

ACTEW
CORPORATION

ACTEW Corporation Ltd.
Acton/AGU House
Level 5, 40 Bunda Street
Canberra ACT 2600
GPO Box 366 Canberra ACT 2601

Tel (02) 6248 3111
Fax (02) 6248 3567
actew.com.au
APB 86659 381 946

21 March 2013

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Mr Andrew Barr MLA
Deputy Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Chief Minister

Dear Deputy Chief Minister

I refer to your letter dated 19 March 2013 requesting further information about the circumstances of the under reporting of remuneration for the Managing Director, Mark Sullivan in the 2010-11 Annual Report.

At the end of each financial year Mr Sullivan's performance, including achievement of outcomes against key performance indicators is assessed by the Remuneration Committee. At its meeting on 1 July 2010, the Committee authorised me to negotiate key performance targets for Mr Sullivan for 2010-11. This is reflected in the minutes of the meeting.

At its meeting on 22 June 2011, the Committee considered a detailed written report from Mr Sullivan on outcomes for the 2010-11 year. A copy of his report is attached.

The Committee noted the outcomes and achievements and agreed that his performance during the year was outstanding and that he had exceeded all of the targets set by the Committee. They approved payment of the agreed short term, long term and special performance bonuses for 2010-11 and a 3% increase in his base salary effective 1 July 2011. The Committee's deliberations are included in the minutes of the meeting.

As advised in my letter dated 18 March 2013 the under reported amount of \$234,417 related to a long term incentive and special bonus payment related to the water security major projects which ceased in 2011-12. Specifically the components of Mr Sullivan's remuneration package for 2010-11 were as follows with the under reported amount being the total of the long term incentive and temporary special performance bonus:

| | |
|---------------------------|-----------|
| Salary | \$429,617 |
| Short term incentive | \$100,000 |
| Long term incentive | \$129,417 |
| Special performance bonus | \$105,000 |
| Super | \$ 91,554 |
| TOTAL | \$855,588 |

This is consistent with his remuneration package which was negotiated and agreed by the former Chairman Jim Service and former Managing Director Michael Costello in May 2008. Additionally, three independent external reviews have been undertaken of Mr Sullivan's remuneration package since he commenced with ACTEW in 2008.

In relation to the veracity of Mr Sullivan's remuneration reported for 2009-10, a review of 2009-10, 2010-11 and 2011-12 was undertaken by the Chief Financial Officer in early October 2012 when the under reporting error was found. Reporting for 2009-10 and 2011-12 has been confirmed as correct.

In relation to the circumstances of how the error occurred and was subsequently identified, a summary of these events is outlined below.

In mid June 2011 ACTEW's Manager Finance and Accounting requested remuneration details from the Human Resources (HR) department for inclusion in the 2010-11 Annual Report. That information was subsequently provided in a spreadsheet in mid July 2011 and included in the draft annual report which was provided to the Audit and Risk Management Committee and Board on 24 August 2011.

Treasury officers advised in early September 2011 that the Chief Minister had requested additional information in relation to Mr Sullivan's remuneration for 2010-11 prior to the Annual General Meeting. The information provided to you in my response dated 8 September 2011 reflected the remuneration details in the 2010-11 annual report which at the time were considered correct. Subsequent information was requested by, and provided to, Garrett Purill in mid September 2011.

In early October 2012 when the Company Secretary Michele Norris was reviewing documentation for an upcoming public accounts committee hearing which was expected to be held after the election, she noted that the remuneration figures reported for 2010-11 and 2011-12 appeared inconsistent.

Ms Norris informed the Chief Financial Officer Simon Wallace and he commenced a review of remuneration reported for 2009-10, 2010-11 and 2011-12. At the same time Ms Norris and Mr Wallace informed me and Mr Sullivan of the apparent reporting error.

Mr Wallace subsequently confirmed that the 2009-10 and 2011-12 figures were accurate and correct; but that Mr Sullivan's remuneration for 2010-11 was under reported by \$234,417. The spreadsheet provided by HR was reviewed and Ms Norris and Mr Wallace noted that the long term incentive and special performance bonus payments had not been included.

Legal advice was sought on the requirements to clarify and correct information in the annual report. Advice was also sought from the Chief Minister's and Cabinet Directorate (CMCD). Requests for advice from CMCD were copied to officers in the Commerce and Works Directorate (CWD), as the directorate responsible for matters relating to territory owned corporations. Legal advice was received in late October 2012 and advice from CMCD, through CWD, in late January 2013.

In notifying CMCD and CWD of this matter, an assumption was made that senior officers of those Directorates would advise you of this matter as that has been the practice in the past.

To ensure the company's corporate and financial reporting obligations were met, the reporting error was also discussed with Deloitte, the auditors contracted by the ACT Auditor General. Their view was that there was no need to perform a restatement of the financial report nor make an adjustment in this year's annual report as the error was considered immaterial to the audit.

Satisfied that the company's obligations had been identified; considered and addressed, I sent a letter to the Treasurer on 8 March 2013 advising of the reporting error and attaching a corrigendum and draft letter to the Speaker of the Legislative Assembly.

The Board had a lengthy discussion about this matter at its meeting yesterday. Directors are obviously extremely concerned and regret that the reporting error has occurred and that you had not been informed earlier of this matter.

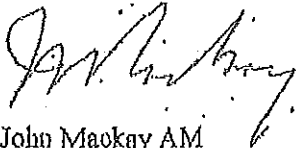
A number of actions were agreed by the Board. The matter will be referred to PricewaterhouseCoopers who is currently undertaking a review of ACTEW's governance framework and arrangements with a request they review the circumstances that led to the under reporting and to recommend measures to avoid a recurrence in the future. Management will also undertake an internal review of processes relating to the provision of information for inclusion in the annual report. The Board also agreed to engage Egan and Associates to undertake a further review of Mr Sullivan's remuneration.

Finally, the Board requested that the Deputy Chair and Chair of the Audit and Risk Management Committee Michael Basson, the Chair of the Safety and Environment Committee Wendy Caird, and I, seek a meeting with you so that we can discuss this matter personally. I will contact your offices shortly to make a time for us to meet with you.

I trust the above information clarifies this matter. I have also attached a detailed chronology of timing and events which may assist you.

Again I apologise for not informing you personally of this matter at the time I was made aware of it and will ensure this oversight does not occur again.

Yours sincerely



John Mackay AM
Chairman

6

ODonnell, Michelle

From: Gallagher, Katy
Sent: Monday, 25 March 2013 9:22 AM
To: Capple-Wood, Andrew
Subject: Fwd: ACTEW CEO Remuneration

COPY

Just received this email. I'm not sure that this clarifies anything other than 800k + is too much? Your thinking?

Katy

Sent from my iPhone

Begin forwarded message:

From: "Mackay, John" <John.Mackay@actew.com.au>
Date: 25 March 2013 9:10:01 AM AEDT
To: Katy Gallagher <katy.gallagher@act.gov.au>, "Andrew Barr" (<andrew.barr@act.gov.au>)" <andrew.barr@act.gov.au>
Subject: ACTEW CEO Remuneration

Katy/ Andrew

As you can imagine the issue of the Managing Directors remuneration and the reporting error has occupied a lot of mine and others time over the weekend

Mark Sullivan had a number of conversations with me yesterday and has put forward a proposition which I believe is generous and worthy of consideration.

He would be willing to terminate his existing contract with Actew Corp. His bonuses would be paid pro-rata to 31/3. No other termination provision.

A new contract would commence 1/4/2013. It would provide for \$630000 salary and 10% super. Total remuneration \$696,000. Because of Superannuation law there may be some balancing between salary and super but no change in total remuneration. No performance pay but annual performance review. The term of the contract would mirror the existing contract through to 2016. He would expect a cpl based increase in 2014 and 2015.

His full remuneration for 2013/2014 would be would be about \$770,000 under the mix of contracts. The new result having a full year impact in 2013/2014

The expected maximum payable under his current arrangement this year is approx \$830000. Last year it was \$866,000. Mark is therefore taking a cut of \$140,000 each year for the next three years

I fully expect John Egan and Associates will still report the current salary as reasonable. We will have him conduct a review asap and probably this week.

Mark chose the numbers partly to retain parity with what he would be receiving as a Secretary of the Commonwealth had he not been recruited to Actew. A level 2 Secretary has remuneration of \$713,000 going to \$758,000 on 1/7/2014

With this would come an unconditional apology from Management and myself for the reporting error and the delay in notifying you as shareholders. The Board in referring the error to the PWC review expect there will never be a repeat.

I feel this has the basis for taking a lot of heat out of current issue. It would allow us to concentrate on a robust but positive response to the ICRC, complete the Cotter Dam Project and build a world class water utility free of bullying, harassment or practices of decades ago.

Mark has told me that he is making this proposal on the basis that if the shareholders did not appreciate the extent of his remuneration, for whatever reason, he would be willing to adjust his remuneration as far as possible in line with those expectations.

If you felt this proposal should be progressed I would discuss it fully with my Board colleagues. I would expect quick consensus.

I am available anytime to speak.

Regards

John

John Mackay AM
Chairman, ACTEW Corp

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28 March 2013

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Mr Andrew Barr MLA
Deputy Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Chief Minister

Dear Deputy Chief Minister

I refer to your letter of 26 March 2013 requesting information relating to remuneration arrangements for the Managing Director, Mark Sullivan.

The Board met on Wednesday evening 27 March 2013 to discuss the letter and once again reviewed the circumstances that led to the reporting error in the 2010-2011 Annual Report. The Board again concluded that this was an error and not a deliberate intention to provide incorrect information or to withhold details of Mr Sullivan's remuneration from publication. The Board also noted that the correct figures were reported in the subsequent annual report for 2011-12.

In retrospect, I should have informed you and the Directors as soon as I was advised of the error in October 2012 and I have apologised to the Board and to you for that oversight. The delays in providing a corrigendum to the 2010-11 Annual Report have been acknowledged by you and the Board and were outlined in the chronology of events provided with my letter of 21 March 2013.

In relation to your specific questions, the following information is provided.

Remuneration Details

Mr Sullivan's remuneration arrangements may appear quite complex and this has no doubt contributed to recent debate and your questioning of his remuneration. External reviews have consistently confirmed that the remuneration arrangements are appropriate so it may be useful to set out Mr Sullivan's employment entitlements.

Mr Sullivan's employment arrangements are set out in the contract negotiated in 2008 by the then Chair of ACTEW, Mr Jim Service, Mr Michael Costello then Managing Director of ACTEW, and Mr Sullivan, and reported to the Board at the time and the then Shareholding Ministers. The contract was signed by the incoming Chair of ACTEW (myself) and Mr Sullivan in May 2008. All decisions taken by the Board's Remuneration Committee subsequently have been governed by the arrangements laid out in that contract.

On commencement in 2008 Mr Sullivan's total fixed remuneration package was \$484,700 comprising gross annual salary of \$370,000, superannuation of 31% of salary (or other amount as required under relevant legislation from time to time in the Commonwealth Superannuation Scheme), a short term incentive of \$70,000 and a long term incentive of up to 10% of gross annual salary in year one, 20% of gross annual salary in year two and 30% of gross annual salary in year three and thereafter.

In 2010, the short term incentive increased to \$100,000 and a special performance bonus of 20% of Mr Sullivan's total fixed remuneration was applied to the remuneration package; though this was only for the 2010-11 and 2011-12 financial years. Such arrangements were consistent with his contract of employment. They also were stimulated by a report by Egan Associates in 2010. Further, that it was becoming more common for CEOs to be paid an incentive in meeting major challenges. The water security projects were front of mind by the Board at that time.

You requested a breakdown of the remuneration package for Mr Sullivan for 2008-09, 2009-10, 2010-11 and 2011-12. These figures are outlined below but it should be noted these are remuneration entitlements, some of which are paid in subsequent years, and is not the remuneration paid to him in that year.

For the 2009-10 year, the first year remuneration was included in annual reports, the remuneration for all executives reflected the salary and superannuation for that year together with the long and short incentives for 2008-09 (which were paid in 2009-10). In subsequent years, remuneration details have been reported on an accrual basis. The reasons for this were detailed in an email from the Company Secretary to Garrett Purtil on 13 September 2011. Therefore the remuneration entitlements outlined below for 2009-10 are different to what is in the 2009-10 Annual Report.

2008-09

| Component | \$ |
|----------------------|---------|
| Salary | 351,795 |
| Long term incentive | 74,000 |
| Short term incentive | 70,000 |
| Superannuation | 85,361 |
| Total | 581,156 |

2009-10

| Component | \$ |
|----------------------|---------|
| Salary | 408,907 |
| Long term incentive | 123,254 |
| Short term incentive | 100,000 |
| Superannuation | 85,063 |
| Total | 717,224 |

2010-11

| Component | \$ |
|---------------------------|---------|
| Salary | 429,617 |
| Long term incentive | 129,417 |
| Short term incentive | 100,000 |
| Special performance bonus | 105,000 |
| Superannuation | 91,554 |
| Total | 855,588 |

2011-12

| Component | \$ |
|---------------------------|---------|
| Salary | 442,614 |
| Long term incentive | 162,335 |
| Short term incentive | 100,000 |
| Special performance bonus | 54,075 |
| Superannuation | 95,124 |
| Total | 854,037 |

You also requested the timelines for payment of Mr Sullivan's bonuses and incentives. As advised in an email to Garrett Purtill on 13 September 2011, incentives and bonuses earned in a financial year are paid in July the following year after performance assessments have been undertaken. Specifically in relation to when Mr Sullivan received payment of his incentives, I advise the following:

- 2008-09 incentives were paid on 8 July 2009
- 2009-10 incentives were paid on 7 July 2010
- 2010-11 incentives were paid on 6 July 2011
- 2011-12 incentives were paid on 18 July 2012

Annual Performance Reviews

Annual reviews of Mr Sullivan's performance are undertaken by the full Board (meeting as the Remuneration Committee). The Committee determines and approves the payment of incentives and annual salary increases having assessed Mr Sullivan's performance, including the agreed key performance measures and targets. This is in accordance with the Committee's Charter.

The Committee's decisions are minuted and copies of the minutes of meetings are provided to you. Copies of minutes for meetings in July 2009, July 2010, June 2011 and June 2012 are at "A". It is important to note here that the Committee does not approve remuneration amounts, rather its approval of incentive payments is consistent with, and reflects, Mr Sullivan's contractual arrangements.

In reviewing Mr Sullivan's performance in 2010-11, and in accordance with his contract, the Committee at its meeting on 22 June 2011 approved a 3% salary increase and the payment of the agreed short and long term incentives and the special performance bonus. Those amounts

were a short term incentive of \$100,000 a long term incentive of \$129,417 (both in accordance with his contract) and a special performance bonus of \$105,000 associated with the water security projects, the latter being for the 2010-11 and 2011-12 financial years only. In the 2010-11 financial year the Committee approved payment of the full special performance bonus and in 2011-12 agreed to pay 50% of the bonus. This bonus no longer applies.

You have requested copies of Mr Sullivan's performance papers presented to the Remuneration Committee. The report for 2010-11 was provided to you with my letter of 21 March 2013. At "B" are reports for 2008-09, 2009-10 and 2011-12. Mr Sullivan is open and honest in his self assessment in the letters accompanying these reports and I would ask that these comments and papers are treated in confidence and not released.

External Remuneration Reviews

Reviews of Mr Sullivan's remuneration were undertaken by Egan Associates in 2008, 2009 and 2010. No reviews were undertaken in 2011 and 2012. Copies of the strictly confidential reports are at "C" but I would ask, and stress to you, that some of the commercial information in these reports is the intellectual property of Egan Associates and that the information is not provided, or copied, to any other party.

Egan Associates is a well known and respected executive remuneration company which works with both private and public sector organisations, including ASX listed companies and public unlisted companies.

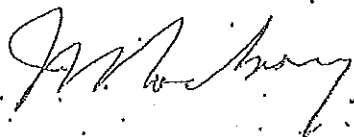
You will recall I advised in my letter of 21 March 2013 that the Board resolved at its meeting on 20 March 2013 to request a further review. A draft copy of the report was provided late yesterday afternoon by Egan Associates for consideration by the Board at its meeting last night. The Board is satisfied that the review has concluded that Mr Sullivan's remuneration arrangements continue to be appropriate, particularly given the unique structure and responsibilities of ACTEW. Egan Associates found that in the "restricted market sector focusing on industrial, energy, utilities and selected consumer entities, addressing an aggregate sample of more than 70 companies, the Managing Director's remuneration is more closely aligned to the 10th percentile and well below the 25th percentile in all respects". In other words 90% of CEOs in that sample of 70 companies are paid more than Mr Sullivan.

In particular, Egan Associates note that they are unaware of any other Government controlled or privately owned corporate entity in Australia which has the breadth of operational and investment accountability that ACTEW has and that the effective provision of services is of critical importance to residents as well as investment returns to the Government. The Board will further consider the review findings at a future meeting once the final report has been received. I am happy to show you a copy of the draft report and forward a copy of the final report once it is to hand and considered by the Board.

One issue that the Board will also address in the near future is a simplified remuneration package for Mr Sullivan. It is apparent that an understanding of his remuneration may be improved by reviewing the somewhat complex combination of salary and incentives in the current contract which may have contributed to the current confusion surrounding his remuneration details. Mr Sullivan has indicated his agreement to such an approach.

The Board requested that I again offer that the full Board, or myself and the Chairs of the Audit and Risk Management Committee (Michael Easson) and Safety and Environment Committee (Wendy Caird) meet with you to discuss this matter personally.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Mackay', written in a cursive style.

John Mackay AM
Chairman



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nctew.com.au
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28 March 2013

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
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Mr Andrew Barr MLA
Deputy Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Chief Minister *Katy*

Dear Deputy Chief Minister

The ACTEW Board met on 20 March 2013. Key matters discussed at the meeting are outlined below.

Managing Director's Remuneration in 2010-11 Annual Report

The Chairman briefed the Board on his meeting with you on 18 March 2013, and your concerns which you relayed to him at that meeting.

The Board noted recent correspondence dated 8 March 2013, 18 March 2013 and 19 March 2013 on the under reporting of my remuneration in the 2010-11 Annual Report. A draft response to your letter dated 19 March 2013 and a draft chronology of events was circulated.

The Board had a lengthy discussion and expressed their regret that the reporting error had occurred and that you had not been informed earlier of this matter. The Chairman acknowledged that notification to you should have been made in a more timely manner and outlined some of the factors that contributed to this.

The Board sought clarification and confirmation of a number of matters included in the draft chronology and discussed the resolutions of the Remuneration Committee at its meeting in June 2011.

The Board agreed to refer the reporting error to PricewaterhouseCoopers who is currently undertaking a review of ACTEW's governance framework and arrangements with a request they review the circumstances that led to the reporting error and to recommend measures to avoid a recurrence in the future.

Management will undertake an internal review of processes relating to the provision and inclusion of information in the annual report.

Egan and Associates will be asked to conduct a review of my remuneration noting that the last review was undertaken in 2010 and the Board will consider the outcomes of the review.

The Chairman, Deputy Chairman and Chairman of the Audit and Risk Management Committee Michael Basson, and the Chair of the Safety and Environment Committee Wendy Caird will seek a meeting with you to discuss the matter personally with them. The Chairman undertook to contact you to arrange a time to meet.



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5 April 2013

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Chief Minister

**NOTICE OF GENERAL MEETING OF
ACTEW CORPORATION LIMITED ACN 069 381 960**

Notice is given that a General Meeting of Members of ACTEW Corporation Limited will be held in the Board Room of the Company's registered office, Level 5 ActewAGL House, 40 Bunda Street, Canberra at 2pm on Monday 15 April 2013.

You have agreed in a letter dated 4 April 2013 to shorten the notice period for the meeting in accordance with clause 30 (2) (ii) of the Constitution.

Section 249X (1) of Corporations Act provides that a member of a company who is entitled to attend and cast a vote at a meeting of the company's members, may appoint a person as the member's proxy to attend and vote for the member at the meeting. A proxy is not required to be a member of the Company. Attached is a proxy appointment form if you are unable to attend the Meeting.

Business

- i) To receive a report from the ACTEW Board on the outcomes of the governance review initiated at the request of the voting shareholders.
- ii) Clarify the voting shareholders expectations in regard to the Board's role in setting the Managing Director's remuneration including:
 - a. Confirming the role of the Board in remuneration setting for the Managing Director;
 - b. Clarifying the expectation of independent advice to the Board in consideration of the above;

- c. Confirming the Board will advise the voting shareholders in July each year of the Managing Director's remuneration including components; and
 - d. Confirming the Managing Director's remuneration details will be reported in the annual report.
- iii) Discuss potential improvements in transparency and reporting between ACTEW and the voting shareholders including:
- a. Development of a communication protocol; and
 - b. Improved disclosure in the Statement of Corporate Intent including discussion around the performance indicators.
- iv) Any other business.

Michele Norris

Michele Norris
Company Secretary

APPOINTMENT OF A PROXY BY A VOTING SHAREHOLDER OF

ACTEW CORPORATION LIMITED
LEVEL 5 ActewAGL HOUSE, 40 BUNDA STREET,
CANBERRA ACT 2600

ACN 069 381 960

I, Katherine Ruth Gallagher MLA, Chief Minister of the Australian Capital Territory and a Voting Shareholder of ACTEW Corporation Limited, of business address c/- ACT Legislative Assembly, Civic Square, London Circuit, Canberra ACT

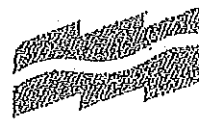
2600, hereby appoint

as my proxy as a Voting Shareholder of the Company at a General Meeting of the Company to be held at 2pm on Monday 15 April 2013 and at any adjournment of that Meeting.

The Meeting will be held in the Board Room of the Company's registered office, Level 5 ActewAGL House, 40 Bunda Street, Canberra ACT 2600.

Signed:.....
Katherine Ruth Gallagher

Date:.....



ACTEW
CORPORATION

ACTEW CORPORATION LIMITED

ACN 069 381 960

GENERAL MEETING

at 2pm on Monday 15 April 2013 in the
ACTEW Board Room, Level 5 ActewAGL House
40 Bunda Street, Canberra ACT 2600

AGENDA

1. Notice of Meeting
2. Agreement of Voting Shareholders to shorten notice of the meeting
3. Minutes of Annual General Meeting No. 18 held on 19 September 2012
4. Business of Meeting