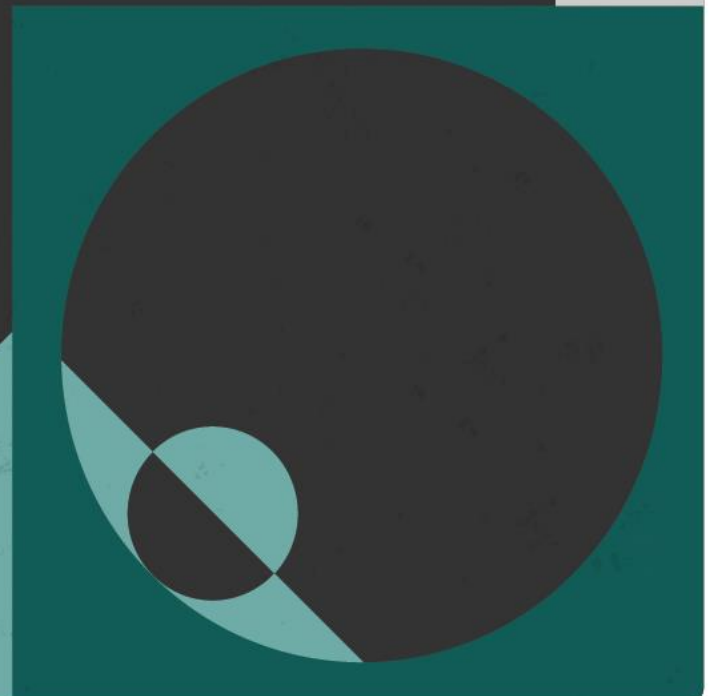




Maddocks

# Australia Post

Investigation into the proper use of  
public resources at Australia Post



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#### **DISCLAIMER**

This report was prepared by Maddocks for public release. The views it contains are not necessarily those of the Shareholder Departments or of the Australian Postal Corporation, its related entities and subsidiaries. While reasonable efforts have been made to ensure that the contents of this report are factually correct, Maddocks does not accept responsibility for the accuracy or completeness of the contents, and will not be liable for any loss or damage that may be occasioned directly or indirectly through the use of, or reliance on, the contents of this report.

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## 1. EXECUTIVE SUMMARY

- 1.1 On 22 October 2020, the Shareholder Ministers of Australia Post, the Minister for Communications, Cyber Safety and the Arts and the Minister for Finance, announced that they had instructed the Department of Infrastructure, Transport, Regional Development and Communications and the Department of Finance to conduct a formal investigation into the gifts of Cartier watches given by the former Group Chief Executive Officer (**CEO**) & Managing Director in November 2018 to four senior managers at Australia Post (the **Watch Recipients**).
- 1.2 The Shareholder Ministers stated that they expected the investigation to commence immediately and be completed within four weeks.
- 1.3 On 29 October 2020, Maddocks was engaged by the Department of Finance to support the investigation, consistent with the announcement by the Shareholder Ministers.
- 1.4 Maddocks would like to thank the officers and employees of both the Department of Finance and the Department of Infrastructure, Transport, Regional Development and Communications for their responsiveness and assistance in facilitating the investigation.

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## 2. SUMMARY OF FINDINGS

Below is a summary of the findings of fact made based on the available information.

### Australia Post – Legislative and Policy Framework and Corporate Governance (see Sections 4 and 7)

#### Finding 1

As a Corporate Commonwealth Entity (**CCE**) that is prescribed as a Government Business Enterprise (**GBE**), Australia Post is subject to both its enabling legislation, the *Australian Postal Corporation Act 1989* (**APC Act**), and the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**) and related legislation.

Under the PGPA legislation, the Australia Post Board, as the accountable authority, has a number of obligations, including to govern Australia Post in a way that promotes the proper use and management of public resources for which the Board is responsible, and to maintain an appropriate system of internal control for the entity.

These obligations of the Board recognise that Australia Post's resources are not Australia Post's, but "belong to the people of Australia".<sup>1</sup>

#### Finding 2

There were varying levels of understanding of the current and former Board members who were interviewed with regard to:

- the obligations of Australia Post's Board as the "accountable authority" for the purposes of the PGPA Act
- the duties imposed on them individually as "officials" by the PGPA Act
- the requirements of the *Commonwealth Government Business Enterprises – Governance and Oversight Guidelines* (**GBE Guidelines**) that apply to Australia

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<sup>1</sup> Explanatory Memorandum, PGPA Bill, paragraph 99.

Post with respect to board and corporate governance and accountability obligations.

### **Finding 3**

Australia Post has established its system of internal controls through delegations issued by the Group CEO & Managing Director under section 93 of the APC Act, including delegations exercisable by the person in the position of Group CEO & Managing Director.

The Board has not issued any delegations expressly under section 94 of the APC Act, but has issued policies including a General Delegations Policy and policies relating to matters such as reward and recognition and credit card use.

The Board has also placed limitations on the Group CEO & Managing Director's authority by requiring Board approval for transactions exceeding certain amounts.

### **Finding 4**

Australia Post's Corporate Secretary reports to the Group CEO & Managing Director, rather than being accountable directly to the Board, through the Chair, for matters relevant to the Board. Australia Post should consider the Corporate Secretary's reporting lines in light of general corporate best practice and given the role a corporate secretary plays in the implementation of good governance practices.

### **Finding 5**

Australia Post's induction process for new Board members does not appear to adequately provide training with regard to the detailed operation of the legislative and policy frameworks applicable to Australia Post as a CCE (and GBE) and the implications of this for the Board collectively and Board members individually.

## **Australia Post – Executive Reward and Recognition (see Sections 5 and 6)**

### **Finding 6**

There is no indication of dishonesty, fraud, corruption or intentional misuse of Australia Post funds by any individual involved in the matters relating to the purchase and gifting of the Cartier watches.

### **Finding 7**

Australia Post's Board has not issued any reward and recognition policies that would support reward and recognition of Executive performance through provision of items such as the Cartier watches.

## **Purchase and gifting of Cartier watches (Section 6)**

### **Finding 8**

The then Board did not consider or approve the purchase of the Cartier watches.

There is no documentary evidence that the Board approved the expenditure for, and none of the Board members interviewed recalled any discussion about the purchase of, the Cartier watches.

There is contradictory evidence as to whether the former Group CEO & Managing Director informed the former Chair that it was her intention to purchase the Cartier watches or whether the former Chair approved the commitment of funds for this purchase. No definitive finding can be made in this regard.

### **Finding 9**

The purchase of the Cartier watches was inconsistent with the obligation imposed by the PGPA Act on the Board relating to the proper use and management of public resources

(section 15(a) of the PGPA Act) and was inconsistent with public expectations in relation to the use of public resources due to:

- (a) the absence of a clearly identifiable and directly applicable policy, authorisation, direction or accountable authority instruction issued by the Board that supported the expenditure
- (b) the unanimous view of the non-executive Board members interviewed that they would not have approved the purchase of the Cartier watches
- (c) a technical breach of section 18 of the *Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)*, which is partly the result of the issue in paragraph (a) above
- (d) expenditure using the Office of the CEO credit card being approved by the Chief Financial Officer, a role subordinate to the Group CEO & Managing Director, being inconsistent with the requirement in section 16 of the PGPA Act that the Board, as the accountable authority, establish and maintain an appropriate system of internal control for Australia Post.

#### **Finding 10**

During the course of this Investigation, various Interviewees have said that Australia Post has commenced, or will shortly commence, an internal review in relation to matters such as its policies applying to gifts and benefits.

Current Board member Interviewees also indicated that an interim change has been made to the way in which the expenses of the Group CEO & Managing Director and the Office of the CEO are approved.

#### **Public expectations and management culture (see Section 7)**

#### **Finding 11**

All non-executive Board members interviewed said that they would not have approved the purchase of the Cartier watches.

There is a tacit acceptance by Interviewees that the purchase and awarding of the Cartier watches was not consistent with public expectations of board members and executives of CCEs and GBEs in their management of the enterprise.

#### **Other instances of credit card usage (see Section 8)**

#### **Finding 12**

Based on a preliminary review of a limited set of credit card usage records, it appears there are potentially other instances of credit card usage for charges that, although for lesser amounts than the expenditure on the Cartier watches, may also be inconsistent with public expectations and Australia Post's policies.

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### 3. BACKGROUND AND INTRODUCTION

#### 3.1 Introduction

3.1.1 The Australian Postal Corporation (**Australia Post**) is:

- (a) continued by the *Australian Postal Corporation Act 1989* (Cth) (**APC Act**) as a body corporate which has a seal and may sue and be sued in its own name;<sup>2</sup>
- (b) a corporate Commonwealth entity for the purposes of the *Public Governance Performance and Accountability Act 2013* (Cth) (**PGPA Act**); and
- (c) prescribed as a Government Business Enterprise (**GBE**) by section 5(1) of the *Public Governance Performance and Accountability Rule 2014* (Cth).

3.1.2 The principal function of Australia Post is to “supply postal services within Australia and between Australia and places outside Australia”.<sup>3</sup> The subsidiary function is to “carry on, outside Australia, any business or activity relating to postal services”.<sup>4</sup> Australia Post has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.<sup>5</sup> Australia Post’s functions include businesses or activities that are incidental to its primary or secondary function.<sup>6</sup>

3.1.3 Australia Post is wholly owned by the Commonwealth. The Commonwealth’s ownership interest in Australia Post is represented by the Responsible Minister (the Minister for Communications, Cyber Safety and the Arts) and the Minister for Finance<sup>7</sup> (the **Shareholder Ministers**).

#### 3.2 Background

3.2.1 On 21 November 2018, four Cartier watches were given to the Watch Recipients, by the former Group CEO & Managing Director (referred to hereafter as the **former CEO**).

3.2.2 At an Estimates hearing of the Senate Environment and Communications Legislation Committee on 22 October 2020 (**Senate Estimates hearing**), the former CEO stated, in response to questions, that the Cartier watches were given as an “award from the Chair, myself and on behalf of the Board” for “an inordinate amount of work” in relation to the Bank@Post arrangement.<sup>8</sup> The former CEO also stated, in response to a later question asking whether she considered it appropriate to “use taxpayers’ money to buy Cartier watches for already highly remunerated Australia Post executives”.<sup>9</sup>

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<sup>2</sup> *Australian Postal Corporation Act 1989*, sections 12 and 13.

<sup>3</sup> APC Act, section 14.

<sup>4</sup> APC Act, section 15.

<sup>5</sup> APC Act, section 17.

<sup>6</sup> APC Act, section 16.

<sup>7</sup> <https://www.finance.gov.au/business/government-business-enterprises/australia-post>.

<sup>8</sup> Environment and Communications Legislation Committee, 22 October 2020, transcript.

[https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/848d6520-0b6d-453a-901a-3b5803c2ca0a/toc\\_pdf/Environment%20and%20Communications%20Legislation%20Committee\\_2020\\_10\\_22\\_8229.pdf;fileType=application%2Fpdf#search=%22committees/estimate/848d6520-0b6d-453a-901a-3b5803c2ca0a/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/848d6520-0b6d-453a-901a-3b5803c2ca0a/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2020_10_22_8229.pdf;fileType=application%2Fpdf#search=%22committees/estimate/848d6520-0b6d-453a-901a-3b5803c2ca0a/0000%22).

<sup>9</sup> Environment and Communications Legislation Committee, 22 October 2020.

*I have not used taxpayers' money. We are a commercial organisation... We do not receive Australian government funding. We are a commercial organisation and it was... a recommendation from our Chair that these people get rewarded.*<sup>10</sup>

- 3.2.3 On 22 October 2020, the Shareholder Ministers jointly announced that they had instructed the Department of Infrastructure, Transport, Regional Development and Communications and the Department of Finance (**Shareholder Departments**) to conduct a formal investigation into the provision of the Cartier watches to the Australia Post Executives (**Investigation**).<sup>11</sup>
- 3.2.4 The Shareholder Ministers stated that the Investigation will determine whether or not the requirement of all government entities, including GBEs, to act ethically and adhere to high standards regarding the expenditure of money were met; and that the Investigation will also examine the actions of Board members in relation to the matter.<sup>12</sup>
- 3.2.5 The Shareholder Ministers' announcement stated that "the Chief Executive of Australia Post would be standing aside from her position for the duration of the investigation". On 2 November 2020, the former CEO announced her resignation from the position.

### 3.3 Terms of Reference

The Terms of Reference for the Investigation are set out at Schedule 1 of this report, and were published on the website of the Department of Infrastructure, Transport, Regional Development and Communications.<sup>13</sup>

### 3.4 Interviews

- 3.4.1 Interviewees attended voluntarily. Four individuals declined Maddocks request for an interview or did not respond to the request for an interview. One individual declined to participate in an interview but sent written submissions to Maddocks on 10 November 2020. Some Interviewees only agreed to participate in interviews on the basis that the interview was confidential and any comments would not be attributed to them.
- 3.4.2 Interviewees were given copies of the transcripts of their interviews and invited to identify any errors.
- 3.4.3 Any person who might be the subject of a possible adverse finding was provided a copy of the relevant parts of the draft report and given an opportunity to comment on the proposed finding. Necessary corrections to factual matters made following the receipt of comments were incorporated into the report.

### 3.5 Qualifications and Assumptions

This report and its findings are subject to the following qualifications and assumptions:

- 3.5.1 The Investigation has been undertaken in a very short timeframe. This necessarily limited:
- (a) the extent to which documents could be produced and reviewed and any missing documents identified;

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<sup>10</sup> Environment and Communications Legislation Committee 22 October 2020.

<sup>11</sup> <https://minister.infrastructure.gov.au/fletcher/media-release/australia-post>.

<sup>12</sup> <https://minister.infrastructure.gov.au/fletcher/media-release/australia-post>.

<sup>13</sup> <https://www.communications.gov.au/what-we-do/post/shareholder-departments-investigation-australia-post-terms-reference>.



- (b) the number of individuals who could be interviewed;
  - (c) the extent to which Interviewees could access documents held by Australia Post to assist them prepare for their interview.
- 3.5.2 The Investigation is an administrative inquiry. There is no power to compel production of documents or evidence other than in accordance with the section 19 of the PGPA. Interview attendance was voluntary. Individuals who declined, or did not respond to, a request for an interview may have relevant information that could not be taken into account.
- 3.5.3 Lawyers from Allens Linklaters, the law firm representing Australia Post, attended the interviews with the Watch Recipients, some current Board members and current employees.
- 3.5.4 The interviews did not involve the giving of sworn testimony. We have conducted the Investigation on the assumption that all Interviewees told the truth to the best of their knowledge and belief.
- 3.5.5 The findings are limited to the assessment of the evidence obtained against the Terms of Reference and are intended to apply only to Australia Post.
- 3.5.6 Maddocks has made findings only. These findings are based on the information made available to us through document production by Australia Post and the Interviews. These findings do not constitute recommendations.

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#### 4. AUSTRALIA POST – LEGISLATIVE AND POLICY FRAMEWORK

Australia Post is one of two *corporate Commonwealth entities (CCEs)* prescribed as a GBE.<sup>14</sup>

Australia Post is subject to legislative obligations under:

- its enabling legislation, the *Australian Postal Corporation Act 1989* (Cth) (**APC Act**). Under the APC Act, Australia Post is obliged to perform its functions in a manner consistent with sound commercial practice<sup>15</sup>
- the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**), the *Public Governance, Performance and Accountability Rule 2014* (Cth) (**PGPA Rule**) and other subordinate legislation. Australia Post's Board has an obligation under the PGPA Act to promote the 'proper' (efficient, effective, economical and ethical) use and management of Australia Post's money.<sup>16</sup>

A note to section 13 of the APC Act states that the PGPA Act applies to Australia Post.

Relevant policy and guidance material applicable to Australia Post includes:

- Resource Management Guide No. 126: *Commonwealth Government Business Enterprise – Governance and Oversight Guidelines* (**GBE Guidelines**)<sup>17</sup>

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<sup>14</sup> The other Commonwealth GBE that is a corporate Commonwealth entity is Defence Housing Australia.

<sup>15</sup> See section 26 of the APC Act; and section 23 regarding the Board's obligation to ensure that Australia Post performs its functions in a commercial manner.

<sup>16</sup> PGPA Act, section 15.

<sup>17</sup> Department of Finance (<https://www.finance.gov.au/sites/default/files/2019-10/commonwealth-gbe-governance-and-oversight-guidelines-rmq126.pdf>).

- Guidelines published by the Department of Finance on the role of directors in Commonwealth GBEs.<sup>18</sup>

All Board members said they were aware of the PGPA Act and GBE Guidelines. However, there appeared to be a varying level of understanding of the detail of the obligations imposed on the Board, individual Board members and Executives by the PGPA Act.

The relevant obligations are summarised below. These provisions are outlined in more detail in Schedule 3.

#### 4.1 **Australian Postal Corporation Act 1989 (Cth)**

##### 4.1.1 **Governance**

The APC Act establishes a Board of Directors of Australia Post and the position of Managing Director.<sup>19</sup> The Board is comprised of the Chairperson, the Deputy Chairperson, the Managing Director and not more than 6 other directors.

In practice, the position of Managing Director appears to be referred to as the position of Chief Executive Officer (**CEO**). For the purposes of this report, we have referred to that position as the “CEO”. The former CEO was, at all relevant times, the Managing Director and a member of Australia Post’s Board. The Managing Director’s role is, under the Board, to manage Australia Post.<sup>20</sup>

The individuals who held these roles at the relevant time in 2018, and who hold them today, are set out in Schedule 2.

The APC Act does not impose duties on the Board members and Executives that are akin to the directors duties imposed by the *Corporations Act 2001* (Cth) (**Corporations Act**) on directors of companies. Rather, those types of duties are imposed on Australia Post’s Board members and Executives by the PGPA Act (see section 4.2.3 below).

##### 4.1.2 **Role and responsibilities of the Board**

The role of the Board and a number of specific responsibilities specified in the APC Act are set out in Schedule 3.

The Board may, by resolution, delegate any or all of its powers to a director or an employee of Australia Post.<sup>21</sup>

The Board Charter states:

*The Board has delegated to the Group Chief Executive Officer and Managing Director responsibility for implementing Australia Post’s strategic priorities and for managing Australia Post’s day-to-day operations. Specific limits on the authority delegated to the Group Chief Executive Officer and Managing Director are set out in Delegated Authorities approved by the Board.*<sup>22</sup>

The Managing Director (or another employee authorised by the Board) may delegate all or any of Australia Post’s powers to an employee of Australia Post.<sup>23</sup>

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<sup>18</sup> See <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines>.

<sup>19</sup> APC Act, sections 20, 21 and 22.

<sup>20</sup> Section 24(1) of the APC Act.

<sup>21</sup> APC Act, section 94.

<sup>22</sup> AUP.100.001.0028.

<sup>23</sup> APC Act, section 93.

Documents provided indicate that on 29 July 2015, the Board placed limitations on the Group CEO & Managing Director's authority by requiring Board approval for transactions exceeding certain threshold amounts. It is not clear whether the limitations were made pursuant to section 94 of the APC Act; and the Board has not made any delegations pursuant to this section.

#### **4.2 Public Governance, Performance and Accountability Act 2013 (Cth)**

As noted, Australia Post is a CCE for the purposes of the PGPA Act.

The Board is the *accountable authority* of Australia Post for the purposes of the PGPA Act.

##### **4.2.1 Fundamental obligation of the Board**

As the accountable authority, a primary obligation of the Board<sup>24</sup> under the PGPA Act is to govern Australia Post in a way that<sup>25</sup> promotes the *proper* use and management of *public resources* for which the Board is responsible.

This obligation of the Board recognises that Australia Post's resources are not Australia Post's, but "belong to the people of Australia".<sup>26</sup>

##### **4.2.2 General duties of Board – establishing and maintaining controls**

As the accountable authority, the Board's duties under the PGPA Act include:

- establishing and maintaining appropriate systems of risk oversight and management, and internal controls<sup>27</sup>
- implementing measures that ensure all Australia Post personnel comply with all PGPA legislation.<sup>28</sup> This can be effected through the Board issuing *accountable authority instructions*<sup>29</sup> or other delegation instruments.

Accountable authority instructions assist accountable authorities, such as the Board, in meeting their general duties under the PGPA Act and establishing appropriate internal controls for their entity.<sup>30</sup> The Department of Finance has issued model accountable authority instructions for CCEs.<sup>31</sup>

Resource Management Guide No. 206 (*Accountable Authority Instructions (AAIs)*) states that it is important to distinguish between instructions issued under section 20A and other internal guidelines issued within an entity.<sup>32</sup> The policies issued by the Australia Post Board do not include any accountable authority instructions made under section 20A. The Board has not made delegations expressly under section 94 of the APC Act, however, the Managing Director has made delegations under section 93 of the APC Act.

The policies issued by the Board include a General Delegations Policy and policies relating to matters such as rewards and recognition and credit card use (see section 5 below).

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<sup>24</sup> Explanatory Memorandum, PGPA Bill, paragraph 131.

<sup>25</sup> PGPA Act, section 15.

<sup>26</sup> Explanatory Memorandum, PGPA Bill, paragraph 99.

<sup>27</sup> PGPA Act, section 16.

<sup>28</sup> PGPA Act, section 16.

<sup>29</sup> PGPA Act, section 20A.

<sup>30</sup> Resource Management Guide No. 206 (*Accountable Authority Instructions (AAIs)*). (See <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/risk-internal-controls/accountable-authority-instructions-aais-rmg-206>).

<sup>31</sup> Resource Management Guide No. 206 (*Accountable Authority Instructions (AAIs)*).

<sup>32</sup> Resource Management Guide No. 206 (*Accountable Authority Instructions (AAIs)*).

The policies issued by the Board and the delegations issued by the Managing Director set out Australia Post's system of internal controls.

#### 4.2.3 **Duties imposed on individual Board members, Executives and employees**

As 'officials'<sup>33</sup> for the purposes of the PGPA Act, individual Board members are subject to duties that are similar in nature to the duties imposed on directors and officers of companies by the Corporations Act.<sup>34</sup>

For example, Australia Post's Board members must:

- exercise their powers and perform their functions with care and diligence.<sup>35</sup> For individual Board members, this duty also encompasses the principles set out in the GBE Guidelines (see section 4.4 below)
- exercise their powers and perform their functions in good faith and for a proper purpose.<sup>36</sup>

Australia Post Executives and employees are also 'officials' for the purposes of the PGPA Act and subject to these duties.

### 4.3 **Public Governance, Performance and Accountability Rule 2014 (Cth)**

#### 4.3.1 **Approval of expenditure must be in writing**

Any approval of a commitment of Australia Post's money by the Board or an individual Board member, Executive or employee must be:

- recorded in writing
- approved (and recorded) consistently with any delegation, authorisation, direction or accountable authority instruction issued by the Board.<sup>37</sup>

As at the date of this report, no written approval of a commitment of expenditure given by the Board or an individual Board member in relation to the purchase of the Watches has been sighted.

If there was no written approval of, or any relevant policy authorising, the expenditure incurred in purchasing the Watches, this is indicative of gap in the internal controls framework required to be established by the Board.

The document called "Delegations made by the Managing Director"<sup>38</sup> that was in force at the time of the purchase of the Watches stated that "[t]he Managing Director delegates the authority set out in this document severally to Australia Post employees in the specified positions pursuant to section 93 of the APC Act". These positions include the position of Managing Director. It is unclear how the Managing Director can delegate authorities to the Managing Director.

The Delegations of the Managing Director relevantly provide:

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<sup>33</sup> PGPA Act, sub-sections 13(1) and 13(2).

<sup>34</sup> *Corporations Act 2001* (Cth), Chapter 2D, Part 2D.1 (Duties and powers). See Resource Management Guide No. 203 – *General Duties of Officials*.

<sup>35</sup> PGPA Act, section 25.

<sup>36</sup> PGPA Act, section 26.

<sup>37</sup> PGPA Rule, section 18.

<sup>38</sup> AUP.102.001.0008.

- A delegate must only exercise their authority within the express scope of the delegation, where it is necessary for, and directly relevant to, that delegate's specific role and usual responsibilities, and in the ordinary course of business.
- Where any activity or decision exceeds the scope (including Financial Limit) of a delegation, that activity or decision can only be exercised by the Managing Director, the Board or an Authorised Person.
- The Managing Director is authorised for card expenditure only in accordance with the applicable policy and standards of Australia Post. The potentially relevant policies that were identified are summarised in section 5 below.
- That "additional approvals apply depending on the category of expenditure (e.g. travel expenses and mobile devices) – refer to Procurement".
- The position of Managing Director has some human resources-related delegations, but generally to "endorse" the exercise of delegations by the General Manager Human Resources rather than as an "Authorised Delegate (exercise)". Relevantly, the Managing Director's role in relation to "incentives and performance management processes" is to endorse and not exercise a delegation.

#### 4.4 Obligations imposed by the GBE Guidelines and related frameworks

The Department of Finance has published:

- GBE Guidelines – these provide guidance to GBEs such as Australia Post on board and corporate governance, financial governance, planning and reporting<sup>39</sup>
- a guide for directors of GBEs, intended to help them familiarise themselves with GBE governance requirements by, relevantly to the present, identifying features of a GBE that make it unique from private sector organisations.<sup>40</sup>

In accepting appointment (or re-appointment) to a GBE board, members of all GBE boards, including the Australia Post Board, are asked to confirm that they have reviewed their obligations under the PGPA Act, the GBE Guidelines and Guide for GBE Directors.

The Guide for GBE Directors notes, among other things, that a GBE, as a government-owned entity, is subject to high levels of scrutiny, sensitivity and accountability.

#### 4.5 Findings

- 4.5.1 As a CCE that is prescribed as a GBE, Australia Post is subject to both its enabling legislation, the APC Act, and the PGPA Act. Under the PGPA Act, the Australia Post Board, as the accountable authority, has a fundamental obligation to govern Australia Post in a way that promotes the proper use and management of public resources for which the Board is responsible. This obligation of the Board recognises that Australia Post's resources are not Australia Post's, but "belong to the people of Australia".<sup>41</sup>
- 4.5.2 There were varying levels of understanding of the current and former Board members who were interviewed with regard to:

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<sup>39</sup> Resource Management Guide No. 126: *Commonwealth Government Business Enterprise – Governance and Oversight Guidelines* (<https://www.finance.gov.au/sites/default/files/2019-12/commonwealth-gbe-governance-and-oversight-guidelines-rmg126.pdf>).

<sup>40</sup> See <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines>.

<sup>41</sup> Explanatory Memorandum, PGPA Bill, paragraph 99.

- (a) the obligations of Australia Post's Board as the "accountable authority" for the purposes of the PGPA Act
  - (b) the duties imposed on them individually as officials by the PGPA Act
  - (c) the requirements of the GBE Guidelines that apply to Australia Post with respect to board and corporate governance and accountability obligations.
- 4.5.3 Australia Post has established its system of internal controls through delegations issued by the Managing Director under section 93 of the APC Act, including delegations exercisable by the person in the position of Managing Director. The Board has not issued any delegations expressly under section 94 of the APC Act but has issued policies, including a General Delegations Policy and policies relating to matters such as reward and recognition and credit card use.
- 4.5.4 On 29 July 2015, the Board placed limitations on the CEO's authority by requiring Board approval for transactions exceeding certain thresholds.<sup>42</sup> In doing so, the Board also expressly required "that the Board continue to be informed about the activities of the Corporation, including to enable the Board to satisfy its legislative obligations and obligations to Shareholder Ministers".

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## 5. AUSTRALIA POST – EXECUTIVE REWARD AND RECOGNITION

The Australia Post Board has ultimate responsibility for internal controls with respect to reward and recognition at Australia Post.<sup>43</sup>

The former CEO's position is that the purchase and gifting of the Watches to the Watch Recipients was within Australia Post's "gift and remuneration" policy. No policy which supports gifts such as the Watches being made to Executives as a reward for high performance has been identified.

The acquittal process for expenditure using the CEO credit card and the Office of the CEO credit card appears to involve approval for such expenditure being given by the CFO, a direct report to the CEO.

Board members interviewed indicated that the purchase and gifting of the Watches did not fall within any formal policy regarding rewards, recognition or incentives. All non-executive Board members interviewed agreed that the Watches were not an appropriate type of reward and that they would not have approved the expenditure. There is no specific policy made by the Board that would support the decision to purchase the Watches as a reward for superior performance.

The Watch Recipients, in their Interviews, emphasised that the Watches were in the nature of 'reward and recognition' rather than 'gifts'. Other Interviewees also appeared to characterise the Watches as being in the nature of 'reward and recognition'. The distinction appeared to be that 'reward and recognition' recognises a work-related contribution, while a 'gift' carried the implication that it was given for a purpose unconnected with their work performance. However, extracts from the internal reconciliation system describe the Watches as 'gifts'.<sup>44</sup>

None of the following Australia Post reward and recognition policies appears to support the purchase and gifting of the Watches:

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<sup>42</sup> AUP.102.001.0001.

<sup>43</sup> AUP.100.001.0071.

<sup>44</sup> AUP.100.001.0638.

- **Group Remuneration Policy**, particularly sections relating to Executive Short Term Incentives (STI)<sup>45</sup> - This policy is designed to reward Executive Group Managers and Group Executives for delivering financial performance, non-financial performance and individual leadership and safety management. Performance is measured over the course of a financial year against an Executive STI plan. Executive STI rewards are determined by the Board based on performance outcomes and information provided by the CEO. These provisions do not apply to the Watches and are implemented through a separate performance review process. As noted in section 6.4, three of the Watch Recipients also received STI payments in the same year as the Watches.
- **Applaud Program**<sup>46</sup> - This Program was in place in 2018 at the time of the purchase of the Watches. It has since been superseded by the 'Thank You' Policy. The Applaud Program enabled eligible employees<sup>47</sup> to recognise, and be recognised for, behaviours that demonstrated the Australia Post shared values and for meeting other recognition categories by being awarded points (which could be redeemed to obtain a reward such as a gift card, voucher, donation or Qantas points). The Applaud Program was used for rewards of a significantly lesser value than the Watches.
- **The Thank You Policy** - This policy authorises managers to issue Australia Post Gift Cards to recognise high performing employees.<sup>48</sup> The Thank You Policy was not in effect at the time the Watches were given and superseded the Applaud Program.
- **Sales Incentive Scheme** - Employees eligible for this Scheme are confined to account managers, sales managers and sales directors.<sup>49</sup>

## 5.1 Credit card policies

The Group Credit Card Policy that was in effect in 2018 outlines appropriate use of corporate credit cards and responsibilities of card holders and approvers.<sup>50</sup>

The Group Credit Card Policy states that "a credit card is a delegation to spend up to the credit card's transaction and card limit" and that, in obtaining a credit card, an employee gains a delegation. It is unclear whether this 'delegation' articulated in the Group Credit Card Policy is a delegation that has been made by the Board under section 94 of the APC Act or by the Managing Director under section 93 of the APC Act.

The delegations policy that was in effect in 2018:<sup>51</sup>

- states that Australia Post's corporate governance practices are informed primarily by the APC Act and the PGPA Act, as well as current best practice for GBEs
- provides information about the structure and operation of Australia Post's delegations of authority
- explains the legal and regulatory framework that provides Australia Post with its powers and functions, and which underpins the delegations
- sets out requirements in relation to employees exercising delegated authority

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<sup>45</sup> AUP.100.001.0071, particularly section 5.2.

<sup>46</sup> AUP.100.001.0382; AUP.100.001.0079.

<sup>47</sup> Being all permanent and fixed-term employees from Australia Post, Star Track, Decipha and SecurePay.

<sup>48</sup> AUP.100.001.0164.

<sup>49</sup> AUP.100.001.0075.

<sup>50</sup> AUP.100.001.0011 and AUP.100.001.0017. For the purposes of this report, the Group Credit Card Policy that was in effect at time of the Watches purchases has been considered.

<sup>51</sup> AUP.100.001.0014.

- confirms that the delegations policy does not, of itself, delegate any power as such delegation occurs under instruments executed by the Board, Managing Director or another employee authorised by the Board
- does not specifically address the use of credit cards, but acknowledges the existence of delegations issued under the Group Credit Card Policy.

The Group Credit Card Policy describes use of a credit card for certain business expenses as “approved use”. The only category of allowable business expenses into which the purchase of the Watches may, potentially, fall is “other authorised business transactions not prohibited or excluded under this policy”. This would require the purchase of the Watches to be characterised as a “business transaction” which had been “authorised”.

The credit card limit for the Office of the CEO credit card is \$150,000.00.<sup>52</sup> The Group Credit Card Policy states that the person whose name appears on the card is the only person authorised to use that credit card. At the time of the purchase of the Watches, it appears that the Card Holder of the Office of the CEO credit card was the Purchaser.

## **5.2 Proper use and management of public resources**

Australia Post’s Board has an obligation under the PGPA Act to promote the ‘proper’ – that is, the efficient, effective, economical and ethical - use and management of Australia Post’s money.<sup>53</sup>

In this respect, we make the following observations.

### **5.2.1 Approval of expenditure on CEO’s credit card or Office of the CEO credit card**

The former Chair stated in his interview that he was not required to approve expenditure by the CEO or the Office of the CEO. Further, he noted that he had expressly sought management’s advice as to why he, as the Chair, did not authorise/approve the CEO’s expenditure. He was advised by management that it was because he was not an employee of Australia Post.

The former CFO approved the credit card expenditure of the former CEO, including in relation to the purchase of the Watches using the Office of the CEO credit card.

Based on the information available, the CFO is a direct report to the CEO. As such, an employee in a subordinate role to the CEO appears to have been approving expenditure by the CEO using the CEO’s credit card and expenditure using the Office of the CEO credit card.

The risk is that, as a direct report to the CEO, the CFO may not be able to be an effective “check and balance”. Accordingly, there is a risk that this arrangement is not ‘effective’ or appropriate.

With respect to the Office of the CEO credit card, it appears that the card holder was the Purchaser rather than the CEO. The Purchaser was a more junior employee than the CFO. It appears that the Office of the CEO credit card was used to purchase the Watches, albeit on the instruction of the CEO (see section 6.1.4 below).

As noted in section 8, additional instances of expenditure using Australia Post credit cards have been identified which may also be inconsistent with public

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<sup>52</sup> A per transaction limit was not provided despite being requested.

<sup>53</sup> PGPA Act, section 15.



expectations and Australia Post's policies. If these are investigated at a later stage, that investigation should include adequacy of the acquittal process for those expenses.

#### 5.2.2 Policies with regard to former CEO expenditure

As noted in section 4.2, the Board, as the accountable authority under the PGPA Act, must establish and maintain an appropriate system of internal control for the entity, including by implementing measures directed at ensuring officials of the entity comply with the finance law.<sup>54</sup>

Based on the information available, there are no specific policies or apparent controls that have been (or were in 2018) implemented by the Board regarding the giving of internal gifts, reward or recognition which is in the nature of the Watches (that is, a luxury good or service). All non-executive Board members interviewed accepted that giving of gifts in the nature of the Watches was not appropriate.

There is a question as to the adequacy of the policies or controls that have been (and were in 2018) implemented by the Board regarding:

- decisions by the CEO regarding discretionary expenditure by the CEO or the Office of the CEO
- the approval of expenditure using the CEO credit card and the Office of the CEO credit card.

Accordingly, with respect to the above matters specifically, there is a question as to whether Australia Post's internal controls support (and supported in 2018) the 'efficient, effective, economical and ethical use and management' of its relevant money.

### 5.3 Findings

- 5.3.1 Australia Post's Board has not issued any reward and recognition policies that would support reward and recognition of Executive performance through provision of items such as the Watches.
- 5.3.2 There does not appear to be an adequate policy or mechanism for the acquittal or authorisation of discretionary expenditure by the CEO or the Office of the CEO, including expenditure incurred on Australia Post credit cards.

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## 6. PURCHASE AND GIFTING OF CARTIER WATCHES

The circumstances surrounding the purchase of the Watches are summarised below..

Although the Watches are referred to as 'gifts' in Section 6, during their interviews a number of the Watch Recipients characterised the Watches as "reward and recognition" rather than as a "gift". The distinction appeared to be that they received the Watches in recognition for their work rather than as a gift, which carries the implication that it was given for a purpose unconnected with their work performance. However, the extracts from the internal reconciliation system provided by Australia Post describes the Watches as a 'gift'.<sup>55</sup>

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<sup>54</sup> PGPA Act, section 16.

<sup>55</sup> AUP.100.001.0638.

## 6.1 Factual background

### 6.1.1 Bank@Post Refresh

Bank@Post is an agency service provided by Australia Post which allows customers who have accounts with participating banks and financial institutions to deposit cash and cheques, withdraw money, and make balance enquiries at post offices around Australia.<sup>56</sup> The service is of particular importance to people in rural and regional areas.

Australia Post undertook extensive work leading up to a 2018 decision to update the Bank@Post fee structure and renegotiate contracts with the relevant financial institutions.

This project was referred to by some of the Interviewees as the **Bank@Post Refresh**. This report adopts that terminology.

The relevant Interviewees agreed that the Bank@Post Refresh was of great significance to Australia Post and the viability of the Licensed Post Office network. The former CEO's position is that this was a landmark agreement and gave the largest capital investment into the Post Office network in Australia Post's history.

### 6.1.2 Australia Post personnel involved in Bank@Post Refresh

It appears that the "core team" involved in the Bank@Post Refresh comprised the former CEO and the Watch Recipients.

The work associated with the Bank@Post Refresh was described as "intense", "demanding" and "pretty full-on". The Bank@Post Refresh required those involved, to varying degrees, to work on weekends, on leave days and late at night.

### 6.1.3 Discussion between former CEO and former Chair regarding reward

There appears to have been a discussion between the former CEO and the former Chair a couple of weeks after announcing the agreements with CBA, Westpac and NAB regarding recognition of individuals from the Bank@Post Refresh team.

While this discussion may have included mention of an appropriate amount to be spent on any recognition, it does not appear to have specifically canvassed purchasing the Watches for this purpose.

### 6.1.4 Purchase of the Watches

On or around 14 November 2018, the Purchaser received a call from the former CEO asking that Cartier watches be purchased for a number of people involved in the Bank@Post Refresh.

The Purchaser stated that, shortly thereafter, the Purchaser received a text message from the former CEO which contained a screenshot of the particular watches that were to be purchased.

On or around 14 November 2018, the Purchaser attended the Cartier store in Collins Street, Melbourne and purchased four Cartier watches totalling \$19,950 (including GST) on behalf of the former CEO. Based on the invoices, the watches were as follows:

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<sup>56</sup> <https://auspost.com.au/money-insurance/banking-and-payments/bank-at-post>.

- (a) Ronde Solo de Cartier 29MM watch with pink gold and steel case, alligator strap and quartz movement which cost \$7,000 (including GST)
- (b) Ronde Solo de Cartier 29MM watch with steel case and bracelet and quartz movement which cost \$3,800 (including GST)
- (c) Ronde Solo de Cartier 36MM watch with steel case and bracelet and automatic movement which cost \$4,750 (including GST)
- (d) Ronde Solo de Cartier 36MM watch with steel case, interchange, leather strap and automatic movement which cost \$4,400 (including GST),

(collectively, the **Watches**).<sup>57</sup>

The Purchaser used a credit card in the name of the “Office of the CEO” to purchase the Watches.

The former CEO’s position is that the Watches were purchased on her behalf and on behalf of the former Chair. The former Chair agrees that there was a discussion regarding providing some form of reward and recognition to the Bank@Post Refresh team but does not accept that he ultimately approved the provision of the Watches to the Watch Recipients.

#### 6.1.5 **Organisation of the presentation of the Watches to the Watch Recipients**

The thank you cards which accompanied the Watches were signed by both the former CEO and the former Chair.

#### 6.1.6 **Presentation of the Watches to the Watch Recipients**

On 21 November 2018, the Watch Recipients received an invitation to a meeting with the former CEO in the former CEO’s office at 8 am that morning. It is unclear who attended the meeting.

The former CEO gave a speech to the Watch Recipients which acknowledged their hard work, their success in reaching an agreement with the CBA, Westpac and NAB and the significance of ensuring that communities had access to essential banking and financial services.

The former CEO presented each of the Watch Recipients with a bag which contained a wrapped gift and a card.

Two of the Watch Recipients later sent an email to the former CEO thanking her for the gift.

The Watch Recipients had the impression that the gift was a token of appreciation on behalf of the former CEO and the former Chair.

None of the Watch Recipients could recall ever having a direct conversation with the former Chair or the other members of the Board regarding the gift.

## 6.2 **Acquittal for Watch purchases**

On 20 December 2018, a cardholder declaration was signed in relation to the Office of the CEO credit card which stated that “all purchases were authorised or necessarily incurred on behalf of the company [sic]” (presumably referring to Australia Post) in relation to a number

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<sup>57</sup> AUP.100.001.0001; AUP.100.001.0002; AUP.100.001.0077; AUP.100.001.0428; AUP.100.001.0429.

of charges that had been incurred on the credit card in the name of the 'Office of the CEO'.<sup>58</sup> One of these charges was for the purchase of the Watches on 14 November 2018. It is not clear if this declaration was signed by the former CEO, or by the Purchaser.

On 31 December 2018, the former CFO signed and approved these charges, including the purchase of the Watches on 14 November 2018.<sup>59</sup>

The former CFO stated that the first time she became aware that the Watches were being gifted to Watch Recipients was when she was informed of this by the former CEO shortly before the presentation of the Watches on 21 November 2018.

The former CFO stated that while the presentation of the Watches was unusual, she approved the charges for the purchase of the Watches for the following reasons:

- (a) the purchase was within the CEO's delegation for expenditure and an invoice had been provided in accordance with standard practice
- (b) the CEO had explained to the former CFO the reason for the purchase as being recognition for the efforts of the Watch Recipients, who had delivered a significant commercial benefit to Australia Post
- (c) the former CFO had observed the presentation of the Watches to the Watch Recipients
- (d) the former CFO believed that the former Chair had a degree of understanding regarding the provision of at least a recognition award to the Watch Recipients given that, to the best of her recollection, he had provided a thank you note to the Watch Recipients and he had been briefly present during the presentation of the Watches.

### **6.3 Fringe Benefits Tax**

On about 21 January 2019, Australia Post paid Fringe Benefits Tax for each of the Watches.<sup>60</sup>

On about 18 June 2019, each of the Watch Recipients received a letter from the Head of Taxation at Australia Post setting out the Reportable Fringe Benefit Amount on their respective Watch.<sup>61</sup>

### **6.4 Performance incentives**

Three of the Watch Recipients each received a financial incentive or bonus for the 2019 Financial Year.<sup>62</sup> The Bank@Post Refresh was mentioned in performance review documents and KPIs for two of the Watch Recipients.

It appears that the success of the Bank@Post Refresh and the Watch Recipients' contributions to this project were factors which were considered by Australia Post when determining their eligibility for a financial incentive or bonus for the 2019 Financial Year.

### **6.5 Involvement of the former Chair**

There is a conflict of views as to the facts regarding the involvement of the former Chair.

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<sup>58</sup> AUP.100.001.0429.

<sup>59</sup> AUP.100.001.0429.

<sup>60</sup> AUP.100.001.0077.

<sup>61</sup> AUP.100.001.0060; AUP.100.001.0061; AUP.100.001.0063; AUP.100.001.006.

<sup>62</sup> AUP.100.001.0902; AUP.100.001.0916; AUP.100.001.0923.

The former CEO and the former Chair agree:

- that there was a discussion regarding providing some form of reward and recognition to the Bank@Post Refresh team
- that there was an agreement that some form of reward or recognition was appropriate.

There is disagreement as to whether the former Chair ultimately approved the provision of the Watches to the Watch Recipients.

The former Chair's position is that he did not.

The former CEO's position is that approval was given because the purchase of the Watches was broadly consistent with the discussion with the former Chair regarding rewarding and recognising the Watch Recipients. The former CEO also said that the former Chair must have been aware that the Watches had been given.

## **6.6 Involvement of the Board or Board committees**

- 6.6.1 There is no record of the Board approving, or being asked to approve, the purchase of the Watches, including in Board minutes. None of the Board members who were on the Board at the time and who agreed to participate in an interview recalled approving, or being asked to approve, the purchase of the Watches.
- 6.6.2 While the "Group CEO Report" to the Australia Post Board on 24 October 2018 specifically identified the efforts of certain people on the Bank@Post Refresh team, it did not include any proposal that these individuals would receive any particular reward or recognition.<sup>63</sup>
- 6.6.3 It is the former CEO's position that the gifts of the Watches were openly celebrated and at no point did any Board member (or anyone else) raise any concerns of this choice of gift.
- 6.6.4 However, the Board members who were interviewed consistently stated that the first time they became aware of the Watches was during the Senate Estimates hearing on 22 October 2020.

## **6.7 Compliance with PGPA Act and PGPA Rule**

Based on the evidence available, the purchase of the Watches was not fully consistent with the PGPA legislative framework because:

- (a) It does not appear that the Board had issued any internal policy (or accountable authority instructions) regarding reward and recognition of significant contributions by Executives which contemplates gifts such as the Watches being given. This appears to be still the case today. This does not appear to be consistent with the requirement in section 16 of the PGPA Act that the Board establish and maintain an appropriate system of internal control for Australia Post.
- (b) There does not appear to have been a record made of the approval to purchase the Watches (and commit the relevant money for which the Board is responsible) that was consistent with the requirements of section 18 of the PGPA Rule. However, this partly reflects that there does not appear to have been a clearly identifiable delegation, authorisation, direction or accountable authority instruction issued by the Board which supported the expenditure.

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<sup>63</sup> AUP.100.001.0216.

- (c) The relevant delegations of the Managing Director<sup>64</sup> authorises the Managing Director for credit card expenditure only in accordance with the applicable policy and standards of Australia Post and within the scope of the delegation, where it is necessary for, and directly relevant to, that delegate's specific role and usual responsibilities, and in the ordinary course of business. However, no policy that directly governed the purchase of the Watches could be identified. Similarly, the delegations of the Managing Director do not state that the Managing Director is an authorised delegate in relation to "performance incentives and performance management".
- (d) Noting that the Watches were purchased using the Office of the CEO credit card, the acquittal process appears to have involved approval being given by the former CFO, a direct report to the former CEO. This does not appear to be consistent with the PGPA Act requirement in section 16 that the Board establish and maintain an appropriate system of internal control for Australia Post.

As noted earlier, during the course of this investigation, various Interviewees said that, since the commencement of this investigation, an interim change has been made to the way in which the expenses of the CEO or the Office of the CEO are approved so they are now being approved by the Chair rather than the CFO. It remains to be seen whether this change to the approval process becomes permanent.

## 6.8 Findings

- 6.8.1 There is no indication of dishonesty, fraud, corruption or intentional misuse of Australia Post funds by any individual involved in the matters relating to the purchase and gifting of the Watches.
- 6.8.2 The then Board did not consider or approve the purchase of the Watches. There is no documentary evidence that the Board approved the expenditure and none of the Board members interviewed recalled any discussion about the purchase of the Cartier watches.
- 6.8.3 Based on the available evidence:
  - (a) There is contradictory evidence as to whether the former CEO informed the former Chair that it was her intention to purchase the Watches or whether the former Chair approved the commitment of funds for this purchase. No definitive finding can be made in this regard.
  - (b) The purchase of the Watches was inconsistent with the obligation imposed by the PGPA Act on the Board relating to the proper use and management of public resources and was inconsistent with public expectations in relation to the use of public resources due to:
    - i. the absence of a clearly identifiable and directly applicable policy, authorisation, direction or accountable authority instruction issued by the Board that supported the expenditure
    - ii. the unanimous view of non-executive Board members interviewed that they would not have approved the purchase of the Watches
    - iii. a technical breach of section 18 of the PGPA Rule, which is partly the result of the issue in paragraph (a) above
    - iv. expenditure using the Office of the CEO credit card being approved by the CFO, a role subordinate to the CEO, being inconsistent with the

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<sup>64</sup> AUP.102.001.0008.

requirement in section 16 of the PGPA Act that the Board, as the accountable authority, establish and maintain an appropriate system of internal control for Australia Post.

- 6.8.4 During the course of this Investigation, various Interviewees have said that Australia Post has commenced, or will shortly commence, an internal review in relation to matters such as its policies applying to gifts and benefits. Current Board member Interviewees also indicated that an interim change has been made to the way in which the expenses of the CEO and the Office of the CEO are approved.

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## 7. PUBLIC EXPECTATIONS AND MANAGEMENT CULTURE

### 7.1 Public expectations of GBEs

The public has a significant stake in all CCEs, including GBEs.

In the case of Australia Post, the Commonwealth's ownership stake is represented by two Shareholder Ministers who are accountable to Parliament and the public.<sup>65</sup> In a broad sense, the public can be viewed as the ultimate 'owners' of Australia Post.<sup>66</sup> The public also receives services from Australia Post as a customer; and ultimately benefits from any dividend payable by Australia Post through consequent Government expenditure.

This was expressly recognised by the current Chair of Australia Post, when he said:

*As a Government Business Enterprise, Australia Post is owned by the taxpayer – indeed by the people of Australia... I understand well that our ownership structure places a unique responsibility to manage the resources of this business prudently, and ultimately in the best interests of all Australians – as underlying shareholders, as well as customers.*<sup>67</sup>

This sentiment was also expressed by a number of Interviewees.

The public expectations of GBEs are different from those of shareholders in private sector companies, where the principle expectation is the provision of financial returns.<sup>68</sup> This was recognised as early as 1996 when the International Federation of Accountants (IFAC) criticised GBEs for using their rate of return as a singular performance measure:

*'Their [GBEs] organization and management will reflect a variety of political and socio-economic objectives. Although government business enterprises are normally required to operate commercially and usually take the same legal form as private sector business enterprises, the combination of the fact that they often enjoy a monopoly position and the political context in which they operate means that the user of financial reports cannot rely on simplistic measures such as return on capital employed.'*<sup>69</sup>

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<sup>65</sup> GBE Guidelines, paragraph 1.7.

<sup>66</sup> Stephen Bottomley, *Government Business Enterprises and Public Accountability through Parliament*, Parliamentary Research paper 18 1999-2000,

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp9900/2000RP18#major](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9900/2000RP18#major)

<sup>67</sup> Opening Statement made by the current Chair of Australia Post, Lucio Di Bartolomeo, to the Estimates hearing of the Senate Environment and Communications Legislation Committee held on 9 November 2020.

<sup>68</sup> Janet Lee, 'Performance Reporting by Australian Trading Enterprises: An empirical study 1998 – 2002', *Australian Accounting Review*, available online at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1835-2561.2006.tb00358.x>; IFAC.

<sup>69</sup> International Federation of Accountants (IFAC), 1996, 'Performance Reporting by Government Business Enterprises' p.2.

Nevertheless, the ASX Corporate Governance Council recognises that, even in the private sector, “[g]ood corporate governance promotes investor confidence”.<sup>70</sup>

Board members and executives of CCEs and GBEs are subject to a more extensive accountability framework than their private sector counterparts in relation to the management of the enterprise. For Australia Post, this framework includes the PGPA framework, GBE guidance described above and the APC Act.

## **7.2 Public expectations – purchase of Watches**

It is not possible in this report to definitively articulate the public’s expectations of board members and executives of GBEs and their management of the enterprise. However, we make the following observations with respect to Australia Post and the matters under investigation:

- (a) On 9 November 2020, the current Chair of Australia Post publicly recognised that “the purchase of the watches in 2018 may not have met with expectations of members of the public”.<sup>71</sup>
- (b) The current Chair also publicly stated that he would have “vetoed” the purchase of the Watches if he had been the Chair in 2018 and been made aware of the proposal to purchase Cartier watches.<sup>72</sup>
- (c) All non-executive members of the Board who were interviewed for the purposes of this report stated that, had they been aware of the purchase of the Watches, they would not have approved it. While some Interviewees were not, in principle, opposed to the idea of additional reward and recognition being given to those who had done outstanding work or contributed to a significant project, the view was that careful consideration should be given to the form and value of any additional reward.
- (d) All of the Watch Recipients stated in their Interview that they were surprised to receive the Watch.
- (e) A number of current Australia Post Board members indicated that, since the commencement of this Investigation, Australia Post has commenced, or will shortly commence, an internal review in relation to gifts and benefits; and that managers and Executives have been asked not to provide rewards or recognition outside of the set structure until the review is completed.
- (f) A number of current Australia Post Board members indicated that, since the commencement of this Investigation, an interim change has been made to the way in which the expenses of the CEO or the Office of the CEO are approved. Previously, these expenses were approved by the CFO. These expenses are now being approved by the Chair. A number of Interviewees indicated that it would be appropriate for the approval process to be permanently altered so that the CEO or the Office of the CEO expenses are approved by the Chair or the Chair of a relevant Board Committee.

Given the above, it can be concluded that there was a tacit acceptance by the relevant Interviewees that the purchase and awarding of the Watches was not consistent with public expectations of board members and executives of CCEs and GBEs in their management of the enterprise.

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<sup>70</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 4<sup>th</sup> edition (February 2019), page 1.

<sup>71</sup> Estimates hearing of the Senate Committee Senate Environment and Communications Legislation Committee, 9 November 2020.

<sup>72</sup> Estimates hearing of the Senate Committee Senate Environment and Communications Legislation Committee, 9 November 2020.



### 7.3 Australia Post's management culture

It is not possible in this report to make any definitive statement with regard to Australia Post's management culture. However, we make the following observations with respect to matters identified during the Investigation:

- 7.3.1 One Interviewee was of the view that there is a cultural issue at Australia Post which potentially derives from a lack of understanding or appreciation of the nature and implications of the overlay of the public sector accountability obligations imposed on the Board, Board members and employees by the PGPA Act and its subordinate legislation.
- 7.3.2 All Board members interviewed were aware of the PGPA Act and the GBE Guidelines, however, there appear to be varying levels of understanding of the detailed requirements under this legislative and policy framework.
- 7.3.3 A number of current and former Board members stated that they had been provided with written material regarding the status of Australia Post as a CCE and GBE<sup>73</sup> during their induction; and some noted they had also received a briefing from the Corporate Secretary regarding these matters.
- 7.3.4 One Interviewee stated that the Australia Post Board induction training that they received did not include understanding the role of a CCE or GBE and was more focused on understanding the operational side of Australia Post. This Interviewee believed that the provision of the relevant legislation and GBE Guidelines to incoming Board members was not sufficient, and that specific training on the implications of being a Board member of a GBE would be appropriate.
- 7.3.5 None of the Board members interviewed agreed with the statement by the former CEO in the Senate Estimates hearing that she had not used taxpayers money in purchasing the Watches.
- 7.3.6 A number of Board members expressed the view that this may have been a poor choice of words on the part of the former CEO and that CEO may have meant that Australia Post does not receive a budget allocation from the Government. However, all of the Board members interviewed agree that the Australian Government or the Australian people were effectively the 'shareholders' of Australia Post and that, in turn, the assets of Australia Post are the assets of the Australian people.
- 7.3.7 A number of Board members acknowledged that Australia Post operates in a competitive commercial context; and that, for example, its remuneration structure needs to be consistent with other commercial companies, to ensure that it was able to attract and retain quality staff and executives.
- 7.3.8 Further, a number of Board members were not, in principle, opposed to the idea of additional reward and recognition being given to those who had done outstanding work or contributed to a significant project, but indicated that careful consideration should be given to the form and value of any additional reward.
- 7.3.9 A number of Interviewees described the culture as "conservative" with respect to business expenses or more conservative than other organisations where they had worked previously.
- 7.3.10 Recommendation 1.4 of the ASX Principles is that the Corporate Secretary should be accountable directly to the Board, through the Chair, for matters relevant to the

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<sup>73</sup> Including copies of the APC Act, PGPA Act, PGPA Rule and the GBE Guidelines.

Board. The associated commentary states that “each director should be able to communicate with the company secretary and vice versa”. A corporate secretary can be considered to be the “chief governance specialist within an organisation, and it is a role which is increasingly relied upon by the board to provide advice and implement good governance practice”.<sup>74</sup>

However, as noted on Australia Post’s website, the formal reporting line of the current Australia Post Corporate Secretary is to the CEO. It is stated that this is because the Corporate Secretary “fulfils other management responsibilities in addition to corporate secretarial duties”. In particular, the current Australia Post Corporate Secretary is also the General Counsel. The website states that “[f]or any matter relevant to the corporate secretarial duties or conduct of the Board, the Corporate Secretary has an *indirect* line, and is accountable, to the Chair of the Board” (emphasis added).<sup>75</sup>

- 7.3.11 The Board Charter does not contain Australia Post’s policy on when and how its directors may seek independent professional advice at Australia Post’s expense.<sup>76</sup> This is an important mechanism for ensuring non-executive directors have access to independent advice whenever they consider it necessary to discharge their responsibilities appropriately.

## 7.4 Findings

- 7.4.1 All non-executive Board members interviewed agreed that they would not have approved the purchase of the Watches.
- 7.4.2 There is a tacit acceptance by Interviewees that the purchase and awarding of the Watches was not consistent with public expectations of board members and executives of CCEs and GBEs in their management of the enterprise.
- 7.4.3 Australia Post’s Corporate Secretary reports to the CEO, rather than being accountable directly to the Board, through the Chair, for matters relevant to the Board. Australia Post should consider the Corporate Secretary’s reporting lines given the role a corporate secretary plays in the implementation of good governance practices.
- 7.4.4 The induction process for new Board members does not appear to adequately provide training with regard to the detailed operation of the legislative and policy frameworks applicable to Australia Post as a CCE (and GBE) and the implications of this for the Board collectively and Board members individually.

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## 8. OTHER INSTANCES OF CREDIT CARD USAGE

### 8.1 Preliminary analysis of credit card usage

A preliminary review was undertaken of the documents provided which detail credit card usage for a limited set of credit cards. This review did not involve a forensic accountant.

Based on that preliminary review, there are potentially other instances of credit card usage that may be inconsistent with public expectations and Australia Post policies. All such transactions are for lesser amounts than the amount expended on the Watches.

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<sup>74</sup> Australian Institute of Company Directors, *Role of the company secretary*, [https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-6-7-duties-directors\\_role-company-secretary\\_a4\\_web.ashx](https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-6-7-duties-directors_role-company-secretary_a4_web.ashx).

<sup>75</sup> See <https://auspost.com.au/about-us/corporate-information/our-organisation/corporate-governance-statement>.

<sup>76</sup> See [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/board-charter.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/board-charter.pdf)

## 8.2 Findings

Based on a preliminary review of a limited set of credit card usage records, it appears there are potentially other instances of credit card usage for charges that, although for lesser amounts than the expenditure on the Cartier watches, may also be inconsistent with public expectations and Australia Post's policies.

## 9. GLOSSARY

Term	Meaning
<b>Australia Post</b>	the Australian Postal Corporation as continued under the APC Act.
<b>APC Act</b>	<i>Australian Postal Corporation Act 1989</i> (Cth)
<b>Bank@Post Refresh</b>	the project undertaken by Australia Post in 2017 and 2018
<b>CCE</b>	corporate Commonwealth entity, as defined in the PGPA Act
<b>Department of Finance</b>	means the Commonwealth of Australia as represented by the Department of Finance (ABN 61 970 632 495)
<b>Department of Infrastructure, Transport, Regional Development and Communications</b>	means the Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development and Communications (ABN 86 267 354 017)
<b>GBE</b>	Government Business Enterprise
<b>GBE Directors guide</b>	Guidance published by the Department of Finance as a starting point to assist directors of GBEs ( <a href="https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines">https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines</a> ).
<b>GBE Guidelines</b>	<i>Commonwealth Government Business Enterprises – Governance and Oversight Guidelines</i> (Resource Management Guide No. 126)
<b>Interviewees</b>	the individuals interviewed by Maddocks for the purposes of this investigation
<b>PGPA Act</b>	<i>Public Governance, Performance and Accountability Act 2013</i> (Cth)
<b>PGPA Rule</b>	<i>Public Governance, Performance and Accountability Rule 2014</i> (Cth)
<b>Senate Estimates hearing</b>	the Estimates hearing of the Senate Environment and Communications Legislation Committee on 22 October 2020, at which Australia Post appeared
<b>Shareholder Departments</b>	the Department of Infrastructure, Transport, Regional Development and Communications and the Department of Finance
<b>Shareholder Ministers</b>	the Minister for Finance and the Minister for Communications, Cyber Safety and the Arts

<b>Terms of Reference</b>	means the terms of reference for the investigation as set out here: <a href="https://www.communications.gov.au/documents/shareholder-departments-investigation-australia-post-terms-reference">https://www.communications.gov.au/documents/shareholder-departments-investigation-australia-post-terms-reference</a> The Terms of Reference are reproduced in Schedule 1.
<b>Watches</b>	the four Cartier watches referred to in this report

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## Schedule 1      Terms of Reference

### Shareholder Departments' investigation into Australia Post – Terms of Reference

Australia Post provides critical services to all Australians.

Australia Post is established under the *Australian Postal Corporation Act 1989* and is a wholly owned Corporate Commonwealth Entity and Commonwealth Government Business Enterprise under the *Public Governance, Performance and Accountability Act 2013*.

The Minister for Finance and the Minister for Communications, Cyber Safety and the Arts are the Shareholder Ministers of Australia Post.

The Government expects all government entities, including Government Business Enterprises, to act ethically and adhere to high standards regarding the expenditure of money, as the public also rightly expects.

Noting the governance and legal obligations that apply to Australia Post, and the expectations from the Australian Government and the public about the behaviour of public institutions, the Department of Finance and Department of Infrastructure, Transport, Regional Development and Communications, supported by an external law firm, will undertake an investigation into Australia Post's governance arrangements and corporate culture concerning the proper use and management of public resources, in relation to gifts, rewards and expenses, including personal expenses of executives. The investigation will determine whether Australia Post has expended money ethically and acted in a manner expected of a Government Business Enterprise.

Specifically the investigation will determine:

- The facts around an incident involving the provision of wristwatches to Australia Post staff in late 2018;
- The role of the then Australia Post Chair and Board, and the Managing Director and Chief Executive Officer in the incident;
- Whether there are other instances in Australia Post inconsistent with appropriate behaviour for a GBE that require further investigation;
- Whether this incident or other instances (including the actions of those involved) are consistent with:
  - o the obligations of Directors and Chief Executives of Government Business Enterprises; and
  - o the efficient, effective, economical and ethical expenditure of money and use of public resources.
- The extent to which Australia Post's governance arrangements and management culture, in particular in relation to gifts, rewards and expenses, including personal expenses of executives:
  - o supports the efficient, effective, economical and ethical management of resources;

- meets the expectations of the public around the leadership and governance of Australia Post as a public Institution; and
- require further investigation or review.

A report is to be provided to Government within four weeks of the investigation commencement.

## Schedule 2      Australia Post directors and Executives

**TABLE 1 – DIRECTORS AND EXECUTIVES IN 2018**

Office or role	Person holding the office or role at 30 August 2018
Chairperson (non-executive)	John Stanhope
Deputy Chair (non-executive)	Holly Kramer
Director (non-executive)	Paul Scurrah
Director (non-executive)	Bruce McIver
Director (non-executive)	Tony Nutt AO
Director (non-executive)	The Hon Michael Ronaldson
Director (non-executive)	Jan West
Director (non-executive)	Deidre Willmott
Chief Executive Officer and Managing Director	Christine Holgate
Group Chief Executive Officer	Bob Black
Executive General Manager, International Services	Annette Carey
Executive General Manager, People & Culture	Susan Davies
Acting Executive General Manager, Corporate Services	Chris Blake
Executive General Manager, Community and Consumer	Nicole Sheffield
Chief Financial Officer	Janelle Hopkins
Executive General Manager, Business & Government	Gary Starr
Executive General Manager, Product and Innovation	Ingo Bohlken
General Manager, Payment & Financial Services	Deanne Keetelaar
Head of Strategy	Anna Bennett

**TABLE 2 – DIRECTORS AND EXECUTIVES AT DATE OF THIS REPORT**

Office or role	Person holding the office or role at date of this report (November 2020)
Chairperson (non-executive)	Lucio Di Bartolomeo
Deputy Chair (non-executive)	Andrea Staines OAM
Director (non-executive)	Mario D’Orazio
Director (non-executive)	Bruce McIver AM
Director (non-executive)	Tony Nutt AO
Director (non-executive)	The Hon Michael Ronaldson
Director (non-executive)	Jan West AM
Director (non-executive)	Deidre Willmott
Corporate Secretary and General Counsel	Nick Macdonald
Acting Group Chief Executive Officer and Managing Director	Rodney Boys
Executive General Manager, Deliveries	Rod Barnes
Executive General Manager, Product & Innovation	Ingo Bohlken
Executive General Manager, People & Culture	Susan Davies
Executive General Manager, Community & Consumer	Nicole Sheffield
Executive General Manager, Government & International	Gary Starr
Executive General Manager, Transformation & Enablement	John Cox



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## **Schedule 3      Legislative and policy framework applying to Australia Post**

### **1.      *AUSTRALIAN POSTAL CORPORATION ACT 1989 (CTH)***

#### **1.1      Governance**

- 1.1.1      The APC Act continues Australia Post as a body corporate, and sets out its functions and powers.

#### **1.2      Role and responsibilities of the Board**

The role of the Board is to:

- 1.2.1      decide the objectives, strategies and policies to be followed by Australia Post; and
- 1.2.2      ensure Australia Post performs its functions in a manner that is proper, efficient and, as far as practicable, consistent with sound commercial practice.<sup>77</sup>

The Board's specific responsibilities under the APC Act include (but are not limited to):

- appointing the Managing Director, determining the terms and conditions (including relating to remuneration and allowances),<sup>78</sup> and terminating the appointment<sup>79</sup>
- preparing or revising financial targets for inclusion in a corporate plan for Australia Post under section 35 of the PGPA Act.<sup>80</sup>

The Board may, by resolution, delegate any or all of its powers to a director or an employee of Australia Post. The delegate is, in the exercise of a delegated power, subject to directions of the Board.<sup>81</sup>

The Managing Director (or another employee authorised by the Board) may delegate all or any of Australia Post's powers to an employee of Australia Post.<sup>82</sup>

#### **1.3      Role and responsibilities of the Managing Director (commonly referred to as the 'CEO')**

The Managing Director's role is to, under the Board, manage Australia Post. Anything done in the name of, or on behalf of Australia Post by the Managing Director is taken to have been done by Australia Post itself.<sup>83</sup>

#### **1.4      Commercial and financial matters**

Australia Post's commercial obligation is that it "shall, as far as practicable, perform its functions in a manner consistent with sound commercial practice".<sup>84</sup>

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<sup>77</sup> APC Act, section 23.

<sup>78</sup> APC Act, sections 83 and 84.

<sup>79</sup> APC Act, Part 6, Division 3.

<sup>80</sup> APC Act, section 38.

<sup>81</sup> APC Act, section 94.

<sup>82</sup> APC Act, section 93.

<sup>83</sup> APC Act, section 24.

<sup>84</sup> APC Act, section 26.

The APC Act provides that Australia Post's capital includes (but is not limited to) any part of Australia Post's liabilities to the Commonwealth at the commencement of the APC Act that the Minister directs be converted to capital; and any amounts appropriated by the Commonwealth Parliament and paid to Australia Post for the purpose of providing capital. Interest is not payable to the Commonwealth on the capital.<sup>85</sup>

Australia Post's money may be expended only:<sup>86</sup>

- 9.1.1 in payment of amounts properly payable in the performance of its functions;
- 9.1.2 in payment of remuneration and allowances payable under the APC Act; and
- 9.1.3 in making any other payments that Australia Post is authorised or required to make under the APC Act or any other Act.<sup>87</sup>

The Board must, annually, notify the Minister in writing with a recommendation as to whether or not Australia Post will pay a dividend for the relevant financial year. The Minister must, by written notice to the Board, approve the recommendation; or direct payment of a dividend or a different dividend.<sup>88</sup> In setting its financial target for inclusion in Australia Post's corporate plan, the Board must have regard to the expectation of the Commonwealth that Australia Post will pay a reasonable dividend.<sup>89</sup> That dividend must be specified in Australia Post's annual report.<sup>90</sup>

## **1.5 Accountability obligations**

Australia Post's general governmental obligations under the APC Act include the requirement to perform its functions in a way that is consistent with any government policy orders that apply under section 22 of the PGPA Act. At the date of this report, no government policy orders applying to Australia Post have been issued.

## **2. PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY ACT 2013 (CTH)**

Australia Post is a corporate Commonwealth entity for the purposes of the PGPA Act. The objects of the PGPA Act include, relevantly, to:

- 2.1.1 establish a coherent system of governance and accountability across Commonwealth entities;
- 2.1.2 require Commonwealth entities to meet high standards of governance and accountability
- 2.1.3 use and manage public resources properly.<sup>91</sup>

A note to section 13 of the APC Act states that the PGPA Act applies to Australia Post, and:

*That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.*

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<sup>85</sup> APC Act, section 52.

<sup>86</sup> Money not immediately required for the purposes of Australia Post may be invested under PGPA Act, section 59 (see APC Act, sub-section 57(2)).

<sup>87</sup> APC Act, section 57.

<sup>88</sup> APC Act, section 54.

<sup>89</sup> APC Act, paragraph 38 (c).

<sup>90</sup> APC Act, paragraph 44(1)(d).

<sup>91</sup> PGPA Act, section 5.

## 2.2 Accountable authority's duties

As the Board is Australia Post's governing body, the Board is also the *accountable authority* of Australia Post for the purposes of the PGPA Act. As the accountable authority, the Board's obligations under the PGPA Act include, relevantly, the obligation in section 15 to govern Australia Post in a way that (emphasis added):

- 2.2.1 promotes the **proper** use and management of **public resources** for which the Board is responsible
- 2.2.2 promotes the achievement of Australia Post's purposes
- 2.2.3 promotes Australia Post's financial sustainability.<sup>92</sup>

"**Proper**", when used in relation to the use of management of public resources, is defined in section 8 of the PGPA Act to mean:

*efficient, effective, economical and ethical.*

"**Public resources**" is defined in section 8 of the PGPA Act to mean:

*relevant money, relevant property, or appropriations.*

"**Relevant money**" is defined to mean:

- (a) *money standing to the credit of any bank account of the Commonwealth or a corporate Commonwealth entity; or*
- (b) *money that is held by the Commonwealth or a corporate Commonwealth entity.*

As such, the Board, as the accountable authority of Australia Post, is required under the PGPA Act to promote the efficient, effective, economical and ethical use and management of the money standing to the credit of any Australia Post bank account or money that is held by Australia Post.

The GBE Directors guide states that the Board as a whole needs to exercise its decision-making powers and oversight of management in ways that discharge this duty.<sup>93</sup>

As stated in the Explanatory Memorandum for the PGPA Bill, 'proper use and management' recognises:

*That the public resources used and managed by Commonwealth entities are, in a broad sense, not theirs, but rather belong to the people of Australia ...*<sup>94</sup>

The Explanatory Memorandum also noted that promoting the proper use and management of public resources is "a fundamental duty of accountable authorities". It went on to say, relevantly:

*Fulfilling this duty may require an accountable authority, among other things, to establish decision-making processes for the use of resources (for example a process of approvals for the expenditure of relevant money), to oversee line areas*

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<sup>92</sup> PGPA Act, section 15.

<sup>93</sup> <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines/director-rules-and-duties>.

<sup>94</sup> Explanatory Memorandum, PGPA Bill, paragraph 99.

*responsible for projects and programs and to address the inappropriate use of resources by individuals in the entity.*<sup>95</sup>

## 2.3 Accountable authority – duty to establish and maintain systems relating to risk and control

Section 16 of the PGPA Act provides (emphasis added):

*The accountable authority of a Commonwealth entity must establish and maintain:*

- (a) *an appropriate system of risk oversight and management for the entity; and*
- (b) *an appropriate system of internal control for the entity;*

*including by implementing measures directed at ensuring officials of the entity comply with the **finance law**.*

The '**finance law**' means, relevantly, the PGPA Act, the rules, or any instrument made under the PGPA Act.

### Accountable authority instructions

In support of the discharge of the duty in section 16, an accountable authority may, by written instrument, give instructions to an official of the entity about any matter relating to the finance law.<sup>96</sup>

While it is not necessary for an instruction to expressly state this in order to be, in fact, an accountable authority instruction given under section 20A, Resource Management Guide No. 206 (*Accountable Authority Instructions (AAIs)*)<sup>97</sup> states that it is important to distinguish between instructions issued under section 20A and other internal guidelines issued within an entity.

### Duties of 'officials'

The PGPA Act provides that each Commonwealth entity has 'officials'.<sup>98</sup> A person is an 'official' if the person "is in, or forms part of, the entity".<sup>99</sup> An official of a Commonwealth entity includes (but is not limited to), relevantly:

- a person who is a member of the accountable authority. In relation to Australia Post, each Board member is an 'official' for the purposes of the PGPA Act; and
- a person who is an officer, employee or member of the entity. In relation to Australia Post, each executive and every employee is an 'official' for the purposes of the PGPA Act.

The PGPA Act imposes general duties on officials which are similar to a number of the duties imposed on directors and officers by the *Corporations Act 2001* (Cth) (**Corporations Act**).<sup>100</sup> For example, section 25 of the PGPA Act requires that an official of a Commonwealth entity:

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<sup>95</sup> Explanatory Memorandum, PGPA Bill, paragraph 131.

<sup>96</sup> PGPA Act, sub-section 20A(1).

<sup>97</sup> See <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/risk-internal-controls/accountable-authority-instructions-aais-rmg-206>.

<sup>98</sup> PGPA Act, sub-section 13(1).

<sup>99</sup> PGPA Act, sub-section 13(2).

<sup>100</sup> *Corporations Act 2001* (Cth), Chapter 2D, Part 2D.1 (Duties and powers).

*...must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:*

- (a) *were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and*
- (b) *occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.*

This is similar to the obligation imposed by section 180 of the Corporations Act on directors and officers to exercise care and diligence. However, for officials who are members of the accountable authority of a corporate Commonwealth entity that is a GBE (such as the CEO), this duty of care and diligence arguably encompasses the principles set out in the GBE Guidelines, including that the directors of a GBE ensure that GBEs and their officers maintain the highest standards of integrity, accountability and responsibility.

Similarly, section 26 of the PGPA Act mirrors section 181 of the Corporations Act, and provides:

*An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose.*

These, and the other general duties imposed by the PGPA Act on 'officials', apply to, relevantly, the individual Board members of Australia Post and the members of the Australia Post executive.

The Department of Finance's Resource Management Guide No. 203 – *General Duties of Officials*, provides detailed guidance on the obligations of officials of Commonwealth entities.<sup>101</sup>

### **3. PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY RULE 2014 (CTH)**

The *Public Governance, Performance and Accountability Rule 2014 (Cth) (PGPA Rule)* requires Australia Post, as a Commonwealth corporate entity, to include in its annual report information relating to its main corporate governance practices during the relevant period.<sup>102</sup>

The PGPA Rule was amended in 2019<sup>103</sup> to require annual reports of Commonwealth corporate entities to include information about remuneration (including bonuses, benefits and allowances) for senior personnel.<sup>104</sup> These provisions were not in the PGPA Rule in 2018, at the time of the purchase of the Watches.

#### **Approving commitments of relevant money for which the Board is responsible**

Under section 18 of the Rule, if the accountable authority of a Commonwealth entity (such as the Australia Post Board) is approving the commitment of relevant money for which the accountable authority is responsible, or an official (such as the Australia Post Chief Executive or the Chief Financial Officer) of a Commonwealth entity is approving the commitment of 'relevant money' for which the accountable authority is responsible, then the accountable authority or official must record the approval in writing as soon as practicable after giving it.

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<sup>101</sup> See <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines>.

<sup>102</sup> *Public Governance, Performance and Accountability Rule 2014 (Cth)* rule 17BE(m).

<sup>103</sup> [Public Governance, Performance and Accountability Amendment \(Reporting Executive Remuneration\) Rules 2019](#)

<sup>104</sup> PGPA Rules 17CA, 17CB and 17CC.

Sub-section 18(2) provides that the official must approve the commitment, and record the approval, consistently with any written requirements (including any requirements relating to the proper use of that money and spending limits) specified by the accountable authority in:

- 3.1.1 if the official is acting under a delegation or authorisation of the accountable authority:
  - (a) the instrument that delegates to the official, or otherwise authorises the official to exercise, the accountable authority's power to approve the commitment of relevant money; or
  - (b) a direction to the official in relation to the exercise of that power; or
- 3.1.2 instructions given by the accountable authority.

### **Obligations regarding Audit Committee**

Section 45 of the PGPA Act requires the accountable authority of a Commonwealth entity to ensure that the entity has an audit committee. Section 17 of the PGPA Rule requires the accountable authority to determine "by written charter" the functions of the entity's audit committee.

Section 17 of the PGPA Rule includes the following requirements with respect to the audit committee:

- The audit committee's functions must include reviewing the appropriateness of, relevantly, the accountable authority's system of internal control for the entity (sub-s.17(2)).
- For corporate Commonwealth entities such as Australia Post, "all members of the audit committee must be persons who are *not* employees of the entity" (emphasis added) (sub-s. 17(4AA)), unless they have been employed or engaged primarily for the purposes of being a member of the audit committee (sub-s.17(4A)).
- The following persons must *not* be a member of the audit committee (sub-s.17(5)):
  - the head of the accountable authority (in Australia Post's case, this would be the Chairperson of the Board)
  - the Chief Financial Officer
  - the Chief Executive Officer.

The Australia Post Audit & Risk Committee Charter (dated as being effective from 20 August 2020) is published on Australia Post's website.<sup>105</sup>

## **4. GOVERNMENT BUSINESS ENTERPRISE (GBE) GUIDELINES AND RELATED POLICIES**

### **4.1 Government Business Enterprises Guidelines**

The Commonwealth *Government Business Enterprises – Governance and Oversight Guidelines (GBE Guidelines)* are published by the Department of Finance and provide guidance to Commonwealth GBEs on board and corporate governance, financial governance, planning and reporting.

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<sup>105</sup> See [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/audit-and-risk-committee-charter.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/audit-and-risk-committee-charter.pdf).

The GBE Guidelines state that one of the main features of the Commonwealth's relationship with its GBEs are "reporting and accountability arrangements that facilitate best practice governance and active oversight by the Commonwealth".<sup>106</sup> The key principles underpinning the GBE Guidelines include (but are not limited to) that:

- The directors of a GBE are responsible for overseeing the development of the business strategies and the development of the day-to-day management policies.
- The directors of a GBE ensure that GBEs and their officers maintain the highest standards of integrity, accountability and responsibility.<sup>107</sup>

The GBE Guidelines confirm that, as is evident from the discussion above, the general conduct of boards such as the Australia Post Board, is subject to the provisions of the PGPA Act and PGPA Rules, as well as, in the case of Australia Post, the enabling legislation.

Relevantly, the GBE Guidelines:

- state that Board members have their fiduciary and other duties drawn to their attention by Shareholder Ministers in their appointment letters.
- articulate the Government's expectation that GBE boards establish and maintain a code of conduct for directors, employees and contractors which may cover, among other matters, appropriate use of assets and resources.<sup>108</sup> The code of conduct may cover matters including, relevantly, gifts and benefits and appropriate use of assets and resources.
- recognise that a key objective of a GBE, like that of a private sector company, is to add to its shareholder value. In order to achieve this, GBEs should operate efficiently, price efficiently, and earn at least a commercial rate of return.<sup>109</sup>

#### 4.2 The role of Directors in Commonwealth Government Business Enterprises

Guidance published by the Department of Finance<sup>110</sup> (**GBE Directors guide**) is intended to be a starting point to assist directors of GBEs to familiarise themselves with GBE governance requirements by identifying features of a GBE that make it unique when compared with private sector organisations; and highlighting key features of the GBE governance framework.

Relevantly, the GBE Directors guide makes the following points:

- The directors of a GBE are responsible for the financial stewardship and ongoing solvency of the GBE, and the key objective of the GBE to add to its shareholder value.
- As a government-owned entity, a GBE has "high levels of scrutiny, sensitivity and accountability". In particular, the Shareholder Ministers, who are accountable to Parliament, have an oversight role which extends beyond that of a private sector company shareholder.
- The key requirements for the governance, reporting and accountability for a GBE and the proper use and management of public resources are set out in the PGPA Act.

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<sup>106</sup> GBE Guidelines, paragraph 1.5.

<sup>107</sup> GBE Guidelines, paragraph 1.7.

<sup>108</sup> GBE Guidelines, paragraphs 2.6-2.7.

<sup>109</sup> GBE Guidelines, paragraph 1.8.

<sup>110</sup> See <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines>.

- As noted above, the PGPA Act also contains a GBE director's core fiduciary (general) duties, as well as a number of GBE-specific duties.
- Consistent with standard commercial practice, directors of a GBE may delegate some of their powers to the Chief Executive Officer or Managing Director (as relevant). Relevantly, the GBE Directors guide states "Directors will be called on to directly authorise those transactions that fall outside of the delegations to GBE management".<sup>111</sup> Although it is recognised in the GBE Directors guide that these are likely to be the "largest and most strategically important transactions", this authorisation requirement is not confined to those kinds of transactions in the GBE Directors guide.
- Directors have an important role in monitoring the delegation of powers to the Chief Executive Officer or Managing Director (as relevant) and the senior executives. This includes (but is not limited to):
  - Ensuring a rigorous and effective risk management system is in place, with appropriate reporting lines and internal controls

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<sup>111</sup> See <https://www.finance.gov.au/business/government-business-enterprises/role-directors-commonwealth-gbes-guidelines/director-rules-and-duties>.