showing the MD personally paid for drinks or meals during working hours, which totalled \$103.50. While one transaction for \$53.00 on 12 April 2017 at a wine bar in inner Melbourne was included to the MD's benefit, the legitimacy of this transaction as evidence of an expense during business hours is questionable. The MD provided a notation to the investigation, 'possibly shared tapas + drinks for two'. This compared to \$1,087.88 which the MD claimed from GMW in the same period, including coffees and meals for unnamed GMW third parties, but excluding pre-Board dinners or drinks he claimed for Directors (including himself).

224. In response to the draft report, the MD's representatives submitted:

- the MD had 14 personal bank transactions for food and/or drinks of \$160.40 on work days
- over the same period, the MD estimated he claimed \$218.90 in GMW meal related expenses (excluding Board expenses), averaging \$9.12 per head.

225. Regarding, the MD's calculations, the investigation found that he:

- had personal bank transactions for food and/or drinks on only 10 days
- claimed \$262.80 from GMW in meal related expenses (excluding Board expenses), ranging from \$3.80 to \$16.75 per head.

226. The MD also noted that the Victorian Auditor-General (VAGO) had audited all of his expenses in the 2017 financial year. In response to the investigation's enquiries, VAGO clarified its audit of the MD's claims in 2017, stating:

- we examined 6 expenses, consisting of one relocation expense claim and 5 personal expense claims
- all 6 expense claims were dated between March and June 2017
- all 6 expense claims were approved by the Chair ...

The Audit Act 1994 requires the Auditor-General to form an opinion on GMW's financial report based on the audit. The objectives for the audit are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes the Auditor-General's opinion. The audit opinion for 2016/17 was unqualified.

In arriving at the audit opinion, in so much as it relates to the expense claims, our objective was to determine whether all expenses paid to the Managing Director were included in the financial statements and whether they were duly authorised. For this purpose, the expense claims were not materially misstated in GMW's 2016/17 financial report.

Comparison with other GMW Managing Directors

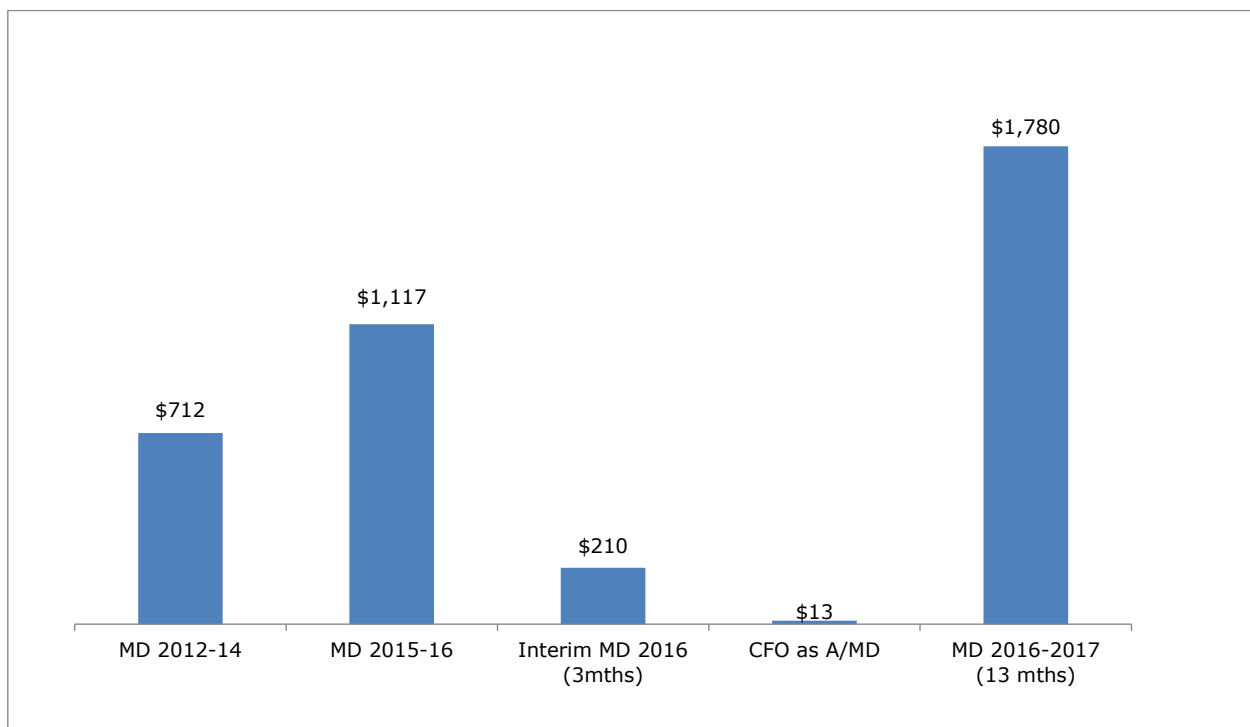
227. GMW Finance provided the investigation with comparative data on all Managing Directors from 2012 to present. The MD's expenses far exceeded those of other Managing Directors, as illustrated in Graph 1 below.

228. When asked to comment on the variance of his expenses compared to former MDs, the MD said it is because he is particularly 'mobile' in his role, and his accommodation costs likely make up the majority of his expenses. The MD said that ordinarily, GMW books accommodation for staff. However, he books his own accommodation, mostly for stays at the Sheraton in Melbourne, because he prefers this hotel and it is close to DELWP offices.

229. Despite owning a house in inner Melbourne, which must be available for his immediate use (according to LAFHA eligibility), the MD justified his hotel expenses by saying, 'I'm not sure how practical that is at times' referring to staying at his Melbourne residence when travelling to Melbourne for meetings.

230. Contrary to the MD's claim that his expenses were artificially inflated by the absence of hotel expenditure by former MDs, GMW provided evidence that the MD's hotel expenditure was consistent with reimbursements for previous MDs. Average accommodation reimbursements for each of the two former MDs from 2012-16 were \$591 per month, and \$621 for Patrick Lennon. The investigation noted the two other MDs did not own a residence in Melbourne, and over 90 per cent of their accommodation was in Melbourne.

Graph 1: Average MD expenses per month (excludes 'relocation expenses' and related accommodation)



231. The MD also commented that his expenses were higher because the Board encouraged him to engage in more stakeholder relationship building on the commencement of his role. This is consistent with the Chair's evidence at interview when she said:

... the Board has talked about the business having been very insular in the past and not really connected in the way that it should be and engaged in the way it should be with its government stakeholders, customers and community and that this Managing Director has brought those relationships ... to a level that they should be at.

232. In response to the draft report, the MD's representatives stated that the Chair 'had made it clear to Mr Lennon that he should meet and socialise with customers, stakeholders and the executive team'.

233. The response went on to state that the investigation's graph is 'flawed', in part because figures are not adjusted for inflation and includes interim MDs, which is not a like-for-like comparison.

The Chair's evidence

234. GMW's Staff Delegations mandate that the Chair is responsible for approving the MD's expense claims.¹⁰ At interview, the Chair said she did not scrutinise the MD's expense claims as she believed that this was the Corporate Secretary's role, but said she generally questioned whether it was a 'necessary expense on behalf of the business'. The Chair said she had never considered the Codes of Conduct during her review and acceptance of the MD's claims, and confirmed the investigation's view that she had never rejected a claim by the MD.

235. The Chair said she believed she 'did the right thing at the time' when approving the MD's expenses. She said that when looking at the MD's overall expenditure, it was not a question of volume but a 'question of strategic intent for the business'. The Chair did not check the MD's diary in every case to assess the reasonableness of each of the MD's claims, but commented at interview that she was 'largely aware' of the MD's general activity. When discussing the reasonableness of the MD's accommodation expenses, the Chair said she did not have access to his diary and so could not comment on these expenses.

236. When asked to explain why she approved expense claims where the MD exceeded allowable limits, the Chair said:

... because I believe that his function is ... so important to the business ... I think that should be an expense borne by the business ...

237. The Chair then stated that she did not think the limits (in Appendix 18) should apply to the MD but they 'certainly' applied to herself as a Director.

Unjustifiable as legitimate business expenses

238. In addition to examining the MD's volume of expenses, the investigation considered several specific expenses alleged to have been 'excessive', 'unreasonable', and not directly related to the MD's official duties.

¹⁰ GMW's Staff Delegations state another Director may approve the MD's expenses if the Chair is unavailable.

An exceptional day?

239. On one of the days examined, the MD made multiple claims, including:

- \$10.30 for breakfast in Seymour for an 'MD's meeting'
- \$25.50 for three 'Furphy Refreshing Ales' at the Princess Theatre, Melbourne for a 'DELWP debrief'
- \$189 for a '[public water corporation]/GMW dinner' including an \$89 bottle of wine, tuna, cod and rabbit (see Exhibit 4 below)
- \$283.22 for accommodation at the Sheraton in Melbourne.

Exhibit 4: Receipt from the European

EUROPEAN

BILL FOR
TABLE 10

ABN: 71 793 789 873
Printed From: European POS2
Covers: 2

Date: 06/07/17 21:08

ITEM	QTY	\$
*Castellare Chianti Classic	1	89.00
*Raw tuna	1	17.00
*Blue Cod	1	41.00
*Rabbit Assiette	1	42.00

TOTAL INCLUDES GST **\$189.00**
* GST item

TOTAL DUE \$189.00 ✓
Thank you for dining at the European

The MD's evidence

240. Explaining his claims on this day, the MD said at interview:

- He left home early, caught the train to Melbourne for a 'Managing Director's meeting' and had 'toast and a latte there for breakfast'.
- Later that day he met with DELWP and afterwards 'de-briefed' with a GMW General Manager and the MD of another public water corporation at the Princess Theatre where he 'grabbed a glass of beer and had a debrief'. The MD confirmed confidential matters were discussed, but said, 'I'm sure that we would have been careful not to be in talking ... earshot of other people'.
- He then had dinner with the MD of another public water corporation. When asked to explain the 'business need' for alcohol to be consumed at this dinner, the MD said, '... [it] was really a meal to get to know each other ... there would have been business content talked about'.

241. The investigation asked the MD at interview whether it was appropriate for him to talk about water management matters in a restaurant and also when consuming alcohol. In response, the MD said, 'it wasn't a decision-making meeting, it was a catch-up'; it was 'continuing to talk about work things but it was also about just developing the relationship'; and he wasn't sure how many glasses of wine he had, or 'whether there was anything left [in the bottle]'.

242. In response to the draft report, the MD's representatives stated 'there was nothing exceptional' about this day, save for the fact that Mr Lennon would have risen at 5am and left home at 5:45am to travel to Melbourne for a series of meetings ... [and his] day ceased at approximately 9:30pm'.

243. In his response to the draft report on 30 August 2018, the MD of the other public water corporation confirmed he did attend dinner at the European on 6 July 2017, at the invitation of the MD of GMW, who paid for the dinner. He stated that he could not confirm the cost of the meal or whether this was paid using a GMW or personal credit card, as he did not see the bill. Additionally, he stated this dinner followed a 'day-long workshop between the four "rural" water corporations to share strategies and discuss potential cooperation' and that it was 'likely' business concerns were discussed, albeit he did 'not have any formal record of what we discussed'.

The Chair's evidence

244. When asked at interview about the need for the MD to perform his role over lunch and dinner, the Chair responded this was a 'naïve question'. The Chair said the MD's meal expenses were about 'relationship building'. The investigation asked why stakeholder engagement necessitates the MD to claim a meal, to which the Chair responded:

... it doesn't necessitate, but ... it doesn't surprise me ... I would have an expectation that there would certainly be a level of engagement over dining ...

245. Speaking about the European dinner at which the MD spent \$89 for a bottle of wine, the Chair said she recalled the Corporate Secretary raising concerns about this claim – nevertheless, she approved it. When asked why she approved the payment as reasonable, especially given the Corporate Secretary's rejection, the Chair said 'it's often the case where he may not know the strategic significance of ... whatever was going on ... I tend to have that information'.

246. The Chair told the investigation the meeting with the other MD was due to an 'urgent' request from DELWP about the other public water corporation 'running out of water'. At interview, the MD denied this was the case, and maintained the meeting was about 'relationship building'.

Flights

247. In August 2017, the MD and the Chair attended a conference in Canberra. GMW booked and paid for their travel, with an intended return flight time of 4.25pm. Not wanting to wait for this pre-paid flight, the MD purchased additional return flights for himself and the Chair costing \$540, arriving two hours earlier. The Corporate Secretary refused to endorse payment of these flights on the MD's claim. However, the Chair approved payment of these flights, including her own.

248. When asked to comment on the expenditure, the Chair said, 'we had other things that we needed to do ... both our times are very valuable'. The Chair could not recall what matters she needed to attend to. When asked whether, in hindsight, the expense of \$540 was reasonable, the Chair said, 'In hindsight, I think the [booking] system should've been more flexible'.

249. At interview, the MD gave evidence suggesting the decision to return earlier was not work-related:

[The Chair had caregiver responsibilities]
... I think I had a very early start the next day ... It's a long drive to get home and I really don't like driving of an evening with all the native animals. You know, there's lots of incidents happen in country Victoria. Running into kangaroos. It's quite nerve wracking.

250. In response to the draft report, the MD's representatives stated had the original itinerary been maintained, the MD would have arrived at Tullamarine at 4:30pm, causing him to drive in the dark, and that he had a 7:30am meeting in Shepparton the following day.

251. Both the MD and the Chair accumulated personal frequent flyer points for this travel. The MD had also accumulated frequent flyer points for business class flights to New Zealand in February 2017. The mandatory *Victorian Public Sector Travel Principles* (travel principles) state:

Frequent flyer points accumulated while on official business at public expense may only be used for further official travel.

252. At interview, the investigation asked the Chair and the MD about what steps they had taken to ensure that frequent flyer points accumulated while at work were not used for private benefit. The Chair responded that she never uses her frequent flyer points as she finds them useless and she had 'no idea' if the MD was using work points for personal benefit.

253. The Chair approved reimbursement of the MD for this expenditure. This claim is one of several that she approved that included her own expenses, such as dinners, lunches, train tickets, and alcohol. This is discussed further in the next section of this report, with an analysis of GMW's internal controls.

254. At interview the MD said he needed to input his frequent flyer number on the purchased flight to access the Qantas lounge. The MD suggested it would be difficult to separate out personal and business frequent flyer points given people generally have only one membership.

255. In response to the draft report, the Chair's legal representative noted that, 'such frequent flyer points would only be around 2,000 points'.

256. The MD's representatives submitted in response to the draft report that the travel principles are not mandatory for GMW.

257. However, in a Premier's Circular dated 21 December 2006, the then-Premier stated that the principles 'will apply to the whole of the Victorian Public Sector, including all Departments, Agencies and Boards'.

Internet, home phone and personal mobile

258. The investigation examined the MD's home internet, home landline phone and personal mobile charges for the relevant period (1 November 2016-30 November 2017). These totalled \$2,507.66 and were reimbursed by GMW in full.

259. While the MD's employment contract provided him with the use of a work mobile, he elected to maintain his personal mobile and claimed 100 per cent of this cost from GMW. The MD had no contractual entitlement to home phone or internet, but claimed 100 per cent of these costs from GMW each month. These claims were not reduced to account for the MD's (or his wife's) personal use of these services, and no documentation was provided to GMW to show that these expenses were solely related to the MD's official duties.

260. GMW does not have a specific policy for reimbursement or use of personal mobile phone, home phone and internet services for work.

261. At interview, the Chair said she considered home phone and internet costs to be a 'normal business expense'. When asked how she accounted for the private benefit to the MD and his wife when approving GMW to pay these costs, the Chair responded, 'we don't know ... that it's used for private purpose'. The investigation asked the Chair if she considered the ATO requirements for businesses and individuals to apportion private versus personal use of phones and internet. The Chair acknowledged she had not and that following her interview she needed to obtain further information about such ATO advice.

262. In response to the draft report, the MD's representatives stated that 'there is no telephone use' and 'it was necessary to have wi-fi in case his Telstra mobile system was not working'. The response went on to say that the MD is not aware of any other GMW staff being required to apportion telecommunication services for personal use, before quoting the Handbook which states 'reimbursement should be related to the amount of official calls'.

Car parking charges

263. In the period examined, the Chair also approved multiple car parking claims for the MD, including:

- \$200 car parking in Melbourne when the MD stayed at the Sheraton for two nights in August 2017, which the Corporate Secretary refused to endorse
- \$135 car parking for two nights when the MD stayed at the Sheraton in September 2017
- \$226.80 for two-day short-term parking at Eureka car park in September 2017.

264. Regarding her approval of the MD's car parking, the Chair said at interview:

I just look at them in the context of what the Managing Director is doing at the time. His responsibilities and if I believe it's fair and reasonable in accordance with his duties, that's what I believe.

265. At interview, neither the Chair nor the MD were able to provide details of the activities being undertaken to justify why expensive CBD parking needed to be used when the MD often travels to Melbourne by train, and received a LAFHA on the basis that he had immediate use of his Melbourne residence while living in the Tatura region.

266. In response to the draft report, the MD's representatives stated:

the analysis fails to recognise that Mr Lennon made a conscious effort to travel to the Melbourne CBD by V/Line train to save thousands of dollars on car parking costs.

267. After having had an opportunity to examine his diary, the MD's representatives stated in response to the draft report that the MD was attending water industry conferences and functions at the time of incurring two of these charges. One was incurred for an overnight stay for the MD to have 'dinner with the CEO of Tasmania Networks'.

268. It is unclear how this could be related to his role at GMW. The investigation also found that GMW reimbursed the MD \$118.62 for his 50 per cent portion of this dinner at The French Brasserie (\$57.50 of this reimbursement was for alcohol).

Credit card annual fee

269. The Chair also approved reimbursement of the MD's \$249 annual fee for a platinum credit card. The MD said at interview the bank had since waived future annual fees on this card.

270. Both the Chair and the MD told the investigation they had agreed to the reimbursement of the MD's personal credit card fee when he first started. However, the investigation found no evidence of any agreement, including in Schedule B of the MD's contract, which otherwise records his work-related entitlements.

271. The MD told the investigation that he had a process of charging all 'business transactions' on his personal credit card and seeking reimbursement.

272. In response to enquiries with GMW about whether Finance had raised concerns with the MD about his claims, the CFO provided the investigation his contemporaneous notes of the meeting held on 26 July 2017 between the MD, Chair and CFO (referred to in the LAFHA chronology). The expenses meeting was about the MD's credit card fee, tax invoices, LAFHA and the MD's claims in general. The CFO's contemporaneous notes record that he raised concerns that the \$249 credit card fee was 'excessive', the platinum card provided personal benefits to the MD that GMW cannot apportion, and thus the payment of this by GMW incurred FBT. The Chair reportedly responded to the CFO at this meeting, 'what if [the MD] never claimed points?' Later in the meeting the CFO recorded that he showed the Chair an email from VAGO requesting to see the MD's expense claims. He said the Chair responded, 'I don't care about auditors'.

273. In response to the draft report, the Chair's legal representative stated, '[the Chair] has no recollection of such a comment being made to the CFO'.

VPSC advice and opinion

274. In response to enquiries about such expenses, the VPSC responded on 31 May 2018 that it advises boards and executives that:

... 'benefits' such as mobile devices are in fact tools of trade, and should not be included in contracts or in TRP. Including them inappropriately blurs the line between personal and business expenses.

275. The VPSC advised that reimbursement of a portion of home phone and internet may be reasonable on a case by case basis and organisations should have policies to govern this practice.

276. Regarding reimbursement of credit card fees, the VPSC advised that this does not appear to be appropriate. '[O]rganisations should provide corporate credit cards, and/or reimburse actual direct expenses incurred on personal credit cards. Again, the Board should set policies to govern the appropriate use of credit cards.'

277. In response to the draft report, the Chair's legal representative said: 'The Board is responsible for adopting policy whereas management is responsible for developing policy'.

278. The investigation noted the MD could have obtained a standard credit card for \$29 from the same bank for his work-related expenses, versus using his personal platinum credit card and requesting reimbursement of an annual fee of \$249.

Accommodation

279. As detailed, the MD claimed multiple accommodation stays in his first 13 months of employment, the majority of which exceeded the allowable limits.

280. GMW Staff Delegations require that the Board approve all overseas travel for the MD. For one trip, the Board approved the MD's accommodation and meals for travel to Wellington, New Zealand, for a conference. Upon return, the MD submitted, and the Chair approved, a claim for two nights' accommodation at the InterContinental at a cost of \$NZ397.88 and \$NZ437.08 (\$AUD821.26 in total). These costs exceeded the limits approved by the Board by approximately \$AUD160 and \$AUD200 respectively. Additional Board approval was not sought by the MD or the Chair.

281. When asked why he did not comply with GMW's policies about accommodation expenditure, the MD said, 'straight off hand ... I don't have an answer ... Wellington is an expensive city'. The MD said he did not seek to stay at an expensive hotel and he was sure there were hotels in Wellington more expensive than \$400 a night.

282. The MD could not explain why requisite approval from the Board was not obtained.

283. In response to the draft report, the Chair's legal representative stated the Chair was 'not aware that the Board policy on accommodation expenses covers international travel'.

284. Regarding the overseas accommodation, the MD's representatives submitted that 'occupancy rates in Wellington were at record highs in early 2017' and that any failure to obtain Board approval for the 'excess' amounts was 'inadvertent and not deliberate on his part'.

285. The MD's representatives stated in response to the draft report that the MD's claims for accommodation in Melbourne CBD were consistent with those made by his predecessors 'and were incurred on approximately seven nights'.

286. As detailed in the report, the MD claimed nine hotel stays in Melbourne during the period examined, and neither of his predecessors with whom his expenditure was compared owned residences in Melbourne.

287. Additionally, the MD's representatives stated he also stayed at his Melbourne residence on 21 occasions 'resulting in no cost to GMW, which would have equated to a cost of approximately \$7,000'.

288. However, the cost of meals that the MD was reimbursed for when staying at his own residence was not removed, and it is unclear how the MD arrived at this figure. It is implausible that these costs amount to \$333 per day, a figure which in any case exceeds the limit for CBD accommodation in Appendix 18, of \$232.47.

289. The potential cost saving to GMW when the MD stayed in his own home was increased to \$7,440 in a later reference, and did not account for FBT costs to GMW if these costs were paid as an allowance to the MD.

The MD's claims for alcohol

290. It was alleged that within his day-to-day expense claims of \$21,688.18, the MD pursued reimbursement of alcohol expenditure, contrary to the GMW Board policy for Director reimbursements (Appendix 18).

291. The previous Ombudsman's 2011 *Investigation into Foodbowl Modernisation Project and related matters* found that the payment of alcohol for employee/contractor events and Board dinners at GMW was not reasonable or compliant with the Financial Management Act because it provided a 'private benefit' to employees, and was not a 'business need'.

Policy - employees

292. GMW's Financial Management Compliance Procedure states, 'GMW does not reimburse the cost of alcohol (including when consumed with a meal) unless previously authorised by the Managing Director'. The Procedure also states that 'non "business" purchases such as alcohol [on GMW corporate credit cards] should only be undertaken with approval from the Managing Director'. The policy does not detail what legitimate purchases of alcohol might be.

Policy – Directors

293. Appendix 18 explicitly provides that **‘alcohol is not claimable’** [original emphasis]. Explanation of this policy is included in the induction for all Directors.

294. GMW’s Business Rules Framework Policy (contained within the GMW Corporate Governance Manual) provides that only the Board can approve Board policies. A ‘Board policy’ is defined as a policy that concerns strategic risks, whole of organisation governance and/or the Board of Directors. Thus, Appendix 18 cannot be changed, except by the Board.

295. In response to the investigation’s enquiries, the CFO advised:

The Managing Director appointed in August 2011 ... had a ‘zero tolerance’ for alcohol claims, consistent with the recommendations of the Ombudsman [Foodbowl investigation 2011]. For example, the executive team would pay for any alcohol expenses personally. The same practice was followed by his successor from December 2014 ... and myself while acting as MD. The practices changed since [the MD’s] commencement from September 2016.

Attempts to change alcohol reimbursement rules

296. In as early as February 2017, the MD instructed his subordinates to amend GMW rules to allow for General Managers to claim for the purchase of alcohol. The MD faced internal resistance from several employees who considered the change inconsistent with the organisation’s long-established practice of disallowing alcohol reimbursement, as well as a draft policy which intended to prohibit any alcohol consumption while at work. The investigation noted the MD only has authority to alter the GMW’s Financial Management Compliance Framework Procedure, not the Board policy applicable to Directors (Appendix 18).

297. The CFO’s contemporaneous notes from the expenses meeting of 26 July 2017 noted that he raised concerns about alcohol reimbursements and that the Chair instructed him (the CFO) to ‘seek evidence the Board has set a “no alcohol exp claim” policy’.

298. In August 2017, the Corporate Secretary emailed the MD and the Chair about the ‘purchase and reimbursement of alcohol’, writing:

- Broader State Government culture/ attitudes is negative towards the purchase/reimbursement of alcohol: although there is nothing mandated (yet – DELWP Model Policy being developed)
- GMW rules prohibits the purchase of alcohol unless previously approved by the Managing Director: GMW Board has been generally compliant with this
- Managing Director approved changes to rules in February 2017: changes allow MD & General Managers to claim for purchase of alcohol within the meal allowance limits paid by GMW. This decision has not been implemented.

299. The Corporate Secretary also referred to the Foodbowl investigation and its findings.

300. Despite the Corporate Secretary’s advice at induction and in August 2017, the MD continued to claim, and the Chair approved, alcohol reimbursements, as well as multiple Board dinners with alcohol expenditure.

The MD’s evidence

301. The MD said at interview he had spoken to both the Chair and the executive early in his appointment about policy changes to allow for ‘modest alcohol consumption’ for executive staff, stating that from his recollection, the Chair and the executive gave him ‘comfort’ that this was ‘not non-compliant’.

302. The MD said that alcohol played a part in his ability to interact with stakeholders and develop important relationships, especially with the Chair. The MD commented in the ordinary course of having a meal it was 'not unusual to have a few glasses of wine' and therefore if he is on business activity, he would have a couple of glasses of wine, but overall he had been 'modest' in his consumption. When asked how this was compliant with GMW's policy that alcohol is not claimable for Directors, the MD said, 'I'm the one person that is authorised to approve the consumption of alcohol'. The MD commented:

... modest, reasonable consumption, I didn't see as an issue and it hasn't been an issue in any of my working life. Never. Not in any of my working life anywhere, in the public service or outside the public service here or in the USA.

303. The MD said he did not consider the Ombudsman's 2011 investigation conclusions were relevant to his decisions about alcohol reimbursement because it related to an earlier GMW culture of 'excessive behaviour'.

304. The MD acknowledged he had conversations with both the CFO and the Corporate Secretary about their concerns with alcohol expenditure, commenting that they were both 'very conservative'. After being provided with these 'conservative views' he said he 'tested' his view about reimbursement for alcohol with his peers, including the Chair and a current Managing Director of another water corporation, who was a former MD at GMW. This former GMW MD reportedly said 'modest' consumption for their executive team was acceptable.

305. The MD noted that from July 2017, the Corporate Secretary was overseeing his expenses prior to approval from the Chair, which included alcohol claims, and no concerns were ever raised with him.

306. The Corporate Secretary acknowledged that he had not identified the level of non-compliance in the MD's expenses that the investigation had found. For example, on 14 September 2017, the MD claimed, and the Chair approved, expenses incurred at the Langham Hotel: a \$12 lunch and a \$65 'dinner beverage' with the notation 'Vic Water Conf'. However, as detailed in this report, the Corporate Secretary did not have oversight of the MD's claim for the first nine months of the MD's employment, and on occasion refused to endorse other specific claims for alcohol, parking and flights, which the Chair subsequently approved.

307. The investigation also obtained documentary evidence from GMW records to substantiate the Corporate Secretary's claim that he had raised concerns when the MD directed him to undertake the role of overseeing his expenses – in part, because he was 'not necessarily skilled in all the rules for claims' and he considered Finance's input important to 'avoid mistakes'. Ultimately, the MD and the Chair were accountable for their conduct regarding these claims.

308. The investigation confirmed that at no stage has GMW changed its policy to allow for the MD to claim or authorise other Directors' reimbursement of alcohol expenditure. At interview, the MD commented it was the CFO and Corporate Secretary's responsibility to have made the necessary changes to GMW's policies, albeit they do not have the authority to change Board policies.

309. The CFO also emphasised that he had not followed the MD's directive to change any policies or procedures to allow for reimbursement of alcohol, as this would have been inconsistent with a proposed Drug, Alcohol and Rehabilitation procedure. The procedure mandates that all GMW staff have a zero blood alcohol level while at work; this policy remained in draft as at July 2018.

The MD's response to the draft report

310. The MD's representatives submitted in response to the draft report:

The Board itself, and even in the first week of Mr Lennon commencing, consumed modest amounts of alcohol at Board functions and through its actions, made the decision that alcohol was an endorsed charge for Director reimbursements. In any event, in the case of Board dinners where reimbursements were claimed by Mr Lennon, he had authority by reason of the Financial Compliance Framework, Corporate Card Purchasing Rules and contractual entitlement, to make such claims.

311. The MD's response asserted his view 'that the amount of alcohol ... consumed whilst he has been Managing Director of GMW has been under \$23 per head (on average) for both Board-only and other dinners.
312. No evidence was provided to enable the investigation to verify this calculation. The investigation has, however, detailed a pattern of expenses for which the amount of alcohol cannot be determined as the receipts are not itemised.
313. Additionally, the MD's representatives submitted that the Corporate Secretary and CFO 'confirmed to him' he had the authority to approve such expenditure, and that when the MD enquired with the Chair about the position on alcohol 'she said to him that reasonable consumption was fine'.
314. The MD's representatives provided an email from the Corporate Secretary to his own Executive Assistant, dated 3 August 2018, that contained a quote for a 'Board Dinner with Strategic Advisory Committee' scheduled for 28 August 2018 and the word 'Approve'. The quote included a \$20 allowance per person for beverages and the statement 'Alcohol to be served'. The Corporate Secretary's assistant then sent this to the MD's assistant with the notation 'For MD approval'. The MD's representatives stated that this demonstrated the Corporate Secretary has continued to seek the MD's approval for alcohol purchases.

315. The MD's representatives also stated that both the Corporate Secretary and the CFO have consumed alcohol paid for by GMW at various events.

The Chair's evidence

316. Consistent with her view that the expense limits for Directors did not apply to the MD, the Chair similarly considered that the rules prohibiting alcohol did not apply. She also stated that Appendix 18 should be amended given the Board consumes alcohol at its dinners, and thus the policy should be consistent with this practice, rather than accept that the practices are non-compliant. When pressed to explain this approach, she said:

... one tries not to look at things in isolation. I think in that case one would have to look at the Ombudsman's report, the policy and existing practice ... I'm not the Board, I'm just the Chair.

317. In response to the draft report, the Chair's legal representative stated: '[the Chair] believes that it is reasonable to have the Board policy consistent with the Procedure ... and existing Board practice'.
318. Regarding her approval of the MD's claims for alcohol reimbursement, the Chair said at interview that although she was not clear what alcohol purchases the MD could authorise for others, she considered she could approve all those he purchased for himself:

... the way I viewed it at the time was that the MD has the ability to approve alcohol, and that in circumstances where he thought that was appropriate, I endorsed that decision.

The MD's tax receipts

319. During the investigation, additional concerns were raised that the MD had covered his tax receipts with EFTPOS slips as a matter of practice, in an attempt to disguise his alcohol purchases. The MD was allegedly concerned about Finance staff reviewing his expenditure, and the possibility of his expenses being 'leaked'.

320. It is noted that for expenses incurred from July 2017, when the Corporate Secretary started endorsing his claims, the MD provided tax receipts for most purchases, albeit non-itemised receipts continued to be provided for significant Board and function expenditures he claimed. This issue is examined later in the report in the context of GMW's internal governance controls.

The MD's claims for Board dinners and staff events

321. In addition to the MD's general expense claims, including alcohol, the investigation examined the MD's claims for Board dinner expenses.

322. Noting that there is nothing that permits the MD to claim or approve alcohol for Directors, the VPSC's Gifts, benefits and hospitality Policy framework also states that the supply of alcohol at an event would be 'relatively uncommon', is associated with risks to employees if impaired, and that 'no more than two standard drinks per person should be provided'.

323. As noted previously, the MD claimed \$21,688.18 between November 2016 and November 2017, of which \$3,023.30 related to pre-Board dinner and drinks for himself and other Board members. In total, \$8,343.40 was spent on pre-Board dinner and drinks during the period examined, with the additional expenditure approved by the MD as purchase orders, paid by GMW directly to the restaurants. These are listed in Table 4 on the next page. On one occasion, the Board spent \$1,052, of which \$347 was alcohol. Overall, this exceeded the allowable limit for Director reimbursements.

324. At interview, the MD said pre-Board meeting dinners were necessary to develop relationships among Board members. The MD said, 'it's an effort to actually go along but you do it because you, you've got to have a functioning Board', commenting that it was not just about socialising because there was 'business conversation' involved at the dinners.

325. The Chair said at interview the purpose of pre-Board meeting dinners was two-fold:

One, our directors don't get killed on the roads leaving home at 4 o'clock in the morning or something and two, in order to strengthen the cohesion, and collegiality of the Board, we believe it's important that we have time together to – over dinner ... that's a convenient time for people to – to meet. To discuss things of consequence and not of consequence I suppose.

326. The investigation asked the Chair whether it was reasonable for public money to be used to pay for alcohol for the Board dinners, to which she responded, 'I think that that's custom and practice across most Boards'.

327. The Chair also stated it was 'unfair' for the investigation to refer to the Ombudsman's 2011 findings and ask her to answer questions at interview about the appropriateness of public funds being used to provide alcohol to Board members now. She stated, 'I haven't really thought about that much'.

328. However, as detailed previously in this report, the Corporate Secretary provided specific advice on this issue in writing to both the MD and Chair in September 2017, emphasising the previous Ombudsman's investigation and negative public attitude towards alcohol expenditure.

329. The Chair stated she had 'come out of local government in the 1980s' and that standards had 'changed significantly'. She cited her attendance at a March 2018 DELWP function where attendees had to purchase their own drinks, stating, 'I'd never come across that before'.

Staff events

330. The MD also claimed or approved expenses for staff events. A sample is listed in Table 5 on the next page.

Table 4: GMW Pre-Board dinner and drink expenses claimed or approved by the MD			
Date	Type (Alcohol not usually separated)	Cost	Venue
22/11/16	Dinner/drinks x 10	\$551.00	The Carrington, Shepparton
13/12/16*	Board Christmas dinner post Awards function same night, plus Executive team and partners	\$2,063.10	GV Hotel
21/02/17	Dinner/drinks x 7	\$573.00	The Carrington, Shepparton
25/04/17	Dinner/drinks x 4	\$196.00	The Carrington, Shepparton
23/05/17	Dinner/drinks x 10	\$628.00	The Carrington, Shepparton
26/06/17	Dinner/drinks x 5	\$166.50	Commercial Hotel, Alexandra
27/06/17*	Dinner/drinks (\$835 'bar tab')	\$2,205.00	Holmesglen, Eildon
28/06/17	Drinks x 4	\$40.00	Holmesglen, Eildon
23/10/17	Dinner/drinks x 4	\$256.80	Huon Hill
21/11/17	Dinner/drinks x 10 GMW x 2 Connections Project	\$612.00	The Carrington, Shepparton
26/02/18*	Dinner/drinks (\$347 alcohol)	\$1,052.00	The Carrington, Shepparton
Total		\$8,343.40	

Table 5: Sample of other hospitality claimed or approved by the MD			
Date	Type (Alcohol not usually separated)	Cost	Venue
13/12/16*	Staff Awards event – inc. bar tab \$1064.90	\$3,084.90	GV Hotel
21/12/16	Meal/drinks x 6 GMW; x 4 partners 'Beth Leaving Fct'	\$275.00	Receipt unreadable
08/02/17	Meal/drinks 1 x GMW; 2 x external (third parties unknown)	\$133.00	Golden Trout Hotel, Eildon
20/02/17	Meal/drinks x 2 GMW 'Chair/MD catch up pre-workshops business mtg'	\$152.00	The Carrington, Shepparton
02/05/17	Meal/drinks x 4 GMW ('Chair/Business mtg')	\$259.00	The Carrington, Shepparton
31/07/17	Meal/drinks x 5 GMW 'Executive dinner'	\$471.00	The Carrington, Shepparton
5/09/17	Drinks x 8 GMW (alcohol only)	\$61.30	Parklake Hotel, Shepparton
11/09/17	Meal/drinks 'Melbourne meeting TasNet' (Connection with GMW unclear)	\$118.62	The French Brasserie, Melbourne
20/09/17	Meal/drinks x 3 GMW 1 x other (third party unknown; \$72 alcohol)	\$171.41	Thai Riffic, Mildura
21/09/17	Meal/drinks x 3 GMW	\$181.50	The Black Stump, Mildura
28/11/17	Dinner/drinks x 12 'Dinner Executive Team'	\$1,079.50	The Teller Collective, Shepparton
Total		\$5,987.23	

*Approved by the MD via a purchase order.

331. In December 2016, the MD approved costs of up to \$2,000 for a staff awards night. The total expense for the night was \$3,084.90, of which \$1,064.90 was alcohol. The same night, the Board and Executive attended a \$2,063.10 Christmas dinner. The MD approved \$80 per head for 30 guests, including partners of staff, of which \$20 per person was for alcohol – exceeding the allowable limits for meals.

The MD's provision of hospitality

332. Over the 13 months examined, in addition to his own expenses, the MD claimed for costs related to other parties on at least 123 occasions. This is illustrated in Graph 2 below. This excludes Board dinners and functions.

333. The VPSC Gifts, benefits and hospitality Policy states that a public official providing gifts, benefits and hospitality must:

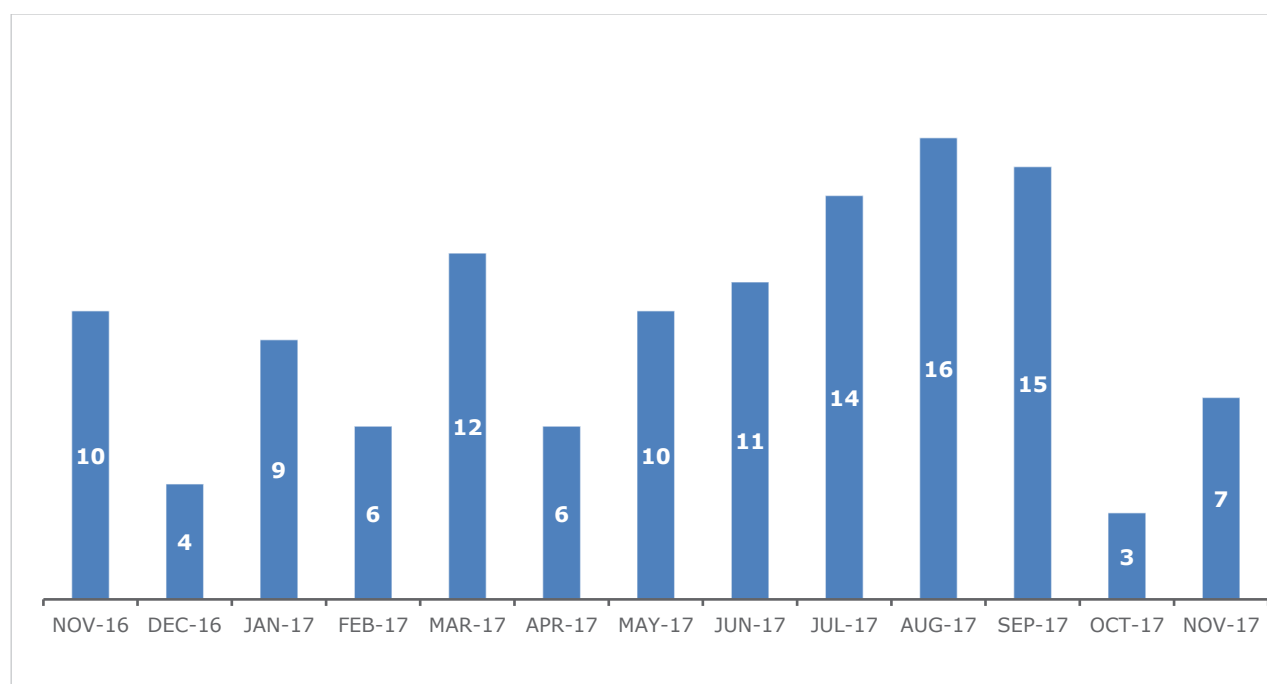
5. Ensure that any gift, benefit and hospitality is provided for a business purpose in that it furthers the conduct of official business or other legitimate organisational goals, or promotes and supports government policy objectives and priorities.

6. Ensure that any costs are proportionate to the benefits obtained for the State, and would be considered reasonable in terms of community expectations.

7. Ensure that when hospitality is provided, individuals demonstrate professionalism in their conduct, and uphold their obligation to extend a duty of care to other participants.

334. Additionally, the policy states, 'Gifts, benefits and hospitality may be provided to external guests ... as well as to employees'.

Graph 2: Number of work days the MD made food or beverage claims for other parties



335. The policy requires that documents such as financial records of expenditure of public funds must be kept in accordance with the *Public Records Act 1973* (Vic), the Financial Management Act, and the *Freedom of Information Act 1982* (Vic) – which enables the public to access these records. The VPSC emphasises the need to consider these requirements and relevant privacy legislation in their internal policy, and when publishing their register online.

336. The investigation identified that GMW's *Gifts Benefits and Hospitality Board Policy* is limited to standards and procedures for responding to gift offers. Despite gifts, benefits and hospitality being a standing agenda item for the Board, the investigation found no evidence of the MD disclosing any of the frequent hospitality he provided to staff and third parties.

Purchasing cards

337. The MD claimed reimbursement for his expenses after paying for them on his personal credit card. Had he been using a GMW corporate credit card or 'purchasing card', additional rules and reporting requirements would have applied.

338. In particular, any breaches of the purchasing card rules must be reported to the Department of Treasury and Finance (DTF), reducing opportunities for fraud and misuse of public funds if monitored appropriately. Employees using GMW purchasing cards must also, in accordance with the Standing Directions Instructions:

- always act in the interests of the State, as opposed to personal interests or convenience; and
- perform their duties honestly and with skill and care.

339. In its 2012 report, *Personal Expense Reimbursement, Travel Expenses and Corporate Credit Cards*, the Victorian Auditor-General's Office (VAGO) identified that agencies were likely to apply less scrutiny on personal reimbursements than on purchasing card transactions.

340. The MD's representative submitted in response to the draft report that information about the rules and protections offered by purchasing cards were not relevant as:

- 'duties to act in the best interest of GMW and to act honestly and with skill and care, exist at law'
- it wrongly infers that the MD 'acted in personal interest and not performed his duties honestly'
- VAGO's findings are irrelevant as it examined six public sector 'agencies' in its investigation and GMW is not an 'agency'.

Further comments from the Chair and MD in response to the draft report

341. In response to the draft report, the Chair's legal representative stated:

[The Chair] did approve "multiple Board dinners with alcohol expenditure throughout 2017" as she had been advised by the Corporate Secretary that this was within both normal Board practice over years and within the GMW policy of the MD having the ability to approve alcohol ... She did not seek to change existing Board practices. Further, she is aware that it is also normal practice within other water corporations.

342. The MD's representatives emphasised his position that as Appendix 18 'did not apply to him, there was no exceeding of any threshold'.

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343. However, the investigation maintains the view that Appendix 18 applied to the MD as a Director of the Board, and that the MD was not exempt from the limits stated in this policy that apply to all employees of GMW.
344. The MD's representatives also stated in relation to the MD's accommodation that 'reference to LAFHA is irrelevant' as 'to the extent the logistics warranted it, [the MD] stayed in the Melbourne CBD as opposed to [his inner Melbourne home]. The response continued, stating that the MD did not claim for two hotel stays, 'such as the Treasurer's Dinner [which cost] \$311 and a Ministerial Meeting [which cost] \$361'.
345. Regarding Board dinners, the MD rejected 'the assertion that he was not entitled to claim reimbursement for the cost of alcohol'. The MD's representatives stated:
- ... the Corporate Secretary managed payment for the Board dinners - it was pre-approved by Mr Lennon. The Corporate Secretary never advised Mr Lennon of the fact that there were any issues he should be aware of in relation to Board dinners.
346. This statement does not acknowledge the advice the Corporate Secretary provided the MD and Chair in August 2017 about the negative attitude towards reimbursement of alcohol in the 'broader state government', including his reference to the Ombudsman's 2011 recommendation against public funds being used to fund alcohol for Boards.
347. The MD's representatives stated in response to the draft report that the Corporate Secretary advised the MD via email on 2 August 2017 that the VPSC's Gifts, benefits and hospitality Policy framework 'is not mandatorily applicable to GMW [original emphasis in email]'. They stated that this is 'not a policy per se' but that 'the guidelines referred therein were principally met'.
348. Regarding hospitality provided by the MD, his representatives submitted that he made 'no attempt ... to hide his activities' and that his claims were approved by the Chair in accordance with her delegation.
349. In responding to the draft report, the MD's representatives rejected that the proposed Drug, Alcohol and Rehabilitation procedure would 'constrain the directive of Mr Lennon with respect to alcohol reimbursement'. The MD's representatives also stated that neither the CFO nor Corporate Secretary had alerted the MD to inconsistencies between the draft procedure and the MD's ability to approve some alcohol purchases, or had explained that this is why they had not actioned directives.

Additional comment

Process and governance issues – Board oversight

350. During the investigation, additional related issues came to the attention of the Ombudsman. Comment about these governance issues in the context of the Board's oversight and the positions of the subjects is detailed in this section.

351. The Directors Code details that as Directors, Board members have both individual and collective responsibilities. These include '[ensuring] matters reserved for the Board are clearly identified' ... that 'there are adequate controls ... in place to prevent fraudulent conduct' and that it 'is accountable for the actions of its delegates and sub-committees'. The Directors Code also states that in making decisions, Directors must exercise their powers with a reasonable degree of care, diligence and skill.

352. While the Chair was responsible for approving the MD's claims, the Board had a collective responsibility to ensure that appropriate fraud controls were in place, in accordance with the Directors Code and the DELWP 'Governance the Victorian Water Industry Guide'. The Guide states:

The Board is accountable for what happens to the agency and for the actions that the agency takes ... the Board cannot avoid its accountabilities simply by claiming that "it was not told of the true situation" the Board has a duty to take appropriate measures to ensure that it is properly informed.

353. The MD and the Chair encouraged the Board to dine on monthly dinners with alcohol to strengthen their relationships with each other on evenings before Board meetings. This was after a zero-tolerance policy had been implemented by previous GMW leaders, following the previous Ombudsman's 2011 investigation.

354. The Board did not appear to question the use of public funds for this purpose, despite the MD and Chair being new to the organisation, and this being the MD's first appointment to such a role in the public sector. While the Board cannot be held responsible for the conduct of these individuals, it is responsible for ensuring that it 'properly informed' itself about such matters.

355. The investigation identified the Chair and MD did not have shared understanding to whom the MD reported: the Chair believed it was the Board, and the MD believed he reported only to the Chair. The absence of clarity with respect to this may explain why neither appeared to understand the number of transactions or issues that should have been reported to the Board. These include the MD's relocation claim in excess of his contract conditions; the approval of the MD's LAFHA and contract variation; the MD's proposed changes to Appendix 18 for Director alcohol reimbursements; and transactions that exceeded allowable limits.

Breaches of the Financial Management Act, Standing Directions and Instructions

356. The mandatory Standing Directions Instructions required the MD, as the Accountable Officer to:

... ensure that the Agency develops policies and procedures to address the following expenditure types:

(a) travel; ...

(d) personal expense reimbursement; ...

(g) ex-gratia payments.

357. There was also no limit on the Chair's financial delegation at GMW, contrary to the Standing Directions. Additionally, Standing Direction 5.1.4 required GMW to make an attestation about its compliance with the Financial Management Act and Instructions for the first time publicly in its 2016-17 Annual Report, including disclosure of all Material Compliance Deficiencies:

Exhibit 5: Attestation for Compliance with Standing Direction from GMW 2016-17 Annual Report

Attestation

**Attestation for Compliance
with Standing Direction
3.7.1**

I, Jo Anderson, certify that Goulburn-Murray Water has complied with the Ministerial Standing Direction 3.7.1 – Risk Management Framework and Processes. Goulburn-Murray Water's Audit Committee verifies this.



Jo Anderson
Chair
Goulburn-Murray Water
16 August 2017

Our Environment

GMW has in place a comprehensive process to report and monitor compliance against legal, regulatory and Statement of Obligations requirements. An annual attestation of compliance against these obligations is reported to the Board and Executive Management Team. In the instance a breach is identified an action plan is developed in consultation with the relevant business unit to identify appropriate control measures to mitigate future occurrences. As required, breaches are reported to the relevant regulatory authorities. GMW attest that there were no breaches of our legal, regulatory, or Statement of Obligations requirements during the 2016/17 reporting period.

358. A Material Compliance Deficiency is one that 'a reasonable person would consider has a material impact on the Agency or the State's reputation, financial position or financial management'. These deficiencies must be reported to the Minister for Finance, DELWP (as portfolio department), and discussed with the Department of Treasury and Finance (DTF).

359. The investigation sought the opinion of DTF regarding whether GMW's failure to have policies for relocation expenses, personal mobile phone, home phone and internet services, is a breach of the Standing Directions Instructions requirements as detailed above. DTF advised that these failures are breaches and that GMW must determine whether the breach is material or non-material, and report any non-compliance:

The Framework is designed to foster a culture of sound financial governance and management, with a view to identifying and addressing deficiencies, along with a culture of transparency and accountability, brought about by open reporting of deficiencies and remedial actions.

360. DTF also advised that the Public Administration Act covers the responsibilities of persons engaged in the public sector with respect to consequences of non-compliance with laws.

361. In response to the draft report, the Chair's legal representative stated:

Management are responsible for drawing the appropriate Board committee and/or the Board's attention to the requirement for additional policies and controls.

- the ability of Executive Assistants to approve the MD's short-term accommodation, which was a 'relocation expense' not intended to be within their normal financial delegation
- unmonitored expenditure on alcohol, with Fringe Benefits Tax implications (as receipts were often not itemised, and not provided to Finance).

Internal control deficiencies

362. As detailed in the report, it appears that deficiencies in internal controls enabled the pattern of non-compliance in the MD's claims and the Chair's approval of these (see Table 6 below).

363. Additionally, there was an absence of internal controls which allowed:

- the Chair to approve the MD's claims without apparent reason (for alcohol, parking, and duplicated flight expenditure), which the Corporate Secretary had refused to endorse
- hospitality to be provided to others, internally and externally, without systems to record, monitor and scrutinise
- unmonitored personal frequent flyer points accumulation from official travel

Payment of bonus to the MD

364. In June 2017, following a recommendation of the Remuneration Committee of which the Board Chair is also Chair, the MD received a bonus of \$8,990.87 for his performance in the 2016-17 financial year. At this time, the MD had been employed for eight months. This bonus was awarded as 5.6 per cent of his pro-rated salary from a maximum possible bonus of 6 per cent, as stipulated in his employment contract. The Chair was responsible for assessing the MD's performance, as Chair of both the Remuneration Committee and the Board.

365. In response to the draft report, the Chair's legal representative stated the Chair was not responsible for assessing the MD's performance, but 'provided advice to the Board's Remuneration Committee which assessed the performance of the MD and made a recommendation to the Board'.

Table 6: Non-compliance in MD's expense claims, November 2016 – November 2017

Insufficient supporting documentation – no tax receipts, names of third parties	X
No evidence of business need for hospitality	X
Exceeding allowable limits for Directors and GMW employees	X
Non-permissible purchases – alcohol; accumulation of personal frequent flyer points	X
Chair (approver) authorised her own expenses	X
Personal assets claimed as 'relocation expenses'	X
Personal use not apportioned – home internet/home phone/mobile	X
Claimant and approver not aware of, or disregard for, government policies	X
Excessive expenditure – hotels, car parking, taxis, hospitality	X
Inadequate internal controls and internal audit of expenses	X

366. The VPSC has published advice about public sector executives and their receipt of bonuses:

Bonuses are discretionary, not mandatory. Executives are already paid to do the job well. Anything less is under performance. A bonus recognises performance at the outstanding or exemplary level. A robust performance management system must underpin any bonus outcome.¹¹

367. The VPSC clarified to the investigation:

... bonuses are normally considered as part of an annual performance cycle for all of an organisation's executives, a new executive would normally not be considered for a bonus payment in their initial year of service ... as it is normally very difficult for an executive to deliver the required exceptional performance in a reduced period of time.

368. In June 2017, the VPSC Commissioner, who serves as the Chair of the GSERP, wrote to the Chair regarding executive remuneration and performance bonuses. She advised that based on the Premier's annual adjustment determination, GSERP policy provided that the Board may increase the MD's remuneration by up to 2 per cent. The Commissioner also advised regarding bonuses:

Care must be taken to ensure that all bonus outcomes are appropriate, with higher bonus outcomes reserved only for exceptional performance ... I encourage you to be prudent in your assessment and to exercise restraint ... [and] bonuses should not be used as a 'default supplement' to executive TRP.

369. Additionally, in July 2017, the Acting Secretary of DELWP provided similar advice to the Chair about bonuses. She stated, **'bonuses should only be paid when performances are outstanding and exemplary** [original emphasis]'.¹¹

370. The Acting Secretary also said:

The use of bonuses to 'top up' executive remuneration for those that are simply doing their job undermines the work of those that genuinely receive bonuses for high performance.

371. In response to the draft report, the Chair's legal representative submitted that advice from both the VPSC Commissioner and Acting Secretary of DELWP was provided to the Board's Remuneration Committee.

Decision to award bonus

372. In July 2017, the Remuneration Committee (chaired by the Board Chair) met in the presence of the MD to discuss his performance. In its minutes it recorded:

... the Committee recommend the Board approve:

an annual adjustment of 2% to the Total Remuneration Package (TRP) of the Managing Director from 1 July 2017: consistent with the annual notification received from the Victorian Public Sector Commission

a bonus payment of 5.6% of his current TRP adjusted proportionately for the time he had been an employee of GMW during 2016/17 (commencement date 24 October 2016): based on the [Remuneration Committee] scoring the 2016/17 [Performance Agreement] of [the MD] as 375/400

the increase from 1 July 2017 of the Managing Director's Total Remuneration Package (TRP) up to the midpoint of \$401,525 permitted by the Victorian Public Sector Commission

CARRIED.

373. When assessing the MD's performance, the Committee noted two key areas for improvement including GMW's need to reduce its 'Lost Time Injury Frequency Rate', and to meet its annual capital expenditure budget. In the MD's Performance Agreement, he self-assessed a result of only three out of four for capital expenditure and noted 'Capex program is [currently] \$10m behind'.

¹¹ Victorian Public Sector Commission, 'Myths and Facts in Public Sector Executive Employment', accessed online 4 June 2018 <<https://vpsc.vic.gov.au/wp-content/pdf-download.php?postID=5351>>

374. The Performance Agreement did not indicate the MD's eight months of initial service was 'exceptional' or 'outstanding' or exceeded his planned targets, as required by GSERP policy. This agreement, approved by the Chair, did not contain any performance metrics as required, or content related to his specific responsibilities as the Accountable Officer at GMW. Instead, it recorded the Chair as having conducted 'a qualitative assessment'.

375. The Chair's legal representative submitted in response to the draft report that:

The Performance Agreement was assessed by the Remuneration Committee against these quantitative metrics [determined by the Remuneration Committee in December 2016] with only one aspect being the qualitative assessment by the Chair.

376. However, this is contradicted by her documented assessment in the MD's Performance Agreement presented to the Remuneration Committee, wherein seven of the eight 'metrics' conclude with 'Chair qualitative assessment', and the eighth is blank.

377. Virtually all other executives at GMW received half the bonus amount for the same period, with five of the six executives receiving three per cent bonuses, and one receiving four per cent.

378. The investigation did not assess the general performance of the MD, nor any of the other executives at GMW, which is outside of the scope of this investigation.

Transparency - concerns about media leaks and changes in claims process

379. The MD was required to provide his expense claims to the Chair for approval, and then provide the expense details in full to the Finance team for processing. In August 2017 the MD changed this process whereby he provided his claims and scanned receipts to the Corporate Secretary for 'endorsement' before approval by the Chair. This change meant Finance did not receive a copy of receipts when processing his reimbursements, which effectively removed the necessary oversight to identify items on receipts that may not be compliant with financial rules or that which may incur tax liabilities.

380. At interview, the Corporate Secretary and the CFO stated the MD had cited concerns about 'leaks' and potential Freedom of Information requests for his expense claims, specifically in relation to his alcohol expenses.

381. The MD said at interview:

I didn't want there to be, you know, a newspaper kind of discussion about some expense that a Director or the Managing Director had so I was really seeking to have confidentiality.

382. The Directors Code, however, states that 'public officials should demonstrate accountability by ... submitting themselves to appropriate scrutiny', and 'it is precisely these things that the public sector values and [the Directors Code] seek to reinforce and protect'.

383. In VAGO's Personal Expense Reimbursement, Travel Expenses and Corporate Credit Cards report, the investigation notes that:

Hospitality expenditure is an area of reputational risk for public sector agencies and the government. The media and the community are sensitive to what is perceived as excessive expenditure on food, alcohol and entertainment for public sector employees and those they are required to entertain.

384. In response to the draft report, the MD's representatives said the MD 'relied upon the CFO's advice that there was compliance' when changing the claims process. They also stated that receipts were meant to be provided to the Finance team in the new process.

385. However, this statement is contradicted by evidence from the Corporate Secretary and CFO, as well as the memo describing the new process, which stated:

... Finance staff process claim in electronic system using summary data sheet ...

Original Documents never leave Corporate Secretariat.

Tax receipts

386. In response to the allegation that he did not provide and/or deliberately covered his tax receipts when submitting his claims in order to avoid scrutiny, the MD said he had always provided tax receipts. The MD said his Executive Assistant had all his receipts in an envelope, should an audit ever be conducted, but these had never been requested.

387. Documentary evidence reviewed by the investigation contradicted the MD's evidence. For example, emails from Finance reflected their attempts to obtain the MD's tax receipts. In several instances, documentation provided was concealed with EFTPOS receipts, and the MD did not provide the tax receipts.

388. A review of the MD's claims in as late as November 2017 showed the MD did not provide tax receipts, albeit his compliance improved from July 2017. The MD's practice of not providing itemised receipts with a breakdown of meal versus alcohol expenditure persisted. This is despite the MD's claim at interview that this practice ceased 'a long time ago'. The MD's receipts did not contain sufficient details to ascertain the charges were legitimate business expenses, such as detailing the purpose of the meeting, or the names and roles of the attendees he was entertaining.

389. Later in his interview the MD said he had not always provided receipts, but this had always been deemed acceptable when he worked as a private consultant. The MD said he was not trying to disguise anything, but he had concerns about the Finance team viewing his claims stating:

I just thought it was inappropriate for somebody in the business to be looking at what Directors were doing, that was all.

390. At interview, the Chair denied approving the practice and said she thought receipts had been provided to the Corporate Secretary and would expect this be done to ensure compliance with financial obligations.

391. However, the Corporate Secretary said that no additional receipts were provided to him and 'there's never been an instance of expenses being leaked'.

392. Ultimately, it was the MD's responsibility as the submitter, and the Chair as the approver, to ensure that tax documentation and evidence of the legitimate 'business purpose' for every expenditure was provided.

393. In response to the draft report, the MD's representatives submitted the MD's tax receipts were available for inspection at any time in his office.

394. Given the previous Ombudsman's 2011 findings about GMW's misuse of public resources and more recently the Ombudsman's 2017 *Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board*, this investigation again highlights the need for more oversight and support to Boards to ensure they are accountable, responsible and cognisant of current public sector standards and community expectations.

Exhibit 6: Advice from Finance to MD's Executive Assistant 30 May 2017, and response

[REDACTED]

I have just received some expenses claims for Pat, but in several instances the copies of documentation attached have the eftpos slip covering the actual invoice, which is what I need. This is especially important for meal claims as we need to be able to ascertain whether the amount includes alcohol or not and also to be able to claim GST back and determine any FBT implications.

For the claims attached above, could Pat either provide a copy of the invoices behind the eftpos slips, or even better, the originals please. Originals are always our first preference.

Thanks

[REDACTED]

[REDACTED]

I did explain to Pat that the requirement was for the actual invoice but he advised me that he had discussed this with the Chair and they had agreed that he would not be providing the tax invoice.

He advised that if you had issues you would need to speak to [REDACTED]

Regards,

[REDACTED]

Findings

395. GMW is Australia's largest rural water corporation, and has faced a litany of issues in recent years, including:

- the previous Ombudsman's *Foodbowl Modernisation Project and related matters* investigation in 2011 about procurement and financial probity found, among other things, that the payment of alcohol for employee/contractor events and Board dinners was not reasonable
- the dismissal of the Board by the Minister for Water in 2011 for financial mismanagement
- the removal of half of the Board in 2015 due to the Minister's concerns about their capacity to tackle local issues
- the intervention of the state government in 2017 when it established a Strategic Advisory Panel to examine GMW's strategic direction and planning
- the Minister's decision in 2018 to establish a Transformation Panel to work with the Board and report back to the Minister to address strategic issues
- multiple changes to the Chair and Managing Director positions since 2012, including five Chairs and seven MDs.

396. Moreover, there have been significant changes in land and water use in northern Victoria over the last 10 years, with reduced water availability for irrigation, fluctuating water prices and changes in demand for water. The Minister for Water is currently consulting with local communities on these issues. The Goulburn Murray community has also faced years of hardship following droughts, the global financial downturn and dairy crisis - all of which ought to contribute to even higher community expectations of financial competence and responsibility at GMW.

397. GMW operates in a commercial environment, undertaking crucial water projects worth billions of dollars to sustain Victoria's water resources. However, it is a public body (with oversight at arms-length from DELWP) and must act responsibly when spending public funds. GMW's responsibility is, arguably, heightened by the increasing cost of water and associated messages from GMW to staff and the local community that GMW must cut costs to lower its debt and fundamentally change to become an efficient business.

398. The MD and the Chair demonstrated a lack of restraint and accountability in spending public funds; and in the context of the hardships being felt in the Goulburn Murray region, this conduct is even more egregious.

399. In addition to his Total Remuneration Package (TRP) of \$384,000 since commencing in late 2016, the MD has claimed more than \$40,000 in expenses from GMW (including relocation); received the benefit of nearly \$9,000 of accommodation to assist with his relocation; and received nearly \$25,000 of his salary as a tax-free LAFHA.

400. The MD ignored the written contractual requirement for his 'relocation expenses' to be reasonably incurred because he did not believe this reflected the 'bargain' he had with the Chair. He also pursued tax breaks and changes to claims processes, and encouraged alcohol consumption by staff and Directors in circumstances where he would receive a personal gain, without justifying any legitimate business need. The MD showed a consistent pattern of non-compliance with relevant policies, public sector standards and legislation, including the Public Administration Act; a disregard for the advice of his experienced executive team; and a failure to act consistently with community expectations.

401. Prior to the investigation, GMW staff raised concerns with the MD and the Chair about the MD's relocation claim and his pursuit of the LAFHA and expense claims. These were ignored. The MD justified to the investigation that his practices were acceptable in both the public and private sectors and that his expenditure was moderate, stating he often did not claim for other expenses to which he felt entitled. He admitted he had not read the codes of conduct.

402. The Chair did not adequately consider legal and internal advice about the MD's claims, missing an opportunity to demonstrate leadership and ensure responsible expenditure of public funds, and minimised the investigation's concerns. She failed to apply relevant GMW and broader government policy or the codes of conduct to herself or the MD when approving his claims, giving evidence that the MD was, effectively, 'above the law' by stating policies regarding Director reimbursements, and specifically alcohol, did not apply to him.

403. At interview, the Chair demonstrated a failure to meet contemporary expectations regarding public expenditure, particularly with respect to the purchase of alcohol for Board members. She referred to it being 'custom and practice across most Boards' to provide alcohol. This ignored the advice her own staff provided, as well as the previous Ombudsman's conclusion in 2011 that GMW's payment of alcohol for Board dinners was not reasonable or compliant with the Financial Management Act because it provided a 'private benefit' to employees and was not a 'business need'. Her approval of the MD's claims indicated a disconnect with public policies, values and expectations. This is surprising given the well-publicised economic hardships in the Goulburn Murray community and her extensive experience in the public sector.

404. The investigation substantiated all three allegations regarding the MD's and the Chair's conduct:

- the Chair misused GMW's funds in approving \$18,397.43 of unreasonable expenses claimed by the MD for relocation, which conferred upon him a private benefit not provided for in his employment contract
- the MD and the Chair unreasonably directed and/or required senior staff to pursue and pay a LAFHA, saving the MD \$11,129.85 in tax, which exposed GMW to unnecessary costs, reputational damage and potential tax penalties and liabilities
- the MD claimed, and the Chair approved, numerous expenses, some of which were not legitimate business expenses because they were not reasonably incurred in the performance of the MD's duties, and conferred personal benefits on the Chair, MD and other Directors.

405. In response to the draft report, the Chair's legal representative said it was 'incorrect' to state the Chair ignored concerns about the MD's relocation claim, LAFHA request, and expense claims, stating:

[The Chair] sought clarification, and with particular regard to legal advice accepted the final advice of GMW Legal Counsel [with respect to the LAFHA matter] ... Further ... [the Chair] had been advised that the MD had the ability to approve the purchase of alcohol ... the purchase of alcohol was provided to the Board previous to the appointment of the MD and [the Chair] did not attempt to change this custom and practice.

406. In his response to the draft report, the MD did not accept that he had acted improperly, breached any codes of conduct, or claimed any expenses to which he was not entitled. His representatives stated that the MD:

... is a Senior Executive who has, to date, had an unblemished record of service within the public and private sectors across Australia and the United States. He has consistently strived to uphold values of accountability, transparency and integrity.

Members of his executive are smearing his personal and professional reputation ... [and] have a vested interest in undermining his leadership at [GMW] in order to protect their won fiefdoms. [He] has been seeking to bring about the modernisation of GMW and this has resulted in resistance from some within the GMW executive team.

407. In justifying expense claims for which the investigation considered he was not entitled, the MD's response to the draft report repeatedly stated that:

- there was a lack of policy (home phone/ internet)
- he had an arms-length 'contract' outside of his signed employment contract (relocation expenses).

408. The MD also wrongly maintained that Appendix 18 did not apply to him.

409. Appendix 18 prohibited Directors claiming excessive meal costs or any alcohol, and did not explicitly exclude the MD. These limits also apply to other staff, not only Directors.

410. The MD's representatives stated his claims 'have always been directly aligned to his work-related activities or, alternatively, were of a relocation nature'. The response further stated: 'his claims were consistent with his entitlement under his Contract of Employment of being "*reasonably*" incurred ... and were only done so after clarification was obtained from the Chair'.

411. The response also stated the LAFHA 'did not result in GMW being "*out of pocket*" at all' and that the MD 'provided an indemnity to GMW for any liability that may be incurred by GMW'.

412. The investigation notes that despite the ATO's opinion being provided to the MD's representatives in full on 10 May 2018, the MD did not seek to have the LAFHA tax concession provided to him reversed by GMW, nor stated any intention to do so. The practical effect of the 'indemnity' is questionable.

Misuse of public funds

The MD's relocation claim

413. The MD submitted, and the Chair approved, a 'relocation expense' claim of \$20,000. They were not bound by any GMW or broader public sector policy. However, the advice the MD and Chair received from their staff, the standards indicated in the GMW EBA, the Handbook and the Directors Code all demonstrate that most of the items claimed by the MD could not be considered 'relocation expenses' that were 'reasonably incurred', as required in his signed employment contract.

414. The MD claimed \$18,397.43 worth of items, substantially comprising personal household assets and items not reasonably considered relocation expenses (including a high-end barbeque and a cookbook), that would remain in his possession long after his tenure at GMW. He also claimed an indeterminate amount of alcohol as part of otherwise legitimate meals for himself and his wife while residing in temporary accommodation.

-
415. These reimbursements provided a personal advantage to the MD, which was not in the best interests of GMW or justifiable to the community at large. Conversely, the MD did not claim for other costs such as removals that he incurred, that would have been reasonable 'relocation expenses'. The MD made his claim knowing his contract required his claim to be reasonable and directly related to his relocation; and having received internal advice to this effect.
416. The MD's claim for \$20,000 as direct reimbursement for relocation came after having already received \$8,687.70 worth of temporary accommodation directly related to his relocation and reasonably funded by GMW. When combined, these exceeded the maximum limit in his contract.
417. In her response to the draft report, the Chair acknowledged that the cost of the temporary accommodation should have been deducted from the MD's \$20,000 reimbursements and denied his assertion that she approved these costs as additional expenditure to be borne by GMW.
418. In approving all of the MD's relocation expenses, the Chair disregarded internal advice and Board policy that prohibited Directors' reimbursement for alcohol. She failed to seek advice or guidance from the codes of conduct and obvious external sources such as the VPSC and the ATO, or even internal sources such as the Remuneration Committee or the Board. She maintained her belief that she had absolute discretion to approve the MD's claims.
419. On balance, the MD's evidence indicates the \$20,000 relocation allowance was offered by the Chair to 'top up' his salary to meet his expectation of a TRP of \$400,000, with his representatives proffering this saved GMW money over the MD's five-year contract term.
420. In response to the draft report, the Chair's representative curiously argued the expenses themselves did not need to 'be reasonably considered relocation expenses'. The MD's representatives expressed a similar view.
421. Although the Chair's response stated that she 'relied upon advice provided by other staff in forming [her] beliefs' about the MD's 'ability to approve the purchase of alcohol', and that 'the DELWP governance officer suggested offering a relocation allowance in addition to the TRP', her representative also stated that she 'has not attempted to apportion blame to any other person' for her decisions.
- Provision of the LAFHA to the MD**
422. In September 2017 the MD obtained a LAFHA with the approval of the Chair, after he had received a relocation expenses reimbursement of \$20,000. He used his position to pursue advice from various sources to procure the LAFHA to reduce his personal tax, despite advice that the ATO may determine him ineligible. This placed GMW at risk of reputational and financial consequences. His insistence in pursuing the LAFHA led to GMW spending \$17,059.90 on advice, including reimbursement of \$2,750 to the MD for his personal accounting advice. The expenditure of such money, in addition to the substantial staff resources dedicated to resolving this issue, was not in the public interest.

423. The Chair's approval of the LAFHA was made simultaneous to her decisions to approve nine hotel stays for the MD in Melbourne, despite the MD's eligibility for the LAFHA being dependent on his having immediate access to his Melbourne property, if it was genuinely his usual place of residence.

424. The Chair repeatedly stated she would authorise GMW to incur such legal expenses again, which far exceeded the net financial gain to the MD, if this facilitated the recruitment of other executives, particularly women. This was not financially responsible behaviour and did not reflect well on her standing as a Chair, or on the reputation of GMW – especially given the assessment of the ATO about the legitimacy of the LAFHA payment.

The MD's day to day claims - without legitimate business purpose

425. The MD consistently claimed expenses not reasonably incurred in the performance of his duties. This included drinks and meals where the business need to conduct his work with hospitality provided through public funds was not sufficiently demonstrated – particularly in respect of alcohol.

426. The MD's justification for altering claims processes by submitting claims without tax compliant documentation and reducing oversight by Finance with the Chair's endorsement as being connected with 'media leaks', demonstrated a lack of appreciation of the need for accountability and transparency in the use of public monies.

427. Tax law also provides guidance that the cost of drinks and meals is generally a private expense, as they are 'a cost of maintaining life', irrespective of a person's official duties. While the MD may have been conducting legitimate business simultaneous with his consumption of drinks and meals (reimbursed by GMW), this was often his choice and not justifiable as legitimate business expenses.

428. From November 2016 to November 2017, the MD was reimbursed \$21,688.18, in addition to relocation, LAFHA benefits, and temporary accommodation. On more than half of his work days the MD made claims, 32 of which exceeded GMW's reimbursement limits for Directors. He also made claims for as little as \$1 for carparking and charitable donations.

429. The MD's claims, which the Chair approved, for alcohol for the MD to 'debrief' after a work meeting and a \$90 bottle of wine for the MD to build a relationship with another MD, are inconsistent with tax guidance and community expectations. As too was the additional \$500 spent on flights so the Chair and MD could return to Melbourne two hours earlier.

430. At interview, the MD commented that when he worked at the State Electricity Commission and Hydro Tasmania, 'you'd claim for everything'. The nature and volume of his expense claims indicates he continued this practice at GMW. Despite the efforts of GMW staff to rein in his expenditure, the Chair approved every claim.

431. The Chair's approval of many of the MD's claims was not reasonable. She failed to confirm the business need for the expenditure, ignored advice from staff, and did not hold the MD accountable to the conditions of his contract. Her decisions were not compliant with GMW or public sector policies and accepted standards of behaviour, nor were they of any benefit to GMW.

432. In response to the draft report, the Chair's legal representative stated that the Chair 'did confirm the business needs for the expenditure'. The Chair did not appear to scrutinise if the expenses claimed were 'reasonable' when she 'confirm[ed] the business needs'. She simply endorsed the MD's relocation claim without questioning the appropriateness of individual items and endorsed reimbursement of his hospitality provided to others, including herself, on the basis that stakeholder engagement by the MD was so important.

Possible breaches of Directors Code

433. The Directors Code is designed to promote adherence to public sector values. Specifically, the Code instructs 'Where policies and procedures are unclear or prove insufficient in particular circumstances, it is advisable to go back to first principles', including considering public sector values when making decisions. These values include a responsibility on the MD and the Chair to act with integrity and impartiality, and to be accountable leaders.

434. Under the Directors Code, the MD and the Chair were required to 'use their position[s] to promote the best interest' of GMW and not 'to seek an advantage for themselves ... or to cause detriment' to GMW.

435. The MD made claims, including for his relocation expenses, LAFHA and alcohol, that were inconsistent with the advice of his senior management, GMW and other government policy, public sector values and the standards expressed by external bodies such as the VPSC. He set a poor example for the staff he was meant to lead, some of whom felt pressured into following his directions with respect to claims they believed were unreasonable or not legitimate.

436. The Chair held three successive leadership positions at public water corporations. It is surprising, therefore, that she showed little insight into the principles and values of public sector leadership, in accepting the MD's claims seemingly without scrutiny. Equally, the MD claimed that his attitudes towards this expenditure from the public purse were endorsed by his peers at other water corporations and unquestioned during his years in the private and public sector.

437. In substantiating the allegations, the investigation found both the MD and Chair may have breached the Directors Code relating to:

- leadership and stewardship
- the best interests of GMW
- financial responsibility
- transparency
- integrity.

438. Similarly, the MD may have breached the Employee Code, which was binding on him and prescribes comparable behaviours expected of employees consistent with the values set out in the Public Administration Act.

439. The MD's representatives stated in response to the draft report that:

At all material times, as is evidenced from his interview and these submissions, Mr Lennon has acted in the best interests of GMW and not sought to obtain advantage for himself or to cause detriment to GMW.

Recommendations

The following recommendations were made on 7 September 2018:

To the Goulburn Murray Water Board:

Recommendation 1

Rectify the governance issues identified in this report through improved processes that address, including but not limited to:

- personal expense policies and reimbursements
- caps and use of financial delegations
- GMW's compliance with tax obligations
- internal financial controls
- other areas of compliance with the Standing Directions for the Minister for Finance.

In doing so, report progress on steps taken quarterly to the Department of Environment, Land, Water, and Planning (DELWP), and consider the appointment of an independent external auditor and/or probity practitioner.

Recommendation 2

Taking into account the findings of this report, consider if the Managing Director has complied with his employment contract and/or codes of conduct and take appropriate action.

Recommendation 3

Consider whether GMW has grounds to seek repayment from the Managing Director in relation to:

- I. The Managing Director's 'relocation expenses'
- II. Any tax liability or any associated penalties owing due to the LAFHA
- III. Personal expense claims reimbursed.

Board's response (from new Chair on 10 September 2018):

The Board takes the Draft Report extremely seriously. It does not seek to make any submissions on the recommendations. However, I advise that the Board intends to take steps to prepare to implement recommendations [1, 2 and 3] immediately ...

To the Minister for Water:

Recommendation 4

Require assurance from the Board, via reports to DELWP, of the rectification of governance issues identified in this report, including but not limited to compliance with the Standing Directions of the Minister for Finance.

Minister's response:

The Minister supports this recommendation.

The Secretary will require the Board to report quarterly on progress with implementing these recommendations and the outcomes achieved until all of the recommendations are fully implemented.



Hon Lisa Neville MP

Minister for Police
Minister for Water

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WARNING

This information is being communicated pursuant to the *Independent Broad-based Anti-corruption Commission Act 2011*. Breach of the confidentiality of this information may be a criminal offence.

Ms Deborah Glass OBE
Victorian Ombudsman
Level 2
570 Bourke Street
MELBOURNE VIC 3000

Dear Ms Glass

OMBUDSMAN DRAFT REPORT INTO A PROTECTED DISCLOSURE - ALLEGATIONS OF IMPROPER CONDUCT

I refer to your investigation into allegations of improper conduct by the Managing Director and former Chair of Goulburn Murray Water. I am deeply concerned by the findings of your report. It shows poor judgement and leadership by the former Chair and Managing Director. The behavior and decision making of these two individuals was contrary to advice from their own staff and extensive material and guidance provided by the Department of Environment, Land, Water and Planning and the Victorian Public Sector Commission.

Well established codes of conduct, policies and guidance govern public sector entities across Victoria and these are routinely reinforced through water sector induction and governance oversight processes. The former Chair and Managing Director have failed to respect these standards and have conducted themselves in a way that undermines community confidence in GMW – a water corporation responsible for critical services to rural communities. The government expects the highest standards of integrity from public sector leaders and these leaders fell well short of these expectations.

I take these matters very seriously and I accept your recommendations.

As you may be aware, I have recently appointed a strong Chair with extensive public sector experience to work with the board, to regain the confidence of the northern Victorian community in Goulburn Murray Water.

I am ensuring the new Chair and Board give immediate attention to address the findings and recommendations in your report. This includes the board's consideration of the grounds for repayment of misused funds.

Yours sincerely

Hon Lisa Neville MP
Minister for Water

13/9/18

**To the Department of Environment, Land,
Water and Planning:**

Recommendation 5

Review the hospitality and related personal expense policies of Victorian water corporations, to ensure consistency and that public expenditure is in accordance with relevant whole of government policies, codes of conduct and community expectations.

Secretary's response:

The Department of Environment, Land, Water and Planning (DELWP) supports this recommendation.

As a priority, DELWP will write to boards in the water sector, requiring each board to review their existing hospitality and related personal expense policies and public expenditure to ensure consistency with whole of government policies, codes of conduct and community expectations.

In consultation with the water sector and other public sector entities within the portfolio, DELWP will develop a principles-based model policy by January 2019. The model policy will be underpinned by binding instruments such as the Codes of Conduct.

DELWP will require each Board to report annually on other policies by 30 June 2019, as part of the existing annual reporting cycle.

In conjunction with other entities, DELWP will also support learning and development for executive members of public sector entities and expand upon its existing induction program for directors in the water sector by the end of October 2019.

....

Your report brings to light serious integrity failures of the former Chair and Managing Director of GMW. I expect all public entities in DELWP portfolios to uphold core public sector values and codes of conduct. It is deeply disappointing that, despite being well informed about public sector standards, two senior officials have acted in a way that undermines public confidence and trust.

DELWP provides a range of resources and programs to assist board members to understand their responsibilities and to ensure public entities fulfil their functions effectively and in compliance with relevant laws, policies and public sector values. These are regularly updated and reinforced.

To the Victorian Public Sector Commission (VPSC):

VPSC's response:

The Commissioner accepted recommendations 6 and 7, noting that these recommendations were made in consultation with the VPSC.

Recommendation 6

Develop a handbook for public sector entity executives, drawing on the approach adopted in the existing Victorian Public Service Executive Employment Handbook.

Recommendation 7

The Ombudsman made the following recommendation to the Department of Environment, Land, Water and Planning relevant to this investigation in the report *Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board* in March 2017:

- The department, in partnership with an external provider, consider developing and delivering an education and training program for people who are appointed to board or chief executive officer positions in public sector entities under the department's portfolio to:
 - a. build their awareness and skills regarding public sector policies, obligations and accountabilities, particularly regarding the expenditure of public money
 - b. target relevant parts of the program at office holders who have little or no experience in the public sector.

The department subsequently implemented a program.

The Ombudsman now recommends the VPSC, in conjunction with, and supported by other relevant entities, develop induction for incoming Board and Chief Executive Officers/Managing Directors. This should include instruction on the codes of conduct; gifts, benefits and hospitality policy; guidance on managing conflicts of interest; and information on key items of executive employment policy.

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March 2018

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November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

September 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board

June 2017

Apologies

April 2017

Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

February 2017

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

2017

Investigation into the financial support provided to kinship carers

December 2017

2016

Investigation into the transparency of local government decision making

December 2016

Ombudsman enquiries: Resolving complaints informally

October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Report on recommendations

June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Councils and complaints – A report on current practice and issues

February 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

2014

Investigation following concerns raised by Community Visitors about a mental health facility

October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria

August 2014

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