

NSW Select Committee Inquiry (public hearing 21 November 2022) – Questions taken on notice

1. Are you able to provide a copy of (the 2017 Deloitte Report) to the Committee so that we can better inform ourselves when we're writing the recommendations?

Murray Irrigation Limited understands that references to the Deloitte report are a reference to a report by Deloitte dated 10 October 2017 (**First Deloitte Report**) which was prepared by Deloitte for HWL Ebsworth Lawyers who were acting for Murray Irrigation Limited as independent lawyers.

The First Deloitte Report is confidential and Deloitte was formally retained by Murray Irrigation Limited's independently appointed lawyers HWL Ebsworth for the express purpose of assisting them to give advice to Murray Irrigation Limited.

The First Deloitte Report is addressed to HWL Ebsworth Lawyers and each page marked 'Subject to Legal Professional Privilege'.

The First Deloitte Report was prepared subject to legal professional privilege and Murray Irrigation Limited maintains that the First Deloitte Report is confidential and that it has not expressly or impliedly waived any privilege.

As Murray Irrigation Limited maintains privilege in the First Deloitte Report, it must not act in a manner which is inconsistent with the maintenance of confidentiality in the report.

Neither Murray Irrigation Limited's Board of Directors or Deloitte have approved the First Deloitte Report being released publicly.

In 2022, a further report was obtained from Deloitte dated 15 September 2022 (**Second Deloitte Report**) which sets out all the recommendations from the First Deloitte Report. These recommendations and progress of their implementation are set out in the attached spreadsheet (Attachment 1). This spreadsheet should be read in conjunction with the evidence of Mr McCalman given to the Committee on Monday 21 November 2022.

2. Did (Murry Irrigation) seek to refer (alleged governance failures) to an external agency, i.e., ASIC, or to any regulator with which the governance aspects may have been looked at in more detail?

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

The resignations (and subsequent interim appointments) were reported to the Australian Investments and Securities Commission (ASIC).

To the best of our belief and knowledge, Murray Irrigation Limited did not refer any alleged governance failures to an external agency.

While it was clear from the First Deloitte Report and the recommendations contained in it that there was dysfunctionality on the Board at that time, Deloitte did not recommend any governance failures be reported to an external agency, ASIC or otherwise.

3. If they didn't, (whether) it was discussed at the board level to do so, and if it wasn't, why not?

The current Board does not know what was discussed by former Directors of Murray Irrigation Limited. There is nothing reported in the minutes from 2017 and 2018 regarding a referral of alleged governance failures to any external agencies.

RECOMMENDATIONS

- (a) We have set out the Deloitte's recommendations below and identified the stages of implementation to address each of these recommendations.
- (b) The document is set out in a traffic light system.
- (i) A green shading ■ indicates that the recommendation has been fully addressed and changes have been implemented.
- (ii) A yellow shading ■ indicates that the recommendation has been partially addressed.
- (iii) A red shading ■ indicates that the recommendation has not been addressed.

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
1.		<u>NEW TRAINING AND PROCESSES</u> Introduce a blend of training and compliance-based processes to reinforce understanding of Board and Management of responsibilities under existing policies.	Partially implemented	- Directors are required to attend Australian Institution of Company Directors (AICD) course or equivalent. - Directors are required to complete Equal Employment Opportunity (EEO), Bullying and Harassment modules (last updated in 2017). - No formal training in relation to Directors' Handbook or Code of Conduct.	- Amend Directors' Handbook to include mandatory training requirements. - Ensure attendance at training is a component of annual director review process.	3 – 12 months
2.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>COMPLIANCE WITH CODES</u> Board-reinforced compliance by current Board members with existing MIL Codes of Conduct and Directors' Handbook requirements by imposing mandatory procedures requiring Directors to sign off by a specified date that they will comply with Board-sanctioned policies.	Partially implemented	- The Code of Conduct was amended such that consequences for failure to comply with the Code and MIL policies and procedures may result in termination of employment and engagement with MIL. - Directors are required to sign off on MIL Code of Conduct. - Directors do not sign declaration for Directors' Handbook. - No formal training in relation to Directors' Handbook or Code of Conduct.	Board has now agreed for these to be implemented.	3 – 12 months
3.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>CODE OF CONDUCT INVESTIGATIONS AND SANCTIONS PROCEDURE</u> Code of Conduct Investigations and Sanctions Procedure needs to articulate and defined what is a serious and minor breach. MIL should also include definitions of each type of misconduct in the Directors' Handbook, Staff Code of Conduct and Code of Conduct Investigations and Sanctions Procedure.	To be implemented	- The Code of Conduct Investigations and Sanctions Procedure has not been updated since 30 March 2017. - It does not include detailed definitions and examples of each type of misconduct or what is serious and minor breach.	Board has now agreed for these to be implemented.	3 – 12 months

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
4.	HIGH PRIORITY - 0 TO 3 MONTHS	<p><u>INDEPENDENT REVIEW OF BOARD</u></p> <p>Engage a comprehensive independent review of Board reporting function, processes, and report content and format, to ensure the MIL Board receives an appropriate, consistent and timely level of information to support decision-making.</p> <ul style="list-style-type: none"> • Clear processes and procedures of communication between Management and the Board. • Board paper templates to clearly articulate the evidence gathered, qualify and quantify impact of decision on MIL. 	Partially implemented	<ul style="list-style-type: none"> - Gardner Consulting Services were engaged between 2018 and 2021 to review effectiveness of Board and provide recommendations on Board composition, performance, processes and the relationship between Board and Management. - There has not been an independent review of Board reporting function and processes. This is scheduled to occur in January 2023 as part of an internal audit. - MIL began to use a secure Board portal known as 'Diligent' in March 2019. Access requires two factor authentication. MIL Board papers are no longer emailed or stored on Google Drive. - There have been changes to the Board report format template to provide additional narratives on how to format and complete papers. There is no specific training regarding preparation of Board papers. 	<ul style="list-style-type: none"> - MIL to determine if Board performance review will be conducted internally or externally and provide results to Directors via REMCO or Board (as appropriate). - Audit and Risk Management Committee has approved bringing forward February 2024 Internal Audit to early 2023. 	3 – 12 months underway
5.	HIGH PRIORITY - 0 TO 3 MONTHS	<p><u>REPLACE INDEPENDENT DIRECTOR</u></p> <p>Find replacement Independent Director considering previous solid experience as independent Chairperson with strong focus on corporate governance.</p>	Not implemented	<ul style="list-style-type: none"> - In 2017, Mr Barlow was appointed as an independent Director, Deputy Chair of the Board, an acting Chair for a brief period. Mr Barlow is no longer on the Board. - In 2018 Ms Filson was an independent Director and was appointed Deputy Chair in June 2018. Ms Filson is no longer on the Board. - In 2019, Mr Baxter, a shareholder Director, was appointed Deputy Chair and currently maintains this position. - The Board is responsible for appointing a Chair by Director vote. - Currently there are 5 shareholder-elected Directors and 2 Board-appointed independent Directors. 	This matter will be considered by the Board in 2023	
6.	HIGH PRIORITY - 0 TO 3 MONTHS	<p><u>REMUNERATION AND NOMINATION COMMITTEE COMPOSITION</u></p> <p>Change composition of Remuneration and Nomination Committee to include more than one independent member and consider including an independent non-Board member.</p>	Partially implemented	<ul style="list-style-type: none"> - Charter was updated in May 2022 stating the Committee was to include at least 2 Members with at least one Member being an independent Director. - Committee currently comprises of two shareholder Directors and one independent Director. - An independent non-Board Member is yet to be appointed. 	The Board will consider appointing independent non-Board member(s) to its committees in 2023.	3 – 12 months underway
7.	HIGH PRIORITY - 0 TO 3 MONTHS	<p><u>MINUTES OF MEETING</u></p> <p>Minutes of meetings of the Board and its committees should be electronically recorded or be subject of an outsourced professional service provider to minimise dispute about completeness and accuracy.</p>	Partially implemented	<ul style="list-style-type: none"> - This recommendation was made due to the 'dysfunctional' MIL Board at the time of the First Report. There were concerns raised by Directors as to the accuracy of Minutes. - Deloitte suggests this recommendation may not be relevant as Board composition has changed and no concerns relating to Board minute accuracy has since been raised. <p><u>Current Minute Process</u></p> <ul style="list-style-type: none"> - Minutes are typed in meetings. - Once completed, minutes are sent to CEO and Chair to approve. - Once approved, minutes are published on Diligent and email sent to Board members (within one week of meeting). - Board members may review and request (via the Chair) any required edits. - Once edited, the minutes are sent to the Chair for approval and then archived in MIL's electronic management system and included in the company's minute book within one month of the meeting. 	Not applicable.	

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
8.	HIGH PRIORITY - 0 TO 3 MONTHS	<u>SMS & COMMUNICATION TERMS</u> Revising and enforcing Board communication protocols to exclude SMS or text messages. Include specific terms in Directors' Handbook to ensure Board communications comply with these recommendation guidelines.	Partially implemented	- Text messages are limited to logistics such as instructions to check emails and discuss availabilities for meetings. - MIL Directors' Handbook was updated in May 2021.	To be further updated in relation to methods of communication or restriction.	3 – 12 months
9.	HIGH PRIORITY - 0 TO 3 MONTHS	<u>EMAIL SYSTEM</u> Directors should only communicate within MIL email system and not use personal email accounts.	Implemented	- Directors are clear on use of MIL email vs. personal emails. - Personal emails are used only to forward calendar invites to enable Directors to access virtual meetings via their personal devices.		
10.	HIGH PRIORITY - 0 TO 3 MONTHS	<u>ENCRYPTION</u> Further protocol of encrypting Board papers and requiring the use of a password to access the individual document. Password should be sent out separately.	Implemented	- Access to Diligent requires two factor authentication and is capable of managing what documents can or cannot be exported.		
11.	HIGH PRIORITY - 0 TO 3 MONTHS	<u>CONFIDENTIALITY</u> Remind Board members of confidentiality obligations and impact and ramification of breach. Formal annual training and declarations should be required from each Board member in relation to compliance with confidentiality and conflict of interest policies.	Partially implemented	- Directors are advised of their obligations regarding confidentiality during their induction process. - On appointment, directors are required to sign Confidentiality Agreement. Signed copies have been provided for all current directors with the exception of one. - No formal annual training has occurred for MIL's Confidentiality Policy and Conflict of Interest Policy. - Regular disclosure obligations on Directors under Conflict of Interest Policy procedures and Register of Interests. - Directors undertake mandatory training with Beakon. Modules include Confidentiality Training, Bullying and Harassment.	- Investigate options and external service providers for directors to undertake additional formal training. - This is being followed up. - Review and amend Directors' Handbook and Board Charter if required. - Develop process to gain Management input on any disclosure that selected information should be made public. - Some Directors are yet to complete their mandatory training.	3 – 12 months Underway 0 – 3 months 0 – 3 months
12.		<u>MARKING BOARD PAPERS CONFIDENTIAL</u> Board should clearly mark all Board papers including email communications, meeting agendas, minutes of meetings as confidential.	Implemented	- Between January and December 2018, Board Agendas were marked 'Board in confidence'. - In March 2019, MIL began to use Diligent. Board papers were not marked confidential as documents were inherently confidential due to secure access. - Since August 2022, MIL began marking Board documents and emails as confidential including within Diligent.		

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
13.		<u>FORMAL CONFIDENTIALITY TRAINING</u> Formal training provided by MIL to Directors on confidentiality and sensitive of information.	To be fully implemented	- No formal training is provided but Directors are required to complete the Director Induction Checklist including signing a Confidentiality Agreement and agreeing to comply with policies and procedures.	- Ensure training is provided to Directors to provide clarity on confidentiality of all matters. - Ensure that if Board agrees by consensus or circular resolution that information should be shared, that decision or resolution is to be formally recorded or minuted.	0 – 3 months
14.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>FURTHER ACTION FOR CONFIDENTIALTY BREACHES</u> Consider whether further action and investigation is required with regards to apparent confidentiality breaches that were identified e.g. number of emails relating to Board matters forwarded to parties external to MIL	Implemented	- Further investigations were conducted by another forensic investigation firm engaged by a third party law firm on behalf of MIL. - This report is confidential and privileged. Deloitte reviewed scope of works which indicated this recommendation has been implemented.	- Develop additional procedures to document discussions by Directors with MIL external stakeholders e.g. communications register.	0 – 3 months
15.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>APPLICABILITY OF STAFF CODE</u> Refer to HWLE advice and determine the applicability of Staff Code of Conduct to Directors who are also employees of MIL.	Implemented	- Code of Conduct was updated in May 2021 and this was clarified in that version. - Directors' Handbook was updated in May 2021 and also included changes to clarify this.		
16.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>SEPARATION BETWEEN BOARD AND MANAGEMENT</u> Remind Directors of the separation of their roles and responsibilities to Management and employees including of Clause 7 of Staff Code of Conduct – MIL employees contact with the Board should only be via the CEO unless otherwise approval by the CEO.	Implemented	- New <i>Delegations of Authority Policy</i> was introduced on 1 February 2021 to explain the delegation system and functions. - Clause 7 was replaced with Section 11.4 of the same effect. - Information on separation of Board and Management responsibilities are included in MIL's policies and procedures. - No training has been provided.	- Review and amend MIL Board Charter to define roles of Board, Chair, CEO and Executive management. - Investigate options and external services to provide training. - Develop mechanism for Chair of Board to communicate comments, advice, and decisions to CEO.	0 – 3 months
17.	HIGH PRIORITY – 0 TO 3 MONTHS	<u>DUTY TO CRITIQUE, MANNER OF CRITIQUE</u> Remind MIL Management and Directors of Clause 53 of the Directors' Handbook of Board's duty to critique quality of work done at its behest, whether by a Committee or Management. Board's critique must be professional and constructive.	Implemented	- Clause 53 was replaced by Clause 51 but remains the same in wording.	- Develop mechanism for Board to provide constructive feedback via Chair to CEO on quality and value of Board papers.	3 – 12 months
18.		<u>DIRECTOR FEES</u> Raised in Second Report.	Not done		- Remove Directors from employee payroll system and pay their director fees on receipt of appropriate tax invoice from each director. - Liaise with finance to implement and determine time for transition / have in place for new financial year.	0-3 months

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
19.	LONG TERM PRIORITY – 3 MONTHS+	<p><u>CHANGE BOARD MEMBERS</u></p> <p>Transition off the MIL of all current Board members at expiry of four-year term to allow new Directors to join the Board (and increase independent Directors from 2 – 4, including Chairperson).</p> <p>Refer to HWLE advice on permissibility of these changes.</p>	Partially implemented	<ul style="list-style-type: none"> - Following the First Report, all Board members submitted their resignation at the conclusion of the 2017 AGM. - Two shareholder Directors were elected at the 2017 AGM. The Interim Board would be appointed and overseen by these two Directors. - In May 2018, three new shareholder Directors were elected via postal ballot and the Interim Board resigned. - In June 2018 three independent Directors were appointed by shareholder Directors. Currently, five shareholder Directors and 2 independent Directors. - Anecdotally, shareholders are not supportive of increasing independent Directors. - There has not been an independent Director appointed as Chairperson. 	<ul style="list-style-type: none"> - Consider prior to 2023 on appointment of independent Director to Chair or Deputy Chair. - Consider additional training for Chair. - Consider mentor programs for new directors, or directors moving into Chair / Deputy Chair role. 	12+ months
20.	LONG TERM PRIORITY – 3 MONTHS+	<p><u>DIVERSITY OF BOARD</u></p> <p>Consider gender diversity and professional skills of Directors, considering qualifications in accounting, business, engineering and law.</p>	Partially implemented	<ul style="list-style-type: none"> - Since 2017, Constitution was amended to update definition of an independent Director removing requirement for tertiary qualification and not less than 10 years' experience. - Selection and Appointment of Directors Policy was updated in 2022 and included minimum candidate criteria and requiring Directors to have appropriate mix of skills, diversity and gender. - Board engaged executive search firms to appoint last five independent Directors. - The Board currently only has one female Director. 	<ul style="list-style-type: none"> - Deloitte recommendation to amend Constitution to re-include tertiary qualification and 10 years' experience requirement for independent directors was not supported by Board at October board meeting. - Reconsideration of draft report prepared by Sauce Communications on 16 June 2021 (which considered gender balance). CEO to review and prepare Board paper with Management recommendations. - Engage a study on how regional unlisted public companies recruit and maintain Directors. 	0 – 3 months
21.	LONG TERM PRIORITY – 3 MONTHS+	<p><u>CHANGE BOARD COMPOSITION</u></p> <p>Reduce Board members from eight to five or six allowing for three to four independent Board members in reduced size. This requires amendment to the constitution.</p>	Not done	<ul style="list-style-type: none"> - Section 4.2 of the Constitution remains unchanged (i.e. no more than 3 Independent Directors). Special resolution was put to shareholders in EGM in April 2018 to change Board composition which was lost on poll vote (66.1% for and 33.9% against). 	<ul style="list-style-type: none"> - Resolution to require “at least three” independent directors has been supported by the Board and added to 2022 AGM Notice of Meeting. - Draft amended Constitution completed. - Shareholder approval to be sought at 2022 AGM (currently postponed due to flooding; date to be confirmed). 	0 -3 months underway
22.	LONG TERM PRIORITY – 3 MONTHS+	<p><u>INDEPENDENT REVIEW PANEL</u></p> <p>If above recommendations cannot be agreed by the Board, MIL should consider appointing an independent review panel with broad terms of reference to assess governance and identify mechanisms for more direct shareholder input towards governance.</p>	Not done	<ul style="list-style-type: none"> - Current CEO supportive of independent review panel if MIL Board is not capable of agreement on implementation of outstanding governance recommendations. - Deloitte is of the view this recommendation may no longer be relevant as most recommendations have been agreed or will be addressed by this round of governance review. 		

No.	FIRST REPORT (7 Sept 2017 + 10 Oct 2017)		SECOND REPORT (15 Sept 2022)		MIL PLAN	
	Priority	Recommendations	Status	Comments	Action	Time
23.		Culture Raised in Second Report.	Not done		<ul style="list-style-type: none"> - Chair and CEO to consider holding 'town hall' presentations to provide updates and important information. - Seek Board approval for shareholder education sessions / workshops regarding roles and responsibilities of Directors and importance of independent Directors. - Investigate options and external service providers for directors to undertake formal Respect the Workplace training. 	3 – 12 months