

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

March 2017

**Ordered to be published
Victorian government printer
Session 2014-17
P.P. No. 280**

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*, I present to Parliament my *Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board*.



Deborah Glass OBE

Ombudsman

20 March 2017

Contents

Foreword	2
Background	4
The protected disclosure complaints	4
Mount Buller and Mount Stirling Resort Management Board	5
The subjects of the investigation	5
Methodology	6
Relevant legislation, policies and the Code of Conduct	8
Misuse of public funds	11
The CEO's use of public funds for his family's private travel	11
The Property Manager's use of public funds for his family's private travel	18
The CEO used public funds to pay for snow tyres for his personal vehicle	21
Misuse of position and public resources	23
Resort's accommodation, ski pass and entry policies	23
Provision of free accommodation by the Board Chair	24
Provision of free accommodation, ski passes and resort entry by the CEO	26
Bonus arrangements	31
Staff bonuses	31
Conflict of interest	32
Engagement of a catering company	32
Findings	34
Misuse of public funds	34
Misuse of position and public resources	38
Bonus arrangements	41
Conflict of interest	42
Recommendations	43

Foreword

I will be completely offended if you don't let us look after you. You tell me the dates that you want to be up and I'll lock something in for the clan. I have a range of apartments ...

Email from CEO of the Resort offering his former business associate and his family free holiday accommodation at Mt Buller

It is a truism that taxpayers' money should not be used for personal gain. This should be ingrained into every person employed on the public purse, but as this, and so many other Ombudsman investigations in past years illustrate, it is not always the case.

This investigation focuses on the use of public funds by some of the senior management and board of the popular tourist resort of Mt Buller and Mt Stirling. The Resort sits on Crown land and is managed on behalf of the Minister for the benefit of the state – the people of Victoria.

In this investigation, we identified more than \$30,000 worth of public funds being used for such things as international family travel and the entertainment of the CEO's friends. The privileged access to the snowfield's accommodation also enjoyed by the Resort's staff and board was used for the entertainment of friends, family and associates.

Mt Buller is no-one's personal playground. It is public property and its management is the temporary custodian.

Of perhaps most concern is that people in positions of the highest responsibility gave evidence that they were unaware of their obligations regarding the use of public funds.

There is a sound argument that a publicly owned tourist resort should embrace the best of the private sector when appropriate. But it must also never forget that it is not a private business. It has a responsibility to the public when it comes to spending the public's money.

Three of the subjects of this investigation had little or no experience of the public sector. Previous Ombudsman investigations have demonstrated the risks associated with such people coming directly from the private sector into publicly funded roles – plainly, those risks continue.

In the Resort CEO's own words, the research and development provisions of his contract – used to justify family flights to the United States on one occasion – were designed to assist him with regular travel 'to the US for holidays'. While the charms of a lake house in upstate New York are undeniable, Victorians do not pay taxes to fund public sector employees' private holidays.

I believe it would be appropriate for my family and I to go to this destination ... because we are a very family-oriented resort and it's important for us to experience this as a family ...

from interview with subject about why public funds were used to pay for family ski trip to Europe

The cultural risk associated with private sector individuals must be factored in to recruitment processes for public sector roles. I would prefer to help government build a sturdy stable door than spend my time chasing after horses with expensive tastes that have long since bolted.

To this end, I have recommended that Victoria's Travel Principles be revised to make it clear that public sector organisations are not permitted to enter into employment contracts that provide travel entitlements inconsistent with the principles.

I have also recommended the CEO return the cost of his holiday to the public. I am glad to report this has been accepted.

I must also acknowledge the bravery of the whistleblowers who drew these matters to my attention and assisted with my investigation. The public owes them a debt of gratitude for shining a light on this conduct.

Deborah Glass

Ombudsman

Background

The protected disclosure complaints

1. On 15 March 2016, the Independent Broad-based Anti-corruption Commission (IBAC) referred two matters to the Victorian Ombudsman for investigation under section 73 of the Independent *Broad-based Anti-corruption Act 2011* (IBAC Act), which it had determined to be 'protected disclosure complaints' under the *Protected Disclosure Act 2012*.
2. On 8 April 2016, IBAC referred two more matters to the Victorian Ombudsman for investigation under the same provision, which it had also determined to be 'protected disclosure complaints' under the Protected Disclosure Act.
3. During this investigation, a number of other allegations were made that were assessed to be 'related disclosures' under sections 34 and 35 of the Protected Disclosure Act; and these were incorporated into the investigation.
4. The complaints contained allegations of conflicts of interest and improper use of public funds and public resources by:
 - the Chief Executive Officer (CEO) of the Mount Buller and Mount Stirling Resort¹ (the Resort)
 - the Chair of the Mount Buller and Mount Stirling Resort Management Board (the Board)
 - the Property Manager (Property Manager) of the Resort
 - the Chief Financial Officer (CFO) of the Resort.
5. It was alleged that:
 1. The CEO improperly purchased airfares for his wife and child using the Resort's credit card.
 2. The CEO improperly used his corporate credit card for personal purchases while on annual leave.
 3. The CEO improperly authorised the use of public funds to pay for a personal ski trip to France attended by the Property Manager and his family.
 4. The CEO improperly used his corporate credit card to purchase tyres for his personal car costing about \$1,500.
 5. The Board Chair misused work accommodation by allowing personal friends and family to stay at the Resort in contravention of the Resort's policy.
 6. The CEO misused work accommodation by allowing personal friends to stay there and by providing these friends with free VIP ski passes, in contravention of the Resort's policy.
 7. The CEO improperly provided the CFO and the Property Manager a range of benefits in lieu of placing them on required Government Sector Executive Remuneration Panel (GSERP) contracts.
 8. The CEO regularly engages a business in which his wife has an interest, with no transparent procurement process.

There were three other allegations that we investigated, however these were not substantiated and do not form part of this report.

¹ The Mount Buller and Mount Stirling Resort Management Board is a statutory authority established under the *Alpine Resorts (Management) Act 1997*.

Mount Buller and Mount Stirling Resort Management Board

6. The Resort is a statutory authority established in 2004, under section 34 of the *Alpine Resorts (Management) Act 1997*, to manage on behalf of the relevant Minister, the Mount Buller and Mount Stirling Alpine Resort, a Crown land reserve.
7. The Resort oversees public assets and infrastructure, provides essential services to the local community and has a range of responsibilities and functions similar to a local council².
8. The Resort is also required to be planned for, developed, promoted and managed as a nature-based tourist, recreational and educational resort for all seasons of the year³.
9. The Minister may appoint between three and seven members to a board to manage the Resort on behalf of the Crown⁴. Five of the seven current board members were appointed in January 2016.

The subjects of the investigation

Board Chair

10. The Board Chair was appointed by the Minister on 28 October 2011. Prior to her appointment, the Board Chair was the Deputy Chair of Lake Mountain Alpine Resort Management Board, Chair at the Australian Regional Tourism Network, and CEO of Yarra Valley and The Dandenongs Marketing.
11. Board members' remuneration is determined by the Victorian Government Appointment and Remuneration Guidelines. The Board Chair told the investigation that she receives a stipend of about \$1,025 per month for her role as Chair.

Chief Executive Officer

12. The CEO commenced at the Resort in January 2010. His duties and responsibilities include to:
 - Carry out the Board's directions;
 - Manage day-to-day operations of the Resorts in accordance with approved policies;
 - Manage and direct the organisation to achieve optimum profitability and effective use of business assets and human resources;
 - Develop and review policy, and plan and control major functions relating to the operation and administration of the organisation through subordinate executives
 - Lead the professional RMB (Resort Management Board) team and enabling the Board's vision, direction and framework for the future development of the Resorts in an environmentally, economically and socially sustainable manner⁵.

² Section 38 of the *Alpine Resorts (Management) Act 1997* sets out the functions.

³ *Alpine Resorts (Management) Act 1997* section 38.

⁴ *Alpine Resorts (Management) Act 1997* section 37.

⁵ Mount Buller and Mount Stirling Resort Management Board Charter, March 2014, Version No. 3, page 6.

-
13. Prior to his appointment at the Resort, the CEO worked in the private sector, most recently for an interstate tourist resort between 1997-2009.
 14. The CEO advised this office that during the recruitment process, the Board Chair made it clear to him that the Board was not seeking someone with public sector experience, but rather 'a seasoned leader from the private tourism sector who would bring the culture, experience and networks found in the private tourism sector to the Resort'⁶.
 15. The CEO's total remuneration package is more than \$200,000.⁷ Since 2009, the CEO has had three employment contracts⁸. Each contract has included a 'professional development' component allowing the CEO to undertake study or training courses locally or internationally. His most recent contract, effective as of 3 February 2015, also allows the CEO to 'assign up to \$5,000 of additional costs associated with Research and Development Scheduling'⁹ to a 'professional development study opportunity'.

Chief Financial Officer

16. The CFO started at the Resort as the Finance Manager in March 2012 and was appointed to his current role in March 2014. He is responsible for 'financial management, risk management, finance (planning and analysis), audit (systems and controls), reporting, insurance, information technology, contract and legal services'¹⁰. Prior to working at the Resort, the CFO worked as a certified practising accountant.

Property Manager

17. The Property Manager is responsible for 'management of leasing, sub-leasing, licensing, statutory planning matters, and major capital development'¹¹. He has been employed at the Resort since 2009.
18. Before this he worked in the private sector.

Methodology

19. On 30 March and 27 April 2016 I notified the then Minister for Environment, Climate Change and Water, the Hon Lisa Neville MP¹² of my intention to investigate the allegations under the *Ombudsman Act 1973*.
20. My jurisdiction to investigate protected disclosure complaints is derived from section 13AAA of the Ombudsman Act, which provides that I have the function to investigate protected disclosure complaints about conduct by or in an authority or protected disclosure entity. The Mount Buller and Mount Stirling Resort Management Board is a public statutory body under item 13 of Schedule 1 to the Ombudsman Act and therefore an 'authority' within the meaning of the Act. The CEO is appointed by the Board. The Property Manager and the CFO are employed by the Resort.
21. In reaching the findings in this report, the standard of proof I have applied is the balance of probabilities. In determining whether that standard has been met, I have considered the High Court decision of *Briginshaw v Briginshaw*¹³. Specifically, I have considered the seriousness of the allegations made and the gravity of the consequences that may flow from any adverse finding.

6 The CEO's statement responding to the Ombudsman's draft report, 21 November 2016.

7 The CEO's Contract of Employment 3 February 2015.

8 2009, 2012 and 2015.

9 The CEO's Contract of Employment 3 February 2015.

10 Mt Buller and Mt Stirling Resort Annual Report 2014-15, page 8.

11 *ibid.*

12 Since May 2016, the Resort Management Board has reported to the Minister for Energy, Environment and Climate Change, the Hon Lilliana (Lily) D'Ambrosio MP.

13 *Briginshaw v Briginshaw* 1938 60 CLR 336.

22. The investigation involved:

- examining relevant state legislation, government policies and rules, and Resort policies, including:
 - *Financial Management Act 1994*
 - *Standing Directions of the Minister for Finance 2003*¹⁴
 - *Purchasing Card Rules for Use and Administration issued pursuant to the Financial Management Act issued by the Department of Treasury and Finance* (updated 2012)
 - *Public Administration Act 2004*
 - *Victorian Public Sector Code of Conduct for Public Sector Employees 2007* issued by the Public Sector Standards Commission
 - *Victorian Public Sector Code of Conduct for public sector employees 2015* issued by the Victorian Public Sector Commission¹⁵
 - *Directors' Code of Conduct and Guidance Notes 2006* issued by the Public Sector Standards Commissioner
 - *Victorian Public Sector Travel Principles* issued under Premier's Circular No. 2006/04
 - *The Policy on Executive Remuneration in Public Entities* (first issued in 2000 last updated August 2016) issued by the Victorian Public Sector Standards Commission
 - *Message from the Secretary to the Victorian Public Service Executives – Changes to Remuneration Arrangements* issued by the Department of Premier and Cabinet 2016
- *Alpine Resorts (Management) Act 1997*
- *Alpine Resorts (Management) Regulations 2009*
- the Resort's *Accommodation Policy 2011*¹⁶
- the Resort's *Financial Code of Practice 2013*
- Mount Buller and Mount Stirling Resort Management Board Charter, March 2014, Version No. 3
- *Board Funded Travel (International and Interstate) Policy*, November 2007
- the *Resort's Employee Handbook, 2015*.
- examining documents held by the Resort including:
 - emails of staff that are subject to the allegations (January 2011- May 2016)
 - financial records (including corporate credit card records and requests for reimbursement)
 - accommodation records for 2014 to 2016
 - board minutes dated 21 March 2014, 16 May 2014 and 5 June 2015
- conducting voluntary interviews¹⁷ with five witnesses
- conducting compulsory interviews¹⁸ with the four subjects – the Board Chair, the CEO, the CFO, and the Property Manager. Each subject was legally represented at interview.
- providing a draft report to affected parties for comment and incorporating these comments, where relevant, into this report.

¹⁴ These were replaced in 2016 but for the relevant period the 2003 Directions were in place.

¹⁵ There have been two codes of conduct issued during the period relevant to this investigation. One was issued in 2007 and one in 2015. The foreword of the 2015 Code states the changes in the reissued code seek to clarify existing requirements, particularly in the area of gifts and benefits and conflict of interest.

¹⁶ Resort Management Policy, *Our People – Accommodation Policy*, September 2011.

¹⁷ 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.

¹⁸ 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* as in force immediately before its repeal.

23. In accordance with section 25A(2) of the Ombudsman Act, the Ombudsman provided the Board Chair, the CEO, the CFO and the Property Manager with a reasonable opportunity to respond to the material in the report. Their responses are fairly set out in this report. This report includes adverse comments about the Board Chair, the CEO and the Property Manager. There are no adverse comments about the CFO.
24. In accordance with section 25A(3) of the Ombudsman Act, I advise that any other persons who are identifiable, or may be identifiable from the information in this report are not the subject of any adverse comment or opinion and:
- I am satisfied that it is necessary or desirable in the public interest that the information that identifies or may identify those persons be included in this report; and
 - I am satisfied that identifying those persons will not cause unreasonable damage to those persons' reputation, safety or well-being.

Relevant legislation, policies and the Code of Conduct

Public Administration Act 2004

25. The *Public Administration Act 2004* provides a framework for Victorian Public Sector organisations to understand their governance and public administration obligations and to meet community expectations about accountability and integrity.
26. Section 7 of the Public Administration Act requires public officials to act consistently with public sector values¹⁹. Section 61 requires the Public Sector Commissioner to issue codes of conduct to promote adherence to these public sector values.

¹⁹ Section 7 of the *Public Administration Act 2004* lists the following public sector values: responsiveness, integrity, impartiality, accountability, respect, leadership and human rights.

Victorian Public Sector Code of Conduct for public sector employees

27. Under the *Code of Conduct for Victorian Public Sector Employees* (Code of Conduct), public sector employees must not use their power to provide a private benefit to themselves, their family, friends or associates²⁰. They must also maintain a strict separation between work-related and personal financial matters and only use, or authorise the use of public funds or resources for work-related purposes²¹. The Code of Conduct also requires public sector employees to avoid actual, potential or perceived conflicts of interest²².
28. Employees of the Resort are required to comply with the Code of Conduct. The Resort's Employee Handbook states:

A Code of Conduct is a public statement about how a group or organisation expects to be perceived and, ultimately, judged. This is nowhere more the case than in the public sector, which in some way or other touches everyone in the community. The actions of each and every public sector employee, no matter what their role, will shape the way they, their organisation and the sector as a whole, are perceived.

The *Code of Conduct for Victorian Public Sector Employees* amplifies the values contained in the *Public Administration Act 2004* (PAA). Both the values and the code build on our public sector's long tradition of striving to meet the high standards the community rightly expects of it and reinforces the line of accountability from public sector employees to Secretary, CEO or Board, to Minister to Parliament.

²⁰ *Victorian Public Sector Code of Conduct for Public Sector Employees 2015* section 3.2.

²¹ *Victorian Public Sector Code of Conduct for Public Sector Employees 2015* section 3.3.

²² *Victorian Public Sector Code of Conduct for Public Sector Employees 2015* section 3.7.

29. Contravention of a code of conduct by a public official who is bound by the code can amount to misconduct. Section 4 of the Public Administration Act defines misconduct as including:

- a contravention of a provision of this Act, the regulations or a binding code of conduct
- improper conduct in an official capacity
- an employee making improper use of his or her position for personal gain.

Directors' Code of Conduct 2006²³

30. From 2006 until March 2016, members of the Board were required to comply with the *Directors' Code of Conduct 2006*, which required Board members to use their position as a director appropriately. Directors are prohibited from using their position as a director to seek an undue advantage for themselves, family members or associates²⁴. Directors are required to demonstrate leadership and stewardship by behaving in a way that exemplifies the public sector values²⁵ and ensure that the actions of the public entity as a whole are consistent with relevant standards²⁶.
31. The Directors' Code of Conduct also states that an 'an independent board member is not connected personally, financially, commercially or professionally with the public entity's management or with any other business or relationship that could interfere with their independent judgement'²⁷.

32. In March 2016, the Directors' Code of Conduct was replaced by the *Code of Conduct for Directors of Victorian Public Entities*.

Financial Management Act 1994

33. The Resort and its Board must comply with the *Financial Management Act 1994*.²⁸ 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 organisations²⁹.
34. The Act authorises the Minister for Finance to issue Directions to public sector organisations to assist in the implementation of the legislation. These Standing Ministerial Directions have the force of legislation³⁰.
35. The relevant Standing Directions for this investigation came into effect on 1 July 2003. They include Standing Direction 4.5.3 that sets out mandatory procedures for the use of corporate credit cards.
36. Standing Direction 4.5.3 is supplemented by *The Purchasing Card Rules for the Use and Administration Issued pursuant to the Financial Management Act* (the Purchasing Card Rules)³¹. The Purchasing Card Rules assist public sector organisations to understand and comply with their legislative obligations³². The Resort has a number of corporate credit cards, use of which is governed by the Purchasing Card Rules.

23 This was replaced on 29 March 2016 by the Code of Conduct for Directors of Victorian Public Entities 2016. The new code explicitly refers to the duties of boards and chairpersons and the duties of directors.

24 *Directors' Code of Conduct 2006* pages 6 and 18.

25 *Directors' Code of Conduct 2006* page 29.

26 *Directors' Code of Conduct 2006* page 30.

27 *Directors' Code of Conduct 2006* page 14.

28 Section 4 *Financial Management Act 1994* binds the Crown not only in right of Victoria but also, so far as the legislative power of parliament permits, the Crown in all its other capacities.

29 *Financial Management Act 1994* section 1.

30 *Standing Directions of the Minister for Finance under the Financial Management Act (as part of the financial management package) June 2003* (updated May 2015), page 1.

31 *Purchasing Card Rules for Use and Administration issued pursuant to the Financial Management Act* (updated 2012).

32 The Standing Directions for the Minister for Finance and associated rules referred to in this report were in place between 1 July 2003 and 30 June 2016. These directions and rules were replaced on 1 July 2016 by the Standing Directions of the Minister for Finance 2016.

37. The Purchasing Card Rules provide that purchasing cards can only be used for official purposes that are in direct connection with, or as a consequence of, the cardholder's functions and duties within an organisation. Consequences for unauthorised use of a purchasing card may include:

- referral to police for investigation
- written report to the organisation's audit committee and the minister
- withdrawal of purchasing card
- disciplinary action
- termination of employment.

Victorian Public Sector Travel Principles

38. A Premier's Circular (No 2006/04) introduced Travel Principles for the Victorian Public Sector in 2006. The circular states that 'the Travel Principles will apply to the whole of the Victorian Government Public Sector, including all Departments, Agencies and Boards'. This includes the Board, the Resort and its staff. The Travel Principles provide a minimum standard framework on which public sector organisations are expected to base their travel policies. The Travel Principles state:

- Staff may travel with their partners provided that it does not incur any costs at public expense and does not interfere with the business requirements of the travel. Partners' travel at public expense requires the Premier's approval.

- Approval for leave to be taken during an official overseas visit must be approved through the usual approval channels. The length of leave taken should be in reasonable proportion to the duration of the official travel and must not give the impression that official travel is being used to subsidise private travel arrangements. As general guidance up to 2 days leave may be taken for every 7 days of official travel.
- Requests to add private travel onto official travel (usually domestic) should only be approved if the extension does not create the impression that official travel is being used to subsidise private travel arrangements.
- Leave, or an extension of private travel, taken while undertaking work related travel must not incur or result in any additional costs to the State. Departments may give consideration to employees reimbursing some of the official travel expenses to offset any private travel arrangements.

39. The Resort informed this office that it does not currently have a travel policy. However, the investigation located a travel policy implemented by the Board in 2007,³³ which reflected the Travel Principles outlined in the Premier's Circular (No 2006/04).

³³ Board Funded Travel (international and interstate) Policy, November 2007.

Misuse of public funds

40. This section of the investigation deals with the following allegations relating to the misuse of public funds:

- The CEO improperly purchased airfares for his wife and child using the Resort's corporate credit card.
- The CEO improperly authorised the use of public funds to pay for a personal ski trip to France attended by the Property Manager and his family.
- The CEO improperly used his corporate credit card to purchase about \$1,500 worth of tyres for his personal motor vehicle.

The CEO's use of public funds for his family's private travel

2014 Trip to Savannah Georgia, United States

The CEO's contract

41. Since being appointed to his role at the Resort, the CEO has negotiated three contracts with the Board. Each contract has allowed him to attend training or study overseas. The contract that was in place in 2014, provided:

... the CEO will be able to access a facility to undertake an intensive, executive level professional development study opportunity in line with his current career direction (minimum 14 calendar days, maximum 42 calendar days), locally or internationally ... This item will be budgeted as part of the Training provision, which will continue to support attendance at agreed training courses and other sources of professional development of the Executive from time to time, as agreed by the Employer. Funding should be within reasonable limits. Scheduling and funding is subject to the Chair's approval³⁴.

42. In response to the draft report³⁵, the CEO explained how the professional development provision came to be in his contracts:

... the Chair of the Board has always been acutely aware that the remuneration I receive as the CEO falls short of the remuneration I could command elsewhere. In each of these discussions the Board Chair has sought to keep my salary at the highest permissible level under the GSERP arrangements and recognised my achievements by giving me the maximum permissible bonuses and finding other ways to provide me with additional permissible benefits.

To this end we discussed the fact that I regularly travelled to the US for holidays and the possibility that the RMB could assist me with this, particularly, if it were combined with training or professional development. Accordingly my [2009, 2012 and 2015] contracts contain [Professional Development provisions] within a Schedule dealing with my 'Remuneration Package'.

CEO's decision to travel to the United States for the NSAA convention

43. The CEO is from the United States of America and has lived in Australia for several years.

44. On 10 November 2013, in an email titled 'Serendipity at work', the CEO's wife forwarded information to him about an upcoming National Ski Areas Association (NSAA) Convention and Tradeshow in Savannah, Georgia. She wrote:

Ok I think I have found what we need. The southern driving route I sent you included Savannah Georgia and here is this!! The dates are absolutely perfect and the conference could not be more perfect. If you look at last year's conference subjects, they are very applicable, you would assume similar for 2014.³⁶

34 CEO's Executive Contract of Employment, 22 November 2012.

35 CEO statement responding to the Ombudsman's draft report, 21 November 2016.

36 Email from the CEO's wife to the CEO, 10 November 2013.

-
45. Subsequently, in April 2014, the CEO travelled to the United States with his wife and child. From 14-27 April 2014, he and his family stayed at their lake house in New York State. The CEO then attended the NSAA convention from 30 April to 3 May 2014.
46. The CEO used his corporate credit card to pay \$2,373.92 for his flights to the United States, but not his family's flights³⁷.
47. At his interview on 12 August 2016, the CEO denied that his wife was trying to find a ski convention he could attend that would fit into personal travel they had already planned. Instead, he said that he believed he had previously attended the NSAA Convention two or three times and that he had asked his wife to find out where it would be held that year³⁸.
48. There is no evidence in the Resort documents reviewed by the investigation to suggest that the CEO attended the NSAA convention prior to 2014. The CEO's statement that he attended the convention prior to 2014 is also inconsistent with the Board Chair's evidence. At interview on 1 September 2016, the Board Chair said that the first time the CEO had attended the convention was in 2014; he had only attended twice (2014 and 2015); and it was her idea that he attend³⁹. In response to the draft report⁴⁰, the Board Chair also said:

My discussion with the CEO of the relevance of the ASAA [*sic*] conference in the USA predated [the CEO's] planning to combine the conference and annual leave.

49. In his second response to the draft report⁴¹, the CEO's legal representative said:

[The CEO] now agrees that the 2014 NSAA convention was the first NSAA convention he attended. He does say, however, that the RMB was a member of the NSAA prior to 2014 and, by reason of that membership, he received material from NSAA which amongst other things, promoted NSAA conventions and enabled him to attend conventions. Prior to receiving the email from [his wife], [the CEO] was generally aware of NSAA conventions but did not realise that the 2014 convention would coincide with his travel plans both in terms of timing and the places he intended to visit.

In our view, the manner in which [the CEO] learnt of the 2014 convention is of no particular relevance; the relevant points being that attending the NSAA Convention was pertinent to the work [the CEO] does as CEO of the RMB and there was never any question in the mind of [the Board Chair] that [the CEO] would be spending [*sic*] was entitled under his contract to combine part of his time in the US taking annual leave with his attendances at the conference ...

50. Minutes from a Board Meeting held on 16 May 2014 indicate that the CEO presented a written report about the convention to the Board members⁴².

The CEO's family 'holiday'

51. An email from the CEO to a personal friend indicates that after the convention, the CEO and his family spent additional time in Savannah. He wrote:

After the lake we went down to Savannah for about 10 days and enjoyed some good southern cooking ...⁴³

37 Mount Buller and Mount Stirling Resort Management Board Approval for CEO Corporate Credit Card expenses.

38 Interview with the CEO, 12 August 2016.

39 Interview with the Board Chair, 1 September 2016.

40 The Board Chair's response to the Ombudsman's draft report, 11 November 2016.

41 The CEO's second response to the Ombudsman's draft report, 13 January 2017.

42 Mount Buller and Mount Stirling Resort Management Board Meeting Minutes Item 8.2: CEO Report, 16 May 2014.

43 Email from the CEO to a friend, 26 May 2014.

52. Emails between the CEO and the Board Chair while he was on the 2014 trip indicate that both considered the trip a 'holiday'⁴⁴. For example, the Board Chair told the CEO to 'go back to your holiday' and he wrote:

... sad to say but it is my last day in Savannah then off to New York to start the journey back. It's been a great break and most importantly a fantastic reconnect with family⁴⁵.

53. At interview, the CEO said that he was not aware of the Travel Principles⁴⁶, which state that private travel can only be added to official travel where doing so does not give the impression that the official travel is being taken to subsidise private travel. As a general rule, the principles state that two days personal travel may be taken for every seven days official travel.

54. In response to the draft report, the Board Chair said:

Each time [the CEO] has been on leave, he has arranged a weekly phone link with his executive staff to continue to provide leadership and guidance to his staff around current projects. He has as well stayed in touch with me to continue discussion on particular initiatives. My comment to him 'go back to your holiday' was in response to his continued attention to work whilst away.

55. At interview, the Board Chair said she knew that the CEO planned to take leave during the trip to the United States. She said:

... I didn't have a level – any level of discomfort that he timed his leave to activate at the end of the conference because he's American. He's in America and he was you know, he was due for leave so why wouldn't he activate. I mean it just wouldn't be reasonable for him to fly home to Melbourne and then fly back to America because he wanted to activate leave. But I wasn't aware that there is any issue with that. And I wasn't aware that two days' leave may be taken for every seven days of official travel. I'm not aware of this policy at all⁴⁷.

56. In response to the draft report, the Board Chair said that if she had been aware of the Travel Principles and its restrictions she would not have hesitated to apply to the Premier for permission 'for an American employed in Australia to attend an American conference combined with annual leave to his American base'.

57. Both the CEO and the Board Chair told the investigation that the Resort did not have a travel policy.

The CEO's use of his corporate credit card for family meals

58. During his time in Savannah after the convention, the CEO used his corporate credit card to pay for \$292 worth of meals for his family⁴⁸.

59. At interview, the CEO confirmed that he used his corporate credit card for this purpose and stated that he had been unaware of the Purchasing Card Rules, which prohibit the use of corporate credit cards for private purchases⁴⁹.

60. When asked whether he believed that the purchases for his wife and child using his corporate credit card were consistent with the Purchasing Card Rules, the CEO responded:

The ones [rules] I was unaware of, yes⁵⁰.

61. In response to the draft report, the CEO added:

While I was not aware of the purchasing card rules, I do accept that my corporate credit card should not have been used for private purposes. I believe that I was entitled to use my corporate credit card to pay for my food and beverages while attending the 2014 NSAA conference. However I accept that there is no clear entitlement under my 2012 contract of employment to enable me to claim the cost of food and beverages for my wife and [child]. Accordingly, I feel I should repay what I estimate to be a portion attributable to the food and beverages consumed by my wife and [child].

44 Email from the Board Chair to the CEO, 8 May 2014.

45 Email from the CEO to the Board Chair, 7 May 2014.

46 Interview with the CEO, 12 August 2016.

47 Interview with the Board Chair, 1 September 2016.

48 Mount Buller and Mount Stirling Resort Management Board Approval for CEO Corporate Credit Card Expenses, May 2014.

49 Interview with the CEO, 12 August 2016.

50 Interview with the CEO, 12 August 2016.

2015 Trip to San Francisco, United States

The CEO's 2015 contract

62. In February 2015, the CEO and the Board executed a new employment contract. In addition to the ability to undertake professional development study opportunities, the new contract provided 'the CEO can assign up to \$5,000 of additional costs associated with Research and Development Scheduling'⁵¹.
63. In response to the draft report, the Board Chair said that before agreeing to the CEO's contract, she sought advice from the Victorian Public Sector Commission, an external workplace consultant with experience in 'remuneration contracts at senior government level' and the Board Remuneration Sub Committee. She said that 'at no stage were any concerns regarding that contract raised'.

Approval to attend the convention

64. On 23 February 2015, the CEO sought approval from the Board Chair to attend the San Francisco NSAA convention, which was to be held between 3-6 May 2015. In his request he said he was seeking to:
- ... take the family with me spend four days San Fran for the conference and then take 3 weeks leave over at our lake house...
65. The Board Chair approved the CEO's request via a reply email.
66. Subsequently, in May 2015 the CEO attended the NSAA convention in San Francisco, accompanied by his wife and child. The CEO charged his corporate credit card \$5,257.66 for the cost of his flights and those of his wife and child.

67. The Premier's permission was not obtained for the payment of expenses related to the CEO's wife's travel as is required by the Travel Principles.
68. The CEO presented information about the NSAA convention to the Board in June 2015.⁵²

The CEO's family 'holiday'

69. At interview the CEO said that the purpose of the trip was 'initially to attend the National Ski Areas conference ... and then ... I think it was preceded and followed by a personal holiday'⁵³.
70. In an email dated 22 April 2015 to a personal friend, the CEO wrote 'the three of us are heading back to the states to spend some R & R time at our little lake house at the end of the week'⁵⁴.
71. The CEO's personal Facebook page documents his family's trip to the United States. On 2 May 2015, the CEO posted:
- Off to the states for a bit of work and then some good family time at our little lake house - [smiley face] feeling grateful with [the CEO's wife] at Melbourne International Airport.
72. After leaving San Francisco, the CEO and his family went to New York City and finished their holiday at their lake house, when he posted:
- What a finish to a great stay at our little lake house, a waterside evening fire with some roasted hotdogs, a drink or two and some smores (that's roasted marshmallows sandwiched between chocolate and graham crackers - for all the non-Americans). Thank you the Adirondacks and our friends at Fern Lake for such a great holiday.

51 CEO's Executive Contract of Employment, 3 February 2015.

52 Mount Buller and Mount Stirling Resort Management Board minutes Item 3.2, 5 June 2015.

53 Interview with the CEO, 12 August 2016.

54 Email from the CEO, 22 April 2015.

The CEO's use of the corporate credit card for family flights

73. The CEO used his corporate credit card to pay \$5,257.66 for the cost of his flights and those of his wife and child⁵⁵. Such use of a corporate credit card is contrary to the Travel Principles⁵⁶ and the Purchasing Card Rules⁵⁷. At interview, the CEO said he was unaware of these documents.

74. At interview, the CFO said that he was unaware of the Travel Principles. However he said that he knew that the Purchasing Card Rules prohibited the use of corporate credit cards for private purposes. The CFO said:

... private flights for the family would not be authorised, now I don't know who gave the authorisation for those flights and in what component were those flights provided, on face value they look like they were private flights and therefore shouldn't have been paid using the corporate credit card⁵⁸.

The CEO's response

75. The CEO explained, at interview, that he believed he was entitled to pay for his family's flights with public funds because of the provision in his contract allowing him to assign \$5,000 additional funds associated with research and development; and as the arrangement had been approved by the Board Chair⁵⁹. The CEO said:

What is allowed for in my contract and what I believe was an appropriate arrangement in the circumstances was to allow me what was required for me to go over there, attend that and then have a family holiday afterwards⁶⁰.

76. At interview, the CEO also said:

What I would say is I was going to the national skiers' association conference as a benefit to the Resort. I think it's very, very beneficial for us to be there, be representative there. We've been a member for a period of time. I was unaware of these arrangement or sorry, these guidelines and I have been completely transparent from the very, very beginning, all the way through the very, very end of my intentions in that. And I only say that in the fact of going - I would take and hope that you would take from that there is nothing untoward or sinister that was implied by me. I've been very up front with that from the beginning with my chairman. This is what my intent is to do⁶¹.

77. In response to the draft report⁶², his lawyer added:

[The CEO] was entitled to rely on the Board to ensure that all the legal and procedural requirements [regarding the contract] are attended to. There is no evidence that [the CEO] entered into any of these arrangements other than in good faith and in the belief that arrangements had been put in place by the Board to encourage him, as a highly qualified applicant, to take up employment with the RMB and to subsequently encourage him to remain in that employment.

78. In response to the draft report, the CEO also said that the Travel Principles did not apply to his 2014 Savannah trip, as this was not official travel:

I confirm that I was not aware of the Premier's Circular or the Board's 2007 Travel Policy. I have now read the Premier's circular and the Travel Principles and believe that these apply to official travel which would be funded by the RMB and not travel arranged in accordance with my contract of employment, which is treated as part of my remuneration package and paid for out of an allocation for training. In the course of my work as CEO, I frequently undertake business-related travel on behalf of the RMB. This travel is dealt with differently to the overseas travel referred to in the draft report.

55 Mount Buller and Mount Stirling Resort Management Board Approval of CEO Corporate Credit Card May 2015.

56 Interview with the CEO, 12 August 2016.

57 Interview with the CEO, 12 August 2016.

58 Interview with the CFO, 8 September 2016.

59 Interview with the CEO, 12 August 2016.

60 Interview with the CEO, 12 August 2016.

61 Interview with the CEO, 12 August 2016.

62 Letter from the CEO's legal representative responding to the Ombudsman's draft report, 21 November 2016.

The Board Chair's response

79. At interview the Board Chair said that 'in principle' it was not reasonable to use public funds to pay for the travel of family, but that she did not believe the Resort had '[tripped] that principle in his [this] case ... because [the CEO] has a facility in his contract that allows him to use up to \$5,000 additional expenses'⁶³.

80. In response to the draft report, the Board Chair added:

I was uncomfortable at the unorthodox application of the clause in the CEO's contract when he informed me of his intention to apply it to family member travel. The clause allowed for the application of an additional \$5,000 for activity associated with research and development. Since the clause was not sufficiently specific as to disallow his chosen application, I could not in good faith reject his decision to apply it in that way. I had taken advice in the development of the renewed contract and it was signed and in place. With hindsight I would have made a different call and reworked that clause.

The CEO's use of the corporate credit card for family meals

81. The CEO used his corporate credit card to pay \$255.08 worth of family meals at restaurants in San Francisco during and after the NSAA convention⁶⁴. Such use of a corporate credit card is contrary to the Travel Principles and the Purchasing Card Rules.

82. Despite signing off on the CEO's credit card expenses, at interview, the Board Chair said that she did not knowingly approve the use of the CEO's corporate credit card for food for his family while he was on the NSAA trips to America. She said:

I wouldn't expect him to approve it for me and I don't - wouldn't approve it for him⁶⁵.

83. In response to the draft report, the CEO said:

In relation to my attendance at the 2015 NSAA conference, I believe that the charges relating to the food and beverages consumed by my wife and [child] during the 2015 NSAA conference were appropriate 'additional costs' to be placed on my credit card [in accordance with his 2015 contract].

Lack of awareness of the Travel Principles and Purchasing Card Rules

84. At interview, the Board Chair complained about the adequacy of induction activities for the Board:

I must say I just feel quite irritated with my - with my bureaucrats as wonderful as they are in so many ways. There has been quite a lot of criticism delivered back to them over the last four or five years about the paucity of their induction activities with incoming boards. And every 18 months had an incoming board. I would have loved to have had [the Travel Principles and Purchasing Card Rules ...] put in my hand back then. I mean why can't this be part of the package that says, here's your credit card rules, here's your financial responsibility, you know, and here's your travel - here are the travel principles. We do get the public service code of conduct and we do you know, we do give our own board charter. And we get a couple of other generic documents. But we don't get specific like this⁶⁶.

85. In response to the draft report, the Board Chair added that she attended an induction session with Department of Environment and Primary Industries⁶⁷ in early 2012, at which a list of separate pieces of legislation was presented but no mention of the Travel Principles or other specific policies was made. She said that between 2012 and 2016 there was no formal induction program for incoming Board members by the relevant department, despite requests from Boards and the Alpine Resorts Co-ordinating Council.

63 Interview with the Board Chair, 1 September 2016.

64 Mount Buller and Mount Stirling Resort Management Board Approval of CEO Corporate Credit Card May 2015.

65 Interview with the Board Chair, 1 September 2016.

66 Interview with the Board Chair, 1 September 2016.

67 As of 1 January 2015, the Department of Environment, Land, Water and Planning.

86. In his response to the draft report, the CEO also pointed to a lack of induction process:

Prior to commencing work for the RMB, I had had no experience of working in the public sector ... there was no induction process to familiarise me with relevant legislation, Government policies or Board policies. I was, therefore, reliant on advice provided to me by my executive team in relation to financial governance and human resources practices. I was also reliant on the guidance provided to me by the Board Chair.

87. At interview, the CFO also said that he was not aware of the Travel Principles⁶⁸.

88. The evidence of the Chair and CEO was inconsistent with information provided by the Department of Environment, Land, Water and Planning (the department). Mr Adam Fennessy, Secretary of the department advised this office that the Travel Principles were brought to the attention of the CEO and Board Chair on several occasions:

I acknowledge that there is a continuous need to improve governance practices and training, as is highlighted by the conduct identified in the report. However in this instance, more considerable support was provided to the Board than the Chair acknowledges ...

Good governance standards, obligations and accountabilities for Victorian public sector entities can be complex. The board of an entity is responsible for ensuring that the entity complies with these standards, obligations and accountabilities. DELWP has an important role in supporting boards under its portfolio and increasing their capacity to deliver good governance ...

In June 2011, the then Department of Sustainability and Environment (DSE) produced a Guide to Good Governance – board members: an introduction to duties and standards of conduct (the guide). Section 2.3(d) Government policies, page 6 of the guide, states:

A large number of government policies set out operational and procedural requirements that are binding on all public sector agencies, or on specific types of agencies (e.g. public entities). Some of these whole of government policies are issued as a Premier's Circular, **for example, the Victorian Public Sector Travel Principles** [emphasis added].

Appendix 2, page 38 of the guide, states:

Unless you are already very experienced in relation to the key topics in the guide ... it is recommended that you read the relevant guidance note.

The Victorian Public Sector Travel Principles are also listed under 'Government policies' on page 38 of the guide.

In Appendix 5, page 42 of the guide, the Victorian Public Sector Travel Principles are again listed under 'Government policies' under the heading of: 'Applies to public sector – whole of government (Victoria)'...

On 30 November 2011, the then DSE implemented an induction program for alpine resort management boards. The current Chair of the Mount Buller and Mount Stirling Alpine Resort Board and the current Chief Executive Officer of the Mount Buller and Mount Stirling Alpine Resort attended the program. Publications made available to participants at the program included:

- the guide; and
- State Services Authority publications: Welcome to the Board, Welcome to Government, and Directors' Code of Conduct.

In December 2015, when the current Chair of the Board was reappointed, the Chair was provided with a copy of the guide and the Directors' Code of Conduct with the letter of appointment.

More recently, on 2 February 2016 DELWP delivered another induction program for chairs and members of alpine resort boards. The current Chair of the Mount Buller and Mount Stirling Alpine Resort Board and the current Chief Executive Officer of the Mount Buller and Mount Stirling Alpine Resort also attended this program. Attendees at this program also received a copy of the guide and the Directors' Code of Conduct ...

68 Interview with the CFO, 8 September 2016.

The Property Manager's use of public funds for his family's private travel

2015-16 trip to the French Alps

89. In December 2015, the Property Manager, his wife and child travelled to France. One of the Property Manager's children was already there, having left Australia in August 2015 to visit a relative who was in France, and to undertake studies.
90. On 30 November 2015, on request of the Property Manager, the Resort reimbursed the Property Manager \$8,351.98: the total cost of return flights, including his child's separate August flight, which cost \$975.26. In December 2015 and January 2016 the Resort reimbursed the Property Manager a total of \$7,479.70: the accommodation costs for two rooms for his family's stay in the French Alps. The Resort paid a total of \$15,831.68 for the Property Manager's family trip.
91. When he returned, the Property Manager provided a report to the CEO about this trip entitled 'Observations from Val D'Isere and Val Thorens'⁶⁹.

The Property Manager's contract

92. The Property Manager's contract, that was negotiated between him and the CEO in May 2013, provides for:
- ... 11 days per financial year (1 November-31 October) research and professional development within the Mr Buller and Mt Stirling resorts or any other resort as agreed with [the CEO]. Any unused days in any given year may accumulate for use during the following financial year however they may not be paid out or form part of any leave entitlement if your employment ceases for any reason. RMB will pay reasonable expenses associated with this leave to the value to not exceed \$10,000 a year subject to agreement with [the CEO]⁷⁰.

93. In response to the draft report, the CEO explained the rationale for including this provision in the contract:

The circumstances of my employing [the Property Manager] were very similar to the circumstances in which the Board employed me in 2009, that is, I was keen to employ a person who could bring private sector business experience to the RMB but was constrained in how I could match the remuneration he could command in private industry ... In my mind, this clause (in the ... employment contract) served as an inducement to [the Property Manager] to take the position and had nothing to do with official travel of the nature contemplated in the Public Sector Travel Principles.

94. In terms of how this arrangement was in the public interest, the Property Manager said:

I am the development manager of the premier resort in Australia. We compete on the world stage, it is incumbent on me to manage and develop the Resort according to world standards. If I don't know what the rest of the world is doing, how am I expected to fulfil that function?⁷¹

95. The Board Chair said that she did not know that the Property Manager had the same research and development 'facility' in his contract as the CEO. She said that she did not consider that these contract arrangements were appropriate for the Property Manager and she thought it should be a unique benefit for the CEO in recognition of his 'outstanding abilities'⁷².

69 Observations from Val D'Isere and Val Thorens, file note from the Property Manager to the CEO, 18 January 2016.

70 Letter outlining further conditions of employment, 16 May 2013.

71 Interview with the Property Manager, 2 September 2016.

72 Interview with the Board Chair, 1 September 2016.

Approval of the family trip

96. At separate interviews on 12 August and 2 September 2016, the CEO and the Property Manager said that the trip to France was authorised by the CEO under the research and development allowance in the Property Manager's contract. The Property Manager said that he told the CEO:

I believe it would be appropriate for my family and I to go to this destination, we believe it's appropriate because we are a very family-oriented resort and it's important for us to experience this as a family and look through the eyes of a family and we have a discussion around the scope of the trip and what I am wanting to achieve and what the RMB would be willing to contribute to⁷³.

97. The Property Manager noted that under the Alpine Resort (Management) Act, Resort staff are required to research, promote and develop the Resort⁷⁴.

98. The Property Manager said that the CEO authorised him to exceed the annual \$10,000 limit on research and development funding by allocating two years' worth of the allowance to the trip to France⁷⁵.

99. In response to the draft report⁷⁶, the Property Manager's legal representative said that while there was no approval documentation relating to the trip, the Property Manager was authorised under his contract to undertake research and development; and, while only verbal agreement to the trip was provided by the CEO, the reimbursement of receipts was approved by the CEO and the CFO.

100. At interview, the CEO said that he approved the research and development trip because the Property Manager had demonstrated that the trip would provide 'reasonable benefit to the organisation and to the Resort'. In regard to the approval process, the CEO said at interview:

... it'd be him sitting down and talking to me about what he's going to do, where he's going to go and that and me verbally approving that⁷⁷.

101. The CEO said that he did not have a problem with paying for the Property Manager's family to accompany the manager on the research and development trip to France because:

I don't differentiate between family. I give a value to that amount for that research and development trip, and he needs to provide reasonable, sorry, appropriate receipts to that, but I don't identify whether it's just him or him and family. I put a dollar amount on it⁷⁸.

102. At interview the Board Chair said that she thought the Property Manager was attending a 'planning conference on our behalf'⁷⁹. The Board Chair said that she did not know that the Resort had paid for [the Property Manager's] family's flights and she was 'very disappointed'⁸⁰ that it had.

Resort's payment of the earlier flight to France

103. At interview, the Property Manager explained why he decided to send his child to France early:

... we had agreed that we would have return flights from France. There was an opportunity for me to allow my [child] to go over a bit earlier and spend some time with my [relative] who happened to be over there and as part of that we were able to get [the child] a cheaper flight because of the timing of the year. So we said if the costs of the flight are covered by [the child] going over all I am actually doing is saving the business a little bit of money⁸¹.

73 Interview with the Property Manager, 2 September 2016.

74 *ibid.*

75 *ibid.*

76 Letter from the Property Manager's legal representative responding to the Ombudsman's draft report, 10 November 2016.

77 Interview with the CEO, 12 August 2016.

78 *ibid.*

79 Interview with the Board Chair, 1 September 2016.

80 *ibid.*

81 Interview with the Property Manager, 2 September 2016.

-
104. The Property Manager said that by sending his child to France in August he had saved the Resort '\$360 odd'.
105. The Property Manager said that his 'best guess' was that the CEO was aware one of his children was going to France separately from the rest of the family:
- ... we would have had some discussions about it but not in the context of a formal approval but would have said my [child] is going to France next week or whatever⁸².
106. However, the CEO said that he had not intended to authorise the Resort to pay for the Property Manager's child to fly to France separately in August 2015;⁸³ although the CEO did sign off on the reimbursement request that had individual itineraries attached to it.
107. In response to the draft report, the Property Manager's legal representative stated:
- ... whether [the child] travelled separately or with [the Property Manager] is ... not to the point - the expenses had been approved in advance by [the CEO].
108. The Property Manager's response said his child had travelled to both resorts as planned, and contributed to the family discussion on the facilities at the resorts.
109. At interview, the Board Chair said that she 'knew that [the Property Manager] was continuing, after the conference, to collect his [child] who'd been on an exchange and was in France'⁸⁴ but she 'cannot imagine a situation where [paying for the child's earlier flight to attend an international school] would be justified'⁸⁵.
110. At interview the CFO said that he was aware that the Property Manager's family was accompanying him on a research and development trip, but checked with the CEO whether the reimbursement of associated costs was 'reasonable'. The CFO said that he was 'concerned about the flights in total and the fact that the whole family was being paid for'. He said the CEO said that was 'appropriate' and part of the Property Manager's Employment Agreement, which specified that the Resort would pay the reasonable expenses associated with the Property Manager's leave 'subject to agreement' with the CEO.
111. Despite signing off on the reimbursement to the Property Manager, the CFO said that he was not aware that the Resort had paid for the child's earlier flight. He said he:
- ... wouldn't have thought that that would be appropriate because it wasn't part of the research and development trip⁸⁶.
112. In response to the draft report, the CFO said that when presented with the Property Manager's expense reimbursement form, he checked the totals and GST components of the claim and that the total of the included receipts supported the sum of the claim. He described his failure to notice that the date of the child's earlier outbound flight was different from that of the other family members as an 'inadvertent oversight' and 'isolated incident'.

82 *ibid.*

83 Interview with the CEO, 12 August 2016.

84 Interview with the Board Chair, 1 September 2016.

85 *ibid.*

86 Interview with the CFO, 8 September 2016.

2013-14 trip to Jackson Hole, Wyoming

113. At interview, when asked if the Resort had contributed to his family's travel expenses on other occasions, the Property Manager mentioned a research and development trip to Jackson Hole Wyoming that he had taken with his family.
114. After his interview, the Property Manager provided evidence that the Resort spent \$8,820.60 on accommodation for him and his family to stay in ski resorts at Grand Targhee and Jackson Hole, Wyoming over a three-weekly period in December 2013 – January 2014.
115. The Property Manager produced a four-page report for the CEO entitled 'Observations from Jackson, Wyoming'⁸⁷.
116. The Premier's permission was not obtained for the payment of expenses related to Property Manager's wife's travel as is required by the Travel Principles.

The Travel Principles

117. The Property Manager said that he had not heard of the Travel Principles and he did not know if the Resort had a travel policy. In response to the draft report, he said that on joining the Resort from the private sector, he never received any instruction or training in relation to the Code of Conduct or the Travel Principles.
118. In response to the draft report, the Property Manager's legal representative also stated that the Travel Principles did not apply to the family trips:

... in so far as the [Travel] Principles are concerned ... a clear distinction can and should be drawn between the application of the Principles to government-funded travel for Public Service employees and what is contained in my client's terms of employment as detailed in the 16 May 2013 letter ...

119. The Property Manager also denied that his family had been provided a private benefit that was contrary to the Code of Conduct, noting the 'cost of the [France] trip was far more than was reimbursed'⁸⁸, and had cost in the order of \$35,000 in total.

The CEO used public funds to pay for snow tyres for his personal vehicle

120. Since commencing at the Resort, the CEO has exercised an entitlement to a work vehicle under his employment contracts. In addition to his work vehicle, the CEO personally owned a BMW. It was alleged that he used public funds to pay for snow tyres for his personal vehicle, despite having access to a work vehicle.

2010

121. The investigation obtained an invoice demonstrating that in 2010 the Resort was billed for snow tyres for the CEO's BMW vehicle.
122. At interview the CEO said that he recalled having snow tyres fitted in 2010 but said that he was personally invoiced by the Resort.
123. The CEO later provided an invoice and bank statement to the investigation showing that he personally paid for the snow tyres⁸⁹.

2014

124. Emails also show that in March and April 2014 Resort staff were arranging to have snow tyres fitted to the CEO's personal BMW, at his request⁹⁰.

⁸⁷ Observations from Jackson, Wyoming, file note from the Property Manager to the CEO, 19 May 2014.

⁸⁸ Interview with the Property Manager, 2 September 2016.

⁸⁹ The CEO's second response to the Ombudsman's draft report, 13 January 2017.

⁹⁰ Emails between Resort staff dated 10 April 2014.

-
125. At interview, the CEO said that he did not believe new snow tyres were fitted to his BMW in 2014 and undertook to provide further information to the investigation⁹¹.
126. The CEO subsequently advised that he was unable to locate records showing that he paid the tyre supplier or the Resort for the tyres in 2014. He said that although he did not remember asking for snow tyres to be fitted to his BMW in 2014, he accepted the evidence that he probably had made this request and undertook to repay the Resort \$1,688 (\$1,580 for the purchase of the tyres and \$108 for the fitting of the tyres onto the rims)⁹².
127. In response to our enquiries, the Resort's CFO located evidence that confirmed the Resort paid \$1,580 for snow tyres for the CEO's personal BMW in 2014.⁹³

91 Interview with the CEO, 12 August 2016.

92 Email from the CEO to the Victorian Ombudsman, 31 August 2016.

93 Email from the CFO to the Victorian Ombudsman, 23 September 2016.

Misuse of position and public resources

128. This section of the report will deal with allegations that:

- The Board Chair misused work accommodation by allowing personal friends and family to stay there in contravention of organisational policy.
- The CEO misused work accommodation by allowing personal friends to stay there, and by providing these friends with free VIP ski passes in contravention of organisational policy.

Resort's accommodation, ski pass and entry policies

129. The Resort owns a property at Mount Buller called the Black Forest Lodge, which consists of two apartments. Under his employment contract, the CEO and his family live in one side of Black Forest Lodge during the official ski season.

130. A three-bedroom apartment that constitutes the other half of Black Forest Lodge, and another property rented by the Resort called Huski Lodge⁹⁴, are considered 'Category 3' accommodation under the Resort's Accommodation Policy.

131. The Accommodation Policy describes Category 3 accommodation as 'general accommodation to be used by staff and family, corporate sponsors, Board Members, contractors and VIPs'⁹⁵. The fee for staff to stay in Category 3 accommodation is \$150 per night. The CEO provided information to the investigation that the market rate for equivalent accommodation at Mount Buller ranged from \$460-\$700 per night⁹⁶.

132. The Accommodation Policy states that 'board members attending official duties will not be required to pay a fee, nor will corporate sponsors or VIPs'⁹⁷.

133. The CEO has discretion under the Accommodation Policy to provide the following 'additional related benefits' to 'official guests of the RMB [the Resort] and their direct family'⁹⁸:

- entertainment (dinner and drinks)
- complimentary mountain access and transport to the village⁹⁹
- complimentary skiing for up to two days for the following official guests:
 - Premier of Victoria
 - Treasurer of Victoria
 - relevant Ministers
 - Opposition Members holding equivalent positions as the above
 - local members for State and Federal Governments
 - senior public servants and associates with the Department of Sustainability and Environment¹⁰⁰
 - other non-political and department VIPs¹⁰¹.

134. While the Accommodation Policy does not define VIP or 'non-political and department VIPs' it provides that:

In determining bookings or providing entertainment or complimentary ski activities for guests, consideration must be given to the 'good standing' of the RMB either to the Minister or the people of Victoria¹⁰².

94 Under the 2015 Rental Agreement for Huski 3, the Resort pays \$50,000 for use of the unit during the rental period of 22 May 2015 to 9 October 2015.

95 *Mount Buller and Mount Stirling Resort Management Board Employee Handbook 2015, Accommodation Policy* page 36.

96 The CEO provided evidence that the price for four nights was \$1,840 for rooms that were on sale and reduced from \$2,200.

97 *RMB Employee Handbook 2015, Accommodation Policy* page 37.

98 *RMB Employee Handbook 2015, Accommodation Policy* page 37.

99 In addition to the Accommodation Policy, entry to the Resort is governed by the *Alpine Resort (Management) Regulations 2009*, which limit the provision of free entry to the Resort to circumstances such as visitors coming to Mount Buller in an official capacity, or at the invitation of the Board in the course of carrying out its functions.

100 Now the Department of Environment, Land, Water and Planning.

101 Accommodation Policy, page 37.

102 *ibid*.

Alpine Resort (Management) Regulations 2009

135. Under the *Alpine Resort (Management) Regulations 2009*, it is an offence to enter an alpine resort in a motor vehicle without paying a fee¹⁰³. The Regulations allow certain people to enter Alpine Resorts without paying the fee¹⁰⁴, and permit the Board to reduce or waive fees in certain circumstances¹⁰⁵. For example, fees may be waived for visitors coming to Mount Buller in an official capacity, or at the invitation of the Board in the course of carrying out its functions.

Provision of free accommodation by the Board Chair

The Board Chair's extended stay at the Resort

136. The Accommodation Policy states that Board members are able to stay in Category 3 accommodation (such as Black Forest Lodge) 'when attending official duties'¹⁰⁶. The Mount Buller and Mount Stirling Resort Management Board Charter (Board Charter) states:

Where possible ... a Board Member shall be entitled to use the Board/VIP accommodation on nights either side of a board meeting or official function.

Subject to availability the Board Member may also organise to use the Board's accommodation when attending to RMB business in the region¹⁰⁷.

137. In an email dated 14 February 2014, the Board Chair advised the CEO that she would 'like to move into Black Forest from July 7 until 29 September'. She wrote:

... Of course, the other two bedrooms will be available for other Board members as required. I am convinced that the Chairman's presence in the resort(s) will send a positive message to stakeholders in this time of change and have spoken to other directors about this, with their support. I need exclusive use of the apartment only from August 16-24 for guests from Western Australia¹⁰⁸ ...

138. At interview the Board Chair said that the Board 'was ramping up [its] stakeholder engagement' and:

... with discussion with the Board members, because I don't work full-time elsewhere, I offered to spend a number of weeks in the Resort so that I could have informal discussions [with stakeholders...]¹⁰⁹.

139. In response to the Board Chair's request, the CEO said that he would need Black Forest Lodge for 'media, sponsors etc' but she could use it in July and August 2014.¹¹⁰

¹⁰³ Regulation 28 provides that the penalty for entering an Alpine Resort without paying the fee is five penalty units.

¹⁰⁴ Regulation 32 provides that a person may enter an Alpine Resort without paying a fee if they: are acting in accordance with a Board issued authority; are allowed to access the Alpine Resort pursuant to a lease or a licence under the *Alpine Resorts (Management) Act 1997* or *Crown Land (Reserves) Act 1978*; are entering the alpine resort during the off season and have not been given a reasonable opportunity to pay the fee; are travelling directly through the alpine resort to a place outside that resort.

¹⁰⁵ Regulation 33 provides that the Board may reduce or waive fees if it is satisfied that: (a) the person is conducting official business with the Board; or (b) the person has been invited by the Board (in the course of carrying out its functions) to enter the resort; or (c) a fee has already been paid for that person to access or use public areas in another alpine resort; or (d) the person is the driver of a bus bringing other people to the resort or (e) the person is in charge of an aircraft that has landed with purpose of bringing other persons to the resort.

¹⁰⁶ *Mount Buller and Mount Stirling Resort Management Board Employee Handbook 2015*, Accommodation Policy.

¹⁰⁷ Mount Buller and Mount Stirling Resort Management Board Charter, March 2014, Version No. 3.

¹⁰⁸ Email from the Board Chair to the CEO, 14 February 2014.

¹⁰⁹ Interview with the Board Chair, 1 September 2016.

¹¹⁰ Email from the CEO to the Board Chair, 15 February 2014.

140. Minutes from a Board meeting held on 16 May 2014 show that the Board Chair 'declared that she will be staying in Black Forest Lodge all of July/August. Her husband ... will also stay occasionally' . After interview, the Board Chair¹¹¹ emailed this office and advised that her husband did not stay with her at Black Forest Lodge in 2014.¹¹²

141. There is evidence that, in the past, a more stringent approach was taken to Board members' use of the accommodation. The 2009 Mount Buller and Mount Stirling Resort Management Board's Governance Manual required that use of the lodge be 'to the stated benefit of the Alpine Resort Management Board'. Board members were also required to confirm whether their intended use was 'board business or personal business'. Personal use was invoiced to the Board member at \$45 per night in 2009¹¹³.

The Board Chair's provision of free accommodation to family, friends & associates

142. The Accommodation Policy and the Board Charter intend that Board members use accommodation at Mount Buller for official, not personal purposes.

143. The *Director's Code of Conduct 2006* also states:

... as a director and a member of a Board of a Victorian public entity you must use your position appropriately. Do not use your position as a director to seek an undue advantage for yourself, family members, or associates ...

144. During the winters of 2014 and 2015, the Board Chair provided free accommodation at Black Forest Lodge to the following family, friends and other associates:

- 9-11 July 2014: two nights' accommodation to an entertainment lawyer
- 29 July 2014: one night's accommodation for three individuals associated with the Resort a, 'Girls' night in'¹¹⁴
- 14 August 2014: another one night's accommodation for the entertainment lawyer
- 16-17 August 2014: two nights' accommodation for a friend
- 20-21 August 2014: two nights' accommodation for a musician and his partner, a project manager
- 22-26 August 2014: five nights' accommodation for family
- 19-25 July 2015: seven nights' accommodation for family
- 27-30 August 2014: three nights' accommodation for a personal friend, who did not end up attending the Resort¹¹⁵.

145. At interview the Board Chair said that she provided accommodation to the entertainment lawyer, the musician and his project manager partner to discuss an idea to establish a song writing contest as a September attraction at Mount Buller. The Board Chair said that she did not pay her guests for their consultation services and she did not document any of their work during these trips¹¹⁶.

¹¹¹ *Mount Buller and Mount Stirling Resort Management Board Meeting Minutes*, 16 May 2014.

¹¹² Email from the Board Chair to the Victorian Ombudsman, 8 September 2016.

¹¹³ Email chain between Resort staff and Board members, 16-22 July 2016.

¹¹⁴ Email from the Board Chair to the CEO's office, 23 July 2014.

¹¹⁵ Interview with the Board Chair, 1 September 2016.

¹¹⁶ *ibid.*

146. At interview the Board Chair conceded that she had provided a holiday to her nephew and his family who visited between 22-26 August 2014 but said:

... should I be forced to live in isolation because I've chosen to activate a professional responsibility to my duties at Mount Buller? I don't believe so¹¹⁷.

147. The Board Chair also said that she felt she was justified in providing accommodation to her family 'given ... the amount of time I spend beyond the call of duty because I am passionate about Mount Buller and I believe in its long term future. I believe it's completely justifiable'¹¹⁸.

148. In response to the draft report, the Board Chair added:

Since [a personal tragedy in mid-2012], I have chosen, at times, to have company stay with me whilst I am working at Mount Buller ... In arranging not to be isolated, it has been my intention to reinforce my strength and resilience, not to provide me, or my guests, with entertainment.

149. The Board Chair also said:

Where I can combine my preference for company with a professional aim in having someone stay, I have. This applied to a young professional who has experience in media, events and law ... and to a performer and his tourism communications and project management partner ... Yes, they were informal arrangements. Yes, I have known these parties for some years in a professional capacity ...

These people gave their expertise freely and willingly. In return they were provided with accommodation and I cooked for them. I was in the accommodation anyway, undertaking other duties ... Cost to the government? Zero. The value of the contribution of external expertise and experience ... to our strategic thinking via information and insight is substantial. The cost of gaining that insight? [Zero] because my time is donated and so is theirs ...

150. In her response to the draft report, the Board Chair described the 'Girls' night in' for three individuals associated with Mount Buller as 'a return of graciousness to three individuals who have given service over many years to the Resort'. She said that her guests were three previous employees of High Country Reservations and the Visitor Information Centre at Mount Buller, 'a business unit partially owned by [the Resort] ... and servicing inbound tourism'.

151. The Board Chair said that she has never allowed the Resort to pay for gate entry, accommodation, transport access or lift tickets for her guests.

Provision of free accommodation, ski passes and resort entry by the CEO

Mr Y, Mr B and Mr P

152. Between 1997-2009, the CEO worked for an interstate tourist destination in a number of roles including:

- 2004-2007 General Manager – Retail, Concessionaires and Services
- 2007-2009 General Manager – Operations and Commercial.

153. Mr Y¹¹⁹ and Mr B were also employed by the interstate tourist destination at the same time as the CEO. Mr Y has worked for the interstate tourist destination in a number of roles since 1998. Since September 2009, Mr Y has been the General Manager of a hotel at the interstate tourist destination. Mr B was the General Manager of a resort at the interstate tourist destination from September 1998 until November 2004. Mr B currently runs a restaurant interstate.

154. Mr P is the Managing Director of a day cruise operator based at the interstate tourist destination.

117 *ibid.*

118 Interview with the Board Chair, 1 September 2016.

119 'Mr Y', 'Mr B' and 'Mr P' are pseudonyms. Their conduct is not the subject of this investigation and no adverse findings are made about them.

155. The CEO provided to Mr Y and his family:

- 2010: a five-night complimentary stay at the Black Forest Lodge on Mount Buller¹²⁰
- 2014: a five-night¹²¹ complimentary stay at the Black Forest Lodge and four ski passes for five days¹²²
- 2015: a six-night¹²³ complimentary stay at the Black Forest Lodge and ski passes¹²⁴.

156. The CEO provided to Mr B and his family:

- 2011: a six-night VIP car pass¹²⁵ and six nights¹²⁶ complimentary accommodation at Black Forest Lodge¹²⁷
- 2012: complimentary entry to the Resort, six-nights' parking and six-nights' complimentary accommodation¹²⁸ at Huski Lodge on Mount Buller
- 2014: eight nights' complimentary accommodation¹²⁹ at Huski Lodge and eight nights' complimentary parking for two vehicles¹³⁰. In response to the draft report the CEO said that this visit ended up being for four nights
- 2015: seven nights' complimentary accommodation, complimentary entry parking¹³¹ and two all-day ski passes for seven days¹³²
- 2016: seven nights' complimentary accommodation at Black Forest Lodge¹³³.

157. In addition, the CEO provided to Mr B and Mr P and their families:

- 2013: six nights' complimentary accommodation¹³⁴ at Black Forest Lodge, complimentary entry to the Resort, six nights parking and seven taxi vouchers for the families of B and P¹³⁵.

158. The CEO provided information indicating the market rate for equivalent accommodation at Mount Buller ranged from \$460-\$700 per night¹³⁶.

159. Between 2011 to 2014 the CEO also charged \$491.05 to his corporate credit card for meals at restaurants with Mr Y and Mr B while they were visiting Mount Buller¹³⁷.

160. At interview when asked about these visitors to Mount Buller, the CEO said that Mr Y, Mr B and Mr P were part of his 'professional hospitality and tourism network'¹³⁸ whom he considered official guests under the Accommodation Policy because they can 'provide benefit to the Resort'¹³⁹. The CEO said that he had 'personal relationships with them all' which were 'first founded on professional relationships'¹⁴⁰.

161. The CEO said that there was no documentation related to any work done or discussions had with these visitors. He said:

... the arrangement is informal, and in hindsight further documentation as to the outcomes of those discussions would be - would have been warranted¹⁴¹.

120 Email from Mr Y to the CEO's wife, 23 October 2010.

121 The CEO's calendar entry '[Mr and Mrs Y] - BF1 1-7 September 2014' and the CEO's statement responding to the Ombudsman's draft report, 21 November 2016.

122 Mount Buller and Mount Stirling Complimentary Ski Pass Register 1 September-7 September 2014.

123 The CEO's calendar Mr and Mrs Y - BF1 1-7 September 2014.

124 Email from the CEO's wife to Mrs Y 4 August 2014.

125 Email from the CEO to an employee, 31 August 2011.

126 The CEO calendar entry 'Mr B on Mountain' 31 Aug-7 Sept 2011.

127 10 May 2011 email from Mr B to the CEO's wife.

128 The CEO calendar entry '[Bs]' 1 July-7 July 2012.

129 The CEO calendar 27 June - 5 July 2014.

130 Mount Buller and Mount Stirling Resort Entry and Parking records.

131 Mount Buller and Mount Stirling Resort Entry and Parking records.

132 Mount Buller and Mount Stirling Complimentary Ski pass register 5-11 July 2015.

133 Email from the CEO to his Executive Assistant, February 2016.

134 The CEO's calendar entry '[Mr P] & [Mr B] BF1' 27 June-5 July 2013; 20 May 2013 email from the CEO to his Executive Assistant.

135 Email from the CEO's Executive Assistant to an employee, 27 June 2013.

136 In an email to my office dated 31 August 2016, the CEO provided evidence that the price for four nights was \$1,840 for rooms that were on sale and reduced from \$2,200.

137 Mount Buller and Mount Stirling Resort Management Board Approval for CEO Corporate Credit Card 2011-2014.

138 Interview with the CEO, 12 August 2016.

139 *ibid.*

140 *ibid.*

141 *ibid.*

162. The CEO also said that:

... they are personal friends as well so I saw it as an opportunity that while they were coming for a family visit that I could use them as part of our network and expand our network and use them as part of a sounding board to get their feedback 'cause I value their feedback¹⁴².

163. Emails between the CEO and his guests show that these trips were personal holidays for the CEO's friends, their partners, children and on one occasion a grandparent. Frequently, the visits were organised by the CEO's wife via email to the friends, and on one occasion to one of their partners.

164. After the CEO's wife first invited Mr Y to Mount Buller, Mr Y responded:

... that's one of the most generous offers ever, ever, ever ... I am seriously dumb struck and not sure whether to jump up and down punching the air or cry I'm so overwhelmed, so not being on for the dramatics, I'll keep composure and say a very heart felt 'thank you' to you both¹⁴³.

165. Similarly Mr P wrote to express his gratitude for the CEO's:

... generosity of arranging the apartment as we simply would not be able to do something like that normally at the moment ... all the best and once again sincere thanks for everything you arranged¹⁴⁴.

166. In response, the CEO wrote that he was 'so glad you guys had a good time and got to make some family memories together'¹⁴⁵.

167. In 2014, the CEO and Mr Y organised another visit to Mount Buller. In an email dated 21 January 2014, Mr Y wrote:

I'm putting together the [Y] family holiday plan for 2014 ... so thinking about Mt Buller for the kids first snow adventure and some family fun time plus love to catch up with you [and the family]. I know it's your peak season jammed into three choka-block months so seriously I don't want you turning into my travel agent! ... Firstly I need some local knowledge/advice on accom on the mountain that would suit the [Y] clan ... seriously, don't need special attention on this, just point me in the right direction. Secondly I would love a night put aside for a [family] catch up? ... can be as simple as pizza and some laughs? Looking at being down in Vic from mid-July to mid-August. Spend approx. 6-8 days on the mountain ... is that too much/not enough time?¹⁴⁶

168. The CEO responded:

I will be completely offended if you don't let us look after you. You tell me the dates that you want to be up and I'll lock something in for the clan. I have a range of apartments and your [sic] first in best dressed just let me know what days you would like ... Depending upon the dates that your [sic] thinking I might have you in the apartment next door to our house so lots of time for red wine and cruisy meals but even if you are in one of our other places, it's all close and we would definitely love to spend some good time with the two families all together ... hugs to the family and we'll talk soon¹⁴⁷.

169. When asked if it was consistent with the Code of Conduct to provide personal family holidays to his friends, the CEO said:

My only comment to you would be that as I mentioned before, I believe that it's implicit upon me as part of my role is to expand the hospitality and tourism network of our resort. And where I can do so through my current network of um - my professional network which happens to have friendships as well that is a positive benefit for the Resort¹⁴⁸.

142 Interview with the CEO, 12 August 2016.

143 Email from Mr Y to the CEO and his wife, 23 June 2010.

144 Email from Mr P to the CEO, 20 July 2013.

145 Email from the CEO to Mr P, 26 August 2013.

146 Email from Mr Y to the CEO, 29 January 2014.

147 Email from the CEO to Mr Y, 30 January 2014.

148 Interview with the CEO, 12 August 2016.

170. In response to the draft report, the CEO said he wished to ‘emphasise the value [of] having people such as [Mr Y], [Mr P] and [Mr B] observe operations in the Resort during the winter season’ as they are ‘respected and influential experts in the tourism industry’.

171. The CEO also said:

I was originally allocated the three-bedroom unit, however, in 2012 after discussion with the Board, I agreed to move into the smaller, two-bedroom unit to enable better utilisation of the three-bedroom unit. In making this move I lost the ability to have family and/or friends stay in my residence. The RMB for its part was able to make significant savings on accommodation expenses for Board members and guests by having access to a three-bedroom unit.

172. The CEO added:

I expect [the Board Chair] understands the limitations of my small unit and the needs of my family to be able to accommodate guests ... I do not regard the provision of the unit I occupy at Mt Buller as a perk of the office ... but for [the requirement to live there during the ski season] I would be living in a larger, more comfortable house in Mansfield. Spending almost all my time at the Resort over the winter period means that I am always on call and, whenever I leave the unit, I am constantly on duty. My wife, who is a non-skier, is very limited in what she can do during the time we spend in residence within the Resort.

and

While there has been no discussion between myself and the Board about the matter, I am confident that if I had asked the Board, the Board would have, particularly having regard to the fact that I relinquished the three-bedroom unit, expressly endorsed my entitlement to have limited private use of the three-bedroom unit.

173. At her interview, the Board Chair said that she expected the CEO and other staff to use the lodges at Mount Buller within the confines of the Accommodation Policy, and that she was not aware that the CEO had provided free accommodation, Resort entry and skiing to Mr Y, Mr P and Mr B.

174. When asked whether the CEO was entitled to have his friends stay in Black Forest accommodation for free, the Board Chair said that she thought that the ‘isolation of [the CEO’s] role’ ... would completely justify him having someone come and stay¹⁴⁹. When asked whether this was consistent with the Code of Conduct (sections 3.2 and 3.3) she said:

I think it is consistent with the conditions under which the Resort operates. And I don’t believe that the privilege has been abused¹⁵⁰.

The CEO’s real estate agent

175. In 2011, the CEO provided free accommodation at Huski Lodge to a real estate agent from an agency located at the international tourist destination. The CEO is Chair of a company that owns an apartment complex at the interstate tourist destination. The real estate agency is the letting agent for the CEO’s apartment at the complex¹⁵¹.

176. Emails indicate that in 2011 the real estate agent contacted the CEO from her real estate agency email address about issues with a tenant¹⁵². In the same email chain, about a week later, the real estate agent thanked the CEO for his assistance with an upcoming trip to the Resort¹⁵³.

177. Email records show that the CEO organised a six-night complimentary stay at Huski Lodge between 31 July and 5 August 2011¹⁵⁴ for the real estate agent.

149 Interview with the Board Chair, 1 September 2016.

150 Interview with the Board Chair, 1 September 2016.

151 Interview with the CEO, 12 August 2016.

152 Email from the real estate agent to the CEO and his wife, 22 March 2011.

153 Email from the real estate agent to the CEO, 7 April 2011.

154 Email from a former Executive Assistant to the real estate agent, carbon copy to the CEO, 5 May 2011.

178. At interview, the CEO said that the complimentary accommodation he provided was not for the real estate agent but her husband who, as a General Manager at the interstate tourist destination, is one of the CEO's '... network colleague[s]' with whom he had 'network relationships with during [his time] at [the interstate tourist destination]'¹⁵⁵.

Provision of flights and accommodation to the interstate tourist destination as staff prizes

179. Since 2010, the CEO has awarded prizes to staff at the end of season celebration held in September each year. One of the prizes is flights and two nights' accommodation for two people at the hotel managed by Mr Y at the interstate tourist destination¹⁵⁶.

180. The Resort's Financial Code of Practice provides for token gifts for the 'celebration of significant staff achievements' such as reward or recognition programs or events and celebrating length of service milestones and/or retirements'. These are deemed 'reasonable expenses'¹⁵⁷.

181. At interview the CEO explained that he provides certain prizes under the Resort staff recognition program, known as the Star Program and he also randomly awards 'lucky door prizes'¹⁵⁸.

182. The prizes awarded by the CEO range in value from \$100 to about \$1000 for flights and accommodation at the interstate tourist destination¹⁵⁹. The CEO explained at interview that the '[tourist destination] prize' is awarded as a 'lucky door prize' and not as a recognition of staff achievement.

183. The CEO said that these prizes are paid for with public money. It appears that the Resort has spent \$6,558 on door prizes to the tourist destination since 2010.

184. In response to the draft report, the CEO stated that these prizes were a way of improving customer service at the Resort by exposing his staff to 'a level of customer service provided at other resorts'. He said that when he started at the Resort, survey results revealed a high level of customer dissatisfaction and there have been substantial improvements in guest satisfaction with customer service under his tenure.

155 Interview with the CEO, 12 August 2016.

156 For example: 25 September 2015 letter from the CEO; 26 September 2014 letter from the CEO.

157 *Mount Buller and Mount Stirling Resort Management Board Employee Handbook 2015*, Financial Code of Practice, page 21

158 Interview with the CEO, 12 August 2016.

159 For example, other prizes awarded by the CEO included accommodation for two at the Grand Hyatt Hotel in Melbourne, including dinner to the value of \$175 and buffet breakfast and dinner for two at a restaurant in Mount Buller (ranging from \$100-\$175). Costs for flights to and accommodation at the tourist destination vary from year to year.

Bonus arrangements

Staff bonuses

185. During the investigation, concerns were identified about the provision of bonuses by the CEO. In between the 2012-13 and 2014-15, financial years, the CEO awarded \$49,000 worth of bonuses¹⁶⁰ to five staff¹⁶¹, including the CFO, who were not on executive contracts and therefore not entitled to bonuses¹⁶².

186. The CEO and the CFO said that the Resort does not have a policy or procedure about bonuses¹⁶³. The CEO said that he provides bonuses based on performance reviews and records the decision to award the bonus in a letter at the end of the performance review. For example, on 22 January 2015, the CEO wrote to the CFO:

This follows our discussions on 22 January 2015, where we used the Performance Development Tool to collectively discuss your performance and progress through the Major Accountabilities of your Position Description as well as the Organisations Core Values.

As was outlined to you on the day, I am pleased to report that your performance for the period was very strong and I would like to convey my sincere appreciation for your efforts.

In line with your performance, I am authorising an increase of your salary of \$10,000 effective from 1 November 2014. Your increase will be back paid to this date.

Additionally in recognition for your performance over 2012-13 period, I am authorising a one-off bonus of \$10,000.¹⁶⁴

187. The CEO said that the CFO was originally hired as a Finance Manager and was promoted. In relation to the CFO's bonuses, the CEO said:

He does an outstanding job and he was undervalued and under paid in the past so I've been working though performance reviews to bring him up¹⁶⁵.

188. Other than stating that the CFO's performance was 'very strong' the letter does not contain any information about the rationale for the CEO's decision to award a bonus or how the bonus was quantified.

189. In response to the draft report, the CEO said:

I acknowledge that at interview I said that "I don't believe we have a policy related to Executive bonuses". While this is true, it does not take account of the fact that there is, in respect of all senior staff, a Performance and Development Review and that in conducting the review I use a Performance and Development Review Tool - this is referred to in my letter to [the CFO], which is reproduced [in the report]. The Performance and Development Tool is a 10-page document which is used to review an Executive's performance against his or her Annual Performance Objectives, Major Position Description Accountabilities, significant Achievements and/or projects, Organisational Values, Future Objectives and Development Plan. The application of this tool provides an objective basis for the opinion which I form about each executive's performance and the level of the bonus, if any, to be paid. In addition, as an experienced manager, I am able to make judgments about the quality of the work performed by executives, particularly, when an executive performs work above and beyond normal expectations. I do not pay bonuses to executives simply to perform to the minimum expectations of their positions.

190. At interview the CFO said that awarding the bonuses was at the discretion of the CEO, and he did not know how the CEO quantified the bonuses. The CFO also said that bonuses were not a budget line item and were paid from resort profits for 'extraordinary performance, above and beyond'.

¹⁶⁰ The Resort Management Board's Human Resource delegation for 'pay roll changes and incentives' sits with the CEO, therefore the Board has given the CEO the power to pay bonuses, or what is more commonly known in the public sector as gratuities.

¹⁶¹ Of this total, the CFO received \$26,000.

¹⁶² The Victorian Government's Policy on Executive Remuneration for Public Entities in the Broader Public Sector establishes an entitlement to bonuses for executive staff in certain circumstances.

¹⁶³ Interview with the CEO, 12 August 2016.

¹⁶⁴ Letter from the CEO to the CFO, 'Performance Review', 22 January 2015.

¹⁶⁵ Interview with the CEO, 12 August 2016.

Conflict of interest

191. This section of the report will deal with the following allegations relating to concerns about conflicts of interest.

- The CEO regularly engages a business in which his wife has an interest, to provide staff functions, with no transparent procurement process.

Engagement of a catering company

192. The CEO engaged a catering company to host the Resort's end of season party at a ski lodge at Mount Buller in 2012, 2013 and 2014. During the snow season, the owners of the catering company also manage the ski lodge.

193. One of the owners of the catering company is also in a business partnership with the CEO's wife. Together they own and operate a company that organises events at Mt Buller.

194. At interview the CEO said that the Resort paid the ski lodge for catering for the end-of-year celebrations, not the catering company. He said:

... I don't believe we would pay [the owners of the catering company]. We'd pay [the ski lodge]. Get invoiced by [the ski lodge]¹⁶⁶.

195. The evidence does not support the allegation that the Resort paid the ski lodge for catering. Instead, the evidence shows that the catering company was paid:

- \$9,000 for catering the 2012 End of Season Staff Party
- \$12,221 for catering the 2013 End of Season Staff Party
- \$10,925 for catering the 2014 End of Season Staff Party.

196. There is email evidence showing that the Resort sought quotes from other suppliers for the catering. However, the CEO told the investigation that he made the decision about whom to engage.

197. In response to the draft report, the CEO said:

I deny that any preference was shown to either the [ski lodge] or [the catering company]. Information about what the various business operators were offering was put to me and I made a judgement based on merit. I made this judgement with the assistance of my Executive Assistant and, on some occasions, members of the Executive Team.

¹⁶⁶ Interview with the CEO, 12 August 2016.

198. The CEO did not provide any evidence to the investigation that other members of the executive team were involved in the decisions to engage the catering company.

199. Email evidence shows that the CEO has sought benefits for his wife's business partner at the interstate tourist destination¹⁶⁷. He wrote:

... A very good friend of ours is coming to the island for the first time this weekend for 4 days. They are the epitome of a hardworking couple, a mom and pop operation, they run a guest house on the mountain, [and a catering company] ... and are in partnership with [the CEO 's wife] in an events company. Above all that they are just two really nice people that need a break after a really hard winter season. They are staying in [Mr Y's hotel] and [an executive of Mr Y's hotel] and [Mr Y] have looked after them but I was wondering if there was any chance of getting them some activity vouchers ...

200. Despite this, at interview the CEO said he did not have a friendship with this individual¹⁶⁸.

201. In response to the draft report, the CEO's wife said that while she enjoys a close personal friendship with the owners of the catering company, the CEO does not. She said he 'maintains a professional, friendly relationship' with them, 'similar in nature to the relationships he has with many of the other stakeholders at Mt Buller'.

202. At interview the CEO said that he declared his interest in his 'wife's company and her partnership with [the owner of the catering company]'¹⁶⁹ and that he did not think that his engagement of his wife's business partner in these circumstances was inappropriate.

203. In response to the draft report, the CEO added:

The suggestion that I would favour any operator within the Resort is misplaced. Similarly, the statement that I have failed to understand my obligations in relation to business dealings with friends and associates is incorrect.

¹⁶⁷ Email from the CEO to an employee at the interstate tourist destination, 13 September 2013.

¹⁶⁸ Interview with the CEO, 12 August 2016.

¹⁶⁹ *ibid.*

Findings

204. Concerns about the way in which organisations operating at ‘arms-length’ from Government treat public sector obligations regarding the expenditure of public money has been a recurring theme identified by this office over the years¹⁷⁰.
205. In this instance, a public sector entity in a remote location is managing a Crown land asset that is a popular public tourist resort. Mt Buller and Mt Stirling are managed on behalf of the Minister for the benefit of Victoria. The Resort and Board’s role is to oversee public assets and infrastructure, provide essential services to the local community and to perform a range of responsibilities and functions similar to a local council¹⁷¹. The Resort is also required to be planned for, developed, promoted and managed as a nature-based tourist, recreational and educational resort for all seasons of the year¹⁷².
206. The use of public funds by the Resort and its Board must meet rigorous standards. It is not simply a matter of how much public money is expended, but also the manner in which it is spent that matters. In this investigation we identified more than \$30,000 of public money was spent on international family travel, the entertainment of the CEO’s friends, and the provision of extravagant prizes. A further \$50,000 was spent on staff bonuses without adequate justification or transparency. None of this was in the public interest, nor did it come close to meeting the expectations of the behaviour of those with access to public funds and resources.
207. The public also rightly expects that the privileged access to the snowfield’s accommodation enjoyed by the Resort’s staff and Board will be used appropriately and not taken advantage of for the entertainment of friends, family and associates. The investigation revealed this expectation has not always been met.
208. Perhaps most striking is that the senior public sector employees and the Board Chair gave evidence that they were unaware of their obligations with respect to public sector policies, directives and legislation, and frequently acted inconsistently with their own internal policies.
209. With the exception of the Board Chair, the subjects of this investigation had little or no experience in the public sector. Previous Ombudsman investigations have demonstrated the risks presented by engaging such individuals in senior public sector positions, owing to their lack of awareness of public sector policies and values.

Misuse of public funds

The CEO improperly purchased airfares and hospitality for his wife and son using the Resort’s credit card

210. The investigation found that the CEO acted inconsistently with public sector legislation and policies by spending more than \$8,000 of public money over two years on what were primarily family holidays.

170 See for example my report *Investigation into allegations of improper conduct in the Office of Living Victoria*, 2014 and my predecessor’s report *Investigation into allegations of improper conduct by CenITex officers*, 2012 <www.ombudsman.vic.gov.au>.

171 Section 38 of the *Alpine Resorts (Management) Act 1997* sets out the functions.

172 *Alpine Resorts (Management) Act 1997* section 38.

2014 trip to Savannah Georgia, United States

211. In 2014, the evidence indicates that the CEO planned a family holiday to the United States, then sought to identify a reason for the Resort to pay for his flights. This is evidenced by his wife's email 'Serendipity at work' and the subsequent decision to attend the NSAA convention. The Board Chair's evidence that she suggested the CEO attend the convention is not plausible in the circumstances.
212. In 2014, the CEO spent four days at the NSAA convention and 14 days at his lake house. During this time, the CEO spent \$292 on meals for his family.

2015 trip to San Francisco, United States

213. In 2015, the CEO admitted that he used his corporate credit card to spend \$5,257.66 of public money on airfares for himself, his wife and his child to travel to San Francisco where he again attended the NSAA convention. The CEO also used his corporate credit card to pay for \$255.08 worth of family meals. The CEO spent four days at the convention and three weeks at his lake house.

Application of the Travel Principles, Purchasing Card Rules and Codes of Conduct

214. The CEO spent the majority of his time in the United States, not attending ski conventions on behalf of the Resort, but at his family's lake house in New York State. These trips were primarily holidays, and thus inconsistent with the Travel Principles. This is also evidenced by the CEO in his own words in emails to the Board Chair and friends.

215. In response to the draft report, the Board Chair said 'there is no doubt that I knew that [the CEO] was combining attendance at the conference with family leave. I deny however that it could be said this was 'primarily' for the purpose of a family holiday'. The CEO's own words indicate that the research and development provisions of his contract were designed to 'assist' him with his regular travel 'to the US for holidays'. Such use of public money is unacceptable.
216. The Board Chair and the CEO both said that they were unaware of the Travel Principles. However, the Secretary of the department advised the investigation that the Travel Principles were brought to the attention of the CEO and Chair on four prior occasions.
217. The Travel Principles form the minimum standards on which all public sector organisations base their travel policies. The CEO breached the Travel Principles when he bought air tickets for his wife and child at the public expense without the Premier's approval and by taking far more leave than permitted during official travel, which gave the impression that official travel was used to subsidise his family's private travel arrangements. The investigation also found that on the two NSAA trips, the CEO charged a total of \$547.08 to his corporate credit card to pay for meals for his family.
218. In response to the draft report, the CEO said that in his view the Travel Principles did not apply to his private expenditure on his family during his 2015 trip, because those costs were covered by the remuneration package in his contract, which allowed him to spend \$5,000 additional costs associated with research and development scheduling. Therefore, he says these costs are a contractual entitlement and not official travel under the Travel Principles.

219. The Board Chair also told my investigation that she was uncomfortable with approving the cost of flights for the CEO's wife and child. Yet, she did not seek advice, instead saying she felt obliged to approve the request because the CEO's contract allowed him to claim up to \$5,000 in, as she put it, 'activity associated with research and development'.

220. The responses of the CEO and the Board Chair, in this regard, appear inconsistent. The CEO argues the trips were not 'official' travel, but part of his contract and therefore not subject to the Travel Principles. In contrast, the Board Chair says the CEO was 'travelling to America ... to attend a conference. He did not do so of his own volition but rather at my and the Board's suggestion and with our endorsement'. The Board Chair's evidence is also at odds with the CEO's wife's email titled 'Serendipity at work'.

221. Both trips were approved by the Board Chair. Despite the transparency of the arrangements, it is clear that both the CEO and the Board Chair were mistaken about public sector fundamentals. The Board Chair's approval of the expenditure of public money on what she ought reasonably to have known were primarily family holidays, was inconsistent with the Directors' Code of Conduct, which requires that she demonstrate leadership, stewardship and ensure that the public entity as a whole complies with relevant standards¹⁷³.

222. The CEO also failed to meet public sector standards. He used his position to provide a private benefit to his family and failed to maintain a strict separation between public and private financial matters in breach of sections 3.2 and 3.3 of the Code of Conduct for Public Sector Employees. His use of his corporate credit card for his family's travel and meals was also inconsistent with section 4.5.3¹⁷⁴ of the Purchasing Card Rules under the Financial Management Act, which provides that corporate credit cards can only be used for official purposes that are in direct connection with, or as a consequence of, the cardholder's functions and duties within an organisation.

The Property Manager's use of public funds for the private travel of his family

223. The investigation found the CEO and the Property Manager acted inconsistently with section 3.2 of the Code of Conduct and the Travel Principles in arranging a 'research and development' trip to the French Alps taken by the Property Manager and his family during the 2015 Christmas break.

224. Section 3.2 of the Code of Conduct prohibits the provision of personal benefits to family members; however, the Resort reimbursed the Property Manager \$15,831.68 for his family's flights to France and their accommodation. Included in the reimbursement was the invoice for an earlier separate flight taken by the Property Manager's child in August to visit a relative in France and undertake studies.

173 Director's Code of Conduct (2006) page 30.

174 Section 4.5.3 Procedure (a) Dot point 3.

-
225. The Property Manager's employment contract provides that each year the Resort will pay up to \$10,000 'reasonable costs associated with' 11 days' research and development leave. As supported by the evidence of the Board Chair and the CFO, family travel expenses are not 'reasonable costs'.
226. The Property Manager's and the CEO's evidence that the Property Manager could travel with his family pursuant to the terms on his contract, shows a lack of awareness of the Travel Principles that reflect that the travel by a partner at public expense can only be taken with the Premier's approval.
227. Another concern is that the Property Manager sent his child to France at the public's expense months prior to his 'research and development' trip. The Property Manager said that his 'best guess' was that the CEO knew that his child was flying separately.
228. Although the CEO and the CFO approved the Property Manager's reimbursement request, both said that they had not intended to reimburse the Property Manager for his child's separate travel. The CFO said that paying for the Property Manager's child's flights was inappropriate, and the Board Chair said she was 'uncomfortable' with the arrangement.
229. The investigation also found that the Property Manager attended another 'research and development' trip with his family to Jackson, Wyoming in 2013-14. The Resort spent \$8,820.60 on the Property Manager and his family's expenses. This, again, was not consistent with the Travel Principles or the Code of Conduct.
230. The Property Manager's comment that he believed it 'appropriate' for the Resort to pay for his family's expenses 'because we are a very family-oriented resort and it's important for us to experience this as a family' is questionable.
231. There was no documentation to justify the CEO's decision to approve either of the Property Manager's trips, or his family's attendance; although the Property Manager did report on his visits to the CEO upon his return.
- The Resort's travel policy and allowances**
232. Including 'research and development' or professional development allowances in contracts risks inducing expenditure for personal gain, by appearing as an 'entitlement'. Research and development travel should be approved according to the Travel Principles and taken only when there is a documented organisational need and it is in the public interest to do so.
233. The findings in this report about the use of public funds for the travel of the CEO's and Property Manager's families was defended along similar lines by the CEO personally and by his and the Property Manager's legal representatives. In essence, the argument put forward is that the CEO and the Property Manager are entitled to spend public funds on their families' travel because of the 'remuneration packages' in their contracts.
234. While the CEO's and the Property Manager's contracts may include research and development components, these components are not part of their total remuneration packages. The contracts allow for payment of costs associated with research or training. This cannot reasonably be interpreted to include travel costs of family members.

235. Even if it were correct that the employment contracts allowed for payment of their families' travel, the CEO, the Property Manager and the Board would have entered into contractual arrangements that were inconsistent with public expectations about the expenditure of public money, not to mention the Travel Principles. Statutory authorities like the Resort cannot contract their way around the expectations of Government, including those clearly expressed in the Travel Principles and Purchase Card Rules.

236. In his second response to the draft report the CEO's legal representative said:

There was no intent on the part of the Board or [the CEO] to avoid the expectations of Government or the Travel Principles, rather, the parties were electing that one of the benefits of [the CEO's] employment (and [the Property Manager's] employment) would be travel in this form. In the case of the CEO's entitlements, the Board (and [the CEO] in the case of [the Property Manager]) made a commercial decision to agree to include these particular benefits in lieu of other benefits.

237. The Resort informed this office that it does not currently have a Travel Policy. However, investigation officers located a travel policy implemented by the Board in 2007¹⁷⁵, which reflected the Travel Principles outlined in the Premier's Circular (No 2006/O4). It is unclear why this policy is no longer in place.

238. In response to the draft report the Board Chair said:

Since I was interviewed on September 6 the lack [of a travel policy at the Resort] has been addressed. As an organisation there has been so little travel, I have not noticed its absence nor been alerted to the need for one. I appreciate the opportunity to be made aware of the 2007 ruling. I do not know why it was registered in the [Resort] and subsequently lost. The loss predates my appointment by four years. It does not appear on our policy register.

The CEO used public funds to pay for snow tyres for his personal vehicle

239. The Code of Conduct requires a strict separation of work-related and private finances. The investigation found that the Resort purchased snow tyres for the CEO's private BMW vehicle, at a cost of \$1580. During the investigation, the CEO reimbursed the Resort the cost of the snow tyres.

Misuse of position and public resources

240. The Resort's Accommodation Policy provides that:

In determining bookings or providing entertainment or complimentary ski activities for guests, consideration must be given to the 'good standing' of the RMB either to the Minister or the people of Victoria.

241. This statement reflects the reasonable public expectation that those with access to the benefits of Victoria's alpine resorts, use that privileged access carefully, conservatively and do not use Crown land assets to provide personal favours to friends, family or associates. The investigation found evidence that the two most senior officers at the Resort, the Board Chair and the CEO, have used the Resort accommodation for their personal friends and associates. The market rate for accommodation equivalent to that the CEO and the Board Chair provided to friends and family ranged from \$460-\$700 per night¹⁷⁶.

¹⁷⁵ Board Funded Travel (international and interstate) Policy, November 2007.

¹⁷⁶ The CEO provided evidence that the price for four nights was \$1,840 for rooms that were on sale and reduced from \$2,200.

The Board Chair misused work accommodation by allowing personal friends and family to stay there

242. The investigation found that in 2014 the Board Chair used Black Forest Lodge as a base on the mountain during the ski season. During this time, she entertained her family and friends who stayed at the accommodation without payment. This was inconsistent with the Resort's Accommodation Policy, Board Charter and the Director's Code of Conduct.
243. The Board Charter and the Accommodation Policy provide that Board members have access to accommodation at Mount Buller. However, both documents make clear that this access is to be used for official duties, such as board meetings or attending official functions.
244. The Board Chair told the investigation that her use of Black Forest Lodge in 2014 was, at least some of the time, for work-related purposes. However, her use of Black Forest Lodge does not appear to satisfy the Board Charter or the Accommodation Policy, which permits such use 'on nights either side of a board meeting or official function' or 'when attending to RMB business in the region'¹⁷⁷.
245. The Board Chair also conceded that she provided free accommodation to family members in 2014 and 2015. Using public assets to provide an advantage to her family falls below the community's expectations of the behaviour of a Board chair. The Board Chair has also failed to meet the requirement in section 3.2 of the Director's Code of Conduct that she demonstrate stewardship and leadership by behaving in a way that exemplifies public sector values.
246. The Board Chair said that while her conduct was not consistent with the Accommodation Policy, she felt entitled to have friends and family stay with her because of the 'isolation' at Mount Buller. Staying at Mount Buller for an extended period of time appears to be beyond normal Board duties and something she chose to do. That she felt isolated at Mount Buller is not an acceptable reason to provide free holidays to her family at the public's expense.
247. In her response to the draft report, the Board Chair acknowledged that at times the Resort's Accommodation Policy 'was not strictly met'. However, she said believes this was justified because she had been 'working at all times [she] was in the Resort'. She also said that the Accommodation Policy is 'too rigid given the location of the Resort and that corresponding need to ensure that staff and Board members remain when professionally engaged in matters'.

The CEO misused work accommodation and ski passes for the benefit of personal friends and a business associate

248. While the Board Chair's inappropriate use of Black Forest Lodge was essentially limited to one winter, since arriving at Mount Buller in 2011, the CEO has routinely used it and other accommodation owned by the Resort to provide free holidays for friends and other associates from an interstate tourist destination with which he was previously associated. In doing so, the CEO acted inconsistently with the Code of Conduct, the Alpine Resorts (Management) Regulations and the Resort's Accommodation Policy.

¹⁷⁷ *Mount Buller and Mount Stirling Resort Management Board Charter*, March 2014, Version No. 3.

-
249. Since commencing at the Resort, the CEO provided 52 nights' free accommodation to personal friends and their families, with one family visiting five of the six past winters. He also provided them free ski passes and parking. The CEO also provided free accommodation to a real estate agent managing a property he owns at the interstate tourist destination, in violation of the Code of Conduct requirement to separate work-related and personal financial matters.
250. From 2011-14, the CEO also charged \$491.05 to his corporate credit card for meals at restaurants with Mr Y and Mr B while they were visiting Mount Buller¹⁷⁸.
251. The CEO's evidence was that while the guests discussed in this report were close friends who were primarily visiting for personal reasons, they were also part of his 'professional tourism network' and therefore entitled to free accommodation, entry to the Resort and skiing as VIPs whose visits added some value to the Resort.
252. There were no meetings scheduled or work documented; and the professional value of these multiple visits was not recorded in any way that would satisfy the public that these guests were 'official guests' of the Resort.
253. The wealth of emails exchanged about these visits conveys close, long-standing and personal relationships between the CEO and the guests; and they do not reveal any official purpose for the visits to Mount Buller. Using the Resort in this way violates of section 3.2 of the Code of Conduct, in that the CEO used his position to provide personal benefits to his friends.
254. In response to the draft report, the CEO said that he should be entitled to 'limited private use' of Black Forest Lodge for his family to accommodate guests. However, this is inconsistent with his evidence at interview that Mr B, Mr Y and Mr P were part of his professional network and, thus 'VIPs' under the Accommodation Policy.
255. In response to the draft report, the CEO also stated that his guests only used the unit at Black Forest Lodge when it was not otherwise in use, so there was no financial impact on the Resort. However, the visits of guests on some occasions were planned months in advance.
256. The CEO also said:
- In relation to lift passes, the lift passes were not purchased for use by any particular individual, rather, annual lift passes are purchased by the RMB which are made available to Board members, RMB staff and RMB guests on a first in, first served basis. There was, therefore, no additional cost to the RMB.
257. In addition, the CEO said:
- It is within my discretion to waive Resort entry fees - I do this for guests of the RMB and in a variety of other circumstances. I accept that there may be some people who would not make the same judgement, however, in my judgement, the revenue foregone would easily be made up by reference to the value contributed by these visits.
258. However, the Alpine Resort (Management) Regulations do not contain a discretion for the waiver of entry fees for the CEO's friends. There is no evidence that the CEO's friends met any of the criteria outlined in the Regulations. By providing free access to Mount Buller, the CEO caused his friends to breach the Alpine Resort (Management) Regulations by entering the Resort without paying an entry fee¹⁷⁹, in circumstances in which a fee waiver is not permitted under the regulations¹⁸⁰.

178 Approval for CEO Corporate Credit Card 2011-2014.

179 *Alpine Resort (Management) Regulations 2009* regulation 28.

180 Regulation 32 provides circumstances in which a person may enter the resort without paying a fee; Regulation 33 lists circumstances under which the Board may reduce or waive fees for access or use of the resort.

259. The CEO accepts there could be a perception that he misused his position and public resources:

I am concerned about the criticism made of my use of the three-bedroom unit and I accept that I should have both formalised the use of Black Forest Lodge for limited private use with the Board and discussed with the Board the question of whether the value these guests could contribute justified giving them guest use of the RMB status. I accept that there could be a perception that I misused my position and public resources. However the nature of my actions should be seen in context.

260. In their responses to the draft report, the CEO and the Board Chair both made the point that their private use of the publicly owned Black Forest Lodge for the accommodation of their friends and family did not cost the State money. While it is true that this accommodation is owned by the Resort, these responses miss the point that the CEO and the Board Chair have used their public positions to access public resources for the private benefit of their friends, family and associates. This is not permitted by the Code of Conduct, irrespective of the cost to government.

Provision of flights and accommodation to the interstate tourist destination as staff prizes

261. Since arriving at Mount Buller in 2010, the CEO has provided staff with \$6,558.87 worth of randomly awarded door prizes of flights and accommodation to the interstate tourist destination at the Resort's end-of-year functions. This is inconsistent with the Resort's Financial Code of Practice, which only allows for 'token' prizes for the celebration of achievement or milestones.

262. This practice ignores the obvious public perception that using public money to provide such generous gifts to public sector employees is simply wrong. Given the recipients of the prize are accommodated at the hotel managed by Mr Y, who in turn frequently receives accommodation favours from the CEO, the use of public money in this way is even more questionable and fails to meet the Code of Conduct requirement that work-related and personal financial matters are strictly separated¹⁸¹.

Bonus arrangements

263. The investigation identified an issue with the transparency of \$50,000 in bonuses paid to staff, including the CFO, in the absence of a policy or procedure about when and how bonuses can be awarded. It is not relevant that the CEO uses Resort 'profits' to award bonuses as the profits are generated from the use of a publicly owned resource. Therefore how the profits are used should rightfully be subject to the same public scrutiny as expenditure of all other public money. This scrutiny is near impossible because of the paltry information available about the awarding of bonuses.

264. The CEO explained to the investigation that he provides bonuses based on performance reviews and records and informs the recipient the decision in a letter at the end of the performance review.

¹⁸¹ Victorian Public Sector Code of Conduct for Public Sector Employees 2015 section 3.3.

265. The performance review tools described by the CEO are used across the public sector. The purpose of these tools is not to justify staff bonuses, but to ensure that staff are meeting expectations set by the organisation and to provide for incremental salary increases tied to progression. There is no evidence that the CEO has recorded his justification for the relevant bonuses in the performance review tools or anywhere other than in short letters to staff informing them of his decision. This lack of transparency is not acceptable.

266. On 4 August 2016, the Department of Premier and Cabinet announced the Premier's decision to remove performance-related bonuses from government policies related to executive employment and remuneration. This decision was made pursuant to a review by the Victorian Public Sector Commission that found that the provision of bonuses to public sector executives does not drive performance and is not offered in other Australian jurisdictions. To date, the Premier's decision has only been applied to Victorian Public Service executives, and a sector specific review of organisations in the wider public sector is being conducted in 2017.

267. While there does not appear to be a policy addressing the award of bonuses for non-executives in the Victorian Public Sector, the provision of bonuses to non-executive Victorian Public Sector staff should be considered in the context of the changing policy landscape about executive bonuses.

Conflict of interest

268. The investigation identified concerns with the CEO's engagement of his wife's friend and business partner. In remote areas such as Mount Buller there may easily be overlap between personal and professional relationships. However, public sector employees must be careful and agile in how these relationships are managed to avoid the perception of a conflict of interest.

269. The investigation found that the CEO failed to avoid the perception of a conflict of interest by personally engaging his wife's business partner to cater the Resort's end-of-year parties three years in a row for a total cost of \$32,146. Each time, he selected the catering company from a range of competitors, without input from anyone other than his Executive Assistant. The CEO's response to the draft report, states that he consulted other executive staff about the engagement of the catering company. There is no documentary evidence to support the involvement of executive staff in the decisions and it contradicts his own evidence at interview. Given the professional and personal relationships, the CEO would have been prudent to remove himself from this decision entirely.

270. At interview, the CEO said that he did not pay the catering company, but the ski lodge at which they are employed. This is inconsistent with the evidence. Despite calling his wife's business partner 'a very good friend of ours' in his email to a friend at the interstate tourist destination seeking favours for her and her husband, the CEO denied that she was his friend.

271. In failing to understand his obligation in relation to business dealings with his friends and associates, the CEO breached section 3.7 of the Code of Conduct that he avoid actual potential or perceived conflicts of interest.

Recommendations

To the Minister:

Recommendation 1

Review the current governance arrangements of Alpine Resort Management Boards regarding the issues and findings raised in this report.

To the Secretary, Department of Premier and Cabinet:

Recommendation 2

Revise the Travel Principles to make it clear that public sector organisations are not permitted to enter into employment contracts that provide travel entitlements inconsistent with the Principles.

The Department of Premier and Cabinet's response:

In response to the draft report and recommendations, the Deputy Secretary, Governance Policy and Coordination advised:

DPC supports in principle a clarification of the Victorian Public Sector Travel Principles to make clear that public sector organisations are not permitted to enter into employment contracts that provide travel entitlements inconsistent with the Travel Principles. DPC anticipates briefing the Premier shortly regarding revising the relevant documents.

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

Recommendation 3

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's response:

In response to the draft report and recommendations, the Secretary of the department, advised:

The Department of Environment, Land, Water and Planning (DELWP) greatly appreciates the investigation into the Mount Buller and Mount Stirling Alpine Resort Board and into the resort management. DELWP also welcomes this opportunity to provide a response to the draft report, and will embrace the report's recommendations to assist to improve the performance, transparency and accountability of the resort for the benefit of the Victorian Government and the Victorian community ...

DELWP acknowledges that the findings of the report recognise the risks of engaging individuals, who have had little or no experience in the public sector, in senior public sector positions, owing to their lack of awareness of public sector policies and values. Therefore, DELWP would positively view ... recommendation [3].

To the Board:

Travel

Recommendation 4

Develop a travel policy consistent with the Travel Principles, which:

- a. conforms with the requirement that any partner's travel at public expense requires approval from the Premier
- b. requires that prior to approving travel, the Board or the CEO review documents detailing the purpose of the travel to satisfy itself that the travel is in the public interest; that the expense and duration of the travel are justified; and that the travel will not create the impression that official travel is being used to subsidise private travel. This assessment should be documented.

Recommendation 5

Ensure that travel associated with research and development is justified on a case-by-case basis in accordance with organisational need and the Travel Principles, rather than as a personal contractual entitlement.

Recommendation 6

The Board Chair provide an attestation in the Board's Annual Report annually for a period of three years that the Resort's travel expenditure and reasons for the travel comply with the Travel Principles.

Recommendation 7

Require that the CEO pay back the cost of his family's flights to the United States in May 2015, and the cost of meals for his family paid for on his corporate credit card in the United States in 2014 and 2015.

The CEO's response:

In his first response to the draft report, the CEO said that he is willing to pay back \$294, his estimated cost of meals paid for his family during their 2014 trip to the United States. However, he said that he did not propose to pay back the cost of his wife's and child's flights to the United States in 2015 or meals they consumed during their 2015 holiday, as he considered that 'to do so would involve me foregoing my contractual entitlements'. His lawyer also said:

[The CEO] was entitled to rely on the Board to ensure that all the legal and procedural requirements [regarding the contract] are attended to. There is no evidence that [the CEO] entered into any of these arrangements other than in good faith and in the belief that arrangements had been put in place by the Board to encourage him, as a highly qualified applicant, to take up employment with the RMB and to subsequently encourage him to remain in that employment. In the absence of a legal basis to require a further reimbursement by [the CEO]... declines to make such a payment.

However, in a subsequent response, the CEO advised that he had entered into an agreement with the Board whereby he 'would repay an amount previously paid by the organisation in respect of family travel in 2015, family meals in 2014 and 2015 whilst traveling, and meals associated with entertaining certain guests in the resort from 2011-14'.

In correspondence to the Board confirming the agreement, the CEO stated:

In agreeing to make the repayment, I do so on the basis that it is in the wider interests of both the Board and the organisation not to be seen to make payments which are inconsistent with Government policy. This said, it should be recorded that, apart from \$292 in respect of family meals in 2014 whilst traveling, which was an error on my part, I simply availed myself of entitlements under my contract of employment freely negotiated between the parties. On each occasion the travel was authorised by you [the Chair] as were the subsequent payments.

Notwithstanding my view, I accept that there are occasions when obligations and entitlements can be construed differently by different people. Rather than create an impression of any impropriety, I agree that we err on the side of caution.

The arrangement is that the amount of \$4,435 related to the aforementioned expenses ... be repaid by deductions made from my salary over the next 10 pay periods.

Recommendation 8

Require that the CEO pay back the cost of meals he purchased at restaurants for Mr Y and Mr B while they were visiting Mount Buller.

The CEO accepted this recommendation.

Recommendation 9

Require that the Property Manager pay back the costs of flights and accommodation for his family in France in 2015.

Property Manager's response:

The Property Manager's legal representative submitted that as the Property Manager was authorised by the CEO as a staff member of the RMB to conduct the trip, to require him to 'refund monies which were legitimately reimbursed by the RMB to him would be quite unreasonable and a breach of procedural fairness'.

Corporate credit cards

Recommendation 10

Engage an independent auditor to audit the use of all corporate credit cards from January 2014 to the present.

- a. Action any identified breaches of the Purchasing Card Rules and Standing Directions of the Minister for Finance under the Financial Management Act
- b. Report to the Minister, within three months of the receipt of the final audit report, on the findings of the audit and recommendations and actions that will be implemented to prevent future instances of inappropriate use
- c. Require any unjustified personal expenditure to be paid back by the parties responsible for the expenditure.

Recommendation 11

Regularly audit the use of corporate credit cards.

Accommodation

Recommendation 12

Revise the Resort's Accommodation Policy to ensure that it is consistent with the *Alpine Resorts (Management) Regulations 2009* and the codes of conduct, including by:

- a. requiring that all uses of the accommodation be documented and approved
- b. requiring that use of the accommodation by persons nominated by the CEO be pre-approved by the Board
- c. prohibiting the provision of complimentary accommodation to family, friends or personal associates where the purpose for visiting the Resort is primarily personal
- d. stipulating that accommodation can only be provided when it is in the public interest
- e. clarifying the meaning of 'VIP' for the purposes of the policy
- f. requiring that personal use by Board members be invoiced, as it is for personal use by Resort staff
- g. incorporating the requirement, currently found in the Board Charter, that Board members are entitled to use the Board/VIP accommodation 'on nights either side of a board meeting or official function' only.

Bonuses

Recommendation 13

Develop a policy within three months about the awarding of bonuses requiring that:

- a. The CEO document the rationale for all decisions to award bonuses, and any reasons documented in individual staff members' files, and submit them to the Board for approval prior to awarding a bonus.
- b. The Board Chair provide an attestation in the Annual Report annually for three years that the bonuses awarded in the past financial year comply with the Board's policy relating to the awarding of bonuses.
- c. Bonuses be a separate line item in the Resort's salaries budget.

Perceived conflict of interest

Recommendation 14

Consider and document how the Board will manage the CEO's perceived conflict of interest about any future engagement of the catering company by the Resort.

The Board's response:

In response to the draft report, the Board advised:

After consultation with the Remuneration Sub Committee of the Mt Buller and Mt Stirling Resort Management Board, and subsequently with the full Board, this letter advises that the recommendations contained in the Draft Report ... will be adopted and implemented in full.

The Board wishes to express its appreciation for the thoroughness of the report and commits to working through the recommendations cooperatively to ensure that the policy settings under which the resorts operate are intact and active. In order to achieve this we will work immediately and consistently through 2017 with a workplace legal expert, our colleagues in the Governance section of DELWP, and through our Board sub committees - Governance, Risk Audit and Finance and Remuneration. The full Board will review progress via a standing item on its agenda.

We look forward to continued success at Mt Buller and Mt Stirling and to ensuring that the Governance framework under which we operate is at all times current and aligned with prevailing Government policy whilst reflecting the unique environment in which we operate.

The Ombudsman intends to monitor the Board's implementation of her recommendations. The Ombudsman also suggests the Minister require the Board to report annually on progress with implementing her recommendations to the Board, and the outcomes achieved, until all of the recommendations to the Board are implemented in full.

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222
Fax 03 9602 4761
Email ombudvic@ombudsman.vic.gov.au
www.ombudsman.vic.gov.au