

Redacted Final Report
Full investigation pursuant to referral under
section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	Veterinary Surgeons Board of South Australia
Public Officer	Ms Debra Lane
Ombudsman reference	2016/07643
Date of referral	21 September 2016
Issues	<ol style="list-style-type: none">1. Whether Ms Debra Lane committed misconduct in public administration by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination2. Whether Ms Debra Lane committed maladministration in public administration by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination

Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (**the ICAC Act**), as raising potential issues of misconduct and maladministration in public administration within the meaning of that Act (**the referral**).

Section 14B of the *Ombudsman Act 1972* provides:

14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
 - (a) will be taken to relate to administrative acts for the purposes of this Act; and
 - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
 - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
 - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

(2) In this section–

Commissioner means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

ICAC Act means *Independent Commissioner Against Corruption Act 2012*;

Office means the Office for Public Integrity under the ICAC Act.

The referral arose out of a report made to the Office for Public Integrity.

The referral gives rise to a range of issues concerning the alleged conduct of the former Presiding Member of the Veterinary Surgeons Board of South Australia, Ms Debra Lane. These issues concern, broadly:

- allegations that Ms Lane directed that remuneration be provided to members of the board in relation to their attendance at committee meetings without first seeking or receiving an approved remuneration determination of the Governor
- allegations that Ms Lane directed that remuneration be provided to members of the board in relation to 'out of session' duties without first seeking or receiving an approved remuneration determination of the Governor
- allegations that Ms Lane directed that members of the board be reimbursed or indemnified for certain expenditure without first seeking or receiving an approved remuneration determination of the Governor and, with respect to payments made in relation to parking expenses, in circumstances contrary to relevant administrative instructions.

Investigation

Using my powers under the Ombudsman Act, I have conducted an investigation of the issues in response to the referral by:

- assessing the information provided by the reporter
- seeking information from the Veterinary Surgeons Board of South Australia
- seeking information from the current Registrar of the Veterinary Surgeons Board of South Australia
- seeking information from the former Registrar of the Veterinary Surgeons Board of South Australia
- seeking further information from the current and former Registrar of the Veterinary Surgeons Board of South Australia
- seeking and assessing a written response from Ms Lane
- seeking further information from the Veterinary Surgeons Board of South Australia in light of Ms Lane's response
- seeking and assessing a further written response from Ms Lane
- considering:
 - the *Veterinary Practice Act 2003*
 - the *Public Sector (Honesty and Accountability) Act 1995*
 - the Department of the Premier and Cabinet Circular 16
 - the Department of the Premier and Cabinet publication, *Honesty and Accountability for Members of Government Boards*
 - the Department of the Premier and Cabinet publication, *Government Boards and Committees: Guidelines for Agencies and Board Members*
- preparing a provisional report and seeking the views of Ms Lane, the Registrar and Presiding Member of the Veterinary Surgeons Board of South Australia and the principal officer of Primary Industries and Regions SA
- preparing this final report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Response to my provisional report

1. I provided my tentative view to the parties by way of my provisional report dated 18 July 2017.
2. By letter dated 11 August 2017, the Registrar of the Veterinary Surgeons Board of South Australia submitted, *inter alia*:
 - the official records and documents returned to the board by Ms Lane at the conclusion of her term as Presiding Member did not include a copy of the *Board Members Handbook*
 - contrary to the position expressed in my provisional report, she understands Ms Lane to be a current member of both the Legal Practitioners Disciplinary Tribunal and the Board of Examiners established under the *Legal Practitioners Act 1981*.³
3. By this same letter, the current Presiding Member of the Veterinary Surgeons Board of South Australia indicated that he wished to make no further comment in relation to my provisional report.
4. By email dated 15 August 2017, Ms Lane submitted that she 'did not wish to add anything further in response at this stage.'
5. By letter dated 15 August 2017, the principal officer of Primary Industries and Regions SA supplied additional background information to my investigation however did not otherwise provide submissions in response to my provisional report.
6. The parties did not take issue with the findings foreshadowed in my provisional report and as such my views remain unchanged.
7. I have otherwise made minor corrections to the body of my report in accordance with clarification provided by the parties.

Background

8. The Veterinary Surgeons Board of South Australia (**the board**) is constituted under section 5 of the Veterinary Practice Act.

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

³ The Registrar further submitted that she understands Ms Lane to be a member of the Australian Health Practitioner Regulation Agency; however I observe this appears to be a Commonwealth authority.

9. The board consists of eight members appointed by the Governor.⁴ By operation of section 6(1)(b)(i) of the Veterinary Practice Act, the Presiding Member of the board must be a legal practitioner nominated by the Minister.
10. Ms Debra Lane was appointed Presiding Member of the board on 25 September 2008 and held this office from 1 October 2008 until 30 September 2014. Ms Lane is no longer a member of the board.
11. [The current Presiding Member] is the current Presiding Member of the board and has held this office since 1 January 2015.
12. [The former Registrar] held the position of Registrar of the board between approximately May 2005 and January 2014.
13. [The current Registrar] is the current Registrar of the board and has held this position since 10 February 2014.
14. Pursuant to section 9 of the Veterinary Practice Act, board members are 'entitled to remuneration, allowances and expenses determined by the Governor.'
15. On 20 November 2008 the Governor in Executive Council issued a determination with respect to the remuneration payable to members of the board. According to this determination, board members were to be remunerated at the following levels:

Chair:	\$258 per four hour session + \$5,050 per annum A/R allowance
Members:	\$206 per four hour session
Deputy Member required to chair inquiries:	\$258 per four hour session + \$5,050 per annum A/R allowance[.] ⁵
16. Section 15(1) of the Veterinary Practice Act empowers the board to establish committees 'to advise the Board on any matter' or 'to carry out functions on behalf of the Board.' Section 16 of the Act establishes that the board may delegate certain of its powers and functions to a committee established under section 15(1).
17. The report made to the Office for Public Integrity alleged that during Ms Lane's term of office the board established a number of committees in circumstances contrary to the terms of the Department of the Premier and Cabinet Circular 16 (PC016).
18. The report alleged that Ms Lane in her capacity as Presiding Member directed that board members be remunerated for their attendance at these committee meetings, as well as for their performance of various other 'out of session' duties, in circumstances contrary to PC016.
19. The report alleged that Ms Lane directed that board members be reimbursed for certain expenses incurred in connection with their role in circumstances contrary to PC016.
20. The report alleged that Ms Lane had further directed that the board satisfy two expiation notices issued to her by the City of Burnside in circumstances contrary to PC016.
21. As at the commencement of Ms Lane's term of office in September 2008, PC016 relevantly provided:

⁴ Veterinary Practice Act, section 6(1).

⁵ Department of the Premier and Cabinet, Minute forming enclosure to DPC99/0552, 21 November 2008.

1. Introduction

- 1.1 The Chief Executive of the Department of the Premier and Cabinet (DPC) has the delegated authority of Cabinet to assess and recommend fees for the members of government appointed part-time boards and committees. The determination of fees is undertaken in accordance with a Cabinet-approved classification structure which the Chief Executive may review from time to time.
- 1.2 Except where otherwise indicated, this circular applies to all part-time boards, committees, tribunals, trusts, commissions, councils, authorities, panels, taskforces, forums, reference groups, working groups, advisory groups and steering groups:
 - created by or under an Act of the Parliament of South Australia or by ministerial authority; and
 - to which one or more appointments are made by a minister or the Governor.

[...]

4. Seeking a remuneration determination

- 4.1 Where the minister expresses a desire to remunerate members of a board, the advice of the Chief Executive, DPC, is required to determine the appropriate level of remuneration. Submissions to the Chief Executive should be forwarded through the responsible minister or the responsible agency's chief executive.

[...]

- 4.4 Fee determinations are provided to the responsible minister by the Chief Executive, DPC. In many cases, particularly with boards and committees created by ministerial authority, the minister will have the power to approve the recommended remuneration. However, for the majority of statutory boards, the approval of Cabinet and the Governor in Executive Council will be required. For guidance on preparing Cabinet submissions or on the legal requirements for having a particular remuneration arrangement approved, agencies should contact Cabinet Office.

[...]

7. Types of remuneration: annual and sessional

- 7.1 The Cabinet approved remuneration framework divides boards and committees into one of two categories. Category 1 bodies receive annual fees, while category 2 bodies are paid on a sessional basis.

[...]

Sessional remuneration

- 7.6 Boards classified at category 2 are paid on a sessional basis. Sessional fees are expressed as an amount per four hour session based on the assumption that board meetings are generally of four hours' duration.
- 7.7 Sessional fees are only to be paid to members for meetings of the board at which they were actually present.
- 7.8 Where a meeting lasts for between two and four hours, the sessional fee should be paid in full. Where a meeting lasts for less than two hours, the sessional fee should be converted into an hourly rate. The hourly rate is then to be paid for each completed or partially completed hour.
- 7.9 Where a meeting exceeds four hours' duration, the sessional fee should be paid for the first four hours. The hourly rate is then to be paid for each completed or partially completed hour beyond the fourth.
- 7.10 It is expected that, in order to participate effectively, members will spend approximately three hours in preparation for a meeting. Accordingly, members are not entitled to additional remuneration for such preparation time.

[...]

10. Travel and accommodation expenses

- 10.1 Members required to travel a distance of greater than 40 kilometres one-way to attend meetings are entitled to:
- costs necessarily incurred for meals and accommodation; and
 - where public transport is used: actual travel costs necessarily incurred; or
 - where a private motor vehicle is used: a motor vehicle allowance at the rates prescribed under “Motor Vehicle Allowance” in attachment A of Commissioner’s Standard 3.2.
- 10.2 Claims for payment of travel and accommodation expenses are to be made in accordance with Commissioner’s Standard 3.2. A reference to a chief executive or employer in Commissioner’s Standard 3.2 is to be read as a reference to the agency responsible for paying the board member. A copy of the standard can be found on the Office for Public Employment website (see “further information”).
- 10.3 Board members are entitled to reimbursement of expenses necessarily incurred in connection with their role as a board member. However, except as stated in subsection 10.1, reimbursement of travel expenses and expenses which are clearly the member’s responsibility, such as car parking and child care expenses, is not to be provided.
- 10.4 For non-statutory boards, or for those boards established under an Act that does not set out arrangements for payment of expenses, expenses are to be paid in accordance with this circular.
- 10.5 Where an Act provides that the expenses payable to members of a particular board are to be determined by the responsible minister or by the Governor, it is recommended that the minister or Governor be requested to approve the payment of expenses as set out in this circular.

11. The Boards and Committees Information System (BCIS)

- 11.1 The Boards and Committees Information System, or BCIS, is a database developed to record the membership and remuneration details of government boards and committees. The database is held and maintained by the Boards and Committees Unit, Department of the Premier and Cabinet.
- 11.2 Boards and committees meeting one or more of the following criteria are required to be recorded on BCIS:
- the board is established by or under an Act of the Parliament of South Australia;
 - one or more members of the board receives remuneration, whether statutory or non-statutory; or
 - the responsible minister has expressed a specific desire for the board to be listed on the database.
- 11.3 As a general rule, sub-committees of a board or committee are considered to be part of the main board or committee, exercising power delegated by the board or committee and having no separate existence in law. For this reason, most sub-committees are not required to be recorded on BCIS. However, a sub-committee is required to be included on BCIS where:
- one or more members receive remuneration for their role on the sub-committee, distinct from any remuneration they may receive as a member of the main board or committee[.]
- [...]
- 11.4 Membership and remuneration details of government boards meeting the criteria outlined in subsection 11.2 must be recorded on BCIS. The form attached as appendix 1 outlines the details required for the inclusion of a new board, while the form at appendix 2 provides an indication of the information required to enter a new board member on to the database.

22. PC016 was revised a number of times during Ms Lane’s term of office. The passages identified above remained largely unchanged during this period, however I observe that the September 2011 revision inserted the following clause:

Remuneration for out of session duties

- 8.12 In some cases, members of sessionally-paid boards and committees may be required to undertake duties of the board or committee outside of formal meetings. Where the responsible minister believes that remuneration should be provided for out of session duties, the advice of the Chief Executive, DPC, is required in order to determine whether such an arrangement is appropriate and, if so, what the level of remuneration should be.
 - 8.13 Applications for remuneration for out of session duties should clearly identify how the out of session duties relate to the role of the board or committee.
 - 8.14 Remuneration for out of session duties cannot be paid without the approval of the relevant authority (see section 4.4).
23. By letter dated 29 September 2016 my investigation wrote to the board to request information and records relevant to the issues raised by the referral.
24. On behalf of the board, the Registrar and current Presiding Member provided a response to my queries by letters dated 13 January 2017, 24 January 2017 and 24 March 2017.

Formation and remuneration of committees

25. The board advised my investigation that it established the following committees during Ms Lane's term of office:

1. Premises

Commenced: April 2014

Members: [Board Member A] and [Board Member B]

Meeting frequency: ad-hoc

Purpose: to investigate and report to Board on alternative premises for the Board's office

Terms of reference: No

2. Human Resources

Commenced: November 2013

Members: D. Lane (up to 30/9/14), [Board Member C] and [Board Member D]

Meeting frequency: ad-hoc

Purpose: to conduct job interviews, conduct performance reviews of Registrar, set KPIs for Registrar, approve KPIs for Assistant Registrar, approve engagement of temporary staff and report to the Board on all staff matters concerning employment of the Registrar and Assistant Registrar

Terms of reference: No

3. Audit and Risk

Commenced: February 2013

Members: D. Lane (up to 30/9/14), [Board Member C] and [Board Member D] (formerly [Board Member E] up to 21/1/14)

Meeting frequency: ad-hoc

Purpose: to assist Board to discharge its stewardship, leadership and control responsibilities

Terms of reference: Draft only

4. Information Technology

Commenced: October 2013

Members: D. Lane (up to 30/9/14), [Board Member C] and [Board Member F]

Meeting frequency: ad-hoc

Purpose: to provide advice and recommendations to the Board on the use of IT in office and in particular on the future development and use of the website
 Terms of reference: Yes

5. Education

Commenced: June 2010
 Members: D. Lane (up to 30/9/14), [Board Member C] and [Board Member B] (formerly [Board Member G] up to 7/8/14)
 Meeting frequency: ad-hoc
 Purpose: to provide advice and recommendations to the Board on education matters such as accreditation and training
 Terms of reference: No

6. Complaints

Commenced: March 2010
 Members: Rotating on a quarterly basis
 Meeting frequency: generally monthly
 Purpose: to consider complaints, make recommendations to Board and advise/assist the Registrar
 Terms of reference: see Policy BG04-10⁶

26. Records supplied to my investigation suggest the board convened a number of other committees and sub-committees during this period, including the 'Pet Uni Committee', the 'Tro-solfen [sic] Committee', the 'Hospital Sub-committee', the 'Staff Recruitment Committee' and the 'Code of Conduct Committee.' The board advised my investigation that '[t]here is no record of terms of reference for these "committees", only payments being made to members out of Board funds.'
27. Records supplied to my investigation disclose that members of the board and Ms Lane were remunerated at a rate of \$51.50 per hour and \$64.50 per hour respectively for their attendance at committee meetings.
28. These records disclose that a total of approximately \$13,072.94 was paid to board members for attendance at committee meetings between 2009 and 2014. Of this amount, \$3407.85 was paid to Ms Lane.
29. The board advised my investigation that during Ms Lane's term of office:
- [t]he Board did not inform the Department of the Premier and Cabinet (DPC) of the establishment of any of its committees or seek a remuneration determination in respect of payments to members of committees[.]

Remuneration for out of session duties

30. Records supplied to my investigation disclose payments made to board members in relation to a range of activities appearing to fall outside of, or otherwise be incidental to, formal meetings of the board or its committees.
31. The board advised my investigation:
- The practice of the Board was for payments to be made to Board and committee members, (as recorded on the Board Members Payments Schedule) on a monthly basis by the Registrar, who had access to the Board's Bank SA account details. The online banking system was (and is) configured so that Bank SA sends an email confirmation of the payment from the Board directly to the payee at the time of the transfer.

⁶ Submission to external review of the board, September 2014.

32. The board further advised:

The only record of such out of session attendances is as recorded on the Board Member Payments schedule. In the absence of such further records, it is unclear as to how the out of session attendances relate to the functions of the Board. However, in relation to Ms Lane, payments may be categorised as follows:

- a. Meetings with government officers such as officers of Primary Industries and Regions SA (PIRSA), the Crown Solicitor's Office and Ombudsman SA
- b. Meetings with representatives of external bodies/institutions such as the Australian Veterinary Association Limited, the Australasian Veterinary Boards Council Incorporated (AVBC) and the University of Adelaide
- c. Attendance at meetings of AVBC as the Board's representative
- d. Meetings with newly appointed members of the Board and a meeting with her deputy, [Board Member H]
- e. Meetings with staff members of the Board for performance management and other reasons
- f. Attendance at a Board member training session conducted by [U] of the Crown Solicitor's Office
- g. Meetings with Board members regarding deliberations on various disciplinary complaint matters (eg *Registrar v [N]* and *Registrar v [M]*)
- h. Conducting interviews for staff recruitment
- i. Meeting with [the current Registrar] for the purpose of providing a written offer of employment[.]

[...]

[Board Member H] [the Presiding Member preceding Ms Lane] did not receive any out of session payments during his time as Presiding Member of the Board. He advised [the current Registrar] telephonically in January 2015 that he understood that the annual retention allowance of \$5,050 plus superannuation was paid for the purpose of remunerating the Presiding Member and his/her deputy for all out of session work performed in connection with the roles.

Ms Lane received the annual retention allowance during her two terms as Presiding Member of the Board, as did [Board Member H] in both his roles as Presiding Member of the Board and later, deputy to Ms Lane.

There is no record of authorisation being sought by the Board in relation to the payment of out of session remuneration for members save for a payment made to [Board Member E] in 2013/2014 for work completed in conducting a review of the Registrar's office.

33. Payments made to other board members appear of a similar nature to those made to Ms Lane.
34. The board's records disclose a total of approximately \$10,516.00 was paid to members of the board in relation to duties of this kind between 2009 and 2014. Of this amount, \$5353.00 was paid to Ms Lane.

Reimbursements and payments on behalf of board members

35. Records supplied by the board disclose a number of other payments made to or on behalf of individual board members.
36. The board advised my investigation:

[The board's payment] schedules include reference to payments made by the Board in relation to expiation notices, travel expenses and the reimbursement of parking expenses. In particular, the schedules include reference to the following:

- a. Payment to the City of Burnside of a fine in the sum of \$80.00 on behalf of the Board's former Presiding Member, Ms Debra Lane, in relation to an expiation notice issued to her on 10 May 2012 for committing Parking Offence 167: *Stopping where no stopping sign applies.*
- b. Payment to the City of Burnside of a fine in the sum of \$56.00 on behalf of Ms Lane in relation to an expiation notice issued to her on 7 June 2012 for committing Parking Offence 208(3): *Failing to park in the direction of travel on a two-way road.*
- c. Payment of travel expenses to former member, [Board Member D] in the total sum of \$1,180.98 relating to her attendance at various committee meetings during the 2013/2014 financial year. [Board Member D] was required to travel a distance of greater than 40 kilometres one-way to attend such meetings and monies due were calculated in accordance with Department of the Premier and Cabinet Circular PC016 – *Remuneration for Government Appointed Part-Time Boards and Committees* (PC016).
- d. Payment of travel expenses to [Board Member I] (deputy to former member, [Board Member B]) in the total sum of \$510.60 relating to her attendance at meetings of the Board's Complaints Committee during the 2011/12, 2012/13 and 2013/14 financial years. [Board Member I] was required to travel a distance of greater than 40 kilometres one-way to attend such meetings and total monies due were calculated in accordance with PC016.
- e. Reimbursement of parking expenses to [Board Member D] in the sum of \$62.00 on 18 December 2013.

[...]

The Board was aware of the payments referred to [above] as such payments were reported to it in meeting agenda papers.

37. Records provided to my investigation disclose a total of \$198.00 said to have been wrongfully reimbursed or paid on behalf of board members in relation to parking and expiation fees during Ms Lane's term of office. Of this amount, \$136.00 was paid on behalf of Ms Lane.

Remuneration practices

38. My investigation sought information from both the previous and current Registrar of the board as to the circumstances giving rise to the board's remuneration practices during Ms Lane's term of office.
39. [The former Registrar], the Registrar of the board between approximately May 2005 and January 2014 advised my Officer by telephone, *inter alia*:
 - during her term as Registrar, the Complaints Committee was the primary committee of the board
 - she can recall that this committee was established during Ms Lane's term of office
 - she can recall that it was the practice of the board to provide remuneration to members for participation on the Complaints Committee, and that her 'recollection would be that it was Ms Lane' who directed that the board commence this practice⁷

⁷ [The former Registrar] was not informed that my investigation concerned the conduct of Ms Lane.

- to her recollection, the board did not provide remuneration to board members for participation on committees or for 'out of session' duties during the term of Ms Lane's predecessor
 - she recalls 'being instructed to pay members of [the Audit and Risk Committee]' after it was formed; she recalls that this instruction was provided by Ms Lane
 - she can recall 'on one occasion' processing payment to a board member in relation to that member's parking expenses
 - she was aware of the operation of PC016 and consulted it in determining whether expenses incurred by board members were eligible for reimbursement by the board
 - she can recall an occasion when she was asked by a board member, [Board Member E], for reimbursement of baby-sitting expenses in connection with [Board Member E]'s attendance at a hearing of the board; she can recall denying this request and that Ms Lane subsequently contacted her to query this decision; she can recall advising Ms Lane that the requested payment was 'not authorised under any of the guidelines'
 - in her assessment, payments to board members 'escalated a lot' during Ms Lane's term of office, together with the number of committees established by the board
 - she considers that the payments to board members for committee attendance and 'out of session' duties during Ms Lane's term of office were made at the direction of Ms Lane
 - although she did so from time to time, she considers it was 'hard' to query instructions from Ms Lane due to Ms Lane's management style, stating 'you'd get instructed to do things, short and sharp.'
40. [The former Registrar] further spoke of a conversation between herself and [J], Senior Policy Officer, Boards and Committees of the Department of the Premier and Cabinet (DPC), in which she sought advice as to whether the board could continue providing remuneration to board members for participation on the Complaints Committee in light of a then 'recent revision' to PC016.⁸ [The former Registrar] informed my Officer that to her recollection [J] suggested that this was a matter for the board to consider.
41. The current Registrar of the board, [the current Registrar], advised my investigation by email:

I do not recall being shown a copy of the Governor's remuneration determination for members by [the former Registrar] or [previous Acting Registrar] [Board Member E].

[...]

I do not recall whether the Board's practice of remunerating Board members in relation to committee meetings/out of session duties was outlined to me by [the former Registrar] or [Board Member E]. I believe it is more likely to have been explained to me by [Board Member E] as she had maintained a spreadsheet of payments to be made to members during her time acting in the position as Registrar for both attendance at committee meetings and out of session meetings (including payments "due" to Ms Lane's [sic] for her time in meeting with me on 5 February 2014 to hand over my employment contract.

[...]

At that early time, I was in the practice of communicating with Ms Lane telephonically, and I believe I would have checked with her that payments were to be made in accordance with details recorded on the Board Member's Payment spreadsheet (which had a number of tabs/pages dating back to the 2010/11 financial year). I also would have noted that

⁸ When prompted by my Officer, [the former Registrar] advised that she is 'pretty sure' she telephoned [J] following the insertion of the 'out of session duties' clause in the September 2011 revision of PC016.

payments to members (as per the spreadsheet record) had been reported to the Board at meetings in the Registrar's written monthly reports for several years.

42. [The current Registrar] further advised:

I do not specifically recall [the basis for authorisation of the payments] being explained to me; however it was apparent from the file records⁹ that it was Ms Lane's practice to email to staff details of various meetings (with names of attendees and start and end times for each meeting) with a request that an entry be added to the list of payments due to members. It is highly probable that I would have clarified this matter with [Board Member E], who would have shown me the relevant spreadsheet, shown me the means of calculating the payment at the Board's hourly meeting rate, and confirmed the practice in this regard.

43. My investigation queried whether [the current Registrar] considered the impugned payments to have been directed by any person in particular:

The person who directed me to make these payments was Ms Lane, as Presiding Member of the Board - to whom I was required to report under my employment contract.

44. [The current Registrar] advised that she was unable to recall any specific discussion with Ms Lane about the board's remuneration practices around the time of her commencement as Registrar.

45. [The current Registrar] advised (emphasis in original):

Frequently, when I questioned Ms Lane to seek clarification on a particular matter, I was told that I had only minimal experience as a legal practitioner and should be guided by her and take her direction, as she had *"30 years of experience as a legal practitioner and has been the Presiding Member of this Board for almost 6 years"*.

46. At the request of my investigation, the board supplied my investigation with copies of correspondence sent by Ms Lane to board staff concerning the provision of remuneration and reimbursements to members of the board. I set out the content of various emails provided by the board below:

From: Debra Lane
Sent: Thursday, 23 January 2014 12:24 PM
To: admin@vsbsa.org.au
Subject: Recruitment Committee

Dear [V]¹⁰

Before I forget, could you enter on the spreadsheet – or whatever record is being kept for the purposes of calculating Board member's remuneration, the time spent by [Board Member D], [Board Member C] and me yesterday in interviewing candidates for the Registrar's role.

We were all there from 9:15 to 2:00pm i.e. 4 ¾ hours.

[...]

Debra Lane

From: Debra Lane [...]
Sent: Friday, 7 February 2014 10:31 PM

⁹ [The current Registrar] clarified this to be a reference to emails she viewed between Ms Lane and the Acting Registrar and other officers of the board sent in the weeks prior to her appointment as Registrar.

¹⁰ The board advised that this email appears to have been addressed to a temporary administrative assistant engaged by the board.

To: registrar@vsbsa.org.au; admin@vsbsa.org.au
Subject: Board Member Payments

The panel sitting on the *Minister v [M]* matter ([Board Member G] [Board Member A] and I) met for an hour this afternoon to finalise the findings.

Debra Lane

From: Debra Lane [...]
Sent: Friday, 21 February 2014 9:50 AM
To: registrar@vsbsa.org.au
Subject: Board Member Payments

For the record, [Board Member D] [Board Member C] and I have just had a meeting of the staff management committee via tele-conference for half a n [sic] hour.

Cheers

Debra Lane

From: Debra Lane [...]
Sent: Friday, 11 April 2014 11:27 AM
To: registrar@vsbsa.org.au
Subject: Board Member Payments

Hi [the current Registrar]
To confirm the HR Committee spent 1.5 hours with you this morning and another half hour on the phone last night for a tele-conference so that is an additional 2 hours for the Board member payments list.

Cheers

Debra Lane

From: Debra Lane [...]
Sent: Wednesday, 21 May 2014 3:41 PM
To: registrar@vsbsa.org.au
Subject: Board Member Payments

Dear [the current Registrar]

Before I forget, [Board Member C] and I both spent 65" on the phone to [K] and [L] (AVBC) this morning so that needs to be added to the list for this month- along with whatever time is spent on the two tele-conferences we are having tomorrow.

Cheers

Debra Lane

From: Debra Lane [...]
Sent: Monday, 22 September 2014 2:09 PM
To: registrar@vsbsa.org.au
Subject: Board member Payments

[The current Registrar]

The panel of Board members on the Registrar v [W] matter (myself, [Board Member A] and [Board Member B]) have just spent an hour conferring per telephone in relation to our findings.

Please add this to the list of the Board member payments to be made.

Regards

Debra Lane

From: Debra Lane [...]
Sent: Tuesday, 23 September 2014 4:53 PM
To: registrar@vsbsa.org.au
Subject: Board Member Payments

[Board Member D], [Board Member C] and I have just had a half hour tele-conference discussing matters of hand over for the A&R and HR Committee.

Please add that to the list of Board member payments to be made.

Regards

Debra Lane

47. The board also provided my investigation with a copy of various emails and other records arising from an email discussion between the Registrar, board member [Board Member D] and Ms Lane on 18 June 2014.

48. The initial discussion provided:

On 18 Jun 2014, at 9:13am, "[The current Registrar]" <registrar@vsbsa.org.au> wrote:

Good morning [Board Member D]

As per clause 11.1 of the Department of the Premier and Cabinet Circular PC016: *Remuneration for Government Appointed Part-Time Boards and Committees*, members required to travel a distance greater than 40 kilometres one way to attend meetings are entitled to:

- costs necessarily incurred for meals and accommodation; and
- where public transport is used: actual travel costs necessarily incurred; or
- where a private motor vehicle is used: an allowance at the rate specified in Attachment 'A' of *Commissioner's Determination 2.2* (which is currently set at 83 cents per kilometre for cars).

For the last financial year, our records reflect that you were paid for costs incurred in attending 10 meetings in the total sum of =\$1,312.20 (162kms travelled each time x .81 cents).

For the current 2013/2014 financial year, our records reflect that you attended the following meetings of the Board in person:

[...]

Total Board meetings: 11

Total Committee meetings: 9

TOTAL MEETINGS: 20

Could you kindly advise of any inaccuracies in the above data and confirm that you used a private car for transport from your residential address at [regional location] on each of the occasions on which you attended meetings. If you incurred any costs for meals or public transport (taxi or otherwise), please advise and provide receipts for same.

Many thanks [Board Member D],

Kind regards

[The current Registrar]
Registrar

From: [Board Member D]
Sent: Wednesday, 18 June 2014 9:30 AM
To: [The current Registrar]
Subject: Re: VSBSA - Travel expenses for the 2013/2014 financial year

Thanks [the current Registrar].
Just for clarification what about the Tribunals (or was this paid at the time?) -Dr [X].
I had 3or [sic] 4 days in December, 3(?) days in February and again in April so not sure how this is worked out (or it may have been so).
I was also on Dr [N's] (they were held at the office. I think a couple of days and then another day to work out penalty. [Board Member B] was also on Dr [N's] case).

Kind regards
[Board Member D]

From: [The current Registrar]
Sent: Wednesday, 18 June 2014 9:50 AM
To: '[Board Member D]'
Cc: Debra Lane [...]
Subject: Re: VSBSA - Travel expenses for the 2013/2014 financial year

Hi [Board Member D]

Travel expenses under clause 11.1 of the Circular are payable for 'meetings' of the Board. I interpret this narrowly to mean Board meetings and meetings of the Board's committees, rather than participation in hearings. However, I could be wrong on this point.

I note that last financial year, you were paid for travel costs in relation to monthly meetings of the Board; not hearings.

However, it is also relevant that Board members are paid 'sessional remuneration' to appear at hearings. Sessional remuneration is expressed in the Circular to be payable for 'board meetings'.

It may even be the case that appearance by Board members at hearings should be classified as 'remuneration for out of session duties' rather than 'sessional remuneration' – in which case the approval of the Minister is required to enable payment.

I have copied Debra into this email so that she can provide guidance on these matters. Once I hear back from Debra, I will let you know the position.

Kind regards

[The current Registrar]

From: [Board Member D]
Sent: Wednesday, 18 June 2014 7:12 PM

To: [The current Registrar]
Subject: Re: VSBSA - Travel expenses for the 2013/2014 financial year

Hi [the current Registrar],
 In November Debra and I met with [the former Registrar] in regards to her performance review.
 I was nominated by the Board to do so, so can not [sic] understand why there would be no travel allowance as I had to make a special trip for the Board.
 As [Board Member E] had done the Review it was felt that she should not be a part of the Performance review.

Kind regards
 [Board Member D]

From: [The current Registrar]
Sent: Thursday, 19 June 2014 9:47 AM
To: '[Board Member D]'
Cc: Debra Lane [...]
Subject: Re: VSBSA - Travel expenses for the 2013/2014 financial year

Morning [Board Member D]

Unfortunately I am limited to making payments to Board members for travel by clause 11.1 of the Department of Premier and Cabinet Circular: *PC016 – Remuneration for Government Appointed Part-Time Boards and Committees*. As there was not a committee established by the Board at that time for the purpose of conducting [the former Registrar]'s performance review, your meeting with [the former Registrar] and Debra did not constitute a 'meeting' of the Board or one its [sic] committees and therefore payment for travel is not able to be paid under clause 11.1. This clause limits payment for travel to occasions on which a member (who is required to travel more than 40km on-way [sic]) is required to attend meetings of the Board (including committee meetings). This work would appear to fall under the category of 'out of session duties' and I confirm from the Board's records that payment was made to you for your time under clause 8.12 (despite the fact that approval of the Minister was required for payment but apparently was not sought by the Board).

I have copied Debra into the email so she can clarify any misunderstanding on my part with respect to the establishment of a committee to conduct [the former Registrar]'s performance review and approval of the Minister for payment under clause 8.12.

Once I hear back from Debra about the position with respect to travel to attend hearings, I will let you know.

Kind regards

[The current Registrar]

49. Ms Lane subsequently emailed [the current Registrar] on 30 June 2014:

Dear [the current Registrar]

The A&R committee met via telephone conference this morning for 1 hour, so please add that to the Board member payments for June for [Board Member D], [Board Member C] and me.

[...]

I also understand that you have declined to pay [Board Member D] for mileage for a meeting she attended with [the former Registrar] and me last year. In future, please raise those sorts of issues with me. In fact, [Board Member D] was then part of a staff management committee (with me) which morphed into the staff recruitment committee

(with the addition of [Board Member C]) when [the former Registrar] and [O] resigned- and then into the present HR Committee, so [Board Member D] was part of a Committee and certainly should be paid for mileage for that attendance. In fact, she probably should be even if she wasn't a member of a Committee- but it so happens she was.

Following on from this, the A&R Committee has have [sic] noted that there is no separation in the budget or payment records of mileage payments to Board members as distinct from payments for attending meetings at the designated hourly rates. Can you introduce that from now on please so we can all see where we are with this?

On that topic, both [Board Member D] and [Board Member I] should have been paid mileage (as well as being reimbursed for car parking) for their attendances at the various *Registrar v [X]* hearings (dating back to December 2013). Can you check whether they have been paid or not please? If not, and if you need a mileage estimate from [Board Member I], please advise and we can ask her. Presumably you know what [Board Member D]'s usual mileage claim is!

It is important we get this in order as I gather [P] (whom I hope will shortly be appointed) lives some distance away so will be entitled to mileage payments for every meeting he attends- as [Board Member D] is.

50. [The current Registrar] responded later that afternoon (emphasis in original):

Hi Debra

I note the below comment that you made in an email sent to me today:

I also understand that you have declined to pay [Board Member D] for mileage for a meeting she attended with [the former Registrar] and me last year. In future, please raise those sorts of issues with me. In fact, [Board Member D] was then part of a staff management committee (with me) which morphed into the staff recruitment committee (with the addition of [Board Member C]) when [the former Registrar] and [O] resigned- and then into the present HR Committee, so [Board Member D] was part of a Committee and certainly should be paid for mileage for that attendance. In fact, she probably should be even if she wasn't a member of a Committee- but it so happens she was.

I think that there is a misunderstanding. Please refer to the below email that I sent to you on 18 June 2014 at which time, you will note that I sought your guidance on this matter. I will shortly send to you a further email that I sent to you on 19 June 2014 in which I also sought your guidance on this matter.

It is important that I comply at all times with the financial delegation made to me by the Board. In this respect, I refer to the *Instruments of Delegation* that I put to the Board at the last meeting (refer Item 13.3 in the minutes). One of the delegated powers that I have is "to approve payments of remuneration and disbursement of costs to Board members". That delegation is limited to payments made "in accordance with Department of the Premier Circular [sic]: Remuneration for Government Appointed Part-Time Boards and Committees". The delegation was made to me by resolution of the Board on 5 June 2014.

You will note from my emails that I have not at any time "declined to pay [Board Member D] mileage...". I have simply stated my interpretation of the Premier Circular and asked for your direction on this matter given that I am not prepared to make any payments outside the scope of my financial delegation.

I would be pleased if you could provide that direction. I will then be in a position to finalise the sum owing to [Board Member D] for travel.

51. Later that same afternoon [the current Registrar] appears to have emailed a copy of PC016 to Ms Lane.¹¹

¹¹ Email from [the current Registrar] to D Lane dated 30 June 2014, subject: 'PC016 - Remuneration for Government Appointed Part-time Boards and Committees'.

52. [The current Registrar] emailed Ms Lane on 8 July 2014:

I have received an enquiry from [Board Member D] as to the status of her claim for reimbursement for travel costs. I advised her that I am awaiting direction from you on the matter. Have you had the opportunity to consider whether travel costs are recoverable for attendance at hearings and non-committee meetings under the relevant Department of the Premier and Cabinet Circular (copy emailed to you previously)? Please refer to past emails to you on this matter.

[...]

I have no record in the office of a 'Staff Management Committee' established by the Board (as referred to in your email to me of 30 June); I only have record of the Staff Recruitment Committee and the HR Committee. This is why I have queried whether the meeting that [Board Member D] attended to review [the former Registrar]'s performance is eligible for mileage reimbursement under the Circular.

[...]

I need to ensure that I do not exceed the scope of the financial authority given to me by the Board to make payments of this nature and given my uncertainty I need direction from you as Presiding Member.

53. Ms Lane emailed [the current Registrar] on 8 July 2014 (referring to [the current Registrar]'s email forwarding a copy of PC016):

[The current Registrar]

Further to your email below, I have four questions;

1. Do you have the previous version of this Circular? I note that it came into operation in February 2014 so [Board Member D]'s claim for the hearing last year would be governed by the previous version.
2. Is the VSBSA a category 1 or category 2 Board? (I assume we are Category 2 but that warrants confirmation).
3. Are you sure that there has been no prior determination to pay Board members' sitting fees? They have always been paid in my nearly 6 years on the Board and your predecessor (coming from the Public Service as she did) could be expected to have dotted the i's and crossed the t's on that issue before making the payments.
4. Have you paid anyone for any of the formal hearings? (whether or not mileage/parking expenses have been paid)?¹²

54. [The current Registrar] responded on 9 July 2014:

Dear Debra

Please find responses to your questions below:

1. [...] There is no previous version of the Circular in the office and it is not available from the Department of the Premier and Cabinet (DPC) website. I have requested for DPC to provide a copy.
2. [...] VSBSA is a category 2 Board as remuneration is paid to Members on a sessional rather than an annual basis.
3. [...] I have spoken to [J], Policy Officer, in the 'Boards and Committees' division of DPC has reviewed the VSBSA file and advised the following:
 - It would appear technically that Board members attending disciplinary hearings may need to be paid for their time as 'out of session duties' rather

¹² This email in fact preceded [the current Registrar]'s 8 July 2014 email regarding [Board Member D]'s travel expenses by a matter of minutes.

than as 'sessional remuneration' – in this case, a determination needs to be made by the Governor as to the appropriate remuneration rate. In principle, the sessional fee may well be appropriate, but the appropriate remuneration needs to be determined. The Chief Executive of DPC has not given past advice to the Board on this matter and there has been no prior determination made by the Governor.

- Likewise, technically, it would appear that sessional remuneration can only be paid for a Board member's attendance at a meeting of the Board or one of its committees. The Board requires advice from the Chief Executive as to whether travel expenses can be paid in relation to a Board member's attendance at disciplinary hearings and attendance at other meetings which are not meetings of the Board or one of its committees.
- It is recommended that advice be sought from the Chief Executive of DPC (through the Minister) on the above matters ie whether attendance at a disciplinary hearing can be interpreted as attendance at a meeting or whether it is an out of session duty, and if it is an out of session duty, the appropriate rate of remuneration and whether travel costs can be paid.

4. [...] I have made payments for formal hearings in accordance with past practice, but please note the point above that a determination is required so that I can be comfortable making future payments. I note that DPC prohibits Board members from being involved in a transaction with the Board without a determination being made by the Governor. DPC advises that it is important that this matter is dealt with in a formal way so that there is an appropriate paper trail as to interpretation of the Circular and what may or may not need to be determined by the Governor. [J] advises that the Board writes to the Minister to seek advice from the Chief Executive of DPC as to whether a determination is required.

55. Ms Lane responded later that same day:

1. [...] Noted.
2. [...] I know Board members are paid on a sessional basis. I have been Presiding Member for nearly 6 years! That fact is not sufficient in and of itself I am afraid. A mistake could have been made by your predecessor or mine. How do we know we are a category 2 Board? The classification of the Board must come from somewhere- it is not a function of the payment structure; it is the other way around. Anyway, [Board Member H] and I also paid annual fees.
3. [...] Noted. I am very surprised to be informed this was not dealt with long ago by your predecessor – if not by her predecessor. I am sure there will be a copy of the previous version of the circular on the office somewhere- which may well have been relevantly different to the new one. Unless it arrives very quickly from [J], please locate the copy which will be in the office somewhere - or ask [the former Registrar] where it can be found. Perhaps things like this live on that old laptop she had. Have you looked there?
4. [...] I will do a letter this week. Please provide me the address details (including email address).

56. On 29 July 2014 [the current Registrar] emailed Ms Lane:

Hi Debra

Board member payments

I am due to make payments to Board members next week for the month of July however I am unable to do so given uncertainty regarding:

[...]

- The hourly rate payable for attendance at hearings.

Are you able to please advise the following:

1. Have you received a reply to your letter to the Minister/CE of Department of Premier and Cabinet ([T]) concerning a determination as the [sic] rate for payment to Board members for attendance at hearings? Are you also able to give me a copy of your letter so I can include it in the Board papers for the next meeting? [Board Member D]'s travel claim has been paid in relation to her attendance at Board meetings and committee meetings during the last financial year; but the determination is required in order for me to make reimbursement to her for travel to hearings.
57. Contrary to the above email, the board advised my investigation that to its knowledge Ms Lane did not at this or any other time write to the Minister or the Chief Executive of the DPC to discuss the remuneration of board members for attendance at hearings.
58. On 4 August 2014 [the current Registrar] forwarded a copy of her 29 July 2014 email to the members of the board's Audit and Risk Committee, advising:

Given the uncertainty with the fee to be paid to Board members for attendance at hearings, I am unable to pay [Board Member B], [Board Member A] and Debra for their time on 29/7 until the Government determination has been made. I would be grateful if you could update the Board as to the position at the meeting this Thursday.

59. Shortly afterwards Ms Lane emailed [the current Registrar]:

Dear [the current Registrar]
 As I have mentioned before, this issue is with the A&R Committee who will be reporting to the Board at Thursday's meeting.
 You need do nothing further on this- so don't waste your time sending emails to the A&R Committee- we are all apprised of the issues.

60. On 6 August 2014 Ms Lane distributed a memorandum to members of the board in advance of a meeting of the board scheduled for the following day. This memorandum relevantly provided (emphasis in original):

TO	:	VSBSA
FROM	:	DEBRA LANE on behalf VSBSA Audit & Risk Committee
RE	:	BOARD MEMBER EMOLUMENTS
DATE	:	28 July 2014

1. BOARD MEMBERS SITTING ON DISCIPLINARY HEARINGS

I note the Registrar's concern that the DPC Circular which applies to payments to Board Members does not permit payments to be made to Board Members for time spent in sitting on disciplinary hearings.

I have considered the circular and this has been discussed with the other members of the Audit Risk Committee [sic], [Board Member C] and [Board Member D].

Given the Board's parlous financial position, I am disinclined at this juncture to seek formal advice from the Crown Solicitor's Office on this issue but am happy to discuss. In any event, I do not believe that it is necessary for the reasons set out below.

Part 5 of the *Veterinary Practice Act 2003* sets out the procedure in relation to investigations and proceedings.

Pertinent sections are:

1. Section 59(2) which requires the Board to investigate a report of a health professional made under the section to be investigated.
2. Section 60 gives the Board powers upon being satisfied, **after due enquiry**, that a Veterinary Surgeon is medically unfit to provide veterinary treatment.
3. Section 62 is entitled “Enquiries [sic] by Board as to matters constituting grounds for disciplinary action”.
4. Section 62(4) gives the Board certain powers upon being satisfied of certain things after conducting an enquiry.
5. Section 64 contains provisions as to the constitution of the Board for purposes of proceedings under Part 5 of the Veterinary Practice Act and in Section 65 are to be found provisions in relation to proceedings before the Board under Part 5.

Relevant provisions of the DPC circular are as follows:

[Excerpts from clauses 7.2, 7.3, 8.6 and 8.7 omitted]

The calculation of payments due in respect of meetings for less than two hours between two and four hours or more than two hours are set out in clauses 8.8, 8.9 and 8.10.

Remuneration for “out of session” duties is set out in 8.12. This states:

[Excerpt omitted]

Sitting on hearings clearly constitutes formal meetings of the Board, rather than “out of session” duties.

There can be no doubt that enquiries and proceedings before the Board constitute part of the Board’s mandated operations in respect of which participating Board Members should be remunerated.

Payments due would extend to travelling expenses and, in the case of hearings held at the Sir Samuel Way Building, parking expenses incurred by Board Members to facilitate their attendance (see DPC circular clause 11).

Accordingly, I would like to arrange for the outstanding payments to Board Members to be made by the Registrar.

Pursuant to Clause 13 of the DPC circular, committees/sub-committees of the Board are considered to be part of the main board or committee exercising power delegated by the parent body and have no separate existence in law.

The “Panel” of Board Members could be construed as a Committee of the Board or, more likely, the Board itself.

Membership and remuneration details of Government boards meeting the criteria outlined in clauses 13.2 and 13.3 must be recorded on the Board’s [sic] and Committee’s [sic] Information System (BCIS) pursuant to clause 13.4. The Registrar should be asked to ensure this is done (if it has not been done already).

61. At the meeting of the board on 7 August 2014 [the current Registrar] tabled a separate memorandum addressed to the members of the board. This memorandum provided:

Re: Determination required from Department of Premier and Cabinet concerning appropriate rate to be paid to Board Members sitting on disciplinary hearings

Dear Board Members

On 9 July 2014, I spoke to [J], Policy Officer, in the Boards and Committees division of Department of Premier and Cabinet (DPC) in relation to my concern that a determination is required for the rate of remuneration to be paid to Board members for sitting on disciplinary hearings. As you are aware, in the past, Board members have been paid 'sessional remuneration' for their time in sitting on such hearings. However, sessional remuneration is payable for Board meetings only.

After reviewing the VSBSA file, [J] advised the following:

- It would appear technically that Board members attending disciplinary hearings may need to be paid for their time as 'out of session duties' rather than as 'sessional remuneration' under DPC Circular PC016 - *Remuneration for Government Appointed Part-Time Boards and Committees* (the Circular). In this case, a determination needs to be made by the Governor as to the appropriate remuneration rate. In principle, the sessional fee may well be appropriate, but the appropriate remuneration needs to be determined. The Chief Executive of DPC has not given past advice to the Board on this matter and there has been no prior determination made by the Governor.
- Likewise, technically, it would appear that sessional remuneration can only be paid for a Board member's attendance at a meeting of the Board or one of its committees. The Board requires advice from the Chief Executive as to whether travel expenses can be paid in relation to a Board member's attendance at disciplinary hearing and attendance at other meetings which are not meetings of the Board or one of its committees.
- It is recommended that advice be sought from the Chief Executive of DPC (through the Minister) on the above matters ie whether attendance at a disciplinary hearing can be interpreted as attendance at a meeting or whether it is an out of session duty, and if it is an out of session duty, the appropriate rate of remuneration and whether travel costs can be paid. There is no cost to the Board to seek the determination.

For the last financial year, I made payments for formal hearings in accordance with past practice, but a determination is required so that I can be comfortable making future payments.

[J] has cautioned that DPC prohibits Board members from being involved in a transaction with the Board without a determination being made by the Governor.

62. At this meeting, the board relevantly resolved:

9.2 Audit and Risk Committee

The Presiding Member tabled a memorandum on behalf of the committee regarding Board member emoluments which had been circulated to members and the Registrar by email on 6 August 2014.

[...]

The Board also noted the Registrar's memorandum dated 7 August 2014 regarding advice she had received from [J], Policy Officer in the Boards and Committees division of Department of Premier and Cabinet about the need to seek a determination on the matter of remuneration for Board members sitting on disciplinary hearings (see Item 13.5).

The Presiding Member advised that the committee would further consider this matter and report to the Board at the next meeting.¹³

63. On 12 August 2014 [the current Registrar] emailed Ms Lane and the members of the board's Audit and Risk Committee (emphasis in original):

¹³ The board advised my investigation that no such report appears to have been tabled at the September meeting of the board.

I note that you are considering the matters raised by me in my memorandum to Board members, as tabled at the recent Board meeting in partial response to the memorandum of the Audit and Risk Committee circulated on the evening of 6 August 2014. In particular, I understand that you are considering my recommendation to seek a determination from the Governor (through Minister Bignell) as to the appropriate rate to be paid to Board Members for sitting on disciplinary hearings. It is important that this matter is dealt with expeditiously as at the present time I am unable to make payments to Board members sitting on disciplinary hearings on the advice of [J] of DPC for the reasons outlined in my memorandum.

I now have had an opportunity to further consider the Committee's memorandum.

I am concerned that there is an error on page 2 where it is stated that "[p]ayments due [to Board Members] would extend to travelling expenses and, in the case of hearings held at the Sir Samuel Way Building, parking expenses incurred by Board Members to facilitate their attendance (see DPC circular clause 11)."

I am unable to pay parking expenses to Board Members under clause 11.3 of DPC PC016 Circular, which states:

"Board members are entitled to reimbursement of expenses necessarily incurred in connection with their role as a board member. However, except as stated in sub-section 11.1, reimbursement of travel expenses and expenses which are clearly the member's own responsibility, such as car parking and child care expenses, are not to be provided."

I note that there was also mention of an entitlement of Board Members to car parking expenses in the recent letter that was sent by the Board to Minister Bignell.

Could I ask you to please consider the above matter and provide clarification to Board members at the next meeting?

Please find below a link to the Circular:

[Hyperlink omitted]

The August 2014 CSO advice

64. On 12 August 2014 Ms Lane emailed [Q] of the Crown Solicitor's Office (CSO), attaching a copy of the February 2014 revision of PC016:

I am contacting you in the hope you will be able to tell me to whom I should be directing my enquiry.

The new Registrar has raised some concerns about the application of the above circular (copy attached) - which, of course, applies to many government boards and committees- not just the VSBSA.

She thinks the time spent by Board members sitting on disciplinary hearings is not to be paid for under the circular- nor are eg the parking expenses incurred by Board members who travel from the country to sit with me on disciplinary hearings at the Sir Samuel Way Building- or travelling expenses.

I would be very surprised if the CSO had not been asked to advise on this circular previously- and assuming that, I would like to be provided with a copy of that advice if possible- redacted to conceal the name of the client if necessary.

This has fallen to the Audit & Risk Committee of the VSBSA to consider- and I am copying this email to the members of that committee- but not the Registrar, because she has declined to take direction on this.

I find it difficult to believe that it was ever contemplated that in exercising the Board's statutory function in sittings on hearings of disciplinary complaints (or medical fitness to practice investigations and hearings), Board members would not be paid the modest hourly sum they are paid to attend Board or committee meetings; however, given the Registrar's stance, we need to resolve the matter ASAP. We have 2 further days of hearing in a particular disciplinary matter this week - and I can hardly ask Board members who come from some distance away (Yankalilla and Strathalbyn in the case of this panel) to give up their time for no recompense- and also pay for their own parking near the Sir Samuel Way Building.

I look forward to hearing from you as soon as possible on this.

65. Later that day [R] of the CSO emailed Ms Lane:

It is difficult to comprehensively advise on this without knowing what aspect of DPC16 being [sic] called into question. I have just left a message for you to call me as I assumed that you may have wanted to discuss the issue. In the meantime, I provide some very general advice below.

Section 9 of the Veterinary Practice Act provides that a member of the Veterinary Surgeons Board is entitled to remuneration, allowances and expenses determined by the Governor. Clearly the Act contemplates that payments to Board members for carrying out their functions, which do include hearing disciplinary matters, could extend to 'fees', and associated allowances and expenses. However, to advise you specifically on the members' actual entitlements, I would need to see the instruments of appointment to consider what terms the Governor set for the Board members pursuant to s9.

DPC Circular 16 sets out the Government's policy, and is therefore a guide, about remuneration of members of Government Boards and Committees. The Governor customarily uses DPC16 as a guide to setting remuneration terms when appointing persons to Government Boards. If there were any inconsistency between the actual terms of appointment set pursuant to s9 of the Act, and the terms of DPC16, then the actual terms would prevail.

If you wish me to consider further matters, including actual terms of appointment (to which you may have access), and the application of DPC16 to those actual terms, please do not hesitate to contact me. I hope that this assists in the meantime.

66. Ms Lane responded later that afternoon:

Thankyou for your time just now.¹⁴

My file in relation to my original appointment to the Board 6 years ago is in archives. I will retrieve it- but not before close of business today. I will send you a copy when I have the file.

I am happy for you to make the suggested phone call to [J]- but bearing in mind he may have been told by the (new) Registrar that is her view (which does not accord with the Board's) that inappropriate payments have been made to Board members for years- for attendances at hearings, and car parking expenses (for hearings also).

I guess you will have to play it by ear- but I would like to approach this issue on a principled basis- rather than having [J]'s view coloured by something the Registrar has said, which may or may not prove to be correct. I would also be interested to hear ([J] may know if the CSO does not) how other professional practice Boards (most of which were subsumed by AHPRA from 2010) dealt with this issue under relevantly identical (or very similar) legislation.

¹⁴ The content of this email suggests an earlier telephone call between Ms Lane and [R]. My investigation was not provided with any records arising from such a conversation.

I should also say that the Board is in a parlous financial position so I would be grateful if the necessary advice is provided as economically as possible.

67. The following day [R] emailed Ms Lane a letter of advice in relation to the matter. This email further attached a copy of the 21 November 2008 DPC Minute setting out the terms of the then-current remuneration determination of the Governor.

68. [R]'s letter of advice provided:

I refer to your request for advice in relation to the question of remuneration of the members of your Board. In particular, you have asked whether, consistently [sic] with a long standing practice, Board members may be paid hourly fees for hearing disciplinary matters under the *Veterinary Practice Act 2003* ("the Act") and parking expenses incurred in connection with those hearings, in addition to the remuneration paid to Board members in respect of their attendance at regular monthly Board meetings.

This letter confirms and expands on the urgent email advice sent to you yesterday.

Section 9 of the Act provides that a member of the Veterinary Surgeons Board is entitled to remuneration, allowances and expenses determined by the Governor. Clearly the Act contemplates that payments to Board members for carrying out their functions, which do include hearing disciplinary matters, could extend to 'fees', and associated allowances and expenses. However, it is necessary to consider any actual determination made by the Governor under s9 to know what Board members' entitlements may be.

You instructed me yesterday that it was likely that Board members had only ever received letters advising of their appointments incorporating broad information about remuneration, but with no other information. You could not quickly locate a copy of your own letter of appointment to provide as an example and so asked me to contact [J] of the Department of Premier & Cabinet ("DPC") to obtain information about this. [J] has today given me a copy of a Minute to the Executive Officer of your Board dated 20 November 2008 setting out details of the Governor's determination about Board members' remuneration (copy attached). [J] has advised me that this determination is current. You will see that the determination sets remuneration as follows:

Presiding Member:

- \$258 per four hour session
- Attraction/retention allowance of \$5,050 per annum

Members: \$206 per four hour session

Deputy Member to the Presiding Member: Attraction/retention allowance of \$5,050 per annum

Department of Premier & Cabinet Circular 16 sets out the Government's policy, and is therefore a guide, about remuneration of members of Government Boards and Committees. The Governor customarily uses DPC16 as a guide to setting remuneration terms when appointing persons to Government Boards. If there were any inconsistency between the actual terms of appointment set pursuant to s9 of the Act, and the terms of DPC16, then the actual terms would prevail. There is no inconsistency here.

I note that under Part 5 of the Act disciplinary hearings are conducted by the Board. Given this, Board members are entitled to be paid for attending those disciplinary hearings in accordance with the above determination.

The attached Minute does not address the issue of travel expenses, including parking expenses. I do not know if the Governor has ever made a separate determination with respect to payment of these expenses for your Board. Your instructions are that the payment of parking expenses to Board members has been a long standing practice and that you and other Board members had assumed that it was lawful. There is no suggestion that these expenses were paid other than in good faith, and in particular in circumstances other than when Board members actually incurred them in connection with

their Board duties and functions, eg to attend Board meetings and disciplinary hearings. On this basis, my view is that they were not unlawful.

However, such payments may not have been consistent with the Government's policy on this issue, as set out in paragraph 11.1 and 11.3 of DPC Circular 16. This policy states that travel expenses will be paid at the rate of 83 cents per kilometre travelled over 40 kilometres using a private vehicle and that parking expenses will not be paid in addition to this per kilometre payment.

I recommend that further inquiry be made with [J] in relation to what determinations have been made by the Governor in respect of travel expenses, I recommend that the Board seek such a determination by the Governor. Of course, this request can be facilitated by [J] and will need to be sent through the Minister for Agriculture, Food & Fisheries. You may wish to provide a copy of this advice to [J] to assist further discussions about the matters raised in it.

I have kept the advice brief given the time constraints. However, if you require any clarification of it or advice on any related issues, please do not hesitate to contact me.

69. On 15 August Ms Lane emailed [R]:

I have only just managed to sit down and read your advice properly as I have been sitting on a disciplinary hearing for 2 days this week.

I will now ask the Registrar to attend to the payments to the panel members who have sat with me on the disciplinary hearings.

I assume you have no quarrel with travelling expenses being paid to Board members who live more than 40km from the CBD to sit on disciplinary hearings- noting clause 11.1 of the DPC Circular does permit this.

As to parking expenses, a determination will have to be sought.

70. [R] responded later that same day:

I think to be safe the determination should be for travelling expenses because there is an argument that they are not authorised. I did not go into this in detail in the advice partly because it would have required additional time/work and I wanted to get the advice on the substantive issue to you as quickly as possible.

As the Governor makes determinations using DPC16 as a guide, it may be that he will decline to determine that parking expenses should be paid as well.

71. Shortly afterwards, Ms Lane responded

Thanks [R]- happy to confirm this when seeking the determination about the parking- but I would have thought that having determined payments for sitting on disciplinary hearings is authorised- being paid to travel to them (if one has to travel more than 40 km one way to do so) is already implicitly authorised by the circular.

72. [R] responded:

Dear Debra

Sorry I missed your call.

The issue lies with s9 of the Act as referred to in my advice. There is an argument that, if there is no Governor's determination covering expenses for travel, then payment for them is not authorised for the purposes of expenditure of public funds. This does not mean that they are not [sic] necessarily unlawful and, on the basis of the facts, I have concluded that they are not unlawful. However, I do think that an express determination should be sought from the Governor to cover the expenses.

73. The board advised my investigation that a copy of [R]'s advice was not tabled at the 11 September 2014 meeting of the board or at any subsequent meeting of the board during Ms Lane's term of office.¹⁵

The direction to the Registrar

74. [The current Registrar] informed my investigation that at a 20 August 2014 [meeting] convened by the board's Human Resources Committee (comprised of Ms Lane and board members [Board Member C] and [Board Member D]) she was counselled for [...] 'making telephone contact' with [J] on 9 July 2014 and 'questioning the entitlement of members to receive a travel allowance for attendance at non-Board/committee meetings and hearings.'
75. [The current Registrar] advised my investigation that she was:
- directed by the HR committee to not contact [J] or any other officer of the DPC at any time in the future (unless specifically authorised to do so by Ms Lane), [and] to liaise only with Ms Lane in relation to Board remuneration matters and to follow her directions in this regard.
76. My investigation sought further information from [the current Registrar] about the purpose and nature of this direction. By email dated 11 July 2017, [the current Registrar] advised (emphasis in original):

The [meeting] was held on 20 August 2014 between 9:30am and 11:40am. [...] Ms Lane informed me that the committee had a "*serious matter*" to raise concerning my performance.

[...]

Ms Lane [stated] that I had previously been told to only seek guidance from her as Presiding Member. She said that I should be well aware of this "*requirement*".

[Board Member C] then asked me directly why I had communication with [J] of the Boards and Committees Unit of the Department of the Premier and Cabinet (DPC) about Board remuneration matters and DPC Circular PC016.

I responded that I had previously communicated with Ms Lane about this matter and had in fact sought her guidance regarding interpretation of DPC Circular PC016. I explained that I had contacted [J] to seek his assistance after Ms Lane had requested that I obtain documentation which was not available in the office.

I further responded that I had only communicated with [J] once, and that the communication was fully reported to Ms Lane and also to the Board (by my memorandum tabled at the Board meeting on 7 August 2014).

Ms Lane became very angry at this point and I recall her pointing her finger at me and telling me (in an aggressive tone) that I should not have contacted [J] and that this was a "*serious*" matter.

[Board Member D] expressed clearly in the meeting that she agreed with Ms Lane and [Board Member C] – in that I should not have contacted [J], unless I was specifically authorised to do so by Ms Lane.

[...]

¹⁵ I am advised that meetings of the board's Audit and Risk Committee were not minuted during Ms Lane's term of office. I do not know if the Crown advice was tabled at a meeting of this committee.

At that stage, I felt as if my employment was at risk of being terminated by the HR Committee[.]

[...]

In order to protect my position, I apologised, stated that I will not contact [J] in the future and assured HR Committee members that I will only seek clarification from Ms Lane on Board remuneration matters.

I was also told by Ms Lane that I was not to seek guidance on Board remuneration matters from any other Board member or deputy Board member – only her as Presiding Member of the Board.

I was further told by Ms Lane that she had sought legal advice from the Crown Solicitor's Office (CSO) regarding payments for hearings and travel expense [sic] to members of the Board. She informed me that she had been advised by CSO that a remuneration determination of the Governor was not required, and stated that I had been "*wrong on the law*" on this matter. I was then told that this was one example where I had acted "*precipitously*" without seeking her guidance (as I was required to do) and that it had led to me making an "*error*" and exercising "*poor judgement*".

She asked me for my response to CSO's advice.

I said that I was surprised that CSO had advised that a remuneration determination was not required, as that was inconsistent with the advice provided by [J] – and if there is any doubt, it would seem prudent to seek a determination and there is no cost to the Board of doing so.

I then said that that [sic] legal opinions can differ.

[Board Member C] said that [J] is not always correct in his advice.

Ms Lane stated that I needed to accept that I had made a "*mistake*".

I was then told by Ms Lane to finalise all payments to members immediately, on the basis of CSO's advice, including payment of [Board Member D]'s travel expenses.

I was told something along the lines of the following by Ms Lane:

"Board members such as [Board Member D] commit a great deal of their time dealing with Board matters and rightfully deserve to be paid for their time and necessary travel expenses. They should not have their entitlements questioned."

[...]

[Board Member C] [...] stated that I was to seek guidance from Ms Lane only regarding Board matters – but that in the first instance I was permitted to contact [the former Registrar] to ascertain Board processes if they were undocumented.

77. [The current Registrar] provided my investigation with a copy of a letter she received from Ms Lane on 28 August 2014, signed '[f]or and on behalf of the Human Resources Committee.' This letter identified 25 'specific KPI/requirements' for [the current Registrar] to meet as Registrar, including:
7. Always report to the Board via the Presiding Member. Do not first go elsewhere for guidance on Board matters.
78. [The current Registrar] further provided my investigation with a copy of a handwritten file note dated 20 August 2014, said to have been authored by Ms Lane in relation to the [meeting]. The handwriting in this note is somewhat unclear, however it is possible to identify the following entry:

[Unclear] – should have gone x P.M
not [J].
or: Bd member deputy

79. [The current Registrar] advised my investigation:

I understood that if I failed to comply with the direction to not contact [J] or any other person other than Ms Lane for guidance about Board remuneration matters, I could be summarily dismissed from my position as Registrar.

Following Ms Lane's departure from the board

80. The board advised my investigation that efforts were made to investigate the board's remuneration practices in the months following the end of Ms Lane's term of office on 30 September 2014.

81. In the course of the board's investigation, [the current Registrar] telephoned [J] of the Boards and Committees Unit, DPC. [The current Registrar]'s notes relating to this discussion relevantly record:

[J] said that it is "problematic" that the Governor had not determined the matter of payment to VSBSA members for sub-committee meetings.

He then said that up until recently the Government was not aware that VSBSA had established any sub-committees. He said that he was informed directly by PIRSA of this matter. He also referred to our telephone conversation earlier in the year in which I enquired as to whether a determination needed to be made by the Governor to enable payment to members sitting on tribunals, as strictly speaking this may be classified as an 'out of session' duty under PC016.

He emphasised that "a separate determination of the Governor is required" to enable payment to members for sitting on meetings other than monthly Board meetings.

He then said that "remuneration not determined by the Governor is unlawful" and further that "the Board as a part of Government needs to be a model citizen".

I assured [J] that I would bring this matter to the attention of the Board.

82. [The current Registrar] informed my investigation that on 31 October 2014 she advised [Board Member C], the board's then-Acting Presiding Member that, contrary to established practice, she 'had not paid any monies to members (including former Presiding Member, Ms Lane) for out of session work or attendance at committee meetings for the month of September 2014' and 'would not make any further payments until such time as the Governor had made the necessary remuneration determination(s).'

83. The board at a meeting on 6 November 2014 resolved to abolish all but one of its committees and to suspend all remuneration to members for attendance at committee meetings.

84. By letter dated 2 December 2014 the board's Auditor wrote to the Registrar to report concerns regarding remuneration provided to board members during the 2013/2014 financial year:

During the audit process, an initial review of the financial reports revealed that the sitting fees expense for the year ended 30 June 2014 was markedly higher than for the previous reporting period. Further investigation revealed that although the retention allowances paid to Ms Lane and [Ms Lane's deputy] [Board Member H] had remained the same as for

the previous year, the sitting fees paid to some members of the Board had increased substantially.

Having reviewed the Premier and Cabinet Circular PC016 - Remuneration of Government Appointed Part-time Boards and Committees – I have reservations as to whether all of the sitting fees paid were in accordance with PC016.

This matter has been discussed briefly with you and I would respectfully ask that you table this letter at the next Board meeting. It is important that all Board members understand the reasons for, and importance of, following the protocol outlined in PC016 so as to ensure that all payments to Board members are made in accordance with PC016.

85. [The current Registrar] informed my investigation that she discussed the substance of the Auditor's report with [the current Presiding Member] upon his appointment as Presiding Member of the board on 1 January 2015.
86. This was followed by a further letter from the board's Auditor to the Registrar dated 3 February 2015:

As you are aware, during an initial review of the financial reports, I noted that the sitting fees expense for the year ended 30 June 2014 was markedly higher than that for the previous reporting period. Further investigation revealed that although the retention allowances paid to Ms Lane and [Board Member H] had remained the same as for the previous year, the total sitting fees paid to members of the Board had increased substantially.

My review indicated that the total amount paid for sitting fees was in the order of \$18,250 for the audit period while draft financial report [...] lists payments of \$39,107. This simple comparison would suggest that payments in excess of \$20,000 have been made over and above those expected to have been paid.

During the course of the 2013/2014 year, payments were made to Board members for attendance at monthly board meetings as well as sub-committee meetings, teleconferences and meetings in relation to other VSBSA business including, but not limited to, tribunal hearings and recruitment work.

For example, the Presiding Member (Ms Lane) was paid \$9,051 during the audit period for attendance at hearings, teleconferences and meetings of sub-committees such as the audit and review committee, staff recruitment committee and IT committee. These payments were in addition to the retention allowance payable to the Presiding Member and session fees for attendance at Board meetings.

As a consequence of this finding, I reviewed the Premier and Cabinet Circular PC016 - Remuneration of Government Appointed Part-time Boards and Committees - and based upon that review, it is likely that not all of the 'sitting fees' were paid were [sic] in accordance with PC016.

[...]

Based upon the audit work conducted, it would appear that at least some of the payments made during the audit period, for instance those for attendance at meetings of committees and sub-committees, were not properly approved by the Governor in accordance with PC016.

Examples of work and duties performed during the 2013/14 year which do not appear to have been approved include:

- a) Attendance by members at a workshop at PIRSA
- b) Attendance of the Presiding Member and various members at 'induction meetings'
- c) Attendance by a member at an AVBC meeting

- d) Meetings/tele-conferences attended by the Presiding Member and various members to discuss matters regarding hearings
- e) Conducting recruitment work such as interviewing candidates – undertaken by the Presiding Member and other members
- f) Meetings of the Presiding Member with the Registrar and with the AVA President
- g) Attendance by the Presiding Member at a ‘Ministerial meeting’

I wish to make it clear that the actual attendance at these various meetings by board members is not necessarily disputed. Furthermore, it is not suggested that any of the board members have intentionally set out to obtain a benefit to which there was no entitlement. The fundamental and critical concern from an audit perspective is that I have been unable to obtain confirmation that all of the payments have been recommended by the Chief Executive DPC and approved by the Governor.

87. On 16 February 2015 the board’s Auditor supplied his audit report to the board. This report relevantly advised that payments made by the board that were not ‘properly approved pursuant to relevant legislation [...] may need to be repaid’ to the board.
88. [The current Presiding Member] subsequently sought advice from the CSO with respect to the recovery of monies said to have been wrongfully paid to members of the board during Ms Lane’s term of office.
89. Crown advice was provided to [the current Presiding Member] by letter dated 16 July 2015. The board was advised in this letter that certain of the views expressed in the August 2014 CSO advice delivered to Ms Lane were ‘no longer sustainable’ in light of information provided by [the current Presiding Member].
90. On 21 July 2015 [the current Registrar] forwarded a copy of this advice to the members of the board.
91. At a special meeting on 18 August 2015 the board, comprised solely of members not conflicted in relation to the matter, resolved, *inter alia*, to seek authorisation of the Treasurer to waive debts in relation to:
 - the monetary equivalent of what each board member would have received for committee meeting attendance had the board received the required approvals
 - superannuation contributions made in relation to otherwise recoverable payments
 - travel expenses paid to board members that were otherwise eligible for reimbursement under PC016.
92. The board at this meeting further resolved to recover by letter of demand from the CSO all remaining monies said to have been wrongfully paid to current and former members of the board.
93. On 25 November 2015 the Treasurer wrote to the board to provide authorisation to waive certain debts consistent with the terms proposed by the board.¹⁶
94. On 25 May 2016 Ms Lane repaid \$136.00 said to be in satisfaction of two expiation notices paid by the board in 2012. Ms Lane characterised this payment as being made ‘with a denial of liability and with no concession that it was inappropriately made in the first place – or is repayable now.’
95. I understand that at the time of the referral, all current and former board members save for Ms Lane had repaid all funds said to be owing to the board.
96. By letter dated 24 March 2017 the board advised my investigation:

¹⁶ A total of \$10,311.78 was waived.

We confirm that Ms Lane has not repaid further monies to the Board since her payment of \$136.00 by cheque received on 25 May 2016 in relation to expiation notices. [...] Ms Lane has not responded to the Crown Solicitor's letter dated 5 January 2017 seeking recovery of the remaining debt repayable, despite attempts by [solicitor] [S] to contact Ms Lane telephonically.

97. On 6 June 2017 the board subsequently advised:

By letter dated 18 May 2017, CSO advised Ms Lane of its instructions to file a claim in the Adelaide Magistrates Court seeking recovery of the debt (plus costs) on 31 May 2017. Further to that communication, Ms Lane paid the sum of \$7,225.13 by EFT into the Board's account pursuant to the terms of a deed of settlement entered into on 29 May 2017. The first instalment of \$5,000.00 was received on 1 June 2017 and the final instalment of \$2,026.25 was received on 2 June 2017.

Other relevant information

98. The board provided my investigation with a copy of a board publication, *Board Members Handbook*.¹⁷ The board informed my investigation that a form of this handbook is supplied to each member of the board following his or her appointment. This handbook includes a copy of the Veterinary Practice Act, the *Veterinary Practice Regulations 2005*, a handbook for veterinarians published by the board, a copy of the DPC publication *Honesty and Accountability for Members of Government Boards* and, relevantly, a copy of PC016.
99. My investigation sought information from the former Registrar of the board, [the former Registrar], as to whether she could recall a copy of the handbook being provided to Ms Lane at the commencement of Ms Lane's term of office. On 6 June 2017 [the former Registrar] advised my Officer by telephone, *inter alia*:
- she could specifically recall attending Ms Lane's premises to deliver a copy of the handbook
 - she cannot recall the exact address but the property was in or around the [suburb] area
 - she cannot recall the exact date but it was 'late in the afternoon' and 'not long after' Ms Lane's appointment as Presiding Member in 2008
 - the handbook was the 'standard handbook' provided to board members
 - although she is not certain, she believes the handbook included a copy of PC016, along with the Veterinary Practice Act, 'the Regulations', the 'Honesty and Accountability Act'¹⁸ and the 'relevant codes' for veterinary practitioners
 - she can recall that Ms Lane was not at home when she attempted delivery
 - she left a copy of the handbook at the premises for Ms Lane, either by handing it to 'one of her children who answered the door' or by depositing it 'by the front door', she can no longer recall which.
100. The board further advised my investigation that between approximately February 2011 and May 2015 the Registrar's office maintained an online Dropbox account to facilitate storage and access to 'board meeting agenda papers, registration, complaint and hearing papers and other Board related documents'.
101. [The current Registrar] confirmed that a copy of PC016 was available to members via this Dropbox account at the time of her appointment as Registrar in February 2014.

¹⁷ Specifically, the October 2014 revision. The board later provided my investigation with a copy of the August 2013 revision of this handbook, which I observe also included a copy of PC016. The board advised my investigation that it was unable to locate a copy of the handbook as it existed in September 2008.

¹⁸ The copy of the handbook provided to my investigation does not include a copy of the Public Sector (Honesty and Accountability) Act; however I observe that the DPC paper 'Honesty and Accountability for Members of Government Boards' addresses the obligations of board members under this Act.

[The current Registrar] further advised that she kept this document 'up to date' within the Dropbox account until the board suspended its use of the account in May 2015.

102. The board advised my investigation that it was able to locate various other records created during Ms Lane's term of office touching upon the board's obligations under PC016. An excerpt from the minutes of the 7 February 2013 meeting of the board chaired by Ms Lane provides:

Item 3.5. Review Committee

[...]

The first meeting of the Sub-Committee would be held after the Board meeting to review the terms of reference, and requirements for Boards under the relevant Dept. Premier and Cabinet documents (Honesty and Accountability for members of government boards; DPC circular PCO016 [sic].

103. A letter from Ms Lane to the then-Minister for Agriculture, Food and Fisheries dated 22 February 2013 relevantly provided:

The VSBSA has recently appointed an Audit and Risk Sub-Committee to review the Board's activities and operations overall. It is contemplated that this Sub-Committee will be in a position to provide a better oversight of the administrative aspects of the Board's activities as well as to constitute a focussed means to review the Board's financial management.

The Audit and Risk Sub-Committee comprised three members of the VSBSA (including the Presiding Member) and will report to the whole Board periodically.

The VSBSA has decided that the first task for the Audit and Risk Sub-Committee is to review the administrative procedures of the Board (in the office of the Registrar), with a view to ensuring maximum efficiencies and compliance with appropriate standards of governance. This review is to include evaluation of administrative policies and operating procedures, record keeping, information technology, general workflows and compliance with legislation and the Board's directions, and reporting to the Board.

[...]

The VSBSA is of the view that the most cost-effective and efficient way to review its administrative processes would be to appoint [board member] [Board Member E] to undertake the task.

[...]

The VSBSA [...] notes that paragraph 8.12 of the Department of the Premier and Cabinet Circular "*PC016- Remuneration for Government Appointed Part-Time Board and Committees*" states that Ministerial approval and the approval of the Chief Executive of the Department of the Premier and Cabinet is required for 'out of session' remuneration of (government) Board members.

It is understood that if you endorse proposal [sic] for the Board to remunerate [Board Member E] for the proposed review, Chief [sic] Executive of the Department of Premier [sic] and Cabinet is responsible for determining if such remuneration is appropriate and at what rate it is paid.

[...]

Accordingly, the VSBSA seeks your in-principle approval and endorsement of its proposal to engage and remunerate [Board Member E] to undertake a review of its administrative processes.

104. The board provided my investigation with a copy of a response from the Minister dated 7 March 2013 and addressed to Ms Lane. This letter stated in part:

I approve of the proposal and encourage the Board in its efforts to ensure the operations of the VSBSA are efficient and effective. I note you will still require the approval of the Chief Executive of the Department of Premier and Cabinet, who will advise you on the appropriate level of remuneration for this task.

105. I have attached a schedule of the impugned payments together with the sums waived by the Treasurer in an annexure to this report.

Response from Ms Lane

106. On 31 March 2017 my Deputy wrote to Ms Lane to seek a response to the issues raised by the referral.

107. By letter dated 5 June 2017, Ms Lane advised my investigation

I have no recollection of having at the time of my appointment as Presiding Member (or any time thereafter) been provided with:

- a copy of any determination made by the Governor pursuant to s 9 of the VPA
- the DPC Minute [concerning the 2003 remuneration determination of the Governor]
- any iteration of PC016

or to ever having had my attention drawn to the DPC Minute or any provision of any iteration of PC016.

108. Ms Lane went on to submit, *inter alia*:

I was aware that s 9 of the VPA provided that members of the VSBSA were entitled to remuneration, allowances and expenses as determined by the Governor.

I do not now recall how the arrangements under which other members and I received such remuneration, allowances and expenses were put in place. They were as I recall administered by the Registrar.

I do not recall discussing the rate of remuneration with the Registrar. I was at some time made aware that members of the VSBSA would be paid sitting fees by reference to a rate of \$258 per four hour session (that is, at the rate apparently fixed by the Governor in the November 2008 determination referred to in the DPC Minute). I do not know how that was communicated to me, but at some stage early in my tenure I was given to understand that this was consistent with a directive issued by the Commissioner for Public Employment[.]

[...]

During my tenure at the VSBSA, the VSBSA underwent significant change and the workload of the VSBSA increased significantly. An annual grant of \$25,000 that VSBSA Annual [sic] had been receiving from PIRSA ceased at the end of the 2011/2012 financial year and the VSBSA had thereafter to operate on and from income derived primarily from registration fees (supplemented by fines and other miscellaneous income). In response to this, the members of the VSBSA and I attempted to streamline and maximize the efficiency with which we discharged our obligations at board meetings.

I believed that the committees that were established during my tenure were properly established by the VSBSA pursuant to section 15 of the VPA.

[...]

It was my understanding that members of the VSBSA who served on committees established pursuant to s 15 of the VPA were still acting as members of the VSBSA

(albeit in committee) and that they were therefore also entitled to receive remuneration, allowances and expenses in performing their duties in committee.

In about late 2009 I formed the view that VSBSA members serving on committees and undertaking specific actions and duties on behalf of the VSBSA outside of formal meeting were undertaking significant work over and above that ordinarily required of them as members of the VSBSA and that it was also appropriate that they be remunerated for at least some of that committee and out of sessions [sic] work.

I do not now recall how the arrangements pursuant to which such payments were made were established. I expect that I discussed the making of such payments with the Registrar and other members from time to time but I have no specific recollection of any specific occasion. I do not recall having "directed" that remuneration be provided to members of the VSBSA in relation to their attendance at committee meetings or their out of session duties.

I understood that remuneration at an hourly rate in accordance with any determination made by the Governor pursuant to s9 [sic] of the VPA would be paid to members for such work. I was aware that a rate of \$258 per 4 hour session had been fixed and expected that members would be paid by reference to that rate ie that I would be paid at an hourly rate calculated by dividing \$258 by 4 and that members would be paid at a rate calculated by dividing \$206 by 4 (that is, \$64.50 and \$51.50 per hour, respectively).

The payments made to members for the performance of such duties were calculated, administered and made by the Registrar. I understood that members of the VSBSA were being appropriately and properly remunerated for (certain) of their additional work outside of VSBSA meetings. I had no reason to believe that they were made other than in accordance with any relevant determination pursuant to s9 [sic] of the VPA. I do not recall any question or issue being raised with me by the Registrar or any other person at any time as to the propriety of such payments or the rate at which they were made.

[...]

I do not know what expenses incurred by members I am alleged to have directed be reimbursed.

I do not have any recollection of having "directed" that members be reimbursed for expenditure incurred, whether generally or in relation to specific expenditure.

I submitted the two expiation notices issued by the Burnside Council on 10 May and 7 June 2012 to the VSBSA for payment. I do not have a copy of the cheques that are referred to [in the Deputy Ombudsman's letter]. The expiation notices (totally [sic] \$136) were incurred by me in the course of the performance of my duties as member of the VSBSA and were therefore expenses within the meaning of s9 [sic] of the VPA.

I was, as already noted, not aware of PC016 (or any other issue relevant to the claim made) and do not recall any question or issue being raised by the Registrar or any other person at any time as to the propriety of such a claim for reimbursement and did not understand there to be any such issue. However, they, like the other payments the subject of the CSO letter, have been reimbursed.

109. In response to my Deputy's query as to whether the board informed the Boards and Committees Unit, DPC of the formation of committees during her term of office, Ms Lane advised:

I did not know of PC016 (or any of its various iterations) and therefore did not know that it included clauses relating to the notification of the Boards and Committees Unit, DPC of the formation of those committees.

110. Ms Lane went on to submit (emphasis in original):

The Annual Reports published by the VSBSA and laid before Parliament for each year of my tenure as Presiding Member recorded that members of the VSBSA were paid "*sitting fees in accordance with the Directive of the Commissioner for Public Employment*"¹⁹ [...] at the rate of \$258 per 4 hour session for the Presiding Member and \$206 per 4 hour session for other members. The audited accounts included in each Annual Report included a statement of the fees paid to each member of the VSBSA.

In the ordinary course, the Annual Report was prepared by the Registrar and submitted to the Board for approval. The reference to the "Directive" to which I have referred was carried forward from Annual Reports prior to my appointment. I do not recall the auditor, the Auditor-General or any other person ever raising with me or any other member any issue as to such a document, its contents or the remuneration of members as recorded and disclosed in the Audited Accounts.

I believe that had I been made aware at any time of PC016 and the Determination, I would have ensured that I understood what they provided for and the manner in which the guidelines and processes referred to in PC016 operated and taken steps to ensure that the VSBSA complied with any obligations they impose.

It appears that in that event (and to the extent that it may in fact have been necessary to seek further approvals or determinations) at least the committee (and some of the other) work undertaken by members of the VSBSA might then have been formally approved for remuneration, as I note that the CSO letter [to Ms Lane] (and a subsequent communication) record the fact that a claim for repayment of various "committee" and other (unspecified) payments have upon consideration been waived

111. Ms Lane further submitted (emphasis in original):

The allegations made against me are, as noted above, all predicated on the proposition that I (that is I personally) "*directed*" that certain payments be made to members of the VSBSA and that expenditure incurred by them be reimbursed[.]

[...]

On the information presently available to me and from my recollection I gave no such "*directions*". Such payments as were made to me were made by the VSBSA in the ordinary course of its administration and by its administrative officers (including the Registrar from time to time):

- in relation to work actually undertaken by me in my capacity as Presiding Member and in respect of the work of the VSBSA over a period of some six year;
- regularly, openly and in good faith by all involved in making those payments;
- with an honest belief on my part that they were payments to which I was properly entitled;
- with the apparent authority of the VSBSA to do so (and were in that respect "authorise" [sic]);
- calculated in accordance with an hourly rate derived directly from (and were in that respect authorised by) the Governor's determination; and
- without question or query from the VSBSA administration, the members, the external auditors, the Auditor-General, the relevant Minister or the Parliament.

112. Ms Lane otherwise submitted, *inter alia*:

- she does not consider section 9 of the Veterinary Practice Act required that the board seek a remuneration determination with respect to the payments said to have been wrongly made

¹⁹ I note that the remuneration determination preceding the 2008 determination was issued on 30 April 1999 and authorised by the Commissioner for Public Employment.

- she understood the reference to the directive of the Commissioner for Public Employment in the Annual Reports of the board to mean that the payments made by the board were authorised by or otherwise consistent with this directive
- she does not consider PC016 to be a 'relevant' administrative instruction for the purposes of section 5(4)(c) of the ICAC Act,²⁰ on the basis that:
 - PC016 was not 'promulgated by the VSBSA'
 - PC016 was not 'directed to (and not expressed to be intended to be provided to)' persons in her position
 - she is unaware if the Registrars during her term of office 'were aware of any iteration of PC016 and its content from time to time'
 - she has 'no recollection of ever having been provided with or having otherwise made aware of PC016' or the provisions of PC016 relevant to my investigation
- clause 4.4 of PC016 in any case does not explicitly refer to 'committee work', and might be understood 'to apply where there was need for a (or some further) determination, but not where the Governor had already made a determination that might apply to the work of a member'
- clause 8.12 of PC016, inserted by the September 2011 revision, 'is only concerned with members undertaking duties of the board or committee outside of formal meetings', which might be understood 'to indicate that where a member was engaged in committee work in a committee meeting, that was not out of session.'

113. On 9 June 2017 I wrote to Ms Lane to seek clarification of her response in light of the information then in the possession of my investigation.

114. By letter dated 30 June 2017 Ms Lane responded, *inter alia*:

I have no recollection of [the former Registrar] having [personally delivered a copy of the *Board Members Handbook*] and I do not now have a copy of the Handbook. [...] [A]fter my term as Presiding Member ended I delivered up a number of documents that I had received in that role in response to a request from the VSBSA that I do so.

[...]

I had access to the VSBSA Dropbox account. My access ceased at the end of my tenure with the VSBSA. In the period that I had access, I recall that I used the Dropbox account for the purpose of board meetings and accessing documents for those and other VSBSA meetings. I do not recall seeing or accessing a copy of PC016 in the Dropbox account. That is, I believe, consistent with the request I made to the Registrar for a copy in my email of 8 July 2014[.]

[...]

I was involved in drafting the letter [to the Minister for Agriculture, Food and Fisheries dated 22 February 2013]. I believe the letter combined drafts from and included contributions by [the former Registrar] and at least one other member of the VSBSA, [Board Member C] and that it was finalised by me.

[...]

It is apparent from the documents that you have provided that the Registrar, [the current Registrar], provided me with a copy of the then current version of PC016 (February 2014 version) by email on 30 June 2014. I believe that I was also provided with a copy of a version of PC016 in the course and for the purpose of preparing the 22 February 2013 letter[.] [...] I do not believe I otherwise received a copy of PC016.

²⁰ Section 5(4)(c) provides that maladministration in public administration 'is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.'

[...]

It is apparent from the documents that you have provided that my attention was drawn to PC016 in the context and for the purpose of the matters identified in those documents from about 18 June 2014 (and particularly, in relation to travel expenses for members who had to travel long distances to meetings and the payment of sitting fees for disciplinary hearings). Again, I had no independent recollection of such correspondence until provided with the documents that were included with your letter.

[...]

It further appears from this correspondence that the Registrar did not raise any issue with me regarding the propriety of remuneration arrangements in respect of member attendance at committee meetings and in fact recorded, approved as consistent and (to my recollection, where she thought appropriate) adjusted amounts paid for such attendance in accordance with PC016 and her interpretation of it.

[...]

Having regard to the various emails [...], it is clear that I sent those emails to the Registrar in the expectation that members of the VSBSA, including me, would be remunerated for our attendance at meetings identified. This was in accordance with my/our understanding at the time that there was a proper basis for doing so.

In paragraphs 3 and 5 of the email of 30 June 2014 [...] to which you direct my attention I expressed my view, which I believed to be properly based, that having travelled the distance they did to attend the meetings in question, the Board members referred to were entitled to and therefore should be paid travel expenses. The entitlement of Board members to be paid travel expenses continued as a topic in communications between the Registrar and me thereafter as is apparent from the subsequent documents marked F-J.

[...]

I do not know who authored the information appearing on the 'post it' note [attached to the first expiation notice]. It is not my writing and I do not recognise it. That is the case with all of the handwriting in the [documents concerning the expiation notices].

I do not recall whether I was a co-signatory to the VSBSA's Bank SA account at the time those documents were created, but expect that I was.

I do not have a copy of the relevant cheques and do not know who signed them.²¹

I submitted the expiation notices to the VSBSA for (and in the expectation of) payment in the belief that it was proper to do so.

Whilst I am sure I was attending to the business of the VSBSA when I incurred the expiation notices, I do not now recall anything more in relation to the actual attendance and no longer have my diaries from that period.

[...]

I have no independent recollection of attending a [meeting] with [the current Registrar] convened by the VSBSA's Human Resources Committee on 20 August 2014, but I was a member of the Committee and if there was a meeting on that date then I agree that I was likely to have been present.

I have no independent recollection of any such direction being given. I do recall that the Board did ask the Registrar to refer matters to it before communicating with the

²¹ At the request of my Officer, the board arranged to obtain information from BankSA identifying the co-signatories to the board's chequing account at the time the two expiation notices paid. The board subsequently advised my investigation that although Ms Lane was a co-signatory to the account at the relevant time, it appears that the cheques authorised in relation to the two expiation notices were co-signed by [the former Registrar] and board member [Board Member F].

Department in the context of ensuring that the board was properly apprised of such matters.

Relevant law

115. Section 5(3) of the ICAC Act provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

116. Section 5(4) of the ICAC Act provides:

(4) *Maladministration in public administration*—

- (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Consideration

117. In determining the issues raised by the referral it is appropriate that I first consider which, if any, of the impugned payments to board members during Ms Lane's term of office were made contrary to the terms of PC016 and/or the 2008 remuneration determination of the Governor.
118. If I am satisfied that certain payments were not authorised by PC016, it is also appropriate that I consider which of these payments, if any, may have been eligible for authorisation at the policy level had a relevant remuneration determination of the Governor been sought by the board.
119. It is also appropriate that I consider whether the remuneration provided by the board exceeded what may have been authorised by a relevant remuneration determination of the Governor.
120. Throughout this report I have adopted the position that payments to board members that are not authorised by a remuneration determination of the Governor are contrary to section 9 of the Veterinary Practice Act.
121. Section 9 of the Veterinary Practice Act establishes that members of the board are 'entitled to remuneration, allowances and expenses determined by the Governor.'
122. In my view, section 9 of the Veterinary Practice Act is intended to operate as an exhaustive description of the manner and form in which compensation to members of

the board may be authorised. That is, I do not consider members of the board are entitled to payments by the board in connection with their duties other than in accordance with a relevant remuneration determination of the Governor.

Payments made in relation to disciplinary hearings

123. The advice provided by the CSO to Ms Lane in August 2014 was that board members were entitled to be paid for attending disciplinary hearings in accordance with the 2008 remuneration determination of the Governor. This advice was explicitly qualified by reference to the time and resource constraints imposed upon the CSO by Ms Lane's instructions.

124. The CSO advice provided to Ms Lane's successor advised the board to seek a remuneration determination from the Governor with respect to these payments. This advice appears to have been based on the following further information obtained from [J] of the Boards and Committees Unit of the DPC:

[E]xisting precedent and current practice [is] that remuneration for disciplinary hearings has always been determined separately and the payment is made hourly (not sessionally). Typically the hourly amount is determined with reference to the approved sessional amount.

Historically it was considered that there was merit in paying board members for disciplinary hearings on a separate hourly basis in order to recognise the difference between that function and an ordinary board meeting. Like "out of session" fees determined for other government boards, fees for disciplinary hearings are normally paid on an hourly pro rata basis rather than under the normal rules of board meetings (which are expressed in section 8 of DPC Circular 16).

There are two current examples of boards that have a separate fee determination for disciplinary hearings, which are the Pharmacy Regulation Authority SA and the Education and Early Childhood Services Registration and Standards Board of SA. In the past there were a number of others which have since been abolished, but included the Nurses Board of SA, Medical Board of SA and Physiotherapy Board of SA to name a few.

I acknowledge that the current fee determination is open to interpretation. I think from a policy perspective we would prefer to maintain a distinction in the approved fee entitlements because a "four hour session" has always been taken to mean an ordinary quorate board meeting and it may create confusion to now extend this to other board functions. I accept that the wording of DPC Circular 16 could probably be more explicit to cover these topics more effectively.²²

125. I consider that the CSO advice provided to [the current Presiding Member] is correct insofar as there remained some uncertainty as to whether the board's practice of remunerating members for attending disciplinary hearings was strictly permitted under the 2008 determination of the Governor. It was appropriate in the circumstances for the board to seek a further remuneration determination to be satisfied that its practices complied with government policy and section 9 of the Veterinary Practice Act.

126. This does not necessarily mean that the board's practice of remunerating members for attending disciplinary hearings was contrary to the 2008 remuneration determination or the terms of PC016. I note that the CSO advice provided to [the current Presiding Member] did not purport to resolve this question.

127. The 2008 remuneration determination of the Governor identified the 'remuneration payable to the Veterinary Surgeons Board of South Australia [...] per four hour session'.

²² As quoted by the CSO in its letter of advice to [the current Presiding Member].

The terms of the determination do not identify what constitutes a 'session' of the board for which members may be remunerated.

128. Clause 8.6 of the February 2014 revision of PC016 states that '[s]essional fees are expressed as an amount per four hour session based on the assumption that *board meetings* are generally of four hours' duration.' Clause 8.7 states that '[s]essional fees are only to be paid to members for *meetings of the board* at which they were actually present.'²³
129. Part 5 of the Veterinary Practice Act requires the board to 'inquire into the subject matter' of a complaint setting out matters alleged to constitute grounds for disciplinary action against a veterinary surgeon. Section 64 of the Act identifies how the board is to be constituted 'for the purpose of hearing and determining proceedings' under Part 5. Section 65(1) of the Act establishes that the board must, in conducting proceedings under Part 5, 'afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.'
130. Section 17 of the Veterinary Practice sets out the procedure to be followed during meetings of the board. Section 17(4) provides that a 'decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.'
131. Section 17(3) of the Veterinary Practice Act distinguishes between a meeting of the board for the purposes of section 17 of the Act and a 'meeting' convened under Part 5 of the Act:
 - (3) A meeting of the Board (*other than for the purposes of hearing and determining proceedings under Part 5*) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member, and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.²⁴
132. In my view, section 17(3) at least suggests that a disciplinary hearing convened under Part 5 of the Act might be considered a kind of 'meeting' of the board. This would in turn mean that such a meeting could be considered a 'session' of the board for the purposes of the 2008 remuneration determination.²⁵
133. In the circumstances I am not prepared to conclude that the board's practice of remunerating board members for attending disciplinary hearings was contrary to the terms of the 2008 remuneration determination or the relevant provisions of PC016.

Payments made in relation to committee meetings

134. The CSO advice provided to Ms Lane in August 2014 did not consider the propriety of the board's payments to members for attendance at committee meetings. The advice provided to [the current Presiding Member] adopted the position that these payments were made contrary to the 2008 remuneration determination of the Governor and the terms of PC016:

Apart from not obtaining approval for the establishment of the Committees, the Board also failed to seek a remuneration determination in respect of payments to members of its committees as required by clause 4.1 and 4.4 of DPC016.

²³ These same provisions are to be found in clause 7 of the September 2008 revision and clause 9 of the current revision of the Circular.

²⁴ Emphasis added.

²⁵ I reach this position notwithstanding the 2008 remuneration determination's reference to board 'inquiries' for the purpose of fixing the remuneration and annual retention allowance payable to the Presiding Member's Deputy.

Although it could be contended that the provisions of DPC016 are ambiguous with regard to whether or not additional approval is required for the payment of remuneration to committee members of sessionally paid boards in cases where the same committee members are also board members, I am advised that it is the policy of Government that prior approval must be sought.

Prior approval is required because save in exceptional circumstances, Government policy is that committee members will not be paid at sessional rates of remuneration but will receive lower rates of remuneration.

The rationale for the distinction is the following:

1. The scope of the work undertaken by committees is considered to be generally narrower than the work performed by board members.
2. It is considered that committee members generally have less responsibility than board members.

I am advised that:

1. there is an approved rate of remuneration for committee members of boards depending upon the board's classification.
2. rates of remuneration for committee members of the Board would fall within the lowest category of rates of remuneration - the Board being classified at the same level as boards such as the Teachers Registration Board and the Education and Early Childhood Services Registration and Standards Board of South Australia.

135. Ms Lane in her initial response to my investigation submitted:

It was my understanding that members of the VSBSA who served on committees established pursuant to s 15 of the VPA were still acting as members of the VSBSA (albeit in committee) and that they were therefore also entitled to receive remuneration, allowances and expenses in performing their duties in committee.

136. Section 15(1) of the Veterinary Practice Act states that the board 'may establish committees [...] to advise the Board on any matter [or] to carry out functions on behalf of the Board.' Section 15(2) establishes that a committee formed under section 15(1) 'may, but need not, consist of, or include, members of the Board.' Section 15(3) provides that the board may delegate certain of its functions or powers to a committee formed under section 15(1).

137. The Veterinary Practice Act does not require the board to form committees under section 15(1); the board's power to do so is discretionary in nature.

138. The Veterinary Practice Act does not establish criteria to be satisfied before a committee may be formed under section 15(1).

139. The Veterinary Practice Act does not limit the number of committees that may be formed under section 15(1). There does not appear to be anything within the Act to preclude a committee formed under section 15(1) from then forming its own subcommittee(s) (although section 16(1)(a) of the Act precludes a committee from further delegating any of the board's powers or functions under the Act).

140. By its terms, section 17 of the Act (establishing the procedure to be followed during meetings of the board) would appear to have no application to meetings of committees formed under section 15(1) of the Act.²⁶ The Veterinary Practice Act does not identify whether or how committees formed under section 15(1) are to convene.

²⁶ See, e.g., section 17(1), '[s]ubject to this Act, 5 members constitute a quorum of the Board.' If this section were to apply to committee meetings, a committee formed under section 15(1) comprising four or fewer members of the board would be incapable of achieving a quorum.

141. I do not consider a meeting of a committee established by the board under section 15(1) of the Act to be a meeting of the board for the purposes of PC016. To adopt the contrary position would suggest, per section 15(2), that a 'meeting of the board' could include a meeting of a committee comprised entirely of persons who are not themselves board members.
142. Setting the terms of PC016 aside, I do not consider that a meeting of a committee established by the board under section 15(1) of the Veterinary Practice Act can properly be considered a 'session' of the board within the meaning of the 2008 remuneration determination.
143. If one were to adopt the contrary position, the board would be obliged to provide additional remuneration to each and every member sitting on a committee formed by the board without regard to that committee's terms of reference, the relative complexity of the work undertaken by its members or the powers and functions delegated to it under section 15(2) of the Veterinary Practice Act. This remuneration would be fixed at a rate equal to that provided to board members for attendance at ordinary meetings of the board. The board would be unable to form a committee (other than a committee comprised entirely of persons who are not also board members) without being obliged to remunerate its members at this fixed rate.
144. In my view, it is appropriate that the board first seek a remuneration determination with respect to a committee formed (or proposed to be formed) under section 15(1) of the Veterinary Practice Act before providing remuneration to its members. This would be in keeping with the clear purpose of section 9 of the Veterinary Practice Act and the terms of PC016, which both serve to limit payments made to board members to those consistent with government policy and objectives.
145. I note the following passage from the CSO advice provided to [the current Presiding Member] (emphasis in original):
- [J] has advised me that had the Board sought advice from DPC in accordance with DPC016 regarding remuneration for Committee members, it is likely that the following payments would have been approved:
- Chair: \$129 per four hour session
Members: \$103 per four hour session
146. It follows that the remuneration provided to members of the board for attending committee meetings during Ms Lane's term of office doubled what was likely to have been authorised by the Governor had a relevant remuneration determination been sought.
147. I also note that, contrary to clause 13.4 of the February 2014 revision of PC016,²⁷ the committees formed by the board during Ms Lane's term of office were not recorded on the Boards and Committees Information System maintained by the DPC.

Payments made in relation to 'out of session' duties

148. The CSO advice provided to Ms Lane in August 2014 did not consider the propriety of the board's payments to members for so-called 'out of session' duties. The advice provided to [the current Presiding Member] was that there is 'no entitlement' for board members to be paid for the performance of such duties:

²⁷ Clause 11.4 of the September 2008 revision and clause 15.2 of the current revision of this Circular.

There is no entitlement to remuneration for attendances at sub-committee meetings or other non-board meetings i.e. out of session duties.

Examples of these types of meetings/attendances for which remuneration at sessional rates was claimed by Board/Committee members are the following: Ministerial meeting; Meeting with CSO; Induction meeting with a newly elected member; Workshop attendance/training; Meeting with the Australian Veterinary Association President; Meetings with the Board's Registrar and staff.²⁸

149. In my view, this is made plain by clauses 8.12 to 8.14 of PC016, inserted by the September 2011 revision to the Circular.²⁹
150. I do not consider the absence of these clauses from the earlier revisions of PC016 to mean that payments of this kind were authorised prior to September 2011. I simply do not consider a 'contract meeting' between Ms Lane and the Registrar³⁰ (to select one example) amounts to a 'session' or 'meeting' of the board within the plain meaning of those terms.
151. I otherwise note the following passage from the CSO advice provided to [the current Presiding Member]

Even if approval had been sought for such out of session duties, approval would not have been given as payment would be inconsistent with Government policy.

Reimbursements provided to board members

152. The letter of advice provided to Ms Lane on 13 August 2014 relevantly provided:

The [2008 remuneration determination] does not address the issue of travel expenses, including parking expenses. I do not know if the Governor has ever made a separate determination with respect to payment of these expenses for your Board. Your instructions are that the payment of parking expenses to Board members has been a long standing practice and that you and other Board members had assumed that it was lawful. There is no suggestion that these expenses were paid other than in good faith, and in particular in circumstances other than when Board members actually incurred them in connection with their Board duties and functions, eg to attend Board meetings and disciplinary hearings. On this basis, my view is that they were not unlawful.

However, such payments may not have been consistent with the Government's policy on this issue, as set out in paragraph 11.1 and 11.3 of DPC Circular 16. This policy states that travel expenses will be paid at the rate of 83 cents per kilometre travelled over 40 kilometres using a private vehicle and that parking expenses will not be paid in addition to this per kilometre payment.

I recommend that further inquiry be made with [J] in relation to what determinations have been made by the Governor in respect of travel expenses, I recommend that the Board seek such a determination by the Governor.

153. This advice was supplemented by further advice emailed by [R] to Ms Lane:

The issue lies with s9 of the Act as referred to in my advice. There is an argument that, if there is no Governor's determination covering expenses for travel, then payment for them is not authorised for the purposes of expenditure of public funds. This does not mean that they are not [sic] necessarily unlawful and, on the basis of the facts, I have concluded that they are not unlawful. However, I do think that an express determination should be sought from the Governor to cover the expenses.

²⁸ Emphasis in original.

²⁹ Clauses 9.11 to 9.13 of the current revision.

³⁰ July 2010. Ms Lane was remunerated \$64.50 for this attendance.

154. The CSO advice provided to [the current Presiding Member], noting the board's revised instructions that there was 'no evidence' of a 'long standing practice for the parking expenses incurred by Board members who attended disciplinary hearings and other regular Board meetings to be paid', relevantly provided:

[J] has informed me, that there is an inconsistency between Government policy and the requirements under Section 9 of the Act that expenses and allowances of Board members be approved by the Governor. Government policy regarding what allowances and expenses will be paid for board members is contained in DPC016. Provided the expenses (for instance travel expenses) meet the requirements in DPC106 [sic], it is Government policy to reimburse board members for these expenses even if the approval of the Governor has not been obtained as required by the relevant legislation.

155. Noting that the travel expenses paid to board members during Ms Lane's term of office appeared eligible for reimbursement under clauses 11.1 and 11.3 of the PC016,³¹ the advice to [the current Presiding Member] concluded that the board's reimbursement of these expenses 'was justified.'
156. I would not go so far as to describe the board's payment of travel expenses as 'justified' in all the circumstances. In my view, a public authority cognisant of an inconsistency between its enabling legislation and government policy is not entitled to ignore the former in favour of the latter.
157. I otherwise agree with the advice provided to [the current Presiding Member] insofar as it adopts the position that the travel expenditure reimbursed by the board was *prima facie* capable of authorisation by a relevant remuneration determination.
158. The advice provided to [the current Presiding Member] went on to note:
- Reimbursement of parking fees [...] should not however have been made as the expenses incurred were not approved by the Governor and furthermore reimbursement was contrary to Government policy.
159. This is plainly the correct position. PC016 at all times stated that 'reimbursement of [...] expenses which are clearly the member's responsibility, such as car parking and child care expenses, is not to be provided.'³²
160. The advice provided to [the current Presiding Member] appears to have adopted the position that the board's satisfaction of the two expiation notices was also contrary to this provision of PC016.³³
161. As the expiation notices were satisfied by the board in the first instance (that is, Ms Lane was not actually 'reimbursed' within the ordinary meaning of the term), I am unable to agree with this position.
162. The propriety of the board satisfying the two expiation notices on behalf of Ms Lane is something I return to later in this report.

³¹ These provisions are to be found in clause 10 of the September 2008 revision and clause 13 of the current revision of the Circular.

³² Clause 10.3 of the September 2008 revision; clause 11.3 of the February 2014 revision; clause 13.3 of the current revision.

³³ 'Reimbursement of [...] parking fines should not [...] have been made as the expenses incurred were not approved by the Governor and furthermore reimbursement was contrary to Government policy.'

Whether Ms Debra Lane committed misconduct in public administration by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination

163. Pursuant to section 5(3) of the ICAC Act, a public officer commits misconduct in public administration through a 'contravention of a code of conduct [...] while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer' or otherwise through 'other misconduct [...] while acting in his or her capacity as a public officer.'

164. During her term as Presiding Member of the board, Ms Lane was a 'corporate agency member' for the purposes of the Public Sector (Honesty and Accountability) Act.

165. Sections 4 and 5 of this Act relevantly provide:

4—Duty of corporate agency members to exercise care and diligence

(1) A corporate agency member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.

(2) If a corporate agency member is culpably negligent in the performance of his or her functions, the member is guilty of an offence.

Penalty: Division 4 fine.

(3) A corporate agency member is not culpably negligent for the purposes of subsection (2) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act of the member to warrant the imposition of a criminal sanction.

(4) A corporate agency member does not commit any breach of duty under this section by acting in accordance with a direction or requirement of the relevant Minister.

5—Duty of corporate agency members to act honestly

(1) A corporate agency member must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

Penalty: Division 4 fine or division 4 imprisonment, or both.

(2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

166. Contravention of the above provisions does not constitute a ground for disciplinary action against a corporate agency member.

167. I have therefore assessed whether Ms Lane's conduct in seeking and receiving the reimbursements amounts to 'other misconduct' for the purposes of section 5(3)(b) of the ICAC Act.

168. In considering what may amount to 'other misconduct' for the purposes of section 5(3)(b) of the ICAC Act, I have had regard to Ms Lane's duties under sections 4 and 5 of the Public Sector (Honesty and Accountability) Act,³⁴ as identified above. In my view, a corporate agency member's failure to comply with these duties may inform a finding as to whether that member has committed misconduct in his or her capacity as a public officer.

169. The Veterinary Practice Act establishes the statutory functions of the Presiding Member of the board. Section 6(1)(b)(i) of the Act requires the Presiding Member to be a legal practitioner. Section 17(3) of the Act establishes that the Presiding Member will ordinarily chair meetings of the board and may exercise a casting vote if votes are

³⁴ These obligations are also summarised in the DPC publication, *Honesty and Accountability for Members of Government Boards*, as provided to board members in the *Board Members Handbook*.

equal. Section 64 of the Act establishes that the Presiding member will ordinarily preside over disciplinary hearings convened under Part 5 of the Act and may determine any questions of law or procedure arising in the course of such proceedings.³⁵

170. I have also had regard to the DPC publication *Government Boards and Committees: Guidelines for Agencies and Board Members*.³⁶ The board advised my investigation that this publication is included within the *Board Members Handbook* provided to each new board member.³⁷

171. This publication relevantly provides:

In these guidelines, the term 'board' is used to mean boards of statutory authorities and in so far as it is relevant, committees of such boards. In addition, for the purposes of this document the term 'board' also means non statutory boards and committees of a commercial or entrepreneurial nature. The term 'member' is used to mean members, trustees or directors of boards of management of statutory authorities. In the event of any inconsistency, legislation overrides these guidelines.

[...]

These guidelines have been developed for Ministers, agencies and board members as a guide to best practice. However, specific legislation and Government need will always prevail.

The guidelines have been developed to cover many boards set up for differing purposes, so certain boards will need to use only those parts of the guidelines which are relevant to them. For example, boards which do not manage their own funds and do not have financial obligations under their Acts, need not be concerned with the sections relating to financial management. Some boards, for example health boards, may encounter specific issues not covered in the guidelines.

All non statutory government boards and committees should use this booklet as a guide to efficient and effective performance.

172. Under 'Guidelines for Board Members', the publication relevantly provides:

ROLE OF THE CHAIRPERSON

Although the chairperson has no greater responsibility as a member of the board than other members, in practical terms the chairperson usually has a great influence over the success of the board and the success of the organisation.

A chairperson must be prepared to contribute much more time overseeing the organisation than an ordinary member.

The chairperson should not identify too closely with management, dominate the board or allow coalitions to form that exclude other members from the decision-making process.

[...]

THE CHAIRPERSON AND THE BOARD

The chairperson must, on behalf of the Government and the public, identify the issues of significance to the board, provide the right environment for consideration of those issues,

³⁵ See also section 65(5) of the Act, which empowers the Presiding Member to make certain determinations and orders in the course of proceedings convened under Part 5 of the Act.

³⁶ First published September 1995; current edition published February 2014. Available online at <<http://dpc.sa.gov.au/what-we-do/services-for-government/boards-and-committees-administration>>, last accessed 10 July 2017.

³⁷ The board further supplied my investigation with a copy of a letter from the Minister for Agriculture Food and Fisheries to [the current Presiding Member], dated 9 July 2015, in which the Minister requested that the board follow 'the selection process as published' in these Guidelines in considering prospective appointments to the board.

and ensure that all members have the opportunity to put their views and have them considered. He/she will do this through the structuring of the board agenda and the chairing of the meeting discussion. A carefully structured board meeting deals with routine matters quickly and efficiently, allowing time for attention to the key areas of responsibility (accountability, strategic thinking, monitoring and corporate policy).

The chairperson must be thoroughly familiar with the business of the organisation and would usually be expected to be spokesperson for the board where necessary. The chairperson should guide the other members of the board to understand their individual and collective roles and responsibilities, and encourage them to familiarise themselves with the operations of, and to make real contributions to, the organisation. The chair's responsibility is also to ensure that each member fully contributes his/her skills and experience towards the effective operation of the board and that an effective forum exists to enable the board to examine its own performance.

[...]

Specific legislation may override these general principles and board members should be thoroughly conversant with any legislation that applies to their board.

173. I consider the passages identified above provide general guidance as to the role of the Presiding Member of a board such as the Veterinary Surgeons Board of South Australia.
174. I have determined earlier in this report that the following payments to board members during Ms Lane's term of office were made contrary to the terms of the 2008 remuneration determination, PC016 and section 9 of the Veterinary Practice Act:
- remuneration to members for attending committee meetings (noting, however, that remuneration at a lower rate may have been authorised had a relevant remuneration determination been sought)
 - remuneration to members for 'out of session' duties
 - reimbursement of travel expenses (noting, however, that these payments may have been authorised had a relevant remuneration determination been sought)
 - reimbursement of parking fees.³⁸
175. The former and current Registrar of the board each independently informed my investigation that they considered these payments to have been made at Ms Lane's direction.
176. I note that the first of the impugned payments appears to have been made in November 2009, during Ms Lane's term of office. On the records supplied to my investigation, the payments plainly escalated over the course of Ms Lane's term of office.
177. In my view, Ms Lane through her emails to board staff between approximately January and September 2014 instructed that certain of the impugned payments be made.
178. Notwithstanding my direct request that she do so,³⁹ Ms Lane in her correspondence with my Office declined to identify whether she considered these emails to constitute directions from herself to the Registrar, instead submitting (emphasis added):

[I]t is clear that I sent those emails to the Registrar *in the expectation* that members of the VSBSA, including me, would be remunerated for our attendance at meetings identified.

³⁸ Specifically, the \$62.00 reimbursed to [Board Member D] in December 2013.

³⁹ Letter from Ombudsman SA dated 9 June 2017 ('I request that you now directly respond to the following: do you consider the communications referred to above to constitute directions from yourself to the Registrar to remunerate board members in relation to their attendance at committee meetings? Why/Why not? [D]o you consider paragraphs three and five of [the 30 June 2014 email to the Registrar] to constitute directions from yourself to the Registrar to reimburse specific board members for travel expenses incurred in relation to their attendance at 'out of session' meetings? Why/Why not?')

[..]

In paragraphs 3 and 5 of the email of 30 June 2014 [...] *I expressed my view*, which I believed to be properly based, that [...] the Board members referred to *were entitled to and therefore should* be paid travel expenses.

179. In my view, Ms Lane's response, identified in the passages above, was deliberately worded so as to avoid conceding this central issue. This was typical of the approach Ms Lane adopted in her correspondence with my Office.
180. On the evidence available to me, I am satisfied that the impugned payments identified in Ms Lane's emails between January and September 2014 were made at Ms Lane's direction.
181. In light of the evidence of the former and current Registrar on this issue, and on the weight of the surrounding information supplied by the board, I am satisfied to the *Briginshaw* standard that the remainder of the impugned payments were made in accordance with the directions of Ms Lane. To the extent that certain of the payments may not have arisen from a direct communication from Ms Lane, I am satisfied that they were made under, and in accordance with, her general direction as Presiding Member.
182. The Registrar of the board was ultimately responsible for processing payments by the board to individual board members. In the ordinary course, the Registrar, in receipt of a request for remuneration from a board member, could be expected to assess whether payment was necessary and appropriate in light of relevant administrative instructions and the board's enabling legislation.
183. I do not consider the responsibility to ensure that payments made by the board were in compliance with the relevant instruments fell solely upon the Registrar. Ms Lane as Presiding Member was responsible for exercising a degree of oversight over the board's operations, including its remuneration practices. Per section 4(1) of the Public Sector (Honesty and Accountability) Act, Ms Lane was required to 'exercise a reasonable degree of care and diligence' in doing so.
184. There is ample evidence to suggest that Ms Lane was made aware of the existence and nature of PC016 prior to the specific events in 2014.
185. In my view, per the recollection of [the former Registrar] and the copy of the *Board Members Handbook* provided to my investigation, it is more likely than not that Ms Lane personally received a copy of PC016 shortly after her appointment to the board. I am also satisfied that a copy of PC016 was available to members of the board in the board's Dropbox account from at least February 2014.
186. Ms Lane has in any case acknowledged her involvement in drafting the 22 February 2013 letter to the Minister seeking the Minister's 'in-principle approval and endorsement' of the board's proposal to engage and remunerate [Board Member E] to undertake a review of the board's processes. This letter was signed by Ms Lane and made specific reference to the provisions of PC016 applying to remuneration for 'out of session' duties, including the need to seek external approval through the Chief Executive of the DPC.
187. I generally accept that Ms Lane may not have turned her mind to the application of PC016 to the board's wider remuneration practices prior to the events in 2014.
188. There is overwhelming evidence that Ms Lane had her specific attention drawn to the application of PC016 to the board's remuneration arrangements through [the current Registrar]'s email on 18 June 2014 and the discussion that followed. The emails

demonstrate that [the current Registrar] forwarded a copy of PC016 to Ms Lane on 30 June 2014.

189. Ms Lane in her initial response to my investigation submitted that she had ‘no recollection’ of being ‘provided with [...] any iteration of PC016’ or to having her ‘attention drawn to [...] any provision of any iteration of PC016’ during her term of office.
190. Even allowing for the passage of time since the relevant events, I consider Ms Lane was being deliberately untruthful in these statements.
191. Setting aside the evidence that suggests Ms Lane had some knowledge of PC016 prior to June 2014, I simply observe:
- between 19 June 2014 and 12 August 2014 Ms Lane received at least seven emails from [the current Registrar] directly raising the application of PC016 to the board’s remuneration practices⁴⁰
 - during this same period Ms Lane sent at least four emails to [the current Registrar] seeking to address the issue⁴¹
 - in early August 2014 Ms Lane drafted and distributed a detailed memorandum to the board purporting to reconcile certain of the board’s remuneration practices with the terms of PC016
 - on 7 August 2014 Ms Lane chaired a meeting of the board at which her and [the current Registrar]’s memorandums were tabled and discussed
 - on 12 August 2014 Ms Lane sought and subsequently received CSO advice on the application of PC016 to certain of the board’s remuneration practices, subsequently exchanging a number of emails with the CSO over the course of the days that followed
 - on 20 August 2014 Ms Lane, sitting as part of the board’s Human Resources Committee, counselled [the current Registrar] for her interactions with [J] and the board in relation to the issue.
192. I further note that the CSO made detailed reference to PC016 in a letter to Ms Lane on 8 January 2016.⁴² It is apparent on the documents provided to my investigation (which I have not otherwise set out in this report) that Ms Lane and the CSO exchanged extensive correspondence in relation to the recovery of this amount and the application and availability of PC016 to board members.⁴³ In my view, this correspondence, if nothing else, would have made it difficult for Ms Lane to forget her earlier discussions with [the current Registrar] and the CSO concerning the issue.
193. Even if Ms Lane had not had the existence or terms of PC016 specifically brought to her attention during her term of office, I consider her responsibilities as both a member and Presiding Member of the board required her to ensure that payments made by the board at her direction were authorised at both the policy and legislative levels. Ms Lane appears to have conceded as much in her initial response to my investigation:

I believe that had I been made aware at any time of PC016 and the Determination, I would have ensured that I understood what they provided for and the manner in which the guidelines and processes referred to in PC016 operated and taken steps to ensure that the VSBSA complied with any obligations they impose.

⁴⁰ Emails dated 19 June 2014; 30 June 2014; 30 June 2014; 8 July 2014; 9 July 2014; 29 July 2014; 12 August 2014.

⁴¹ Emails dated 30 June 2014; 8 July 2014; 9 July 2014; 4 August 2014.

⁴² Raising a debt in relation to the impugned payments received by Ms Lane.

⁴³ See, e.g. email from [S] to Ms Lane dated 11 March 2016 (‘I refer to your email of 4 March 2016 in which you made an inquiry about how the Department of the Premier and Cabinet Circulars – PC016 – *Remuneration for Government Appointed Part-Time Boards and Committees* were circulated to members of VSBSA. In my email response, I mentioned that I was puzzled by your inquiry. I remain so. Nevertheless, I am instructed that the contents of PC016 were brought to your attention when you first became a member of the VSBSA. Thereafter there were a number of ways in which any amendments would have come to the attention of members of the VSBSA. These include communications from DPC, and/or the Registrar of the VSBSA and from information on the website of DPC which would have been accessible to all board members.’)

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194. The evidence provided to my investigation demonstrates that on 19 June 2014 Ms Lane was made aware that:
- the Registrar was concerned that under PC016 the board was not authorised to reimburse members for travel expenses incurred in relation to disciplinary hearings
 - the Registrar had further misgivings as to whether the board was authorised to remunerate board members for attending disciplinary hearings
 - under clause 8 of PC016, external approval was required before the board could remunerate members for 'out of session' duties.
195. In my view, at this stage it would have occurred to a reasonable person in Ms Lane's position that the propriety of the board's greater remuneration practices was in doubt. At the very least, if there was some question as to whether the board was authorised to remunerate members for attending disciplinary hearings, that in turn called into question the various payments by the board for duties clearly falling outside of statutory meetings or hearings.
196. The evidence supplied to my investigation suggests that the board's practice of remunerating members for committee meetings and specific 'out of session' duties was not explicitly called into question until after Ms Lane's term of office concluded.
197. In my view, the way in which Ms Lane went about responding to the Registrar's concerns was largely responsible for the delay in identifying these issues.
198. There was nothing inherently improper in Ms Lane forming her own opinion with respect to the application of PC016 and the existing remuneration determination to the board's remuneration practices at the time the Registrar first raised her concerns.
199. Consistent with my views above, I consider it was reasonably open to Ms Lane to form the view that sessional remuneration for attendance at disciplinary hearings was authorised by the 2008 remuneration determination. This is not to say that it would have been wrong for the board to seek external advice or a further remuneration determination on this issue, given the surrounding uncertainty.
200. I do not consider it was reasonably open to Ms Lane at the time of her 6 August 2014 memorandum to the board to conclude that a remuneration determination was unnecessary with respect to the payment of travel or parking expenses. In the case of the payment of travel expenses, clause 11.5 of PC016 'recommended' that payments be first authorised by the Governor in accordance with the board's enabling legislation. Clause 11.3 explicitly stated that reimbursement of parking fees was 'not to be provided.' Although, per [J], it may have been 'Government policy' to reimburse board members for expenses authorised under PC016 notwithstanding the lack of approval required by a board's enabling legislation, Ms Lane's memorandum did not refer to this 'policy' or otherwise purport to reconcile the board's reimbursement practices with section 9 of the Veterinary Practice Act.
201. On the information before me, it is unclear what caused Ms Lane to seek advice from the CSO, noting that her 6 August 2014 memorandum to the board suggested that this was in her view unnecessary.
202. In my view, the terms of Ms Lane's instructions to the CSO betray a certain aversion to external advice contradicting her own stated position, both through her framing of [the current Registrar]'s concerns⁴⁴ and through her efforts to downplay the significance of

⁴⁴ 'The new Registrar...'; '...she thinks...'; '...she has declined to take direction on this...'; '...I find it difficult to believe...'; '...her view (which does not accord with the Board's)...' etc.

any advice from [J].⁴⁵ This appears reinforced by Ms Lane's subsequent correspondence with [R] following the letter of advice.

203. In my view, it was not necessary or appropriate for Ms Lane to seek this advice on an urgent basis. That is, although it was appropriate for the board to immediately seek legal advice on the issue (in fact, it should have done so much earlier), the pending disciplinary hearing later in the week was not sufficient cause to expedite the CSO's consideration of the matter. It was open to the board to suspend certain of its payments pending legal advice on the issue.
204. As I have already stated, it should have been apparent to Ms Lane at the time that there was a need to seek external advice in relation to the board's greater remuneration practices. The terms of Ms Lane's instructions to the CSO should have queried the board's practice of remunerating members for 'out of session' duties and, in my view, should have disclosed the full extent of the remuneration being provided to board members at the time. This should have included reference to the board's practice of remunerating members for attendance at committee meetings.
205. The manner in which Ms Lane went about seeking the CSO advice effectively prevented the various issues with the board's greater remuneration practices from being identified.
206. I do not consider the board's financial position at the time excuses the course adopted by Ms Lane. As [the current Registrar] repeatedly noted in her correspondence with Ms Lane and the board, it would have cost the board nothing to immediately seek a remuneration determination of the Governor.
207. There is also a certain perversity in a public authority's financial position being used to justify a failure to properly investigate the possible mismanagement of its funds.
208. The letter of advice from the CSO and the emails from [R] that followed clearly advised Ms Lane and the board to seek a relevant remuneration determination with respect to the board's payment of travel and parking expenses. No such determination was sought during the remainder of Ms Lane's term of office. Ms Lane did not table the advice before the board or, it seems, otherwise circulate a copy to board members. If so, this is bewildering.
209. I have no information before me to explain why Ms Lane, in receipt of explicit and unambiguous legal advice to do so, did not immediately commence the process of seeking a further remuneration determination of the Governor.
210. Ms Lane in her second response to my investigation stated that she has 'no independent recollection' of the 20 August 2014 [meeting] or the alleged direction to [the current Registrar].
211. I do not believe Ms Lane on this issue. The [meeting] was over two hours in length. It followed considerable email correspondence between Ms Lane and the Registrar debating its purpose and scope. It caused Ms Lane to draft and send a three-page letter to [the current Registrar] identifying 25 separate [directions to her].
212. According to [the current Registrar], Ms Lane at this meeting informed her that she 'had been advised by CSO that a remuneration determination of the Governor was not required'. If this is indeed what Ms Lane said, she plainly misled the Committee.

⁴⁵ '...bearing in mind he may have been told by the (new) Registrar that it is her view...'; '...I would like to approach this issue on a principled basis- rather than having [J]'s view coloured by something the Registrar has said, which may or may not prove to be correct...'

213. Ms Lane, in her letter dated 28 August 2014, directed [the current Registrar] to:

Always report to the Board via the Presiding Member. Do not first go elsewhere for guidance on Board matters.

214. On the issue of the direction, Ms Lane submitted to my investigation:

I have no independent recollection of any such direction being given. I do recall that the Board did ask the Registrar to refer matters to it before communicating with the Department in the context of ensuring that the board was properly apprised of such matters.

215. Viewed in all the circumstances, and particularly in light of Ms Lane's correspondence with [R] of the CSO, I consider the purpose of this direction was to prevent the nature and extent of the board's greater remuneration practices coming to the attention of the DPC.

216. Whatever its intent, the effect of the direction was to prevent [the current Registrar] from seeking further input from the Boards and Committees Unit on the issue.

217. It is clear from [the current Registrar]'s evidence to my investigation and the surrounding circumstances that she felt compelled to process the August 2014 payments to board members. In my view, Ms Lane through her conduct was largely responsible for this sentiment. I note [the current Registrar]'s refusal to process the September payments following Ms Lane's departure from the board.

218. With respect to the expiation notices paid on her behalf, Ms Lane submitted to my investigation:

I submitted the expiation notices to the VSBSA for (and in the expectation of) payment in the belief that it was proper to do so.

Whilst I am sure I was attending to the business of the VSBSA when I incurred the expiation notices, I do not now recall anything more in relation to the actual attendance and no longer have my diaries from that period.

219. The two expiation notices by their very nature should never have been satisfied by the board. Owing if nothing else to the nature of the parking offences in question, the payments could not have been necessary for the conduct of the board.

220. Again, Ms Lane in her statements on this issue failed to directly respond to my request that she identify whether she directed the expiation notices be paid. In the circumstances, and owing to her position of authority within the board, I am satisfied that she did so.

221. Even if Ms Lane merely requested that the board satisfy the expiation notices on her behalf, this would still have been wholly inappropriate in light of the nature of the proposed expenditure and the clear expectation as Presiding Member that the payments would be met.

222. No reasonable person in Ms Lane's position would have formed the view that payment of the expiation notices was necessary for the conduct of the board or an appropriate use of public funds.

223. As required by the Commissioner's referral of the issue pursuant to section 24(2)(a) of the ICAC Act, I have considered whether there is any issue of misconduct in public administration under the ICAC Act in relation to Ms Lane's conduct concerning the impugned payments.

224. In my view, and in light of my findings above, Ms Lane through her conduct failed to exercise a reasonable degree of care and diligence in the performance of her functions within the meaning of section 4(1) of the Public Sector (Honesty and Accountability) Act.
225. On the evidence before me and in all the circumstances, I am further satisfied that Ms Lane through her actions committed misconduct in public administration within the meaning of section 5(3)(b) of the ICAC Act. In reaching this conclusion, I have had particular regard to:
- Ms Lane's overall failure to exercise a reasonable degree of care and diligence in the performance of her functions
 - the nature and extent of the payments wrongfully made to board members during Ms Lane's term of office (including payments made in excess of what may otherwise have been authorised), and the nature of Ms Lane's responsibilities as Presiding Member
 - Ms Lane's involvement in directing the impugned payments, including her failure to ensure that these payments were authorised under the relevant instruments
 - the manner in which Ms Lane responded to the concerns raised by the Registrar, including her failure to seek legal or other external advice in relation to the board's greater remuneration practices, her failure to follow the legal advice received and her failure to bring that advice to the attention of the board
 - Ms Lane's submission of the two expiation notices for payment in circumstances where it was wholly inappropriate to do so.

Opinion

In light of the above, my view is that by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination, Ms Lane committed misconduct in public administration within the meaning of section 5(3)(b) of the ICAC Act.

Whether Ms Debra Lane committed maladministration in public administration by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination

226. Pursuant to section 5(4) of the ICAC Act, a public officer commits maladministration in public administration in circumstances where his or her conduct has resulted in the 'irregular and unauthorised use of public money'; the 'substantial mismanagement of public resources'; or has involved 'substantial mismanagement in or in relation to the performance of official functions'.
227. Although I consider the payments wrongfully directed by Ms Lane to have resulted in the unauthorised use of public money (that is, unauthorised by the remuneration determination of the Governor, the terms of PC016 and the Veterinary Practice Act), on balance I am not satisfied that Ms Lane's conduct in directing the majority of these payments resulted in an 'irregular' use of public money within meaning of section 5(4)(a)(i) of the ICAC Act, in the sense that I am satisfied that the majority of the wrongful payments to board members were made in relation to their performance of official duties.
228. I draw an exception in the case of the expiation notices. In my view, Ms Lane's conduct in submitting the two expiation notices for payment clearly resulted in both the irregular and unauthorised use of public money. Ms Lane, owing to her position and authority,

could have expected that those payments would be made. This on its own would justify a finding of maladministration in public administration in the circumstances.

229. On the evidence before me and in all the circumstances, I am in any case satisfied that Ms Lane's conduct in directing or the wider payments be made resulted in the substantial mismanagement of public resources within the meaning of section 5(4)(a)(i) of the ICAC Act.
230. In reaching this conclusion, I have had particular regard to the nature and extent of the payments wrongfully made to board members, Ms Lane's involvement in directing these payments and Ms Lane's failure to ensure that the payments were authorised under the relevant instruments. I have also had regard to Ms Lane's conduct following the issue being brought to her attention by [the current Registrar], and her failure to take appropriate action at this time to ensure that the board's remuneration practices were properly authorised.

Opinion

In light of the above, my view is that by directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination, Ms Lane committed maladministration in public administration within the meaning of section 5(4)(a)(i) of the ICAC Act.

Conclusion

In light of the above, my final view is that:

1. By directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination, Ms Lane committed misconduct in public administration.
2. By directing payments be made to members of the Veterinary Surgeons Board of South Australia in the absence of an approved remuneration determination, Ms Lane committed maladministration in public administration.

I understand that Ms Lane remains a public officer through her current membership of the Legal Practitioners Disciplinary Tribunal and the Board of Examiners.

I am satisfied that the board, following the departure of Ms Lane, has taken appropriate action to ensure that its remuneration practices accord with government policy and section 9 of the Veterinary Practice Act.

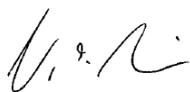
I am also satisfied that the board has taken appropriate action with respect to the recovery of the impugned payments.

The board under its current Presiding Member has fully cooperated with my investigation.

In the circumstances, I do not consider it necessary or justifiable that I make a finding of administrative error under section 25(1) of the Ombudsman Act with respect to the payments wrongfully made by the board. On this basis, I do not make any recommendations to the board under section 25(2) of the Ombudsman Act.

I intend to provide a copy of my final report to the Minister for Agriculture, Food and Fisheries.

In the circumstances, and owing to the conduct of Ms Lane during her term as Presiding Member and in responding to my investigation, I also intend to provide a copy of my final report to the Boards and Committees Unit of the Department of the Premier and Cabinet.



Wayne Lines
SA OMBUDSMAN

17 August 2017