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Katy Gallagher MLA

CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR REGIONAL DEVELOPMENT
MINISTER FOR HIGHER EDUCATION

MEMBER FOR MOLOXGLO

Mr John Mackay AM
Chair
ACTEW Corporation

Dear Mr Mackay

Thank you for meeting with us this morning to discuss reporting anomalies associated with the remuneration arrangements for ACTEW's Managing Director, Mr Mark Sullivan.

As agreed at the meeting, we would like written responses to the questions outlined at the end of this correspondence by 5.30pm today.

This will enable the shareholders to finalise a statement to the ACT Legislative Assembly at the earliest opportunity and to place on the record a full account of the events that have led to reporting discrepancies in this matter.

As outlined to you this morning, the shareholders take this matter most seriously. Matters of trust and transparency go to the heart of the relationship between the utility and ACT shareholders. Errors and omissions of the kind outlined in your letter to the Treasurer on the 8th March 2013 regarding the remuneration package of the Managing Director, Mr Mark Sullivan, gives rise to serious questions about the adequacy of disclosure on the part of ACTEW.

It is clear from your letter to the Treasurer dated 8 March 2013, that at least one ACTEW annual report has reported incorrect information associated with the level of remuneration paid to the Managing Director and has misled the shareholders, the ACT Legislative Assembly and the Canberra community being misled.

This is not a minor matter and will not be treated as such.

As shareholders we are also extremely concerned at the inordinate period of time that has elapsed between the time when the error in the 2010/11 Annual Report on page 31 was identified by ACTEW and when this matter was brought formally to the government's attention in your letter to the Treasurer on the 8 March 2013.

We are also concerned that advice provided to shareholders on the 8 September 2011 that Mr Sullivan's remuneration package totalled \$621,171 was clearly incorrect. This was the final piece of formal correspondence from the ACTEW Board with the shareholders regarding the

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Managing Director's salary and was in line with previous advice to the shareholders around an appropriate salary for the position.

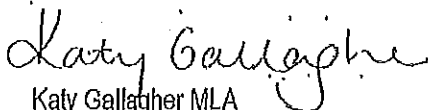
Your recent correspondence now informs us that Mr Sullivan's actual salary has been understated by approximately 27% or \$234,000 per annum.

The belated disclosure of the corporation's misreporting raises serious concerns as to accuracy and timing of this correspondence to shareholders.

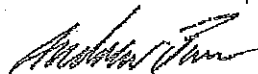
Prior to finalising our views on this matter we seek written answers to the following questions:

1. When was the error identified?
2. Why did Michele Norris's email of 9 November 2012 to Monique Kenny and Tony Hays - which clearly outlined the error - not give rise to immediate action on the part of ACTEW to notify its shareholders immediately?
3. When did the ACTEW Chair and Managing Director first become aware of the error in annual report 2010-11?
4. As the Remuneration Committee of the ACTEW Board sets Mr Sullivan's remuneration package, what formal knowledge do the Directors of the ACTEW Board have of the error in the 2010-2011 Annual Report?
5. Has it been discussed at Board level and if so, when? Was the discussion formally minuted and was there a decision taken in relation to when this matter needed to be formally advised to the shareholders.
6. Is the letter to ACTEW's shareholders dated 8 September 2011, outlining Mr Sullivan's base pay and performance bonus totalling \$ 621,171 factually correct? (This correspondence seems to be at odds with the published annual report for the same reporting period of the 2010-11 financial year.)
7. In the same letter of 8 September 2011, you advise the shareholders that Egan Associates have reviewed the Managing Director's remuneration taking into account a range of factors. Further, following this, that the board had determined to set Mr Sullivan's salary at \$621,171. If this is the case what is the justification for a further \$234,000 to be paid in addition to the figure advised to shareholders?
8. How does ACTEW board justify a salary of \$855,000 for the Managing Director's position?
9. How does this salary compare with other utility managing directors? (In 2010 \$621k was already at the upper end of the comparisons)
10. Does Chair consider this a significant issue?

Yours sincerely



Katy Gallagher MLA
Chief Minister



Andrew Barr M.L.A.
Deputy Chief Minister

18 March 2013

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AEN 6/17/2013

**ACTEW**
CORPORATION

RECEIVED
21 MAR 2013
BY: _____

18 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 18 March 2013 regarding reporting of remuneration for the Managing Director in the 2010-11 Annual Report. I note your comments and request for further information:

Responses to your questions are outlined below.

1. The error was identified in early October 2012.
2. At the time the error was identified the Government was in caretaker mode and the Company Secretary deemed it important that all information and advice on the extent of the reporting error and the requirements to rectify the error was needed before any advice to you.

I can assure you it was considered an important matter, but given the time that had elapsed since the report had been issued ie more than twelve months, and the fact that the 2011-12 Annual Report had been released, this matter was not considered critical enough to provide incomplete advice to you as a matter of urgency. I note that no questions have been asked about the Managing Director's remuneration as a result of the release of the 2010-11 and 2011-12 Annual Reports.

Advice was sought from King & Wood Mallesons in October as the annual report legislation is silent on the timing of requirements to issue a corrigendum. Upon receipt of that advice in late October, and following a review by the Chief Financial Officer of all remuneration reported since 2009-10 which established there were no other reporting errors, officers in the Chief Minister's and Cabinet Directorate (CMCD) and Commerce and Works Directorate ie Monique Kenney and Tony Hays respectively, were contacted on 9 November 2012 seeking advice on the issuing of a corrigendum and the process to be followed.

The request for advice was not responded to in a timely manner, indicating that this was not deemed a matter of critical urgency by them, and was followed up with

emails dated 27 November and 18 December 2012. The Company Secretary also spoke to the Public Service Commissioner on Friday 14 December 2012 seeking his advice on the matter.

On 18 December 2012 the Company Secretary was advised that CMCD was seeking legal advice on whether the timeframe to do a corrigendum had lapsed. The Company Secretary prepared documentation relating to a corrigendum and held on to it until further advice was received.

On 24 January 2013 the Company Secretary was advised that a corrigendum was required following further advice from Leisl Centenera Director Public Sector Management to Mr Hays. A corrigendum template was provided with that advice.

In late January 2013 ACTBW's Senior Manager Finance and Accounting Irene Quah advised Sarah Horne Account Director Assurance and Advisory of Deloitte (the ACT Auditor-General's contracted auditors) of the circumstances of the reporting error.

On 15 February 2013 the matter was discussed at a meeting with senior Deloitte staff including Alexandra Spark Partner Assurance and Advisory, David White Partner Assurance and Advisory, Sophie England Senior Analyst Assurance and Advisory, and Ms Horne. It was also discussed again in detail with Ms Horne and Ms England at a further meeting on 13 March 2013.

The auditors advised that there was no need to perform a re-statement of the financial report for 2010-11 nor make an adjustment in this year's financial report as the error is technically considered to be "immaterial" to the audit.

3. Myself and the Managing Director were notified on 3 October 2012.

4. The Remuneration Committee, which is the full Board of ACTBW, was not made aware of this error at that time. A copy of my letter to the Treasurer dated 8 March 2013 providing a corrigendum to the 2010-11 Annual Report has been provided to Directors.

5. The Board has had no discussions about this matter.

6. At the time of writing the letter dated 8 September 2011, all information contained in the letter was considered to be accurate and correct. As outlined in (1) above, this information was considered factual until October 2012.

7. The letter to you dated 8 September 2011 was accurate at that time and outlined the remuneration for 2010-11 and provided a breakdown of what was reported in the 2010-11 Annual Report which was provided to you a short time later. The Managing Director's remuneration for 2010-11 was discussed and agreed by the Board at its meeting on 1 July 2010.

As outlined elsewhere in this letter and in other correspondence, total remuneration was inadvertently underreported by \$234,000 and resulted from an error in information obtained from the human resource management system being included in the Annual Report. The Board did not resolve to pay the Managing Director an

additional sum of \$234,000 which related to a long term incentive and bonus payment.

8. The Board annually reviews the Managing Director's performance and achievement of key performance indicators and is satisfied that his remuneration reflects the high levels of accountability and responsibilities he has. The independent external reviews undertaken by Egan Associates provide guidance to the Board on an appropriate level of remuneration which reflects these responsibilities and is comparable with businesses of a similar scale to ACTEW.

9. The report from our independent expert remuneration consultant makes various comparisons with other utilities, but also takes consideration of the unique span of issues covered by the ACTEW MD.

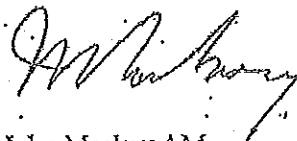
10. A reporting error on any matter is a matter for concern. However I am satisfied that at no time has there been any actions or intention to not report this matter fully and at the appropriate time. I am confident that all actions taken to rectify the reporting error have been appropriate, properly and fully informed and in accordance with ACTEW's obligations in relation to reporting.

I apologise for not drawing this matter to your personal attention much sooner. I should have done so at the first available opportunity. This delay was compounded by:

- My determination to not influence the Company Secretary or the auditors in dealing with this matter appropriately;
- Our wish to maintain caretaker conventions at the time;
- Our wish to make sure that we had comprehensive advice before acting;
- The delay in receiving advice from government officers;
- Our advice that the error was not "technically" material; and
- Our knowledge that a correct figure was in the public arena for the past five months without controversy.

You may be assured that I will discuss these matters with the Board later this week and will do what I can to avoid further oversights like this.

Yours sincerely



John Mackay AM
Chairman



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Katy Gallagher MLA

CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR REGIONAL DEVELOPMENT
MINISTER FOR HIGHER EDUCATION

MEMBER FOR MOLONGLO

Mr John Mackay AM
Chair
ACTEW Corporation
Via email

Dear Mr Mackay

Thank you for your correspondence dated 18 March 2013 in which you respond to our letter of the same date regarding your advice of a reporting error relating to the Managing Director's remuneration in ACTEW's 2010-11 Annual Report.

We note that your correspondence goes to the detail of the chronology of events relating to the error and also outlines the steps that you have taken in relation to correcting the public record. Within the ACTPS we have requested a full brief relating to all contact and documentation between the ACTPS and ACTEW in order to review the chronology and decision making points relating to this matter. Once we are satisfied that we have in our possession a full record of this matter we believe we will be able to come to a more informed judgement on the circumstances and level of responsibility which should be allocated to this error.

However, there are still a number of unexplained matters which are not satisfactorily covered in your correspondence and which we now require further clarification.

Firstly, in relation to the understated remuneration of the Managing Director, totalling \$234,417, it is still not clear from your letter exactly what this figure represents in his remuneration package. For instance, is it composed of part of his base rate, long or short term entitlements or superannuation? Or is it comprised of one component only, and is this component contingent on performance? Finally, what event or assessment process triggers the allocation of this payment?

Secondly, we also seek an assurance as to the veracity of the remuneration details reported in the 2009-2010 Annual Report for the Managing Director.

Finally, we would like you to advise us as to what process led to the error in the 2010-11 Annual Report being identified? We seek your assurance that arrangements are now in place to ensure that a similar error is not repeated in the future.

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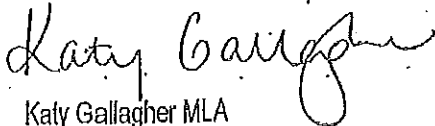
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We have attached a copy of the formal document tabled in today's sitting of the ACT Legislative Assembly and request that you note that we will be reporting back to the Assembly after we have a full response from ACTEW to hand.

Yours sincerely



Katy Gallagher MLA
Chief Minister



Andrew Barr MLA
Deputy Chief Minister

19 March 2013

Madam Acting Speaker, I present a corrigendum to the ACTEW Corporation Limited 2010-2011 annual report which was presented to the Assembly on 18 October 2011 pursuant to section 13 of the Annual Reports (Government Agencies) Act 2004.

I ask leave to make a statement in relation to the paper.

Madam Acting Speaker, I have been recently notified by the Chairman of the ACTEW Corporation of an error that has been discovered from its 2010-11 Annual Report.

I was advised that the Corporation discovered that it had understated the Executive Remuneration of the Managing Director in the order of \$234,417. The correct salary should have read \$855,588.

This correct salary is consistent with the figure reported and tabled in the Corporation's 2011-12 Annual Report.

I must say that I am surprised and disappointed to learn that the 2010-11 Annual Report had such a discrepancy from what was previously tabled in this place.

The Shareholders of ACTEW Corporation have asked the Chairman to clarify details of the circumstances surrounding this error and why it wasn't discovered earlier.

As shareholders, we will continue to seek further answers regarding this error. However, as a courtesy to Members, I've tabled this document today – the first sitting day after I received this notification from the Chairman.

I will report back to the Assembly further information when I can.

2013

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

CORRIGENDUM TO

ACTEW CORPORATION LIMITED

2010-11 ANNUAL REPORT

Presented by
Mr Andrew Barr MLA
Treasurer

**CORRIGENDUM TO ACTEW CORPORATION LIMITED 2010-11
ANNUAL REPORT TO THE ACT GOVERNMENT**

The 2010-11 Annual Report to the ACT Government at page 31 states that short term benefits for Mark Sullivan, Managing Director totalled \$529,617. This is an error and the amount was under reported by \$234,417. The correct amount was \$764,034. This error resulted from information in the human resource management system being incorrectly transferred to a spreadsheet for inclusion in the Annual Report. The correct remuneration is as follows:-

Name and Position	\$ Short term benefits	\$ Post employment benefits superannuation	\$ Other long term benefits	\$ Termination benefits	\$ Total
John Mackay Non Executive Chairman	65,262	5,873	-	-	71,135
Michael Easson Non Executive Director	37,468	3,372	-	-	40,840
Mark Sullivan Managing Director	764,034	91,554	-	-	855,588
Edward (Ted) Mathews Non Executive Director	32,582	2,932	-	-	35,514
Allan Hawke Non Executive Director	31,450	2,831	-	-	34,281
Wendy Cahd Non Executive Director	31,450	2,831	-	-	34,281
Rachel Peck Non Executive Director (from 2 May 2011)	4,387	395	-	-	4,782
TOTAL DIRECTORS	966,633	109,788	-	-	1,076,421
Ross Kneo Executive Manager Water	377,211	50,799	-	-	428,010
Kerry McIlwraith Chief Financial Officer (until 11 May 2011)	138,668	14,402	-	81,119	234,189
Simon Wallace Chief Financial Officer (from 12 May 2011)	28,626	1,960	-	-	30,586
Michelle Norris Company Secretary	196,126	27,156	-	-	223,282
Ian Carmody Director, Water Security Operations	405,640	32,881	-	-	438,521
Kirsten Bartlett Community Engagement Manager	111,920	9,511	-	-	121,431
TOTAL SENIOR MANAGERS	1,258,191	136,709	-	81,119	1,476,019

TOTAL DIRECTORS AND SENIOR MANAGERS	2,224,824	246,497	-	81,119	2,552,440
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Katy Gallagher MLA

CHIEF MINISTER
MINISTER FOR HEALTH
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MINISTER FOR HIGHER EDUCATION

MEMBER FOR MOLONGLO

Mr John Mackay AM
Chairman
ACTEW Corporation
via email

Dear Mr Mackay

Thank you for your email to shareholders of the 25th March 2013.

In response to you canvassing new arrangements for the remuneration of the Managing Director of ACTEW, the shareholders remain of the view that this is a function and responsibility of the Board of Directors of ACTEW and we cannot properly be engaged in a process to negotiate or change the Managing Director's remuneration.

The shareholders expectation has always been that the Managing Director's salary is negotiated by the Board after taking independent expert advice on a suitable remuneration package that is in line with appropriate industry benchmarks.

Since we received your letter of the 8th March 2013 our concern has focused on the incorrect information that has been provided shareholders around the level of remuneration about the Managing Director's salary.

We continue to seek information and assurances that the \$855,000 remuneration package agreed to for 2011-12 and 2012-2013 is in line with industry benchmarks and is supported by independent advice provided to the Directors prior to reaching agreement with the Managing Director.

Following your correspondence of 21st March 2013 we have a series of questions which we would appreciate your advice and answers to.

- We seek copies of the Egan Associates external review of remuneration levels for 2009-10, 2010-11 and 2011-12.
- You advised that at 8th September 2011 the remuneration details of the 2010-11 annual report "were correct". Can you therefore confirm that the Board at the end of the 2010-11 agreed to remuneration of \$621,000.

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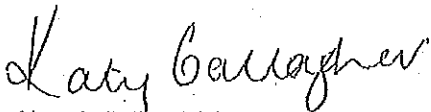
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- If not, did the Board agree to the remuneration as now disclosed, and if so on what basis and when?
- Please provide a clear breakdown of the salary package of the Managing Director such that differentiates the base salary, superannuation, each specific bonus and incentive. The information should cover the financial years of 2008-09, 2009-10, 2010-11 and 2011-12.
- Please provide complete copies of remuneration and performance papers presented to the Remuneration Committee for the purposes of setting the Managing Director's remuneration for the years 2008-09, 2009-10, 2010-11 and 2011-12.
- As a corollary, please provide a copy of the minutes of the Board and supporting papers for the approval of that remuneration.
- Please provide timing details for all incentives and bonus payments provided to the Managing Director since 2009-10.

Yours sincerely



Katy Gallagher MLA
Chief Minister



Andrew Barr MLA
Deputy Chief Minister

26 MAR 2013



Katy Gallagher MLA

CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR REGIONAL DEVELOPMENT
MINISTER FOR HIGHER EDUCATION

MEMBER FOR MOXONGLO

Ms Michele Norris
Company Secretary
ACTEW Corporation
Michele.Norris@actew.com.au

Shareholder notification of General Meeting

Dear Ms Norris

In accordance with Section 30(2)(f) of the Constitution, the shareholders of ACTEW Corporation would like to convene a general meeting of the company on Monday 15 April 2013 at 2.00pm.

We propose that the agenda include:

- I) Report by ACTEW Corporation Board on the outcomes of the Governance Review Initiated at request of Shareholders.
- II) Clarification of Shareholders expectation in regard to Board's role in setting 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. Confirm that Board will advise the Shareholders in July each year of the Managing-Director's remuneration, including components.
 - d. Confirm the Managing Director's remuneration details will be reported in annual report.
- III) Discuss potential improvements in transparency and reporting between ACTEW and Shareholders, including:
 - a. Development of a communication protocol.
 - b. Improved disclosure in the statement of corporate intent, including discussion around the performance indicators.
- IV) Any other business

Yours sincerely


Katy Gallagher MLA
Chief Minister


Andrew Barr MLA
Treasurer

04 APR 2013

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