Letter to the Legislative Council and the Legislative Assembly

To
The Honourable the President of the Legislative Council and
The Honourable the Speaker of the Legislative Assembly


G E Brouwer
OMBUDSMAN
23 November 2011
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1. Executive summary

Background

1. In 2007, the Victorian Government was under considerable pressure to respond to a significant drought. Victoria’s water security was a pressing issue and there were concerns that Melbourne would run out of water.

2. In June 2007, the former government released its water plan, ‘Our Water Our Future – The Next Stage of the Government’s Water Plan’ which proposed a number of projects to save and generate water in Victoria.\(^1\) The largest project proposed by the government was the modernisation of water irrigation infrastructure in Victoria’s Goulburn-Murray Region, a $2 billion project designed to generate water savings for Melbourne, irrigators and the environment (the Foodbowl project).

3. In December 2007, a statutory body called the Northern Victoria Irrigation Renewal Project (NVIRP) was established\(^2\) to plan, deliver and implement the Foodbowl project.

4. Goulburn-Murray Water (GMW) is the statutory body responsible for the delivery of water in Northern Victoria. At the time of the former government’s announcement, GMW’s infrastructure was old, inefficient and expensive to maintain.

5. The Foodbowl project involves upgrading and modernising GMW’s infrastructure while retiring a significant proportion of water channels and pipes; and connecting landowners on non-backbone channels to the backbone channels.\(^3\)

6. GMW is responsible for running the irrigation system throughout the project and will be responsible for the infrastructure at the conclusion of the project. Given that NVIRP is essentially upgrading GMW’s assets, the project requires a high degree of cooperation between the two bodies with GMW assisting NVIRP to achieve the project’s goals. Such assistance includes decommissioning assets; conducting site inspections; and collecting, entering and verifying data.

7. On 1 February 2011 Mr Peter Walsh MP, Minister for Water wrote to me to express concern about GMW and NVIRP and requested that I consider investigating GMW and NVIRP’s development and implementation of the Foodbowl project. After considering the issues, I commenced an own motion investigation of the Foodbowl project under section 14 of the Ombudsman Act 1973.

8. My officers met with a large number of landowners and key stakeholders directly affected by the Foodbowl project. Many irrigators told my

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\(^1\) Projects included a new desalination plant for Melbourne, expansion of Victoria’s water grid and upgrading Melbourne’s Eastern Water Treatment Plant.


\(^3\) The backbone channels are those channels intended for modernisation. Properties which are not on a backbone channel will be connected to their nearest backbone water service point by privately owned water infrastructure.
officers of the difficult times and the level of stress they had operated under in recent years; their tenuous financial positions; and their desire to retire and/or leave the industry. My officers also visited several irrigators’ properties to see first hand, specific issues involving the Foodbowl project.

9. My investigation of the Foodbowl project covered the following areas:
   • water savings
   • project planning, management, implementation and timelines
   • procurement
   • governance issues.

Key conclusions

10. The Foodbowl project provides an extraordinary opportunity for irrigators, the environment and communities to benefit from a more efficient and modernised irrigation system.

11. NVIRP has achieved its progressive water savings targets to date and made satisfactory progress in modernising the irrigation infrastructure. However, some capital installations are behind, due to the recent floods, and some quality issues exist in relation to capital installations and designs.

12. Landowners are generally supportive of modernisation, however many irrigators expressed concerns about the way in which NVIRP had implemented the Foodbowl project. My investigation has identified areas where NVIRP has not implemented the project transparently and equitably and has failed to manage its contractors’ conflicts between their public duties and private business interests. Given that the future success of the project is contingent on the voluntary participation of around 15,000 landowners in Northern Victoria, I do not consider the project will successfully achieve its goals without first addressing these concerns.

13. Several governance-related issues identified in this investigation reflect a fundamental misunderstanding by NVIRP Directors and its senior management of public sector principles such as conflict of interest, good governance, privacy and transparency.

14. I consider the definition of ‘water savings’, which is central to this project, to be problematic because it allows water to be described as a ‘saving’ even though, in certain situations, it was previously being productively used and was not ‘lost’.

15. In view of the current water supply situation, the experiences of the project to date and the findings in this report, I consider that it is timely to review the objectives and strategic direction of the Foodbowl project. As Stage 1 is progressing and the Commonwealth and Victorian
governments have recently agreed on matters relating to Stage 2, it is opportune to ensure that the project’s direction remains appropriate and aligns with the State’s and region’s current and future needs.

16. I note that the governments have also agreed to a review of the Stage 2 connections program in mid to late 2014. I propose that this review be brought forward and that the recommendations and concerns raised in my report be considered when reviewing the future direction of the project.

17. With the funding details now established for the delivery of NVIRP Stage 2 and some flexibility in timelines to achieve modernisation, connections and water savings objectives, it will be important for government to ensure that the issues and challenges identified in this report are sufficiently addressed so that the planned improved outcomes for irrigators and their communities will be achieved. In particular, the transfer of NVIRP’s functions to GMW is critical to the future success of the Foodbowl project.

Specific findings

Project planning

18. The Foodbowl project is a significant and complex undertaking. My investigation established that it was announced without sufficient planning and in the absence of established evaluation and approval processes being undertaken. The former government’s decision to proceed with the project was based on meetings with irrigators and its experience with previous modernisation projects (which were of a different nature and scale).

19. The former government approved and committed substantial funding to the project although it had not undertaken a Business Case and feasibility studies critical to assess and evaluate investment options. The future cost implications of modernisation for irrigators and GMW were unknown as the relevant analysis had not been undertaken. This lack of planning resulted in numerous changes being made to the project (concerning estimated water loss and savings figures and the capital works program) which could have been minimised had greater planning occurred.

20. At interview, the then Treasurer, Mr Brumby, acknowledged that the former government had not undertaken the required studies prior to announcing the project given the state’s critical water situation.

21. However, the drought situation had been developing since 1997 and I consider that government should have been able to respond in a timely, considered and strategic manner.

22. Measured decision-making is essential particularly for major projects with long-term implications for both the government and the community. I consider that governments should not compromise project planning, particularly when the project involves substantial government funds.
23. Notwithstanding that GMW is the owner and operator of the irrigation infrastructure and was required to contribute $100 million to the Foodbowl project, the decision to establish NVIRP was made without due consideration of, or consultation with, GMW. Given the significance of the project, a detailed assessment including consultation about the costs and benefits and options for delivery was warranted. I identified that the modernisation program was adversely affected, both operationally and financially, by the existence of dual organisations and that the differing perspectives of GMW and NVIRP have prevented some issues being resolved in a timely manner. The dual organisation structure also hampered the ability to deliver project goals.

24. Since the former government made the decision to proceed with the Foodbowl project, the environment has changed. GMW has developed a draft plan to modernise the Goulburn-Murray Irrigation District (GMID). While the draft plan has not yet been approved by GMW’s new Board, I am satisfied that the modernisation approach proposed by GMW’s senior management has merit and requires consideration by government as it may overcome issues that have arisen in the Foodbowl project to date.

25. In mid-2009 GMW significantly underestimated annual costs relating to support and maintenance of software systems for some installations in a review to ascertain the future cost implications of the modernised irrigation system. This cost represents a key project cost. A second review by GMW in early 2011 further reduced the annual costs to $360,000. However, the actual annual cost is likely to be more than 10 times this amount.

26. GMW maintains that modernisation costs in the second review were reduced under direction from the Department of Sustainability and Environment to ‘cut the cost base’. As a result, inaccurate information about the annual operating cost of the modernised irrigation system was provided to the former government, as well as to the irrigators who will need to meet any increased costs.

Project management and governance

27. NVIRP reports to the Department of Sustainability and Environment, the portfolio agency responsible for water. I consider the scope of NVIRP’s reporting is deficient as it focuses on capital activities and the achievement of water savings, to the detriment of other valid project objectives including regional, economic and social benefits.

28. The project to date has been hampered by a number of unresolved policy issues. Such policy issues include whether compulsory participation measures will be used if irrigators refuse to participate in the project and the nature of joint water infrastructure syndicates.

Project implementation

29. The project scope and level of capital works activities planned as a part of the modernisation program is ambitious and NVIRP has made significant progress. This progress has included completion of the capital
works program in the annual winter works periods; decommissioning of the Campaspe Irrigation district; transfer of around $200 million of improved irrigation assets to GMW; and the creation of business and employment opportunities within the region.

30. However, NVIRP has failed to ensure adequate oversight of the works program which has led to issues with the quality of some installations and concerns about whether some key equipment items are fit for purpose. It is not unusual in situations where new equipment is being brought on line in an existing operating environment, that faults are reported. However, poor quality designs and installations alienate landholders and there is evidence that this is occurring.

31. NVIRP’s connections program has not been delivered in a transparent way and has resulted in a perceived inequity between landowners on the backbone\(^4\) and landowners who are not. Undesirable outcomes such as negative impacts on the valuation of irrigators’ properties, have also arisen as a result of NVIRP’s connections program.

32. Farm designers who are contracted to NVIRP are a critical element of the program and will be in contact with all 15,000 irrigators during the project. However, my investigation has identified that the role of a farm designer is inherently conflicted with no clear delineation between their roles when acting on behalf of NVIRP or on behalf of irrigators. These conflicts of interest have not been managed by NVIRP.

33. There is a risk that under the Constitution Act 1975 (Vic), privately owned infrastructure will ‘revert’ to GMW if, in future, landowners do not wish to continue managing the private infrastructure from the backbone to their properties.

34. NVIRP’s experience to date indicates that the achievement of 100 per cent participation by irrigators in Stage 2, needed to obtain the water savings target, is unlikely under the current voluntary participation arrangements. Already, NVIRP is seeing resistance by landowners who do not wish to connect to the backbone given concerns that they will be responsible for the upkeep of infrastructure once owned by GMW.

35. The timelines for the Foodbowl project have adversely impacted on the delivery of the project. In my view, NVIRP has been driven by the project’s timelines and has not devoted sufficient time and effort to ensuring that all aspects of its operations are sufficiently robust, controlled and able to withstand scrutiny. Overall, the level of project planning and consultation has been less than that undertaken for less significant projects interstate.

**Water savings**

36. The achievement of water savings is the key driver for the Foodbowl project. The project proposes to ‘save’ 425 gigalitres of water for distribution to Melbourne, the irrigators, the environment and the Commonwealth Government.\(^5\)

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4 Backbone channels are the larger capacity channels with 20 megalitres of delivery share or more.
5 Over the long term, water savings are expected to average 425 gigalitres per annum.
37. My investigation assessed the appropriateness and rigour of the methodology for estimating, measuring, verifying and allocating water savings and identified that:

- Defining ‘water loss’ is not an exact science and therefore it is difficult to estimate water savings. Moreover, the use of terms ‘water loss’ and ‘water saving’ in relation to the project is problematic. The Department of Sustainability and Environment has defined water which was previously put to productive use; water purchased by NVIRP; and water losses transferred to the landowner, as water saved. In essence, the definition encompasses water which has not been ‘saved’ through modernisation of the irrigation system but water that can now be more accurately distributed and accounted for by GMW.
- Original water loss and savings estimates were based on unverified figures and as a result, water loss estimates have been revised several times.
- Recent estimates of water losses in the GMID have been reduced by around 20 per cent on the original estimates, however, water savings to be achieved by NVIRP have not been proportionally reduced. With fewer overall water losses in the system, it may prove a challenge for NVIRP to achieve the same amount of water savings.
- The department’s external audit of water savings adds transparency and confidence in relation to the savings achieved. While my review did not identify any concerns with the audits undertaken, the audit results are communicated to the public in a way which is complex and difficult to understand.
- The Minister for Water is currently determining the method for distributing water savings achieved through the project to stakeholders.

Procurement

38. The supplier of the Foodbowl project’s technology has had extensive involvement in irrigation modernisation projects in the Goulburn-Murray Irrigation District (GMID) over several years. Its technology was advanced compared with local suppliers at the time. It was considered to be the sole supplier in integrated channel automation systems and therefore, automatically, the supplier for the Foodbowl project. No evidence has been provided to my investigation of who made the decision to adopt the channel automation technology for the project or how this decision was reached. NVIRP contends that the decision was made before the establishment of NVIRP. However, a senior departmental officer advised that there was no formal commitment to utilise the supplier for the Foodbowl project.

39. A tender process was not undertaken by NVIRP to procure the project’s technology as required by government procurement guidelines. There
was also no documentation provided to me that justified a departure from the guidelines. To date NVIRP has paid the company $77.2 million for Stage 1 works without a tender process. This is concerning given the Department of Sustainability and Environment was advised in 2007 of the existence of international competitors in integrated channel technology.

40. To this extent, the state government has facilitated the supplier’s involvement in the GMID over several years. Its actions have assisted the supplier to improve its technology and achieve and maintain its strong market position as the sole supplier of integrated channel automation technology.

41. I accept that there are likely to be practical difficulties associated with changing suppliers or technologies for the Foodbowl project. However, for such a significant government project, the decision to adopt this technology has not been transparent.

42. As a state owned enterprise, NVIRP has a responsibility to ensure appropriate procurement processes are followed. In these circumstances, it missed an opportunity to test the market for potential suppliers and therefore, cannot be assured that value for money from this procurement has been achieved.

Governance issues

43. Good governance is an essential part of any organisation and poor governance can risk a project’s commercial viability, reputation, integrity and transparency.

44. The level and nature of governance issues highlighted in this report relating to both NVIRP and the Department of Sustainability and Environment are concerning. In my view this is indicative of senior management and staff not having a sound understanding of basic public sector principles and values such as acting transparently, maintaining privacy, acting impartially, demonstrating accountability and identifying and managing conflicts of interest.

45. The governance issues involved:
   - significant and inappropriate assistance provided to a private company
   - numerous breaches of the provisions of the Information Privacy Act 2000 in relation to private landowner information
   - a failure to declare gifts and hospitality from suppliers and the inappropriate acceptance of hospitality
   - inadequate complaints handling.

46. All of the issues I investigated involved senior NVIRP management and some also involved a then senior departmental officer. In my view, this behaviour ‘at the top’ sets a concerning culture for the agencies involved.
47. I have made a number of recommendations including that:

- consideration be given to transferring the functions of NVIRP to GMW with NVIRP continuing to implement the Foodbowl project as a unit within GMW
- an independent review of the objectives and strategic direction of the Foodbowl project be undertaken to ensure that they remain appropriate and relevant and align with the State’s and region’s current and future needs
- consideration be given to the merits of GMW’s draft Plan for Modernisation
- the Foodbowl project be included within the scope of the Department of Treasury and Finance’s revised central oversight processes
- policy issues that require resolution for the successful implementation of the Foodbowl project be considered in a timely manner by the Department of Sustainability and Environment
- a framework for reporting the wider benefits of the modernisation investment be established
- the use of farm designers in the connections program be reviewed to ensure probity and integrity in their appointment; management; monitoring; and review and oversight
- all staff involved in the Foodbowl project undertake training in understanding, recognising and managing conflicts of interest
- the procurement for future modernisation projects comply with relevant government procurement guidelines.
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2. Introduction

My investigation

48. On 1 February 2011 Mr Peter Walsh MP, Minister for Water wrote to me to express concern about Goulburn-Murray Water (GMW) and the Northern Victoria Irrigation Renewal Project’s (NVIRP) development and implementation of the Foodbowl Modernisation project (the project).

49. I was informed by Minister Walsh that the ‘Government’s priority is to ensure the project is being properly administered in accordance with the relevant policy and enabling legislation’. Minister Walsh suggested that enquiries should be made about:
   • the effectiveness of the project’s management, oversight and governance
   • the appropriateness and rigour of the methodology for estimating, verifying and allocating water savings.

50. Following my consideration of Minister Walsh’s correspondence I decided to conduct an own motion investigation of the Foodbowl project under section 14 of the Ombudsman Act 1973.

51. I advised Minister Walsh on 1 February 2011 and the Secretary of the Department of Sustainability and Environment; the then Acting Managing Director GMW; and the Chief Executive Officer, NVIRP on 4 February 2011, of my intention to conduct an investigation.

52. My investigation involved:
   • Interviews of more than 100 people including:
     • current and former Members of Parliament
     • officers from the Department of Sustainability and Environment; the Department of Treasury and Finance; GMW; NVIRP; and Regional Development Victoria
     • private sector contractors involved in the delivery of the project
     • irrigators and other witnesses who contacted my office to provide information to my investigation.
   • Examination of documentation obtained from the Department of Sustainability and Environment, GMW, NVIRP, contractors and private members of the community.
   • Visiting the Goulburn-Murray irrigation district to:
     • observe modernisation activities being undertaken
     • meet face-to-face with irrigators
     • conduct interviews and file inspections of relevant documentation.
   • Contracting of expert assistance in the areas of agricultural economics, engineering and project management.
53. Witness interviews were audio recorded and quotations used in this report were taken from this source.

Cabinet documents

54. During the investigation I sought the following documents from the Department of Sustainability and Environment:
   - the draft and final business cases for Stage 1 of the Foodbowl project, dated August 2008 and July 2009
   - documents outlining the advice to Ministers regarding the appointment of both GMW and NVIRP’s Board Directors
   - cost benefit analysis reports prepared for the business cases.

55. As the documents concerned the former government, the Secretary, Department of Premier and Cabinet consulted with the Leader of the Opposition in relation to my access to the documents. On 3 October 2011, the Hon Daniel Andrews MP Leader of the Opposition advised me that as the documents were either prepared for the purpose of submission to Cabinet ... or relate to the deliberations of Cabinet or Ministers, the provision of these documents cannot be compelled by the Ombudsman pursuant to section 19(1) of the Ombudsman Act 1973. As a result the documents were not released.

56. Section 19 provides that I may not compel the provision of such documents, but it does not prevent access being provided. I am concerned that the willingness to rely on section 19 as a basis for refusal unnecessarily impeded my investigation. In saying that, I accept that the security of Cabinet information is essential for the maintenance of effective government; but such security should not (and in the past did not) necessitate Cabinet documents being withheld when relevant to my investigations. While in the past, departments and Ministers generally provided access to Cabinet material when requested it was on the basis that section 19 is discretionary, not obligatory.

57. I consider that this investigation was hampered by these section 19 decisions as my investigators were unable to review key documents which would have assisted my understanding of the government’s decision-making in relation to the Foodbowl project and the establishment of the NVIRP Board.

58. I note that the Victorian Auditor-General has a statutory entitlement to access Cabinet documents and I am unaware of any reason beneficial to good and open government for my office not to have similar access. Consideration should be given to the early repeal of section 19.

Project background

59. In October 2005, the Victorian State Government released Our Water Our Future, a policy designed to assist in managing and conserving Victoria’s water resources. In June 2007, after continuing drought
conditions, *Our Water Our Future – The Next Stage of the Government’s Water Plan* (the 2007 Water Plan) was announced.

60. The 2007 Water Plan outlined a $4.9 billion investment in major water infrastructure projects ‘to steadily move back to unrestricted water supplies in our cities and towns’. Included within these projects was the plan to modernise Victoria’s Goulburn-Murray irrigation district (GMID).

61. The GMID comprises six districts⁶ and covers an area of 65,000 square kilometres (it is the size of Tasmania). It has gained a reputation as Victoria’s ‘Foodbowl’ and accounts for, among other things:

- over 70 per cent of water stored in Victoria
- almost 90 per cent of water used in irrigation across the state
- over one-quarter of Victoria’s agricultural output
- approximately 26 per cent of Australia’s milk production
- 95 per cent of Australia’s tomato processing capacity
- 30 per cent of Victoria’s gross value of agricultural production.

62. GMW is the statutory body responsible for the delivery of water to around 30,000 customers in the GMID. It manages $5.8 billion worth of infrastructure assets and has previously undertaken the following water saving and modernisation projects:

- IMSVID Metering Project 2003-07
- Woorinen, Tungamah and Normanville pipelines 2003-06
- CG2 Channel Automation Technology Pilot Trial 2004
- Strategic Measurement Project 2005-07
- Reconfiguration 2005-09
- CG1234 Stage 1 2006-07
- Foodbowl Early Works Package (construction) 2008
- CG1234 Stages 2 and 3 2008-09
- Shepparton Modernisation Project 2008-09
- Mokoan Return to Wetland Project 2009

63. At time of the Victorian government’s 2007 water plan, GMW’s irrigation system was approaching 100 years old, nearing the end of its useful life and in need of extensive renewal works.

⁶ Including Pyramid Boort, Torrumbarry, Rochester, Central Goulburn, Shepparton and Murray Valley - refer to Appendix 1 for a Map of the Goulburn-Murray Water Region.
Project scope

64. On 20 December 2007, the State Owned Enterprise for Irrigation Modernisation in Northern Victoria (trading as NVIRP: Northern Victoria Irrigation Renewal Project) was established to implement the Foodbowl project.

65. The Foodbowl project involves automating, repairing, upgrading and replacing the water infrastructure in the GMID to make the system more efficient and to save water.

66. A key component of the project involves ‘rationalising’ the infrastructure to remove redundant water assets and attempting to reduce the infrastructure footprint in Northern Victoria by 50 per cent while still providing irrigation services to 90 per cent of properties currently serviced. Further, a key driver is to reduce whole of life costs of the modernised system to ensure its ongoing affordability to irrigators while improving levels of service.

67. The project will take around eight years to complete and will cost $2 billion. It is to be delivered in two stages.

68. Stage 1 primarily involves modernising the larger water infrastructure channels known as the ‘backbone’ of GMW’s irrigation system. Modernisation of the backbone includes:
   - automating the opening and closure of main channels using radio controlled, solar power technology and ensuring water is measured more accurately
   - lining water channels with clay or plastic
   - rationalising or removing redundant or obsolete infrastructure including non-backbone channels
   - replacing inaccurate water meters (Dethridge wheels) with modern meters compliant with national metering standards (such as flume gates).

Dethridge meter wheels (left) are to be replaced with meters such as a flume gate (right).
69. Stage 1 also involves the connections program and the connecting of around 30 per cent of non-backbone customers to their nearest backbone channel via privately owned connections. The connections program aims to significantly reduce the amount of public water infrastructure in the GMID.

70. Stage 1 aims to deliver estimated long term average water savings of 225 gigalitres (GL) annually by 2013-14. The Stage 1 funding of $1 billion has been provided as follows:
   - the Victorian State government ($600 million)
   - Melbourne Water ($300 million)
   - GMW ($100 million).

71. Stage 2 will focus on implementing the remainder of the ‘connections program’.

72. Stage 2 was estimated to cost around $1 billion and achieve an additional estimated 200 GL (long term average) of water savings per annum. The Commonwealth government had agreed in-principle to contribute to the costs up to $1 billion, subject to a due diligence assessment and delivery of half the water savings as additional water for the environment.

73. On the 18 October 2011, agreement was reached between the Commonwealth and Victorian governments in regard to the Commonwealth funding for, and Victoria’s delivery of, NVIRP Stage 2. The principal impacts of the agreement are:
   - Stage 2 project costs of $1,059,024,000 (excluding GST) are to be provided by the Commonwealth to a maximum of $952,780,000 and, the Victorian government is to provide $106,244,000. The state government is to provide any expenditure in excess of the project cost that is required to complete the project.
   - The removal of the requirement for irrigators to contribute $200 million in return for their 50 per cent share of the water savings (102 GL) from NVIRP Stage 2. This water will be sold to the Commonwealth government.
   - The Victorian government’s agreement to extend the term of Stage 1 of the Foodbowl project from June 2013 to June 2018 to ‘ensure Victoria has the flexibility to deliver both stages of NVIRP and to provide the best outcome for the community ...’.

74. The Foodbowl project is being implemented at the same time the Commonwealth has undertaken a program to reduce the water extracted for irrigation across the Murray-Darling Basin. A plan is being developed which will set new limits on water that can be taken from the Basin. This plan will significantly impact on irrigation in northern Victoria by affecting water supplies in the GMID.

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7 One gigalitre is equivalent to one billion litres.
3 **Water savings**

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3. Water savings

75. Many witnesses raised concerns that water savings, the basis for the project proceeding, were flawed as the water savings identified were not available or were not ‘true water savings’. A concern was raised that NVIRP were simply ‘re-allocating’ water that had been distributed. Furthermore, several irrigators told my officers that Dethridge meters should not be replaced.

76. Given these concerns, my investigation assessed the way that NVIRP had estimated, defined and measured water savings. I also reviewed how the savings were verified and distributed. My investigation identified that some of the project’s definitions of ‘water savings’ are problematic as they include:

- water which was not saved for the region; and
- ‘savings’ not achieved via modernisation of the system.

Estimating water loss and water savings

Introduction

77. GMW can lose water from its irrigation system in a number of ways, including:

- leakage (water leaking through the banks of irrigation channels)
- seepage (water seeping into the ground through the base of the channel)
- evaporation
- outfalls (excess water spilling out at the end of channels)
- water meter inaccuracies
- unauthorised use, such as theft.

78. The measurement of water loss in the GMW irrigation system is not an exact science because it involves many variables which cannot be practically measured within an area as large as the GMID. Those variables include different soil types causing different rates of water leakage, and water flows which are not measured (including water outfalls or water theft).

79. Despite difficulties in determining water losses, the former Victorian government initially reported to the community that the GMID lost up to 900 GL of water ‘through leaks, evaporation and other inefficiencies’ and that the Foodbowl project would save 450 GL of water. The achievement of these water savings formed the basis for the $2 billion project to proceed.

80. The Victorian Auditor-General’s June 2010 report on Irrigation Efficiency Programs notes that:

[The water loss and savings] figures were largely unsubstantiated at the time the project was approved. The submissions to Cabinet
in June 2007 noted that limited work had been done to confirm the cost estimates or the projected water savings, and also that there was limited data available on the effectiveness of modernisation to achieve the level of water savings.

81. Since the government announced the Foodbowl project, different estimates of the water losses in the GMID have been reported. At June 2010, the water loss estimate of 900 GL was revised down to 730 GL.\(^8\) The water savings target has also been reduced from 450 GL to 425 GL.

82. Different estimates of water losses and savings are shown in Table 1:

**Table 1: Estimates of water losses and savings**

<table>
<thead>
<tr>
<th>Date</th>
<th>Announcement</th>
<th>Water Losses LTCE ¹</th>
<th>Water Savings LTCE ¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 June 2007</td>
<td>Announcement of Foodbowl Modernisation Project</td>
<td>900GL</td>
<td>450GL</td>
</tr>
<tr>
<td>November 2007</td>
<td>Foodbowl Modernisation Project Steering Committee report</td>
<td>900GL</td>
<td>450GL</td>
</tr>
<tr>
<td>June 2009</td>
<td>NVIRP Stage 1 Business Case</td>
<td>780-870GL</td>
<td>225GL - Stage 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>200 GL - Stage 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>425GL - Total</td>
</tr>
<tr>
<td>June 2010</td>
<td>Victorian Auditor-General’s Irrigation Efficiency Programs</td>
<td>632GL(^9)</td>
<td>425GL</td>
</tr>
<tr>
<td>30 June 2010</td>
<td>NVIRP Stage 2 Business Case</td>
<td>730GL (prior to Stage 1)</td>
<td>211.91 GL (from Stage 2 only)(^b)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>415.3GL (losses remaining after Stage 1)</td>
<td></td>
</tr>
<tr>
<td>1 November 2010</td>
<td>Commonwealth Due Diligence Report for NVIRP Stage 2</td>
<td>730GL</td>
<td>203.88GL (from Stage 2 only)(^b)</td>
</tr>
</tbody>
</table>

¹ The Long-Term Cap Equivalent (LTCE) is calculated in accordance with historical data and represents the average annual volume of water that can be expected to be lost or saved if there is a repeat of past climatic conditions. It is the common water currency used to compare water savings and different water entitlements.

² Recent estimates indicate that greater water savings may be achievable in Stage 2 however, Foodbowl project targets have not been altered.

83. The project is to achieve its target of 425 GL of water savings in two project stages, with 225 GL delivered under Stage 1 and a further 200 GL under Stage 2.

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\(^8\) NVIRP Stage 2 Business Case.

\(^9\) VAGO’s report noted that the original figure of 900 GL was potentially misleading as it reflected losses for the whole of the GMID and initially included separate irrigation efficiency programs such as the Central Goulburn 1234 and Shepparton Irrigation Districts which had their own efficiency projects which were later excluded. 632 GL represents the water losses for the NVIRP area. VAGO report, page 18.
Defining water loss and water savings

84. My officers assessed the Department of Environment and Sustainability’s definitions of water losses and savings and identified that the terminology is problematic.

85. The department’s Technical Manual for the Quantification of Water Savings (the manual) describes water ‘savings’ as the difference between water losses in the GMW system before modernisation and the losses in the GMW system after modernisation.

86. For the Foodbowl project, a water ‘loss’ is defined as the difference between what is released into the irrigation system and what is delivered to irrigators.

87. The department’s definition does not take into account that ‘lost’ water sometimes goes to a productive use, as can be the case when water is over-delivered to irrigators (for example through meter error) or when it flows into areas of environmental value. Where this occurs, the prevention of the loss does not generate true water savings. Accordingly, water savings generated through the project may be overstated.

88. My investigation identified five main areas where claims that project measures are achieving water savings may mislead:
   • meter error
   • drainage diversions
   • water purchases
   • transfer of ownership of water infrastructure
   • environmental flows.

89. While the Department of Sustainability and Environment has taken steps to address this issue in relation to savings from water previously flowing into the environment, what comprises water savings has not been clearly communicated to the community.

Meter error

90. A Water Savings Support Report for NVIRP’s Stage 1 Business Case states that 47 GL of water savings will be achieved by reducing the amount of water lost through inaccurate water meters. This equates to 20.8 per cent of the total Stage 1 water savings target.

91. In the case of meter error, the water ‘loss’ is actually water which is delivered over and above the water ordered by an irrigator due to meter inaccuracy. Measures taken to prevent this do not necessarily ‘save’ water because this water was previously going to customers and is likely to have been productively used.

92. From GMW’s perspective, this over-delivery of water cannot be charged for as it has not been ordered and it is therefore considered a revenue
loss to GMW. In essence, this means that the water loss is a loss to GMW, but may not be a loss to irrigators or to the GMID in general. In my view, to call water not recorded due to meter error a ‘water loss’ is misleading.

93. In response to my draft report, NVIRP said:

Meter error savings have been subjected to a number of technical studies. The DSE [Department of Sustainability and Environment] position, which it is understood the Auditor General accepted in his report on Irrigation Efficiency programs, was that meter error volumes are losses in terms of water balance accounting and are recognised as such.

The National Water Initiative recognises the need for improved water accounting (including in relation to meter accuracy) as a key objective of the national reforms to which the Victorian Government is a signatory (Inter-Governmental Agreement for the National Water Initiative, June 2004).

If more water is received by an irrigator, above their entitlement (via inaccurate Dethridge meters) this represents someone else in the system getting less water. Accurate metering provides a level playing field for all irrigators...

In addition leakage and seepage through and around Dethridge wheels may not be necessarily used productively as suggested in the report.

**Drainage diversions**

94. Reduction in outfalls due to modernisation will also affect the water available to drainage diverters. Sources of drainage water include rainfall, run off from farms and outfalls from channels.

95. Where outfalls are being productively used by drainage diverters, it may be misleading to describe those outfalls as a water loss. As with meter error, this water was being productively used, but not ordered or paid for.

96. Drainage water is provided on an opportunistic basis and the quality and reliability of water is generally not guaranteed, which is reflected in the fees paid by drainage diverters. Where drainage diverters use water from outfalls they benefit from system inefficiencies and access water at a lower price compared to those who pay for delivery of irrigation water through the channel system.

**Water purchases**

97. The Stage 1 Business Case provides that NVIRP may purchase up to 4.1 GL of water from customers who want to surrender their water entitlement if the purchase helps facilitate customer connections to the modernised system. NVIRP advised that the purchase must be within a $10.8 million budget. This water contributes to NVIRP’s water savings target.

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10 GMW customers who hold permits to use water in the channels that drain water away from properties and other areas.
98. NVIRP has increased its purchase of water from 4.1 GL to 5.6 GL as it achieved a better price on water than was originally planned. NVIRP is also purchasing an additional 14 GL as part of the shutting down of the Campaspe Irrigation District. Accordingly, NVIRP plans to purchase a total of 19.6 GL of water and count this towards the water savings achieved by the project.

99. Attributing water purchases to NVIRP’s water savings total is misleading because this does not save water but transfers water from one party to another.

100. In response to my concerns, NVIRP said:

   It is recognised that water purchases are not attributable as water savings and that previous reporting lacked clarity in that respect. Recent reporting categorises water generated into:
   
   • Water savings attributable to loss treatment
   • Water generated through one-off special projects
   • Water acquisition (purchases etc)

   The project responded to new information regarding possible savings by abandoning some projected savings approaches and identifying alternative savings projects as it proceeded. The channel remediation project being one such example. The Stage 1 Business Case also acknowledged that the works program may require optimisation over time to achieve the most appropriate mix of works to best meet the Business Case objectives.

Transfer of water infrastructure ownership

101. A key element of the Foodbowl project is reducing the amount of public infrastructure by removing redundant water assets (such as meter outlets, irrigation channels and pipes) or transferring these assets to private landowners. NVIRP plans to reduce the amount of public infrastructure by 50 per cent by the end of the project.

102. When NVIRP privatises assets, the asset owner becomes responsible for any losses that occur in relation to that asset for example, the leakage and seepage loss on a privatised channel. NVIRP claims this as a water saving despite the fact that no water has actually been saved. In fact, it is arguable that the system losses have simply been transferred to the landowners.

103. NVIRP advised that it is the exception for landowners to accept a GMW channel as a privatised asset and that usually, channels are bulldozed and a new farm channel or a pipeline is constructed in its place.

Environmental flows

104. Incidental irrigation water (such as outfalls, leakage and seepage) sometimes flow into and support environmentally valued wetlands and waterways. In such cases, as the water is of environmental value, it is not reasonable to claim it as ‘lost’.
105. The Department of Sustainability and Environment’s 2009 Water Savings Framework for NVIRP states that NVIRP cannot count water saved through the project in its savings target if that water was previously going to sites of high environmental value and stopping the flow would have a detrimental impact on the environment. Where NVIRP modernisation works prevent such water from flowing to the environment NVIRP must provide extra water, called ‘mitigation water’, on top of its 225 GL target. The Stage 1 Business Case estimates that the project will require about five GL of mitigation water.

106. NVIRP is taking steps to meet its mitigation water requirements.

**Measuring and generating water savings**

107. Water savings for the Foodbowl project are measured and verified in accordance with the Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects (the protocol).

108. The protocol:

- sets out the roles and responsibilities of various government agencies in relation to measuring and verifying water savings from irrigation modernisation projects
- explains the water savings audit process
- provides technical guidance on quantifying water savings.

109. The protocol was developed by the Department of Sustainability and Environment in consultation with GMW and NVIRP and was issued by the then Minister for Water in June 2009. This was one and a half years after NVIRP was established. The department advised my officers that this was due to the time it took for it both to recognise the need for such a protocol and to consolidate the learnings from all the water savings projects undertaken.

110. The guidelines set out in the manual are comprehensive and the only ones available in Australia. While they likely represented Australian best practice at the time the manual was written, my investigators identified that, in some instances, the manual is based on data that is not up to date. This issue is addressed in more detail below under the heading Concerns raised about Dethridge meters.

111. My investigation identified that changes have been made to the measures used to achieve water savings for NVIRP Stage 1 from what was outlined in the Business Case. In my opinion, the changes adopted include measures that are outside the original intention of the project as they are not modernisation works.
112. Estimates of the means by which Stage 1 water savings would be achieved were set out in the NVIRP Stage 1 Business Case and are shown in Table 2.

Table 2: Stage 1 water savings estimates and associated works

<table>
<thead>
<tr>
<th>Component of work</th>
<th>Water savings LTCE (GL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backbone Automation – Gates</td>
<td>48</td>
</tr>
<tr>
<td>Backbone Remediation – Channel Lining</td>
<td>43</td>
</tr>
<tr>
<td>Meters – Backbone</td>
<td>58</td>
</tr>
<tr>
<td><strong>Backbone Savings: Sub total</strong></td>
<td><strong>149</strong></td>
</tr>
<tr>
<td>Meters – Connections</td>
<td>28</td>
</tr>
<tr>
<td>Connections – Works</td>
<td>48</td>
</tr>
<tr>
<td><strong>Connections Savings: Sub total</strong></td>
<td><strong>76</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>225</strong></td>
</tr>
</tbody>
</table>

Source: NVIRP Stage 1 Business Case.

113. These figures were early estimates. However, the overestimation of water loss in a particular loss category can mean that anticipated savings cannot be generated to achieve the overall savings target and other measures to generate water savings must be identified.

114. For example, it was originally estimated that channel lining would achieve 43 GL of water savings in Stage 1. This target has been revised down to 20 GL because NVIRP identified that channel lining is a very expensive exercise and with the water savings to be achieved, these works were not cost effective.

115. Given the reduced amount of water savings to be generated through channel lining, NVIRP is achieving water savings through ‘Other Measures’ as listed in Table 3. This includes an increase in the amount of water NVIRP can purchase (‘Water Buyback’) to help facilitate the connections program. The water being purchased by NVIRP is within the $10.8 million budget approved in the Stage 1 Business Case.
116. Table 3 outlines NVIRP’s revised estimates for Stage 1 water savings as at May 2011:

Table 3: NVIRP revised estimates for Stage 1 water savings

<table>
<thead>
<tr>
<th>Component of work</th>
<th>Water savings LTCE (GL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backbone Automation – Gates</td>
<td>54</td>
</tr>
<tr>
<td>Backbone Remediation – Channel Lining</td>
<td>20</td>
</tr>
<tr>
<td>Meters – Backbone</td>
<td>58</td>
</tr>
<tr>
<td>Backbone Savings: Sub total</td>
<td>132</td>
</tr>
<tr>
<td>Meters – Connections</td>
<td>28</td>
</tr>
<tr>
<td>Connections – Works</td>
<td>43</td>
</tr>
<tr>
<td>Connections Savings: Sub total</td>
<td>71</td>
</tr>
<tr>
<td>Other Measures:</td>
<td></td>
</tr>
<tr>
<td>• Water Buyback</td>
<td>5.6</td>
</tr>
<tr>
<td>• Campaspe Strategic Entitlement</td>
<td>14</td>
</tr>
<tr>
<td>• Other projects (e.g. On-Farm Works)</td>
<td>6.5</td>
</tr>
<tr>
<td>Other measures: Sub total</td>
<td>26.1</td>
</tr>
<tr>
<td>Total</td>
<td>229.1</td>
</tr>
</tbody>
</table>

Source: Information provided by NVIRP.

117. Material deviations to the Stage 1 Business Case require approval from the Minister for Water and the Treasurer. Of the ‘Other Measures’ listed above, only the ‘On-Farm Works’ program has been approved by the Minister for Water and the Treasurer. NVIRP advised my investigators that it considers the rest of the ‘other measures’ to be within the scope of works approved in the Business Case. However, this is inconsistent with advice from the Department of Treasury and Finance which described the East Loddon project (one of the ‘Other Measures’ in table 3) as a Business Case departure.

118. GMW’s 2007 Strategic Measurement Project\(^\text{11}\) achieved water savings of approximately 9.4 GL. As only two GL of these savings were set aside for project investors, about 7.4 GL of water savings remained.

119. During interviews, staff from NVIRP and the Department of Sustainability and Environment confirmed that it had been planned that these savings would contribute to NVIRP’s water savings target. In relation to the

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\(^{11}\) Involved installing measuring devices to more accurately measure water flows, improve loss data and increase operational efficiency.
transparency of this arrangement, one senior department staff member said:

I don’t think there’s a problem in transparency if everyone understood it was going to be a free kick.

120. It was later decided that the Strategic Measurement Project water savings would not be attributed to NVIRP because they were needed to compensate for water savings shortfalls in non-NVIRP water savings projects. This was facilitated by the department through the Inter-project Agreement on Water Savings, which involved a complex exchange of money and water savings between several Victorian water savings projects.

Verifying water savings

121. The Department of Sustainability and Environment engages an external auditor each year to audit the water savings generated by NVIRP. Cardno (QLD) Pty Ltd conducted the audits for 2008-09 and 2009-10 and made a number of recommendations, which were largely implemented by the department.

122. The audit reports for NVIRP and other irrigation modernisation projects are made publicly available on the Office of Water’s website, but they are technical documents which are difficult to understand. While a brief explanation of the audit results is provided on the website in addition to the report, there is no clear comparison of expectations and outcomes.

123. The Office of Water could assist the public in understanding how water savings projects are progressing by providing information in addition to audit reports that include a summary of the audit findings, progress against original objectives, and the reasons for material deviations.

Progress against water savings targets

124. My officers found that NVIRP initially exceeded its progressive water savings targets; however NVIRP’s progress has recently slowed due to the recent Victorian floods affecting NVIRP project works.
125. Table 4 outlines timings for the achievement of water savings. The 'Cumulative Total' shows original expectations of the timing for the achievement of water savings. The 'Audit Results' show actual water savings achieved.

Table 4: Dates for the achievement of water savings

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Backbone:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Channel Automation</td>
<td>48</td>
<td>-</td>
<td>7</td>
<td>21</td>
<td>16</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Channel Remediation</td>
<td>43</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>14</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>Metering</td>
<td>58</td>
<td>-</td>
<td>-</td>
<td>19</td>
<td>12</td>
<td>12</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Sub Total</td>
<td>149</td>
<td>-</td>
<td>8</td>
<td>43</td>
<td>35</td>
<td>30</td>
<td>28</td>
<td>5</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Works</td>
<td>48</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>10</td>
<td>12</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Metering</td>
<td>28</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Sub Total</td>
<td>76</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>14</td>
<td>18</td>
<td>20</td>
<td>21</td>
</tr>
<tr>
<td>Total</td>
<td>225</td>
<td>-</td>
<td>8</td>
<td>46</td>
<td>49</td>
<td>48</td>
<td>48</td>
<td>21</td>
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<tr>
<td>Cumulative Total</td>
<td>-</td>
<td>-</td>
<td>8</td>
<td>54</td>
<td>103</td>
<td>151</td>
<td>199</td>
<td>225</td>
</tr>
<tr>
<td>Audit results</td>
<td>n/a</td>
<td>n/a</td>
<td>28</td>
<td>56</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Source: NVIRP Business case Stage 1. n/a: not available or not applicable.

126. The audit results confirm that the project achieved a cumulative total of 56 GL of water savings in 2009-10, two GL greater than the amount specified in the Stage 1 Business Case.

127. At the February 2011 NVIRP Board meeting, NVIRP revised its projected savings for the 2010-11 irrigation season from 103 GL to between 84 GL and 103 GL due to floods and wet weather interfering with NVIRP’s works program.

Distribution of water savings

128. The 225 GL of water savings to be delivered under Stage 1 of the project will be divided three ways, with 75 GL going to each of Melbourne, the environment and GMID irrigators.

129. In addition to the water savings delivered under Stage 1 of the project, Stage 2 aims to deliver a further 200 GL of water savings. Initially, the water savings were to be divided equally between irrigators and the environment. In the recent October 2011 agreement between the Commonwealth and Victorian Governments, the irrigators’ 50 per cent portion of the savings is now to be sold to the Commonwealth for a total cost of $219,221,000.
130. The Minister for Water has responsibility for distributing NVIRP water savings and the government has not yet finalised how this will be done. However, the Department of Sustainability and Environment’s Director, Bulk Entitlements, told my investigators at interview on 2 August 2011 that he was in the process of briefing the Minister for Water on this matter.

Conclusions

131. A key concern raised by witnesses in my investigation was that the basis upon which the project proceeded, that is water savings, was flawed because water savings were overestimated and not identified correctly.

A key concern raised by witnesses in my investigation was that the basis upon which the project proceeded was flawed because water savings were overestimated and not identified correctly.

132. My investigation identified that original water loss and savings estimates were based on unverified figures and as a result water loss estimates have been revised several times.

133. Estimates of water losses in the GMID have been scaled down by nearly 20 per cent of the original figure, however the original predicted water savings have not been proportionally reduced. With less water lost overall in the system, it may prove a challenge for NVIRP to achieve the same amount of water savings.

134. The use of the terms ‘water loss’ and ‘water saving’ in relation to the project is problematic. In my view, the adopted definitions allow water to be described as a saving when no actual saving has been achieved for Northern Victoria. For example I do not consider water has been saved where:

- water was previously being productively used
- water has been purchased by NVIRP
- water loss has been transferred to an irrigator or landowner.

135. While greater control over water in the irrigation system through modernisation means that water is accounted for by GMW more accurately and may be used more effectively, it is important that the community is aware of how government agencies define water losses and savings.

136. The Water Savings Protocol was not created until well after NVIRP commenced. I consider that the protocol should have been created prior to the beginning of the project as this would have assisted NVIRP to decide what specific works to undertake in order to achieve water savings. This process would also have improved transparency around how water savings were to be achieved.

137. The Department of Sustainability and Environment and NVIRP initially agreed that savings achieved through the Strategic Measurement
Project, a non-NVIRP project, would contribute to NVIRP’s water savings target. Although this did not eventuate, I consider that such an attribution of water savings to the project would not have been appropriate and could have resulted in a lack of transparency.

138. NVIRP said that the original decision to include a proportion of water savings from the Strategic Measurement Program was in the context of the Stage 1 Business Case assumptions.

139. The audit process administered by the Department of Sustainability and Environment adds transparency and confidence in relation to water savings figures. My review has not identified concerns with the audits undertaken. However, the audit reports are technical in nature and not easy to understand and I consider it may be difficult for the public to track the progress of water savings projects.

140. While information about water savings projects is generally made publicly available, this often occurs in ways that do not allow for easy comparison of project objectives and outcomes. This can make it difficult for the public to be aware of how water savings projects have performed. This is especially the case when there has been inter-project funding or water savings transfers. This affects the transparency of water savings project achievements.

141. NVIRP is undertaking water savings measures that were not outlined in the Stage 1 Business Case to ensure it achieves its water savings targets. The purchase of a substantial amount of water is of concern as it is not a modernisation measure and does not create actual water savings. In my view, this goes against the original intention of the project, which was to deliver water savings through modernisation. In addition, NVIRP has failed to seek the approval of the Treasurer in relation to a number of water savings measures which deviate from the Business Case.

**Recommendations**

I recommend that the Department of Sustainability and Environment:

**Recommendation 1**

Following the completion of each water savings project audit, make the following information publicly available in addition to the audit report:

- a summary of the audit findings
- progress of the project against its targets
- the reasons for any material deviations.

**The Department’s response**

Recommendation accepted.

**Recommendation 2**

Following the completion of each water savings project, make publicly available information that compares project objectives and outcomes.
This should include:

- original and expended budget
- original water savings estimates and expected beneficiaries
- actual water savings and beneficiaries.

*The Department’s response*

Recommendation accepted.

**Concerns raised about Dethridge meters**

142. The Dethridge meter (see photograph at page 19) has been used to measure water deliveries in Australian irrigation areas since its invention in 1910. The Dethridge meter is controlled by lifting a door to allow water to flow through the meter, causing it to rotate. Each rotation represents a certain volume of water and the rotations are recorded by a counter.

143. In 2008, there were about 17,620 Dethridge meters in the GMID. The replacement and removal of these meters is a key element of the Foodbowl project given they are not compliant with new national metering standards. Other irrigation districts throughout Australia are also replacing the meters.

144. I received several submissions from irrigators who raised concerns about NVIRP's replacement of Dethridge meters. Some irrigators who contacted my office had a significant number of Dethridge meters on their properties, i.e. more than 20. Specifically, the concerns raised were that:

- the Dethridge meter is sufficiently accurate to meet the national metering standards and should not be replaced
- there is an unreasonable amount of water savings attributed to the replacement of Dethridge meters.

**Dethridge meter accuracy**

145. The national metering standards were developed following the Intergovernmental Agreement on a National Water Initiative, which was entered into between the Commonwealth, State and Territory governments on 25 June 2004. The standards require non-urban meter outlets to record water deliveries within an accuracy of +/-5 per cent when in the field and +/-2.5 per cent in a laboratory.

146. The *National Framework for Non-urban Water Metering – Policy Paper* states that:

- meters installed after 30 June 2010 must comply with the national metering standards
- meters installed prior to 1 July 2010 must be replaced with a compliant meter by 1 July 2020.

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12 Although the agreement was not joined by Tasmania and Western Australia until June 2005 and April 2006 respectively.
147. My investigators reviewed several reports relating to Dethridge meter accuracy, including: Hydro Environmental, 2007, 2008 and 2009; and SKM, 2010. These four reports were commissioned by GMW and based on tests in the GMID between 2007 and 2009.

148. All four reports found that:
   • Dethridge meters are inaccurate and non-compliant with the national standards
   • there was substantial variation in the accuracy between meters, with the test results showing accuracies ranging between 32.6 per cent over-delivery and 5.7 per cent under-delivery
   • Dethridge meters had a bias to under-record the amount of water delivered.

149. The reports showed that the accuracy of individual Dethridge meters can fluctuate due to a range of factors, such as flow rate, tail water depth and supply depth. This fluctuation means that meters which sometimes record within the required accuracy may be inaccurate at other times.

150. Despite the findings, my officers noted the following limitations with the reports:
   • the tests conducted focused on Large Meter Outlets (92 meters tested), with only 11 Small Meter Outlets and six Dethridge-Long Meter Outlets tested
   • GMW decided to replace Dethridge meters prior to finalising its analysis of Dethridge meter accuracy.

Water savings from meter replacement

151. For each Dethridge meter outlet it removes or replaces, NVIRP claims water savings for meter error, leakage through and around meters, and unauthorised use.

152. My review of how water savings for meter replacement are calculated found that the water savings claimed are referenced to tests conducted by GMW. However, I note that:
   • the figures used to determine leak rates are based on old information, i.e. tests conducted in 2000-01 and 2005-06
   • calculations in the manual for meter error are not based on the most recent and relevant data. The manual references a 2008 report despite the release of two further reports on Dethridge meter accuracy that were commissioned by GMW in which lower error rates were reported.

153. The Department of Sustainability and Environment is required under the

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14 Tail water depth is the depth of the water on the irrigator’s side of the meter.

15 In 2008, there were about 17,620 Dethridge meters in the GMID, comprising of approximately 13,205 Large Meter Outlets, 4,092 Small Meter Outlets and 323 Dethridge-Long Meter Outlets.
protocol to convene a meeting with NVIRP and GMW every six months to review the manual. While the department advised that these meetings were taking place, the abovementioned issues have not been addressed.

154. Officers of both GMW and the department agreed that there would be merit in conducting a revision of the manual given the improvements in water savings knowledge and further reports released since it was written.

Conclusions

155. Dethridge meters are not sufficiently accurate to comply with the national metering standards. In particular, I note that:

- Dethridge meters generally under-record water delivered
- the accuracy of different Dethridge meters varies significantly
- the accuracy of individual Dethridge meters is dependant on a range of factors and can fluctuate.

*Dethridge meters are not sufficiently accurate to comply with the national metering standards*

156. Therefore, I consider the decision to replace them was reasonable.

157. The water savings attributed to the removal and replacement of Dethridge meters have, in my view, sufficient basis in consultants’ reports and analysis by GMW and were reasonable at the time the manual was established. However, given that water savings information is continually changing, the manual should be updated regularly to ensure it is based on the best available and most relevant data.

158. In relation to meter error and leakage through and around service points, the manual is based on old and/or superseded information. The Department of Sustainability and Environment’s review process has not addressed this.

Recommendation

Recommendation 3

I recommend that the Department of Sustainability and Environment undertake a review of the Water Savings Protocol, including revision of the Technical Manual, to ensure it is up-to-date and water savings calculations are based on best available data.

The Department’s response

Recommendation accepted.
4 Establishing the Foodbowl Modernisation project

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4. Establishing the Foodbowl Modernisation project

159. On 19 June 2007, the former Government released its water plan, *Our Water Our Future – The Next Stage of the Government’s Water Plan*, (the 2007 water plan) which committed $600 million of state funding to:

   Modernising Victoria’s Food Bowl irrigation system to capture water for farms, the environment and Melbourne.

160. My investigation examined the basis for the former government’s decision to announce the GMID modernisation project (and respond to the drought), and identified the decision was based on:

   • oral discussions with irrigators
   • previous modernisation projects.

161. It is unclear what documentation, if any, was used by the former government when deciding to commit significant public funds to the Foodbowl Modernisation project.

It is unclear what documentation, if any, was used by the former government when deciding to commit significant public funds to the Foodbowl Modernisation project.

Lack of documentation supporting the project

162. In June 2006 a number of irrigators formed a group called Foodbowl Unlimited Incorporated (Foodbowl Unlimited)\(^\text{16}\) to lobby the state government to invest in the modernisation of the GMID.

163. Representatives of this group met with Mr John Brumby, then Treasurer, on 23 May 2007 to brief him on Foodbowl Unlimited’s proposal to modernise the GMID. The Chair, Foodbowl Unlimited told my officers at interview that Foodbowl Unlimited briefed Mr Brumby with a report it had commissioned from a consultant firm (RMCG) which outlined the water losses and potential costs to fix the irrigation system.

164. Foodbowl Unlimited and RMCG were unable to locate the report allegedly used to brief Mr Brumby. RMCG provided a report to my officers dated 25 June 2007 (one week after the former Government’s water policy was announced). However this report was in draft format and in many instances contained question marks instead of numerical data.

165. My officers inspected relevant files held by the Department of Treasury and Finance and the Department of Sustainability and Environment. These files do not contain any report or proposal from Foodbowl Unlimited.

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\(^{16}\) Incorporated under the Associations Incorporation Act 1981.
166. The Department of Treasury and Finance’s files contain project briefings which were provided to Mr Brumby. One unsigned briefing dated 2 March 2007 notes that there:

… is insufficient information available on the feasibility of the [...] Plan given that Feasibility Studies have not been completed.

…

As advised by Commercial Division, a full feasibility study/business case would be required before Victoria could commit to the [...] proposal.

167. My officers interviewed officers from the Department of Treasury and Finance who were involved in the preparation of Mr Brumby’s briefings. One officer said that her staff had trouble ‘nailing what the proposal was’ and as a result, there was some difficulty briefing Mr Brumby about the proposal. Another officer said:

We based it [the brief] on what we read in the press … it is fairly clear that there was no documentation available to DTF at that time and we received our advice for the plan through the media.

168. The Department of Treasury and Finance’s files also include a draft version of Victoria’s Water Plan dated 20 April 2007, (about two months prior to the policy being released) which states the modernisation project is ‘under investigation’ and refers to future ‘feasibility studies’ to be undertaken.

169. Another document dated 4 June 2007 titled ‘DPI [Department of Primary Industry] Comments on Victorian Water (Infrastructure Plan)’ notes that the former government had not yet decided how much funding would be committed to the project.

170. On 19 June 2007, the former government released its 2007 Water Plan which committed $600 million to the modernisation project.

171. My officers interviewed Mr Brumby on 2 June 2011 and asked him if a proposal for the modernisation project was provided to him as the Treasurer. Mr Brumby said:

… was there a direct proposal? I don’t – I don’t recall whether there was a direct proposal …

I do know that I had a number of meetings with my department, with the environment department which was responsible for water and with people from that region who would have said here is a proposal to invest in the region; to generate water savings; to get the triple bottom line outcomes, the economic outcomes, the environment outcomes and the social outcomes. And so I don’t recall if there was a specific piece of paper …

172. When asked at interview what occurred between 20 April 2007 (when the project was recorded as subject to a feasibility study) and
19 June 2007 (when the policy was released) to support the former government’s decision to commit $600 million to the modernisation project, Mr Brumby said:

We made a decision to do it, so that’s what happened ... you can spend, you know, your whole time in government just reviewing things and never making decisions and never being sure about what it is you want to do, or if you know that the basis of what you want to do is sound, you get on and do it.

173. In response to my draft report, Mr Brumby said:

Since the commencement of your Report (and my interview on 2 June), the significant benefits of large-scale irrigation renewal projects in general - and Foodbowl in particular - have been highlighted by the Chair of the Murray-Darling Basin Authority as well as by the House Standing Committee on Regional Australia’s Report into the Murray-Darling Basin.17

... I do know that the Foodbowl proposal to invest $1 billion to generate 225 GL of water savings was fully and properly considered by the relevant sub-committees of Cabinet as well as by full Cabinet itself.

All of the evidence provided to the Government by expert advisers including the CSIRO, the Bureau of Meteorology and DSE highlighted the need for urgent action to address continuing severe drought conditions and likely climate change.

... After last year’s La Nina rainfall event, it is perhaps tempting for some to attempt to rewrite history as if the driest decade in history and successive zero irrigation water allocations never happened. But they did. In these circumstances and with the weight of scientific advice demanding action, doing nothing was not an option for the Government. Had, for example, the Government not pushed ahead decisively with pipelines to Ballarat and Bendigo and instead subjected them to the ‘business as normal’ processes of assessment and review, there is no doubt at all that those communities would have run out of water by 2010.

174. Further discussion on project planning is included in Chapter 5 of this report.

**The decision to create a separate body to deliver the project**

175. After releasing the 2007 Water Plan, the former government appointed a Steering Committee to make recommendations to government on key project implementation options.
The Steering Committee

179. On 31 July 2007, Mr Steve Bracks, the then Premier appointed 15 people to the Steering Committee (the committee). The committee’s terms of reference states that it must ‘provide advice on governance arrangements’ and that these arrangements ‘should include key linkages with Goulburn-Murray Water’.

180. The committee’s November 2007 report recommended that ‘the entity responsible for the project be a newly established State Owned Entity’ and highlighted the need for ‘a very close working relationship with GMW throughout the life of the project’. This entity was to be NVIRP.

181. My officers requested that the Department of Sustainability and Environment provide all records relating to the operation of the committee. Of the nine committee meetings, the department was able to locate the draft and incomplete copies of the minutes of three meetings and five meeting agendas.

182. When asked whether GMW was given due consideration to deliver the project the committee’s Project Director and NVIRP’s former acting CEO said:
I think there wasn’t enough consideration given to whether GMW could do it or not ... there [were] very firm views that they needed a separate entity. I don’t believe that enough consideration was given to ... the impact of that ... on GMW, or necessarily how that working relationship would transpire.

183. In response to my draft report, the committee’s Project Director said:

My statement is merely an opinion in hindsight which, although I think is widely held within the industry, lacks the appropriate level of corroborating evidence ...

... I cannot recall if I held that view at the time. I doubt that, if I did, I held it as firmly as I have expressed. In any event, there were perfectly legitimate arguments and reasons for the position which was taken. And more fundamentally, after all, the decision was a political one.

184. During my investigation the committee’s Project Director was able to provide significant documentation relevant to the operation of the committee and the establishment of NVIRP which could not be located by the Department of Sustainability and Environment. This information was stored on a personal laptop computer and constituted over 6,000 files and nearly five gigabytes of information, including documents marked ‘Cabinet in Confidence’.

185. In response to this issue, the committee’s Project Director responded that the documents:

... were retained in the context of a close and ongoing working relationship between DSE, G-MW and NVIRP, which required my accessing the material from time to time, in the fulfilment of my duties as a consultant and acting CEO of NVIRP.

... I was trusted by DSE and NVIRP to use and store these documents in a professional manner.

186. The Chair of the committee’s Governance sub-committee told my officers that there was a ‘pervading preference for a state owned entity ...’.

187. Another member of the Governance sub-committee said ‘it was widely known that government wanted to have a separate body ... I don’t recall any robust discussion about other models, I think it was done and dusted’.

188. The Steering Committee Chair said:

We didn’t see it as being appropriate to have GMW do this. We believed, the steering committee believed, that it needed a separate body that was accountable truly for modernisation ...

GMW was one of the options, it was considered, it wasn’t just outright, ‘oh well, we’ll have a state owned entity’.
189. The Governance sub-committee first met sometime between 17 and 31 August 2007. The exact date is unknown because the sub-committee failed to keep minutes of its meetings. The next steering committee meeting was held on 31 August 2007 and the minutes note discussion about ‘the suggested Specific Purpose Entity … legal structure yet to be ascertained’. This demonstrates that the sub-committee met once before the Specific Purpose Entity was established as a likely outcome.

Lack of consultation with GMW

190. GMW is a statutory corporation constituted under the provisions of the Water Act 1989 (Water Act). It owns the water assets being modernised by the project and will be responsible for ongoing asset management and maintenance of water infrastructure after the project has been completed.

191. The Foodbowl project works will have the following significant impacts upon GMW’s business:

- **Assets:** the public water infrastructure footprint in the GMID will be reduced; new technology introduced; and older assets replaced and upgraded.
- **Operations:** a fully automated delivery system requires significant changes to Information and Communications Technology systems; the way assets are maintained; and the number of staff required in the field.

192. The then GMW Managing Director said that he first heard of the former government’s plans to implement the Foodbowl project in a Water Services Committee meeting on 14 June 2007 attended by Mr Brumby and Mr David Downie, former General Manager, Office of Water, Department of Sustainability and Environment. This was five days before the former government publicly released its 2007 Water Plan announcing the modernisation project.

193. The former GMW Managing Director said that the project concept was outlined by Mr Downie and Mr Brumby who indicated that GMW would be required to contribute $30 million towards the project and this money would be sourced via increased customer pricing. He said that at this stage, GMW had not been consulted about the expected financial contribution.

194. He said that on the day the policy was released, GMW learned it would be expected to contribute $100 million to the project. He said that GMW was not consulted about the increased contribution from $30 million to $100 million.

195. Mr Downie confirmed at interview that GMW was not consulted about the project or about its financial contribution. In response to my draft report, he said:

> GMW was consulted to the extent necessary. It would not have been prudent to further consult with GMW before the initial Government
decision. That is my opinion. [Mr Downie’s emphasis].

... This is not to say that they should not be consulted in the implementation. That they were heavily consulted is clear from the formation of the Futureflow Alliance (early works) etc (which the Department supported) and in post NVIRP creation. In fact a compact was negotiated between the NVIRP and GMW Boards, at the highest level to ensure commitment where it counted. The only details they were not involved with were the last details of the project and who would do it. (Mr Downie’s emphasis).

196. When asked at interview why GMW were not consulted Mr Downie said:

They [GMW] opposed the project all along at the senior level. The culture of the place was opposed to it. There were people we got to do the work on CG2 [Central Goulburn 2] and Shepparton Irrigation Project [who] were exceptions. But they weren’t always supportive [of the project] within the organisation. We had the Chair and the MD [Managing Director] opposed to it.

197. When asked whether it was appropriate to announce the $100 million contribution without consulting GMW, Mr Downie said:

Well, I think in normal circumstances they would have [been consulted]. But they were opposed to the project. And remember, the government was trying to get this project up, not trying to stop it.

198. Mr Downie made the following response to my draft report:

GMW leadership of that time had resisted some previous reform initiatives – another reason they were not trusted before the Government announcement. For example, after the Government had announced the so-called Super Pipe (Waranga Basin to Bendigo/ Ballarat Pipeline projects) decision in 2006/7 the leadership actively opposed the project and visited local communities and sought to build resistance to it.

Consequences of having a separate body

Duplication of organisational functions

199. The creation of NVIRP as a separate organisation to deliver the project resulted in the duplication of key administrative systems and functions already performed by GMW, such as human resource, finance and accounting units; IT systems; and board and senior management personnel. NVIRP’s administrative costs have been capped by government at $50.4 million and equate to about five per cent of Stage 1 funds.

The creation of NVIRP as a separate organisation to deliver the project resulted in the duplication of key administrative systems and functions already performed by GMW.
200. If GMW had had responsibility for delivering the project, it is likely that it would have incurred additional operating costs. However, considerable duplication would have been avoided.

Relationship between GMW and NVIRP

201. The implementation of the project requires a high degree of cooperation and coordination between NVIRP and GMW. This has resulted in over $11 million\(^\text{18}\) being paid from NVIRP to GMW for various services over the life of the project. Such services include:

- decommissioning of assets
- surveying and site inspections
- design and construction works
- collecting, entering, collating and providing data
- technical support and staff training.

202. There is an inherent tension between the roles and priorities of the two bodies because GMW is the owner and operator of the irrigation network being modernised and NVIRP is a project delivery body undertaking significant works on the infrastructure. My investigation identified that GMW is concerned with the long-term vision for its infrastructure while NVIRP’s goals and key performance indicators have a short-term focus.

203. To facilitate the relationship between the two bodies, a Relationship Agreement was formalised in March 2009. The Relationship Agreement notes that the project risks are divided between project delivery and long-term asset use, and states that:

> ... the intent is that the parties will approach the project as if they each were responsible for all of the risks, and would receive all of the benefits.

204. In response to my draft report, NVIRP CEO Mr Murray Smith said ‘whilst NVIRP’s role is relatively short term from a physical build perspective, the organisation has a longer term vision’. Mr Smith also said that this was supported by the Relationship Agreement.

205. The effectiveness of the relationship between NVIRP and GMW has a significant impact on the delivery of the project. Every witness interviewed about the relationship between GMW and NVIRP including Mr Smith, said that there was initially some tension between the two bodies.

206. Most witnesses noted that, while some issues remain, the situation has since improved. However, my investigation identified there are a number of issues on which NVIRP and GMW have been unable to agree. This has adversely affected the project’s progress.

207. For example, as owner of the GMID irrigation system assets, GMW maintains several business systems containing information critical to the delivery of the project. It is necessary that NVIRP has timely access

\(^{18}\) On-costs are included in this amount. These are additional costs charged by GMW to recover overheads it incurs in providing services to NVIRP.
to this information to avoid delays and increased costs. Under the Relationship Agreement, NVIRP’s access to these systems is limited. Mr Smith stated at interview on 16 February 2011:

It’s just a bit of a convoluted process.

But our IT guys and their IT guys are talking to sort of try and streamline some of those things. But just the fact that you are separate entities creates some issues, even though we’re both, you know, animals of government.

208. NVIRP’s Chairman said there are additional difficulties when NVIRP seeks information from GMW that is of a private or confidential nature:

NVIRP needs information on some farms from time to time, and we are rejected [by GMW] on the grounds of privacy. This then delays our work, until we get government permission to proceed. This just covers somebody’s back, but the delay is costly yet again. Here we have one government owned entity not allowed to talk to another on the grounds of privacy.

Ability to deliver project goals

209. GMW is created pursuant to the Water Act and NVIRP is created via the State Owned Entity Enterprises Act 1992. As a result, NVIRP’s powers are limited to those set out in its December 2007 Order in Council and do not include the range of powers that GMW has. This has adversely affected the implementation of the project.

210. Landowner participation in the modernisation program is voluntary and irrigators who refuse to participate can potentially disrupt planned works including infrastructure rationalisation. As a 100 per cent participation rate in the connections program is necessary to achieve Stage 2 water savings targets, this poses a significant risk to the project.

211. In response to my draft report, NVIRP said:

The previous Government was [sic] maintained that the modernisation program was voluntary and was not prepared to consider compulsory participation. The current Government has re-stated that view ... Were powers to exist they could be delegated to NVIRP consistent with those identified in the Relationship Agreement.

212. Some powers held by GMW but not by NVIRP could encourage landowner participation in the project. Such powers include the power to increase service fees and to terminate water supply to landowners. These are matters which have been subject to some negotiation between the two bodies, without resolution to date.

19 A number of GMW’s Water Act powers have been formally delegated to NVIRP through the Relationship Agreement (Clause 5) and under a Ministerial instrument.

20 Northern Victoria Irrigation Renewal Project, Stage 2, Due Diligence Assessment Report, Department Sustainability, Environment, Water, Populations and Communities, I November 2010, pages 14, 41.

21 Under section 16J of the Water Act, water corporations (such as GMW) can cease water service in certain circumstances. As NVIRP is not a water corporation it cannot do this.
213. As part of the project, NVIRP assists irrigators to voluntarily exit irrigation where doing so facilitates the closure of water infrastructure channels and achieves water savings. For this to occur, irrigators are required to relinquish delivery shares. NVIRP does not have the power to terminate water delivery shares, unlike GMW which does so for a fee.

214. A due diligence report completed by the Commonwealth government noted that NVIRP had estimated that the termination of delivery shares during the project could cost NVIRP $43.3 million and concluded that NVIRP’s payment of termination fees is not a suitable use of project funds.

**GMW’s modernisation plan**

215. In late 2010 GMW commenced development of a Modernisation Plan (the plan) on how it could implement modernisation within the GMID. The impetus for developing the plan arose from various recent environmental and political changes that had occurred. The plan notes:

> Whilst the previous Government’s water initiatives were largely driven by water supply in extreme drought conditions, this Government’s focus is on customers, communities and sustainable regional development.

216. The then Acting Managing Director, GMW said at interview on 5 July 2011 that the key differences in the GMW plan versus the NVIRP Stage 1 rollout was in the ‘participatory approach’ to be adopted:

> Well, the key is really the way in which you negotiate ... and work with the community about the change to the infrastructure base. ... Goulburn-Murray Water were actually going about this type of activity prior to NVIRP, working with communities ... at an individual pod level, or section level ... is there a way that we can deliver the services that you need in the future in a different way, and rationalise some of this? You know, to reduce ... the costs, but still provide ... what’s needed.

> ... So we see it as more of a collaborative model working with the community, and that - we don’t know whether that will take longer, but it could take longer than NVIRP’s program, because you can’t predict, you know, community reaction. And you need to give time for the community to adjust.

217. The draft plan provides for a changed delivery model with GMW implementing modernisation works. GMW’s plan would retain key elements of the project including the provision of adjustment packages.

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22 A delivery share is a right to have water delivered by an irrigation system and a share of available flow in a delivery system.

23 Northern Victoria Irrigation Renewal Project, Stage 2, Due Diligence Assessment Report, Department Sustainability, Environment, Water, Populations and Communities, 1 November 2010, page 14, 41.

payments to landowners and developing ‘dryland’ agriculture. In addition GMW states that its modernisation plan would:

- have a larger focus on regional development, system efficiencies and Foodbowl security, as opposed to just achieving water savings
- be ‘irrigator led’ and have a greater community emphasis
- obtain water savings as a by-product of modernisation
- streamline organisation processes and reduce costs
- involve the establishment of a ‘Modernisation Business Unit’ to manage the program and reduce impact on normal business activities.

218. In relation to water savings, GMW’s Acting Managing Director said:

> … we saw that as … the outcome rather than the driver. So you don’t start by saying, “well, we must have that amount of water”. It’s better to start with, “well, you know, what we’re trying to do here is to produce irrigation on the best soils to get the best productive outcome for Victoria and for Australia”. You know, it’s not the megalitres that you start with - and if you do that correctly, you’ll probably get the amount of water you want. But you don’t want to be driven by that.

219. In light of the possibility that GMW may be tasked with the delivery of modernisation to the region, it has commenced preparation of an implementation plan to ensure any transition can be managed efficiently.

220. GMW has advised that the GMW Modernisation Plan was a ‘draft internal working document rather than the draft G-MW plan’ and the document had not been endorsed by the new Board. It also said:

> The minutes of Board Meeting #194 held in May 2011, outline that G-MW had responded to speculation that there may be an integration of the G-MW and NVIRP and “begun to develop its plan on how it would implement modernisation in a new environment”.

> “The [interim] Board noted the work in progress on the modernisation vision, requesting management in continuing development of the vision to ensure that it is inclusive and minimises dislocation”.

> The role of the interim Board was to address specific issues associated with financial management and governance and not to develop long term strategy.

### Future project delivery options

221. In November 2009, NVIRP’s CEO Mr Smith undertook an assessment of the following organisational structure options for the future delivery of the project:

1. retain the status quo
2. immediately merge the two organisations
3. transfer some GMW functions to NVIRP
4. separate the roles of the organisations into a number of different entities.\(^25\)

222. In response to my draft report, Mr Smith said that the assessment was ‘a high level, preliminary view based solely on my own reflections of the most obvious options’.

223. While he did not select a preferred option in his assessment, Mr Smith considered that transferring GMW functions to NVIRP (option 3) or splitting the organisations into a number of different entities (option 4) would have significant benefits but would require extensive change and be expensive to implement. He also noted there would be continuing ambiguity over the roles of the two agencies and the viability of GMW in the long-term might be affected.

224. In relation to retention of the status quo (option 1), Mr Smith highlighted the current situation as potentially inefficient and expensive from a ‘whole-of-government perspective’ due to the existence of two agencies. As a benefit, he noted that NVIRP’s independence from the operation of traditional business had given it the ‘freedom to explore a wider range of alternative delivery options, unconstrained by the historical way of doing business’.

225. In relation to merging the two agencies, Mr Smith suggested this would optimise decision-making, result in a simpler business model and be less expensive. He also noted that it could result in a seamless transition to a modernised system, however identified it could create an overly large organisation and disrupt GMW’s focus on customer service.

226. At interview the Group Director, Office of Water, Department of Sustainability and Environment said that the project should remain in NVIRP’s hands for the moment:

> It needs to have a single focus NVIRP still, there’s a lot going on. We need to continue bedding down Stage 1, we need to secure Stage 2, we need to make sure that continuing to improve the systems and processes are in place there without putting them back into the likes of GMW in the short to medium term anyway, which may offer some other distractions.

227. An NVIRP Board Director suggested a merger would be appropriate, however this should occur in the future:

> After the next election [in 2014], in the next term of government, I think a merger of these two or a takeover will be just fine...

228. The former Acting Managing Director, GMW said at interview that GMW would have the capacity to take on the modernisation project.

229. In response to my draft report, GMW said:

> ... the new Board has initiated through its new Managing Director a substantial internal organisational review and renewal process looking at all aspects of the business.

\(^{25}\) Mr Smith’s benefit and costs analysis of the first two options listed is attached to this report in Appendix 4.
It would appear appropriate that the design of a process for merging NVIRP into GMW be incorporated into the review and renewal process at GMW. This would ensure any integration of functions has a minimal impact on the provision of services to customers and the delivery of the NVIRP project.

Conclusions

230. The decision to establish NVIRP to implement the Foodbowl project was made without due consideration being given to other options. It appears to have been a foregone conclusion by the Steering Committee. The ability and capacity of GMW to undertake this project was not assessed, notwithstanding its experience in delivering other large water savings projects.

The decision to establish NVIRP to implement the Foodbowl project was made without due consideration being given to other options.

231. The modernisation program has been adversely affected, both operationally and financially, by the existence of dual organisations. Further, the different perspectives of GMW and NVIRP regarding some issues have prevented the organisations achieving resolution in a timely manner.

The modernisation program has been adversely affected, both operationally and financially, by the existence of dual organisations.

232. A single entity, responsible for these roles, would not only have a more unified and better focus, but would also remove the duplication of functions and costs and streamline decision-making processes.

233. I can appreciate the desire of government to ensure a focused approach by a single agency in solely implementing this project. The project is a significant and complex undertaking.

234. Considering the significance of the Foodbowl project and the likely cost, a detailed assessment of the costs and benefits and options for delivery was warranted.

235. GMW was not consulted about the $100 million contribution it was required to make to the project. Considering the size of the investment, this would have been prudent.

236. Stage 2 of the Foodbowl project is to be funded by the Commonwealth under an agreement executed between the State and the Commonwealth on 18 October 2011. The Commonwealth Government’s Due Diligence Assessment Report had recommended as a condition of
funding, that a joint review be undertaken of the connections program in 2013, to assess the need for re-scoping the program in the light of developments to that date.26

237. The executed agreement now provides for a joint review of the connections program in mid to late 2014.

238. Given the project is now moving into Stage 2, and a pending review has been proposed, I consider a change in the organisational arrangements for the delivery of the Foodbowl project to be timely and necessary.

239. In my view, GMW’s plan for modernisation, while still in draft format, has merit in that it may overcome issues that have arisen in the project to date. For example:

- the focus on achieving the water savings target as a key driver, which has the potential to overlook other key goals such as regional development and long-term capability to meet demands
- rationalisation of the irrigation system driven by the achievement of water savings as opposed to other strategic considerations such as Foodbowl security
- the likelihood that less than the 100 per cent of irrigators on non-backbone channels required to achieve water savings, will willingly connect to the backbone
- community uncertainty about future water supply and the nature of water delivery.

240. In addition, GMW’s draft plan is in response to the current environment. A briefing to the GMW Board states that the plan’s outcomes are strategically focused on long-term regional economic growth and sustainability and increased delivery system efficiency and ‘… not just the removal of infrastructure …’.

241. In response to my draft report, NVIRP said:

NVIRP is concerned that any change to the existing delivery arrangements for this project not jeopardise the project’s objectives, or the improved outcomes being sought for irrigators and their communities. We suggest that any review of the existing delivery arrangements include consideration of the risks, costs and benefits associated with implementing a new delivery model partway through delivery of this project, and that there be an independent review of the various delivery options, including an assessment of the capacity of GMW to deliver a project of this complexity and magnitude.

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26 Northern Victoria Irrigation Renewal Project, Stage 2, Due Diligence Assessment Report, Department Sustainability, Environment, Water, Populations and Communities, 1 November 2010, page 12.
Recommendations

Recommendation 4
I recommend that the Minister for Water consider transferring the functions of NVIRP to GMW, with NVIRP continuing to implement the Foodbowl project as a unit within GMW.

Recommendation 5
I recommend that the Minister for Water and GMW undertake a review of the objectives and strategic direction of the Foodbowl project. The review should:

- ensure the objectives and direction remain appropriate and relevant and align with the State’s and region’s current and future needs
- give consideration to the merits of GMW’s Plan for Modernisation.

GMW’s response
Recommendation accepted.

GMW is supportive of consideration being given by the Minister for Water to this recommendation and believes that better project and community outcomes could be generated by NVIRP becoming a business unit of GMW.

GMW is supportive of a review in conjunction with the implementation of recommendation four to explore opportunities for improved outcomes for our communities and reductions in costs of delivery of the project.
5 Project planning

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5. **Project planning**

242. Sound planning is fundamental for all capital projects. This is particularly so when governments are confronted with pressing and urgent circumstances upon which they are required to make decisions. In such situations a considered and comprehensive planning approach is required to ensure the full details of a situation are known, all options are identified and evaluated and the proposed solution is realistic both in terms of time and outcomes.

243. The government has put in place some key requirements, guidelines and practices which are designed to ensure robust processes for investment selection, project planning, business case development, project delivery and reporting.

244. Failure to follow these processes could result in:

- the government being less informed
- the best investment option not being selected for implementation
- unachievable project outcomes and timelines being set
- insufficient financial and physical resources being allocated and public monies wasted or not used effectively.

245. This chapter examines the key planning process adopted for the Foodbowl project including:

- the business case planning
- central oversight mechanisms in place
- the Whole of Life Cycle (WOLC)\(^{27}\) costing by GMW.

246. My investigation found proper practices were not followed in planning the Foodbowl project. Both the business case and WOLC review were not completed prior to the former government committing to the project and therefore did not inform the investment decision. A business case and a WOLC costing review are integral for large capital projects in order to assess the merits, costs and benefits and inform the government’s decision-making process.

247. As these were not undertaken, the former government was unable to know if the Foodbowl project was the most cost effective option to achieve the government’s modernisation and water savings objectives.

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27 Whole of Life Costing reviews are undertaken to obtain a better understanding of the future impact that modernisation will have on GMW’s business and cost implications.
248. My investigation also found that current reporting against the project’s objectives is deficient as it focuses on the achievement of water savings and does not adequately include other wider economic, social and environmental benefits.

Current reporting against the project’s objectives is deficient as it focuses on the achievement of water savings and does not adequately include other wider economic, social and environmental benefits.

The Foodbowl business case

249. The Department of Treasury and Finance’s *Investment Lifecycle Guidelines Business Case* (the guidelines) require a business case to be prepared for major investments with a total estimated investment greater than $5 million. Stage 1 of the Foodbowl project involved an investment in excess of $1 billion.

250. A business case is designed to provide government with information on a project’s costs, benefits and risks to enable a fully informed decision to be made on the merits of an investment proposal; whether it should proceed and how funding should be provided.

251. Contrary to the government’s guidelines, the development of the business case for the Foodbowl project was not prepared in time to assist the former government to evaluate the investment proposal. As highlighted by the following timeline, key decisions were made to proceed with elements of the project and to commit significant funds, prior to the approval of the business case in June 2009:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2007</td>
<td>Former government’s 2007 Water Plan released</td>
</tr>
<tr>
<td>July 2007</td>
<td>Business case development commenced</td>
</tr>
<tr>
<td>December 2007</td>
<td>NVIRP established and funding of $113 million approved to conduct early works</td>
</tr>
<tr>
<td>March 2008</td>
<td>Early works business case approved</td>
</tr>
<tr>
<td>December 2008</td>
<td>Managing Contractor appointed</td>
</tr>
<tr>
<td>June 2009</td>
<td>The business case for Stage 1 is approved by the former government.</td>
</tr>
</tbody>
</table>

The development of the business case for the Foodbowl project was not prepared in time to assist the former government to evaluate the investment proposal.
252. In response to my draft report, NVIRP said:

The report fails to acknowledge available evidence in regards to staged approvals which was addressed by the Victorian Auditor General in his report (Irrigation Efficiency Programs) to Parliament in June 2010.

At the project decision point in August 2008 Government sought from NVIRP further immediate development of the principal elements of the NVIRP project. NVIRP subsequently developed in consultation with the key central agencies two significant work packages, those being Backbone Automation and Metering and Connections. These work packages were approved by Government (Premier, Treasurer and Minister for Water) in October 2008 and December 2008 respectively for the purpose of allowing the project to proceed.

The report is erroneous in suggesting that NVIRP proceeded in the commitment of significant funding without the necessary Government approvals.

253. In my view, the planning process adopted for the Foodbowl project was not in accordance with the government’s guidelines. The fact remains that substantial funds were committed in the absence of a business case approved by government.

**Commitment of funds on an inadequate basis**

254. The former government approved the Foodbowl project to proceed and committed funds for early works in the absence of an approved business case. Hence, the business case approved by the former government only detailed the Foodbowl project option. Usually two or three options are considered in a business case.

*The former government approved the Foodbowl Modernisation project to proceed and committed funds for early works in the absence of an approved business case.*

255. Mr David Downie, former General Manager, Office of Water said at interview on 1 March 2011:

... if we'd done a business case, the government probably would've been forced into doing some other project. ... Other than a Foodbowl.

Question: Why is that?

Response: Because ... they were under huge pressure to come up with a project for Melbourne, which was running out of water.

256. In response to my draft report, Mr Downie said:

Meaning that if we had done a fully detailed Business case before the Government looked at the totality of the project it would have
taken another 10-12 months. The Government may well have faced pressure to adopt more expensive options, due to the pressure to act in the face of the drought.

257. As to why the former government committed to the project prior to the completion of a business case, Mr Downie said at interview:

It was simply all the circumstances of 2006-07, and the government not wanting to announce a thing they knew would be unpopular in many quarters, coming up to difficult times – drought. And we didn’t have all the answers because you haven’t done a business case.

258. Mr Downie told my officers that this was the first project the Department of Sustainability and Environment had announced without completing a business case. He said:

... it was the first time we had done - announced a major project - without a business case, and remember the history of the bush - everything we do in the bush is worked through in endless discussion and detail, to go back over 25 years - every project. This was the first one we’d announced without it, because of the political ramifications - the north south pipe connection. And we hadn’t had time.

259. In response to my draft report, Mr Downie said:

... in June/July 2007 the [former] Government was addressing the most significant drought impacts in Victorian history which had intensified dramatically.

... It was the first major project in the rural environment without a Business case but extensive work had already been done.

... Governments often make policy decisions without business cases being done. This does not mean that significant and sufficient analysis has not occurred. When the business case is done the project can be refined, verified or stopped and final funding decisions reached ...Without the policy announcement it would have been almost impossible to do a thorough Business case.

... When the [then] Government approved the Foodbowl Project in principle in July 2007, it had followed the completion of a Central Regional Water Strategy in late 2006 which had identified several options. At that time no Business Case for any options presented in that Strategy had been completed, but some work had been done. There was no adverse criticism of the 2006 strategy announced then or outcomes of this process at all. The Auditor-General subsequently commented favourably on the process. From early 2007 until June 2007 some of those options were considered and further options developed for Melbourne eg. Stormwater/recycling/desalination. In July 2007 it was announced that a number of Business cases would be completed – not just Foodbowl, eg. Desalination, recycling. My comment about it being the first major project to be announced
260. I note that the Auditor-General’s June 2010 report on *Irrigation Efficiency Programs* (at pages vii-viii) concluded that:

... Victorian Government decisions to invest around $2 billion in irrigation efficiency and related projects between 2004 and 2007 were poorly informed, which in some cases has affected the achievement of outcomes. Whether these projects represent the best solution to achieve the government’s policy objectives of saving water and securing Victoria’s water, remains unclear.

... That all projects went straight to the development of business cases, without adequately demonstrating the need to invest or properly consider the most appropriate solution, represents a significant departure from mandatory requirements.

**Auditor-General’s findings**

261. The former government’s 2007 Water Policy detailed the funding required for the project and what water savings would be achieved. Estimated water savings were 450 GL which was 50 per cent of the estimated water loss figure of 900 GL for the Goulburn-Murray Irrigation District. The Victorian Auditor-General noted in his June 2010 report *Irrigation Efficiency Programs* that a submission to Cabinet in June 2007 said:

... limited work had been done to confirm the cost estimates or the projected water savings, and also that there was limited data available on the effectiveness of modernisation to achieve the level of water savings.

262. The Auditor-General highlighted the following poor practices with the project’s planning in his June 2010 report:

- The proposal submitted by irrigators was not given to Department of Sustainability and Environment including its Office of Water to review and assess despite the department having both the expertise and responsibility for irrigation projects.\(^\text{28}\)

- Treasury repeatedly requested officers from the department to conduct a comprehensive feasibility study into the proposal. This was not done.

- A feasibility study was not undertaken before the proposal was submitted to Cabinet in early June 2007 and, a commitment to Cabinet in late June 2007 to immediately undertake a feasibility study into the project was not met.

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\(^{28}\) Reported earlier in this report: there was no proposal submitted for the Foodbowl project.
263. The Auditor-General concluded in his 2010 report:

... the decision to commit $1 billion was based on advice of water savings and cost assumptions that had not been verified, technology that had not yet proven itself and the feasibility of the project, which was unknown.

264. My officers asked the then Treasurer Mr John Brumby at interview on 2 June 2011 why the former government committed to the project in the absence of a business case and feasibility study. He said:

We could have said “Well we’re going to delay and do more studies and more assessments on all of those things.” We could have delayed or we could have pushed ahead and said “We’re going to do it.” And we pushed [ahead] ... 

... there is an abundance of evidence about investing in water savings infrastructure, just an overwhelming amount of evidence. And it’s really pedantic, I think, to suggest that there’s not enough evidence for a government to make a decision about whether it invests in major water savings infrastructure.

... the business case was done subsequently ... the business case in my view confirms that the water savings are there ...

Changes to the Stage 1 Business Case

265. NVIRP is required to advise and obtain the approval of both the Minister for Water and the Treasurer in relation to significant changes to its Stage 1 business case. NVIRP have, to date, only communicated one change. A review by the Department of Treasury and Finance of NVIRP’s draft 2011-12 Corporate Plan highlighted numerous departures by NVIRP that had not been appropriately communicated to, or approved by, the Minister and Treasurer.

266. In response to my draft report, NVIRP said:

The conclusion ... relies on DTF’s [Department of Treasury and Finance] views as to what has constituted ‘numerous departures’ which NVIRP has challenged.

267. The Order in Council establishing NVIRP states that the NVIRP Board must immediately notify the Minister for Water and Treasurer if it forms the opinion that matters have arisen that may prevent or significantly affect the achievement of the corporate plan or [business case], or of its agreed targets.

268. In mid-February 2011 my officers requested NVIRP to provide details of the major changes that had been made to the business case. NVIRP’s Executive Manager Governance and Corporate Planning advised my officers that there had been one change relating to the on-farm efficiency program. The former Minister for Water, Mr Tim Holding had approved this change in August 2010. This approval permitted NVIRP to transfer $16.425 million of Stage 1 funds allocated for channel lining to the Goulburn-Broken Catchment Management Authority’s On-Farm

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29 Order in Council dated 20 December 2007, section 16.
Efficiency Program in order to generate anticipated water savings of 4.34 GL per year. This was considered a more cost effective option of achieving water savings compared with NVIRP’s channel lining program at the time.

269. In July 2011, I received written advice from a Department of Treasury and Finance Director of numerous departures from NVIRP’s approved business case, which had not been conveyed to the Department of Treasury and Finance and not approved by the Treasurer in accordance with the 2007 Establishment Order.

270. An email from a senior officer of the Department of Treasury and Finance dated 30 June 2011 to Mr Smith, NVIRP CEO stated:

> I advise that we have significant and fundamental issues with the draft Corporate Plan regarding both governance and project issues. This requires careful deliberation on our part to digest new and surprising developments that we have found in the draft.

271. In response to enquiries on changes to the project from NVIRP’s business case, NVIRP’s Executive Manager, Governance advised my officers on 26 July 2011 that:

- NVIRP’s relationship with central agencies has generally been centred on the Department of Sustainability and Environment as the portfolio agency supporting the Responsible Minister under the State Owned Enterprises Act
- the level of direct reporting to the Department of Treasury and Finance has not been at the same level as that demanded by the Department of Sustainability and Environment which has resulted in Treasury and Finance being less informed on some of the changes proposed by NVIRP
- ‘No specific guidance has been issued with respect to the NVIRP project as to what constitutes a material or major deviation’.

272. However, I note that in an email to the Governance Manager on 28 June 2011, the Department of Treasury and Finance advised:

> DTF [Department of Treasury and Finance] advised at the NVIRP Board meeting on 25 March 2011 that if there were a number of immaterial changes that in sum made a material change they must be approved by Cabinet. We have subsequently been given verbal assurances that this would occur. Also I note that periodical cash flow approvals by DSE [Department of Sustainability and Environment] does not constitute Government approval to such variations.

273. At the 25 March 2011 NVIRP Board meeting, representatives from the Department of Treasury and Finance told NVIRP directors that their ‘view was that the business case is the contract between NVIRP and the department and any material departures from the BC [business case] needs to go back to both Ministers for approval’.
274. The Department of Treasury and Finance advised my officers that it had identified the following 12 departures where NVIRP had not sought the Treasurer’s approval:

- number of gates reduced by 279, budget reduced by $11 million
- channel remediation reduced by 155 km with a further potential reduction, budget reduced by $26.1 million
- backbone meters reduced by 140, budget reduced by $2.8 million
- connections meters reduced by 580, budget reduced by $1.4 million
- gates rationalised increased by 237
- spur channel and service points rationalised increased by 580
- external funding of $8.7 million for Campaspe region
- transfer of $33 million from modernisation program to purchase 14.9 GL with the intention of selling this water to the Commonwealth
- transfer of $9.1 million channel lining program to East Loddon
- transfer of $6.7 million from capital works program to modernisation
- modernisation activities reduced by $42.9 million
- proposed delay to Stage 1 completion from end of 2012-13 to 2013-14 with cost implications.

275. The Department of Treasury and Finance further advised that the following issues required review by NVIRP in the context of the ‘departures and variations from the business case’:

- $13 million in interest not accounted for in the business case
- the impact on the achievement of water savings given the reduced scope in works
- the impact on the objectives of the business case resulting from the departures.

276. NVIRP’s Governance Manager said that while NVIRP had provided advice to the Department of Sustainability and Environment in respect to proposed variations to the volume of physical works and associated cash flows, ‘... reporting to DTF [Department of Treasury and Finance] is capable of improvement’. He acknowledged that:

... the signalling of major/material deviations through the Corporate Plan process could be viewed as being inappropriate given there are broader business case considerations. NVIRP took the view that the Corporate Plan process represented the best opportunity to confirm the proposed changes which had been signalled through the earlier advices to DSE [Department of Sustainability and Environment].
277. NVIRP’s failure to provide necessary information to the Department of Treasury and Finance and obtain its approval in relation to departures from agreed business case targets and directions is concerning. It is important that NVIRP appropriately signals material deviations from the business case to ensure full project accountability, transparency and approval by government.

*NVIRP’s failure to provide necessary information to the Department of Treasury and Finance and obtain its approval in relation to departures from agreed business case targets and directions is concerning.*

278. In response to my concerns, NVIRP said:

At the time of the Business Case there was no way of knowing exactly what savings might be achieved from every part of the project. Reasonable estimates were made based on best knowledge of previously known approaches to deliver on savings and measurements. As the project has progressed the information has improved in particular in being able to measure losses etc.

As a result the organisation adapted and shifted focus from one area to another or one aspect of the work to another. For example where it was not cost effective to do channel lining alternative approaches were considered and some adopted such as the On-Farm Efficiency project.

The Stage 1 Business Case also acknowledged that the works program may require optimisation over time to achieve the most appropriate mix of works to best meet the Business Case objectives ...

The project has lacked consensus on a single definition of ‘material variation’. For example the Funding Agreement which is the mechanism by which NVIRP is funded provides for up to +/-10% variations in terms of the cost of implementing the project. The Department of Treasury & Finance, Corporate Planning and Performance Reporting Requirements – October 2009 for Government Business Enterprises (not SOE’s) suggests a material variation as being in the order of a +/-15 per cent or more change in forecasts. ...

The conclusions reached in the draft report also rely on DTF’s [Department of Treasury and Finance] views as to what has constituted “numerous departures” (as opposed to material or significant variations) which NVIRP has challenged. For example rationalisations have been identified as a departure. Rationalisations were identified as a key Stage 1 Business Case objective.

279. In my view, NVIRP is responsible to ensure that it complies with its obligations. With the Foodbowl project in its fourth year, definitional issues of what constitutes a departure from the Business Case and
therefore requires reporting by NVIRP to the Department of Treasury and Finance, should have been resolved.

Gateway Review Process

280. The Gateway Review Process (Gateway) was endorsed by the former government in March 2003 to ‘... help Government Departments and Agencies ensure that their investment is well spent, meets business and government’s strategic objectives and achieves value-for-money outcomes’.

281. Gateway involves a team of experienced and independent individuals consulting with project proponents and key stakeholders in their review of the investment project. The review occurs at six key decision-making points: strategic assessment [of the investment decision]; business case; readiness for market; tender decision; readiness for service; and benefits evaluation.

282. The aim of the Gateway process is to ensure large government projects are planned and undertaken in accordance with best practice. I identified that the Gateway review process does not necessarily ensure effective outcomes for projects. For example, gateway reviews are not mandatory and agencies are not bound to rectify issues identified, before proceeding to the next stage of the project.

283. At interview on 2 June 2011 Mr Brumby explained the aim of Gateway as:

... building a better capability across departments from people who deliver major capital projects, ... essentially things to look out for with projects in terms of their delivery that might cause you problems in terms of cost or cost over-runs.

Gateway ... was about making sure that when you’re proceeding with a project that all of the steps are in place to make sure you get the best outcome.

284. Gateway is not mandatory for public sector agencies and the review’s outcomes are not binding on the agency responsible for implementing the project. The resulting report is confidential to the relevant agency and independent of the project’s approval process.

Gateway is not mandatory for public sector agencies and the review’s outcomes are not binding on the agency responsible for implementing the project.

285. The Gateway team issues recommendations for the project and rates the project status as a red, amber or green. This means:

Red - ... the project/program should not be stopped. However to achieve success, remedial action should be taken immediately ...
Amber - ... the project/program should go forward with consideration given to and / or remedial action on recommendations prior to the next key decision point or by the next Gateway Review.

Green - ... the project/program is on target to success but may benefit from the uptake of recommendations.

286. The Gateway review of NVIRP’s Stage 1 business case in August 2008 reported that the business case was unsatisfactory. However, as the project had already commenced in early 2008 and funding had already been committed, the gateway review was inconsequential to the project’s progress.

287. Only two Gateway Review Processes were completed for the strategic assessment and business case phases of the Foodbowl project.

288. The first Gateway (on strategic assessment) was managed by the Department of Sustainability and Environment prior to the establishment of NVIRP. The final report was provided to Mr Downie, former General Manager, Office of Water on 30 November 2007. The project was given an overall status of green.

289. The second Gateway of the business case was managed by NVIRP in August 2008 and the final report was given an overall status of red.

290. The Gateway report concluded that the business case was:

... not of a standard that is normally associated with a project of this size, complexity and risk profile. ... [It] will need amendment and development in several areas ... if it is to document a compelling case for investment.

291. The government approved $113 million funding in December 2007 to conduct early works for the Foodbowl project in the absence of a business case. Eight months later in August 2008, a Gateway review assessed NVIRP’s business case as unsatisfactory. The commitment of significant project funds was therefore made on an inadequate basis.

292. The Director, Department of Treasury and Finance stated at interview on 23 June 2011 that the final business case approved by government in June 2009 was ‘a very good business case’ however, it was:

... a total re-write of what had gone before [draft business cases] and a lot of that re-write happened within the offices of Treasury.

293. The Director said that the department had identified a ‘great number of weaknesses’ ... like 40 pages of ... what the weaknesses were’ with the draft business case. He further stated his view that:

... the DSE [Department of Sustainability and Environment] people in charge of this process were taking the view that the NVIRP project was easy. That it was a $1 million project repeated a thousand times over.
294. The second Review report noted that the next Gateway review was expected prior to NVIRP entering into a contract with the managing contractor.

295. NVIRP’s Governance Manager advised my officers that no further Gateway Review was initiated by NVIRP as following the former government’s October 2008 review of the business case, it approved NVIRP to proceed with various tendering processes.

296. The government[^31] has recently decided that all high-value and high-risk projects will be subject to Gateway Reviews to ensure that they are delivered on time and within budget. High-value and high-risk asset investments have been defined as those projects that:

- have a Total Estimated Investment greater than $100 million, regardless of funding source
- are identified as high-risk, using an approved risk assessment tool
- are determined by the government as warranting the rigour of increased oversight.

297. The initial projects subject to the increased oversight will include:

- all new projects for the 2011-12 budget that fall within the high-value and high-risk definition
- existing infrastructure projects that are subject to significant budgetary and or delivery risks.

298. The Foodbowl project has not been included as a high-value and high-risk project to be subjected to the revised oversight processes. I was advised by the Department of Treasury and Finance that the Foodbowl project was not recommended for inclusion on the initial list as ‘the project was well into the solution implementation phase’.

### Business case for Stage 2

299. NVIRP’s Stage 1 business case details that the Commonwealth Government agreed in-principle to contribute to Stage 2 costs up to $1 billion subject to a due diligence assessment of the Stage 2 business case.

300. NVIRP’s Stage 2 business case was submitted to the Commonwealth Government in March 2010. A due diligence report dated 1 November 2010 concluded:

> The project progresses Australian Government objectives to increase water use efficiency, return water to the environment and assist irrigators to adapt to a future with less water.

> .... By undertaking a system-wide restructure that involves irrigators making decisions about their future, the project methodology offers an arrangement where irrigator participation offers confidence that expenditure will not be wasted on stranded, non-viable assets.

... the Australian Government commitment is recommended to be $952.78 million.\textsuperscript{32}

301. The November 2010 due diligence report states that the Commonwealth government has approved in-principle funding for Stage 2 of the Foodbowl project. However, the report outlines 10 significant investment risks for the Australian Government and outlines 13 key conditions to mitigate those risks.

302. On 18 October 2011 agreement was reached between the Commonwealth and Victorian governments in regard to the Commonwealth funding for and Victoria’s delivery of Stage 2 of the project. The principal impacts of the agreement are:

- the project costs are $1,059,024,000 (excluding GST) and the Commonwealth are to provide maximum funding of $952,780,000 and the State of Victoria to provide a minimum, $106,244,000. The state is to provide any expenditure in excess of the project cost that is required to complete the project
- the removal of the requirement for irrigators to contribute $200 million in foregoing their 50 per cent share of the water savings (102 GL) from NVIRP Stage 2. This water will be sold to the Commonwealth government.
- the Victorian government’s agreement to extend the term of Stage 1 of the Foodbowl project from June 2013 to June 2018 to ‘ensure Victoria has the flexibility to deliver both stages of NVIRP and to provide the best outcome for the community ...’.

Conclusions

303. The former government did not follow its own guidelines for the Foodbowl project and committed to a $1 billion project prior to the completion of a business case. Alternative options, as required by the former government’s guidelines, were not considered and the resulting business case approved by government only addressed the preferred option.

The former government did not follow its own guidelines for the Foodbowl project and committed to a $1 billion project prior to the completion of a business case.

304. In the absence of a business case I consider that the then government was not well informed when it approved the project to go ahead. There have been numerous changes from the business case in relation to estimated water loss and savings figures and capital works. Notwithstanding that changes will occur in projects of this size and

\textsuperscript{32} Northern Victoria Irrigation Renewal Project Stage 2, Due Diligence Assessment Report, Department of Sustainability, Environment, Water, Populations and Communities, 1 November 2010, page 10.
complexity, the planned outputs and the scope of works may have been more reliable and changes minimised, had greater planning occurred to inform the project and the business case.

In the absence of a business case I consider that the then government was not well informed when it approved the project to go ahead.

305. NVIRP continually failed to advise the Department of Treasury and Finance and seek the Treasurer’s approval for material deviations from the approved business case, despite the department’s requirements being clearly conveyed to NVIRP’s Board. In this regard, NVIRP’s management of the Foodbowl project lacked transparency and accountability.

NVIRP’s management of the Foodbowl project lacked transparency and accountability.

306. While there are significant benefits to be achieved from the scrutiny of Gateway Reviews, NVIRP failed to take advantage of the remaining four strategic reviews. NVIRP advised my officers that this was due to departmental advice received. However, in my view, the advice received did not justify NVIRP’s position in failing to complete further Gateway reviews.

307. Planning for the Foodbowl project was not undertaken in line with required government processes. I consider that the government should reconsider the project’s strategic directions as it moves into Stage 2, given changes in the environment, learnings to date and the potential for improved project management. The project is significant and complex and potential changes to its direction should be carefully monitored.

The government should reconsider the project’s strategic directions as it moves into Stage 2, given changes in the environment, learnings to date and the potential for improved project management.

308. In response to my draft report, Mr Brumby said:

The project is proceeding on time, on schedule and under budget. The audited water savings for year one and the updated 31 August figures confirm that the water savings being achieved exceed those identified in the Our Water Our Future policy document and in the business case.
The project positions the region as Australia’s foodbowl for the future, providing both water security and huge system-wide productivity improvements.

Water savings benefit the environment, farmers and Melbourne.

309. In response to my draft report, NVIRP said:

The Ombudsman’s conclusions as to transparency and accountability ignores the:

- significant dialogue that occurs with the portfolio agency (DSE) supporting the Responsible Minister under the SOE legislation being the Minister for Water. The approved Stage 1 Business Case states - “The Minister for Water is the primary link between NVIRP and the Executive Government”.

- monthly reports and ongoing status reports have [sic] consistently provided to DTF.

310. My report acknowledges that NVIRP has communicated and reported to both departments on the project’s progress. However, the substantive issue remains, NVIRP has not complied with its obligations to report numerous material departures from its business case to the Department of Treasury and Finance. To this extent, transparency and accountability are lacking.

Recommendations

I recommend that the Department of Treasury and Finance:

Recommendation 6

Include the Foodbowl project within the scope of its revised central oversight high-value, high-risk processes in view of the findings outlined in this report.

The Department’s response

Recommendation accepted. The department advised that it agrees that the Foodbowl project should be subject to enhanced oversight under the HVHR [high-value, high-risk] process.

Recommendation 7

Undertake a review of the Gateway Review processes as they relate to high-value and high-risk projects and:

- Require all projects to clear all six Gateway gates. In clearing a gate, the Secretary of the department or agency CEO must sign off that recommendations have been satisfactorily addressed.

- Ensure gates one and two are completed successfully prior to seeking project funding.

- Require red light Gateway outcomes to be reported to the agency’s Secretary or CEO and to Department of Treasury and Finance who
in turn should assure their respective Ministers in writing that the concerns have been addressed.

• Require Gateway reviews to be funded from project costs and not met by the Department of Treasury and Finance.

**The Department’s response**

Recommendations accepted. The department advised:

• **DTF agrees that the Foodbowl Modernisation Project should be subject to enhanced oversight under the HVHR [high-value, high-risk] process.**

• **New HVHR process requires all such projects to undergo the full requirements of the Gateway Review Process. If individual red recommendations are included in the report, the Senior Responsible Owner (SRO) is required to sign a Recommendation Action Plan (RAP) highlighting the issues, the mitigation measure, and the relevant timing.**

• **Gates 1 and 2 are now mandatory requirements for projects meeting HVHR definitions. Each review needs to be completed at the appropriate time. The Gate 1 review is undertaken prior to submission of the preliminary business case and a Gate 2 review prior to submission of the full business case.**

• **Individual recommendation red flags will now require the completion of a RAP to be signed off by the project’s SRO. The RAP, once received by the Department of Treasury and Finance, will inform the Treasurer’s next relevant decision point.**

In relation to the final dot point in recommendation 7, the department did not provide a response.

**Whole of Life Cycle costing review**

311. Modernisation of the GMID irrigation system will result in the following significant changes:

• GMW will have near-new assets in almost every part of the system
• corporate and asset management strategies will change
• there will be significant financial implications in relation to irrigation infrastructure maintenance and operational costs.

312. A Whole of Life Cycle costing review (WOLC review) was undertaken by GMW in mid-2009 to obtain a better understanding of the future impact that modernisation would have on GMW’s business and the future cost implications. Specifically, the WOLC review:

• provides whole of life costings associated with the implementation of Stages 1 and 2 of the NVIRP Business Case
• identifies the likely impacts on future tariffs given consideration of revenue and future asset costs under various scenarios
• examines the financial viability and sustainability of pricing options
• provides an understanding of future costs, key drivers of cost, service outcomes and risks for all stakeholders.

313. My investigation examined the WOLC review with a focus on:
• timeliness of the review
• the level of communication with the community and irrigators
• the outcome of the review, that is an assessment of the impact modernisation will have on GMW's operations and what this means for the irrigator.

Timeliness of the WOLC review

314. A WOLC review is critical in the analysis of investment options involving major new assets, particularly those assets with a long life and significant maintenance costs. Such a review should be undertaken prior to any investment decision as it provides essential information about future costs and maintenance decisions.

315. Generally the investment option with the lowest WOLC cost is the preferred choice.

316. The WOLC review's final report dated August 2009 was completed after NVIRP's Stage 1 business case was submitted to the Department of Treasury and Finance. Evidence provided to my officers indicates that the future costs of the modernised irrigation system were unknown at the time the former government committed to the Foodbowl project and that GMW was requested to undertake the WOLC review around ‘… 12 months later than what it should have been’ for inclusion into the business case.

317. A presentation to the former GMW Board by the Steering Committee established to oversee the WOLC review (undated\textsuperscript{35}) states that:
• the [WOLC] project was an input into the NVIRP Business Case, as well as looking at the modernisation impact on GMW's business
• the report has been ‘Driven by NVIRP Business Case deadlines’\textsuperscript{34}

318. The WOLC review was not completed in a timely fashion. It was completed to be an input into the NVIRP Business Case as opposed to informing the Foodbowl project investment decision.

Stakeholder and customer interaction and communications

319. Communication with customers should be an integral part of the WOLC process as the services will be used and paid for by customers in the

\textsuperscript{33} The document seems to have been completed around May 2009.
\textsuperscript{34} Whole of life outcomes, internal Board Paper, page 12.
future. The Water Services Committee\textsuperscript{35} Charter\textsuperscript{36} and the Statements of Obligations\textsuperscript{37} for example, state:

10.1 The Authority must develop and implement open and transparent processes to engage its customers and the community in its planning processes to ensure, among other matters, that the services it provides reflect the needs and expectations of customers.\textsuperscript{38}

*Communication with customers should be an integral part of the WOLC process as the services will be used and paid for by customers in the future.*

320. My investigation identified that the community and particularly its representative Water Services Committees were not actively engaged by GMW in the WOLC review. For example:

- minutes of the 15 May 2009\textsuperscript{39} meeting of the Water Services Committees Leadership indicate that the WOLC report was developed and communicated to water service committees after its completion
- the Shepparton Operations Area Water Services Committee meeting minutes of 20 August 2009 recorded an outline of the scenarios and results. This was two days after the media press release and posting of the WOLC report’s executive summary on GMW’s website.

*The community and particularly its representative Water Services Committees were not actively engaged by GMW in the WOLC review.*

**WOLC review outcomes**

321. The review assessed three scenarios:

- scenario 1: No Further Modernisation after the early NVIRP works
- scenario 2: NVIRP Stage 1 undertaken
- scenario 3: NVIRP Stage 2.

322. The key assumptions underpinning the WOLC review included:

- all future re-investment will be funded by GMW through customer fees

\textsuperscript{35} Pursuant to the Water Act, Water Services Committees may be established to assist in ensuring communities are engaged in future planning and decision-making in relation to costs, service levels and potential system, service and delivery improvements and efficiencies.

\textsuperscript{36} Water Services Committee Charter #2660710v2, approved 9 September 2009.

\textsuperscript{37} The Statements impose obligations on the water corporations in relation to the performance of their functions and the exercise of their powers.


\textsuperscript{39} Project_Presentation_-_Wsc_Leadership_Meeting_15_May_2009.
• under scenario 3 all remaining non-backbone channels will be reconfigured or rationalised, hence GMW will not own or manage any non-backbone channels
• the reconfiguration may result in some non-backbone channels being owned and managed by third parties in syndicate arrangements with no operational cost to GMW.

323. The review found that a key cost driver for GMW is the amount of irrigation network that GMW owns, maintains and operates. Operations, maintenance and capital related costs collectively make up approximately 80 per cent of GMW’s revenue requirement, which is the income that GMW needs to collect from its customers to be able to fund the system’s operating costs.40

324. Under scenario 2 (complete Stage 1 only), the size of the non-backbone network is reduced and under scenario 3 (complete Stage 2), GMW’s irrigation network (other than the continued non-backbone in Shepparton), is rationalised completely. This leads to a substantial reduction in the asset base and therefore significant reductions in the operations, maintenance and capital costs over time compared with what they would be if the entire network were to be retained.41

325. Each scenario progressively reduces the number of staff required to operate the system:
• under scenario 1 there are 232 operations staff in 2010-11
• under scenario 2 this reduces to 217 staff by 2013-14 at the completion of Stage 1
• further reductions to 194 staff will occur by 2017-18 once full modernisation and rationalisation is completed under scenario 3.42

326. The WOLC review identified that the substantial on-going licence fees for modernised gates and meters outweigh the cost savings achieved through the reduction in staff numbers. The outcomes of scenario 3 are dependent on the achievement of reductions in staff to generate efficiency gains under the modernised system.

327. The WOLC report states that the cost of delivery of water to the irrigator will double in real terms in around 30 years under scenario 1 and 2. However, over the same period and under scenario 3 when rationalisation and modernisation is complete, the cost increase will be around 30 per cent.

**GMW’s review of the Whole of Life Cycle costs**

328. As at July 2011, GMW had revised its WOLC review (WOL2) to provide updated whole of life cycle costs taking into account the lessons learnt in the project to date.

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41 Ibid, page 12.
42 Ibid, page 15.
329. The review\textsuperscript{43} shows:

\begin{itemize}
  \item in the short term, irrigators will pay higher costs as the irrigation system is upgraded
  \item over the longer period, NVIRP Stage 2 (scenario 3) is the preferred option as on-going costs are reduced when a comparison is made between scenario 1 and scenario 3.
\end{itemize}

330. A detailed consideration of the cost of various scenarios on individual irrigator costs has not been included at this stage. This should be carried out as a part of the engagement and communication with irrigators.

331. GMW said:

The new Board of G-MW considers the organisation’s financial strategy and the impact it has on our customers to be of the highest importance. With this in mind the Board has had preliminary discussion regarding a detailed review of Tariffs. An extensive customer consultation process will be part of this review. A review of Whole of Life (WoL) will be a fundamental building block in the process.

332. On 3 August 2011 the Acting GMW Chief Strategy Officer and Acting Chief Financial Officer advised my office that annual expenditure within the WOLC review had been significantly understated. The GMW officer said that the initial WOLC review had factored into the analysis $1 million relating to annual support and maintenance of the host and remote site software systems for Foodbowl installations however, this had been reduced to $360,000 ($30 per gate) for the WOL2 review:

As I understand it, [the Department of Sustainability and Environment] … insisted that the costs within WOL 1 were too high, and instructed G-MW to cut the cost base.

333. In recent discussions with the supplier, GMW staff had been advised that the supplier is seeking for the provision of annual software support and maintenance, a cost significantly more than 10 times the annual cost of $360,000 which was included in GMW’s second WOL review.

334. A preliminary assessment undertaken by GMW of this understatement of costs estimates that irrigator fees would need to be increased by at least 15 per cent next year compared with the stated six per cent increase in the WOLC review.

335. The GMW officer indicated that negotiations with the supplier in relation to annual host and software support and maintenance costs were continuing.

Conclusions

336. A WOLC review should have been an integral part of the evaluation of the modernisation proposal before commitment to the modernisation of GMW infrastructure.

\textsuperscript{43} WoL2, draft version 1.8, GMW.
337. It is concerning that greater rigour was not taken by GMW to ensure accurate annual software support and maintenance costs were used in the WOLC review. As a result, inaccurate information has been provided to the former government via the business case for Stage 1 and to the irrigators who will need to meet any increased costs of the modernised irrigation system.

**It is concerning that greater rigour was not taken by GMW to ensure accurate annual ... costs ... inaccurate information has been provided to the former government ... and to the irrigators who will need to meet any increased costs of the modernised system.**

338. The initial business case was prepared and submitted to the former government prior to the WOLC report being initiated. Completion of the costing review by GMW was required by the Department of Sustainability and Environment and NVIRP to be an input into the NVIRP Business Case as opposed to informing the former government’s investment decision.

339. The preparation of the WOLC review has been constrained by time and therefore, the quality of the report is questionable in relation to the following:

- The assessment of implications for GMW customers is brief.
- The decision to have three scenarios is very narrow and should have included consideration of a less costly modernisation program.
- A sensitivity analysis⁴⁴ was not conducted.
- The net regional effects for irrigators in areas that are syndicated are not addressed. The second WOLC review also does not examine this issue.
- The timing and the lack of consultation around the WOLC review raise issues as to whether GMW has met the expectations to act on behalf of customers when considering modernisation.
- The affordability of the GMID modernised system for irrigators.

340. A significant risk to the Foodbowl project and the accuracy of the results of the WOLC review, is that the project does not achieve its target 50 per cent reduction in GMW’s irrigation network. This is due to the significant future implications on maintenance and operational costs of the planned network reduction. A sensitivity analysis would

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⁴⁴ A sensitivity analysis assesses the impact that changes in a certain parameter will have on the model’s conclusions.
have addressed this critical assumption and explored the impacts of a greater cost base and/or less revenue if there is significant water traded out of the GMID.

341. Reduced future infrastructure cost is one of the key objectives of the modernisation project. Indicators such as WOL per unit costs of infrastructure are not articulated and documented under the current NVIRP monitoring and reporting program.

342. The WOL model will require revision to take account of the outcomes of the agreement reached with the Commonwealth in relation to Stage 2 of the project; in particular, the removal of the $200 million payment required from irrigators and the extension of Stage 1 to 2018.

Recommendations

I recommend that GMW ensure that:

Recommendation 8

The WOLC process and report be used as an integral part of the modernisation project’s reporting process with the service levels and costs of infrastructure represented in any performance and monitoring framework.

**GMW’s response**

Recommendation accepted.

Recommendation 9

The WOLC process include a strategy for customer engagement and communication. This should articulate principles for stakeholder interactions and commit to using the WOLC analysis as a basis for discussion on future infrastructure and business planning.

**GMW’s response**

Recommendation accepted. GMW is committed to customer engagement and supportive of this recommendation in the context of its existing customer engagement processes.

Recommendation 10

The WOLC review be comprehensively reviewed and the outcomes communicated to key stakeholders to ensure they are accurately informed of the future cost implications of the modernised irrigation system.

**GMW’s response**

Recommendation accepted. GMW reiterate that a full review of the longer term financial strategy of GMW and the associated tariff structure is a key focus of the new Board; this process will necessitate a review of the WOLC model.
6 Project management

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6. Project management

Background

343. NVIRP is directly responsible to the Minister for Water who, in consultation with the Treasurer, approves the Corporate Plan and considers material scope changes to the Foodbowl project. The Department of Sustainability and Environment is the departmental agency with portfolio responsibility for water and water statutory bodies.

344. Figure 1 provides an overview of the relationships between the various entities involved in the Foodbowl project.

Figure 1: Project Governance Structure

Legend: DSE - Department of Sustainability and Environment
DTF - Department of Treasury and Finance
IAC - Inter-Agency Committee
TAG - Technical Advisory Group.

Source: NVIRP Stage 1 Business Plan, page 153.

345. The Funding Agreement and Relationship Agreement serve as the foundation of the governance structure. NVIRP is required to provide detailed monthly reports to both the departments of Sustainability and Environment and Treasury and Finance. NVIRP must also notify the Minister and Treasurer of any works contract or agreement exceeding $5 million in total value or if matters arise that may prevent or significantly affect the achievement of the corporate plan or its agreed targets.

346. The Group Director, North Region, Office of Water is the NVIRP project’s key contact within the Department of Sustainability and Environment. He receives all NVIRP reports and attends progress meetings with NVIRP. Other departmental staff are also involved via working groups such as the NVIRP Technical Advisory Group.

347. My investigation identified that NVIRP’s current reporting is inadequate as it focuses on progress achieved by the capital works program and

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45 The Minister for Water and Treasurer approve the ‘form’ of the Corporate Plan and specify any information they require; this is the development or guidance stage. On receipt of the Corporate Plan the Minister and Treasurer may make comments on the Plan and the board must have regard to these comments.
on the achievement of water savings. Other elements critical to the achievement of the Foodbowl project’s objectives, such as environmental benefits and outcomes, are not monitored or reported on.

*NVIRP’s current reporting is inadequate as it focuses on progress achieved by the capital works program and on the achievement of water savings. Other elements critical to the achievement of the Foodbowl project’s objectives, such as environmental benefits and outcomes, are not monitored or reported on.*

348. A key objective of the Foodbowl project is regional economic development. However, I found that there is confusion as to which body is responsible for the measurement and monitoring of achievements of the Foodbowl project in this area.

349. I also identified that the Department of Sustainability and Environment’s approach to addressing future policy issues associated with the Foodbowl project was reactive and there was a tendency for issues to remain unresolved or a certain amount of drifting when issues arise, before any direct policy formulation was considered.

**Project objectives and reporting**

350. Table 5 lists NVIRP’s three project objectives and the associated critical success factors.

**Table 5: Critical success factors for Stage 1, Foodbowl project**

<table>
<thead>
<tr>
<th>Project objective</th>
<th>Critical success factor</th>
</tr>
</thead>
</table>
| 1. Deliver an estimated 225GL (long-term annual average) of water.                 | • Water savings achieved and delivered on time  
• Project delivered on time and to budget  
• Attaining the appropriate resources / labour to undertake the works  
• Support from regulatory and decision making entities  
• Timely funding appropriations.                                                |
| 2. Deliver a fully automated water distribution operating system that will provide almost on demand water supply to irrigators with modernised connections by 2012/13. | • Customer choice and opportunities  
• Customer and community acceptance – irrigator willingness to change from present delivery arrangements. |
| 3. Provide a catalyst for regional economic development opportunities and improved productivity. | • Growth in regional economy – improved productivity, growth in value adding industries  
• Improved regional agency inputs.                                               |

Source: NVIRP Stage 1 Business Case.
351. The various reporting frameworks provided information on the water savings estimates and capital works progress. There is no reporting focus on objectives 2 and 3: the delivery of the distribution system and also the regional development aspects of the project.

352. For example, NVIRP has prepared two corporate plans: 2009/10-2012/13 and 2010/11-2012/13. NVIRP’s key performance indicators (KPIs) are shown in Figure 2. The KPI’s were also outlined in the Stage 1 Business Case.

**Figure 2: NVIRP Corporate KPIs**

<table>
<thead>
<tr>
<th>KPIs</th>
<th>Source: NVIRP Corporate Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stronger communities in Northern Victoria</strong>&lt;br&gt;Availability by 2013/14 of 75 GL of long term average saved water for irrigation</td>
<td></td>
</tr>
<tr>
<td><strong>Stronger Victorian economy</strong>&lt;br&gt;Availability by 2013/14 of 75 GL of long term average saved water for Melbourne</td>
<td></td>
</tr>
<tr>
<td><strong>Water security to support Melbourne’s liveability</strong>&lt;br&gt;Availability by 2013/14 of 75 GL of long term average saved water for Melbourne</td>
<td></td>
</tr>
<tr>
<td><strong>Improved environment health of Victoria’s river and wetlands</strong>&lt;br&gt;Availability by 2013/14 of 75 GL of long term average saved water for the environment</td>
<td></td>
</tr>
</tbody>
</table>

353. Figure 2 shows NVIRP has multiple corporate objectives including:

- the delivery of water savings and water security
- an improved standard of water delivery service
- modernised connections
- contribution to regional economic development, a stronger community and improved environmental health of Victoria’s rivers and wetlands.

354. However, only one KPI has been established by NVIRP to monitor and report on the achievement of its corporate objectives and this KPI focuses solely on water savings and specifically:

   Availability by 2013/14 of 75 GL of long term average saved water for irrigation [and Melbourne and the environment].

355. The following wider benefits of the NVIRP project are listed in NVIRP’s Corporate Plan and Stage 1 business case, however, these are not considered in NVIRP’s reporting framework:

- competitive advantage
- GMID sustainability
• farm benefits
• delivery systems
• improved risk management for irrigators
• increased employment opportunities and improved district skill base
• retaining and attracting people and industry to the GMID.\(^{46}\)

356. The Department's Group Director was asked at interview on 23 May 2011 why these ‘other benefits’ of the project were not part of a monitoring and reporting framework. He said:

... this project’s been seen as a water savings project ... if you went back and read the Stage 1 business case looking at the objectives, ... you know, there's a lot of objectives ... this isn't just about water savings ... And if we talk about what the project is trying to achieve and if we go back to what the main issue is, you could start laying out maps of the northern region and saying well, this is what's actually happening, ... water’s moving out of here, ... this is what’s happening in dairy or horticultural. We have a problem here that we need to actually fix.

357. The Group Director agreed that, as the project commenced in 2008, the monitoring and reporting regime for the Foodbowl project as a multiple objective project should have been identified and addressed earlier by the Department of Sustainability and Environment.

358. In relation to NVIRP’s achievements in these areas, the Group Director said that NVIRP had individual case studies to show increased efficiencies and productivity on farms, however:

What I’m saying is that we are not pulling that information together and coherently communicating that back through to the public and reporting on it ourselves ... we’re not communicating that back through internally within DSE, up through to the minister and to the wider community.

359. In response to my draft report, NVIRP said:

NVIRP report on a range of factors including expenditure, water savings, landholder agreements, physical works, (including infrastructure rationalised) and transfer of Delivery Share to the backbone channel system. A number of these factors are in effect surrogates for achieving other modernisation objectives e.g. reducing whole of life costs and increasing the affordability of the system (competitive advantage, GMID sustainability), customers able to access a modernized standard of service and ongoing viability of the modernised backbone.

360. In November 2010, NVIRP commissioned a business performance review by an external consultant to assist NVIRP to consolidate and refine its internal operations. The review highlighted that NVIRP is moving into a more complex operating environment and listed 30 recommendations

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\(^{46}\) NVIRP Stage 1 Business Case, pages 127-128.
for NVIRP to action. This review also recommended greater emphasis be placed by NVIRP on the project’s economic, social and environmental outcomes.

361. My investigation identified uncertainty as to who was responsible for monitoring the extent to which the Foodbowl project achieved regional economic development and improved productivity. NVIRP’s Executive Manager, Governance and Corporate Planning advised my investigation in writing on 13 May 2011, that:

> NVIRP’s expectation is that measuring achievement against the key performance indicators associated with regional economic development and improved productivity for Stage 1 will be principally undertaken by RDV [Regional Development Victoria] together with the central agencies.

My investigation identified uncertainty as to who was responsible for monitoring the extent to which the Foodbowl project achieved regional economic development and improved productivity.

362. I note that the Business Cases for Stages 1 and 2 identifies that Regional Development Victoria will ‘undertake analysis of social and economic impacts of Water Plan initiatives (including the [NVIRP] project)’.

363. However, the Investment Attraction and Facilitation Manager-Northern Regional Infrastructure Development told my investigators on 20 July 2011 that he did not consider it was Regional Development Victoria’s role to monitor and report on the regional development indicators and that NVIRP would be responsible for monitoring and reporting on this aspect of the Foodbowl project.

Monthly reporting

364. My investigation reviewed the Foodbowl project reporting to the Department of Sustainability and Environment. This includes monthly status reporting on key milestones. Reports are also provided to the Department of Treasury and Finance each month.

365. Monthly information provided by NVIRP is also translated by the department into a summary ‘traffic light’ report for the department’s Secretary. The report raises priority matters and provides the opportunity to flag particular issues in relation to project progress or status; upcoming milestones; commonwealth negotiations; and the project’s budget.

366. A review of these reports highlights a focus on the level of activity occurring within the project such as the number of gates and meters installed, channels remediated, delivery share relocated and channels rationalised.
Policy Issues

367. Policy issues are raised and considered through departmental, NVIRP and GMW weekly meetings and monthly reports. At interview on 23 May 2011, the Group Director told my officers that there have been three broad issues that have been the focus of the Department of Sustainability and Environment and NVIRP policy deliberations during the implementation of Stage 1. These are:

- environmental approval processes
- managing the business case and audit protocols
- consideration of the syndicates model.

368. The approach to addressing future policy issues by the department seems to be reactive. From my office’s discussions with departmental staff, there is a tendency for issues to remain unresolved or a certain amount of drifting when issues arise, before any direct policy formulation is considered. For example, syndicates have been an aspect of the Foodbowl project since its inception, however a firm policy position on their implementation has yet to be determined. This approach can lead to a lack of clarity regarding who is responsible for development of policy, and policy issues being unresolved.

369. In addition, a lack of policy formulation or consensus on policy has hindered the progress of the Foodbowl project. For example, NVIRP was unable to progress any connections agreements which involved road assets in the period September 2010 to July 2011, as the issue of who will be responsible for any liability arising from the damage to public assets as a result of the privatisation of water infrastructure is unresolved.

A lack of policy formulation or consensus on policy has hindered the progress of the Foodbowl project.

370. It is important that there is a specified trigger or process that can elevate a particular policy issue to a status that is more significant than just operational reporting.

371. The former Acting Managing Director, GMW said at interview on 5 July 2011 that:

… it seemed to me that over time DSE were somewhat captured by the NVIRP program, and seemed to be quite driven about the implementation of that program, come what may. Rather than being the hands-off department responsible for policy, there did seem to be quite some driver from within the organisation to ensure that it was delivered.
Conclusions

372. NVIRP’s current reporting focuses on capital works activities and water savings. Other wider economic, social and environmental benefits and outcomes considered critical success factors to achieve the project objectives are not monitored or reported on by NVIRP as there are no specific key performance indicators to address these factors. It is therefore not known if or the extent to which the investment is achieving these benefits. There is also a lack of understanding around who is responsible for monitoring and reporting on some of these indicators.

373. The lack of a consistent and transparent policy direction by the Department of Sustainability and Environment on a range of issues has the potential to generate a sense of ‘business as usual’ until a crisis point is reached. It is apparent that the amount of on-going reporting and close interaction between NVIRP and the department in particular may mean that significant strategic issues are not given adequate consideration.

374. For the Foodbowl project to proceed effectively, it is essential that the department can proactively identify policy issues which are hindering the progress of the project and NVIRP is equally able to refer policy issues to the department for timely action and clear determination.

375. The re-examination of the roles of the key agencies should be considered (for Stage 2) given the involvement of the Commonwealth government. Additionally agreements should explicitly flag a review step to ensure that current arrangements and structures remain fit for purpose as the project progresses.

Recommendation

I recommend that the Department of Sustainability and Environment:

Recommendation 11

- review its role and responsibilities with water authorities in policy oversight and ensure that the policy issues that require resolution for the successful implementation of the Foodbowl project are listed and considered using a strategic planning framework
- review the Foodbowl project’s reporting requirements and establish a framework for reporting the wider benefits of the modernisation investment in addition to water savings in line with the initial project business case
- review its public communications about the project to ensure that it adequately publicises performance against wider project outcomes such as water savings (and transfers), improved productivity and environmental outcomes for the region and the State.

The Department’s response

Recommendations accepted.
7 Project implementation

Modernisation of infrastructure
Conclusions
Recommendations
Project quality issues
Conclusions
Recommendation
The connections program
Conclusions
Recommendation
Farm designers
Conclusions
Recommendations
7. **Project implementation**

376. To implement the modernisation project, GMW's water infrastructure has been classified into two categories; backbone and non-backbone. The backbone channels\(^{47}\) are those channels intended for modernisation. Properties which are not on a backbone channel will be connected to their nearest backbone water service point via privately owned water infrastructure.

377. The NVIRP project has been divided into two stages, Stage 1 and Stage 2. Stage 1 of the project will focus on the modernisation of backbone channels and early connections works (around 28 per cent of all proposed connections). Stage 2 will largely involve connecting non-backbone landowners to the backbone (the connection program).

378. Modernisation of water infrastructure attempts to recover water lost through evaporation, leakage, seepage and inaccurate metering.\(^{48}\) It involves:

- replacing the system’s manual water flow control structures with a network of automated water supply gates
- relining water delivery channels with clay or plastic to reduce water loss
- removing the traditional Dethridge water supply meters and installing more accurate ‘mag flow’ meters and other compliant meters.

379. Non-backbone channels will be assessed to see if they are redundant and can be rationalised i.e. decommissioned. In a practical sense, water which has traditionally been delivered by GMW direct to landowner properties is proposed to be delivered to the nearest backbone service point and the private landowner will become responsible for the infrastructure delivering water from the backbone to their property.

380. NVIRP’s goal is to reduce the amount of public water infrastructure in the GMID by 50 per cent while still providing irrigation services to 90 per cent of properties currently serviced.\(^{49}\) In addition, NVIRP seeks to reduce whole of life costs and increase ongoing affordability for irrigators.

381. A key component of the connections program involves NVIRP using independent contractors called ‘farm designers’ to conduct farm assessments and design the means by which non-backbone properties can be connected to a backbone.

382. The project is premised on the idea that landowners who reside on backbone channels should benefit from an improved water delivery service. These benefits should also flow onto non-backbone customers once they are reconnected to the backbone in the connections phase (Stage 2) of the project.

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\(^{47}\) Defined as channels with 20 megalitres of delivery share or more.

\(^{48}\) Leakage means water leaking through the banks of irrigation channels and seepage is water seeping into the ground through the base of the channel.

\(^{49}\) NVIRP Business Case, Stage 2, February 2010, page 86.
My investigation examined the implementation of the project to ascertain if it is being administered in a way which is transparent, fair and in accordance with established policies and procedures. The following issues were identified in implementing the project’s modernisation and connections phases, and in the use of farm designers:

- **Modernisation:**
  - there is a lack of transparency in the backbone/non-backbone distinction
  - there are issues of project quality.

- **Connections**
  - private liability for water infrastructure is inconsistently compensated
  - issues with joint ownership/syndicates are unresolved
  - there exists a potential inconsistency with the **Victorian Constitution Act 1975** which gives rise to a future risk for GMW
  - potential devaluation of land occurs as a result of the project
  - there are unresolved elements associated with the project.

- **Farm designers**
  - conflicts of interest are poorly managed
  - there is inadequate oversight by NVIRP.

### Modernisation of infrastructure

#### Lack of transparency in the backbone/non-backbone distinction

384. During my investigation, many irrigators on non-backbone channels approached my officers with concerns that they had been disadvantaged. The Foodbowl project requires irrigators situated on non-backbone channels to own, insure, upgrade and run private connections from their property to the nearest backbone channel at their cost. One irrigator said:

> The classification of water delivery channels into “Backbone” and “Spurs” [non-backbone] by NVIRP has created an unfair bias as all farmers have invested in their farms under the belief that irrigation supply was the same regardless of what type of channel was providing water delivery.

385. Another witness said:

> It would be like me coming to you and saying I’m going to cut the power off to your house, but I’m going to leave it on in these other three streets ...
386. NVIRP’s CEO, Mr Murray Smith described the backbone and non-backbone distinction in a submission to my office as follows:

The backbone is the core of GMW [assets] containing the larger capacity channels and the most sustainable irrigation land. The remaining channels are classified as non-backbone.

387. Figure 3 shows how the layout of water infrastructure will change under NVIRP’s connections program; it will involve the definition of a backbone and removal of non-backbone channels.

**Figure 3: Proposed modern irrigation system for John’s farm [hypothetical example]**

The proposed layout for a modern system presented to John

After some initial surveying, Peter presents a draft plan to John that includes potential costs. The plan includes:

1) replacing three Dethridge wheels with one new automated meter on the backbone channel
2) installing a gravity fed pipe which crosses the neighbouring properties
3) an easement for the new pipe
4) decommissioning the old leaky spur channel.

Source: Fact Sheet, Connections Program for Landowner, NVIRP.
388. NVIRP’s *Connections Program Operational Guidelines* (the Operational Guidelines) define a backbone as ‘a channel where 20 ML/d [megalitres per day] of delivery share occurs’. However, the Operational Guidelines also allow the backbone to be extended or retracted if specific criteria are met. The Operational Guidelines are not publicly available as some data within the guidelines is considered ‘commercial in confidence’.

389. My officers obtained a spreadsheet from NVIRP which demonstrates that since the beginning of the project, the backbone has been extended by 82.4 kilometres and reduced by 64.6 kilometres, a net change of 17.8 kilometres.

390. Many witnesses raised concerns that:
   - the process to determine whether a channel is a backbone or not is unclear
   - exceptions are made by NVIRP, leading to the perception of a ‘change the rules as you go’ system
   - delivery shares had been removed from channels and channels had been cut in two so they could be considered non-backbone.

391. Investigation of specific allegations found that the backbones had been extended in line with NVIRP’s Operational Guidelines. However landowners remained sceptical that the classification followed due process.

392. NVIRP publishes maps on its website which detail whether a channel is backbone or non-backbone. As the backbone can be extended or retracted, these maps are altered periodically, although they are not updated each time a backbone extension or retraction occurs. The reasons for the extension or retraction are not published.

393. NVIRP’s website maps include channels which are described as ‘backbone subject to investigation’ which means their particular backbone/non-backbone classification is contingent on other project factors.

394. NVIRP’s approach of not updating its published maps each time a backbone is altered and not updating the reasons for change lacks transparency and contributes to the perception raised by landowners that NVIRP is arbitrarily extending or retracting backbone channels.

**NVIRP’s approach of not updating its published maps each time a backbone is altered and not updating the reasons for change lacks transparency and contributes to the perception raised by landowners that NVIRP is arbitrarily extending or retracting backbone channels.**
395. In response to my draft report, NVIRP said that ‘All backbone extensions and retractions are done in consultation with and in agreement with the affected landowners’.

396. As irrigators perceive that landowners on backbone channels are advantaged, it is essential that the public is made aware of the reasons behind backbone extensions and retractions. Maps on the NVIRP website should be accurate so that landowners are aware if they reside on a backbone.

Conclusions

397. Due to the significance of the backbone and non-backbone distinction, it is important that the decision to consider channels backbone/non-backbone be transparent. While specific concerns investigated by my officers demonstrate that the backbone was altered in line with NVIRP policy, the fact these concerns were raised to my officers indicates that the decision to extend or retract a backbone is not communicated adequately to the public.

Recommendations

I recommend that the Department of Sustainability and Environment:

**Recommendation 12**

Ensure that the classification of backbone/non-backbone channels is transparent, and accurate maps of backbone/non-backbone channels are published regularly.

*The Department’s response*

*Recommendation accepted.*

**Recommendation 13**

Where backbone channels are retracted or extended, the reasons for doing so be made public on the NVIRP website.

*The Department’s response*

*Recommendation accepted.*

Project quality issues

398. NVIRP has engaged a Managing Contractor to manage the capital works. The contractual agreement between NVIRP and its Managing Contractor set out the Managing Contractor’s responsibilities. These include responsibility for the procurement of plant, materials, sub-contractors, and safety systems and for setting up a system to manage quality from the design phase to completion of the works.
399. The effectiveness of the Managing Contractor’s quality system is monitored by internal audits and third party audits, such as environmental audits. Several audits have been undertaken since 2009. Each audit has identified a range of issues and non compliances (of a major and minor nature). In the main, these issues have been addressed in a timely manner by NVIRP and the Managing Contractor.

Site visits

400. During my investigation my office received numerous requests from irrigators to visit and inspect what they saw as poor quality modernisation works. My officers carried out several property inspections and interviewed both irrigators and staff from the Managing Contractor, NVIRP and GMW in relation to these matters.

401. The site visits identified examples of the following:

• Flume gate leakage. In one case viewed by my officers the leakage was considerable and the spill of water was assessed by the irrigator to be equivalent to around 10 litres per minute. In response to my draft report the Managing Contractor said that they had not been advised of this defect by GMW. They also said that the flume gate would have sealed satisfactorily at practical completion50 however such obstructions such as silt, gravel, weeds and sticks may prevent an adequate seal.

• A flume gate had been installed too low, restricting water flow. At the time of the inspection one flume gate had been removed from the channel and the former infrastructure re-installed to allow an irrigator to obtain water. In response the Managing Contractor said ‘one case (notified to us on 13 October 2011) is currently under investigation. … Two other cases were rectified during 2010 and 2011’.

• Stock fences had been cut without landowner permission and not repaired, leaving livestock to wander onto roads. The Managing Contractor said in about 85 per cent of projects it is necessary to cut and re-erect fencing to access the work site. They also said that GMW had advised of 16 sites in the past three years where fencing has not been reinstated to its satisfaction and they are also aware of two complaints by irrigators which they believe have been resolved.

• The operation of solar panels (to power communications) were ineffective due to their installation and design. For example, panels were installed under trees, hidden from the sun and some panels had aerial structures which attracted birds, causing the panels to be covered with bird droppings. The Managing Contractor responded that the pedestal/panel is a tried and tested, ‘off the shelf’ package. Around 2,015 pedestals have been installed and 47 meter sites are noted as having ‘shading defects’ according to the Defects Register. Of these, only six triggered a low battery voltage alarm requiring

50 Practical completion is the stage when works have been completed in accordance with the contract and all relevant statutory requirements (with the exception of minor defects or minor omissions).
rectification. The design of the panels has now been corrected by the design of a bracket to the side of the pedestal.

In relation to the installation of solar panels, the Managing Contractor’s Project Director said:

... at any given time there’s possibly 15 or 20 work package contactors installing meters ... we do make every effort to get to each site but we might have just got the next day there and ... the work package contractor has installed this panel in the wrong spot.

The Managing Contractor responded that it had ‘... 8 supervisors in all’.

- Inappropriate channel fencing, such as fencing which allowed only a one metre-wide passage way for several hundred head of cattle to pass through several times per day. In this situation, the landowner said that in response to their complaint, the channel was moved two metres towards the landowner’s property without appropriate compensation or notification being provided to the landowner.

The Managing Contractor responded that land is retained on the side of the channel, by way of easement, to allow GMW to service the channel. Under the NVIRP program, fences to a certain safety standard and design are installed on the GMW easement wherever possible and, where not possible, on irrigators’ land by negotiated agreement with the irrigator and GMW (who compulsorily acquire the land and compensate the irrigator).

402. Several landholders also complained to my officers that contractors had entered their properties without prior notice. If correct, this is in contravention to the NVIRP Access Protocol established with the Managing Contractor.

403. The Managing Contractor’s Project Director confirmed that some of its sub-contractors had not been provided with the access protocol and that ‘this had been the problem’.

404. The Project Director also said that the specific cases identified by my officers and raised with him at interview were ‘isolated cases’.

405. My officers were provided with details of 1,028 ‘support requests’ from irrigators claiming system defects over an 11-month period from 25 November 2009 to 25 October 2010.\(^51\) In this time, around 3,000 - 3,500 items had been installed in the GMID. The reported issues included:

- no communications
- flat battery
- faulty screen
- not recording flow
- gate not open
- leaking door seal.

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\(^51\) The support requests refer to the operation of the entire GMW irrigation network including but not limited to NVIRP works.
406. The Managing Contractor responded that of the 1,028 support requests, it is not clear how many of these were notified to it as construction defects by GMW. In addition it said, in relation to the abovementioned issues, the Register of Defects maintained by GMW showed either no reports to the Managing Contractor or few cases only.

407. NVIRP responded:

The [support] requests are generated both by G-MW Area staff, including requests for routine maintenance, and from irrigators experiencing problems. It is reasonable to expect that such an integrated system will produce faults which require attention particularly in instances where the new modernised automated equipment is being brought on line in an existing operating environment.

**GMW Audits: design deficiencies, poor installation and workmanship**

408. Two audit reports were completed by GMW’s Electrical and Mechanical Services Division in April 2011. The audits covered 100 sites where NVIRP infrastructure had been installed.

*Two audit reports were completed by GMW’s Electrical and Mechanical Services Division in April 2011.*

409. GMW’s audit identified poor wiring standards which have resulted in excessive amounts of cabling under the pedestal housing the meter’s electronic components. This situation attracted vermin to nest; exposed conduits, caused mechanical damage (in 20 per cent of audited cases); and allowed corrosion of the cabling.

**GMW’s audit identified poor wiring standards.**

410. The audit also identified issues of design deficiencies, poor installation techniques and workmanship in relation to solar panels as well as:

- Thirty-eight per cent of the sites installed have some degree of ant infestation. Ants cause premature failure of the circuit boards, radios and motors when they are in concentrated numbers.
- Subsidence of earth predominantly around the pedestal base allows vermin (mice, rats and snakes) to enter the cavity directly below the pedestal through an excessively large conduit entry (26 per cent). The vermin chew the cables ultimately resulting in the failure of the cable (six per cent).

*It also identified issues of design deficiencies, poor installation techniques and workmanship in relation to solar panels*
411. These quality defects can cause a failure in the delivery of water to irrigators and in the case of infestations, the short circuiting of the electronics system that open and close the gates allowing water to flow onto the farm property.

412. In response to my draft report, the Managing Contractor said that:

- the fitting of ‘Ant Café’ packs to all pedestals commenced in about March 2011 when ant infestation was notified to it as being a likely problem
- a period of protracted flooding caused some subsidence of the soil, exposing conduits
- GMW has not identified to it, specific sites of vermin chewing cables to allow our investigation and/or resolution. However, a seal installed to the pedestal base has been procured to prevent vermin entering the pedestal
- the GMW audits referred to have not been provided to it to help identify any outstanding issues with those assets which have now been accepted by GMW.

413. In relation to the infestation of vermin in the infrastructure, the Managing Contractor’s Project Director told my investigators at interview on 2 June 2011 that while he was aware of this issue he had not advised his client NVIRP about it as he would deal with the matter. In response to my draft report, the Managing Contractor advised that its Project Director was aware of how to resolve the ant infestations issue from previous work on another project and that once he had instigated the ‘Ant Café packs’ he would have reported this step at the next weekly catch up with NVIRP rather than having to report it as an issue requiring a special report.

414. When asked if ants, rodents, cattle, birds and solar panel shading problems are an issue for maintenance and operation of the assets modernised by NVIRP, GMW’s Manager of Strategic Asset Planning told my investigators at interview on 2 June 2011:

Oh, it is, it’s an ongoing battle. You know we’ve had an ongoing debate with [the Managing Contractor] and NVIRP ... We don’t have the same problems in Shepparton that we have everywhere else. Funny, that. ... You won’t find shading problems on regulators in Shepparton [assets delivered prior to NVIRP], not one.

415. The Manager of Strategic Asset Planning was asked to comment further on the quality defects that had been identified in the audit and pointed out to my investigators and whether, in his view, the issue was systemic in nature. He said that both GMW and NVIRP have used the same contractors and that the difference in the quality of the output, is the level of supervision that is provided to the contractors:

The discrete difference is the supervision of the contractor. So you have the managing contractor who’s there with no skin in the game. He’s got no reason to ask the contractor to do the job above and beyond or to do the job, which he’s priced to do. He’s there under
the desire to make sure that they don’t get any OH&S issues and the contractor does sort of what he’s supposed to do and then he pisses off and tidies up and hopefully it’s all over.

Whereas our supervisor [GMW’s supervisor] is there from a different perspective. He’s there to say, “Well, we’re all here. We might as well do a proper job and we might as well do the other little bits that make the job work for the long-term. Far better than just getting in and getting onto the next one”. Because the impetus is different. So our supervisors have been in the game for a longer period of time. Then you’ve got the [Managing Contractor] guys who are great blokes.

416. In response to my draft report, the Managing Contractor said:

We do not accept the suggestion that [Managing Contractor company] is “the managing contractor who’s there with no skin in the game”. [Managing Contractor] performance of its obligations under the Managing Contractor Agreement are assessed with reference to:

- “Performance Assessment Measures” which affect its remuneration; and
- KPI measures which may trigger suspension or termination of the agreement.

417. In response to my draft report, the Managing Contractor’s Project Director said that issues with regards to stock fences, vermin and solar panel design and installation were isolated cases. Based on evidence from my officers’ site visits, interviews with witnesses and the audit results, I do not consider these matters to be isolated issues.

418. The Managing Contractor said:

We have not been provided with the evidence of the officers’ site visits, witness interviews or copies of the audit results and so we are not able to properly comment on the Ombudsman’s consideration of these. We believe, however, that, considering:

a. the nature of the NVIRP project,

b. the number of construction contracts on foot at any one time, and

c. the definition of ‘practical completion’ as it applies to the functionality of the assets concerned,

it is fair to regard the delivery of any particular project site as no more problematic than any typical construction project and – and when looking at all project sites together – the delivery of the NVIRP project as a whole has been good.

419. NVIRP responded:

G-MW assume full responsibility for the operation of regulators and meters as soon as they have been installed, inspected and set-to-work (mechanically and, electrically) by the Managing Contractor and by [supplier company].
As part of the hand over process, G-MW inspects all sites and where any defects are identified, they are categorised as either minor, intermediate or major defects. G-MW will operate a site quite normally with minor or intermediate level defects noting that a schedule for addressing these defects is agreed with NVIRP at the outset. Quite correctly, no site is accepted by G-MW for operation with a major defect present.

**Motor failure**

420. GMW’s audit of 100 sites also identified that the Maxon motor, a core element of the channel automation process had an ‘unacceptedly high failure rate …’ of 20 per cent. Issues with the motor arose in November 2010 when a significant number of irrigators reported that their outlets had failed either to open prior to irrigation [not delivering water] or to close [effectively delivering too much water]. The audit also found:

- significant costs estimated at $596,462 had been incurred by GMW in corrective works
- the estimated total cost to replace all the Maxon motors is $3,000,000
- to date, more than 140 Maxon motors have been replaced[^3]
- some of the replaced Maxon motors have since also failed.

**GMW’s audit of 100 sites ... identified that the Maxon motor, a core element of the channel automation process had an ‘unacceptedly high failure rate …’ of 20 per cent.**

421. Recent remote testing by GMW has further identified a further 148 sites where the motors were not responding appropriately.

422. The audit recommended resolution in the following terms:

- corrective action be taken to address the failures identified with the Maxon motor including the replacement of all Maxon motors
- an agreement between all parties be reached to meet the costs of the corrective action.

423. NVIRP’s Project Manager Capital Works agreed that the failure rate was significant and that commissioning tests had not identified any systemic issues with the motors.

NVIRP’s Executive Manager, Capital Works told my officers on 14 July 2011 that:

GMW and [the motor supplier] are still trying to determine the extent to which the motors may or may not be a problem …

[^3]: Of the 3,378 slip gate/flow meters installed to May 2011, 2,311 sites (or 68 per cent) received the slip gate with the Maxon motor.
424. NVIRP’s Manager was asked if the motors do not operate in the environment in which they were designed, should they be considered fit for purpose. He said that ‘I don’t believe we’ve yet got to a point where we know whether the motors are or are not fit for purpose’.

425. In response to the quality issues, NVIRP said that it ‘accepts that in the case of new meter installations quality needs to improve uniformly across all installation contractors and within the Managing Contractor’s construction supervision team - measures are already in place to address this issue’. It also said that ‘meter communications pedestals are being redesigned to prevent the ingress of mice and snakes – preventing the ingress of ants is more difficult’. In relation to the motor issue NVIRP said:

- G-MW are the design authority, not NVIRP or [Managing Contractor] - this role is defined in the G-MW/NVIRP Relationship Agreement [G-MW Requirements]
- G-MW specified the use of these motors in the Early Works Program in which they were directly involved – they continued to approve the use of the motors in NVIRP Stage 1...
- the statement in para [423] remains the position & the ball is squarely in G-MW’s court as it always has been in their design authority role – that is G-MW have not conclusively determined themselves that the motors are not fit-for-purpose – both NVIRP and [the supplier company] stand ready to assist whenever requested – this has never been an issue.

Conclusions

426. The Foodbowl project’s Managing Contractor, has personnel responsible for quality management. The level of quality management by NVIRP and its contractors has not achieved the standard required in several areas. Examples of design deficiencies, poor installation techniques and workmanship have been noted by GMW’s audit and my officers’ site visits.

427. Poor attention to detail by work package contractors in implementing programs of work means that work has to be repaired or replaced; this is not an effective use of resources. In addition, poor quality designs and installations alienate landholders and there is evidence of this already occurring.

428. I have concerns that the contractual requirements for equipment to be fit for purpose may not be met because of issues with vermin and solar panel design and installation.

429. I am also concerned that both NVIRP and GMW did not have in place mechanisms to rigorously check the Maxon motors for the slip gate outlets prior to the expiration of the warranty period.
430. In response to my draft report, the supplier company of the Maxon motors said:

To [the company’s] knowledge, there have been few Maxon motors that have failed due to faulty design; faulty manufacture; component failure; or because the motor is incapable of undertaking the task of raising and lowering the SlipGate. Certainly, as with any manufactured product, it is to be expected that there will be a level of failure over time; however there is no evidence to support a finding that these motors are not fit for purpose or should be replaced.

In conjunction with G-MW, in June 2011 all installed SlipGates in the G-MW system were tested. Of the installed 3,378 motors, 65 were found to fail to operate. These 65 were then the subject of individual site inspections which found that the causes of the failures were primarily:

- Rodent damage to cabling due to faulty installation of the pedestal
- Ingress of water due to faulty transport, storage and handling
- Ant infestation arising both from faulty storage and handling and faulty installation, service and maintenance.

[Supplier company] was not responsible for the installation, transport, storage, handling or servicing of the motors.

With respect to the motors replaced prior to this testing, G-MW undertook no testing that [supplier company] is aware of to determine the possible causes of the failures and as such [supplier company] has no way of determining the true failure rate, if any.

...  

[Supplier company] rejects any finding that the Maxon motor is not fit for purpose.

Recommendation

Recommendation 14

I recommend that the Department of Sustainability and Environment:

Ensure that the affected metered sites are brought up to an acceptable level of performance and reliability.

This action should include a comprehensive review of who should bear the liability for costs associated with any rectification works.

The Department’s response

Recommendation accepted.
The connections program

431. My investigation examined NVIRP’s connections program to establish whether it was fair, transparent and delivered in accordance with NVIRP policies and procedures. The connections program involves the establishment of privately owned direct connections between the backbone and non-backbone properties.

432. The connections program seeks landowners not on a backbone, to ‘take on’ the water delivery to their properties, a service previously provided by GMW. My investigation identified the following concerns:

- Compensation for maintaining the infrastructure is inequitably applied.
- The project proposes setting up connections owned by groups of landowners, which has many practical difficulties yet to be resolved.
- Privatisation of infrastructure is potentially inconsistent with the *Victorian Constitution Act 1975* (Constitution) and could result in future liability for GMW.
- Being on a non-backbone channel could result in the devaluation of land.
- The project has a number of unresolved elements, affecting landowner confidence in the project.

433. Establishing direct private connections between landowners and backbone channels will allow NVIRP to significantly reduce the footprint of public water infrastructure in Northern Victoria. At the conclusion of the connections program, NVIRP aims to have reduced the quantity of public infrastructure within the GMID by 50 per cent.

434. Mr Brumby, then Treasurer who supported the Foodbowl project, advised my officers at interview on 2 June 2011 that he was unaware that publicly owned infrastructure would be privatised under the NVIRP project:

  Question: Something that’s come out of the project is [the] privatisation of a lot of assets. ... [P]eople who are on the [non-backbone] spurs will be directly connected to the backbone through now privately owned infrastructure, or infrastructure that used to be owned by GMW. Was that something that was flagged in the beginning or has that sort of come about through the business case over time?

  Response: I’m firstly not aware of that and secondly, I don’t believe it was flagged. But I wouldn’t think that’s too widespread.

435. Mr Brumby also said:

  Well, I don’t want to make a comment about that because I’m not ... I’ve told you I’m not aware of it and I haven’t seen it and I don’t know whether everyone would fairly describe it that way. So I’m just not familiar ...
436. In response to my draft report, Mr Brumby said:

I made it very clear in the interview that I was not aware of the context, substance or basis of this question. The investigating officers were unable to provide me with this information to enable me to address the question.

437. The concept of privatisation was not identified in the Steering Committee’s recommendations to the former government but was indirectly referred to in the final report which said:

Much of the current public infrastructure is now located within the farm boundaries … The modern system will bring water close to the farm boundary and private infrastructure … will take over from there when the individual businesses choose to change.

438. The NVIRP Business Case, approved by the former government in June 2009, notes that there will be new private infrastructure but does not clearly state how much water infrastructure will be transferred to private ownership.

439. In response to my draft report, NVIRP said:

NVIRP does not support this view. The Stage 1 Business Case (available on the website) identifies the rationalisation process (decommissioned or transferred to private ownership) of spur channels. Page 75 Table 7.1 of the document identifies the total amount of spur channel to be targeted under the modernisation program with the Stage 1 target. The balance being targeted in Stage 2.

440. Participation in NVIRP’s connection program is voluntary and landowners are encouraged to participate by the payment of incentives which are available to:

... cover on-farm costs incurred for any works that are required on farm to reinstate the farm system or to ensure it continues to be operational as a result of a change in the supply system servicing the property.54

441. The compensation available for each individual connection project is limited by the amount of water savings arising from the project and any costs avoided by not having to modernise. These are calculated by set formula in an individual ‘business case’ which is prepared for each project.

**Example of incentive calculation**

Irrigator A has a property on a backbone channel with two Dethridge wheels. NVIRP can achieve water savings by removing one of the wheels and replacing the other with a water magflow meter.

Irrigator B is not on the backbone and has three water channels servicing the property. NVIRP can achieve water savings for decommissioning all of irrigator B’s channels (and their associated Dethridge wheels) and installing a pipe from the backbone to one service point on the property.

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Irrigator B’s project will achieve a greater amount of water savings for the project (and hence available incentive). Greater incentive may be required to fund works on the land to enable it to operate efficiently from the new supply point.

442. The Connections Program Operational Guidelines (the Operational Guidelines) allow for incentives to be provided which exceed the maximum compensation limit outlined in the business case if ‘it can be satisfactorily demonstrated that a benefit exists’ and specific criteria (such as the achievement of other rationalisation opportunities) exist.

443. The Operational Guidelines are not available to the public because they contain information which is commercially sensitive for the project, such as the financial incentive available for removing each Dethridge meter or part of a channel. There is a concern that having access to this information would assist landowners to ‘play the system’ to maximise their incentives to the detriment of the project.

Private liability for water infrastructure

444. Many landowners raised concerns about the implications of privatising infrastructure that has traditionally been publicly owned and managed by GMW. Concerns include the:

- responsibility and liability for infrastructure which can cross other properties and public assets such as roads
- cost of maintaining infrastructure into the future
- operational costs such as power expenses incurred in pumping the water from the backbone supply channels.

Case study: Private ownership concerns

Landowners advised my officers that NVIRP is closing down the irrigation system they use to obtain water and proposes to connect them to a nearby river.

The landowners said that the proposed two kilometre connection from their property would traverse the Calder Highway, a road crossing, land owned by the Shire of Campaspe and a railway track.

They raised concerns about:
- ongoing costs of maintaining the infrastructure to the river
- day-to-day costs of operating a pump from the river
- the potential liability if ‘something happened’ to the pipe and caused damage to a public asset.

In mid-September 2011, the landowners advised my office that despite attending mediation, the issues with NVIRP remain unresolved.

445. My officers interviewed a NVIRP Modernisation Coordinator who liaises between NVIRP contractors, landowners and NVIRP to progress individual connections projects. When asked if irrigators had
raised concerns about the private ownership of irrigation assets, the coordinator said that ‘heaps of people’ had and:

It’s understandable, as its additional infrastructure they will have to maintain into the future.

446. NVIRP’s Executive Manager Modernisation said that ‘the inference is that any structures, channels and new assets on the property will be covered under the landowner’s existing insurance policy’. However, he advised that to his knowledge, no analysis or research had been conducted on whether a landowner’s insurance would cover the new private infrastructure.

Case study: Costs of rationalisation

The landowners currently draw water downstream from a channel via a gravity fed system. They attended a NVIRP community meeting on 16 March 2011 and were handed a map by NVIRP staff which showed that the channel servicing their property was not a backbone.

The landowners told my officers that if this channel was rationalised, they would have to pump upstream from the nearest backbone channel and that they had calculated this would cost them an extra $2,000 each month in power costs. They were unable to independently confirm this figure.

Since being interviewed by my officers, they have been advised that the backbone has been extended to their property.

447. The Irrigation Surveyors and Designers Group Inc (ISDG)55 has developed a spreadsheet to guide NVIRP staff and NVIRP’s contracted farm designers when costing the on-farm works required in a connections project. This spreadsheet recommends compensation be provided to landowners for ongoing maintenance costs over a 20-year period.

448. My officers interviewed a number of NVIRP Modernisation Coordinators about NVIRP’s compensation of irrigators for maintaining private infrastructure into the future. All Modernisation Coordinators consulted by my officers advised that compensation for ongoing maintenance was not often paid and when it was paid as part of an incentive program, it was done so inconsistent with the ISDG guide. They said this was because the amount of funds available for a project was contingent on savings identified in each project’s business case and may not be able to cover ongoing maintenance.

449. On 28 July 2011, my officers spoke with the Secretary and Treasurer of the ISDG who advised that 20 years was an appropriate period for reimbursing future costs of maintenance.

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55 An industry body which represents irrigation designers in Victoria and New South Wales.
Case study: Maintenance compensation

NVIRP proposed to de-commission the channel next to a landowner’s property and pump water via a pipe to their property from a nearby backbone channel.

The design was prepared by a farm designer and included compensation for ongoing operations and maintenance costs for the next 10 years.

My officers spoke with the farm designer who prepared this design. The designer said that while the ISDG spreadsheet included provision for 20-year maintenance compensation, he had shortened the payment for maintenance by 10 years because the calculation of a 20-year maintenance payment often exceeded the maximum compensation available in the irrigator’s business case.

Issues with joint ownership/syndicates

450. Where there are a number of landowners who could be serviced by one connection to the backbone, NVIRP proposes to develop a connection which will be owned and managed by the group of landowners it services. These agreements are commonly known as ‘syndicate’ arrangements and involve neighbours essentially managing private water infrastructure as a collective.

451. Appendix A2 of the Stage 2 Business Case dated 8 February 2010 states that the syndicate model was ‘attractive for NVIRP as it leads to reduced capital construction costs and also reduced WOL [whole of life] costs’.

452. During my investigation, many witnesses approached my office with concerns about the introduction of syndicates. One witness wrote the following in a submission to my office:

The syndicate could be likened to a business, with reluctant partners being forced together. The majority of who do not have the skills or the willingness to take on such a role. Then there is the moving population, land being sold and new owners coming in, a reset of the syndicate? The self managed syndicate is a good way to go if one wants to cause friction between neighbours... [it is a] recipe for neighbourhood disputes.

453. In relation to syndicates, NVIRP said in response to my draft report:

- the formation of a syndicate is a 100% voluntary process
- a syndicate is formed by a group of like minded individuals who wish to join together to achieve a sustainable water supply
- the commitment of the landholders to the supply syndicate should reflect the life of the investment e.g. 30 years
- pipeline supply is the preferred type of syndicate. Only channel syndicates with compelling business cases will be considered
- minimum design and construction standards.
454. My officers interviewed GMW’s Manager, Economics and Tariff who has been liaising with NVIRP on the syndicate model and system. The manager described each proposed syndicate as being a ‘mini GMW’ and highlighted some issues with the implementation of NVIRP’s policy, including:

- Victoria’s Constitution Act 1975, which states that a public authority which has the responsibility for ensuring the delivery of a water service must continue to have that responsibility
- provisions of the Water Act which make it unclear whether people who do not have ‘farms’ can be involved in syndicate arrangements
- questions over who would be liable for aspects such as:
  - over-use of water
  - breach of water use licences, or
  - a failure to pay rates
- the practical difficulties of landowners working together
- the ownership of non-backbone water meters which are placed on the private infrastructure
- long-term commercial viability of the syndicate arrangement
- the nature of the body which would collect the rates and maintain the infrastructure for the syndicate members.

455. In response to my draft report, NVIRP said:

Participation in the Connections program remains voluntary and that in the event a landholder doesn’t see value in participating then supply to their property will be maintained through existing arrangements.

**Private ownership and the Victorian Constitution**

456. Section 97 of the Constitution states that:

> If at any time on or after the commencement of section 5 of the Constitution (Water Authorities) Act 2003 a public authority has responsibility for ensuring the delivery of a water service, that or another public authority must continue to have that responsibility.

457. While GMW is able to contract its responsibility to an independent contractor, it must retain responsibility for the delivery of water.\(^{56}\)

458. While current owners may wish to participate in the connections program (and receive the financial incentives to do so) there is a risk that subsequently they, or future landowners, may be able to demand GMW resume delivering water to their property. This is known as ‘reversion risk’.

459. NVIRP has stated that ‘Any reversion risk would need to be reflective of the cost of providing the service (ACCC Guidelines)’.

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\(^{56}\) Constitution Act 1975 (Vic), section 97(3).
460. The Department of Sustainability and Environment sought legal advice about the effect of the Constitution on NVIRP’s proposal to privatise water infrastructure using a syndicate arrangement. In advice dated 8 June 2010, the Victorian Government Solicitor’s Office wrote:

... GMW does have an ongoing responsibility to ensure that water is capable of being delivered to individual properties, including via minor channel infrastructure.

... It is difficult (but perhaps not impossible) to conceive of how GMW could fulfil these [Constitutional] responsibilities without owning the existing minor channel infrastructure.

461. My office made enquiries with the department and GMW as to the effect of these provisions on the Foodbowl project.

462. Both GMW and the department advised my investigation that based on legal advice they had received, syndication is consistent with the Constitution as GMW retained ultimate responsibility for the delivery of services. That is, should a syndicate fail, GMW as the ‘supplier of last resort’ would be required to provide the service as per the Constitution.

463. The department confirmed there is a risk of reversion in relation to syndicates established under NVIRP and that each year, one to two syndicates disband. The department also advised that the following measures will be taken to lower this risk:

- acceptance of syndicates involving irrigator led proposals
- NVIRP setting asset construction guidelines
- a focus on low pressure pipe infrastructure and avoiding large open channels.

464. While these measures may reduce the risk of syndicates failing, they do not address the risk for GMW should current (or future) landowners decide that they do not wish to continue to participate in the syndicate arrangement.

465. NVIRP’s July 2009 Operational Guidelines note that ‘workable models for these types of schemes, and the rules that may apply, are currently being developed’. My officers requested all connections guidelines from NVIRP. The most recent set provided to my office dated May 2011, state that workable models are not yet in place.

Private infrastructure assets and public roads

466. Another issue arising from the privatisation of water infrastructure involves the private liability which would flow from private infrastructure underneath public assets such as railway lines and roads.

467. NVIRP advised my office that there are approximately 2,500 water supply assets such as channels and pipes under road reserves which will be either transferred to private ownership, de-commissioned and replaced or removed from the system.
468. In September 2010, the Shire of Campaspe placed a ‘moratorium’ on ‘road opening permits’ which prevented any NVIRP construction projects involving roads within the district. The CEO Shire of Campaspe said that councils in Northern Victoria were concerned about the privatisation of public assets under roads, due to their responsibility to ensure the safety of roads under the Road Management Act 2004.

469. Between September 2010 and July 2011, NVIRP was unable to progress any connections agreements which involved road assets.

470. In correspondence dated 7 July 2011 Mr Peter Walsh, Minister for Water advised the Shire of Campaspe, Loddon Shire, Moira Shire and Gannawarra Shire Council:

   … I propose that asset ownership in road reserves continue to be consistent with the rules that applied prior to modernisation …

471. My officers made enquiries of the then Acting CEO of NVIRP regarding the Minister’s decision. The Acting CEO noted that he had heard about the decision ‘on the grape vine’ however NVIRP had not been formally advised.

**Potential devaluation of land**

472. Several witnesses approached my office concerned that, as they were not on a backbone, their property would lose value.

### Case study: Access to finance for properties not on a backbone channel

Landowners advised my office that they had received information from NVIRP that their two adjacent properties were not situated on a backbone channel.

They advised that they had approached the Rural Finance Corporation to obtain a loan to upgrade farming equipment on their property.

They also wanted to use their second property as collateral for the loan. The landowners said that the Rural Finance Corporation verbally advised them that whether their property [the subject of the loan] was on a backbone would affect the value of their property and therefore the level of finance they can access.

Since being interviewed by my officers, the landowners have been advised that the backbone has been extended to their property.

473. On 24 May 2011, my officers interviewed a manager of the Rural Finance Corporation (the corporation) who undertakes work on behalf of the corporation for NVIRP. The manager was asked about the effect on the value of properties of being classified as non-backbone. He said:

   There would have to be some, some impact because farmers would be more aware of the risks involved in buying a property at the end of a spur channel, … in terms of higher operating costs and perhaps having to bear the leakage, seepage, evaporation in their own private channels.

474. The corporation’s manager said that properties on or located in proximity
to the backbone were ‘more attractive’ to property purchasers. In relation to the impact the position of properties has on obtaining finance, he said:

It would certainly be a factor we would take into account... We would like to be informed of how that farmer’s activities are going to be impacted in the future, because that impacts his serviceability [capacity to make loan repayments] because it will be a higher operating cost if he has got to wear the water losses.

475. My officers interviewed a number of real estate agents to determine whether the NVIRP project had affected the value of GMID properties. One agent said on 13 April 2011:

... I can’t get people to look at farms that are not on backbone or any land because they go, well, has it got water, and I cannot confirm or deny.

476. A witness provided correspondence from another real estate agent dated 16 May 2011 which said:

The general opinion is negativity towards those properties [on a non-backbone channel] as some time in the future supply may be deemed unviable to supply these properties and hence may have its supply cut. This is having a detrimental effect on the price achievable for these properties and the overall demand for them.

Case study: Access to water

An irrigator told my officers that properties situated some distance from the backbone were ‘having trouble selling’ because they do not know the nature of their future access to water. The irrigator said that he had consulted a property valuer who advised him that his properties would be worth approximately $500,000 less because of the private infrastructure he now had associated with the property, as well as fewer water delivery points. He told my officers that it was now 5.5 kilometres from the backbone to his farm and he had to pump 700 megalitres of water. The irrigator said:

But the problem is that I’ll never sell the damn farm because nobody is going to take on a farm with that much infrastructure [being required] to get water to it.

477. My officers identified properties advertised for sale which listed, as a feature of the property, their location ‘on a backbone channel’.

Unresolved elements of the connections program

478. As the NVIRP project is voluntary, all landowners being serviced by a non-backbone channel need to agree to be connected by NVIRP to a backbone channel for NVIRP to be able to de-commission the channel (and claim the water savings achieved).

479. NVIRP’s submission to my office dated 31 March 2011, referred to a number of projects in which a small number of people had refused to participate with NVIRP’s program, such as:

- the 5/7 channel in which 16 of 18 landowners had agreed to participate
• the Mt Hope Project in which 21 of 22 landowners had agreed to participate\textsuperscript{57}
• the Campaspe project in which 131 of 133 landowners had agreed to participate.

480. When NVIRP is unable to obtain a landowner’s oral approval for an offer, NVIRP ‘parks’ the case and moves onto the next area. This is commonly referred to by NVIRP as a ‘leap frog approach’. As NVIRP is unable to close non-backbone channels without all landowners’ agreement, this can adversely impact on landowners who wish to modernise their irrigation systems, yet share a non-backbone channel with others who are not willing to participate in the NVIRP program.

481. Landowners in such situations advised my officers that they were advised by NVIRP that staff would return for further discussions around one to two years later.

**Case study: Potential to miss out on modernisation**

A landowner within the Murray Valley holds considerable water delivery shares and has a significant landholding. The landowner raised concerns with my officers that he will ‘miss out’ on modernisation because he resides on a non-backbone channel with other landowners who are opposed to the modernisation project. He told my officers of the following concerns:

- that NVIRP would park his case even though he was keen to engage with NVIRP and for his farm to be modernised
- NVIRP had been working on his channel for over two years; however ‘people keep changing their minds’ about how they want to be connected and what they wanted to do with their land. Many offers had been placed on the table by NVIRP and then changed as a result of other landowners changing their minds
- throughout the two years, farm designers had completed considerable work on the project which had been paid for by NVIRP, with no ascertainable outcomes.

The landowner suggested that it may be appropriate for NVIRP to have the power to coerce landowners to commit one way or the other to the modernisation project. He said that the project is far too fluid and uncertain and it was affecting the way he would manage his farm in the future.

482. My investigation received allegations from landowners, NVIRP and GMW staff, and members of industry bodies that specific landowners were ‘playing the game’ with NVIRP to increase their bargaining power, and ‘holding off’ to obtain a better deal to that first offered by NVIRP.

483. ‘Playing the game’ is inherently risky due to NVIRP’s ‘leap frog’ approach and the possibility that NVIRP will move on and ‘park’ that individual’s case. At interview on 7 July 2011, NVIRP’s Manager, Connections

\textsuperscript{57} NVIRP has since advised that all Mt Hope landowners have now agreed.
Consultation said:

I personally don’t like the fact that a stock and domestic customer who uses maybe one megalitre of water a year can hold up the progress on a whole channel where one other irrigator could be using 2,000 megalitres a year. ... We’ve got $2 billion getting spent and you know Mr and Mrs [landowner] ... can hold a project to ransom is just a joke.

484. A number of witnesses told my officers that the earlier connections projects achieved in Stage 1 by the NVIRP project were the easier ‘low hanging fruit’.

485. The difficulties ahead in the Stage 2 connections program are acknowledged in an appendix to NVIRP’s Stage 2 Business Case:

[Stage 2] involves engaging and converting the entire remaining customer base. This is a far more mixed group and may be characterised by the lower levels of interest and higher costs.

486. NVIRP has identified the following ‘tools and mechanisms’ which may be required to create additional incentives for these landowners to participate:

- raising service point fees to reflect real prices
- charging levies on delivery shares to reflect the real costs incurred in servicing outlets
- users being charged for water measured at the backbone channel rather than from their farm gate
- termination of service ‘as an option of very last resort’. 58

Conclusions

487. The success of the NVIRP connections program is currently measured on the number of channels rationalised and the delivery shares moved to the backbone. While the amount of water savings achieved is an important goal for the NVIRP project, individual landowners and the Foodbowl itself should not be disadvantaged from ‘over rationalisation’.

488. While modernisation is generally supported by most irrigators within the region, my investigation established that the demarcation of backbone and non-backbone channels and the privatisation of infrastructure has potentially disadvantaged some irrigators, particularly those who own land that is not on a backbone.

While modernisation is generally supported by most irrigators within the region, ... the demarcation of backbone and non-backbone channels and the privatisation of infrastructure has potentially disadvantaged some irrigators.

489. While NVIRP provides incentives to landowners to compensate for costs incurred through the modernisation project, in practice that compensation is inequitably distributed and not in line with industry guidance. While the guidelines recommend irrigators be compensated for 20 years’ operating costs, they are sometimes compensated for a period less than this.

**While NVIRP provides incentives to landowners to compensate for costs incurred through the modernisation project, in practice that compensation is inequitably distributed.**

490. The NVIRP project commenced operating without firm decisions being made on a number of policy issues. In particular, it appears undecided whether compulsory measures of participation will be introduced to enable NVIRP to force landowners to participate in the project. In my view, the complexity and enormity of this task involving over 15,000 irrigators, has been severely underestimated.

491. Both the Department of Sustainability and Environment and GMW have obtained legal advice confirming the legality of syndicates pursuant to the Constitution. There still however remains a risk that syndicates will fail and that the responsibility for the water delivery to those irrigators will revert to GMW.

**There remains a risk that syndicates will fail and that the responsibility for the water delivery to those irrigators will revert to GMW.**

492. Based on my review of the evidence presented, the fact that the connections program is currently behind schedule and is participatory in nature demonstrates that it is unlikely that it will be completed as currently planned by NVIRP. Therefore the goals, the tools and the approach need to be revised. As NVIRP is approaching the implementation of Stage 2, it is timely that this occurs soon.

493. In response to my concerns, NVIRP said:

[In relation to syndicates] … any reversion would need to reflect the associated costs and this in itself would be a significant disincentive for reversion.

A review of the tools available to NVIRP and the participatory nature of the program would be welcomed. The Connections Program has identified sufficient business cases involving willing irrigators to achieve all Stage 1 targets and NVIRP is extremely confident that these targets will be achieved. The Ombudsman’s office was also provided with information on the Strategic Connections Projects approach which aims to improve community participation and avenues to appeal NVIRP decision making whilst achieving higher rates of agreement to modernise.
Recommendation

Recommendation 15

I recommend that the Department of Sustainability and Environment ensure that:

- Compensation to irrigators is transparent, equitable and reasonable.
- Irrigators whose property is not adjacent to a backbone are not disadvantaged.
- Alterations to the backbone are made in a way which is transparent.
- Uncertain elements of the program, such as whether powers to compel participation will be introduced in certain circumstances, are clarified for the future.

The Department’s response

Recommendation accepted.

Farm designers

494. Farm designers are independent contractors who design irrigation systems within farms; determine how water can be moved from water channels onto farms; and how best to distribute water to meet the farm’s requirements.

495. To implement the connections program, NVIRP contracts farm designers to formulate proposals on how non-backbone properties can be connected to the backbone. Farm designers conduct ‘farm irrigation assessments’ which:

- identify on-farm environmental issues
- develop a preliminary farm design for landowner consideration
- outline on-farm costs necessary for modernisation
- attempt to maximise asset rationalisation opportunities and water savings.

496. During the life of the Foodbowl project, NVIRP estimates that around 16,000 farm irrigation assessments will need to be conducted. NVIRP has appointed 14 farm design companies (with a total of 40 farm designers) to undertake this role. Some interstate farm design companies have been engaged by NVIRP as the project’s demand for farm designers far exceeds the number of farm designers available in Victoria.

497. As at July 2011, work allocated to farm designers totalled $20.1 million; and $14.2 million has been paid to farm design companies for completed work.
498. During my investigation it became clear that farm designers are conflicted between the role they perform for NVIRP and the services they provide to private landowners. This is because farm designers often undertake work for both parties on the same project, and at the same time. NVIRP is aware of this fact and has failed to address it.

Farm designers are conflicted between the role they perform for NVIRP and the services they provide to private landowners ... NVIRP is aware of this fact and has failed to address it.

499. My officers also identified that NVIRP has failed to exercise adequate oversight of farm designers and respond to serious quality concerns raised in external audits by an independent farm design company.

NVIRP has failed to exercise adequate oversight of farm designers and respond to serious quality concerns raised in external audits by an independent farm design company.

Conflicts of interest

500. A conflict of interest occurs when a public officer has a private interest which could conflict with the public duty they perform.

501. Public officers have many and varied private interests and it is unrealistic to expect that a public officer will never be faced with a conflict of interest, particularly when they live and work in a small community. When conflicts do exist, they must be identified and managed appropriately.

502. Farm designers are contracted by NVIRP to provide services similar to the work they undertake in a private capacity in Northern Victoria. At interview on 23 March 2011, NVIRP’s Executive Manager Modernisation noted this and said:

[the Farm Designers have] always worked closely with landowners, and it’s always been an issue for us that when we put them on a panel that they were working for us and not the landowners.

503. NVIRP’s contracts with farm designers require that farm designers are ‘not engaged in any business, trade or calling ... whereby directly or indirectly, duties or interests are or might be created in conflict with ... their duties and interests under this agreement’.

504. NVIRP requires farm designers and their staff to identify and declare any conflicts of interest, and maintains a ‘Farm Designers Conflict of Interest Register’ which is updated annually and includes declarations by farm designers of financial and property interests.

505. In addition to the farm designer contracts and register, the Connections Program Operational Guidelines state that farm designers must ‘ensure
that no actual or perceived conflicts of interest exists ... [through] the firm for which they work, in connection with the information and advice provided and/or received'.

Farm designers privately project-managing works

506. Once NVIRP approves a farm designer’s preliminary assessment and provides compensation to a landowner, the landowner is responsible for having the work completed. The landowners can hire a project manager or project manage the works themselves.

507. My investigation established that NVIRP does not restrict farm designers from project managing their own designs and has even recommended it on occasion.

508. As farm designs include an estimation of costs for project management, and this estimation is based on the total cost of the works, there is a clear potential for farm designers to design costly irrigation setups thereby inflating the potential project management fees they could solicit for future work.

509. In correspondence to NVIRP dated 2 March 2011, farm designer A raised concerns that another farm designer company, farm designer B was project managing its own NVIRP design. This correspondence said:

   Our understanding is this is a conflict of interest as they no longer provide independent advice to the farmer nor NVIRP.

   ... [We] would assume the initial NVIRP contact is a confidential negotiation and no [private] commercial advantage should result from these Government funded works.

510. NVIRP’s Executive Manager, Modernisation replied to the private company in correspondence dated 8 March 2011:

   NVIRP has no real issue with Farm Designers being appointed as project managers if this drives efficiencies for the entire project. Nevertheless we are keen to promote and utilise local firms wherever possible. NVIRP sees no conflict-of-interest with this arrangement as it only occurs after landowners have agreed and entered into a legally binding contract. In essence the landowners are appointing the project manager albeit this appointment may be at NVIRP’s request to ensure good on-farm outcomes are achieved and to drive efficiencies.

511. In response to my draft report, the Manager, Modernisation wrote:

   The only time a project manager is appointed by NVIRP is if there are significant environmental or safety risks in a project, or if NVIRP is requested to make such appointment by the landowner. This does not infer that the particular farm designer who developed the design is appointed to project manage the on-farm works implementing their design. Rather, a decision by NVIRP to appoint a project manager is based on ensuring the appropriate outcomes are achieved for the landowner by the most efficient means. In
this process, NVIRP will take into account the location of the Farm Designers, and their availability.

512. During my investigation, NVIRP implemented a process where companies would tender to be placed on a panel of project managers, from which landowners can select a project manager for their modernisation work. Under this approach, farm designers can be project manager panel members.

513. In a proposal to the NVIRP Board Modernisation Sub-committee titled ‘Strategic Connections Project Delivery Framework’ dated 4 July 2011, the Manager Modernisation wrote:

Some landowners may not have the capacity to manage a Project Manager. In these cases NVIRP could provide assistance to the landowner ... There is a potential conflict-of-interest between the designated farm designer also being a Project Manager however, in a lot of cases, it will make sense that the two tasks are performed by the same person. One way of managing this is to ensure a higher number of projects with the same Farm Designer/Project Manager are audited and that guidelines are reviewed and revised as the program continues to unfold.

514. In response to my draft report, the Manager Modernisation highlighted an ‘audit and review’ phase undertaken by NVIRP in which farm design proposals are checked. In my view, the auditing of farm design works is insufficient and does not meet the standards set out in NVIRP’s guidelines. This is discussed later in my report.

515. Under the revised approach, it would be possible for:

- a farm designer to be paid by NVIRP to approach irrigators and prepare farm assessments; then
- be paid by the landowner to project manage their own design; then
- be re-engaged by NVIRP to verify the works are complete.

516. In response to my draft report, the Manager Modernisation noted that:

It is common practice in the irrigation industry for Farm Designers to be engaged to design and project manage all types of on-farm works irrespective of the funding source ... NVIRP never re-engages a farm designer to verify completed on-farm works where the same farm designer was responsible for the design/installation and/or construction of those works.

517. NVIRP staff advised my officers that any conflicts of interest would be mitigated by the farm designer’s concern to protect his/her professional reputation by doing a good job.

Providing other private professional services

518. Once a farm designer submits a farm irrigation assessment to NVIRP, their work with that landowner on behalf of NVIRP is complete. My investigation established that some farm designers have used their contact with a landowner to solicit and provide other professional services on a fee-for-service basis.
These services were provided to landowners at the same time that the designer was providing services on behalf of NVIRP. In many instances these services were provided to assist works completed in the modernisation project.

**Case study: Sustainable Soils & Farms (SSF)**

NVIRP contracted a farm design company to work with a private company, SSF, within the connections program. SSF proposed to purchase a number of properties within the GMID and undertake on-farm works resulting in considerable water savings.

NVIRP’s Operational Guidelines allow compensation to be paid to assist with the prospective purchase of property if this purchase would result in the achievement of water savings. NVIRP provided an incentive payment of $1,044,322 to SSF to assist with the property purchases, on the basis of the water savings SSF proposed would be generated. The farm designer who was under contract to NVIRP subsequently provided private services to SSF including the project management of around $350,000 of on-farm works; the designer even contemplated privately investing in SSF’s company.

During my investigation, a dispute between SSF and NVIRP arose as to who should pay the contractors for completed on-farm works amounting to $155,964.20. SSF claimed that the farm designer was working for NVIRP and therefore NVIRP should pay for the works and NVIRP claimed that the farm designer was working for SSF when it project managed the works and therefore SSF was responsible for the payment of the contractors.

At the date of this report, the contractors had not been paid.

Further discussion regarding SSF is outlined in chapter 10 of my report.

NVIRP’s Connections Manager advised my officers that NVIRP does not maintain a record of the private arrangements farm designers enter into with landowners.

As farm design companies often offer private services involved in modernisation works, they have an interest in designing plans that require the services that they provide in a private capacity.
Case study: Farm designer proposing solutions to maximise private benefit

On 6 January 2009 NVIRP contracted a farm design company to provide farm design solutions for the NVIRP project. NVIRP identified that most of the company’s solutions proposed a pumped ‘pipe and riser’ solution, even though NVIRP considered this was not necessary in many instances.

As well as offering farm design services, the company provided services for the construction of pumped pipes and risers. NVIRP was concerned that the company was attempting to use its position on the farm design panel to solicit and maximise private work for the company.

After a number of warnings, NVIRP ceased its contract with the company due to concerns it had acted on a conflict of interest.

523. My investigation also received allegations that some farm designers were using their position to persuade landowners to use certain external companies for on-farm construction works. This allegation is of concern as there is a risk that farm designers may receive commissions or ‘kick-backs’ from the companies they recommend landowners use, for their on-farm works.

Case study: Farm designer using sole supplier for works

A property owner told my officers that company A (a farm designer) was project managing her NVIRP project. She raised concerns that company A was only referring to price lists of one supplier when determining the price of the works and she had concerns it were not considering other supplier’s products.

The property owner said that she had checked the price list of another supplier and found the other supplier to be much less expensive (however they didn’t offer the specific equipment size needed by company A). She said that when she asked company A about this, he said that he had not ‘even approached the other supplier’.

In discussing the matter with the property owner, it became apparent that company A was not actually ‘project managing’ her works but was in fact her allocated farm designer. As the property owner had not yet reached an agreement with NVIRP for the incentive required, she had not received any funds for the project and the ‘project managing’ phase of her project would not commence until the farm design phase was complete. She was unaware that she was able to select her own project manager and that the payment for managing the project would come out of her allocated NVIRP incentive. When this was raised with her, she said that she had thought company A were project managing her works and even if she had the choice, company A would manage the works when the time came given they had designed the works.

524. The following case study outlines the action taken by NVIRP in dealing with an allegation that a company who was project managing NVIRP
modernisation works (the project manager) had provided a confidential quote to a company to allow that company to ‘undercut’ the services of a farm designer.

Case study: Provision of a farm designer’s works quotations to a competitor

In June 2010, a farm designer approached NVIRP concerned that the project managing firm had distributed its quotes for on-farm works to a competitor. The farm designer said it initially provided the quotes direct to landowners and was concerned that the project manager had sent their quotes to a competitor.

After learning of the farm designer’s concerns, NVIRP’s Manager Connections Consultation wrote to the project managing firm advising:
- a farm designer had made an allegation about the project manager
- the allegation was that the project manager had sent the farm designer’s quotes to a competitor
- the NVIRP manager and his Executive Manager had found ‘this a bit hard to follow’ because it is not the farm designer’s role to obtain quotes
- he had advised the farm designer not to render detailed quotes in future
- he had taken the opportunity to reprimand the farm designer about an unrelated matter, such as building the expectations of landowners.

In his letter to the project manager, NVIRP’s Connections Manager wrote:

If you need to discuss any specifics with me please do so. I trust this will not become an issue of any significance and I encourage you to keep up the good effort you are putting in and always engage with the community professionally.

The matter was not investigated further by NVIRP.

525. I consider the Connections Manager’s response to these serious allegations to be inappropriate because:
- the identity of the complainant was disclosed to the respondent
- the matter was not investigated by NVIRP
- the respondent was commended
- the complainant was reprimanded by NVIRP.

526. In my view, this is not how a complaint about a potential conflict of interest should be managed. It indicates a lack of understanding by a senior NVIRP staff member of the implications of this matter and conflict of interest issues involving farm designers and the connections program.

527. In response to my draft report, the Connections Manager said that he had discussed the complaint matter with a representative from the farm designer company and that the action NVIRP took in response, was ‘...
what [the farm designer company] would have wanted and expected me to do’. He said that this was also the reason why NVIRP did not investigate the matter further.

528. My investigation heard from many property owners that they were unsure in which capacity farm designers were attending their farms: whether they were acting in the irrigator’s interest; the farm designer’s private interest; or in the interests of NVIRP. This is demonstrated in the following case study.

Many property owners were unsure in which capacity farm designers were attending their farms: whether they were acting in the irrigator’s interest; the farm designer’s private interest; or in the interests of NVIRP.

### Case study: Sustainable Soils & Farms (SSF) and a landowner

SSF is a private company who wanted to purchase properties and obtain NVIRP incentives via the connections program.

A farm design company was contracted by NVIRP to conduct farm irrigation assessments. At the same time, it was contracted by NVIRP to ‘provide support and guidance’ to the SSF project.

While assisting SSF, the farm design company also began providing private professional services to SSF. It provided private third party landowner information (obtained from NVIRP) to SSF to help it identify properties to purchase.

The farm design company attended a landowner’s property on behalf of NVIRP to discuss modernisation opportunities. While at the property, the farm designer provided a letter to the landowner which contained an offer for the purchase of his property from SSF. This offer was on the letterhead of the private company SSF.

529. In response to my draft report, the farm designer said:

[The farm designer] suggest to all landholders they can choose their preferred consultant and in some cases landholders have engaged a consultant they have previously worked with. In many instances landholders have requested [the farm designer] to undertake the work as [the farm designer] are preparing the report for reconnection or rationalisation.

[In relation to the case study above] on at least three occasions [the farm designer] handed an envelope to [the landowner] as letters of offer from NVIRP and legal agreements were hand delivered. It is without [the farm designer] knowledge of the written content within the envelope in all three cases as these were delivered to [the farm designer] to hand over to [the landowner].

The practice to have the consultant pass on the legal agreements was done due to [the landowner] having the confidence working
with [the farm designer personnel] on NVIRP related matters. If an envelope containing matters not related to NVIRP was passed on to [the landowner] it was for convenience that [the farm designer] delivered an envelope and not for [the farm designer] to gain any advantage.

... Landholders find [it] advantageous dealing with the consultant contracted to NVIRP that will assist with on-farm issues of water efficiencies that link to NVIRP projects. There is no conflict undertaking the on-farm work that is linked to the NVIRP reconnection.

530. At March 2011, there had been 1,935 landowners involved in connections to the backbone and therefore serviced by farm designers. During the life of the project, only two conflicts of interest have been identified and reported to NVIRP involving farm designers. In one situation the farm designer was asked by NVIRP not to represent the landowner. The other is outlined below.

Case study: Conflict of interest

On 10 June 2010 a farm designer declared to NVIRP that he had a conflict of interest concerning proposed work on a landowner’s property. The conflict arose because the landowner was ‘an employee of ours on a casual basis late last year and early this year’. The farm design company proposed that it complete the survey on the property and pass that information to another farm designer to develop the subsequent design proposal. The proposal involved the upgrade of a meter on the backbone.

The declaration was made to NVIRP’s Project Officer, Business Performance. The farm designer completed the survey and an independent designer was appointed to complete the work.

531. In the above case study, to avoid any perceived conflict of interest in this situation, I consider it would have been appropriate for the independent farm designer to complete the entirety of work associated with the property.

532. It does not appear that any NVIRP manager or senior officer was involved in assessing the appropriate action to take as a result of the designer’s declaration. In fact, the only action taken by NVIRP was that proposed by the designer. I am concerned that an officer and not a manager was tasked with approving the designer’s proposal in response to a conflict of interest, particularly given that the officer appears to have approved an inappropriate course of action.

533. Given the potential for conflicts to occur and the number of landowner approaches made by farm designers, I consider the fact that two declarations of conflict of interest have been made demonstrates that conflicts are significantly under reported in the project.
Lack of adequate oversight of farm designers

External independent oversight

534. The Operational Guidelines state that two independent farm designers will be engaged to verify the quality and costing of farm designs every six months, or ‘where performance is questionable’.

535. My officers requested evidence of all external audits completed. NVIRP provided a six-page document evidencing a March 2010 audit of three farm irrigation assessments. This is the only external auditing of farm designers that has been undertaken.

536. The audits which were completed raise concerns about the quality of farm designer services including:
   • insufficient information provided in the designs
   • excessive costing
   • the inclusion of ‘luxury items’ and unnecessary works.

The audits which were completed raise concerns about the quality of farm designer services including:
   • insufficient information provided in the designs
   • excessive costing
   • the inclusion of ‘luxury items’ and unnecessary works.

537. The audit described one farm designer’s plan as ‘woefully inadequate’.

538. The results of the audit are to be reported to the Internal Review Panel and, where necessary, the Board Modernisation Sub-committee. In relation to the reporting that had occurred in response to this audit, NVIRP’s Manager Connections said he thought the matters were discussed at a farm designers workshop and ‘would have’ been presented to the board. He was unable to specify any steps which were taken to resolve the issues identified in the audit.

Internal checks

539. The role performed by farm designers is managed by NVIRP via contractual arrangements and the rules included within the Operational Guidelines.

540. My officers requested NVIRP provide evidence that the Operational Guidelines were adhered to in the oversight of farm designers. Substantial documentation was provided however a review of this documentation identified that NVIRP has failed to act in accordance with its guidelines in relation to the following aspects:
   • Internal reporting – While NVIRP undertakes significant internal reporting on the progress of its connections program, this reporting largely focuses on the quantity of work completed as opposed to the quality of work undertaken.
• **Quality assurance reporting** – A bi-annual report is provided to the NVIRP Board and Modernisation Committee. My officers reviewed the April-September 2010 Quality Assurance Report which is largely a summary of the processes and procedures implemented to support the Operational Guidelines as opposed to reporting on the outcomes of those processes and procedures. For example, the Guidelines state that the report will include a list of all conflicts of interest which are identified in the project and their managed outcomes. However, the report itself only states that NVIRP staff (excluding the farm designers) have declared their private interests.

• **Quality assurance checklists** – My officers conducted a random audit of business cases which involved incentive payments paid to landowners over $50,000. This audit identified that about one-third of the checklists were not completed, or were completed retrospectively prior to NVIRP’s contract with the landowner being sent to the landowner.

• **Internal oversight committees** - There was insufficient evidence provided that NVIRP’s oversight committees (particularly the Internal Review Panel and the Irrigation Surveyors and Designers Group-ISDG), are carrying out their quality assurance functions. The minutes of the Internal Review Panel only record decisions relating to business cases and do not demonstrate any discussion of quality assurance issues.

• **Cost estimation** - The cost estimates contained in farm irrigation assessments are verified against guidelines developed by ISDG. This provides a basis for NVIRP staff to ensure that farm designers are not over-costing the works they design. NVIRP’s Executive Manager Modernisation advised my officers that the verification of costs against the guidelines is not documented.

• **Internal audits** - NVIRP’s contract with farm designers allows it to inspect and/or audit the accounts and records of any farm designer in relation to its provision of NVIRP services. My investigation established that NVIRP had never audited or inspected the files of any farm designer.

541. In response to my draft report, NVIRP said:

   Internal Reporting – the bi-annual QA process also involves an independent irrigator survey of 100 landowners who have been involved in the program. This provides an analysis of the quality of the processes that have been undertaken by NVIRP, allowing trends to be determined and continuous learning engendered within the Modernisation team.

   Quality Assurance Reporting – as well as including a landowner survey, an extensive review of farm designer performance is also undertaken as part of the QA reporting process. In the report completed for the period ending 30 June 2011, 16 separate recommendations were made in relation to areas for improvement.

59 A panel which has been established to evaluate and review all projects with a value of $100 000 - $500 000 to ensure adopted procedures have been followed.
... Internal Reporting focuses on the quantity of outcomes achieved whereas the QA report focuses on the quality.

Internal audits - This was an oversight on NVIRP’s behalf and has been rectified. Since this was brought to NVIRP’s notice 6 separate companies have been audited.

542. In addition to the internal checks prescribed in the Operational Guidelines, NVIRP undertook a Farm Designer Performance Assessment dated 24 September 2010. This report states:

The farm irrigation designers have provided a high standard of work, although as this report shows the costs to complete these works varies significantly from one company to the next ... the report is timely in that many of the current farm assessors, whilst being capable in completing backbone meter assessments, may not have the ability to think outside the square creatively and successfully undertake strategic connections projects [in Stage 2].

... many are still over costing designs, taking on too much work and are not being timely in their response and still need to work on their understanding of the NVIRP principles.

543. The report lists four companies from the panel of 14 which are not performing and states:

In an ideal world, continued engagement of these under performing companies would be unacceptable, but given the lack of farm design resources, engagement of individuals within these companies is required. It is noted however that individuals from these companies moving forward will be scrutinised in detail and if deemed under performing will be given no additional work.

Conclusions

544. The role of a farm designer is a critical element of the Foodbowl project. This is highlighted by the significant costs incurred by NVIRP in providing farm designer services and that farm designers will be in contact with all 15,000 irrigators during the life of the project.

545. I consider that the role of the farm designer is inherently conflicted with no clear delineation between their roles when acting on behalf of NVIRP or when acting on behalf of irrigators. NVIRP has failed to address this risk. It has not placed any restriction on the private work farm designers can complete for the landowners they provide NVIRP services to.

The role of the farm designer is inherently conflicted with no clear delineation between their roles when acting on behalf of NVIRP or when acting on behalf of irrigators.
546. Senior NVIRP staff have a misunderstanding of what constitutes a conflict of interest and how such should be managed. The oversight of the farm designers, a function recognised by NVIRP as critical to the Foodbowl project, has been insufficient. In particular, my investigation established that the external auditing of the quality of services provided by farm designers is severely underutilised. The independent audit of only three designs within a two-year period is clearly inadequate.

The oversight of the farm designers, a function recognised by NVIRP as critical to the Foodbowl project, has been insufficient.

547. Internal auditing of farm design works is also insufficient and does not meet the standards set out in NVIRP’s guidelines. Where farm designers are found to be under-performing, NVIRP is clearly hesitant to take appropriate action due to the limited number of farm designers available in Northern Victoria and the substantial number needed for the project.

Internal auditing of farm design works is also insufficient and does not meet the standards set out in NVIRP’s guidelines.

548. I do not consider the role of farm designer has been well managed by NVIRP. If the farm designer program is to be successful, it must be strengthened in terms of service quality, service quantity, integrity and probity. This will ensure that public funds are properly spent and the project delivered effectively.

Recommendations

I recommend that the Department of Sustainability and Environment:

Recommendation 16

Review the use of farm designers to assist in the implementation of the Foodbowl Connections Program to ensure probity and integrity in their appointment; management; monitoring; and review and oversight. In particular, specific areas for improvement should include:

- the role of a farm designer
- farm designer contracts and guidelines
- conflicts of interest
- private work undertaken by farm designers in areas that they service
• independent and regular audit and oversight of designer’s proposals
• appropriate resourcing of the audit of designers.

The Department’s response

Recommendation accepted.

Recommendation 17

Ensure all staff involved in the Foodbowl project undertake training in understanding, recognising and managing conflicts of interest.

The Department’s response

Recommendation accepted.
8 Project timelines

Progress against business case targets 127
Timeline comparisons 128
Conclusions 129
Recommendation 130
8. Project timelines

549. The initial timeline for key events in the Foodbowl project is outlined in the following table:

**Table 6: Foodbowl Modernisation project – Initial Timeline**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2007</td>
<td>Former government announced the Foodbowl Modernisation Project</td>
</tr>
<tr>
<td>December 2007</td>
<td>NVIRP is established as a State Owned Entity</td>
</tr>
<tr>
<td>December 2007</td>
<td>Early works of +$100 million funding approved</td>
</tr>
<tr>
<td>December 2007</td>
<td>NVIRP office established to provide support to the NVIRP Board during the start-up phase</td>
</tr>
<tr>
<td>March 2008</td>
<td>Former government approves the early works’ business case</td>
</tr>
<tr>
<td>May 2008</td>
<td>Early works commenced</td>
</tr>
<tr>
<td>May 2008</td>
<td>Mr Murray Smith is appointed as NVIRP CEO</td>
</tr>
<tr>
<td>August 2008</td>
<td>Stage 1 business case is submitted for approval and it is determined that more work is required. Former government approves the procurement process for the business case.</td>
</tr>
<tr>
<td>December 2008</td>
<td>Managing Contractor appointed</td>
</tr>
<tr>
<td>June 2009</td>
<td>Former government approves the Stage 1 business case</td>
</tr>
<tr>
<td>2008 – 2012-13</td>
<td>Stage 1 time period</td>
</tr>
<tr>
<td>2010 – 2016-17</td>
<td>Stage 2 time period</td>
</tr>
</tbody>
</table>

(a) As announced on 18 October 2011, NVIRP Stage 1 has been extended from June 2013 to June 2018.

Source: Information provided by NVIRP.

550. The timeline highlights a rapid period of development which has seen the establishment of NVIRP and the rollout of the Stage 1 capital works.

551. Senior staff from both NVIRP and GMW have expressed concerns about the project timeframes and NVIRP’s capacity to meet the timeframes, for example:

... the timelines are just frightfully huge and tight
... there are some real significant pressures ...
... it [Stage 1] was certainly very, very ambitious given the timelines.
... the timelines of this whole project are extraordinarily ... ambitious.
... I’m sure we can do it within the timeframes ... but are we doing it to the best of our ability in those timeframes? I’m not sure. Are we going to get the best outcomes for everyone in that timeframe because of the resources we’ve got? I’m not sure.

Progress against business case targets

552. The Stage 1 business case provided target timeframes for completion of aspects of the project as they related to achieving the water savings. The volume of water savings available in any one year was determined by the capital works completed in the previous year. Hence, achieving water savings has driven the timeframes for the delivery of the project by NVIRP.

553. Table 7 outlines the progress of the Foodbowl project as at 30 June 2011. At this date, 60 per cent of the scheduled time for Stage 1 had elapsed.

Table 7: Progress against Stage 1 targets as at 30 June 2011

<table>
<thead>
<tr>
<th>Milestone Category</th>
<th>Measure</th>
<th>Original Business Case Targets</th>
<th>Approved Revised Business Case Targets</th>
<th>Progress as at June 2011</th>
<th>Progress achieved against revised targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gates</td>
<td>Gates Installed</td>
<td>3,133</td>
<td>2,925</td>
<td>2,528 a</td>
<td>86%</td>
</tr>
<tr>
<td>2. Channel Remediation</td>
<td>Kilometres Refurbished</td>
<td>380</td>
<td>323</td>
<td>64 b</td>
<td>20%</td>
</tr>
<tr>
<td>3. Backbone Meters</td>
<td>Meters Installed</td>
<td>4,680</td>
<td>4,540</td>
<td>3,035</td>
<td>67%</td>
</tr>
<tr>
<td>4. Connections Meters</td>
<td>Meters Installed</td>
<td>1,620</td>
<td>1,620</td>
<td>20 c</td>
<td>1%</td>
</tr>
<tr>
<td>5. Connection Agreements</td>
<td>Delivery share relocated to backbone (ML/d)</td>
<td>2,258</td>
<td>2,258</td>
<td>1,298</td>
<td>57%</td>
</tr>
<tr>
<td>6. Connection Agreements</td>
<td>Kilometres channel rationalised</td>
<td>859</td>
<td>859</td>
<td>450</td>
<td>52%</td>
</tr>
<tr>
<td>7. Meters Rationalised</td>
<td>Agreements finalised</td>
<td>1,877</td>
<td>1,877</td>
<td>980</td>
<td>52%</td>
</tr>
</tbody>
</table>

Notes: (a) The figure does not include gates to be installed during the May to August 2011 winter works program. The target is 195 gates.
(b) The plastic lining of channels was due to be ramped up from 2011-12 onwards. The figure does not include channel remediation undertaken in the May to August 2011 winter works program. This is estimated at 45 kilometres.
(c) The installation of connections meters commenced in May 2011 due to a focus on installing backbone meters.

Source: Information provided by NVIRP.

554. The 30 June 2011 NVIRP progress report noted that meter installation progress had been adversely impacted as a result of the floods and wet weather experienced from December 2010 to February 2011.
Issues impacting on the achievement of timelines

555. Several GMW and NVIRP staff (including contractors) said that the tight timelines associated with the Foodbowl project presented significant challenges. My investigation identified the following issues as likely to impact on NVIRP’s capacity to meet the project timelines into the future:

- The voluntary nature of the project and hence, the challenge to negotiate with all landowners to relocate supply to the backbone. This in turn impacts on the timeliness of the works program.
- The movement of landowners and closure of irrigation districts.
- Availability of farm designers to service the needs of the irrigators.
- The time taken to ensure appropriate approvals are obtained by GMW and NVIRP.
- Delays associated with finalising business cases and connections legal agreements with irrigators and GMW approval processes.
- Issues with the availability of capital works components for example, meters.

556. In response to my draft report, NVIRP said, ‘No works to NVIRP’s knowledge have been delayed or cancelled due to non-availability of meter components. There have been some factory delays on occasions delivering concrete pits and products but this has not been seen as a major issue’.

557. In relation to a realistic timeframe for completion of the Foodbowl project, many NVIRP and DSE staff interviewed by my officers considered an extension of time from 1-2 years to 8-9 years for the completion of Stage 2, would be a more achievable target.

558. The Group Director, Department of Sustainability and Environment said at interview on 23 May 2011:

I think there’s always scope to re-visit any business case … particularly one that’s going on … to 2018. One that’s also very much dependent on what’s happening within the community and what might be happening in regards to … climate, whether we’re in flood and drought, political environment … I think that there’s a lot of other influences out there that would lead us to the fact that we need to go back and revisit it [the business case].

Timeline comparisons

559. Specialist advice obtained during my investigation provided information on timelines associated with other irrigation projects.

560. During the 1990’s various improvements in infrastructure and land management were made in NSW through Land and Water Management Plans.

561. In NSW, the improvements to existing irrigation schemes over past decades have been in the main based on changes to management
accountability; modification to the assignments of water entitlements; changes to on-farm management practices; improvements in infrastructure (such as efficient regulators, channel lining); and more recently new metering.

562. Planning for these incremental investments generally took several years. The planning from initiation to implementation of Land and Water Management Plans took up to six years with approved government support over a 15-year investment period.

563. Compared with the Foodbowl project, the NSW projects did not involve significant re-configuration and associated system structural adjustments and they were less significant financial investments.

Conclusions

564. In the context of severe drought, the Foodbowl project aimed to achieve water savings and a significant program of modernisation in a timeframe which, compared with other similar projects, was ambitious.

565. The timeframes applied to this project have had implications for its successful delivery. A lack of planning has meant that aspects of the project have not proceeded as they should have, had adequate time been allocated for planning and consultation with irrigators. For example, revisions were required to the business case targets in respect to channel lining and components for capital works were not available.

566. The changes the Foodbowl project will bring to the way irrigation occurs in Northern Victoria are complex. It is more than simply the automation of the existing manual system; it has long term implications for irrigators. There are also significant social implications in the project. The amount of planning and particularly consultation has been significantly less than that undertaken for less significant projects interstate.

A lack of planning has meant that aspects of the project have not proceeded as they should have, had adequate time been allocated for planning and consultation with irrigators.

567. In light of the matters outlined above, a review of the strategic direction of the Foodbowl project is both warranted and timely.

568. In response to my draft report, NVIRP said:

It was a conscious decision of the former government not to afford the project a planning period prior to implementing the works and programs such as connections. The channel remediation issue could not have been overcome through an earlier planning process [sic] it has emerged through experience and learning as the project progressed.
Recommendation

Recommendation 18

I recommended that the Department of Sustainability and Environment review the strategic direction of the Foodbowl project. This review should include consideration of the following issues which are important to the successful implementation of the project:

- the timeframe for completion of the project
- farm design resources
- legal agreement resources
- the supply of materials for the capital works program
- the timeframe for individual and community consultation
- the use of formal powers available to the Minister under the Water Act.

The Department’s response

Recommendation accepted.
9 Supplier to the Foodbowl project

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9. **Supplier to the Foodbowl project**

569. The Foodbowl project utilises channel technology which automates the water supply system, allowing irrigators to order water online and have it supplied to their properties within several hours of ordering. Previously, water orders had to be placed much longer in advance and irrigators would manually lift gates to let water flow onto their property.

570. The technology allows water to be measured more accurately and can assist GMW to pinpoint water leakage, seepage and losses from theft.

571. A Victorian company (the company) owns the channel automation technology which provides, installs and maintains the equipment; it also trains GMW staff to use its equipment.

572. The company was formed in May 1995 by five individuals, four of whom were former employees of the Rural Water Corporation when the corporation was dissolved by the State government as a result of the then government’s restructure of the water industry in Victoria. The dissolution led to the creation of a number of new water authorities, including GMW.

573. GMW and the Department of Sustainability and Environment first piloted the company’s channel automation technology in 2002-04 in the Central Goulburn number 2 channel. The trial costs were shared equally by the company, GMW and the Department of Sustainability and Environment. Between 2005 and 2009, the company supplied equipment and services to GMW for water savings projects including the Strategic Measurement Project, Reconfiguration Program, Central Goulburn 1-4 and Shepparton Irrigation Area modernisation projects.

574. In response to my draft report, a director of the company said:

> [The company] commenced development of its [channel automation] technology around 1995 and self funded a significant amount of research, particularly in conjunction with the University of Melbourne.

> ...

> GMW and DSE entered into the Pilot Agreement “to understand and obtain information about the system for possible application throughout the irrigation channels under the control of GMW”.

575. The company advised my officers that from 2005 to date:

- it has received $185 million in total revenue from GMW and NVIRP for work in the GMID
- NVIRP, GMW and other Victorian Government entities account for over 80 per cent of its business.

576. Both GMW and the department have told me that, following GMW’s 2002-04 Central Goulburn trial, they considered the company was the only supplier capable of delivering a fully integrated automation system and that a contestable tender process would be of no value.
In January 2005 the company and GMW entered into an Agreement for the Supply and Integration of [channel technology]. The contract between the company and GMW was revisited in 2007. In February 2009, NVIRP entered an agreement with GMW and the company (the Tripartite Agreement) to enable NVIRP to be supplied by the company under its pre-existing contract with GMW.

My investigation examined how the channel automation technology became the key technology used in the Foodbowl project. It appears that the company’s technology was considered to be at the forefront of developments in modernised irrigation systems and as a result the Victorian government has over several years procured its services.

In procuring the services of the company, the department appears to have taken reasonable action to assess risks, investigate probity, analyse competition and review the company’s pricing.

However a contestable selection process for the company’s involvement in the Foodbowl project was not undertaken, notwithstanding a departmental review confirming the existence of potential international competition in the field of integrated channel automation systems.

A contestable selection process for the company’s involvement in the Foodbowl project was not undertaken.

As the company’s technology was adopted by NVIRP for the Foodbowl project without a contestable procurement process, the company maintained its ‘sole supplier position’ and increased its market advantage relative to other potential suppliers of integrated channel automation systems.

In response to my draft report a Director of the company said:

[The company’s] market advantage has been achieved through its technical knowledge and significant investment in research and development that eventually led to the creation of the [channel automation technology] and the fact that [the company] is the only supplier, worldwide, of an automated, integrated open channel irrigation system.

... The decision to implement the proprietary [...] system was in the full knowledge that [the company] is its sole supplier.

... to [the company’s] knowledge there is no competitive solution to [channel automation technology], anywhere in the world. [The company] has [...] systems operating in a number of countries and to date we have never been requested to participate in a contestable process and despite our knowledge of the industry we are not aware of any comparable systems.
Procurement for the Foodbowl project

583. The relevant standards for procurement by NVIRP are set out in the Victorian Government Purchasing Board (VGPB) policy framework which states that for purchases over $10 million, agencies must:

- check whether the goods or services are available under an existing contract
- prepare a probity plan
- prepare a Strategic Procurement Plan, and obtain VGPB approval of the plan prior to commencing the tender
- conduct a public tender or obtain a certificate from the Accountable Officer (in NVIRP’s case, the CEO) waiving the tender requirement.

584. NVIRP did not undertake these processes when procuring products and services from the company. NVIRP’s Executive Manager, Governance, informed my office in writing on 19 July 2011 that compliance with VGPB procurement guidelines was not applicable and that the decision to adopt the company’s channel automation technology was made well before the establishment of NVIRP and:

- NVIRP believes the principal relationship as to procuring [the company’s] products and services which make up the [channel automation technology] solution but excluding products which are contestable such as meters, is between G-MW and [the company]. The terms and conditions under which the products and services are sourced by NVIRP such as pricing are set in the contract between G-MW and [the company] and over which NVIRP has no control.
- NVIRP has no discretion in the products and services it must acquire in meeting G-MW’s standard of a [channel automation technology] solution other than where it believes a contestable market exists such as for meters.
- ... it is also reasonable for NVIRP to assume a position that accessing [the company] products and services which make up the [channel automation technology] solution adopted for the GMID, is on the basis of being a sole supplier basis that has the endorsement of Government and the Board of G-MW.

585. NVIRP’s Executive Manager, Capital Works advised that $78.7 million had been paid by NVIRP to the company for Stage 1 works. Of this amount, works to the value of $77.2 million were not subject to a tender process.

586. As outlined below, Mr Downie, former General Manager, Office of Water, Department of Sustainability and Environment said that the procurement decision rested with NVIRP.
The decision to adopt the channel automation technology

587. It was consistently stated throughout my investigation by staff at GMW, NVIRP and the department that the company was the only supplier capable of delivering an integrated channel automation system. However, no one was able to say who made the decision to adopt the company’s channel automation technology for the project.

588. A former GMW Manager, Irrigation Modernisation said that GMW had been working with the company ‘for probably over ten years in development phase and testing’. He stated that there was a general assumption that the company’s channel automation technology would be used in the NVIRP project.

589. In response to my draft report, NVIRP said that the ‘basis for selection of [the company] as the appropriate automation technology is discussed in detail in the Stage 1 Business Case as part of the procurement strategy selection’. The business case also states, ‘[company] is a monopoly supplier to NVIRP and is a critical success factor’. NVIRP also said that this position was endorsed by the then government through the Cabinet process.

590. At interview on 8 July 2011, Mr David Downie, then General Manager Office of Water, said that following the NVIRP Early Works Program, the decision of whether to adopt the channel automation technology for the project rested with the NVIRP board and there was ‘no further commitment to [the company]’.

591. In response to my draft report, Mr Downie wrote:

   The Department and the Government endorsed the early works program and from the Department’s point of view the next stage works were to be managed by NVIRP, who would organize any contracts. That is why they were set up.

592. My office obtained an unsigned briefing to the then Treasurer, Mr John Brumby, dated 23 May 2007 (prior to the Foodbowl project announcement) which states that the proposed Foodbowl project involves:

   [a] refurbishment and restructure of Goulburn-Murray irrigation infrastructure, including reconfiguring large sections of both irrigation systems, piping and lining channels, and more automated [channel technology by the company].

593. Attached to the briefing is additional information on the channel technology which states:

   Whilst the [name] proposal’s infrastructure improvements are not described in any detail, it is reasonable to envisage that they would involve piping and lining of open irrigation channels, and further roll-out of [the company’s channel automation] technology.

594. In response to my draft report, the company stated:

   It was in 2004 that [the company] was approached by G-MW, DSE and Treasury to enter into negotiations for the supply of this technology across the State of Victoria. ...
Those negotiations were always represented to [the company] on the basis of a sole supplier contract because there were no competitors and therefore it was not possible to tender for the supply of such a system ...

Clearly the decision to contract with [the company] for the modernisation of G-MW systems was initially made in 2005 and by the time NVIRP came into existence there was no practical opportunity for it to review or change that decision other than to utilise the 3rd Party Integration clauses that were introduced in 2007 after the second KPMG Competitor Analysis.

Those clauses have been utilised by NVIRP/G-MW in both successful and unsuccessful cases and there are currently 3rd party products being integrated in the [channel automation] system by NVIRP.

Competition

595. The department and GMW undertook a number of steps to assess the company prior to entering a contract for the supply of channel automation technology in 2005. These included:

- assessing the risks of procuring the technology from the company
- commissioning a probity investigation by Dench McClean Carlson in 2004-05
- commissioning KPMG to do a competitor analysis in 2004
- commissioning KPMG to review the company’s pricing proposal in 2005.

596. These reviews did not identify any major issues of concern in relation to procurement from the company. However, the initial report of the probity advisor, provided to the department in September 2004, recommended that a competitor analysis be completed to identify ‘known interested suppliers’ and explain why they were not considered competitors for the channel automation technology. In response, the department commissioned KPMG to conduct a competitor analysis.

597. KPMG's report to the department in November 2004 concluded that the company did not have any Australian competitors and that competitors in the international market were less advanced in their product development and lacked the necessary physical presence in the region.

598. This report was revisited by KPMG in 2007 however a copy of the final report could not be located by the department. The 2007 draft report confirmed the conclusion of KPMG’s 2004 analysis that ‘[the company] is the only provider of an integrated solution to channel automation in the domestic market’. However, it also recognised that competitors’ products had improved and that there was potential competition emerging in integrated automation systems (in the international market) as well as in terms of system components. The report identified that there were three

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60 This analysis was revisited by KPMG in 2007 at the request of the Department of Sustainability and Environment.
international entities that could potentially provide a level of channel integration and automation close to that achieved by the company.

599. The report also said that procurement from a competitor would:

- enable water authorities to improve their value for money outcomes in the procurement of channel automation products by either negotiating better terms with the company or, sourcing products from its competitors
- increase the delivery risk from the perspective of water authorities that have used the company’s products and were generally satisfied with their performance and, may result in significant time delays.

600. KPMG’s 2007 report recommended that there be a technical review to assess the systems offered by the company’s international competitors.

601. The Group Director North Region, Office of Water, advised on 16 June 2011 that he was unable to find any records that showed such a review was undertaken.

602. At interview on 8 July 2011, my investigators asked Mr Downie if he knew whether KPMG’s 2007 recommendations were followed up. He said:

No I don’t, but I’d be surprised if they were. We don’t go on witch hunts around the world every time we do a contract. I mean every time we do a contract you award the contract at the time and then if you have to do a new contract, then you would check. But you certainly don’t do a world search all the time, you can’t afford it.

603. In response to my draft report, the company said that the recommendations in KPMG’s 2007 Competitor Analysis report had been acted on, including changes to supply contracts to enable third party products to be integrated with its channel automation technology.

604. Ensuring value for money is achieved is of particular concern in a sole supplier scenario. Concerns regarding the company’s pricing were identified by the department, GMW and the probity advisor in 2004 and measures taken to address these concerns included:

- the adoption of protocols to guide contract negotiations with the company
- the involvement of independent advisors on the contract negotiation team
- commissioning KPMG to assess the reasonableness of the company margins and gate manufacturing costs.

605. The Group Director advised that he was only able to locate a draft copy of KPMG’s pricing report. The report did not identify any issues of major concern in relation to manufacturing costs and concluded that the margins on the company’s gates were within a reasonable range.
606. The negotiations that proceeded led to the 2005 contact between the company and GMW. Negotiations regarding pricing were revisited in 2007 and resulted in the current contract, which improved some terms in favour of GMW, such as increased discounts and a one-off software licence fee for gates.

Conclusions

607. Prior to the 2002-04 trial, it would appear that the company’s channel automation technology was at a more advanced stage than local competitors. The trial and the company’s subsequent involvement in the GMID since the trial assisted it to improve its technology and increase its market advantage. To this extent, the involvement of the State government has assisted the company achieve and maintain its strong market position as a sole supplier of an integrated channel automation system.

608. A specialist review in 2007 advised the Department of Sustainability and Environment of potential international competition in integrated channel automation systems and recommended further review. My investigation found no evidence that the department acted on this information and therefore, I consider that the department cannot be assured that potential suppliers did not exist at the time NVIRP commenced.

A specialist review in 2007 advised the Department of Sustainability and Environment of potential international competition in integrated channel automation systems and recommended further review ... I found no evidence that the department acted on this information.

609. Given the funds spent on channel automation technology in Victorian irrigation projects to date, I consider that this was a missed opportunity to test the market for potential suppliers.

610. On the information provided to me, there was no formal commitment to utilise the company or its channel automation technology for the project. However, I acknowledge the company’s previous extensive involvement in irrigation modernisation projects in the GMID. This created a situation whereby it would have been difficult to adopt another technology for the Foodbowl project.

611. Nevertheless, NVIRP’s role was to plan and deliver the project. As a state owned enterprise it had a responsibility to ensure appropriate procurement processes were followed or, at a minimum, record the reasons for any deviation from standard practices. In my view, it has failed to comply with procurement processes.
612. At the date of this report NVIRP had paid the company $77.2 million for Stage 1 works without a tender process. Government, therefore, cannot be assured that value for money has been achieved.

At the date of this report NVIRP had paid the company $77.2 million for Stage 1 works without a tender process. Government, therefore, cannot be assured that value for money has been achieved.

613. My investigation was unable to locate evidence of who made the decision to adopt the company's channel automation technology for the project, or how this decision was reached. As a result, the decision to adopt the technology lacks transparency.

614. Government agencies are required under the Public Records Act 1973 to record decisions and maintain records securely. My investigation identified several failures in this regard, including: the decision to adopt the channel automation technology; the implementation of recommendations from the 2007 competitor analysis; and the department's inability to locate a number of final reports it commissioned.

615. In response to my draft report, NVIRP said that they disagreed with the conclusions in relation to NVIRP procurement and:

NVIRP has implemented procurement policies and procedures to ensure value for money outcomes and compliance with the Victorian Government's procurement guidelines. Controls are in place to ensure that expenditure is not committed unless the procedure has been followed.

616. In response to my draft report a Director of the company said:

[The company] rejects any suggestion that there are any "local competitors", nor for that matter any competitors worldwide, for the core [channel automation technology] system. [The company] understands that there are some entities that claim to have competitive offerings however we believe that that is not the case and that any such claims of comparable competitive products are false and misleading.

... I also reject the suggestion that [the company] has received an unfair advantage compared with 'local competitors'.
Recommendations

I recommend that the Department of Sustainability and Environment:

Recommendation 19

Implement procedures to ensure that it and agencies within its portfolio:

• comply with relevant government procurement guidelines
• clearly record the decisions made in the procurement of major capital works and any deviations from standard procurement practice.

The Department’s response

Recommendation accepted.

Recommendation 20

Ensure that procurement for future modernisation works in the GMID complies with relevant government procurement guidelines and that a contestable tender process is undertaken.

The Department’s response

Recommendation accepted.
10 Governance issues

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10. Governance issues

617. My investigation identified a range of inappropriate practices and behaviours involving staff from both the Department of Sustainability and Environment (the department) and NVIRP over several years. The issues identified are concerning on a number of levels:

- The nature of the issues identified reflects a misunderstanding of public sector principles such as conflict of interest, good governance, ethical behaviour, confidentiality, privacy, transparency and accountability.
- In most cases, senior staff and/or board directors were either aware of or involved in the issues investigated by my office.

My investigation identified a range of inappropriate practices and behaviours involving staff from both the Department of Sustainability and Environment and NVIRP over several years.

618. The standard of good governance is set at a necessarily high level for public sector agencies, in line with community expectations. Amongst other things, good governance is concerned with accountability, control and behaviour at the top of organisations.

619. My investigation highlighted the following specific issues:

1. Inappropriate assistance to a private entity (NVIRP and the department)
2. Breaches of privacy (NVIRP)
3. Poor security of NVIRP information (NVIRP)
4. A lack of understanding of conflicts of interest and the perceptions that may arise as a result of acceptance of gifts and hospitality from current suppliers (NVIRP and the department)
5. Inappropriate hospitality expenditure (NVIRP)
6. Untimely payment of contractors (NVIRP)
7. Inadequate complaints handling (NVIRP)
8. A lack of departmental oversight of GMW and NVIRP.

620. In response to my draft report, NVIRP said:

The Board takes seriously the Ombudsman’s comments and findings in relation to the behaviour of staff and directors in this project. NVIRP is not prepared to accept the Ombudsman’s draft conclusions on these matters at face value. The Board is concerned in particular about the seriousness of the allegations made against management and was concerned to investigate and address those allegations.
promptly, given their broader implications for the Board and the organisation generally.

Nevertheless in light of the concerns expressed by your office, it has been decided to postpone the investigation until you have finalised your report and it is made public.

Independent reviews are to be conducted on the following matters so as to provide advice and recommendations for future Board action:

- Farm Designers
- SSF relationships with NVIRP
- Hospitality and related policies
- Complaints handling process.

621. My investigation of these matters is outlined below.

Inappropriate assistance to a private entity

Introduction

622. My investigation identified that in early 2010 NVIRP paid a private company over $1 million to help the company purchase properties in Leitchville, Northern Victoria. The private company, Sustainable Soils and Farms Pty Ltd (SSF), told NVIRP it was able to reduce the amount of water needed to farm the land and obtain water savings for the Foodbowl project. SSF said it would be able to purchase ‘pods’ of properties and rationalise a great deal of water channel. The Leitchville project was just one of these pods.

623. The Chair of SSF, Mr Neil O’Keefe, is a former Federal MP and a Director of Water for Rivers. Prior to engaging with the NVIRP program, SSF was not a landowner in Northern Victoria.

624. After using NVIRP’s money to purchase the properties, SSF bought approximately $7 million (or 2,600 megalitres) of water shares from elsewhere and placed those water shares on the properties. SSF then sold the water shares to The Living Murray for $7.52 million.

625. At interview, Mr O’Keefe said ‘... we made a margin of about $300 a megalitre’. This is around $780,000 profit.

626. Concerns were raised in the media that the SSF project had benefited financially from political connections it had within government. Given the
allegations of political interference and the considerable funds NVIRP paid SSF, my investigation examined NVIRP’s involvement in SSF’s project.

627. My investigation established that SSF was given substantial assistance from both the Department of Sustainability and Environment and NVIRP to prepare and undertake its business. Specifically:

- SSF was given guidance to ‘tailor’ its business proposal for presentation to the Department of Sustainability and Environment and NVIRP by the Director Allocation and Licences, Department of Sustainability and Environment. The Director is also the state representative for the Water for Rivers advisory panel and was consulted on Mr O’Keefe’s re-appointment as a Director of Water for Rivers.

- Mr David Downie, then General Manager, Office of Water, Department of Sustainability and Environment, was briefed by Mr O’Keefe and SSF’s Relationships Manager and Finance on the SSF project. Mr Downie then referred SSF to NVIRP’s CEO for assistance.

- NVIRP provided SSF with confidential information about incentive figures and private landowner data in order to assist it to target properties for purchase.

- NVIRP contracted and paid a farm design company, to provide ‘support and guidance to the SSF project’.

- NVIRP’s $1.04 million incentive payment to SSF was made outside NVIRP’s Connections Program Operational Guidelines.

- Mr Downie facilitated a Ministerial Exemption to Victoria’s 4 per cent water cap\(^6\) so that SSF could sell water to The Living Murray, even though the project did not meet the exemption criteria.

- NVIRP provided misleading information to the former Minister for Water in response to concerns raised by the media about SSF’s involvement in the NVIRP project.

628. In response to my draft report, Mr Downie said:

> I refute absolutely the nonsensical conclusion that I or [the Director Allocation and Licences] provided advice or assistance to Mr O’Keefe in a private capacity.

Access to senior public officials and information about the NVIRP project

629. My officers obtained and examined a large amount of electronic files and hard copy records from NVIRP, the department, GMW and the farm design company. These files contained various documents relating to SSF’s dealings with these entities.

\(^6\) A 4 per cent cap exists on the volume of water shares that can be traded each year out of irrigation districts in northern Victoria.
630. This information demonstrates that in late September 2008 (approximately two months before SSF was registered as a company) Mr O’Keefe sought and was provided assistance by the department’s Director Allocation and Licences to tailor the SSF presentation to the Department of Sustainability and Environment.

631. In response to my draft report, Mr O’Keefe said:

   The project was listed on the Eligible Measures Register of The Living Murray Project prior to that under the name of Sustainable Dairy Farms Pty Ltd with the listing being changed to the new name as our Company underwent internal structural and shareholder changes. The original listing occurred after a considerable period of prior work with government in a continuum.

   ...

   I made it clear at the outset to all officers I spoke with that this matter was associated with my private company and its dealings with The Living Murray Project.

632. In its response to my draft report, the Department of Sustainability and Environment said:

   The SSF project has been assessed and approved by both the MDBC [Murray Darling Basin Commission] and the MDB Ministerial Council for inclusion in an Eligible Measures Register under the Living Murray Initiative. As part of this process there has been access to State and MDBC officials on matters relating to the SSF Project.

633. Numerous documents and correspondence between the department and SSF describe the project as being a ‘joint partnership’ between the Victorian government and SSF and one email from Mr O’Keefe to the Director Allocation and Licences states:

   Obviously got this OK – have overnight made some internal changes to our briefing note and slide show to tailor it more directly to the focus we spoke about yesterday. [SSF’s Relationships Manager and Finance] is our computer guru – he is touching it up this morning and will send up to you the revised show and doc this morning.

634. In response to my draft report, Mr O’Keefe said:

   It is normal commercial practice for officers to assist proponents in tailoring any submission to fit the guidelines of a government incentive program.

635. The Director Allocation and Licences is the state representative for the Water for Rivers advisory panel, a public company of which Mr O’Keefe is a Director. Two months after this email the Director was consulted to see if he had ‘any issues’ with Mr O’Keefe being re-appointed as a Director of Water for Rivers. He responded that he had no issues with the re-appointment.

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67 Sustainable Soils and Farms Pty Ltd was registered as a company on 18 November 2008.
636. In response to my draft report, the Director Allocation and Licences said:

... SSF was previously registered as Sustainable Dairy Farms. Sustainable Dairy Farms (SDF) had previously applied to the Murray Darling Basin Commission under The Living Murray Program to receive funding to recover water under that program. Given that the Murray-Darling Basin Commission had earlier accepted an application from SDF and agreed that it would sponsor their water recovery proposal, I did not consider it inappropriate to discuss the SDF proposal with them. I did not offer anything other than verbal comment on their proposal and have no recollection of any acceptance of a “joint partnership”.

... My role as the Victorian Water Advisory Panel member is limited to commenting on the draft Annual Business Plan prior to them being forwarded to Government for approval.

637. On 7 October 2008, Mr O'Keefe and the SSF Relationships Manager and Finance, attended the Department of Sustainability and Environment to brief Mr Downie then General Manager, Office of Water and the Director Allocation and Licences on their project proposal.

638. Mr Downie told my officers that Mr O'Keefe was ‘well known around the traps as knowing parliamentarians and Canberrans ...’ After the presentation, Mr Downie referred Mr O'Keefe to NVIRP for assistance with the proposal.

639. In response to my draft report, Mr O'Keefe wrote:

The comment by Mr Downie about me was accurate and his decision to refer our proposal for consideration to NVIRP was entirely appropriate.


... In 1998 I took through the ALP National Conference the first National Water and Salinity Strategy. This was given effect in the later platform commitments of the ALP in the lead up to the 1998 Federal election.

... What is now known as the NVIRP project had its genesis in that policy commitment.

... My successor as ALP national Primary Industries spokesman, [name], further developed the ALP national policy with an additional emphasis on soil quality and the urgent need to upgrade soils in the MDB farming region.

... After leaving Parliament [name] became a shareholder of SSF and has been instrumental in driving our thinking on many of these aspects in our farming plan and corporate strategy.
640. After meeting Mr Downie, SSF then met with Mr Murray Smith, NVIRP CEO and NVIRP’s Executive Manager, Modernisation. An email drafted by Mr Smith to an officer within the Department of Sustainability and Environment dated 26 November 2008 states:

As discussed [NVIRP’s Executive Manager, Modernisation] and I met with reps from the above [SSF] a couple of weeks ago. They were looking for a ‘special’ deal with NVIRP. We explained that there was no need to enter into any special deal as we were immediately able to offer incentives through the reconfig program which was transferring across to NVIRP and would be able to deal with them through the connections program in the near term. If they were to target farms at the end of spurs and work their way down the spur towards the backbone with their hub farm supplied via the backbone then they could potentially come out significantly in front of any ‘special’ deal and would meet NVIRP board objectives at the same time.

641. I note that SSF was not registered as a company until 18 November 2008, after it had been guided in its project by at least two senior departmental staff and NVIRP’s CEO and its Executive Manager, Modernisation.

642. In response to my draft report, Mr Smith said:

As of 22 October 2008, SSF were placed on the Eligible Works Register for the Living Murray Initiative (LMI) after having applied in August 2008. The LMI is a partnership of the Australian, NSW, Victorian, South Australian and ACT governments. In order to be placed on the register, SSF’s application must be assessed and approved by the government partnership. It was with this background that [NVIRP’s Executive Manager, Modernisation] and I met with SSF in early November.

... SSF was included on the Eligible Works Register for LMI as of 22 October 2008 which appeared to support their legitimacy as an organisation.

Provision of public resources to assist the Sustainable Soils and Farms project

643. After meeting with SSF, NVIRP’s Manager of Connections was appointed as the case manager for SSF. At interview, the Executive Manager, Modernisation said it was unusual for such a senior officer to have been allocated as case manager for SSF, however this was done as ‘there was a bit of doubt and concern with SSF. It was all marketing and talk …’.

644. In response to my draft report, NVIRP’s Executive Manager, Modernisation said:

SSF was not a normal landowner and as such a decision was made to appoint a senior person to manage the interaction.

645. In response to my draft report, Mr O’Keefe wrote:

Given the scale of opportunity (in a landscape going nowhere for NVIRP at the time) as CEO I would have done the same thing
to try to make sure my organisation got some substantial ‘runs on the board’.

646. File notes prepared by NVIRP’s Manager Connections demonstrate the Manager’s concern that SSF was seeking specific information. A file note dated November 2008 reads:

They [SSF] were keen to be “pointed in a particular area” by NVIRP. I told them that our priority is the backbone and connections. We don’t want to be pointing them in a particular direction.

... [SSF’s Manager Relationships and Finance] was interested in “avoided modernisation” incentives. He got from his meeting with Murray [Mr Smith] and [NVIRP’s Executive Manager, Modernisation] a sense that that was where the real money could be made.68

647. On 13 January 2009, Mr Murray Smith, CEO NVIRP contracted a farm designer to provide up to $50,000 worth of ‘support and guidance to the SSF project’, to be funded by NVIRP. NVIRP’s Executive Manager, Modernisation described the purpose of this contract as:

To try and give SSF a bit of comfort that we were there to help if we could. As long as we could get the outcomes that NVIRP required we would assist them as much as possible.

648. In response to my draft report, Mr Smith said:

SSF were the first entity looking to major farm restructuring to approach NVIRP to participate in the connections program. Their objectives of consolidating intensive irrigation around the backbone channel system and rationalising infrastructure in those areas that do not have a long term sustainable irrigation future largely aligned with NVIRP’s objectives. The decision to provide resources to support the connections program associated with the SSF approach to achieve modernisation outcomes was based on an assessment that it would deliver a value for money outcome for the state.

649. During the project, the farm designer provided SSF with guidance on properties to ‘target’ for purchase and assisted SSF to develop proposals which would rationalise properties. The farm designer also provided advice to NVIRP on the appropriate incentive to be paid to SSF.

650. My investigation identified that while working for the SSF project on behalf of NVIRP, the farm designer also undertook the following activities:

• considered private investment in the SSF project including discussing the proposal with its solicitors
• sourced and facilitated the sale of water shares to SSF in a private capacity
• asked NVIRP in June 2009 for six NVIRP projects/customers to be ‘put on hold’ or ‘leap frogged’ until SSF ‘had negotiated their way through respective properties’

68 Incentives are paid where an action taken, such as closing of a channel, allows the modernisation of the system to be avoided.
• provided a letter of support to SSF’s bankers
• project managed construction works on SSF properties
• provided considerable private landowner information to SSF, including GMW maps and details of landowner names; property sizes, private circumstances and water share details. This information was provided without landowner consent.

651. Both SSF and the farm designer responded to my draft report as follows:

• Farm designer investment in SSF

  Mr O'Keefe said:
  It is normal commercial practice to evaluate highly prospective opportunities when they come on your corporate radar screen. The SSF partners made it clear to [the farm designer] that SSF would welcome investment but it could only be on the basis that [the farm designer] relinquish any contractual role with NVIRP. SSF saw itself as engaging in a long term relationship with NVIRP and was not prepared to allow any ‘conflict’ issues of this kind to put that at risk.

  The farm designer said:
  The farm designer did not consider entering into any arrangement with SSF because of [its] contract with NVIRP as well as not being interested.

• The sale of water shares

  Mr O'Keefe said:
  [The farm designer] sourced vendors seeking to sell water to help make up the SSF parcel to be on sold to TLM [The Living Murray]. This was consistent with the [the farm designer] task of helping make the project happen for NVIRP. [The farm designer] received no payment of commissions from SSF.

• Concerning the fact that the farm designer had requested other NVIRP projects be ‘put on hold’ or ‘leap frogged’

  Mr O'Keefe said ‘that was their [the farm designer’s] job!’

  The farm designer said: ‘Leap frogged projects advised by NVIRP not SSF’.

• Concerning the letter of support provided to SSF’s bankers

  Mr O'Keefe said:
  Did they? I don’t see how it could have amounted to much as SSF had no trading or commercial relationship with [the farm designer].

  The farm designer said:
  [The farm designer] was asked by SSF to prepare a resume of [the farm designer] company profile to their agribusiness bank. This was done as SSF advised [the farm designer] would be their Designers for their agribusiness venture.
• In relation to the project managing of construction works undertaken on SSF properties

Mr O’Keefe said:

... SSF thought that [the farm designer] was managing the task on behalf of NVIRP ... SSF did not commission [the farm designer] as project manager and ... SSF did not make [sic] any payment to [the farm designer] for the work done.

The farm designer said:

[The farm designer] did project manage SSF reconnection and SSF have not paid for these services. SSF have been invoiced for the Project Management by [the farm designer]. PM [Project Management] is not funded directly by NVIRP.

• In relation to the provision of confidential landowner information

Mr O’Keefe said:

There was no requirement to gain landowner consent when discussing ‘commercial-in-confidence’ proposals of this nature. All the information you nominate is on the public record.

The farm designer said:

[The farm designer] did not provide G-MW maps to SSF, however supplied SSF of [sic] maps generated by [the farm designer] survey department from field work. [The farm designer] provided the property area size and water details to SSF following the purchase of such properties. Landholders agreed to provide Farm Plans and water share details to SSF.

652. As demonstrated above, many of the responses provided by SSF and the farm designer to my draft report were inconsistent with each other. Notwithstanding this, it is clear that the boundaries between the farm designer’s public role for NVIRP and its private work for SSF became blurred.

653. The responses provided by the farm designer and SSF in relation to the exchange of private and confidential information are inconsistent with email evidence obtained during my investigation. Given my concerns, I referred the matter to the Victorian Privacy Commissioner and I was advised on 14 July 2011 that the Privacy Commissioner has considered my information and decided to investigate possible breaches of the Information Privacy Act 2000. Further comment on this issue is included later in this report.

654. It became clear that there was an element of secrecy and a lack of transparency associated with the relationship between NVIRP, SSF and the farm designer. Correspondence between all three parties frequently warned of the need to keep discussions and arrangements confidential. For example, an email from SSF’s Manager Relationships and Finance to the farm designer dated 17 June 2009 stated:

We have paid over the odds for [irrigator’s name] to get the deal done – we need help from “you know who” as we discussed
previously – could you firm this up please as we don’t want to be signing contracts without this detailed in a new letter.

655. My officers asked the farm designer whom SSF’s Manager was referring to in the email and he stated it was ‘NVIRP’.

656. Mr Smith was asked at interview on 17 August 2011 whom he believed the email was referring to. He said that he suspected it was referring to NVIRP. Mr Smith was asked how this correspondence may be perceived by a third party observer. He said, ‘it doesn’t look particularly pleasing, does it?’

657. In response to my draft report, Mr O’Keefe said:

He [Mr Smith] should have responded that they [the correspondence] seem to be part of a ‘commercial-in-confidence’ discourse between [the farm designer] and SSF and were not subject to 3rd party overview (other than the Ombudsman in these circumstances). They [the discussions] did not need to stand any third party test.

658. In my view, this response by Mr O’Keefe demonstrates a misunderstanding about the nature of conflict of interest. A discussion conducted in confidence can still create a perception that interests are conflicted.

659. I am concerned about the constant references in emails between NVIRP and SSF about the need to ensure the arrangements between them remained secret and have included examples of these emails in Appendix 5.

I am concerned about the constant references in emails between NVIRP and SSF about the need to ensure the arrangements between them remained secret.

660. In response to my draft report, the farm designer said that he did not agree that it was involved in any secrecy with SSF as it was open and transparent at all times.

Provision of confidential incentive information

661. Emails between SSF’s Manager Relationships and Finance and NVIRP’s Executive Manager, Modernisation demonstrate that confidential incentive information was provided to SSF, prior to the former government’s approval of NVIRP’s Stage 1 business case. On 4 November 2008 SSF’s Manager Relationships and Finance emailed the following to NVIRP’s Executive Manager, Modernisation:

Thank you very much for your hospitality yesterday. It was a wonderful learning experience for us and of great benefit to our investors and ourselves.

... In order to finalise our concept paper I need information on all of those incentives you mentioned yesterday and the basis for
calculating the “channel closure” amount. I believe this figure to be $150k approx per kilometre but later on somebody ... said use a figure of $200,000 per farm.

...

We realise that this information had not been released and is in confidence.

We are hoping to meet with David Downie on Friday.

Emails between SSF’s Manager Relationships and Finance and NVIRP’s Executive Manager, Modernisation demonstrate that confidential incentive information was provided to SSF, prior to the former government’s approval of NVIRP’s Stage 1 business case.

662. On 5 November 2008 NVIRP’s Executive Manager, Modernisation emailed SSF’s Manager Relationships and Finance information regarding incentives available to SSF:

... there are three levels of incentives:

For properties on the backbone, avoided modernisation costs...

For properties who connect back to the backbone, $150,000 per km of channel decommissioned plus $30,000 for each delivery share relocated back to the backbone

For properties who cannot reconnect back to the backbone, a value determined by the water savings generated from decommissioned infrastructure ...

The business case is yet to be approved. This [is] due by December [2008]. As such these figures are still confidential and subject to change.

663. Information about the connections incentives is not available to the public and considered by the former government to be commercial in confidence. It is not available because NVIRP is concerned that individuals will attempt to utilise the information for private gain to the detriment of the project.

664. This information was also provided to SSF prior to its being registered as a company. At interview on 15 August 2011 NVIRP’s Executive Manager, Modernisation was asked why the figures he provided to SSF (via email on 5 November 2008) were confidential:

... I just assumed ... it [the business case] hadn’t been approved and we wouldn’t want those figures out there straight away ...

665. Mr Smith was asked to review NVIRP’s Executive Manager, Modernisation correspondence to SSF’s Manager at interview on 17 August 2011. Mr Smith described it as ‘unfortunate’ and that he was ‘surprised’. He said
the information should not have been provided to SSF by NVIRP’s Executive Manager, Modernisation and should not have been in the public domain.

666. NVIRP’s Executive Manager, Modernisation said at interview ‘I know for a fact they [SSF] already had them [incentive figures]’ as he had been present during a meeting in which Mr Smith ‘mentioned’ the incentive amounts to SSF.

667. Mr Smith stated in response to NVIRP’s Executive Manager, Modernisation’s evidence, ‘I can’t recall having done that’. Mr Smith further stated that he may have provided some ‘ball park’ information to SSF but not an ‘exact number’.

668. Mr Smith acknowledged that the provision of this information would have provided SSF with an advantage over an individual irrigator who did not have the same information. He said ‘it could be perceived that they [SSF] would have an advantage’ and ‘… to some degree that’s preferential treatment’.

669. In response to my draft report, Mr O’Keefe noted that:

All real estate agents trying to sell properties to us on behalf of farms were quoting the NVIRP estimates of incentives available to the farms.

These farmers had all received “ball park” estimates that turned out to be exactly in line with the formula finally announced after the business case was approved.

There was no commercial advantage gained in any way by SSF in these discussions.

All discussions were of a ‘commercial-in-confidence’ nature and involved information that was in the public domain.

670. In response to my draft report, NVIRP’s Executive Manager, Modernisation said:

My email dated 5 November 2008, to which you refer, does not disclose confidential information.

... 

In general, all landowners, including SSF, were keen to understand the incentive program ... The incentive rates, based on the average water savings in a kilometre of channel, are therefore irrelevant because the ultimate incentive entitlement obtained by a landowner cannot be calculated using the incentive rates alone. On-farm costs incurred, which always differ between projects, will determine the ultimate incentive payable to a landowner.

I believe the provision of this information would not provide SSF an advantage over an individual irrigator as offers made to landowners are based on actual incurred costs. [NVIRP’s Executive Manager’s emphasis].
671. The Stage 1 business case was not approved by the former government until June 2009. The business case on NVIRP’s website details the principles underlying compensation packages and contains the following caveat:

Material considered to be confidential being of a commercial or related nature has been excluded from the document where it was deemed that its release could be commercially detrimental to the conduct of the project.

672. The information provided by NVIRP’s Executive Manager, Modernisation to SSF is not included in the business case which is included on the NVIRP website.

673. NVIRP’s Executive Manager, Modernisation said at interview on 15 August 2011 that he did not believe there was a ‘rule’ that NVIRP could not release information regarding incentives. He said both he and Mr Smith had provided this information to SSF and had also provided this information at public meetings.

674. The public meetings to which NVIRP’s Executive Manager, Modernisation refers were not minuted and he has not provided any evidence that the specific information he provided to SSF in November 2008 was in the public domain at that time. However, I do note that in NVIRP’s Executive Manager, Modernisation’s email to SSF, he refers to the information provided as ‘confidential’.

675. In response to my draft report, Mr Smith said:

I acknowledge that SSF were provided with broad incentive information. However the level of any incentive available to SSF would be based on on-farm costs associated with any new connection consistent with the connections framework and which is independently reviewed by NVIRP.

**Incentive payment to Sustainable Soils and Farms Pty Ltd outside Connections Program Operational Guidelines**

676. NVIRP’s Connections Program Operational Guidelines (the guidelines) dated 26 October 2009, refer to ‘Property Consolidation’ and state that significant rationalisation of infrastructure and resulting water savings can be generated through property amalgamation. Therefore, the costs involved in purchasing a property can be compensated via the incentive program, if sufficient water savings result.

677. The guidelines state that an initial offer of 60 per cent of the maximum incentive can be made to landowners and:

... initial offers can be increased up to 100% if the proponent can verify [costs] ... are greater than the offer made, once the property has been purchased ...

678. As such, the initial offers of 60 per cent of the maximum incentive can only be increased ‘once the property has been purchased’.
On 24 February 2010 NVIRP executed a connections agreement with SSF to consolidate properties around the Leitchville area for an incentive amount of $1,044,322.40 (including GST). This was an offer of 100 per cent of the maximum incentive available in the business case.

The properties involved in the SSF business case were not purchased until April 2010. As such, the offer was made two months prior to the purchase of the properties by SSF.

The payment made to SSF was contrary to the NVIRP guidelines as the offer to SSF for 100 per cent of the incentives was made prior to the properties being purchased. NVIRP’s Executive Manager, Modernisation said at interview that initially NVIRP would offer 60 per cent of the incentive available on a ‘no questions asked’ basis. He said:

Once you purchase the properties and they are in your ownership, if the costs involved to consolidate that property go up ... you can come back [to NVIRP] and put in a claim [for up to 100 per cent of the remaining available incentive].

Do you want to know why we didn’t in this particular case? Because they [SSF] needed some certainty with their bankers that they were going to get x amount ...

The payment made to SSF was contrary to the NVIRP guidelines as the offer to SSF for 100 per cent of the incentives was made prior to the properties being purchased.

In response to my draft report, Mr O’Keefe said:

The payment was not made before the properties were purchased. It may have been transferred to the appropriate bank account prior to the property settlements as a matter of good business practice.

The funds were not accessed until they became part of the “round robin” settlement in exactly the same way as any normal real estate settlement process.

It was a requirement of our banker - and a necessary component of the round robin process.

[The] payment was entirely within the guidelines.

In response to my draft report NVIRP’s Executive Manager, Modernisation said:

The payment to SSF was made on the day of settlement and thus, as justification for on-farm costs were already provided, adhered to the guidelines.
Department of Sustainability and Environment’s assistance to SSF to be exempt from Victoria’s 4 per cent water trade cap

684. A 4 per cent cap exists on the volume of water shares that can be annually traded out of irrigation districts in northern Victoria.

685. Exemptions to the cap are available for the trade of water shares to the Commonwealth Government, the Murray Darling Basin Authority (for The Living Murray) and Water for Rivers if the following conditions apply:
   • The water shares have been associated with that land for 12 months or since 1 July 2009.
   • The water shares are associated with land in areas not identified as priorities for modernisation.
   • The landowner has reached an agreement with NVIRP on modernisation actions.

686. After using NVIRP’s money to purchase the properties, SSF bought approximately $7 million worth of water shares and placed those water shares on the properties. SSF then sold the water shares to The Living Murray for $7.52 million.

687. In response to my draft report, Mr O’Keefe noted that:
   The SSF sale to TLM [The Living Murray] occurred at a price below the public tender figure being paid by the Federal Government in its water ‘buy backs’ carried out under the 4% cap.

   It was important for all parties to be able to demonstrate that the transaction represented ‘value for money’ for TLM [the Living Murray] – and it did so.

688. SSF obtained an exemption to the water trade cap, even though the water it sold had not all been associated with the land for 12 months. As it was able to obtain the exemption, it was able to purchase water from Victorian irrigators who were not able to obtain an exemption, and on-sell that water at considerable profit.

SSF was able to purchase water from Victorian irrigators who were not able to obtain an exemption, and on-sell that water at considerable profit.

689. In response to my draft report, Mr O’Keefe said:
   It was (and still is) our understanding that at the time the [Former] Victorian Government nominated our project into the TLM EMR [The Living Murray Eligible Measures Register] the 12 month rule did not apply.

   We understand that it came into being as part of the rule changes introduced in January 2010.

   In any case the Minister has discretion to alter the rules if he sees fit.
690. At interview, Mr Smith, NVIRP CEO described the placing of water on properties by SSF as ‘gaming’ and ‘milking the system’. He said that it was ‘inappropriate’ to buy water from within an irrigation area and then trade it outside of the area to get an inflated price.

691. In response to my draft report, Mr O’Keefe wrote:

At all times in all discussions with TLM [The Living Murray], DSE and NVIRP SSF made it completely clear that the NVIRP incentive payment did not stack up commercially and could not get the project to the starting line.

SSF was completely open about the fact that it also needed to add a water trading profit to the mix to be able to do the project.

Mr Smith gives the impression of being unaware (and he wasn’t) that NVIRP itself had entered into a secondary contract to purchase the water from SSF if ... TLM contract fell through.

692. My investigation identified numerous examples of irrigators facing financial hardship because they were unable to obtain an exemption to the government’s 4 per cent water trade cap and sell their water shares. For example, the following email was sent from NVIRP to the farm designer, who in turn forwarded it to SSF’s Manager Relationships and Finance:

[Landowner] has rang at least three times in the past week - he seems to be in a fairly desperate situation. Basically [he] walked off the farm and [is] trying to sell the property, in the meantime also trying to keep the banks off his back. He sold his low reliability entitlement last week - this will give him 2 to 3 weeks grace BUT he missed out on his proposed sale to the Fed [Federal] Government due to the 4% cap - the property wasn’t in a position to come under the exemption rules.

693. My investigation reviewed the circumstances in which SSF was able to obtain an exemption to Victoria’s 4 per cent water trade cap and identified that Mr David Downie, then General Manager, Department of Sustainability and Environment:

- Placed pressure on NVIRP to issue an Exemption Evidence Notice to be submitted for GMW’s consideration for GMW to approve an exemption to the 4 per cent cap. GMW did not approve the exemption.
- Coordinated a Ministerial Briefing supporting an exemption to the 4 per cent cap, which was approved by the then Minister.

694. In response to my draft report, Mr O’Keefe said:

We believe Mr Downie was giving effect to a pre-existing policy commitment of the Government. [concerning the Living Murray and NVIRP].
Department of Sustainability and Environment’s pressure on NVIRP to issue an Exemption Evidence Notice

695. NVIRP issues Exemption Evidence Notices to declare that the water shares are associated with a particular parcel of land and there is a modernisation agreement in place. GMW then checks the application against the trading rules and, if compliant, grants the exemption.

696. On 1 April 2010 NVIRP’s CEO Mr Smith wrote to Mr Downie and advised that some of SSF’s water intended to be sold to The Living Murray was unable to be considered exempt under the 4 per cent cap.

697. In a letter dated 14 April 2010 from Mr Downie to Mr Smith he stated:

This project [SSF] has been supported by the government ... the government’s view is that an exemption to the 4% should be provided for all the water shares involved (up to a total of 3200 ML), even though about 25% of the water shares are attached to land in green areas. ... please issue an Exemption Evidence Notice for all the water shares.

698. Upon this advice, NVIRP issued an exemption evidence notice. I note that this is not an exemption itself.

699. Mr Smith said at interview that ‘SSF were never afraid to sort of drag out his name [David Downie] whenever things weren’t quite going how they wanted...’ He said that NVIRP had ‘suggests from within DSE’ that they assist SSF however he had ‘pushed back’ and told them that SSF would be treated the same as everyone else.

700. In response to my draft report, Mr Downie said:

It is true DSE had organised an exemption which NVIRP would not provide. DSE did not pressure NVIRP to give an exemption on my action. Neither did I.

... As I recall it, [SSF’s Manager Relationships and Finance] approached [the department’s Director Allocations and Licences] because of the inability to process transactions for the Living Murray initiative through the quite proper interpretation of the existing exemption policy by all those personnel. I can only presume that through Mr O’Keeffe [sic] being a member of the Water for Rivers Board and a person thus knowing the context was probably aware of the way the exemption policy worked and that we could be interested in providing further exemptions enabling water purchases for the LMI [Living Murray Initiative] to proceed.

701. When asked if NVIRP had been ‘deceived’ by SSF, Mr Smith said:

I have no doubt that SSF have used NVIRP ... used to the extent or deceived to the extent that ... most probably omissions as well. ... in terms of what they’ve told us, who’s doing what, who’s talking to who, what’s going on, yes I don’t think anyone has covered themselves in glory.
702. In response to my draft report, Mr O’Keefe said:

SSF acted openly and honestly on all occasions and in every matter with NVIRP — and delivered to them exactly the large scale demonstration project they were seeking on exactly the terms described in the contract.

Department of Sustainability and Environment’s briefing to the former Minister recommending an exemption for the Sustainable Soils and Farms Project

703. On 17 June 2010 Mr Tim Holding, former Minister for Water approved an exemption to the 4 per cent cap to allow SSF to sell its water to The Living Murray. This was approved even though the water had only been associated with the land for around one month and not for 12 months, as required by the cap conditions.

704. The exemption was given in response to a briefing paper dated 4 June 2010, approved by Mr Downie. The briefing was prepared by the Department of Sustainability and Environment Manager, Water Trading Development. The manager advised Mr Downie by email on 1 June 2010 that SSF’s actions were contrary to the intent of the exemption process and the 12-month requirement was important ‘to prevent people wheeling water shares … in order to get an exemption’.

705. Despite the manager’s advice to Mr Downie, the briefing was submitted to the then Minister by the Executive Director, Water Entitlements and Strategies, Department of Sustainability and Environment. At interview, Mr Downie said the briefing was prepared as Mr O’Keefe had asked him for help because SSF’s purchase of water was being ‘held up’. He told my officers he said to Mr O’Keefe:

“Well, we shouldn’t have any bloody trouble. This will help us achieve our Living Murray objective.” …

… So, I told my people, and we did a submission, … to the Minister seeking approval for an exemption from those processes.

706. In response to my draft report, Mr Downie said that there were no reasons for him to support Mr O’Keefe’s company except to obtain outcomes for The Living Murray and NVIRP water policies.

707. The department’s 4 June 2010 briefing stated that while the majority of land in question was in the required area and thus satisfied the primary requirement for an exemption:

... most of the water shares have only recently been associated with the relevant land and hence do not meet the ‘waiting period’ requirement for general exemption.

This has occurred because SS&F [SSF], when buying land, was unable to persuade the sellers to also sell the associated water shares. It has instead bought water shares from elsewhere and associated with them with the land in the last few weeks. Hence, an exemption under current rules cannot be granted until approximately May 2011.
708. In response to my draft report, Mr O’Keefe highlighted an error with the briefing:

It is not correct that SSF was “unable to persuade the sellers (land) to also sell the associated water shares”.

The fact is that all but one had already sold their water elsewhere when SSF acquired the properties. That is why it had to be acquired from other farmers.

The important point here is that it is completely in line with the information provided in all our briefing materials - “many farmers have sold their water and now can’t find anyone to buy their properties”.

It was always clear to everyone that we would have to buy in water to consolidate the parcel for the TLM [The Living Murray] bundle.

709. My investigation identified that the land SSF purchased included approximately one quarter of the water eventually sold by SSF to The Living Murray. Hence, most of the water was purchased elsewhere and placed on the NVIRP funded properties and sold for significant financial gain to SSF.

710. In response to my draft report, Mr O’Keefe wrote that the incentive payment from NVIRP accounted for ‘less than 1/3’ of the properties’ purchase price.

711. At interview Mr O’Keefe said that ‘all the players knew’ it was SSF’s intention to purchase water, place it on the land and then sell the water. He said:

... in all the discussions with Living Murray, DSE and NVIRP, it was very clear ... So where did people think the water was going to come from?

712. Mr O’Keefe was informed at interview that officers from both NVIRP and the department had provided evidence that they had no knowledge of SSF’s intention to purchase water and place it on the land. He said, ‘well I’d say they’re running for cover’.

713. In response to my draft report, Mr O’Keefe said:

The fact is that the project was not going to proceed without financial certainty in all its core aspects and each of the parties realised this.

714. The farm designer said at interview on 12 July 2011 that when he sold the water to SSF he queried how SSF was going to try and sell it. He said:

... these guys [SSF] were effectively ordinary blokes ... other than having the right contacts within the halls of Parliament and perhaps knowing the way around the systems. ...You’re not a government entity. You’re not obtaining water savings. There’s no story there about water savings up front. ...

I sit here and think “How the bloody hell have they done that”? [obtained the exemption] ...You’ve got to have sold a good story to someone about the benefits of the operation to make that work.
715. After using the NVIRP incentive payment to purchase properties, SSF bought approximately 2,600 megalitres of water shares and placed those shares on the purchased land. SSF then sold those water shares to The Living Murray for $7.52 million, achieving a profit of around $300 per megalitre.

Conclusions

716. Mr O’Keefe approached the Department of Sustainability and Environment in a private capacity, as Chair of SSF. The person he chose to approach in the department, the department’s Director, Allocations and Licences, was the state’s representative on the advisory panel for Water for Rivers, a public company that Mr O’Keefe represents on behalf of Victoria.

717. I note that two months after providing advice to assist Mr O’Keefe’s private interests, the Director was consulted by the Department of Treasury and Finance to see if there were any issues with Mr O’Keefe being re-appointed as Director of Water for Rivers for a further three-year term.

718. Both the department’s Director Allocations and Licences and Mr Downie provided advice and assistance to Mr O’Keefe’s private business interest before referring him to the CEO of NVIRP.

719. I consider that it is open for a reasonable person to perceive that Mr O’Keefe obtained access to these senior officials as a result of his previous and current public positions.

720. In my view, the department and in particular, Mr Downie, have inappropriately afforded information, access and assistance to SSF. Such advantages would not have been available for other members of the Victorian public. This information, access and assistance included:

- access to senior departmental officials
- information and guidance to allow SSF to focus its project proposal in such a way as to ‘appeal’ to NVIRP for the purposes of obtaining funding
- access to the CEO of NVIRP
- involvement in NVIRP affairs, specifically an instruction to issue an Exemption Evidence Notice
- advice to the then Minister for Water that a 4 per cent exemption should be granted to SSF.

721. I am satisfied that NVIRP:

- disclosed confidential government information to SSF (including the confidential incentive figures)
- divulged private landowner details to SSF, without landowners’ consent

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allocated senior staff to assist the project
- contracted and funded a farm designer to provide assistance to SSF without ensuring that the farm designer was working in the best interests of the Foodbowl project
- provided significant incentive payments to SSF outside its Operational Guidelines.

722. In response to my draft report, NVIRP’s Executive Manager, Modernisation noted the provision of information to SSF and said:

I agree with your ... conclusion to the extent that a map was provided to SSF which may have included landowners’ names.

723. I am satisfied that SSF benefited from public contacts and connections and was able to obtain information for commercial advantage which was not available to northern Victorian irrigators. At interview, NVIRP’s CEO confirmed that SSF had received preferential treatment.

I am satisfied that SSF benefited from public contacts and connections and was able to obtain information for commercial advantage which was not available to northern Victorian irrigators.

724. I have concerns regarding the probity of the $1.04 million incentive payment made by NVIRP to SSF. Particularly given that the farm designer played a role in advising NVIRP about what incentive should be paid to SSF and yet was also considering investing in the company.

I have concerns regarding the probity of the $1.04 million incentive payment made by NVIRP to SSF. Particularly given that the farm designer played a role in advising NVIRP about what incentive should be paid to SSF and yet was also considering investing in the company.

725. In response to my draft report, the farm designer said:

SSF were paid the $1.04 million prior to inviting a member of [the farm designer] company to invest in SSF company ... the member from [the farm designer] declined and never considered to take up the offer.

726. In response to my draft report, Mr Downie said:

I thought he [Mr O'Keefe] had a good case for exemption and I would (subject to checking Departmental policy) seek the Minister's decision on whether an exemption would be granted. I did tell him
[Mr O’Keefe] that I would, as General Manager, support an additional exemption given the reasons I have explained ...

Many of these people in this space have several roles (simultaneously or at different times) in this space. ... That does not mean that they should be excluded from access to Government officials particularly when there is no other process through which to have these issues addressed. In Mr O’Keeffe’s [sic] case he had tried the other processes and failed. He did not try to use existing political influences, the Minister’s office, Water for Rivers association or anything else. To me he was simply an interested party who approached our office with a good idea and there were no grounds for us to refuse to listen to his ideas.

I submitted the recommendation because I believed that it was a far better policy outcome.

727. In response to my draft report, Mr O’Keefe wrote:

Any irrigator coming to NVIRP with any solid prospect of a successful re-connection deal was treated with open arms and given specific assistance to try to make it happen.

The NVIRP incentive in its own right does not get most projects over the line and there have not been many success stories.

SSF presents one of the few positive demonstrations of this scale and that had to be supplemented by our private capital, bank finance and a water trading profit.

... it involved the closure of 7 kilometres of old run down channel system as well as a significant consolidation of 4 farms into 1 - a significant outcome for NVIRP at the time.

... the fact is that the project was not going to proceed without financial certainty in all its core aspects and each of the parties realised this.

728. In response to my draft report, NVIRP’s Executive Manager Modernisation said:

The SSF project was complex and involved nine separate properties in total. The end result from a NVIRP perspective is that 5.05km of channel has been decommissioned and six properties (allowing for the SSF consolidation) are connected to a modern backbone channel system thus providing future certainty for these businesses. For NVIRP, this resulted in significant water savings. Additionally, the number of backbone structures was reduced resulting in avoided modernisation cost benefits.
Misleading information provided to the former Minister for Water

729. In December 2009 the farm designer contracted by NVIRP, attended the private property of a landowner in his role as an NVIRP farm designer. While on the property, the farm designer delivered a sealed envelope to the landowner on behalf of SSF. The envelope contained an offer from SSF to purchase the landowner’s property.

730. This incident was detailed in June 2010 media reports which raised concerns about the farm designer’s role with SSF. In response to the media reports, NVIRP conducted an investigation of the incident and provided advice to the Department of Sustainability and Environment to brief the former Minister for Water. My investigation examined this advice and identified that it was superficial as it did not address the issue.

731. On 7 June 2010, Mr Smith addressed an email to NVIRP’s Executive Manager Modernisation in which he detailed a conversation he had had with the farm designer in response to the media article. He wrote:

... The Landholder was very aggressive and threatening ...

[Name of the farm designer] had some football history with the individual ... which gave him more capacity to discuss matters ...

SSF became aware that [the farm designer] was at least able to talk to the individual and asked that he deliver a sealed envelope, which was in fact an offer to purchase the property.

I indicated to [Name of the farm designer] that probity is as much around perceptions as anything ... reminded on the conditions in the contract and the need to clearly separate activities.

732. Mr Smith asked NVIRP’s Executive Manager, Modernisation to obtain a written account of the farm designer’s verbal report to him. Mr Smith sent this email to his Executive Managers and the Group Director, Office of Water.

733. On 8 June 2010 NVIRP’s Executive Manager, Communications emailed two ministerial staff and the Group Director. Mr Smith received a carbon copy of the email. The email provided similar information to that detailed by Mr Smith in his email dated 7 June 2010 and finished with the comment ‘I trust this assists you with any advice to Government’.

734. At interview Mr Smith stated that he had a number of telephone conversations with the Minister’s office and that he understood that the department would have prepared the briefing to the Minister, using the information provided by NVIRP.

735. On 8 June 2010 NVIRP’s Executive Manager, Modernisation wrote to the farm designer and asked it to respond to NVIRP ‘setting out the circumstances surrounding your dealings with [the landowner] and the SSF project’.

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70 Royce Millar, Savvy punters zero in on farms, The Age, 7 June 2010, pages 1 and 6; Melissa Fyffe and Royce Millar, Millions ‘wasted’ on farm water, The Age, 8 June 2010, pages 1 and 7.
736. Initially in a response dated 10 June 2010, the farm designer wrote:

In a meeting held between NVIRP, [the farm designer] and SSF to discuss the best approach for dealing with [the landowner] given his potentially volatile mindset, it was mutually agreed that [the farm designer] would meet [the landowner] with [the farm designer’s] latest design for reconnection along with NVIRP legal agreements for handing over, and also have a sealed letter of offer from SSF in the event [the landowner] was keen to pursue this option. …

… We did not believe for a moment there was any conflict of interest in facilitating this outcome and have been clear with NVIRP and SSF as to the role we have played in this project …

We were always representing NVIRP and the landholder in our dealings ... and were never engaged by SSF to represent them on this or any other project.

737. On 11 June 2010, NVIRP’s Executive Manager, Modernisation emailed the farm designer and suggested he remove certain sentences in the response, specifically that ‘NVIRP provided offer letter to [the farm designer]. In his email he wrote:

… In essence we are staying silent on how the letter was received by [the farm designer]. Can you live with this?

738. After he did this, the farm designer sent the ‘revised letter’ to NVIRP’s Executive Manager, Modernisation.

739. NVIRP’s Executive Manager, Governance, sent an email to the Executive Manager, Modernisation with a carbon copy to Mr Smith dated 22 June 2010. The Governance Manager raised concerns about the accuracy of the information provided by the farm designer to NVIRP:

The last page ... provides information on the relationship between [the farm designer] and SSF. Was this declared previously to NVIRP ...? [the farm designer] indicates ... that they are aware of their conflict of interest responsibilities. In the second paragraph on page 4 [the farm designer] indicate “([the farm designer] ... were never engaged by SSF to represent them on this or any other project”). How does this align with the later statement explaining their relationship with SSF? The Age article includes a statement - “[the farm designer] denies he has ever consulted to Sustainable Soils ...”

740. NVIRP’s Executive Manager, Modernisation was unable to identify any response to these concerns; however he told my officers that he assumed a response would have been provided orally.

741. I reviewed a record of the outcome of NVIRP’s investigation of the issues raised in The Age articles, which was documented following a meeting on 9 July 2010. The outcome was recorded as:

No basis for a conflict was noted. In fact, the difficulties in negotiating outcomes with [landowner] were acknowledged.
742. On 8 June 2010 The Group Director, Department of Sustainability and Environment prepared a document titled Possible Parliamentary Question for the former Minister for Water. It is clear that the information provided by NVIRP had been a primary source for the document which stated:

NVIRP has advised that no special treatment is provided to companies such as Sustainable Soils and Farms (SSF). Sufficient public information is available to companies such as SSF to base their business decisions on. ...

[The farm designer] did undertake some work for SSF however this was related to the [development] of Whole Farm Plans for the Catchment Management Authority (CMA).

SSF did however in learning that [the farm designer] was [on] speaking terms with a landholder ... whose property they were interested in asked [the farm designer] to deliver a letter on SSF’s behalf. In doing so - [the farm designer] was not working for SSF in an official capacity. NVIRP is aware of the perception this created and has addressed this issue with [the farm designer].

743. At interview Mr Smith also stated that he had a number of telephone conversations with the Minister’s office and that he understood that the department would have prepared the briefing to the former Minister, using the information provided by NVIRP.

Conclusions

744. I consider that the information provided by NVIRP to the department to brief the former Minister for Water was misleading because it did not advise the Minister of the following:

- an agreement existed between NVIRP and the farm designer to assist the SSF project
- SSF had received confidential information regarding incentive payments
- NVIRP officers had been present when the decision was made for the farm designer to deliver a letter to the landowner.

745. NVIRP provided information to the department on the circumstances leading to *The Age* articles which was used by the department to provide a briefing to the former Minister. I do not consider that the briefing to the former Minister provided the true facts and circumstances of the relationship that existed between NVIRP, the farm designer and SSF.

*I do not consider that the briefing to the former Minister provided the true facts and circumstances of the relationship that existed between NVIRP, the farm designer and SSF.*
746. In light of the evidence, I consider it was also misleading that the former Minister was informed that no special treatment had been shown to SSF, when there clearly had been. Mr Smith acknowledged at interview that the former Minister may have been misled as he had not been provided with a ‘comprehensive’ understanding of what had happened.

It was also misleading that the former Minister was informed that no special treatment had been shown to SSF, when there clearly had been.

747. NVIRP failed to adequately investigate the issues raised in The Age articles in respect to farm designers and in this respect allowed conflicts of interest to exist and negatively impact on the NVIRP project.

748. In response to my draft report, Mr Smith said that there was no intention to mislead the former Minister for Water about the circumstances which led to The Age articles.

Recommendations

I recommend that the Department of Sustainability and Environment:

Recommendation 21

Commission an independent review of the probity of the agreement between NVIRP and SSF and the conduct of senior NVIRP and department officers in their dealings with SSF.

The Department’s response

Recommendation accepted.

Recommendation 22

Review the engagement of the particular farm designer on the farm design panel given evidence of their conflicts and conduct as identified in this report.

The Department’s response

Recommendation accepted.

Recommendation 23

Review the current arrangements in respect of the panel of farm designers and their competing private interests.

The Department’s response

Recommendation accepted.
I recommend that the Minister for Water:

**Recommendation 24**

Review the 4 per cent cap to ensure it is consistent with the modernisation program objectives and that the exemption is equitably applied in Northern Victoria.

**Breaches of privacy**

749. The *Information Privacy Act 2000* (the Information Privacy Act) regulates the handling of personal information by the Victorian public sector. The Act establishes 10 Information Privacy Principles which govern the collection, use and disclosure of personal information.

750. To implement the Foodbowl project, NVIRP is reliant on particular landowner information being provided by GMW. Information provision between GMW and NVIRP is governed by two documents, a *Relationship Agreement* and an *Information Provision Agreement* (information agreement).

751. The information agreement lists 16 farm design companies that NVIRP would provide with information regarding certain irrigation areas and channels. Farm design companies are engaged by NVIRP to visit landowners and discuss farm design and modernisation options. Many of the farm designers have other aspects to their businesses including:

- supplying products including pipes and fittings
- site inspections, project management and earthmoving
- water trading.

752. NVIRP’s Connections Manager, told my officers that more than 80 per cent of the information relating to the GMID’s 15,000 landowners had been provided to farm designers.

753. My investigation identified:

- NVIRP had provided unnecessary and excessive landowner information to farm design companies. For example:
  - one farm design company was provided with landowner information for 275 Irrigation Planning Modules (IPM)\(^71\) of which they required information for only 155.
  - farm designers were provided with landowners’ ABA [allocation bank account\(^72\)] details which are used by NVIRP as a ‘unique identifier’ for irrigators. A farm designer said that the ABA was not needed by designers.

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\(^71\) Irrigation Planning Modules are the system used by GMW to manage irrigation supply orders. It records delivery volumes for billing purposes, records delivery volumes against entitlements and rejects orders where there is insufficient entitlement.

\(^72\) Allocations made during the irrigation seasons are credited to the allocation bank account (ABA) in the amount of water available to the owner of the associated water share.
A farm designer had provided personal information such as landowner names, land size, and water shares to SSF for potential personal gain. That is, to assist SSF to identify properties to purchase. As the farm designer was also providing private services to the company, this distribution of information potentially privately assisted the farm designer.

NVIRP did not take action to retrieve information provided to two farm design companies who were no longer involved with the Foodbowl project. The designers were provided with GMW irrigator information in February 2009.

Conclusions

754. NVIRP may have breached the provisions of the Information Privacy Act and one or more of the Information Privacy Principles. I am of the view that NVIRP has demonstrated a lack of proper consideration for the private information of landowners in the GMID.

755. In addition, I am of the view that the Department of Sustainability and Environment did not take adequate steps to ensure legislative compliance by those bodies which fall within its oversight, including GMW and NVIRP.

756. Given my concerns, and in consideration of the number of affected individuals, I provided information to the Victorian Privacy Commissioner by virtue of section 20B of the Ombudsman Act 1973. I was advised on 14 July 2011 that the Victorian Privacy Commissioner has decided to investigate possible breaches under Part 6 of the Information Privacy Act.

Poor security of NVIRP information

757. NVIRP board directors are bound by a duty of confidentiality that applies to all that occurs during board and committee meetings and to the papers they are given that relate to the business of the Board.73

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73 Entitlements and Responsibilities of Board Directors for the State Owned Enterprise For Irrigation Modernisation In Northern Victoria, page 3.
758. My officers’ examination of NVIRP director and staff emails identified that:

- NVIRP’s seven Board Directors use their private or business email addresses in all communications with NVIRP. As a result, confidential material is not secure and is accessible by third parties.
- Confidential internal information and information obtained by the NVIRP CEO from external parties has been provided to another party external to NVIRP.

**NVIRP Directors’ use of private email**

759. My investigation identified that all NVIRP board Directors receive NVIRP documentation relating to board meetings and associated business, via their private email addresses.

760. In particular, NVIRP’s communications to a Director for the past three years, (including board minutes, papers, and emails with ‘Highly Confidential’ included in the subject matter), were sent to an email address he shares with his wife. The Director’s wife is a consultant in the Victorian water and dairy industry.

761. Electronic records show that NVIRP staff sent 667 emails to the email address of the Director and his wife, and NVIRP staff received 305 emails from this address. A review of these messages disclosed that the messages related to the core business of NVIRP, such as monthly reports that contained updates on all aspects of the NVIRP project.

762. At interview on 20 May 2011, NVIRP’s Executive Manager, Governance and Board Secretary was asked whether he had concerns with the way that NVIRP Directors sent and received NVIRP communications. He said:

   I would probably agree with your preface that there has been some confidential information [sent out to Board members via their private email addresses]

   I must say I’m not entirely happy with it.

   … we are working to correct [it] but perhaps not quick enough.

763. In response to my draft report, the NVIRP Director said:

   The email address in question is the same email address I have always used in relation to NVIRP issues with NVIRP and DSE. Never before has the use of this email address been questioned.

   Following my interview with your Investigator I immediately put in place steps to rectify the situation and ensure that I had a specific NVIRP email address. I believe other NVIRP Directors have since also received an NVIRP email address.

764. At interview, both the NVIRP Director and NVIRP CEO, Mr Smith initially denied that the Director’s wife had had access to confidential NVIRP information. Upon being presented with emails and other documentary evidence, they both agreed that she had had access to confidential
NVIRP information by virtue of NVIRP’s email practices. The Director also disclosed that he ‘may have discussed … Board papers with [his wife] at times’.

765. In responding to my draft report, the Director also said that:

There is no evidence that my wife has accessed confidential emails sent by NVIRP to me.

My wife is an honourable and reputable person and would not access emails intended for me.

766. I note that the Director’s wife has access to all emails sent to this address by virtue of the joint email address. I consider that it would be necessary for her to open each email to establish whether it was for her or for her husband. Email evidence obtained during my investigation reveals many emails marked ‘confidential’ being sent to this joint email address. The evidence also shows personal emails, with the salutation, ‘Dear [wife’s christian name]’, being sent to this address.

767. From email evidence, I note that Mr Smith has previously specifically referred the Director’s wife to a NVIRP Board paper sent to her Director husband, in order to assist her in preparing a submission related to the dairy industry. This demonstrates Mr Smith was aware she had access to the NVIRP Board papers.

768. My investigation did not disclose evidence of the Director’s wife using NVIRP information improperly.

Inappropriate provision of information

769. My investigation also found that on at least three occasions NVIRP’s CEO, Mr Smith provided the Director’s wife with information that he obtained in his role as a public officer.

770. For example:

- On 18 December 2008 Mr Smith sent an email to [NVIRP’s Director’s wife] with ‘Modernisation Case Studies’ attached. Mr Smith stated:

  [Director’s wife’s name], thought you may be interested in this but you never got it from me.

- Mr Smith sent [NVIRP’s Director’s wife] an email containing an attachment titled Briefing Note, October 2008, … Subsurface Strip Irrigation Demonstration. In his email, Mr Smith stated:

  [Director’s wife’s name], I met with [agency] some time back. Have a paper on the results from their trials. This is where I saw the farm connect concept really well. Were you aware of this from …? I’ve received indirectly – and they wouldn’t know I have it – so just tread carefully with it.
771. At interview, Mr Smith agreed that it was not appropriate for him as CEO to be providing private business information that he obtained as a public officer to a third party such as the wife of an NVIRP Director. My officers asked Mr Smith to comment on the allegation that he treated the Director’s wife like an eighth board member. He said:

Oh, yeah, I guess I can see where you could assume that.

772. Mr Smith was asked why he treated her this way. He said, ‘Because of the value that she brings to – and the knowledge in the water industry in Victoria’.

773. In response to my draft report, Mr Smith said, ‘I maintain that [Director’s wife] in no way influenced NVIRP’s policy or decision making. I also refute that I ever accepted that [Director’s wife] was in effect an eighth board member’. Mr Smith did acknowledge that NVIRP’s email practices allowed the Director’s wife to access information intended to be sent to her husband, an NVIRP Director and that NVIRP’s Directors now have individual NVIRP email accounts.

Conclusions

774. The maintenance of confidentiality and security of government information is a fundamental principle of public sector governance.

775. Responses provided by NVIRP’s CEO and the Board Director to my officer’s questions regarding the security of NVIRP information, indicate a lack of understanding of corporate governance issues and the role and responsibilities of public officers. This is concerning given the significance of the Foodbowl project.

Responses provided by NVIRP’s CEO and the Board Director ... regarding the security of NVIRP information, indicate a lack of understanding of corporate governance issues and the role and responsibilities of public officers.

776. In response to my draft report, Mr Smith said ‘I strongly refute the allegation that I or NVIRP as an organisation had a disregard for corporate governance and the role and responsibilities of public officers. Further, I do not consider this is a conclusion available to the Ombudsman based on the examples set out in the report’.

777. In response to my draft report, NVIRP’s Director said:

On no account would I have ever discussed any sensitive, confidential, or matter of substance relating to board papers, or board discussions with my wife.

In hindsight it was clearly inappropriate to use my private email address for board communications. However, in this I was no more culpable than any of the other Board Members, many of whom have a great deal more corporate experience than me. Once the issue was brought to my attention, a specific NVIRP email address was established.
Recommendation

Recommendation 25

I recommend that the Department of Sustainability and Environment take action to raise awareness among Board Directors and Chief Executive Officers within agencies oversighted by them, of their roles and responsibilities in relation to security of information.

The Department’s response

Recommendation accepted.

Inappropriate acceptance of gifts and hospitality

778. The risks associated with public sector employees accepting gifts and hospitality are outlined in several guides and reports including:

- The Code of conduct for Victorian public sector employees.
- My conflict of interest in the public sector March 2008 report.

779. Key messages outlined in these guides and reports include that public sector employees should:

- not solicit gifts, benefits or hospitality
- refuse all offers of gifts, benefits or hospitality that could be reasonably perceived as undermining the integrity and impartiality of their organisation or themselves
- refuse all offers of gifts, benefits or hospitality from people or organisations about whom they are likely to be making decisions involving tender processes and procurement.

NVIRP gifts and hospitality

780. The NVIRP’s Hospitality, Gifts and Benefits Business Rule (business rule) states that all gifts, benefits or hospitality greater than $50 must be recorded in the Gifts and Benefits Register (the register) and:

... employees, staff and contractors must refuse all offers of gifts, benefits or hospitality from individuals or organisations about whom they are likely to make decisions or are aware that the organisation may be making decisions on tender processes; procurement; or connections or on-farm works.

781. The following issues were identified by my investigation:

- NVIRP’s register was not adequately completed.
- Gifts and hospitality were accepted from a key supplier to the Foodbowl project and not declared by public officers.
• Hospitality was accepted from a key supplier during a tender process.
• Inappropriate hospitality expenditure was incurred by NVIRP.

Register not completed

782. NVIRP’s register contained 47 entries from November 2010 to May 2011. NVIRP’s Executive Manager, Governance told my officers that ‘appropriate attention was not given’ to establishing the register and the associated governance arrangements when NVIRP commenced operations in early 2008. While individual declaration forms were completed from December 2009, a register was not maintained until November 2010. NVIRP’s probity advisor said at interview on 11 May 2011 that:

My recollection is that they [NVIRP] focused their activities on the program works in the first 12 months and then worried about their corporate practices subsequent to that.

783. At interview on 20 May 2011, Mr Murray Smith, NVIRP CEO said in relation to the significance of a gift and hospitality register for a large public project such as the Foodbowl project:

... we can hopefully stand at least some scrutiny from the likes of yourselves [Ombudsman officers] when it comes to, you know our dealings with other individuals that are participating in the project and have the potential to derive benefit from the project.

Hospitality accepted from contractors and not declared

784. My officers identified that numerous gifts had been provided by NVIRP contractors, declared and accepted by NVIRP staff. These included:

• champagne
• perfume with an estimated value of $100
• entry and hospitality at sporting events with an estimated value of $80 to $295
• Christmas gifts.

My officers identified that numerous gifts had been provided by NVIRP contractors, declared and accepted by NVIRP staff.

785. In relation to the gifts and hospitality received by NVIRP staff, Mr Smith stated:

It depended what sort of benefit we were getting out of having a staff member there and who they were able to talk to at the same time. So, if there was some value in that. And you know we are part of the community as well.
786. My officers compared NVIRP’s gifts and hospitality register with documentation obtained from a key supplier to the Foodbowl project.74 This identified that NVIRP officers had accepted tickets to sporting events and hospitality from the supplier however this hospitality had not been declared in NVIRP’s register. For example:

- CEO Mr Smith accepted tickets to rugby matches at Etihad Stadium on 3 and 20 June 2009.
- An NVIRP Board Director accepted tickets to a football match at Etihad Stadium on 14 August 2010.
- Mr Smith dined with the supplier’s staff on 23 July 2009.
- An NVIRP Director dined with the supplier’s staff on 27 October 2008.

**NVIRP officers had accepted tickets to sporting events and hospitality from the supplier however this hospitality had not been declared in NVIRP’s register.**

787. At interview on 20 May 2011, Mr Smith told my officers that his failure to declare gifts and hospitality offered by the supplier was ‘an oversight at the time’. Following the interview with my officers, Mr Smith submitted a written response in which he offered the explanation:

> Our gifts and hospitality business rule was not in place until shortly after. I also recall discussing this with [NVIRP’s Governance Manager] at the time to ensure there was [sic] no active tenders.

788. In response to my draft report, Mr Smith said:

> I acknowledge that I did accept tickets for the rugby matches listed, but only attended one match myself. I am unaware of the face value of the tickets and if they exceeded the $50 threshold but I note they were not in a corporate box. The tickets were “seat only” with access to bar and restaurant facilities which we paid for ourselves. I also understand that the tickets were part of a season package [the supplier] held. I submit that if this was in fact a breach of the Business Rule, and it is not clear that it was, it occurred in circumstances where any breach was inadvertent.

**Gifts and hospitality accepted during a tender process**

789. My investigation identified that on two occasions, NVIRP staff availed themselves of the supplier’s hospitality during a tender process in which the supplier was involved.

**On two occasions, NVIRP staff availed themselves of the supplier’s hospitality during a tender process in which the supplier was involved.**

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74 This company is the sole supplier to NVIRP of the channel control technology for the Foodbowl project.
790. In September 2010 NVIRP awarded the supplier company a contract with a value of over $870,000 for the provision of meters. The tender opened on 19 May 2010, closed on 21 June 2010, and NVIRP CEO Mr Smith authorised the procurement on 17 September 2010. On 14 August 2010, during the evaluation of the tender, an NVIRP Board Director attended Etihad Stadium for a football match as a guest of the supplier company.

791. The Director was given the opportunity to respond to my draft report but declined to make any comment. In response to my draft report, NVIRP said that the Director ‘has confirmed to the Board that he accepted hospitality from [the supplier company] without an appropriate declaration, and he will be counselled by reminding him of his obligations as a Board member and having regard to the organisation’s policies’.

792. In relation to staff receiving gifts and hospitality during a tender process, NVIRP’s Probity Advisor told my officers:

I would have advised them not to go and I would have told them at a board meeting … not to do that sort of thing.

793. In relation to meeting with principals of firms during a tender process, the probity advisor told my investigators: ‘my advice would be “don’t meet”’.

794. Mr Smith stated at interview on 20 May 2011 that he declined most offers of gifts and hospitality and explained his decision-making process as follows:

… I don’t want to … get myself in a compromising position with any of them if I may or may not be signing off on a contract. … the first thing I do is, [ask myself] “Is there any contract in the wind where” … it may taint the waters … how it’s perceived with other potential bidders.

795. A director of the supplier company said at interview on 2 March 2011 that he arranged to have dinner with NVIRP CEO Mr Smith in February 2011. The director told my officers that he was frustrated with the current metering solutions tender process and wished to speak with Mr Smith about this. The tender for the supply of metering solutions was released on 10 December 2010 and tenders were to be submitted by 14 January 2011.

796. On 2 February 2011 the director of the company dined with Mr Smith and NVIRP’s Executive Manager, Communications at a restaurant in Melbourne. The director paid for the dinner which totalled $248. This hospitality was not declared and recorded in NVIRP’s register.

797. Mr Smith stated at interview on 20 May 2011 that he understood that he may be offered gifts or hospitality at times because:

… they’re [those who offer hospitality] looking for me to … drop a little crumb somewhere where it gives them some competitive advantage, or they’re wanting to build a relationship. … I just try to avoid getting myself in that situation.
798. Mr Smith denied that he had ever spoken with the company director during a tender process and further commented that such behaviour would be inappropriate:

If there was a tender out there our policy is to stay well clear of... there will be ongoing things where [the company] is the supplier of gates and the technology... where I will meet with them from time to time. But if there is a tender out there and it’s an open tender, say for meters, I certainly wouldn’t be out there with - to the best of my knowledge.

799. Mr Smith subsequently submitted a written response to my office on 23 May 2011 in which he stated:

I can confirm that I did have dinner with [the director of the company] and [NVIRP’s Communications Manager] on the 2nd February [2011].... channel automation technology is a fundamental building block in the modernisation program and NVIRP needs to retain an ongoing relationship and dialogue with [the company]. NVIRP is a very large percentage of [the company] business and as such a substantial risk to both them and NVIRP. It is clearly in the longer term interests of GMW and irrigators / the State that [the company] remains a robust entity ... Specifically in relation to metering, NVIRP was not in the market on 2nd February - notwithstanding this, matters related to forthcoming tenders were not discussed.

800. NVIRP’s Executive Manager, Capital Works advised my officers in writing on 26 May 2011 that no decision had yet been made on the meters tender at this time. In addition, he confirmed that CEO Mr Smith had a key role in approving the recommended tenderer. The Executive Manager stated:

... the NVIRP CEO [Mr Smith] ... will be asked to approve any recommendations(s) to contract arising from the TER [Tender Evaluation Report] ... up to $3,000,000 ... he will also approve [the] contract(s).

801. The Executive Manager also confirmed that the tenderers were completing testing to determine if their products met the tender’s performance requirements. This information is consistent with the company director’s evidence at interview that he wished to meet with NVIRP’s Mr Smith to discuss his frustration at the testing requirements for the tender as it was costing the company $100,000 for every test conducted.

802. In response to my draft report, Mr Smith said:

That Meter Point Solutions tender closed on 14 January 2011. The dinner on 2 February 2011 occurred post the tender closing, therefore providing no opportunity for the tender bidding process to be influenced or any advantage gained by [the company] as a result of that dinner. It is acknowledged that at the date of the dinner the evaluation of bids resulting from the tender were being evaluated by the Managing Contractor.
... My recollection of the discussions at the dinner were more around broader relationship issues involving NV1RP, G-MW and [the company] as contemplated by the requirement of the Tripartite Deed. ... I categorically say it [the tender] was not discussed.

... The Business Rule required declaration of gifts or hospitality in excess of $50. I submit that this was an inadvertent and insignificant breach of the Business Rule.

... I dispute the interpretation and conclusion reached by the Ombudsman with respect to [the Capital Works Executive Manager’s] advice in that I had a “key role in approving the recommended tenderer;” ... At no stage in the process did I, as the NVIRP CEO, have any involvement in, or influence on the Meter Point Solutions tender processes or final recommendations.

803. In my view, the response provided by Mr Smith raises concerns about his understanding of the acceptance of gifts and hospitality from a tenderer in the public sector and particularly, the perception created by accepting hospitality during a tender process.

804. Mr Smith had final sign off on the tender decision, irrespective of the processes that went before his sign off. It was open to him to agree or not agree with the tender report. I consider he has a key role in the tender process and is a part of the tender process. In Mr Smith’s own words, any involvement with tenderers by him, ‘may taint the waters’.

805. Guidance on these matters is readily available: The Public Sector Code of Conduct, the Public Sector Standards Commissioner’s Gifts, Benefits and Hospitality Policy Framework and NVIRP’s Gifts and Benefits Business Rule (approved by Mr Smith in early 2011) – state: actual, potential or perceived conflicts of interest should be avoided and, all offers of gifts and hospitality from people or organisations about whom they are likely to make decisions involving ... tender processes, procurement, should be refused.

806. I consider Mr Smith’s conduct is inconsistent with the Code of Conduct, the Commissioner’s Policy Framework and NVIRP’s Business Rule and inappropriate.

807. In response to my draft report, the company said that the meeting of 2 February 2011 [between the company and NVIRP’s CEO and Communications Manager] was in accordance with the provisions of the Request for Tender which provides for parties to engage in post tender negotiations. In my view, hospitality provided by the tenderer to the person who has the final decision on the successful tenderer, during the tender process does not amount to ‘post tender negotiations’.
Conclusions

808. The receipt of gifts and hospitality by public officers has the potential to influence decisions and create conflicts of interest. My investigation identified that NVIRP staff have not questioned the basis for private entities offering gifts and hospitality or the perceptions that may arise as a result of acceptance of the same.

_The receipt of gifts and hospitality by public officers has the potential to influence decisions and create conflicts of interest._

809. While NVIRP has established processes and policies to deal with gifts and hospitality, they have not complied with them. I am further concerned that senior NVIRP officers were not acting in accordance with the code of conduct and public sector principles.

_While NVIRP has established processes and policies to deal with gifts and hospitality, they have not complied with them._

810. In response to my draft report, Mr Smith said:

I acknowledge that there may have been a small number of minor and insignificant breaches of the policies in place in the early days of this project.

811. Where the acceptance of gifts and hospitality are not declared by staff and/or managed by agencies, corrupt conduct can easily emerge. It is not enough that the person or agency has not profited from the conflict.

812. My officers’ examination of NVIRP’s gift and hospitality register did not identify any hospitality paid for by the supplier company. Clearly the hospitality extended by the company not only warranted declaration but arguably should have been declined given the company’s position as a major supplier of the Foodbowl project.

813. In response to my draft report, Mr Smith said:

I do not accept the Ombudsman’s suggestion that the hospitality should have been declined.

814. I established that NVIRP’s CEO Mr Smith accepted hospitality from the company director during a tender process. The director told my investigators that he wished to discuss issues with the tender with Mr Smith. Mr Smith told my investigators that the tender was not discussed, although the director of the supplier company advised my officers that the purpose of the meeting was to discuss his concerns with the tender. Given Mr Smith’s role in approving the tender decision and final contract, I consider the attendance at the meeting by Mr Smith was inappropriate and a clear conflict of interest.
815. In response to my draft report, NVIRP said:

A major review of NVIRP’s framework for gifts and hospitality was undertaken in December 2010. This framework included a business rule and Gifts and Hospitality Register. In addition, procedures for review of the register by the Audit and Risk Committee and the Board Chair were developed and implemented in July 2011. NVIRP has adopted a zero value for reporting purposes. Compliance with the policy and reporting of hospitality and gifts has significantly improved as a result of improved awareness and training.

The failure to declare hospitality and have a proper register in place has been acknowledged however the conclusion reached would suggest that declaration of the hospitality extended by [the supplier company] was deliberately avoided. This is rejected. This was poor administrative practice rather than a deliberate attempt to shield such offers from scrutiny. Whilst not excusing that omission it should be acknowledged that [the supplier company] is the sole supplier in respect of [channel automation technology]. Management’s view is that any offer of hospitality should be assessed on a case by case basis in accordance with the guidelines.

**Recommendation**

**Recommendation 26**

I recommend that the Department of Sustainability and Environment formulate an appropriate gifts and hospitality policy and procedure and distribute it to relevant agencies within its portfolio for adoption. The policy should include:

- value of gifts and hospitality to be included in registers
- all offers of gifts and hospitality to be recorded in the register
- disciplinary action for those staff who fail to declare gifts and hospitality or submit declarations after the event.

**The Department’s response**

*Recommendation accepted.*

**Department of Sustainability and Environment gifts and hospitality**

816. Departmental staff are required to:

- complete a Gifts and Benefits Notification Form (notification form) when the gift, benefit or hospitality they are offered is deemed to be of ‘significant value’ (greater than $100) or there ‘could be a perceived conflict of interest, regardless of the value’
- report to their manager immediately when they receive a gift.
817. The Department of Sustainability and Environment (the department) has over 2,700 staff and could only locate its gifts register from August 2008. There were 38 notification forms contained in the register for the period August 2008 to January 2011.

818. My investigation identified that Mr David Downie, former General Manager, Office of Water regularly accepted hospitality from a key contractor to the Foodbowl Modernisation project. According to the contractor’s records, Mr Downie has dined at its expense on seven occasions since 2007, including on two occasions with his wife. The total cost of hospitality accepted by Mr Downie according to the supplier’s records exceeded $700. While the department’s register only dates back to August 2008, Mr Downie has not declared to the department six of the seven instances of hospitality accepted by him during this period.

819. At interview on 8 July 2011, Mr Downie told my officers he had received gifts or hospitality in his role as former General Manager, Office of Water and that these gifts were not recorded as received as they were given to the office and not to him personally.

820. In response to my draft report, Mr Downie wrote:

I did not say at interview that the seven instances of hospitality you quote were a gift to the office. I said one instance, a watering can with a pump was given to the office and I believe it still sits in the Departments [sic] office. It has never become a possession of mine.

821. In relation to hospitality received from the project’s contractor (costing $700), Mr Downie said that as he was not making a decision about the contractor, he had not declared the hospitality. He also confirmed that he had dined with government contracted staff from [other suppliers]:

I have lots of lunches with lots of people, breakfasts and dinners. It’s part of networking and understanding what’s happening in the industry. ... it’s not practice to declare those.

822. Mr Downie told my officers he was aware of the department’s policy in relation to gifts and hospitality but as he did not let contracts to the parties concerned, he did not see the relevance of the policy to his situation.

823. In relation to his acceptance of hospitality, Mr Downie responded to my draft report and said:

The facts above reported … are not disputed. The interpretation because of the circumstances are [sic] totally wrong.

[The Foodbowl contractor] had a contract with GMW (I understand for possibly some years before the Foodbowl Modernisation Program was announced). I was not involved in the letting of these contracts and if I was in the General Manager/Deputy Secretary role at the time these contracts were completed, I was not aware of them or consulted.

So, often back here in Australia I would meet those companies, including [the Foodbowl contractor], and sometimes we would
discuss the overseas situation and potential Victorian Government assistance ... Because of the pressure of the ‘normal’ day to day responsibilities the discussion / meetings would often run over after normal hours. This often leads to breakfasts, lunches, dinners, many of which I paid for or made a contribution. Often it is not clear who precisely paid the bill at these functions. Sometimes I am a guest of all who attended because I was making a speech. Clearly there are no conflicts - these occasions are not about deciding contracts. They are public.

824. Mr Downie was asked to comment on the potential for him in his former departmental role to influence NVIRP officers as follows:

Question: Do you ever exert any influence over Murray Smith [NVIRP CEO] at all?
Response: ... I believe that our relationship is constructive and I’d hope that I exercise influence over him and the execution of his job in delivering government business.

825. In response to my draft report, Mr Downie said:

I was never asked or questioned about exceeding the boundaries of my role in these conversations by either his [Mr Smith’s] Board, Mr Smith or my Minister or the Minister’s office. The Minister’s office had frequent conversations with NVIRP and I am sure if my role/influence was inappropriate it would have been questioned.

At all times I pursued getting the job done in the interests of the Department, the Government and Victoria, and not personal objectives.

826. According to the register, gifts were primarily offered to departmental staff by businesses from whom the department procures goods and services such as consulting companies, legal firms and sales staff. Gifts and hospitality offered to and accepted by departmental officers and recorded in the register included:

• Tickets to cultural and sporting events and corporate hospitality with an estimated value of between $150 and $600.
• Alcohol including one item valued at $550.
• A cheque for $500 from a private school, received in March 2009 and the notification form was completed in September 2009. The department accepted the gift on the basis that it would be put towards a wildlife project and the school would be thanked for its contribution via a plaque.

827. Key reasons noted by staff for accepting the gifts and hospitality included:

• to acknowledge and support good relationships
• to discuss progress on a tender process
• appreciation for department services, for example, ‘processing plans in a timely manner’
• to provide ‘reciprocal hospitality’.

828. The quality of recording on the notification forms by departmental staff was generally poor as forms were often incomplete; not signed or dated and no decision was recorded as to the manager’s decision regarding acceptance or refusal of the gift or hospitality.

829. In addition, some gifts were accepted by staff and recommended by management to be the subject of a charity raffle or donation. There was no information included within the register to confirm if the gift was disposed of in this manner or not.

Conclusions

830. Mr David Downie, former General Manager, Office of Water, has demonstrated a lack of understanding in respect to his own acceptance of gifts and hospitality.

831. Mr Downie said that it is acceptable for him to accept gifts and hospitality because he is not in a position whereby he is directly awarding contracts, although he clearly exercises influence on those that are in that position. He demonstrated limited understanding of perceptions of conflict or the influence he may have exerted over NVIRP staff in his role.

It is highly inappropriate for public sector employees to accept gifts and hospitality without regard to the perceptions of conflict of interest they create.

832. In my view, Mr Downie has failed to comply with his department’s gifts and hospitality policies and procedures. As I have previously reported, it is highly inappropriate for public sector employees to accept gifts and hospitality without regard to the perceptions of conflict of interest they create. As a senior departmental officer, this is inappropriate.

Recommendations

Recommendation 27

I recommend that the Department of Sustainability and Environment ensure all staff are aware of their responsibility to declare gifts and hospitality.

The Department’s response

Recommendation accepted.
Recommendation 28

I recommend that the Secretary, Department of Sustainability and Environment consider the issues in my report concerning Mr Downie and take appropriate action.

The Department's response

Recommendation accepted.

NVIRP hospitality expenditure

833. I reviewed expenditure by NVIRP directors and the Chief Executive Officer to assess whether expenditure incurred was appropriate, reasonable and had been incurred in line with NVIRP’s policies and procedures. This included examining payments claimed for travel, entertainment expenses, and reimbursement of personal expenses and expenses incurred using the corporate credit cards.

834. In determining the appropriateness of expenditure I assessed whether this expenditure was incurred in order to meet a ‘business need’ as required by the Financial Management Act 1994. That is, whether the expenditure incurred could reasonably be associated with the conduct of that person’s official duties.

835. My officer’s review identified that expenditure was regularly incurred on the purchase of alcohol for staff and contractor functions and during board dinners. The exact details of expenditure incurred on alcohol was not able to be ascertained as supplier invoices did not separately disclose the cost of both food and beverages. While NVIRP’s hospitality policy was silent on this aspect, I note that the NVIRP Directors are remunerated for their appointment to the board as follows:

Directors ... will be entitled to reimbursement for reasonable out of pocket expenses such as those for essential travel, accommodation, meals and other incidental expenses ...75

Conclusions

836. I found some NVIRP expenditure to be inappropriate and delivered to individuals a private benefit.

837. I do not consider that the purchase of alcohol by NVIRP for consumption at ‘Board dinners’ is a reasonable or an ‘essential’ business expense that should be borne by a government agency.

838. In response to my draft report, NVIRP said:

Management rejects that the NVIRP policies on this matter are silent but acknowledges that in the area … they lack clarity. That aspect of the policy will be reviewed to ensure it is consistent with government requirements and remove and [sic] ambiguity.

75 Entitlements and Responsibilities of Board Directors for The State Owned Enterprise For Irrigation Modernisation In Northern Victoria, page 1.
Recommendation

Recommendation 29

I recommend that the Department of Sustainability and Environment direct respective water authorities to review their hospitality policies and procedures so that agencies only incur costs for reasonable, business-related expenditure, which is consistent with community expectations for such expenditure.

The Department’s response

Recommendation accepted.

Untimely payment of contractors

839. The payment of NVIRP contractors is governed by the Building and Construction Industry Security of Payment Act 2002 (Vic) (the Act) and by the Managing Contractor Agreement.

840. The Act aims to ensure that any person who carries out construction work is entitled to receive timely payments for performance of that work. Clause 16 of the agreement provides for compliance with the Act.

841. At interview on 2 June 2011 both the Acting Executive Manager, Finance and Business Services, NVIRP and the Managing Contractor’s Accounts Officer appeared unaware of their legislative obligations.

842. In response to my draft report, the Managing Contractor’s Accounts Officer agreed that his knowledge of the requirements of the Act was lacking however, he stated that the contracts entered into with contractors contained timelines for payments to be made.

843. NVIRP’s manager had no comment to make on my draft report.

844. Section 15(4) of the Act makes the ‘respondent’ liable for payment of the payment claim within 10 business days after the service of the payment claim. If these payments are not made in accordance with the Act, the Act provides that the respondent is liable to pay interest on outstanding amounts. The respondent in this case may be NVIRP, the Managing Contractor or a Work Package Contractor engaged by the Managing Contractor. Section 35(2) makes the principal (NVIRP) liable for payment to the claimant if the respondent has not paid the payment claim.

845. NVIRP’s Executive Manager, Capital works, said that as NVIRP and the Managing Contractor are not party to the agreements between work package contractors and their subcontractors and suppliers, NVIRP needs to rely on the work package contractors to act in accordance with the Act.
846. NVIRP provided a copy of a spreadsheet listing outstanding invoices as at 21 March 2011. My investigation identified that there were 241 invoices unpaid at that date comprising:

- 67 invoices (27.8 per cent) with an invoice date over three months old. The oldest invoice was dated March 2010. The total value of the outstanding invoices was $545,352.51.
- 30 invoices (12.4 per cent) with an invoice date over two months old.
- 66 invoices (27.3 per cent) with an invoice date over one month old.

847. Most of the outstanding invoices had a status of ‘To be approved’.

848. Several contractors contacted my office to raise concerns about NVIRP not paying their accounts in a timely manner. NVIRP’s manager, provided my officers with a number of complaints from parties regarding the payment of their accounts. This information was sourced from finance staff’s email accounts as well as the NVIRP complaints register. The manager told my officers that the complaints provided were not exhaustive.

849. NVIRP Executive Manager, Finance and Business Services told my officers that NVIRP had also received complaints ‘from vendors that invoices were overdue’. As a result, the process for managing and tracking mail and invoices was reviewed in April-May 2011, during my investigation. The review found that there were no checks in place for incorrectly filed invoices which had not been paid. As a result, the process for managing mail and tracking outstanding payments has since been revised.

850. To check on the progress made by NVIRP to process accounts in a timely manner, my officers analysed 296 outstanding invoices as at 30 June 2011. This identified:

- 45 invoices (15.2 per cent of the audited list) with an invoice date over three months old. The oldest invoice was dated March 2010. The total value of the invoices was $238,559.98.
- 26 invoices (8.8 per cent) with an invoice date over two months old.
- 59 invoices (19.9 per cent) with an invoice date over one month old.

Conclusions

851. NVIRP’s overall improvement in relation to the payment of invoices in the period March to June 2011 was modest, despite it being made aware of my concerns during the investigation.

852. A lack of knowledge of the provisions of the Act exposes NVIRP to significant financial risk. The information provided by NVIRP about reliance on Work Package Contractors to comply with the Act is misplaced as the Act could still make NVIRP liable for payment of the payment claim and any associated interest for late payment.
NVIRP has not paid its accounts in a timely manner and in accordance with legislative requirements. While the level of overall outstanding invoices at 30 June 2011 has reduced marginally, NVIRP is still not paying its accounts in a timely manner.

NVIRP said:

NVIRP acknowledges that it was having difficulty managing accounts payable as a result of inadequate financial systems.

[there has been] significant improvement achieved as at 21 October 2011. …

Manual controls implemented to fill the existing gaps have resulted in a marked improvement in payment of invoices. NVIRP has commenced implementation of a more robust financial management and project management system to strengthen system controls.

In regard to the Building and Construction Industry Security of Payment Act 2002 NVIRP advises:

• The provisions of the Act do not apply to the payment processes associated with Work Package Contracts [WPC] themselves. Contract payment terms are separately described in each contract. …
• NVIRP is not a party to the WPC contract arrangements with lower tier subcontractors or suppliers;
• NVIRP however has instructed each WPC to ensure that all lower tier subcontractors and suppliers know that they can contact NVIRP/[Managing Contractor] in the event that they haven't been paid on time and making them aware of their rights under the provision.

Recommendations

I recommend that the Department of Sustainability and Environment ensure that:

Recommendation 30

Personnel involved in the processing and payment of accounts for the Foodbowl project are trained in the operation of the Building and Construction Industry Security of Payment Act 2002 (Vic).

The Department’s response

Recommendation accepted.
Recommendation 31

Agencies involved in the Foodbowl project implement systems, procedures and practices that will ensure compliance with the timeliness provisions of the Building and Construction Industry Security of Payment Act.

The Department’s response

Recommendation accepted.

Inadequate complaint handling

855. Complaint handling is a key function of any organisation. Responding to complaints assists organisations to identify errors, rectify potentially costly mistakes and demonstrate to the public that they are receptive of concerns.

856. NVIRP’s complaints are received by the Communications and Administration Assistant (complaints officer). This officer enters complaints received into a Complaints Register (the register) and notifies the appropriate business area of the complaint.

857. The register includes requests for information, enquiries (for example, queries about recruitment, the Foodbowl project) and complaints.

858. During my investigation, my officers identified deficiencies with NVIRP’s complaint handling process including:

- an inadequate complaint handling process
- a lack of confidentiality and privacy in that all staff can access the complaints register
- complaint staff are not familiar with NVIRP’s Stakeholder Complaints and Resolution Procedure (the complaint procedure) or the Whistleblowers Protection Act 2001
- other than general contact details, the NVIRP website does not contain any information about how to lodge a complaint
- NVIRP’s complaint procedure, dated 30 March 2010, defines a complaint however does not define or provide for the entering of consultations or queries in the register
- some complaints were classified in the register as a ‘consultation’ or ‘query’
- staff were not recording dates when complaints or consultations were resolved or responded to.

859. At interview, the complaints officer said that she was unaware of NVIRP’s complaint procedure and:

- demonstrated a lack of understanding about complaint handling processes, confidentiality and the Whistleblowers Protection Act 2001
• advised that if she can resolve the complaint herself, it will not be logged
• had not received any complaint handling training from NVIRP.

860. In response to my concerns, NVIRP said:
• ... only those staff who have signed ‘confidentiality documents’ can access the complaints register
• The practice is that staff using the complaints system (Consultation Manager) are trained in the procedure
• The NVIRP website indicates clearly how contact can be made by phone, fax, mail and in person or via the waterforgrowth email system.

861. My officers contacted several irrigators whose matters had been closed by NVIRP in early 2011 to ascertain whether they were satisfied with NVIRP’s handling of their matter. They indicated that their complaints and requests had not been responded to by NVIRP in a timely manner.

Conclusions

862. NVIRP does not have an effective and appropriate complaint handling/consultation process despite its role and responsibility in delivering a significant undertaking involving the community. Any communication from the public needs to be responded to in a timely and receptive manner. The accurate recording of these decisions by NVIRP is also important and a requirement of the Public Records Act 1973.

**NVIRP does not have an effective and appropriate complaint handling/consultation process despite its role and responsibility in delivering a significant undertaking involving the community.**

863. NVIRP responded that it disagrees with this conclusion and believes the assumptions have been reached on inaccurate analysis of the information provided. It also said a more concise complaints mechanism called ‘Consultation Manager’ has been operational from June 2011. This software assists in identifying and following up outstanding complaints, identifying complaints trends and encouraging staff accountability in actioning complaints.
Recommendation

Recommendation 32

I recommend that the Department of Sustainability and Environment:

Ensure the complaints handling process for the Foodbowl project is accessible, transparent and fair and that complaints handling staff receive appropriate training.

The Department’s response

Recommendation accepted.

Departmental oversight of GMW and NVIRP

864. Water authorities such as NVIRP and GMW report to the Minister of Water via the Department of Sustainability and Environment (the department) which acts as an interface between the Minister and each body. My officers considered the role that the department undertook in the oversight of NVIRP and GMW and identified the following concerns:

• The department failed to ensure that an independent and formal assessment of the NVIRP board’s performance was undertaken.

• Mr David Downie, former General Manager, Office of Water and other senior departmental officers had received information about the level of the former GMW Board’s dysfunction for some years and failed to take remedial action.

NVIRP’s annual board assessment

865. Under the Public Administration Act 2004 boards must ensure that there are adequate procedures for assessing the performance of individual directors and dealing with the poor performance of directors.

866. A senior departmental manager said that such assessments assisted the department in forming a view of how the board is actually performing and in framing recommendations to the Minister for any future board appointments or re-appointments.

867. In contrast, Mr Downie, former General Manager, Office of Water, at interview on 1 March 2011 said:

I don’t put any store in it [annual board reviews]. ... the ones [boards] that are good take it seriously, the ones that are bad don’t want to know the truth.

868. NVIRP’s Chairman informed my officers at interview on 1 March 2011 that since the NVIRP board was appointed he had himself conducted annual interviews with each NVIRP director during which time:

I would ask their view of the performance of the chair, and I’d encourage them to be as frank as possible because it’s only one on one. ... I ask them to comment about the board as a group. Do we have any skills that are missing? Are they happy with the sub
committees they’re on? Other subcommittees they’d like to be part of? Is there something they don’t understand that they want some training on?

869. The Chairman advised that he summarised the information provided during his interviews of directors and then provided feedback to the board.

870. The Group Director, Office of Water, said at interview on 2 March 2011 that it was his understanding that the Chairman met with a manager from the Office of Water and ‘a discussion’ took place but ‘no formal report’ was provided to the department.

871. In my view, the current NVIRP board performance review process lacks independence and is inadequate.

872. In response to my draft report, Mr Downie said:

    NVIRP had only been established for two years. Most of this time it was in development. I stayed in close touch … with NVIRP management and its Board … I did not think it needed a formal review at this time … There were no issues emerging that could not be dealt with and the Board had shown no reluctance to address issues and resolve them. Such a review would have been a waste of taxpayers’ money at that point in time.

873. In response to my draft report, NVIRP said that:

    … an assessment was undertaken in 2010/11 through an experienced independent facilitator and a report provided in August 2011 which the Board has discussed over several meetings in dealing with the recommendations. The Board presently operates in accordance with requirements of Section 81 of the Public Administration Act in this respect.

GMW governance issues

874. Many witnesses interviewed by my officers were critical of the previous GMW Board. They said that it was dysfunctional as it:

    • did not work effectively as a cohesive unit
    • lacked the requisite skills to manage an organisation
    • was unable to articulate to the management team the type of operational information they required
    • behaved unprofessionally in meetings, for example, bullying staff or fellow directors who had a contrary viewpoint.

875. On 16 February 2011, the former Chairman of GMW advised Mr Peter Walsh, Minister for Water, that GMW required additional borrowings of $74.8 million to 30 June 2010 because GMW had:

    • mistakenly used available cash to fund capital expenditure, rather than taken out necessary bank loans
    • failed to recognise $38.4 million received as capital from the Government as a liability in the 30 June 2010 Balance Sheet.
876. On 23 February 2011 Minister Walsh wrote to each GMW Board member and requested that they show cause as to why the Board should not be terminated, given the financial situation. On 25 February 2011 it was announced that all seven GMW directors had resigned.

877. A former GMW Director said that he had informed Mr Downie over a year earlier that the situation was ‘untenable’ and that the chairman should be removed.

878. Mr Downie stated at interview that:

   Lots of people have told me it’s a dysfunctional board, other people have told me it’s a difficult board. And other people have told me there are issues between board members that need to be resolved. There are issues between management and the board.

   … I mean every day of the week for 20 years I’d had people telling me the board’s no good.

   …

   At the end of the day you’ve got to work out whether or not it’s serious enough to make an issue with the Minister.

879. In response to my draft report, Mr Downie said:

   In 2007 I was concerned about the performance of the Chairman and the CEO. I raised this with the Minister’s office or Minister. The Chairman and CEO departed soon after.

   …

   Throughout my involvement from 1984-92 and 2003-2011 there have been continuous and often contradictory stories of tension/dysfunctional behaviour at senior levels of GMW.

   …

   It has a relatively small number of customers but a vast array of functions and high replacement cost assets. The agriculture industries which rely on it for water have undergone significant stress in the challenging climate and market conditions in recent years. It is a climate in which users had great reluctance or capacity to pay increased prices. Tensions with the Board, and for GMW with other organisations are not surprising. Users insist on representation on the Board, and all Governments have agreed to this. This creates inherent conflict.

   …

   I stand by how issues confronting the Board were handled by the Department in the period 2007-2010 as appropriate and effective.

880. On 24 May 2011, Minister Walsh announced the appointment of a new GMW Board and on 22 July 2011, a new Managing Director was appointed.
881. Witnesses interviewed by my officers have advised that the new GMW Board has performed well to date. GMW’s Acting Chief Strategy Officer and Chief Financial Officer said at interview on 4 May 2011 that GMW is now ‘a lot better’ than it was and has recently ‘produced the most comprehensive Corporate Plan we’ve done for years, and we produced it on time’.

Conclusions

882. NVIRP’s previous board performance review process was inadequate and lacked independence.

883. I am concerned that while senior departmental officers appear to have had knowledge for some time that there were issues within the GMW Board, the department did not take any action to investigate or remedy the situation.

884. Notwithstanding the improvements reported to my officers, witnesses have reported that there is scope for the new board to undertake a review of GMW operations to ensure that it has appropriate and adequate resources to enable GMW to achieve its corporate goals.

885. I consider that there is merit in GMW undertaking this review in view of my earlier recommendation that GMW and NVIRP be amalgamated.

Recommendations

Recommendation 33

I recommend that the Department of Sustainability and Environment:

Review the annual board assessment process to ensure it results in independent and transparent assessments. The review should consider:

- appointment by the department of the assessors
- written annual board assessment reports be provided in full to the Minister and Departmental Secretary.

The Department’s response

Recommendation accepted.
Recommendation 34

I recommend that Goulburn-Murray Water:

Undertake an independent review of its organisational capability to achieve its corporate goals. This should ensure a comprehensive assessment is undertaken of the level and quality of resources it requires.

GMW’s response

Recommendation accepted. The new Board has already initiated through its new Managing Director a substantial internal organisational review and renewal process looking at all aspects of the business.
Summary of recommendations
Summary of recommendations

I recommend that:

Recommendation 1
The Department of Sustainability and Environment, following the completion of each water savings project audit, make the following information publicly available in addition to the audit report:

- a summary of the audit findings
- progress of the project against its targets
- the reasons for any material deviations.

Recommendation 2
The Department of Sustainability and Environment, following the completion of each water savings project, make publicly available information that compares project objectives and outcomes. This should include:

- original and expended budget
- original water savings estimates and expected beneficiaries
- actual water savings and beneficiaries.

Recommendation 3
The Department of Sustainability and Environment undertake a review of the Water Savings Protocol, including revision of the Technical Manual, to ensure it is up-to-date and water savings calculations are based on best available data.

Recommendation 4
The Minister for Water consider transferring the functions of NVIRP to GMW, with NVIRP continuing to implement the Foodbowl project as a unit within GMW.

Recommendation 5
The Minister for Water and GMW undertake a review of the objectives and strategic direction of the Foodbowl project. The review should:

- ensure the objectives and direction remain appropriate and relevant and align with the State’s and region’s current and future needs
- give consideration to the merits of GMW’s Plan for Modernisation.

Recommendation 6
The Department of Treasury and Finance include the Foodbowl project within the scope of its revised central oversight high-value, high-risk processes in view of the findings outlined in this report.
Recommendation 7
The Department of Treasury and Finance undertake a review of the Gateway Review processes as they relate to high-value and high-risk projects and:

- Require all projects to clear all six Gateway gates. In clearing a gate, the Secretary of the department or agency CEO must sign off that recommendations have been satisfactorily addressed.
- Ensure gates one and two are completed successfully prior to seeking project funding.
- Require red light Gateway outcomes to be reported to the agency’s Secretary or CEO and to Department of Treasury and Finance who in turn should assure their respective Ministers in writing that the concerns have been addressed.
- Require Gateway reviews to be funded from project costs and not met by the Department of Treasury and Finance.

Recommendation 8
Goulburn-Murray Water ensure that the WOLC process and report be used as an integral part of the modernisation project’s reporting process with the service levels and costs of infrastructure represented in any performance and monitoring framework.

Recommendation 9
Goulburn-Murray Water ensure that the WOLC process include a strategy for customer engagement and communication. This should articulate principles for stakeholder interactions and commit to using the WOLC analysis as a basis for discussion on future infrastructure and business planning.

Recommendation 10
Goulburn-Murray Water ensure that the WOLC review be comprehensively reviewed and the outcomes communicated to key stakeholders to ensure they are accurately informed of the future cost implications of the modernised irrigation system.

Recommendation 11
The Department of Sustainability and Environment:

- review its role and responsibilities with water authorities in policy oversight and ensure that the policy issues that require resolution for the successful implementation of the Foodbowl project are listed and considered using a strategic planning framework
- review the Foodbowl project’s reporting requirements and establish a framework for reporting the wider benefits of the modernisation investment in addition to water savings in line with the initial project business case
• review its public communications about the project to ensure that it adequately publicises performance against wider project outcomes such as water savings (and transfers), improved productivity and environmental outcomes for the region and the State.

**Recommendation 12**

The Department of Sustainability and Environment ensure that the classification of backbone/non-backbone channels is transparent, and accurate maps of backbone/non-backbone channels are published regularly.

**Recommendation 13**

The Department of Sustainability and Environment ensure that where backbone channels are retracted or extended, the reasons for doing so be made public on the NVIRP website.

**Recommendation 14**

The Department of Sustainability and Environment ensure that the affected metered sites are brought up to an acceptable level of performance and reliability. This action should include a comprehensive review of who should bear the liability for costs associated with any rectification works.

**Recommendation 15**

The Department of Sustainability and Environment ensure that:

• Compensation to irrigators is transparent, equitable and reasonable.
• Irrigators whose property is not adjacent to a backbone are not disadvantaged.
• Alterations to the backbone are made in a way which is transparent.
• Uncertain elements of the program, such as whether powers to compel participation will be introduced in certain circumstances, are clarified for the future.

**Recommendation 16**

The Department of Sustainability and Environment review the use of farm designers to assist in the implementation of the Foodbowl Connections Program to ensure probity and integrity in their appointment; management; monitoring; and review and oversight. In particular, specific areas for improvement should include:

• the role of a farm designer
• farm designer contracts and guidelines
• conflicts of interest
• private work undertaken by farm designers in areas that they service
• independent and regular audit and oversight of designer’s proposals
• appropriate resourcing of the audit of designers.

**Recommendation 17**
The Department of Sustainability and Environment ensure all staff involved in the Foodbowl project undertake training in understanding, recognising and managing conflicts of interest.

**Recommendation 18**
The Department of Sustainability and Environment review the strategic direction of the Foodbowl project. This review should include consideration of the following issues which are important to the successful implementation of the project:

• the timeframe for completion of the project
• farm design resources
• legal agreement resources
• the supply of materials for the capital works program
• the timeframe for individual and community consultation
• the use of formal powers available to the Minister under the Water Act.

**Recommendation 19**
The Department of Sustainability and Environment implement procedures to ensure that it and agencies within its portfolio:

• comply with relevant government procurement guidelines
• clearly record the decisions made in the procurement of major capital works and any deviations from standard procurement practice.

**Recommendation 20**
The Department of Sustainability and Environment ensure that procurement for future modernisation works in the GMID complies with relevant government procurement guidelines and that a contestable tender process is undertaken.

**Recommendation 21**
The Department of Sustainability and Environment commission an independent review of the probity of the agreement between NVIRP and SSF and the conduct of senior NVIRP and department officers in their dealings with SSF.
Recommendation 22
The Department of Sustainability and Environment review the engagement of the particular farm designer on the farm design panel given evidence of their conflicts and conduct as identified in this report.

Recommendation 23
The Department of Sustainability and Environment review the current arrangements in respect of the panel of farm designers and their competing private interests.

Recommendation 24
The Minister for Water review the 4 per cent cap to ensure it is consistent with the modernisation program objectives and that the exemption is equitably applied in Northern Victoria.

Recommendation 25
The Department of Sustainability and Environment take action to raise awareness among Board Directors and Chief Executive Officers within agencies oversighted by them, of their roles and responsibilities in relation to security of information.

Recommendation 26
The Department of Sustainability and Environment formulate an appropriate gifts and hospitality policy and procedure and distribute it to relevant agencies within its portfolio for adoption. The policy should include:

- value of gifts and hospitality to be included in registers
- all offers of gifts and hospitality to be recorded in the register
- disciplinary action for those staff who fail to declare gifts and hospitality or submit declarations after the event.

Recommendation 27
The Department of Sustainability and Environment ensure all staff are aware of their responsibility to declare gifts and hospitality.

Recommendation 28
The Secretary, Department of Sustainability and Environment consider the issues in my report concerning Mr Downie and take appropriate action.

Recommendation 29
The Department of Sustainability and Environment direct respective water authorities to review their hospitality policies and procedures so that agencies only incur costs for reasonable, business-related expenditure, which is consistent with community expectations for such expenditure.
Recommendation 30
The Department of Sustainability and Environment ensure that personnel involved in the processing and payment of accounts for the Foodbowl project are trained in the operation of the Building and Construction Industry Security of Payment Act 2002 (Vic).

Recommendation 31
The Department of Sustainability and Environment ensure that agencies involved in the Foodbowl project implement systems, procedures and practices that will ensure compliance with the timeliness provisions of the Building and Construction Industry Security of Payment Act.

Recommendation 32
The Department of Sustainability and Environment ensure the complaints handling process for the Foodbowl project is accessible, transparent and fair and that complaints handling staff receive appropriate training.

Recommendation 33
The Department of Sustainability and Environment review the annual board assessment process to ensure it results in independent and transparent assessments. The review should consider:

- appointment by the department of the assessors
- written annual board assessment reports be provided in full to the Minister and Departmental Secretary.

Recommendation 34
Goulburn-Murray Water undertake an independent review of its organisational capability to achieve its corporate goals. This should ensure a comprehensive assessment is undertaken of the level and quality of resources it requires.

G E Brouwer
OMBUDSMAN
Appendices
Appendix 1: Goulburn-Murray Water Region
Appendix 2: Ombudsman’s advertisement inviting persons to provide information to the investigation

[Image of Ombudsman advertisement]

Investigation into the Food Bowl Modernisation Project

The Victorian Ombudsman is conducting an investigation into the Food Bowl Modernisation Project.

We invite you to meet with Ombudsman officers to provide information which may be relevant to the investigation.

Ombudsman officers will be visiting regional Victoria to provide the opportunity for face-to-face meetings.

For further information or to make a time to meet please contact
Therese Quinn on 03 9613 6294
Nick Mutton on 03 9613 6270
or call Toll free on 1800 806 314

Approaches to Ombudsman officers will be treated in a confidential manner.

For further information about the Ombudsman and his powers
www.ombudsman.vic.gov.au

Independent • Free • Impartial
Appendix 3: Photos of defects in works

Pictures 1 & 2: Compacted soil subsidence, pedestal and man pit

1. Source: Maxon Audit, page 6

Pictures 3 – 5: Shaded sites

3. Source: Maxon Audit, page 7
4. Source: Maxon Audit, page 7

5. Source: Victorian Ombudsman officers site visit, June 2011

Pictures 6 & 7: Conduit and cable issues

No protection against mechanical damage and the conduit not suited to UV exposure

6. Source: Maxon Audit, page 8
7. Source: Maxon Audit, page 8

Picture 8: Ant infestation

8. Source: Maxon Audit, page 9

Picture 9: Vermin access

9. Source: Maxon Audit, page 11
Pictures 10 – 15 Leaking flume gates

10. Source: Maxon Audit, page 11

11. Source: GMID irrigator

12. Source: GMID irrigator
13. Source: Victorian Ombudsman officers site visit, June 2011

14. Source: Victorian Ombudsman officers site visit, June 2011

Picture 15: Bird droppings on solar panel

15. Victorian Ombudsman officers site visit, June 2011
# Appendix 4: Future project delivery options - benefits and costs

The benefits and costs as assessed by Mr Murray Smith, CEO NVIRP, relating to organisational options 1 and 2 for the Foodbowl project delivery.

<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
</tr>
</thead>
</table>
| **Option 1:** Retain the status quo: NVIRP and GMW remain as separate entities | • Framework provided through which a wide range of key stakeholders can have input into the strategic direction and roll-out for NVIRP.  
• NVIRP has freedom to explore alternative delivery options unconstrained by the historical ways of doing business.  
• Lower cost as no change. | • Maintains confusion as to the roles of the two entities across stakeholders and the community.  
• Leads to potential conflict in business operation with GMW maintaining assets that NVIRP then replaces.  
• Fails to achieve streamlining of data access, design innovation and approval processes associated with capital delivery of the modernisation program.  
• Fails to challenge the lack of buy-in from GMW to the underlying strategic direction set by NVIRP.  
• Higher costs from duplication of business functions. |
| **Option 2:** Merge GMW and NVIRP into a single entity | • Simpler business model.  
• Greater clarity of roles and responsibilities.  
• Ensures greater coordination between new capital works and ongoing system maintenance.  
• Streamlines delivery, simplifies data access and timeliness of information.  
• Potential for no need for a managing contractor.  
• Could enhance mutual understanding between the two entities. | • Creation of an overly large organisation.  
• Disruption of the focus on customer service.  
• Reduce the opportunity for a wider group of stakeholders to contribute to the modernisation exercise. |

Appendix 5: Examples of emails between NVIRP, SSF and the farm designer requesting information to be kept confidential

1. On 23 June 2009 NVIRP’s Connections Manager sent an email to NVIRP staff; carbon copied to NVIRP’s Executive Manager Modernisation; the farm designer; and SSF’s Manager Relationships and Finance.

‘HIGHLY CONFIDENTIAL – property purchases in the Torrumbarry area’

[Individual A, B, C]

As you are aware, SSF is a corporate entity actively pursuing farm purchases in the TIA [Torrumberry irrigation Area]. [The farm designer] have been performing a range of farm irrigation assessments in the TIA also and some of these are directly involved with the SSF activities. The SSF negotiations are reaching a critical phase where property purchases are imminent as well as associated connections opportunities realised. Today there has been media investigating the potential sale activity and contacting farmers; they are sniffing around for a media story.

It is absolutely imperative that you do not discuss this business with anybody at any time. It is essential that this business is kept confidential and you do not comment to anyone. The transactions are highly sensitive to the parties involved; they involve a lot of money and they present incredible opportunities for the current owners, SSF and NVIRP.

If anybody asks you about this business DO NOT comment.   [emphasis added by author of email]

2. Extract from email dated 31 October 2008 from SSF’s Manager Relationships and Finance to NVIRP’s Executive Manager Modernisation.

I have attached a paper that will give you and Murray [Mr Smith, NVIRP CEO] an introduction to where our project is leading and where it wishes to start.

Would you kindly not circulate the paper outside of NVIRP or DSE/ Government at the moment? The project carries significant commercial sensitivities of which we are currently protective.
Ombudsman’s Reports 2004-11

2011
Investigation into ICT-enabled projects
November 2011
Investigation into how universities deal with international students
October 2011
Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011
Investigation into the Office of Police Integrity’s handling of a complaint
October 2011
SafeStreets Documents - Investigations into Victoria Police’s Handling of Freedom of Information request
September 2011
Investigation into prisoner access to health care
August 2011
Investigation into an allegation about Victoria Police crime statistics
June 2011
Corrupt conduct by public officers in procurement
June 2011
Investigation into record keeping failures by WorkSafe agents
May 2011
Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011
Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011
The Brotherhood – Risks associated with secretive organisations
March 2011
Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011
Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011
Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2009
Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009
Own motion investigation into the Department of Human Services – Child Protection Program
November 2009
Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009
Brookland Greens Estate – Investigation into methane gas leaks
October 2009
A report of investigations into the City of Port Phillip
August 2009
An investigation into the Transport Accident Commission’s and the Victorian WorkCover Authority’s administrative processes for medical practitioner billing
July 2009
Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009
Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009
Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads’ driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing’s tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe’s and Victoria Police’s handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act 1982
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman’s guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the Freedom of Information Act 1982 Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

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