

## NSW Select Committee Inquiry – Questions taken on notice

- 1. What steps has Murray Irrigation taken to ensure that directors who own water entitlements cannot use internal information for personal profit? And what steps has Murray Irrigation taken to ensure that directors cannot profit from internal information, such as the internal trading market? What steps have you actively taken?**

As part of its broader internal corporate governance framework, Murray Irrigation maintains the following documents:

- Company Constitution;
- Board Charter;
- Code of Conduct;
- Directors' Handbook;
- Conflict of Interest Policy; and
- Conflict of Interest Procedure.

These documents have either been established or updated since 2016/2017. Among other things, these documents ensure directors are aware of, and comply with, their fiduciary and statutory duties.

Murray Irrigation now has a comprehensive risk management and governance team comprised of the following:

- Company Secretary & General Manager Corporate Services: responsible for facilitation of Board business, risk management and compliance functions, sustainability and licencing, and coordination of internal audit;
- Assistant Company Secretary; Governance & Records Advisor: responsible for preparing Board packs minutes and reports, ASIC reporting and compliance.
- Governance, Risk and Compliance Advisor: reports to the Company Secretary in relation to general governance, risk advisory and internal audit.
- Sustainability and Licencing Officer: reports to the Company Secretary in relation to sustainability, licencing compliance and environmental obligations.

In addition to, and consistent with, the general statutory and fiduciary duties of the Board, Murray Irrigation has procedures and standards which are specifically targeted at ensuring that directors cannot profit from internal Murray Irrigation information.

For example, the Directors' Handbook (which includes the Directors' Code of Conduct) reflects the legal duties on the Board such as specifying that directors must not discuss confidential Board matters with anyone outside the Board without explicit authorisation of the Board,<sup>1</sup> and must attend scrupulously to the disclosure of their interests of any real or perceived conflicts of interest.<sup>2</sup>

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<sup>1</sup> Directors' Handbook at paragraph 20 states Directors are expected to: *'Respect the confidentiality of matters brought before the Board, of the Board's deliberations, of the outcomes of those deliberations and, generally, of the Company's affairs. This means Directors may not discuss confidential Board matters with anyone outside the Board without explicit authorisation of the Board.'*

<sup>2</sup> Directors Handbook at paragraph 57 states *'Individual Directors are equally bound to raise the possibility or probability of their having a conflict of interest and to seek the Board's advice on the proposed course of action.'*

Directors Handbook at paragraph 22 states that Directors are expected to: *'Attend scrupulously to the disclosure of their interests and to abide by the spirit and the letter of the Company's Board Conflict of Interest*

In August 2020, Murray Irrigation's Conflict of Interest Policy and Conflict of Interest Procedure came into effect. Upon appointment to the Board, directors are required to submit a Director's Standing Notice of Interest which must be revisited prior to 31 July each year. The Standing Notice requires a declaration by a director of any and all material interests, including dealings in water trading. All current Board members have recorded entries in the Murray Irrigation Conflict of Interest Register and the register is updated following each declaration<sup>3</sup>.

Specifically in relation to water trading, Murray Irrigation enforces strict water trading embargoes whenever the Board is deliberating on sensitive market information through a Water Trading Protocol contained in Murray Irrigation's Conflict of Interest Procedure. The Murray Irrigation Water Trading Protocol prohibits Directors from trading water and water entitlements while in possession of information which is not publicly known, and which could affect the price or value of water or water entitlements. The Murray Irrigation Water Trading Protocol applies to both trading on the director's own behalf or on behalf of another person or entity.

The Murray Irrigation Water Trading Protocol also requires Directors to notify the Company Secretary in writing of any trades, whether directly or indirectly, in water entitlements (both temporary and permanent), delivery entitlements or Murray Irrigation shares. These declarations are captured in the company's conflict of interest register which is tabled at every board meeting.

Murray Irrigation has also taken a number of actions with the aim of ensuring the confidentiality of Murray Irrigation's confidential information and that the Directors are aware of and abide by their obligations in respect of Murray Irrigation's confidential information. These actions are discussed in detail in response to question three below.

- 2. At a 2017 board meeting of Murray Irrigation, a paper entitled "Snowy Hydro: Carryover product" was tabled for discussion. This paper stated that Chris Brooks and another director were attempting to personally profit from the use of commercially sensitive internal board information. This was done by falsely presenting these requests as coming from the board. Has Murray Irrigation done anything to ensure directors cannot generate arbitrage from external water markets alongside internal, sensitive board information?**

As set out above, Murray Irrigation has established a robust internal corporate governance framework. This includes stronger controls for managing conflicts of interest and protection of sensitive board information. Clause 19 of the Murray Irrigation Constitution provides that any Director with a material personal interest in a matter that is being considered by the Board must not be counted in a quorum, must not vote on the matter and must not be present while the matter is being considered at a meeting.

Relevantly, should the Board be considering a matter which, if publicly known, could affect the price of water or entitlements, the Water Trading Protocol contained at paragraph 14 Murray Irrigation's Conflict of Interest Procedure requires that Board members must not:

- a) apply for, acquire or dispose of or enter into an agreement to apply for, acquire or dispose of any water entitlements and this applies whether trading on the Board member's own behalf or on behalf of another person or entity;

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*Policy and Procedure governing the declaration and management of real or perceived conflicts of interest including trading in water and entitlements.'*

<sup>3</sup> Directors Handbook at paragraph 54.

- b) get another person (whether a family member, friend, associate, colleague, broker, investment adviser, private company or trust) to apply for, acquire or dispose of or enter into an agreement to apply for, acquire or dispose of any water entitlements for the Board member or other person or entity;
- c) either directly or indirectly, give sensitive board information, or allow it to be given to another person who the Board member knows, or should know, would be likely to undertake any of the prohibited activities described in a) or b) above.

### **3. Has Murray Irrigation fully implemented the recommendations of the Deloitte report?**

At Murray Irrigation's 2017 Annual General Meeting the full board at the time resigned and an interim board was appointed in its place.

The interim board comprised former Murray Irrigation directors as well as successful local business leaders who had the singular aim of building an effective board and providing members (and stakeholders) with the opportunity to create a board that would concentrate on the oversight and strategic direction of the company and help to contribute to the prosperity of the region.

The interim board spent considerable time and effort in implementing improvements to the corporate governance of Murray Irrigation. This included hosting a series of meetings across the footprint and intensive consultation with a cross section of stakeholders.

Armed with feedback from those meetings, associated surveys, and recommendations for improvements, the interim board tabled several constitutional changes to an Extraordinary General Meeting of members in April 2018; many of which were passed.

The company also hosted a two-day Director information program in 2018. It featured a presentation by the Australian Institute of Company Directors. Participants were provided with an insight into the roles and responsibilities of directors of a company like Murray Irrigation.

Procedures that are now in place specifically in relation to the confidentiality of information at Murray Irrigation include:

1. Directors are now required to sign Murray Irrigation's Code of Conduct on appointment and as it is updated. Section 13 of the Code of Conduct (which was updated in May 2021) states that the consequences for not adhering to the Code of Conduct and Murray Irrigation's policies and procedures may include termination of employment and engagement with Murray Irrigation.
2. New Directors are provided with copies of, or access to, Murray Irrigation policies, which prohibit, among other things, the transmission or disclosure of confidential information to any party without approval.
3. On appointment, Directors are required to agree to and sign a Confidentiality Agreement. The Confidentiality Agreement defines confidential information as "all information provided by the Provider to the Receiver or otherwise obtained or learned by the receiver relating to the business of the Provider".
4. Directors are required to complete an induction. The company's checklist outlines the information that is required to be filled out and signed by directors including the Confidentiality Agreement, Code of Conduct and Conflict of Interest Policy.
5. Directors are required to undertake mandatory training via Beakon, an external training platform used by MIL. One of the training modules is "Confidentiality Training" which

- provides information on the types of confidentiality, relevant legislation and related internal documents, responsibilities, privacy, information security, and best practice.
6. In March 2019, Murray Irrigation began using a secure Board portal known as 'Diligent' to upload and securely distribute Board and committee packs and papers to Directors. Diligent is a secure cloud-based platform that acts as a centralised repository for documents, assists in creation of Board packs, automates agendas and requires two-factor authentication to access. Prior to this, papers were stored on Google Drive, with hard copies available to Directors on request. MIL Board reports and papers are no longer emailed nor stored on Google Drive, as was the case in 2017. The portal also has the capability to manage which documents can or cannot be exported. Diligent is currently only available to Directors, the CEO and three Murray Irrigation administrators, who are part of the company's governance function. Documents provided through Diligent are inherently confidential by nature of the secure access to Diligent but Murray Irrigation now also explicitly marks Board documents and emails as confidential, including those within Diligent.
  7. Directors are now clear on the use of Murray Irrigation vs personal email addresses in relation to Board communications. Murray Irrigation understands that the use of personal email addresses are limited to the forwarding of calendar invites to enable Directors to access virtual meetings via their personal devices. Text messages are limited to logistics such as instructions to check emails and to discuss availabilities for meetings.

**4. It's of great concern to us that we are still getting, even after—these investigations by Deloitte were instituted in 2016-17, and yet we are still getting questions and complaints from irrigators here this morning in relation to the behaviour and patterns of Murray Irrigation Ltd. Does that worry you in any way—five years later, people are still complaining? Has anything changed?**

There have been material changes to the way that Murray Irrigation operates since 2017.

Murray Irrigation has strengthened its internal systems and controls since 2016/2017 and improved its corporate governance. This includes:

1. The introduction of new policies and procedures across the business and updating existing instruments within the company's overall corporate governance framework as described above. In addition to the changes already covered above:
  - a. Murray Irrigation's Code of Conduct has been updated to clarify that it applies to Directors.
  - b. Murray Irrigation's Directors' Handbook has been updated to provide additional detail and guidance regarding the role, obligations and responsibilities of Directors.
  - c. A Delegations of Authority Policy was introduced by resolution of the Board on 25 November 2020 and became effective from 1 February 2021. The purpose of the policy is to ensure MIL has a comprehensive authority delegation system in place and explains how the delegation system functions within Murray Irrigation.
2. Murray Irrigation has implemented Diligent, as described above, to manage its board affairs, as well as respective programs to formally manage risk, compliance and audit functions and register interactions with shareholders and customers.
3. There have been changes to the Board reporting format, with a focus on providing Directors with the information required to support decision making.

4. Murray Irrigation has engaged an independent external provider to facilitate its internal risk function. The internal auditor reports directly to the Board's Audit and Risk Management Committee and is granted access to staff across the business in order to meet its agreed internal audit schedule.
5. Murray Irrigation has increased the transparency and awareness of its independent whistleblowing service to support a culture of corporate compliance, ethical behaviour and good corporate governance.
6. Murray Irrigation introduced a minimum standard that all directors are required to complete Company Directors Course provided by the Australian Institute of Company Directors or equivalent.

Murray Irrigation is satisfied that it has made significant changes to its governance team and procedures. We are confident that these changes are adequate and being appropriately supervised and monitored.