

# **Inquiry report into allegations of unauthorised or unjustified expenditure, and related matters, at the Waikato District Health Board**

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# 1. Overview and findings

## Overview

1. On 5 October 2017, Dr Nigel Murray resigned as Chief Executive of the Waikato District Health Board (Waikato DHB). His resignation followed an investigation into his expenses as the Chief Executive, instigated by the then Board Chair, Bob Simcock (hereafter the “Chair”). Dr Murray’s resignation occurred before an employment investigation was finalised.
2. Following the resignation of Dr Murray, the then Director-General of Health sought an explanation from the Chair regarding the circumstance of Dr Murray’s departure. The State Services Commissioner was briefed by the Chair.
3. On 3 November 2017 the Minister of Health requested that the State Services Commissioner undertake an investigation into the circumstances surrounding Dr Murray’s expenditure. (The Minister’s letter is provided as appendix 1). I was appointed to conduct this inquiry on 10 November 2017. The inquiry comprised:
  - an extensive review of the publicly released files associated with Dr Murray’s expenses
  - analysis of Dr Murray’s expenses over his tenure to determine if his material expenditure was authorised and justified
  - a review of Waikato DHB policies and procedures that address both individual expenditure and conduct
  - a number of formal interviews with a number of people on a confidential basis, taken on oath
  - a consideration of Audit New Zealand’s ‘*Report to the Board on the audit of Waikato District Health Board for the year ended 30 June 2017*’ (the Audit New Zealand auditor’s management letter)
  - a review of the documentation associated with Dr Murray’s appointment as Waikato DHB Chief Executive
  - individual confidential discussions with some people involved in (or vocal about) the appointment process.

## Expenditure

4. This is my report resulting from the inquiry. I include findings based on my assessment of the evidence received against standard recruitment practices, the applicable standards of conduct and the Auditor-General’s guidelines for public entities on controlling sensitive expenditure. Where there is adverse comment on any individual, he or she has been provided with the opportunity to respond before any finding was finalised. The inquiry found that:

- A) During his tenure from 21 July 2014 to 5 October 2017 Dr Murray spent \$218,209 of the Waikato DHB's funding on travel, accommodation and related expenses<sup>1</sup>. This inquiry assessed 129 items of expenditure valued at \$198,933, excluding \$19,276 on minor items considered immaterial to this inquiry.
- B) Of those 129 items of expenditure, on the basis of the information I analysed, I concluded that:
- i) 59 items, valued at \$101,161 did not meet the Waikato DHB's standards for appropriate authorisation as set out in its policies and procedures<sup>2</sup>
  - ii) 45 items, valued at \$120,608 were, in my view, unjustified when measured against guidelines published by the Auditor-General (see section 2.4 below) and the criteria I have used in this inquiry (see section 3.2 below)<sup>3</sup>.
  - iii) \$74,265.04 of the total expenditure by Dr Murray had been identified by the Waikato DHB as personal expenditure requiring reimbursement, of which \$54,831.98 has been subsequently repaid (without admission of liability by Dr Murray) and \$19,434.06 remains in dispute.
- C) More than half of Dr Murray's travel and accommodation (by cost) was, in my view, unjustified, and about half was unauthorised or had authorisation deficiencies.
- D) With specific regard to his relocation expenses, Dr Murray's expenditure contravened both the agreement made in his letter of offer and the Waikato DHB Policy on staff travel and accommodation.

## Conduct

5. In my opinion, Dr Murray's conduct fell well short of that required of a state sector leader. In making significant claims for reimbursement of expenditure that was outside of the Waikato DHB policies, and in spending on items for which there was no apparent authorisation, it is my view that he breached the standards set out in the State Sector Code of Conduct (refer appendix 5).
6. Consistent with his fundamental right to do so, Dr Murray declined to make himself available for an interview to respond to questions arising from this inquiry, principally because of a concern, raised by his lawyers, about the potential prejudice to Dr Murray should he be interviewed for this inquiry prior to the outcome of any Serious Fraud Office (SFO) investigation, and before the resolution of any proceedings which might occur following such an investigation. Dr Murray's lawyer also expressed concern that: *"...even if the SFO were to decide to take no further action that would not necessarily be the end of the matter as Waikato DHB member Dave MacPherson has indicated through the media that he would consider a formal complaint about Dr Murray to the police"*.

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<sup>1</sup> This is the total covered by this inquiry, based on the Waikato DHB's public disclosure and also includes expenditure subsequently invoiced to Dr Murray.

<sup>2</sup> Wholly, or partially unauthorised, or retrospectively authorised.

<sup>3</sup> I note that there is expenditure which I assess as both not meeting the standards for authorisation and unjustified. Therefore, the numbers and dollars in the previous two points cannot be aggregated.

7. Nevertheless, the adverse findings in this report were made available to Dr Murray, through his legal representative, for response. Dr Murray was also provided with a substantial number of documents. Dr Murray's lawyer submitted a 14-page response to the draft extracts provided. Specific comments were also provided on a number of areas of the draft report, many of which were extremely useful to me. I carefully considered all the points made in the response. Where appropriate, the draft was changed to reflect this feedback.
8. Dr Murray's lawyer also recorded that Dr Murray believes he has been the subject of an unfair media campaign and that much of what has been reported is false or inaccurate. His position is that the allegations about him are without foundation and he denies any criminal wrongdoing.
9. While my conclusion has been that Dr Murray's conduct with regard to his expenses did not meet the minimum standards expected in the state sector, it is not the role of this inquiry to determine whether any of his wrong doing is of a criminal nature<sup>4</sup>. Nor is it the role of the inquiry to reach any final conclusion on whether, at least in some instances, Dr Murray may have been less scrupulous in complying with state sector requirements than he should have been because, as he contends, a lax approach to governance within the Waikato DHB led him to believe this was acceptable.

### **Governance**

10. Governance was found wanting at the Waikato DHB. The normal checks and balances in a state sector organisation of its size and scale did not operate as they should have, allowing Dr Murray's unauthorised and unjustified expenditure to continue for too long without being addressed. The Board of the Waikato DHB did not ensure proper oversight of the former Chief Executive's expenditure, with the Chair failing to ensure this occurred. Also, I note that induction of new Board members into their roles was reported to be inadequate.
11. The Chair's oversight of Dr Murray's expenses lacked the rigour and standard of care expected. In particular, from the documentation, the Chair appears to have retrospectively authorised at least 20 of Dr Murray's travel applications, and, when considered against the applicable standards, at least 42 of the travel applications authorised by the Chair had no or inadequate evidence of business purpose.
12. The Chair engaged constructively in this inquiry through interviews, provision of information, and through helpful comment on my draft report's analysis and findings. His feedback pointed to a practice where he, not infrequently, may have provided contemporaneous verbal approval for expenditure, with formal authorisation occurring retrospectively. Also he provided a number of examples of situations where he believed that he had authorised travel which was later changed without authorisation. And he stated that there was travel which he knew nothing of, and which he had never authorised, but which had been undertaken by Dr Murray and paid for by the DHB.
13. The conclusion I have come to is that the Chair was too trusting of the former Chief Executive and I believe the Chair was let down by Dr Murray.
14. Once made aware of concerns about Dr Murray's conduct, the Chair acted, with good advice, and with appropriate urgency, to address concerns about unauthorised and/or unjustified expenditure. The Chair was right to review Dr Murray's expenditure and commission an employment investigation, which was undertaken with appropriate diligence.

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<sup>4</sup> It is not the purpose of this inquiry, and nor do I have the power to, determine the civil, criminal or disciplinary liability of any person.

15. If Dr Murray had continued to be employed by the Waikato DHB it seems from the evidence I have been provided with, that he would most probably have faced disciplinary action. The Board advised me its decision to settle with Dr Murray was only made after carefully analysing and weighing up the risks and benefits of so doing (see paragraph 213). I understand the Board's perspective and acknowledge that, at the time, it achieved what seemed a good outcome for the DHB. In my view, however, accepting a negotiated resignation, albeit on terms favourable to the DHB, was not the best course of action because there were much wider issues involved, principally public confidence in the state sector. In the health sector, with the frequently expressed public anxiety about underfunding and inadequate medical services, the importance of public confidence in how limited taxpayer dollars are spent and transparency about this, is critical.

### **Recruitment**

16. The recruitment of Dr Murray to the role generally followed standard practice. However, good practice would have been to include a reference check with his then current employer, which was not done. While this would have required Dr Murray's consent, and that was not sought, if it had been and it was refused, this would have been likely to have raised a red flag. My inquiries found that, while issues with Dr Murray's management style were surfaced during the recruitment process, no one raised concerns about the management of his expenses.

### **Other matters**

17. District health boards in New Zealand are subject to a number of external checks, and it may be reasonable to have expected any one of these to have identified the former Chief Executive's behaviour sooner. The State Services Commission expects Chief Executives' expenses to be publicly released each year. The Ministry of Health monitors the Waikato DHB and it reports to Parliament. The Waikato DHB is subject to an annual external audit by Audit New Zealand. None of these external checks provided any indication that Dr Murray's expenditure required specific investigation. There are a number of opportunities for the system to be strengthened in light of this inquiry. These are discussed in section 3.7.

### **Findings**

18. My findings are consolidated in this overview section. The full discussion supporting each of these is in the body of this report.

#### **Finding: The Waikato DHB's policies and procedures**

19. Having reviewed these policies and procedures against the applicable standards, I am satisfied that they are reasonable and consistent with the expectations of both the State Service Commissioner's *'Standards of Integrity and Conduct for the State Services'*, and with the Auditor-General's *'Controlling Sensitive Expenditure: Guidelines for public entities'*. (Particularly relevant extracts of the Waikato DHB's policies and procedures are provided in appendix 6.)

#### **Finding: Recruitment and selection process**

20. The Waikato DHB's recruitment process followed generally standard practice.
21. Good practice referee checks should include the applicant's current employer and, in some cases, go beyond the referees nominated by a candidate. In this case it did not include the current employer.

#### Finding: Dr Murray's expenditure

22. More than half of Dr Murray's travel and accommodation (by cost) was, in my view, unjustified, and about half was unauthorised or had authorisation deficiencies.
23. In relation to the costs associated with his relocation to New Zealand I find that Dr Murray's expenditure was in contravention of the agreement made in his letter of offer, and was in contravention of the Waikato DHB Policy on staff travel and accommodation, which states (in part): "*Waikato DHB shall not pay for any expenses relating to personal travel or accommodation.*"

#### Finding: Dr Murray's conduct

24. Based on the evidence I have obtained, and notwithstanding that there were significant failings in the Waikato DHB's compliance procedures, a conclusion that Dr Murray's conduct fell well short of that required of a State Sector leader is unavoidable. His day-to-day practices around travel and related expenses all too often ignored the required policies and procedures, and on occasion involved the private use of public funds.

#### Finding: Oversight by the Board and Chair

25. Consistent with the Waikato DHB's policies it is the Chair's role on behalf of the Board to review and authorise expenditure by the Chief Executive. The Chair's oversight of Dr Murray's expenses lacked the rigour and standard of care expected of properly authorised individuals, as set out in the Auditor-General's guidelines, cited in section 2.4 of this report.
26. In particular, based on the documentary evidence I have obtained, formal authorisations of at least 20 of Dr Murray's travel applications were given retrospectively, and, in my view, at least 42 (or 33%) of the total travel applications approved by the Chair had no or inadequate evidence of business purpose.
27. The Chair was too trusting of the Chief Executive, and I believe the Chair was let down by Dr Murray.
28. Waikato DHB governance processes as they relate to sensitive expenditure should be strengthened.

#### Finding: Accepting Dr Murray's resignation

29. I find that the Board's decision to settle with Dr Murray rather than finalise an employment process was a pragmatic solution given the circumstances. However, in my view, a more principled approach is required in a State Sector situation, where serious allegations ought to be fully determined wherever possible. This means that either a person's name is cleared or they are held publicly to account for their actions. Public accountability and transparency is essential.

#### Finding: State Services Commission's expense disclosure regime

30. I find that the annual public disclosure of chief executive's expenses is an important feature of transparency and accountability in the state sector. Effective operation of the disclosure system requires a balance between clear guidance from SSC and the cooperation and diligence of the state sector agencies involved.

#### Finding: Board member induction

31. An induction programme, once arranged for incoming Waikato DHB members in December 2016, did not meet members' expectations, and did not cover either the Board Governance Manual or the Code of Conduct.
32. A comprehensive induction for incoming chief executives and for incoming Crown Entity chairs and members is important. It can be the difference between a 'bumpy' and smooth start, and even to longer-term success or failure in a role.
33. In section 2.4 of this report I comment on the Waikato DHB Chief Executive's induction, and in section 3.7 about Board member induction. In both cases the Ministry of Health can play an important role, as can monitoring departments across the wider Crown Entity sector. It is my view that the State Services Commissioner should consider this as a priority for the incoming Director-General of Health.

## 2. Background

### 2.1. The Waikato District Health Board

34. There are currently 20 district health boards in New Zealand. They are required to plan and deliver health and disability services regionally, as well as in their own individual areas. The objectives of district health boards as set out in legislation include:
- improving, promoting and protecting the health of people and communities
  - promoting the integration of health services, especially primary and secondary care services
  - seeking the optimum arrangement for the most effective and efficient delivery of health services in order to meet local, regional, and national needs.
35. District health boards are expected to show a sense of social responsibility, to foster community participation in health improvement, and to uphold the ethical and quality standards commonly expected of providers of services and state sector organisations. Public hospitals are owned and funded by district health boards.
36. Each district health board is governed by a board of up to 11 members. The Minister of Health appoints up to four members to each board, and the board's chair and deputy chair. Seven members are publicly elected every three years at the time of local government elections.
37. The Waikato DHB is based in Hamilton, and covers an area of around 21,000 square kilometres, from the Coromandel in the north down to near Mt Ruapehu in the south. It has a population of 400,820 people. It provides tertiary health services (such as highly complex surgery) to the Midland health region of nearly 900,000 people.
38. In the 2016/17 financial year the Waikato DHB received almost \$1.3 billion in funding from the Government for publicly funded health and disability services. It employs more than 6700 staff, with around 18 per cent of those staff involved in administration.
39. About 60 per cent of the funding received by Waikato DHB is used to directly provide hospital and health services, including:
- five hospital sites including a tertiary teaching hospital (Waikato Hospital in Hamilton), a secondary hospital in Thames, and three rural hospitals in Tokoroa, Te Kuiti and Taumarunui
  - two continuing care facilities
  - one mental health inpatient facility
  - community based services
  - population health services.
40. The remaining nearly 40 per cent is used to fund contracted services provided by non-government organisations, primary health care organisations, pharmacies and laboratories, including:

- 57 aged related residential care facilities
  - 76 pharmacies
  - 75 general practitioner practices
  - 18 Māori organisations
  - two Pacific organisations
  - three primary health alliance partners.
41. Dr Nigel Murray took up the role as Chief Executive of the Waikato DHB on 21 July 2014. He replaced Craig Climo in the role. Prior to making the appointment to the Chief Executive role, the Chair of the Waikato DHB had commissioned the Ministry of Health to review the Waikato DHB and identify areas for performance improvement. The document, called *‘Review of opportunities for the incoming chief executive’*, noted that a \$500 million 10-year building project was nearing an end, and that there were challenges ahead in how to work in the new buildings to deliver the best possible care to patients and the community. The report was publicly released on the Waikato DHB’s website in May 2014 and provided critical comment on the Waikato DHB’s performance.

## **2.2. Inquiry**

42. On 5 October 2017, Dr Nigel Murray resigned as Chief Executive of the Waikato DHB. His resignation occurred during an employment investigation into his expenses as chief executive, instigated by the Chair of the Waikato DHB Board. No report into that employment investigation was completed and, accordingly, although I have seen draft documentation and evidence related to it, I have not relied on any of that material in coming to my findings.
43. Also, a specific audit of Dr Murray’s expenses was completed by Audit New Zealand, at the request of the Chair. The results were included in Audit New Zealand’s auditor’s management letter, parts of which have been made publicly available by the Board.
44. Following the resignation of Dr Murray, the then Director-General of Health sought an explanation from the Chair regarding Dr Murray’s departure. The State Services Commissioner was briefed on the Chair’s report and the Minister of Health, on 3 November 2017, requested the State Services Commissioner to undertake an investigation into the circumstances surrounding Dr Murray’s expenditure (appendix 1).
45. I was appointed on 10 November 2017 (refer appendix 2) by the State Services Commissioner to inquire into and report on:
- a. The circumstances of any alleged unauthorised or unjustified expenditure of Dr Murray of District Health Board funds.
  - b. Any related or similar conduct by Dr Murray or any related person or third party identified during the course of the inquiry.
  - c. Any processes undertaken or decisions made by the District Health Board relating to any matters I identify under (a) and (b).

- d. Any other matter that I consider should receive the attention of the State Services Commissioner, for example relating to conduct of other staff members within the Waikato DHB or the DHB's policies or processes.
46. The State Services Commissioner asked me to report back to him by 31 January 2018, or such date as may be agreed.
47. This is my report resulting from the inquiry. I include findings made as a result of the inquiry. Where there is adverse comment on any individual, he or she has been provided with the opportunity to respond before any finding was finalised.
48. The report covers the appointment of Dr Murray as Chief Executive of the Waikato DHB in 2014, his subsequent expenditure, and the Board's oversight of that expenditure. It does not cover any matters associated with Dr Murray's involvement with SmartHealth or the decision to procure the product from HealthTap, except in so far as his expenditure on travel may have been involved. These matters are the subject of an inquiry by the Office of the Auditor-General.
49. For the avoidance of doubt, on 20 December 2017, the State Services Commissioner clarified that the Terms of Reference provided for consideration of the recruitment and appointment processes undertaken by the Waikato DHB in relation to Dr Murray's appointment as Chief Executive, in the context of (a) and (b) of the Terms of Reference. This letter of clarification is provided in appendix 3.

### **2.3. The conduct of the inquiry**

50. The inquiry was conducted in four phases: document review, interviews, supplementary interviews and discussions, and information requests. This was followed by analysis and the development of findings.
51. The first step was a comprehensive consideration of existing material associated with Dr Murray's expenditure. This included Audit New Zealand's Annual Audit of the Waikato DHB<sup>5</sup>, which included the findings of the auditor's audit work on the Chief Executive's expenses. Relevant parts of the report to the Board from Audit New Zealand have been publicly released<sup>6</sup>.
52. A number of other key documents formed the basis of my initial documentation review. Of particular note was the Waikato DHB's publically released detailed Chief Executive expense material, in response to a range of Official Information Act 1982 requests. There is a substantial volume of material relating to Dr Murray's expense disclosures in the public arena.
53. The inquiry examined the Waikato DHB's relevant policies and procedures. First, to assess their consistency with the State Service Commission's Standards of Integrity and Conduct and the Auditor-General's guidelines for public entities on controlling sensitive expenditure. And, second, to provide the basis on which to test Dr Murray's compliance with policy.

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<sup>5</sup> Report to the Board on the audit of Waikato DHB for the year ended 30 June 2017, 27 November 2017.

<sup>6</sup> Note Audit New Zealand's qualification: "...We have not been able to seek clarification or explanation about particular expenses from the previous Chief Executive. We did not receive all the information sought from management staff at the DHB. We were told that some of the information could only be provided by the previous Chief Executive...Our work on the previous Chief Executive's expenses is incomplete, and it is possible that there may be other information held by the parties which could change our findings and conclusions. As a result only limited assurance can be taken from our work".

54. I also sought and reviewed a range of material related to the recruitment and appointment process by which Dr Murray was appointed Chief Executive of Waikato DHB in 2014.
55. Upon completion of the document review and analysis of the expenditure information, lines of inquiry were developed and individuals were identified for interviews.
56. I conducted seven formal interviews on oath, on a confidential basis, and had confidential discussions with a further five people. By providing confidentiality, I sought to obtain the most accurate and reliable information possible. Interviewees were provided with notes from their own interview for comment, clarification and/or correction. I would like to thank all individuals who agreed to be interviewed. I greatly appreciated their willingness and cooperation in assisting me with the inquiry. Appendix 4 lists the people with whom I had interviews or discussions.
57. The two journalists who have broadly covered this matter were offered the opportunity to share any information not already in the public arena, which they thought may be pertinent to the inquiry. They did not provide any further information.
58. Dr Murray was invited to attend an interview but he declined, principally because of legal advice that with an ongoing preliminary SFO investigation under way, that appeared likely to be covering the same issues as my inquiry, there was a serious risk of prejudice to him in being interviewed at this stage. Concerns about the lack of sufficient information disclosure to enable him to properly consider his position were also raised with me. Dr Murray's lawyer asked that I append his letter of 19 January 2018 outlining these concerns. The State Services Commissioner has agreed to release this material as requested, with my lawyer's response, alongside the report. Pursuant to section 25(2) of the State Sector Act 1988, the inquiry had certain statutory powers, including the power to summons witnesses. I considered whether to summon Dr Murray. I concluded that the inquiry could nonetheless proceed without that step because I was satisfied that:
  - A) The documentary review and interviews provided sufficient material on which to report according to my terms of reference. It was therefore not essential that Dr Murray be interviewed for the inquiry to be completed (albeit that I would have welcomed his views on the matters set out in this report).
  - B) Without his willing participation, an interview, especially under summons, was unlikely to be fruitful in providing me with significant additional information.
  - C) Having declined the opportunity to be interviewed I considered that providing Dr Murray with the opportunity to comment on any proposed adverse findings, in accordance with the process described below, would ensure a fair process, and an interview was therefore not necessary to uphold the principles of natural justice.
  - D) I have as far as possible avoided making any findings which depend upon the knowledge of Dr Murray.
59. Following the interviews, I made a number of further information requests and questions to the Waikato DHB, the Ministry of Health, the State Services Commission, and Audit New Zealand.
60. To help develop an accurate understanding of the matters covered by this inquiry I also had discussions at a less formal level with a number of people. These included officials from the

Ministry of Health, the State Services Commission, a former Chair of the Southland District Health Board, an Executive Director from Sheffield, and the former Chair of Fraser Health Limited, Canada.

61. A fair inquiry requires that any person or entity against whom an adverse finding might be made is given notice of that risk and an opportunity to bring relevant evidence and have that evidence fairly considered before findings are finalised.
62. After preparing a draft report, I provided relevant extracts of the draft report to various persons for comment. This included people whom I had interviewed and quoted to ensure that I had not misrepresented them and included those against whom I proposed to make adverse findings. Where relevant, I provided documentary evidence to those parties on which the findings were based. This provided an opportunity for affected persons to know how they might be referred to in the report, to know about the adverse findings, and to provide any evidence that might persuade the inquiry to reach a different finding.
63. All responses were carefully considered and the draft report amended as a result. I thank those who participated in the process. In conducting the inquiry, I sought to achieve an appropriate balance between the importance of providing a critically important public assurance of accountability and transparency in the state sector, and providing a time frame for participants' involvement that would ensure a fair process.

#### **2.4. Applicable standards**

64. In developing my findings arising from this inquiry, the evidence and material reviewed was assessed against applicable standards of conduct for public servants, and the Auditor-General's guidelines for public entities on controlling sensitive expenditure.
65. When a person joins New Zealand's State Services in a governance or leadership position there are a range of agencies and materials in place to provide guidance and set expectations for how they are to conduct themselves as they execute their responsibilities and spend public money.
66. The State Services Commissioner sets the standards for how people are expected to conduct themselves, at all levels, when joining the State Services. Appendix 5 contains the '*Standards of Integrity and Conduct*'. These state that "...state servants must be fair, impartial, responsible and trustworthy, and...must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything they do". This was the standard against which I assessed Dr Murray's conduct in relation to his expenditure as Chief Executive of the Waikato DHB.
67. The Office of the Auditor-General provides guidance for those exercising judgement as they consider applications for incurring sensitive expenditure. In this regard the sensitive expenditure guidelines are reflective of good practice. The Auditor-General states that public expenditure should be "...subject to the standards of probity and financial prudence that are to be expected of a public entity; and able to withstand Parliamentary and public scrutiny".
68. The guidelines set a standard for public expenditure of a sensitive nature, such as chief executive expenditure. It indicates that the standards of probity and financial prudence "...apply the principles that expenditure decisions:
  - have a justifiable *business purpose*;
  - preserve *impartiality*;

- *are made with integrity;*
- *are moderate and conservative, having regard to the circumstances;*
- *are made transparently; and*
- *are appropriate in all respects.”*

69. The standards of conduct and the management of sensitive expenditure are also normally addressed as part of the induction process for state servants. On 20 June 2014, and further, on 23 June 2014, Dr Murray had two days of induction meetings at the Waikato DHB, in Hamilton. This included (amongst others) meetings with the Chair, with the Executive Group (chief executive direct reports), the Chief Financial Officer and the General Manager Human Resources. Alongside these formal meetings I understand Dr Murray was supplied with considerable information on the Waikato DHB and its functions.
70. Further, on Monday 11 August 2014, Dr Murray attended an induction day at the Ministry of Health in Wellington, where I am advised by the then Director-General of Health that he spent time with senior Ministry officials. The Director-General advised that the conversations centred on the operational aspects of the role and the findings of the review of the Waikato DHB undertaken by the Ministry of Health at the request of the Chair<sup>7</sup>. An agenda for that day shows meetings from 8.00am until 4.15pm, including an hour with the Director-General<sup>8</sup>.
71. In my view, Dr Murray went through an appropriate induction at both the Waikato DHB and the Ministry of Health. Further, I note that Dr Murray had previous experience as a senior executive in two New Zealand health boards – Auckland and Southland. The state sector environment into which he was appointed was, or should have been, very familiar to him.

## **2.5. Applicable policies and procedures**

72. The applicable policies and procedures, along with the employment agreement signed by Dr Murray, provided a sufficiently clear and unambiguous set of standards for Dr Murray to make his judgements about his expenditure.
73. A range of policies and procedures covering expenditure by staff were in place at the Waikato DHB and these applied to Dr Murray during his tenure. The Waikato DHB’s policies and procedures relevant to this inquiry include:
- A) Code of Conduct<sup>9</sup>
  - B) Delegations of Authority<sup>10</sup>
  - C) Purchasing Card<sup>11</sup>
  - D) Staff Travel and Accommodation<sup>12</sup>

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<sup>7</sup> Email from Director-General of Health, Chai Chuah, 22 December 2017.

<sup>8</sup> Induction Day at the Ministry of Health for Nigel Murray, Chief Executive, Waikato District Health Board, 11 August 2014 [supplied by the Waikato DHB].

<sup>9</sup> Code of Conduct, Waikato DHB, Document 5674, 1 November 2016.

<sup>10</sup> Delegations of Authority, Waikato DHB, Document 2175, 1 October 2014.

<sup>11</sup> Purchasing Card, Waikato DHB, Reference 0440, 1 July 2015.

- E) Conflict of Interest<sup>13</sup>
- F) Protected Disclosures<sup>14</sup>
- G) Receiving and Giving of Gifts<sup>15</sup>

### **Finding: The Waikato DHB's policies and procedures**

74. Having reviewed these policies and procedures against the applicable standards, I am satisfied that they are reasonable and consistent with the expectations of both the State Service Commissioner's 'Standards of Integrity and Conduct for the State Services', and with the Auditor-General's 'Controlling Sensitive Expenditure: Guidelines for public entities'. (Particularly relevant extracts of the Waikato DHB's policies and procedures are provided in appendix 6.)

#### **2.6 Applicable employment documents**

75. On 16 June 2014, Dr Murray received a letter of offer (refer extract at appendix 7) and attached extract from the applicable employment agreement (refer extract at appendix 8). The offer was accepted and the employment agreement signed on 20 June 2014. From my examination of the letter of offer, the employment agreement, and its attached job description, it is my view that the documents provided a clear and unambiguous statement of what was required between the Waikato DHB and its employee, the Chief Executive, about:

- relocation costs
- the *Standards of Integrity and Conduct for the State Services*
- the requirement to comply with the Waikato DHB's policies and procedures
- where to access these policies and procedures
- the Waikato DHB '*Code of Conduct*'.

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<sup>12</sup> Staff Travel and Accommodation Policy, Waikato DHB, Document 0016, 1 April 2013.

<sup>13</sup> Conflict of Interest Policy, Waikato DHB, Document 0006, 14 April 2014.

<sup>14</sup> Protected Disclosure Policy, Waikato DHB, Document 5151, 1 July 2012.

<sup>15</sup> Receiving and Giving of Gifts, Waikato DHB, Document 1829, 15 February 2016.

### 3. Discussion of matters investigated

#### 3.1. Recruitment, appointment and employment processes

76. As described in paragraph 49, on 20 December 2017, the State Services Commissioner made it clear that my terms of reference included matters relating to the recruitment of Dr Murray to the role of Chief Executive to the Waikato DHB (appendix 3).
77. To that end, I reviewed the files relating to the recruitment of the former chief executive. These included: the Ministry of Health review of the Waikato DHB, commissioned by the Chair; the recruitment company's proposal; Dr Murray's application and related documents; and all referee checks and probity checks undertaken by the recruitment company.
78. I made a point of talking with two people who had been publicly vocal about the appointment of Dr Murray at the time of his recruitment – the Director of the Association of Salaried Medical Specialists, Ian Powell, and the then local Member of Parliament, Sue Moroney. Ms Moroney had also met with the Waikato DHB Chair and: "...expressed concerns about Dr Murray's management style and the circumstances under which he left the role of CEO at the Southland DHB". As some commentary related to Dr Murray's time in Southland, I spoke with the then chair of the Southland DHB, Dennis Cairns. Further, I talked with Wynne Powell who had recently been appointed as Chair of Fraser Health, in British Columbia, Canada, shortly before Dr Murray's departure. Ian Taylor, the Director of Sheffield, cooperated with my inquiry.
79. I also spoke with the Chair, who convened the recruitment process.
80. In most respects what I discovered was a standard practice recruitment process. It involved a review of the current state of the Waikato DHB to set the scene, an executive search, interviews, psychometric testing, referee checks, and probity checks. There is no particular gap or weakness in that process. I note that the referees who were contacted in respect of Dr Murray's application were, without exception, positive in their commentary.
81. While there was public criticism of the appointment of Dr Murray at the time, that criticism related to his management style, not to the matters central to this inquiry. My discussions with Dennis Cairns, the former chair of the Southland DHB, did not bring to light any major concerns arising from Dr Murray's time in Southland. Neither did my discussion with Wynne Powell in Canada. Both discussed issues of style. Neither raised issues with regard to the management of his expenses.
82. Wynne Powell also commented about the findings of a 1200 page report on Fraser Health, which outlined service delivery deficiencies and resulted in Dr Murray's at risk bonus for the year being withheld.
83. Following this report, Wynne Powell advised Dr Murray that the report: "...identified in some key respects, unsatisfactory and unacceptable issues"<sup>16</sup>, and further: "...that Fraser Health is experiencing substantive leadership issues that do not serve the Authority's required outcomes nor assist the health system as a whole for British Columbia"<sup>17</sup>. He continued to advise Dr Murray that: "...the Board is hereby

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<sup>16</sup> Letter, Wynne Powell to Dr Murray, 29 May 2014.

<sup>17</sup> Ibid.

*giving you notice that your employment with the Fraser Health Authority will terminate on 27 November 2015*<sup>18</sup>.

84. Wynne Powell also advised me that he and the Board of Fraser Health advised Dr Murray on 29 May 2014 that: “...*effective immediately, you will not be continuing as President and Chief Executive Officer of FHA. You are being assigned effective today to the role of Provincial Senior Executive lead*”<sup>19</sup>.
85. Wynne Powell advised me that when he met with Dr Murray on 29 May 2014, Dr Murray: “...*provided me his verbal notice of resignation at this meeting following it up with a written confirmation shortly thereafter*”.
86. I am advised that none of this information was available to the Waikato DHB Chair and appointment panel. Wynne Powell was not approached for comment as a referee during the appointment process. The previous Chair of Fraser Health was nominated as a referee by Dr Murray, and was approached for comment in the recruitment process. That was appropriate. He had worked with Dr Murray for some time. However, the new Chair had been brought in by the British Columbia Government following performance concerns. He had a different perspective. In my view, both should have been approached, although this would have required the candidate’s consent, and that was not sought. If it had been, and was refused, this would have been likely to have raised a red flag.
87. The Chair also provided useful information on the reference checking. He observed that an interview was conducted with the British Columbia Deputy Minister of Health, who had commissioned the review of Fraser Health, and who was seen to be in the best position to discuss Dr Murray’s performance. He observed that this person was not one of Dr Murray’s nominated referees.
88. There are two observations I make about the process. First, the recruitment panel was cumbersome, involving two different panels. A panel comprised of the Chair, four Board members and two externals, and later, the entire Board plus the Chair, the full Board and three externals. This meant a very large number of people were involved, and may have been a contributing factor to details of the preferred candidate ‘leaking’ prior to any announcement being made. The Chair, in comments provided to me through his lawyer, takes a different view. In his view, in the health sector there is an expectation from a wide range of people (the Ministry, the clinicians, primary care, and all Board members) for involvement. And Mr Simcock believes this did not contribute to details of the preferred candidate leaking. Notwithstanding Mr Simcock’s comments, I see it as appropriate for a recruitment subcommittee of the Board to take (only) a preferred candidate to the full Board for endorsement, and my view that this process is cumbersome remains.
89. Second, the nominated referees spoken to did not include Dr Murray’s then current boss, the Chair of Fraser Health. I believe best practice should include a broader catchment of referees than those nominated by a candidate, and a reference check with a candidate’s current employer, for the most up-to-date commentary about the candidate’s performance.
90. I have not speculated on whether the Waikato DHB would have made a different employment decision had it known that Dr Murray’s current employer was considering his future at Fraser Health. I simply observe that such information should ordinarily be

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<sup>18</sup> Ibid.

<sup>19</sup> Wynne Powell interview, 9 February 2018, and email 16 February 2018 from Wynne Powell.

available to assist that decision-making, and that the Board did not collect it was an error in an otherwise good process.

### **Finding: Recruitment and selection process**

91. The Waikato DHB's recruitment process followed generally standard practice.
92. Good practice referee checks should include the applicant's current employer and, in some cases, go beyond the referees nominated by a candidate. In this case it did not include the current employer.

### **3.2. The Chief Executive's expenditure**

93. My terms of reference required me to investigate the circumstances of any alleged unauthorised or unjustified expenditure by Dr Murray of Waikato DHB funds.
94. For the purposes of this inquiry, I have defined '*unauthorised*' expenditure as any travel, accommodation, meals, fees and related expenses which:
  - has no authorisation by a person with the delegated authority to approve; or
  - has unauthorised changes made to an original approval, either to the approval form, or to the travel/accommodation booking; or
  - has not been authorised prior to the expense being incurred (as required by policy).
95. And, for the purposes of this inquiry, I have defined '*unjustified*' expenditure as:
  - personal expenditure; or
  - expenditure outside policy guidance<sup>20</sup>; or
  - expenditure where there is no evidence, or inadequate evidence, of a justified business purpose, for all or part of the specific expense.
96. A critical assessment has been about compliance (or not) with Waikato DHB policy and procedural requirements, remembering that Dr Murray's employment conditions were, in my view, unambiguous about the applicability of these. The adequacy of the DHB's policies and procedures has been already been discussed (see paragraph 74).
97. Dr Murray's expenditure throughout his tenure was examined by this inquiry on a 'line-by-line' basis. This included the documents released by the Waikato DHB on its website which was cross referenced to Dr Murray's diary for the period. A number of items were also discussed with Audit New Zealand, and otherwise clarified by interviews with key people. As discussed earlier, Dr Murray did not make himself available to be interviewed.
98. The total number of travel and/or accommodation expenses examined as a part of this inquiry was 129. These included travel, accommodation, and related expenses. There was no

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<sup>20</sup> The reference "outside policy guidance" includes a number of issues. Common amongst these is that Dr Murray made his own travel bookings on 21 occasions, contrary to policy which requires all travel bookings to be made through a travel coordinator. This category also includes situations where the expense is more extravagant than policy, for example where a hotel booking is beyond policy requirements of "room only" or "room plus breakfast", or where the expense is beyond "reasonable" and "not able to withstand Parliamentary and public scrutiny regarding appropriate use of public funds".

detailed examination of items that were, individually, relatively minor, such as taxi use and car parking. These individual items were considered to be below the level of materiality applied to this inquiry, although their total value came to \$19,276.

99. The total quantum of the expenditure by Dr Murray that was examined in this inquiry came to \$198,933.
100. My judgements about whether the travel was authorised and/or justified, and the reasons why it may not be authorised or justified, and how it was that the very unsatisfactory procedures that Dr Murray engaged in were able to go on for so long without being detected, were based on analysis of all the documentation provided by the Waikato DHB, the evidence provided through interviews and comments, and Audit New Zealand's audit work on the former Chief Executive's expenditure. Where necessary, I have applied the test of 'more likely than not' to reach my views, which are as follows:

### **3.2.1 Unauthorised expenditure on travel and accommodation**

101. On 15 separate occasions over 3 years Dr Murray's travel and/or accommodation was not authorised by the Chair, as required by the Waikato DHB's Policy. One occasion occurred in 2014, one in 2015, nine in 2016 and four in 2017. The policy covering delegations of authority is clear that:

*"The Board Chairman shall approve the Chief Executive's budgeted expenses. When the Chairman is unavailable 1) the Deputy Chair or 2) Chair of the Audit & Risk Committee shall be authorised to approve expenses."*

#### **2014 and 2015**

102. The one occasion in 2014 was for domestic travel related to the then National Health IT Board. This was approved by the then Chief Financial Officer (CFO), due to the urgency of travel and in the absence of the Chair. I note the CFO did not have the delegations to do so.
103. The one 2015 instance related to attendance at the National DHB Chairs and Chief Executives quarterly meeting in Wellington and was for the airfare associated with that travel. No authorisation for this travel was found.
104. While both of these instances of travel were unauthorised they appear to be for a legitimate and justifiable purpose. In my view, had they been submitted to the Chair, the requests would have been authorised. Nonetheless, the fact that these remained unauthorised is a demonstration of weaknesses in ensuring the required high standards of process compliance.

#### **2016**

105. Four of the nine instances in 2016 related to **international** travel. The total cost of this unauthorised international travel was \$30,059.68. One of these trips was to Sydney on 28 December 2016. A one way airfare was paid for at a cost of \$572.31. It was booked by Dr Murray and identified as a meeting with Apple on mobile strategy. In my view, there was insufficient information documented to explain the business need for the travel.
106. The other three instances of what I have concluded was unauthorised international travel were identified as required for Dr Murray's professional development, and for the completion of a research project. There was insufficient evidence documented to justify these trips as having a business purpose. When the Chair was given the opportunity to retrospectively authorise some of this expenditure, it was determined that they were

personal expenditure and required reimbursement from Dr Murray. Each of these was to the United States of America and/or Canada, and is discussed below.

#### *Vancouver and San Francisco—September 2016*

107. Between 17 and 24 September 2016, Dr Murray travelled to Vancouver and San Francisco. The trip's purpose was noted as being part of Dr Murray's professional development and for the completion of a research project. International return airfares, accommodation and car hire were paid for by Waikato DHB at a cost of \$11,521.02. The travel was booked directly by Dr Murray rather than through the travel coordinator. However, although the purpose had been stated as for Dr Murray's professional development, the subsequent expense claims indicated it was related to the HealthTap or SmartHealth project, an entirely different purpose. I could not reconcile the reasons two contradictory purposes for the travel were given. Dr Murray's lawyer submitted to me that there was a business case for the Health Tap project and that this was approved by the Board, with the Chair giving a blanket approval for all travel related to this project. In addition, the Chair advised me, through his lawyer, that: "*There was no blanket approval related to Health Tap.*" And that: "*...the expenditure relating to 'Virtual Health' was never approved in terms of Dr Murray going to Vancouver.*"<sup>21</sup> Because I was provided with no evidence in support of Dr Murray's view I have accepted the Chair's position that this travel was unauthorised.

108. For an expense such as the travel to Vancouver and San Francisco, even with a focus on a senior manager's professional development, normal state sector practice would involve:

- before travel, a business case supporting the travel request
- following travel, a report or some other documented record of the benefit to the organisation.

109. I note that the Waikato DHB's *Staff Travel and Accommodation Policy*<sup>22</sup> supports this good practice. For expenses relating to course and conference travel, the policy states that a copy of the pre-approved *Course and Conference* form should be part of the supporting documentation.

110. However, I found none of these — no business case to support the travel, insufficient information to explain its need, no authorisation for the expenditure, and no subsequent report or evidence of benefit to the Waikato DHB.

#### *Los Angeles, New York, Moncton and Montreal—October 2016*

111. A month after his Vancouver/San Francisco trip, Dr Murray travelled to Los Angeles, New York, Moncton and Montreal over the period 18–24 October 2016. This was also identified as professional development and as part of the completion of a research project. The cost for the return airfares, meals, taxis, car hire and parking totalled \$7,690.31. Some of the travel was booked by the Waikato DHB travel coordinator and some by Dr Murray.

112. The travel was not authorised by the Chair, as per the policy, and no particular business purpose could be discerned. There was no documentation supporting the reasons for the travel. No report on its outcomes has been provided to me. The travel documentation from

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<sup>21</sup> Letter from Nielsen Law Barristers and Solicitors, 2 March 2018.

<sup>22</sup> Staff Travel and Accommodation Policy, Waikato DHB, Document 0016, 1 April 2013.

the travel company notes that the itinerary was to be sent directly to Dr Murray's personal email address.

The Waikato DHB's Staff and Accommodation Policy is clear: "...all staff ... must book travel, accommodation ... via a Travel Coordinator" (para 2).

Even so, it is important to note that the fact that Dr Murray made some bookings directly is not, in itself, unacceptable. After hours direct contact with the travel office to make or change bookings, especially when in a different time zone, is understandable.

Rather, it is the frequency of Dr Murray's self-booking (21 separate occasions), and the particular nature of some instances, that appears to breach the policy.

His actions incurred extra costs for Waikato DHB. For example, in some instances the changes made directly by Dr Murray to travel itineraries added significantly to the original travel costs. And the cost of accommodation booked directly by Dr Murray was very high when compared with that booked by travel coordinators, and the parameters set by the DHB's travel policies and practice. Further, in some instances minor items of personal expenditure, such as snacks, were charged to the room, which is outside Waikato DHB policy.

#### *Canada–November/December 2016*

113. At the end of the following month Dr Murray travelled to Canada, from 26 November to 5 December 2016. This travel was also recorded as part of professional development and the completion of a research project. The return fares, car hire in Moncton, and parking totalled \$10,276.04. The travel was booked directly by Dr Murray. As before, it was not authorised by the Chair, no particular business purpose appears to be disclosed, there was no supporting documentation, and no report on its outcomes.
114. Three instances of travel organised by Dr Murray over a reasonably short time frame, and with differing accounts of the purpose, raised questions for me about his conduct. It is important to note that when the Chair had these drawn to his attention for retrospective authorisation he considered they required personal reimbursement by Dr Murray. The Chair believes that he instructed Dr Murray to repay these costs, when he became aware of them in February 2017, and that he had thought that the repayment had occurred until in June 2017 when it became apparent to the Chair this had not happened. At the time of Dr Murray's resignation he was invoiced, and he reimbursed, the full costs of this travel.

#### *Domestic travel 2016*

115. There were also instances of unauthorised expenditure in 2016, related to **domestic** travel or accommodation. Two of these instances involved travel to Wellington and, although unauthorised, appeared to be justifiable based on the documented evidence available for the travel taken:
  - A) Attendance at the National DHB Chairs and Chief Executives quarterly meeting.

- B) Meetings with the Ministry of Health and Health Quality and Safety Commission about Virtual Health, although there was no documentation attached to the request to the travel coordinator to verify the purpose.
116. A further instance of travel that year to Wellington was for one airfare with no record of the purpose for the travel. The Waikato DHB is trying to clarify the purpose of this travel with Dr Murray.
117. On another occasion, an overnight stay on 27 October 2016 had the identified purpose of relating to a procurement strategy. The cost for one night's accommodation was \$320.26 and included full charge back arrangements, which was not consistent with the Waikato DHB staff travel and accommodation policy. There was no further information available to me to justify the purpose of the expenditure.
118. The remaining instance of unauthorised expenditure, on the evidence available to me, appears to be personal expenditure. On this occasion, Dr Murray directly booked 22 consecutive nights at the Langham Hotel in Auckland, from 30 July to 6 August 2016. In the Chief Executive's Expenses disclosure the cost was identified as \$1,571.34, covering seven nights' accommodation. This was the period and amount the Waikato DHB agreed to cover for the stated business purpose of: "*Collaboration on new School of Medicine at Waikato University and attendance at a GP conference*". The remaining 15 nights' accommodation (at a cost of \$2,795.71) was invoiced to, and reimbursed by, Dr Murray.

## **2017**

119. Four further instances of unauthorised expenditure on travel or accommodation occurred in 2017. One instance involved accommodation and airfares to Wellington between 7 and 9 May 2017. This cost \$961.46 and was identified as related to the Waikato Medical School proposal. It was arranged through the travel coordinator, consistent with the Waikato DHB policy. However, there was no supporting documentation to justify the purpose of the travel.
120. The three further instances related to accommodation in Auckland, which Dr Murray booked directly:
- A) Three nights, 12–15 February, at a cost of \$1,375.27.
  - B) One night, 5 March, costing \$632.44.
  - C) Four nights, 8–12 April, costing \$1,124.40.
121. In all cases, no information was available to justify the expenditure. The room charge for each night was \$429 per night. One instance involved accommodation across a weekend.

### **3.2.2 Retrospectively authorised expenditure on travel and accommodation**

122. On 20 occasions Dr Murray's expenses were retrospectively authorised, sometimes well after the expenditure had occurred<sup>23</sup>. This was not consistent with the Waikato DHB staff travel and accommodation policy. In some cases, the authorisation may have been around

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<sup>23</sup> The Chair advised me that, not infrequently, he give verbal approval in advance

the time of the travel, albeit after the travel was booked. However, as most of the instances of authorisation were not dated, it was not possible to determine this for each occasion<sup>24</sup>.

123. Certainly, for a number of instances of travel, there was evidence that the authorisation was provided some time later, at the time the Chief Executive's expenses were initially publicly disclosed in February 2017. In some cases the retrospective authorisation appeared to be part of a tidy up of administration that had been difficult to progress for some time. This is further discussed later in the report (section 3.5).
124. Some of the expenditure retrospectively approved by the Chair was for domestic travel over three years. This included air travel mainly to Wellington, and was for attendance at events such as the DHB Chairs and Chief Executives quarterly meeting, and other meetings with the Ministry of Health. On a couple of occasions it included attendance at Midlands Health Region chief executives' meetings in Rotorua, Tauranga and New Plymouth. On almost all occasions the travel and accommodation was organised through the travel coordinator, consistent with the policy and practice.
125. Notwithstanding the justifiable attendance by the Waikato DHB Chief Executive at meetings with other health sector leaders, there was, on a number of occasions, no supporting information to justify the length of stay, which in a number of instances was for two to three nights, and unsupported by documented business needs.

#### **2015**

126. Four instances of Dr Murray's international travel were retrospectively approved in 2015.

##### *Los Angeles and San Francisco*

127. Travel from 19–31 March 2015 to Los Angeles and San Francisco cost \$8,929.00 and included return airfares, accommodation and rental car hire. The travel was identified as part of *IS Strategy Development* and was verbally approved by the Chair. However, the actual travel varied from the arrangements initially approved by the Chair. When the Chief Executive's expenses were released, the cost of the travel was identified as just \$1,488.00, because \$7,448.83 of the total was invoiced to Dr Murray as personal expenditure.

##### *Sydney*

128. On 24 June 2015 Dr Murray arranged an airfare to Sydney. This was identified as travel for the purposes of medical education research. There was inadequate documentation to support the business justification for the travel. Dr Murray's diary and the Board minutes show that he attended a DHB Board meeting on the 24th June, and his diary shows he was in New Zealand the following day. On the evidence available to me, I have not been able to confirm whether or not the travel occurred.

##### *Palo Alto*

129. International travel by Dr Murray to Palo Alto in the United States from 10–14 October 2015 was retrospectively authorised by the Chair. It was identified as being associated with *IS Strategy Development – Virtual Health*. The travel costs included a return airfare, car hire and accommodation, with a total of \$8,123. It was arranged through the travel coordinator, consistent with the DHB's policy.

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<sup>24</sup> The Waikato DHB forms for requesting travel could usefully be improved to require signature by both applicant and approving officer, and a requirement for these to be dated by both.

130. There was very limited information provided to support the reasons for the travel and the business benefit to the Waikato DHB. As discussed earlier in this report, travel such as this usually has a case made and a reporting process following the visit. Although the DHB's travel request form specifically asks for additional information to be 'attached', no further information was provided. Some individually minor items of expenditure were outside of the DHB's policy, including alcohol and a more expensive meal cost than is provided for.

#### *San Francisco*

131. Travel by Dr Murray to San Francisco from 31 October to 4 November 2015 was also identified as related to *IS Strategy Development – Virtual Health*. It involved airfares, car hire and accommodation at a cost of \$6,075. The travel was booked by Dr Murray, which was against the policy. There was very limited information provided to support the reason for the travel and business benefit to the DHB. The travel was retrospectively approved by the Chair.

132. At paragraphs 185–191 I provide further comment on the retrospective approval of some of the travel outlined above.

#### **3.2.3 Authorised expenditure on travel and accommodation later changed**

133. On 27 occasions Dr Murray's travel and/or accommodation arrangements were changed, without the changes being authorised as required by policy. A number of examples have already been discussed above in this report. Many of these instances related to additional nights of accommodation added later, some of which were retrospectively approved. In almost all instances there was either no information, or very little, to support the business reason for the subsequent changes. In some of these cases the changes had significant costs.

134. From 2–6 September 2016 Dr Murray travelled to Sydney to visit the Apple Executive Briefing centre. The airfare, accommodation and parking cost \$1,515.72. It was authorised by the Chair. The travel arrangements were made by the travel coordinator. However, subsequent, significant changes were made, incurring additional costs. Inadequate information is available to justify the business reasons for the 4-night visit to Sydney over a weekend.

135. My conclusions support the findings of Audit New Zealand, in its 'Report to the Board on the audit of Waikato District Health Board for the year ended 30 June 2017'<sup>25</sup>. This was presented to the Board in November 2017, after Dr Murray's resignation from the role. The Audit New Zealand report stated:

*“Our testing found:*

- *A number of instances of travel were not approved...*
- *One instance of travel which was approved by the [then] Chief Financial Officer who does not have delegated authority...*
- *A number of instances of travel each year were retrospectively approved...*
- *A number of instances of travel where amendments to the travel arrangements resulted in a different cost of travel. We found some of these changes have been retrospectively approved by the Chairman, however, some have not...*”

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<sup>25</sup> Retrieved on 9 February 2018: <https://www.waikatodhb.health.nz/assets/Docs/About-Us/Executive-Team/ANZR-CE2.pdf>

### 3.2.4 Unjustified expenditure on travel and accommodation

136. On 42 separate occasions, the former Chief Executive's travel request forms had either no, or insufficient, justification of business purpose. This is in contravention of DHB policy, which requires that the: "...staff member forwards the Travel Request form with supporting documentation wherever applicable and available, to their immediate manager for authorisation"<sup>26</sup>.
137. A number of examples have already been identified that were unauthorised, retrospectively authorised, or authorised in part, and for which there was no or inadequate supporting information to justify the expenditure. Where those examples were unauthorised and also assessed by me as unjustified, this has been stated. This includes those examples where subsequent changes were made to travel arrangements without any clear justification.
138. It is important to note that the expenditure that has been examined in this inquiry has been assessed against the applicable standards outlined earlier, including the Waikato DHB travel policies and its policies related to delegations of authority, along with the Auditor-General's sensitive expenditure guidelines.
139. The assessment of whether an instance of travel or accommodation was justifiable for a business purpose could only be ascertained based on the evidence available. This included documentation and the information provided through interviews. This assessment is made in hindsight and does not necessarily account for the context in which the requisite decisions were made.
140. Based on my assessment, on at least 10 separate occasions the travel appears to be personal expenditure, inappropriately (and contrary to policy requirements) charged to the Waikato DHB. Included in this calculation is the amount of \$74,265.04 which the DHB is in the process of recovering from the former Chief Executive<sup>27</sup>. The request for this reimbursement demonstrates that the Chair had also formed a view that this expenditure was primarily for personal rather than business reasons. On a further 26 separate occasions I have assessed that the expenditure is outside policy guidance.
141. Again, my conclusions are broadly consistent with the findings of Audit New Zealand<sup>28</sup>, which states:

*"We found:*

- *A number of the travel request forms in 2016/17 did not include the stated business reason for travel*
- *A number of the travel request forms had a business purpose that was retrospectively completed*
- *A number of travel bookings had a stated purpose but it did not explain why each element of the travel was required. This mainly related to international trips. For domestic trips, we noted instances where extra nights were booked, including some into the weekend without explanation*
- *Agendas or other similar evidence was not provided for most travel requests...*
- *A number of instances of travel where amendments to the travel arrangements have resulted in a different cost of travel, but there is no explanation or business justification noted for the change*
- *Two instances of travel where the travel request form stated one purpose but the expense claims relating to the same travel period have a different stated purpose."*

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<sup>26</sup> Ibid, para 3.3.

<sup>27</sup> \$54,831.98 has been recovered as at the date of this report.

<sup>28</sup> Also see footnote 6.

142. Further, the Audit New Zealand auditor's management letter, in discussing whether the former Chief Executive's expenditure had an appropriate business purpose, stated:

*"Our testing identified a range of instances where a question of personal cost or benefit is raised:"*

143. And, in discussing whether the former Chief Executive's expenditure included personal travel or accommodation, stated:

*"We noted a number of domestic trips where the trip started or ended at the weekend with no evidenced business justification".*

144. And:

*"We noted some instances where there was a stated business purpose for the extension but there was no evidence to support this".*

145. And:

*"Testing also found some instances where charges which were personal have been charged to the DHB and subsequently refunded or flagged for refund".*

146. The role of a state sector chief executive requires role modelling the standards of conduct expected of staff in a state sector organisation. Importantly, this includes demonstrating strict adherence by senior leaders to the policies and practices expected by them of others under their employ. In my view, there were too many instances of expenditure on travel by Dr Murray that were not undertaken in accordance with the policies, which meant others could draw a conclusion that personal benefit had arisen. Senior public servants need to ensure that their expenditure of taxpayers' funds avoids any such perception arising.

147. By way of example, no justifiable explanation could be found in the evidence available for two visits to Sydney that occurred within the same week. A further trip to Sydney was booked to occur seven days later, but the travel appears not to have been taken up due to attendance at a Board meeting. No clear justification was provided for the airfare. Spending on multiple trips to Sydney over a short time frame created an impression there was a lack of restraint in the management of travel expenditure. In this instance there was no explanation in the paperwork to support the necessity of taking two separate trips to Sydney in week.

148. There were similarly a number of instances of accommodation booked during or across weekends. In one instance accommodation in Auckland was booked for two nights to attend a 2-hour meeting when the agenda indicated it was to occur between 8.30am and 10.30am on the morning following the second night of accommodation. It was Dr Murray's responsibility to ensure that sufficient records were kept of the purpose of the two nights accommodation to justify the expenditure, which in this instance was not available to me.

149. It was difficult to reconcile a justifiable purpose for one or two instances of travel with the details for the time periods found in Dr Murray's diary. There were two instances of international travel that occurred at the same time that the Chief Executive's diary indicated he was on sick leave. One example was where he travelled to Sydney to attend a Healthcare Workers Vaccination Strategy meeting, from 1–4 November 2014, but at the same time was recorded as being on sick leave. Dr Murray needed to have ensured his record keeping for events such as this did not put into question the purpose of the travel, whether he attended

the event, and whether the travel occurred. I was unable to confirm this directly with Dr Murray as he was not available for an interview.

150. All personal expenditure charged to and paid for by Waikato DHB during Dr Murray's tenure as its chief executive would be totally contrary to policy and represents a serious breach of the DHB's code of conduct.

151. Dr Murray, through his lawyer, advised that: "*When the personal expenditure was brought to Dr Murray's attention he immediately acknowledged it and indicated a willingness to reimburse once the final amounts were confirmed. Establishing the final amounts proved to be a challenge ... and it is for that reason alone that repayment did not occur until his resignation.*"<sup>29</sup> Mr Simcock, through his lawyer, advises me: "*...that is not true.*"<sup>30</sup> He advises that he: "*...instructed Dr Murray to repay all of the unauthorised charges for relocation. This occurred around 2 February [2017]. The sums were clearly understood...by June 2017 they hadn't been all repaid.*" Further: "*In mid-June 2017, when further unauthorised expenditure by Dr Murray was brought to [my] attention, [I] instructed Dr Murray to repay all unauthorised amounts immediately.*"<sup>31</sup> The course of events as described by Mr Simcock is, I believe, accurate.

152. Dr Murray's lawyer, in his submission to me on 26 February 2018, raises an argument which I feel justifies inclusion in full in this report.

*"...the analysis of what is authorised and justified expenditure ignores current principles of employment law. It is well established that an employer must consistently apply its policies. An employer generally cannot discipline an employee in circumstances where they have historically allowed an employee (or employees) to act inconsistently with particular policies. Employment law requires that an employee must first be given notice that the employer intends to begin enforcing its policies and allow the employee the opportunity to change their conduct and act in accordance with those policies.*

*"The current draft of the report fails to consider the significance of the fact (which must have been [sic] to Mr Ombler from his investigation) that the former Chair repeatedly allowed Dr Murray to retrospectively obtain authorisation after a cost had been incurred (the doctrine of condonation). Similarly and equally as well known the former Chair repeatedly allowed authorisations to be submitted with limited justification recorded in writing. No evidence appears to have been obtained by the investigation of the former Chair ever instructing Dr Murray to do otherwise. The former Chair was effectively the employer for Dr Murray's purposes. As must have been evident he was a party to these practices."*

Again, Mr Simcock, through his lawyer, takes a different view and rejects this statement. He maintains that he: "*...did not sign anything for international travel that he did not approve of verbally or in writing in advance.*"<sup>32</sup>

153. I have three observations to make. First, as outlined at paragraph 190, I was advised that the Chair had told Dr Murray to be more disciplined with regard to seeking retrospective approvals. Second, as outlined at paragraph 168, the chief executive should be a role model for all who serve in an organisation, including by adhering to approved policies and procedures. Dr Murray, through his lawyer, concedes that he routinely breached the Waikato DHB's policy and procedural requirements<sup>33</sup>. Third, the present inquiry is not making disciplinary findings and the principles of employment law raised by Dr Murray's

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<sup>29</sup> Letter from Cullen The Employment Law Firm, 26 February 2018.

<sup>30</sup> Letter from Nielson Law Barristers and Solicitors, 2 March 2018.

<sup>31</sup> Ibid.

<sup>32</sup> Letter from Nielsen Law Barristers and Solicitors, 2 March 2018.

<sup>33</sup> Letter from Cullen The Employment Law Firm, 26 February 2018.

lawyer do not affect the conclusion about the unauthorised and unjustified nature of expenditure when measured against the relevant policies and best practice in the state sector and the serious concerns this raises about the fact that the DHB procedures were not complied with over such a long period.

### 3.2.5 Relocation costs

154. The unauthorised expenditure associated with Dr Murray’s relocation transfer from Canada to New Zealand is separately reported here. I have chosen to do this as the letter of offer from the Chair to Dr Murray states that these costs were not to exceed \$25,000. Beyond the applicable standards of the Waikato DHB’s policies related to travel and delegations of authority, or the Auditor-General’s sensitive expenditure guidelines, the letter of offer is clear.

155. Information provided to this inquiry shows that Dr Murray charged the following costs<sup>34</sup> to the DHB:

Flights.....	\$14,929.71
Interim accommodation (June to December 2014)....	\$11,710.17
Household shipping.....	\$23,729.95
Total:	\$50,369.83

156. The flight costs of \$14,929.71 were for four airfares – two from Auckland to Vancouver, and two from Vancouver to Auckland.

157. During the course of this inquiry I was informed by the Chair that he had verbally approved one return airfare for Dr Murray from New Zealand to Canada and return, to be additional to the approved \$25,000. The Chair noted, in his evidence to this inquiry, that this was agreed to in a telephone call, and that it was not written down<sup>35</sup>.

158. Dr Murray overspent his authorised relocation expenses by \$25,369.83. With the exception of one return airfare New Zealand–Canada–New Zealand approved verbally by the Chair, I am satisfied that this expenditure by Dr Murray was unauthorised.

159. Waikato DHB has sought reimbursement from Dr Murray. When the Chief Executive’s expenses were released, the publicly disclosed cost of his relocation was \$24,999.95, within the \$25,000 limit provided for in his letter of offer:

A) The DHB sought reimbursement of \$13,659.71. Airfares paid by the DHB, and included in expense disclosures totalled \$1,270.00.

B) Reimbursement was sought for the entire amount for interim accommodation (\$11,710.17).

### 3.2.6 Reimbursement to Waikato DHB

160. Following Dr Murray’s resignation, the Waikato DHB made an assessment of the expenditure that it considered to be personal expenditure. It then invoiced Dr Murray for

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<sup>34</sup> Waikato DHB CE Expenses 2014/15 and 15/16.

<sup>35</sup> Chair, interview notes of 4 December 2017.

\$74,265.04. As at the date of this report, I am advised that \$54,831.98 has been repaid, and that \$19,434.06 remains in dispute.

### **3.2.7 The Chair's comments**

161. Mr Simcock, through his lawyer, provided extensive comments on my analysis of unauthorised and/or unjustified expenditure. In three cases I changed my view, reclassifying expenditure as justified, rather than unjustified, following these comments, which provided me with the understanding I required and which had been deficient in the official documents.
162. In some cases, he pointed out that the travel application which he approved was at variance with what actually occurred. He points out that what was, at the point of approval, justified, became unjustified as a result of unapproved variances. I accept this.
163. Mr Simcock observed that if a business trip was for what should be regarded as the normal business of the chief executive, then it was justified. I take a slightly different view. Yes, the purpose of the travel may be justified, but the duration and related expenditure, for example on extra accommodation, may not be.
164. In a number of cases, Mr Simcock referenced verbal approvals which were later followed by written authorisations (classified by me as retrospective and outside policy). I accept that, at times, this may have occurred, and note that, with the benefit of hindsight, Mr Simcock might consider it would have been wise to specifically annotate the approval documentation accordingly.
165. I reference at paragraph 177 Mr Simcock's question about how it was that unauthorised expenditure was paid for by the Waikato DHB. In his comments to me Mr Simcock states that he had a right to expect that only authorised bills would be paid by the DHB. I agree. Mr Simcock advised me that he had no visibility in relation to unauthorised expenses, and that it is his belief that had the DHB been checking approvals properly, Dr Murray's conduct could have been identified and prevented from the outset.

### **Finding: Dr Murray's expenditure**

166. More than half of Dr Murray's travel and accommodation (by cost) was, in my view, unjustified, and about half was unauthorised or had authorisation deficiencies.
167. In relation to the costs associated with his relocation to New Zealand I find that Dr Murray's expenditure was in contravention of the agreement made in his letter of offer, and was in contravention of the Waikato DHB Policy on staff travel and accommodation, which states (in part): "Waikato DHB shall not pay for any expenses relating to personal travel or accommodation."

### **3.3. The Chief Executive's conduct**

168. The chief executive should be a role model for all those who serve in the organisation. The ethical standards of behaviour of State Services chief executives need to be impeccable and beyond reproach at all times because, over time, their behaviour creates the culture of an organisation.
169. Dr Murray's employment contract required compliance with the Standards of Integrity and Conduct for the State Services, and his letter of offer made it clear that his terms and conditions were subject to both Waikato DHB policies and procedures, and its Code of

Conduct. The contract also made it clear that the contract could be terminated for serious misconduct, which included any material breach of the terms of the agreement. Adherence to an organisation's code of conduct is the responsibility of each individual employee – not just a requirement monitored by the organisation. This applies irrespective of the level of an employee in an organisation, including at chief executive level where leaders should model the behaviour expected, as well as ensure it is observed by others.

170. During the course of this inquiry, through examination of documents and through interviews, it was clear that staff at the Waikato DHB made repeated efforts over two years to bring the issue of overspending and spending outside policy to Dr Murray's attention<sup>36</sup>. I am satisfied that staff repeatedly raised their concerns with Dr Murray, for example with regard to the over-spend of his agreed relocation allowance, and of the necessity to repay personal expenditure.

#### **Finding: Dr Murray's conduct**

171. Based on the evidence I have obtained, and notwithstanding that there were significant failings in the Waikato DHB's compliance procedures, a conclusion that Dr Murray's conduct fell well short of that required of a State Sector leader is unavoidable. His day-to-day practices around travel and related expenses all too often ignored the required policies and procedures, and on occasion involved the private use of public funds.

### **3.4. Addressing the conduct**

172. From interviews, I have formed the view that the Waikato DHB had a workplace culture where some people felt intimidated by the Chief Executive, and that this directly contributed to the delay in escalating and resolving the issues.

173. The first allegedly unauthorised expenditure incurred by Dr Murray related to his transfer from Canada to New Zealand in mid 2014. It was not until 2 February 2017<sup>37</sup> that this came to the specific attention of the Chair, and it was not until 7 June 2017<sup>38</sup> that the many other cases of alleged unauthorised or unjustified expenditure came to the attention of the Chair. Further, it was not until 19 July 2017<sup>39</sup> that this picture was revealed to the full Board, prompting an employment investigation.

174. This seems to be far too long. As a part of this inquiry I examined the timeline and the points at which concerns were raised. Relevant events in this timeline are provided in appendix 9.

175. In my view, the issues could have, and should have, been identified and resolved much sooner. Having said that, there are reasons it took as long as it did.

176. I found it surprising, and unfortunate, that it required the external prompts of the State Services Commission's (SSC) expense disclosure system and the questioning of the Health Select Committee to bring things to a head. In a healthy, functioning organisation, matters like these are identified and dealt with through standard internal processes, through the normal checks and balances.

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<sup>36</sup> Interview notes of 4 and 5 December 2017 – Executive Assistant to the Chief Executive; Chief of Staff; Executive Director, Corporate Services; and Executive Director, Strategic Projects.

<sup>37</sup> Chair letter to Ministry of Health, 1 November 2017.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

177. The Chair has asked the question: “*How is it that unauthorised travel has been paid for?*” That is a fair question, and one that has led to a tightening up in Waikato DHB procedures. However, there appear to be deeper issues of organisational culture at play. There were people who knew about these issues and yet, even with functions such as internal audit, a Board, an Audit and Risk Management Committee, and a Protected Disclosure Policy, they were not dealt with. In a healthy organisation it should not even need all these checks and balances – issues should just be identified, discussed, and dealt with. They weren’t.
178. Witnesses interviewed for the inquiry described Dr Murray’s style. For example, the Executive Director, Corporate Services advised me that she: “*Had no suspicions at that point [November 2016] that Dr Murray was behaving inappropriately and simply thought that Dr Murray was bad at detail and needed support with paperwork*”<sup>40</sup>. The Executive Director, Strategic Projects thought it was just: “*Nigel being Nigel*”<sup>41</sup>; and: “*He was not one for great detail and rarely wrote anything other than a short email or letter*”<sup>42</sup>; and: “*Dr Murray was just being sloppy in the way he was addressing it*”<sup>43</sup>. The Chief of Staff thought that: “*Dr Murray had an aversion to administrative trivia and used that as a defence, so that others would say “that’s Nigel*”<sup>44</sup>.
179. For many it appeared for much of the time that it was simply a matter of needing to “*do a reconciliation...*”<sup>45</sup>, and that the difficulty was in getting Dr Murray to focus on that. That may be true, but in describing it as a need to “*do a reconciliation*” (of Waikato DHB versus private expenditure) it immediately acknowledges a significant breach of, first, Dr Murray’s conditions of appointment, and second, the DHB’s policies. The Chief Executive’s delay and avoidance of the issue is a reason for the delay in this coming to a head. Another reason is staff reliance on formal organisational processes, such as audit and the expense disclosure requirement, to achieve this end. However, these are not excuses. The fact that DHB funds were used for personal expenditure should have been raised earlier.
180. That could be read as an indictment of the staff at the Waikato DHB. It is not meant that way. They, as I, believe the inappropriate behaviour by Dr Murray should have been identified and escalated earlier. This was freely acknowledged at interviews and people, with the benefit of hindsight, were self critical. Notwithstanding the delays, in the end, those staff showed commendable courage in, first, confronting Dr Murray, and then, after receiving no action on the matter from Dr Murray, in escalating it to the Chair. They deserve our thanks, but the formal structures have been found wanting.

### **3.5. Oversight by the Board and Chair**

181. The Chair and Board of the Waikato DHB are responsible and accountable for the efficient and effective governance of the organisation (refer appendix 10, which provides relevant extracts from the Crown Entities Act 2004).
182. The Board appoints the Chief Executive who then reports to the Chair of the board. The Waikato DHB *Delegations of Authority* policy states:

*“The Board Chair shall approve the CEO’s budgeted expenses. When the Chair is unavailable:*

*1) the Deputy Chair (in the first instance) or the*

<sup>40</sup> Executive Director, Corporate Services, interview notes of 4 December 2017.

<sup>41</sup> Executive Director, Strategic Projects, interview notes of 5 December 2017.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Chief of Staff, interview notes of 5 December 2017.

<sup>45</sup> Interview notes of 4 and 5 December 2017 – Executive Assistant to the Chief Executive; and Executive Director, Strategic Projects.

2) *Chair of the Audit & Risk Management Committee shall be authorised to approve expenses.*”

183. In the period under investigation, Dr Murray’s expenses were either approved by the Chair, once by the then Chief Financial Officer (see paragraph 102), or were not approved. The Deputy Chair and the Chair of the Audit and Risk Committee played no part.
184. During the course of this inquiry I examined every travel request, first, for evidence of approval, and second, for justification. Also, I interviewed the Chair who held that position during the period under investigation.
185. As indicated in section 3.1. it appears that a significant proportion, 18%, of the requests were authorised retrospectively, in contravention of policy.
186. I accept completely that, on occasions, there will be either a need for urgent travel arrangements, or urgent changes to existing travel arrangements, both of which may require a retrospective approval. That is not what is at issue. What has happened in this case is that a large number were retrospectively presented to the Chair for authorisation, including a large pack of request forms retrospectively prepared in an endeavour to tidy up a situation where significant travel occurred without prior approval.
187. In a 2 February 2017 email to the Chair, copied to the Chief Executive, the Executive Director, Corporate Services stated:

*“Please note that some of the expenses have not been approved by yourself. Ordinarily forms would be completed to give the reason for the travel which you would sign off. We [can’t] do this as the forms are currently being completed for our records based on Nigel’s explanation for the travel”.*

188. And, in a 21 March 2017 email to the Chair, the Executive Director, Corporate Services stated:

*“Hi [Chair],  
Just doing final tidy up on CE expenses for last two years. I’ve got the final pack of approval forms and would appreciate it if you could go through and sign them – this will give audit trail between approved and final submissions to SSC. Either I or [Executive Assistant to the Chief Executive] will give to you”.*

189. I note that these emails provide clear evidence of an attempt to provide retrospectively prepared documentation to the Chair for authorisation . It is my view that when staff were seeking to provide this retrospective documentation they were doing so in order to ‘sort out the paperwork’, rather than to try to cover up actions which they knew to be wrong (at that time).
190. In her evidence, the Executive Director, Corporate Services stated that she: *“Gave [Chair] a package of unapproved travel, which [Chair] signed off (for 2015/16 SSC returns)”*; and: *“When (I) started to do the lists for 2017, (I) started to be concerned about the issues. When (I) supplied the package of material to [Chair] for retrospective approval, (I) advised him that it was not good process to do retrospective approvals. The [Chair] told (me) he agreed, and that he had told Dr Murray to be more disciplined about this”*<sup>46</sup>. Further, [Executive Assistant to Chief Executive] stated that he (Chair): *“Went through*

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<sup>46</sup> Executive Director, Corporate Services, interview notes of 4 December.

them quickly”<sup>47</sup>; and that she: “Assumed [Chair] would talk to Dr Murray if he had questions about travel forms”<sup>48</sup>.

191. The Chair does not recollect ever having signed a significant number of travel request forms retrospectively. In his evidence, the Chair advised me that: “Some of the material (I) signed off may have been retrospective, but no one had put it to (me) in those terms”<sup>49</sup>. And, also: “I believe that I only authorised expenses where I understood and agreed the stated purpose: I now believe the stated purpose for two overseas trips misrepresented what actually happened on those trips”<sup>50</sup>.
192. My scrutiny of the documents revealed that many had what I consider either no, or inadequate, justifiable business purpose. At times the business purpose may have been adequate for part, but not all, of the planned travel or accommodation.
193. At interview, the Chair indicated that he would check the purpose and look at the documentation prepared by Dr Murray’s Executive Assistant, and that the test he applied was: “Do I understand what this is, and does it fit with what I know and understand”<sup>51</sup>. The Chair also stated that: “There needs to be a degree of trust with the Chief Executive of an organisation like this.”<sup>52</sup>
194. The interim Chair advised me that: “This organisation, and the former Chair, had put their trust in a man ..... The Chair had trusted him .... evidence that there are not enough checks and balances in the system”<sup>53</sup>.
195. I note here that, in July 2017, the Chair specifically requested Audit New Zealand to examine Dr Murray’s expenditure, and that Audit New Zealand agreed to carry out additional audit work on this expenditure as a part of its Audit for the 2016/17 financial year.
196. In my view, too much reliance was placed on policies to regulate the proper behaviour and conduct at the Waikato DHB. While the policies for travel-related expenditure were reasonable and in line with state sector expectations, the circumstances of the unauthorised and unjustified expenditure clearly show there were weaknesses in how the policies and processes were implemented in Dr Murray’s case, such as:
  - i. Unapproved travel undertaken and paid for by Waikato DHB.
  - ii. Approval of travel often done retrospectively.
  - iii. Significant unauthorised changes to travel made after approval.
  - iv. Very limited evidence of business purpose provided to justify travel.
  - v. Expenditure of a personal nature paid for by Waikato DHB.

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<sup>47</sup> Executive Assistant to the Chief Executive, interview notes of 4 December.

<sup>48</sup> Ibid.

<sup>49</sup> Chair, interview notes of 4 December.

<sup>50</sup> Chair, feedback on interview notes of 4 December.

<sup>51</sup> Chair, interview notes of 4 December.

<sup>52</sup> Ibid.

<sup>53</sup> Interim Chair, interview notes of 5 December.

- vi. Travel expenditure that was outside other policy expectations, such as full charge back, expenditure that was extravagant or immoderate<sup>54</sup>, and frequent changes to travel which imposed significant additional cost on Waikato DHB.
197. Dr Murray’s lawyer commented to me that: “*Nor is there any secret about the fact that at no time during his employment with Waikato DHB did Dr Murray personally seek written pre-approval from the Chair other than verbally. This approval was standard practice for the Chief Executive suite*”<sup>55</sup>. To the extent that this may have been the case, it demonstrates a breach of Waikato DHB policy. This could be taken as an admission from the then Chief Executive that he did not meet the standards required from all staff in his organisation.
198. In addition, there was an inadequate focus on monitoring the Chief Executive and senior executive sensitive expenditure. There was no reporting to the Audit and Risk Management Committee, and there had been no internal audits focused on sensitive expenditure during Dr Murray’s tenure. I note that many state sector organisations include the examination of sensitive expenditure as a regular and routine part of the internal audit programme.
199. Late in 2017, the Chair instituted a new process whereby all senior executive expenses were reviewed regularly by the Board.
200. I commend the resources provided by the New Zealand Institute of Directors (Inc) (IoD) as invaluable guidance to boards of directors, both public and private sector. Some extracts of these resources are provided in appendix 11. If the Waikato DHB had best practice governance in place, with proper oversight of sensitive expenditure, these issues would have surfaced much earlier.

### **Finding: Oversight by the Board and Chair**

201. Consistent with the Waikato DHB’s policies it is the Chair’s role on behalf of the Board to review and authorise expenditure by the Chief Executive. The Chair’s oversight of Dr Murray’s expenses lacked the rigour and standard of care expected of properly authorised individuals, as set out in the Auditor-General’s guidelines, cited in section 2.4 of this report.
202. In particular, based on the documentary evidence I have obtained, formal authorisations of at least 20 of Dr Murray’s travel applications were given retrospectively, and, in my view, at least 42 (or 33%) of the total travel applications approved by the Chair had no or inadequate evidence of business purpose.
203. The Chair was too trusting of the Chief Executive, and I believe the Chair was let down by Dr Murray.
204. Waikato DHB governance processes as they relate to sensitive expenditure should be strengthened.

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<sup>54</sup> The term “extravagant or immoderate” is from clause 1.6 of the Office of the Auditor-General’s guidelines for public entities on controlling sensitive expenditure.

<sup>55</sup> Letter from Cullen The Employment Law Firm, 26 February 2018.

### 3.6. The employment investigation

205. The Chair was first made aware of staff concerns about Dr Murray's expenses on 2 February 2017. This related to the relocation expenses, and also to the non-compliance with the SSC's expense disclosure requirements<sup>56</sup>.
206. Later, on 7 June 2017, when a small group of staff remained frustrated by Dr Murray's lack of action in resolving expenses irregularities, they escalated the matter to the Chair<sup>57</sup>.
207. Once fully appraised of staff concerns about Dr Murray's expenditure, the Chair acted rapidly to seek advice from the SSC on 8 June<sup>58</sup> and on 12 June the Chair spoke with the Minister of Health's office and the Ministry of Health<sup>59</sup>. There was a Remuneration Committee meeting on 28 June 2017 when the Chair outlined the potential issue with the Chief Executive's expenses. After this the Chair of Audit and Risk and the Chair met with the Chief Executive.
208. On 4 July 2017, the Chair and the Chair of the Audit and Corporate Risk Management Committee confronted Dr Murray with the issues and heard his explanations. At this point Dr Murray had given some plausible answers but the Chair was: "...ambivalent about how he was seeing it"<sup>60</sup>. The Chair met again with Dr Murray on 17 July 2017 at which point Dr Murray's answers had changed, which the Chair found very concerning. The Remuneration Committee met again that night and the matter went to the Board with a recommendation to start a formal investigation.<sup>61</sup>
209. I am satisfied that, once aware, the Chair and the Board acted, with good advice, and with appropriate urgency, to address the allegations of unauthorised and/or unjustified expenditure.
210. An independent investigator was engaged to undertake a review of expenditure, as part of an employment investigation. The investigation proceeded to the point where Dr Murray was presented with a draft set of findings. Before the independent investigation report could be finalised and presented to the Remuneration Committee of the Board, Dr Murray, through his solicitor, offered a conditional resignation. However, Dr Murray eventually agreed that the Remuneration Committee needed to know the draft findings, to be able to assess whether or not to consider his resignation.
211. The Waikato DHB, in the 3 November 2017 cover letter to a release of Dr Murray's expense information stated:
- "... in making its decision to accept Dr Murray's resignation, the Board received privileged legal advice and carefully explored the risks and benefits of options available to it. Acceptance of the resignation meant the investigation was not completed, and the Board carefully balanced its interest in having a completed investigation into the employment problem against the risk of ongoing legal processes. Any legal action, regardless of the outcome, would likely cost the DHB a considerable sum of money, (and may have*

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<sup>56</sup> Chair, interview notes of 4 December.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

*prevented the Board from being able to recruit a new Chief Executive while any legal processes were unresolved)*”.<sup>62</sup>

212. When interviewed for this inquiry, the Chair advised me that he: “...considered the Chief Executive had breached the Code of Conduct”<sup>63</sup>, and that: “...at the point Dr Murray had the draft report he offered his resignation”<sup>64</sup>; and: “...strong advice was received from Simpson Grierson that leaks from the organisation could give Dr Murray a basis for action”<sup>65</sup>. The Chair told me he: “...thought there was sufficient grounds to dismiss Dr Murray”<sup>66</sup>. However, there were a number of risks which needed to be considered, including that Dr Murray might have: “... grounds for legal action, so it was on this basis the board decided to accept his resignation”<sup>67</sup>.

213. The Board has advised that its decision to settle with Dr Murray: “...was only made after carefully analysing and weighing up the risks and benefits of so doing, including:

- *Dr Murray had raised numerous ongoing threats of litigation;*
- *There were ongoing legal, accountancy, forensic and investigator costs;*
- *A disproportionate amount of Board time was (and would continue to be) spent on Dr Murray’s expenses;*
- *There was the high risk of further leaks to the media and resulting damage to the DHB’s position;*
- *The employment investigation had almost concluded and the DHB had received the investigator’s draft report. Ensuring Dr Murray left the organisation immediately (and repaid the outstanding expenses) was not inconsistent with the draft findings;*
- *Dr Murray would leave the organisation immediately, would not get paid in lieu of notice/ receive any other payment, would have to repay all outstanding personal expenses, and remain liable for any other relevant losses which may come to light; and*
- *Dr Murray’s ‘resignation’ would only be accepted if it was agreed to be ‘full and final’ ie no litigation, and a detailed public statement from the DHB.”*

214. Interviews reported that the Waikato DHB had a history of ‘leaking’. There seemed an inability for the Board to have a confidential discussion without external parties becoming aware of it in very short order. This behaviour constrained the manner in which the Board dealt with this very sensitive matter and was a contributing factor in the decision it made to accept Dr Murray’s resignation, and by so doing, achieve immediate resolution.

215. It is easy to see why the Board took the decision it did. It was a pragmatic solution in the circumstances.

216. However, in the State Sector, there are wider considerations at play. New Zealand is first equal with Denmark in the Transparency International’s 2016 Corruption Perceptions Index<sup>68</sup>. Higher ranked countries: “...tend to have high degrees of press freedom, access to information

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<sup>62</sup> Waikato DHB letter, 3 November 2017, Bob’s evidence, paras 38 and 39.

<sup>63</sup> Chair, interview notes 4 December.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Retrieved 9 February 2018 from: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

*about public expenditure, stronger standards of integrity for public officials, and independent judicial systems. But high scoring countries can't afford to be complacent either*<sup>69</sup>.

217. The way this issue has played out shows, beyond doubt, that a solution such as this, albeit pragmatic, is not appropriate in the State Sector. The Waikato DHB has been, and still is, impacted by a number of investigations and intense media scrutiny, which are a distraction from its core business of providing health services to the people of the Waikato.

218. In my view, a more principled approach was required, whereby allegations such as those levelled in this case, could be investigated fully, and action taken in accordance with the findings. Only by acting in a highly principled manner can public trust and confidence be assured.

219. That opportunity was taken away by the Board's agreement to settle with Dr Murray.

### **Finding: Accepting Dr Murray's resignation**

220. I find that the Board's decision to settle with Dr Murray rather than finalise an employment process was a pragmatic solution given the circumstances. However, in my view, a more principled approach is required in a State Sector situation, where serious allegations ought to be fully determined wherever possible. This means that either a person's name is cleared or they are held publicly to account for their actions. Public accountability and transparency is essential.

## **3.7. Checks and balances**

### **3.7.1. Audit New Zealand**

221. Audit New Zealand's annual audit programme received some comment from people interviewed during this inquiry. The Chair told me that, if he was still Chair, he would: "...*have strong words with Audit New Zealand*". He commented that it (Audit) had told Waikato DHB that its processes were good<sup>70</sup>.

222. The Chief of Staff noted that in either February or May of 2016 the Audit Committee met and: "...*a person from Audit New Zealand noted that the focus for the June 2016 audit would be sensitive expenditure*"<sup>71</sup>. He was reassured by this, as he had the sense that Audit New Zealand were responding to concerns they might have. But: "*Nothing out of the ordinary was found*"<sup>72</sup>.

223. The Executive Assistant to the Chief Executive noted that she had taken the Audit Committee meeting minutes and that Audit New Zealand had said in 2016 that there would be a focus on sensitive expenditure. She said that she: "*Hoped that the issues with Dr Murray would be picked up through this process*"<sup>73</sup>.

224. I have a couple of observations to make. First, no one from the Waikato DHB specifically pointed out to Audit New Zealand that there were potential issues with Dr Murray's expenses. I note that the Controller and Auditor-General is an 'appropriate authority' for disclosures made under the Protected Disclosures Act 2000. This mechanism could have been used in this case. Second, Audit New Zealand, in examining sensitive expenditure,

<sup>69</sup> Transparency International Corruption Perceptions Index 2016, published 25 January 2017, page 1.

<sup>70</sup> Chair, interview notes of 5 December.

<sup>71</sup> Chief of Staff, interview notes of 5 December.

<sup>72</sup> Ibid.

<sup>73</sup> Executive Assistant to the Chief Executive, interview notes of 4 December.

typically takes a sampling approach, checking some random samples from across the organisation. It is unrealistic to expect an annual audit of this nature to complete a comprehensive review of all sensitive expenditure.

225. Audit New Zealand had looked at sensitive expenditure as a routine part of its annual audit of the Waikato DHB for the 2015/16 year, before it carried out additional audit work on the Chief Executive expenses in 2016/17 at the Board's request. However, it is important to note that these routine examinations are done on a limited sample basis, and should be viewed as just one form of check and balance within a wider system. The Office of the Auditor-General advises me that: "*The objective of an annual audit is to provide reasonable assurance that the financial statements and (where relevant) performance information are fairly presented, in all material respects. Given the nature of that work, auditors in the course of an annual audit, are unable to provide those bodies with the assurance they may need as governors of those entities on all aspects of the entity and that should not be expected*"<sup>74</sup>. My observation is that the Waikato DHB placed too much reliance on Audit New Zealand and did not implement governance and internal control processes that it needed to put in place. Ultimately, the issues about Dr Murray's expenditure were only surfaced because of the operation of the external accountability mechanisms.

226. It is pleasing to note that Waikato DHB has acknowledged the need to improve its governance and internal controls over sensitive expenditure. It has accepted Audit New Zealand's recommendations for improvement, and has already made some changes, such as regular reporting to the Board on all senior executive expenditure.

### **3.7.2. State Services Commission**

227. In 2010 the SSC introduced a new system for the periodic and proactive disclosure of chief executives' gifts and business expenditure. This was to apply to both core Public Service chief executives, and to chief executives of those Crown Entities to which the State Services Standards of Integrity and Conduct applies. This includes district health boards.

228. The SSC commented at the time that this was: "*...in line with moves with New Zealand and overseas towards more open and accessible information about how public funds are being spent.*"<sup>75</sup>

229. The expectation that chief executives would comply with the proactive disclosure was based on section 57 of the State Sector Act 1988, which states:

***57 Commissioner may set minimum standards of integrity and conduct***

*(1) The Commissioner may set minimum standards of integrity and conduct that are to apply in—*

*(a) the Public Service;*

*(b) all or any Crown entities ...*

230. Further, at 57B, it states:

***57B Breaches of minimum standards***

*The Commissioner may advise the responsible Minister if, in the opinion of the Commissioner, a serious breach of any minimum standard applied to an agency under section 57 has occurred, or is likely to occur.*

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<sup>74</sup> Audit New Zealand email, 19 February 2017.

<sup>75</sup> SSC Briefing to Minister of State Services, 3 September 2010, para 4.

231. The system began with scheduled 3-monthly disclosure, and has been modified so annual disclosure is now the expected standard.
232. Since 2010 there has been regular correspondence from the SSC to all chief executives covered by the expectation. Most chief executives have complied, although many have required reminders.
233. Attached in appendix 12 is a timeline of the SSC's communications with the Waikato DHB regarding filing of its Chief Executive Expense Disclosures. In January 2017, after the Waikato DHB had failed to file two years of expense disclosures, the SSC sought the then Director-General of Health's help to get its cooperation and compliance.
234. The system has relied on the cooperation of Crown Entity chairs and chief executives. Due to some wider challenges in achieving cooperation, the SSC began to include chief executives' bosses – board chairs – in its correspondence. The annual public disclosure of chief executive's expenses is an important vehicle for ensuring their public scrutiny and accountability of spending by senior leaders of taxpayer's funds. While the system is administered by SSC, it is critical that chief executives themselves take responsibility for their disclosures and that Board Chairs and agency Audit and Risk Committees are involved.
235. The SSC has advised me that, since 2013, the State Services Commissioner has had increased authority to obtain information. This could be used to have the data sent to SSC, but the intent has been to simply make it publicly available, not have SSC collect, collate and publish. The SSC has not used this direct legal authority to require agencies outside the core Public Service to comply with the expense and hospitality disclosure regime.
236. Included in the SSC's expense disclosure regime is the requirement to declare hospitality and gifts, both given and received. The Waikato DHB policy on *Receiving and Giving of Gifts* defines a gift as: "...goods, services, or other tangible benefit...". It further notes that the policy includes complimentary air travel and accommodation. The policy further states that: "*All gifts are required to be registered.*"
237. Dr Murray declared no hospitality or gifts in the SSC returns. I note that the Audit New Zealand auditor's management letter states: "*We noted through the testing that there was an indication that hospitality had potentially been offered on some of the international trips, but have not noted any declared hospitality received*"<sup>76</sup>. I did not investigate this matter.
238. I found that the conduct of the former Chief Executive and the Waikato DHB in relation to complying with the SSC's expenses disclosure system was at fault. Put simply, the former Chief Executive and Waikato DHB failed to comply in the manner expected.

### **Finding: State Services Commission's expense disclosure regime**

239. I find that the annual public disclosure of chief executive's expenses is an important feature of transparency and accountability in the state sector. Effective operation of the disclosure system requires a balance between clear guidance from SSC and the cooperation and diligence of the state sector agencies involved.

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<sup>76</sup> Audit New Zealand annual audit report 2016/17, section 2.9.

### 3.7.3. Health Select Committee

240. There is one additional matter which, in my view, is worth noting here and that is the role of the Health Select Committee.
241. As has been stated, Dr Murray did not respond to the SSC's requirements for annual disclosure of expenses and hospitality, despite follow up.
242. Important in bringing the matter of Dr Murray's expenses to a head were questions from the Health Select Committee. The Waikato DHB was to appear before this Select Committee in early February 2017 and the DHB was required to answer written questions in advance. Unlike the 'voluntary compliance' nature of the SSC's disclosures regime, this was not optional for the DHB and Dr Murray. It forced the issue, and, in doing so, demonstrated the importance of the Select Committee system, as a part of the Parliamentary processes, in holding the Executive, and the agencies of the State Sector, to account.

### 3.8. Other matters

243. During this inquiry I interviewed the Chair, the interim Chair, a Board member, and several Waikato DHB executives. I was keen to discover how well prepared and informed Board members were for their governance roles. Accordingly, I made inquiries about Board member induction.
244. The Executive Director, Corporate Services advised me that there was induction for Board members after each election round, although that if an individual member was appointed [outside the normal election cycle] the process might not be quite as robust<sup>77</sup>.
245. The interim Chair advised that the only induction she received on becoming a board member was what she herself requested. She advised that the Code of Conduct was not worked into the induction for Board members very well. She also advised that when she and two other new members joined the Waikato DHB, she asked the Chair if the new members could meet with senior executives. A day of meetings followed<sup>78</sup>.
246. A Board member advised me that his induction only came after he asked for it, and only after his second Board meeting. The induction largely focused on the reorganisation of Waikato hospital, rather than the District Health Board's governance and policies. He advised that he found out about policies in a piecemeal way and not through the induction, and that he had no access to the DHB intranet to be able to view DHB policy<sup>79</sup>.
247. The Chair advised that he had a chair's induction arranged by the Ministry of Health, at which the subject of the standards of integrity and conduct for the State Sector were covered. He also advised me that the Board was aware of these standards<sup>80</sup>. He advised me that when three new Board members commenced in late 2016, an induction programme had been prepared and dates set, but that it had to be postponed, later being rescheduled. He recalled that he had indicated his expectation that the Board Manual and Code of Conduct would be covered.

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<sup>77</sup> Executive Director, Corporate Services, interview notes of 4 December.

<sup>78</sup> Interim Chair, interview notes of 5 December.

<sup>79</sup> Board member, interview notes of 5 December.

<sup>80</sup> Chair, interview notes of 4 December.

248. The former Director-General of Health provided me with information about Ministry of Health programmes for chairs, board members and chief executive inductions<sup>81</sup>. In particular, he advised that:

- A) He met personally with the Waikato DHB Chair, when he was appointed Chair, to discuss the challenges for governance and management of the District Health Board. And, that the Chair received a separate briefing from senior Ministry officials as part of his induction process.
- B) The Ministry of Health runs periodic induction sessions for new DHB members. I was provided with copies of the agendas for these, which include sessions run by the SSC on '*Governing in the Public Sector*'. While these are on offer, it is not clear to me how many new DHB members attend/do not attend.
- C) When Dr Nigel Murray was appointed, senior Ministry officials spent time with him as part of his induction process.

249. While some induction of chairs, board members (and chief executives) happens, it is clear from this inquiry that there are weaknesses in the programme. It was concerning that in December 2016 when new Board members began at the Waikato DHB, they felt that there was no induction programme offered (noting that they had to request it). Also, that despite the Chairs expectation that an induction, once arranged would cover essential elements such as the Board Manual and the Code of Conduct, it appears not to have.

#### **Finding: Board member induction**

250. An induction programme, once arranged for incoming Waikato DHB members in December 2016, did not meet members' expectations, and did not cover either the Board Governance Manual or the Code of Conduct.

251. A comprehensive induction for incoming chief executives and for incoming Crown Entity chairs and members is important. It can be the difference between a 'bumpy' and smooth start, and even to longer-term success or failure in a role.

252. In section 2.4 of this report I comment on the Waikato DHB Chief Executive's induction, and in section 3.7 about Board member induction. In both cases the Ministry of Health can play an important role, as can monitoring departments across the wider Crown Entity sector. It is my view that the State Services Commissioner should consider this as a priority for the incoming Director-General of Health.

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<sup>81</sup> Email Director-General Health, 22 December 2017.

# Appendices

## Appendix 1: Letter from Minister of Health to the State Services Commissioner

**Dr David Clark**

Minister of Health

Associate Minister of Finance



- 3 NOV 2017

Mr Peter Hughes, CNZM  
State Services Commissioner  
PO Box 329  
Wellington 6140

Dear Mr Hughes

**Waikato District Health Board: Dr Murray**

On or about October 5, the Waikato District Health Board ("the DHB") announced the resignation of its chief executive, Dr Nigel Murray with immediate effect. This followed the resignation part-way through an independent inquiry into alleged financial breaches during his tenure, which was not completed.

Any unresolved matters relating to allegations of financial breaches by senior leaders can have a damaging effect on public confidence in the public sector. It is critical that transparency in and accountability for inquiring into and appropriately resolving such matters is maintained.

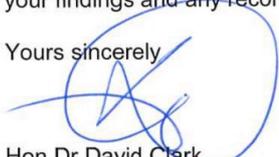
I therefore request you under section 11(4) of the State Sector Act 1988 (Act) to exercise your functions and powers under the Act to investigate:

- (a) the circumstances of any alleged unauthorised or unjustified expenditure by Dr Murray of DHB funds;
- (b) any related or similar conduct by Dr Murray or any related person identified during the course of your inquiry;
- (c) any processes undertaken or decisions made by the DHB relating to any matters you identify under (a) and (b).

I expect that this may involve consideration on your part as to whether or not the appropriate standards of integrity and conduct have been maintained by Dr Murray and the DHB.

Once you have completed your investigation into these allegations, I expect to be briefed on your findings and any recommendations that you or your investigator may wish to make.

Yours sincerely

  
Hon Dr David Clark  
Minister of Health

## Appendix 2: Letter from State Services Commissioner to John Ombler, including inquiry's terms of reference

STATE SERVICES COMMISSION  
Te Komihana O Ngā Tari Kāwanatanga



Mr John Ombler QSO  
John.ombler@gmail.com

10 November 2017

Dear John

### Appointment by the Commissioner and Terms of Reference

On or about October 5, the Waikato District Health Board ("the DHB") announced the resignation of its chief executive, Dr Nigel Murray with immediate effect. This resignation occurred part-way through an independent inquiry into alleged financial breaches during his tenure, which was not completed.

Any unresolved matters relating to allegations of financial breaches by senior state sector leaders can have a damaging effect on public confidence in the public sector. It is critical that transparency in and accountability for inquiring into and appropriately resolving such matters is maintained.

On 3 November 2017, the Minister of Health requested the State Services Commission to undertake an investigation into the matters set out below.

### Appointment

Pursuant to section 25(2) of the State Sector Act 1988, I appoint you to conduct an investigation in accordance with the following terms of reference. For the avoidance of doubt, this delegation enables you to use any statutory powers that are available to me for the purposes of this investigation, including without limitation the power to require production of information by any agency or party; and summon witnesses and receive evidence.

### Investigation

The investigation will inquire into and report on:

- a) the circumstances of any alleged unauthorised or unjustified expenditure by Dr Murray of DHB funds;
- b) any related or similar conduct by Dr Murray or any related person or third party identified during the course of your inquiry;
- c) any processes undertaken or decisions made by the DHB relating to any matters you identify under (a) and (b).

If appropriate, you may make any recommendations to me relevant to your investigation.

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**Process, decisions, and reporting**

- d) You may report to me about any other matter that you consider should receive my attention, for example relating to conduct of other staff members within the Waikato DHB or the DHB's policies or processes.
- e) You must satisfy the requirements of natural justice, including:
  - i. findings must be based upon evidence that has some probative value; and
  - ii. a person against whom an adverse finding might be made must have advanced notice of that possibility and an opportunity to bring relevant evidence and have that evidence fairly considered prior to finalisation of the finding.
- f) You are expected to report to me by 31<sup>st</sup> January 2018 or such date as may be agreed.

I intend to publish your report after it is finalised. Please prepare your report in a manner suitable for publication.

I look forward to receiving your report.

Yours sincerely



Peter Hughes  
State Services Commissioner

## Appendix 3: Letter from State Services Commissioner to John Ombler, clarifying scope of inquiry's terms of reference

STATE SERVICES COMMISSION  
Te Komihana O Ngā Tari Kāwanatanga



20 December 2017

Mr John Ombler, QSO  
By email: john.ombler@gmail.com

Dear Mr Ombler

### Waikato District Health Board Investigation: Dr Murray

You have asked me to consider whether the terms of reference clearly provide for you to look into the recruitment and appointment processes by which Dr Murray was appointed Chief Executive.

On 10 November, under section 25(2) of the State Sector Act 1988 (the Act), I appointed you to conduct an investigation in accordance with the following terms of reference:

- (a) the circumstances of any alleged unauthorised or unjustified expenditure by Dr Murray of DHB funds
- (b) any related or similar conduct by Dr Murray or any related person identified during the course of your inquiry
- (c) any processes undertaken or decisions made by the DHB relating to any matters you identify under (a) and (b)
- (d) You may report to me about any other matter that you consider should receive my attention, for example relating to conduct of other staff members within the Waikato DHB or the DHB's policies or processes
- (e) You must satisfy the requirements of natural justice, including:
  - i. Findings must be based upon evidence that has some probative values; and
  - ii. A person against whom an adverse finding might be made must have advanced notice of that possibility and an opportunity to bring relevant evidence and have that evidence fairly considered prior to finalisation of the finding.
- (f) You are expected to report to me by 31<sup>st</sup> January 2018 or such date as may be agreed.

### Clarification to the Terms of Reference

For the avoidance of any doubt, I am amending the terms of reference to clarify that it is appropriate to consider:

- The recruitment and appointment processes undertaken by the Waikato DHB in relation to Dr Murray's appointment as Chief Executive, in the context of (a) and (b) above.

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I expect that this may involve consideration on your part as to whether or not the appropriate standards of integrity and conduct and related practices have been maintained by the District Health Board.

If you consider the timeframe of 31 January 2018 to be at risk for delivering your report, I would like you to contact me at the earliest opportunity.

I will be updating the terms of reference on the State Services Commission's website and advising the Minister of Health that I have clarified the terms of reference in this way. I ask that you advise any parties you consider appropriate that I have clarified the terms of reference in this way.

Yours sincerely



Peter Hughes  
**State Services Commissioner**

#### **Appendix 4: List of people interviewed for the inquiry**

Formal interviews and/or discussions were held with the following people:

- Dennis Cairns, former Chair, Southland DHB
- Bob Simcock, former Chair, Waikato DHB
- Sally Webb, Interim Chair, Waikato DHB
- Wynne Powell, former Chair, Fraser Health Limited, Canada
- Dave Macpherson, Board member, Waikato DHB
- Neville Hablous, Chief of Staff, Waikato DHB
- ██████████, Executive Assistant, Chief Executive, Waikato DHB
- Maureen Chrystal, Executive Director, Corporate Services, Waikato DHB
- Ian Wolstencroft, Executive Director, Strategy Projects, Waikato DHB
- Ian Powell, Executive Director, Association of Salaried Medical Specialists
- Sue Moroney, former local Member of Parliament
- Ian Taylor, Executive Director, Sheffield

## **Appendix 5: Standards of Integrity and Conduct for the State Services**

The Standards set out that we must be:

### **Fair**

We must:

- Treat everyone fairly and with respect
- Be professional and responsive
- Work to make government services accessible and effective
- Strive to make a difference to the well-being of New Zealand and all its people

### **Impartial**

We must:

- Maintain the political neutrality required to enable us to work with current and future governments
- Carry out the functions of our organisation, unaffected by our personal beliefs
- Support our organisation to provide robust and unbiased advice
- Respect the authority of the government of the day

### **Responsible**

We must:

- Act lawfully and objectively
- Use our organisation's resources carefully and only for intended purposes
- Treat information with care and use it only for proper purposes
- Work to improve the performance and efficiency of our organisation.

### **Trustworthy**

We must:

- Be honest
- Work to the best of our abilities
- Ensure our actions are not affected by our personal interests or relationships
- Never misuse our position for personal gain

- Decline gifts or benefits that place us under any obligation or perceived influence
- Avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Services.

## **Appendix 6: Assessment of relevant extracts from the Waikato District Health Board's policies and procedures**

### **Code of Conduct**

The Code of Conduct is consistent with the SSC's Standards of Integrity and Conduct for the State Services. The policy states:

- “all staff must comply”
- All employees are expected to carry out their duties in a professional manner by (inter alia)
  - Complying with the terms of the relevant employment agreement, and
  - Complying with all Waikato DHB policies, procedures and practices, and
  - Exercising responsible care with all Waikato DHB resources, and
  - Acting in a way that does not damage, or have the potential to damage, the reputation of the Waikato DHB.
- All employees are expected to (inter alia)
  - Act lawfully
  - Not utilise Waikato DHB property or resources for personal use.

### **Delegations of Authority**

This document reflects good practice. The policy states:

- The Board Chair shall approve the CEO's budgeted expenses. When the Chair is unavailable 1) the Deputy Chair (in the first instance) or the 2) Chair of the Audit and Risk Management Committee shall be authorised to approve expenses.

### **Staff Travel and Accommodation**

The Staff Travel and Accommodation policy was updated in August 2017. My observation is that the old policy, which was in place during Dr Murray's tenure, was good and the new policy is better. I tested my thinking on this with Audit New Zealand and it concurs with my views.

The old policy states (inter alia):

- This policy applies to all staff of the Waikato DHB, and
- Waikato DHB expenditure incurred while travelling on Waikato DHB business must be reasonable and in accordance with policy.
- Waikato DHB shall not pay for any expenses relating to personal travel or accommodation.

- Accommodation is booked on a “room only” or “room plus breakfast” basis.
- Staff are responsible for ensuring that expenditure incurred while travelling on Waikato DHB business is conservative, reasonable and in accordance with this policy. Any claims submitted that attempt to claim travel and expenses outside of this policy may result in disciplinary action.
- Staff member must complete a form applying for all relevant expenditure, prior to travel and ... with all supporting documentation.
- Staff members complete the Travel Request Form, prior to travel, and ... with supporting documentation wherever applicable and available, to their immediate manager for authorisation.
- [In the non-business travel and stopovers section] Waikato DHB can organise but will not pay for any personal travel or accommodation which is incurred in conjunction with a business trip.
- [In the non-business travel and stopovers section] Waikato DHB can organise but will not pay for any travel or accommodation for any person accompanying a staff member on a business trip.

### **Protected Disclosure**

This policy reflects good practice.

### **Receiving and Giving of Gifts**

This policy reflects good practice.

## **Appendix 7: Dr Murray's letter of offer**

The letter of offer made to Dr Murray states:

*"Your terms and conditions of employment are also subject to Waikato DHB Policies and Procedures. Copies of these are available on the Waikato DHB internet for your perusal."*

*"All education, training or conference attendance and costs shall be discussed and agreed with the Board Chair."*

*"Relocation- The DHB will provide relocation costs of up to \$25,000. Such costs shall include*

*Flights from Canada to New Zealand*

*Up to 4 weeks temporary accommodation*

*Up to 4 weeks cost of a rental car and*

*Cost for relocation of household goods, excluding vehicles and pets.*

*Relocation costs should be claimed within 12 months of the Chief Executive's appointment date."*

## Appendix 8: Dr Murray's employment agreement

Dr Murray's employment agreement with the Waikato DHB states:

*“2.0 Responsibilities of the Chief Executive*

*2.1 The Chief Executive accepts appointment with the Board on the terms and conditions set out in this Agreement.*

*2.2 During the currency of this Agreement the Chief Executive shall:*

*a) Honestly, diligently, and competently fulfil the duties and responsibilities set out in the job description attached as Schedule 1 to this Agreement. In doing so the Chief Executive shall use his best endeavours to promote and protect the interests of the DHB...*

*d) Promote compliance with all statutory obligations imposed upon the DHB, the Board, or upon employees of the DHB...*

*2.3 In carrying out the Chief Executive's responsibilities under this Agreement the Chief Executive shall comply with his obligations under the Standards of Integrity and Conduct for the State Services and any other standards that may apply to/ in the DHB.*

*10.0 Termination of Agreement*

*10.2 ...the Board shall be entitled in the event of serious misconduct by the Chief Executive, after considering the Chief Executive's explanation of the matter of complaint, to terminate this Agreement...*

*10.3 For the purposes of this clause the “serious misconduct” shall include (but not be limited to):*

*a) Any material breach of this Agreement.*

*b) The commission of any offence involving dishonesty or any offence for which the offender may be proceeded against by way of indictment...*

*d) Any situation where the Chief Executive behaves in a manner likely to bring the Chief Executive, the DHB or the Board into disrepute...*

*Schedule 1 Job Description*

*Code of Conduct and employee expectation*

- Act in a fair, responsible, trustworthy and legal manner.*
- Waikato DHB's code of conduct incorporates the State Services standards of integrity and conduct, and sets expectations relating to employee conduct.”*

## Appendix 9: Timeline of key events

### Key:

Blue = SSC

Black = Waikato DHB

Green = Audit NZ

Red = SSC Inquiry

### 2014

- 16 June 2014 Letter of offer to Dr Nigel Murray.
- 20 June 2014 Employment contract signed.
- 20 & 23 June 2014 Induction at Waikato DHB.
- 11 August 2014 Induction at Ministry of Health, Wellington.

### 2015

- 16 June 2015 [SSC request to chief executives for 2014/15 Chief Executive Expense Disclosures.](#)
- 14 August 2015 [SSC reminder sent for 2014/15 Chief Executive Expense Disclosures.](#)

### 2016

- June 2016 Former Board Chair aware of delays in responding to SSC's request for Chief Executive Expense Disclosures.
- 22 June 2016 [SSC request to chief executive and board chairs for 2015/16 Chief Executive Expense Disclosures.](#)
- 30 July – 24 August 2016 Dr Murray accommodation at Langham Hotel, Auckland.
- October 2016 Executive Director, Corporate Services, Waikato DHB, aware SSC returns had not been filed.
- November 2016 Executive Director, Corporate Services meets with Dr Nigel Murray and agrees a way forward for finalising SSC Chief

## Executive Expense Disclosures for 2015/15.

- November 2016 [SSC reminder sent for 2015/16 Chief Executive Expense Disclosure.](#)

- 1 December 2016 Waikato DHB advises SSC that 2015/16 Chief Executive Expense Disclosures will be published in January 2017.

## 2017

- January 2017 Executive Director, Corporate Services, works with Dr Nigel Murray to finalise expense disclosures for 2014/15 and 2015/16.

- 2 February 2017 Former Board Chair aware for first time of issues and concerns with Chief Executive's expenditure. Former Chair meets with Dr Nigel Murray to discuss.

- Early February 2017 Waikato DHB appears before Health Select Committee.

- February 2017 2014/15 and 2015/16 Chief Executive Expense Disclosures filed with SSC.

- 7 June 2017 Meeting with senior staff and former Board Chair to discuss concerns held regarding Chief Executive's expenditure of DHB funds.

- 8 June 2017 Former Board Chair seeks guidance from SSC.

- 12 June 2017 Former Board Chair informs the Director-General of Health and Office of the Minister of Health about concerns with Chief Executive's expenditure.

- 15 June 2017 [SSC request to chief executives and board chairs for 2016/17 Chief Executive Expense Disclosures.](#)

- 19 June 2017 Former Board Chair engages Simpson Grierson to provide independent legal advice.

- 28 June 2017 Remuneration Committee meeting.

- 4 July 2017 Former Board Chair, Chair Audit Committee and Dr Nigel Murray meet to discuss concerns.

- 4 July 2017 Former Board Chair briefs Remuneration Committee.

• 17 July 2017	Former Board Chair, Chair Audit Committee meet again with Dr Nigel Murray to get responses to information gathered regarding financial expenditure.  Remuneration Committee convenes and decides the full Board requires briefing.
• 19 July 2017	Special meeting of the DHB Board. Board delegates the Remuneration Committee to commission independent investigation and oversee process.
• 21 July 2017	Former Board Chair requests Audit New Zealand undertake investigation into Chief Executive's management of expenses.
• 25 July 2017	<a href="#">Audit New Zealand proposal to undertake an audit of expense claims sent to the former Board Chair.</a>
• Early August 2017	Independent investigator instructed to conduct employment investigation.
• 1 August 2017	<a href="#">SSC reminder to chief executives and board chairs to file 2016/17 Chief Executive Expense Disclosure.</a>
• 1 August 2017	Former Board Chair advises SSC that an investigation has commenced into the management of Chief Executive expenses since 2014.
• August – September 2017	Independent investigator undertakes investigation.
• 29 September 2017	The Remuneration Committee meet to consider Dr Nigel Murray's conditional offer of resignation.
• 5 October 2017	A special meeting of the DHB Board resolves to accept Dr Nigel Murray's offer of resignation.
• 10 November 2017	<a href="#">State Services Commissioner appoints John Ombler, QSO, to undertake an inquiry into financial matters at Waikato DHB.</a>
• 27 November 2017	<a href="#">Audit New Zealand delivers Annual Management Report for year ended 30 June 2017.</a>
• 28 November 2017	Former Board Chair resigns.

## **Appendix 10: Crown Entities Act 2004**

The Crown Entities Act 2004 sets out the role, functions, and responsibilities of a district health board, its chair and members, to ensure the efficient and effective governance of the organisation.

It specifically states that members have a duty to act with reasonable care, diligence and skill. This Act provides clear advice for Board members that they must behave in a manner: “...*efficiently and effectively; and ... in a manner consistent with the spirit of service to the public?*”.

Relevant extracts are provided.

The Crown Entities Act 2004 states at section 25:

### **25 Board’s role**

- (1) The board is the governing body of a statutory entity, with the authority, in the entity’s name, to exercise the powers and perform the functions of the entity.
- (2) All decisions relating to the operation of a statutory entity must be made by, or under the authority of, the board in accordance with this Act and the entity’s Act.

At section 50 it states:

### **50 Manner in which functions must be performed**

The board of a statutory entity must ensure that the statutory entity performs its functions—

- (a) efficiently and effectively; and
- (b) in a manner consistent with the spirit of service to the public; and
- (c) in collaboration with other public entities ... where practicable.

And at section 56 it states:

### **56 Duty to act with reasonable care, diligence and skill**

A member of a statutory entity must, when acting as a member, exercise the care, diligence and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the statutory entity; and
- (b) the nature of the action; and
- (c) the position of the member and the nature of the responsibilities undertaken by him or her.

## Appendix 11: Institute of Directors resources

In 2012, the Institute of Directors (Inc) (IoD) published *'The Four Pillars of Governance Best Practice for New Zealand Directors' (Four Pillars)*<sup>82</sup>. This resource is applicable for both the private and public sectors.

The four pillars are:

1. **Determining purpose.** This is about the board driving and leading the development of the organisations purpose, strategic direction, and goals.
2. **An effective governance culture.** The board must act like a team, and work with management to achieve the organisations purpose, as well as maintaining effective relationships with shareholders and stakeholders. Value comes from the debate and thoughtful discussions that occur within a diverse team.
3. **Holding to account.** A value adding board ensures management are held accountable to deliver against the organisations strategy by providing informed, astute and effective oversight. Board and management responsibilities are clearly defined.
4. **Effective compliance.** The board ensures the integrity of financial reports and processes and that the company remains solvent, meets all legal and financial requirements, and is managing existing and prospective risks.

The *Four Pillars* states that:

- *“A great deal of guidance on governance in the public sector is provided by the SSC and the OAG. Directors appointed to public sector roles would be well advised to review the wide range of governance matters available.”*
- In terms of the focus of audit committees:
  - *“The IoD suggests they focus on conformance, while the Board considers performance”.*
  - And: *“...setting procedure in place that will both prevent and detect any occurrences of fraud or error ... (ie install and monitor the operation of an effective system of internal control)”.*
  - And: *“...reviewing any matter of ethical conduct by directors or staff, or legal compliance ...”* and *“...prescribe principles of good conduct when these may be required”.*
- *“The IoD recommends that attention is paid to the Controlling Sensitive Expenditure guidelines (currently 2017) available from the OAG. These guidelines are written for public sector organisations and not specifically for directors, but provide a useful reference point for fee structures and associated rules.”*

## Appendix 12: Timeline of correspondence between the State Services Commission and Waikato DHB about disclosure of chief executive expenditure

Following is a timeline of the SSC's communications with the Waikato DHB regarding filing of its Chief Executive Expense Disclosures. It covers the period covered by this inquiry, and after Dr Murray's start in July 2014.

• 16 June 2015	SSC sent request for 2014/15 Chief Executive Expense Disclosures to Chief Executives.
• 14 August 2015	SSC sent reminder to all agencies that had not filed their disclosures, including Waikato DHB.
• 22 June 2016	SSC sent request for 2015/16 Chief Executive Expense Disclosures to chief executives and board chairs.
• 30 November 2016	SSC sent reminder to outstanding DHB chief executives, copied to board chairs.
• 1 December 2016	Office of the Chief Executive at Waikato DHB advised SSC that they had encountered technical issues in processing the expense disclosure and that the disclosure would be published by mid-January 2017. This correspondence was copied to the Board Chair.
• 18 January 2017	SSC wrote to the Director-General of Health seeking intervention in order to gain cooperation from the Waikato DHB.
• 19 January 2017	The Director-General of Health provides assurance to SSC that the Waikato DHB Chief Executive expense disclosure will be published 'next week'.
• 15 June 2017	SSC sends request for 2016/17 Chief Executive Expense Disclosure to all DHB chief executives, copied to chairs.
• 1 August 2017	SSC sends reminder that 2016/17 disclosure had not been made and asking for information on when they would be made. The former Board Chair replies to SSC advising that the DHB is undertaking a review of the management of the Chief Executive's expenses since 2014.
• 3 August 2017	SSC acknowledges Board Chair's advice.