



Investigation of the Noongar Charitable Trust

Western Australian Charitable Trusts Commission

11 August 2025

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This report was provided to the Attorney General on 11 August 2025 in accordance with the *Charitable Trusts Act 2022* (WA).

The office of the Ombudsman acknowledges Aboriginal and Torres Strait Islander people of Australia as the traditional custodians of Australia. We recognise and respect the exceptionally long history and ongoing cultural connection Aboriginal and Torres Strait Islander people have to Australia, recognise the strength, resilience and capacity of Aboriginal and Torres Strait Islander people and pay respect to Elders past, present and emerging.

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Foreword

Hon Dr Tony Buti BPE DipEd MIR LLB Dr Phil MLA
Attorney General

I provide this investigation report in response to your predecessor's referral to the Charitable Trusts Commission of 17 July 2023.

Charitable Trusts exist in Western Australia within a wider social, economic and ethical milieu. They are a crucial element for self-determination by Aboriginal communities over funds to advance the interests of Aboriginal communities.

In keeping with modern approaches to social impact investing, it is conceivable that a social return on investment to an Aboriginal community, could be achieved through an investment that results in an economic loss to the trust. And to this end, a trustee would not necessarily be in breach of its duties by distributing trust funds for such a project. However, such a project would require the minimum, or a greater than usual level of due diligence to be exercised by the trustees.

The former CEO of the South West Aboriginal Land and Sea Council (**SWALSC**) proposed a plan to tackle homelessness and housing instability in the Noongar Community. It was open to the Board of SWALSC to support such an endeavour and for Equity Trustees (**EQT**) to make an investment in support of such a project, provided the requisite due diligence was undertaken. It was not and it is the trustee who must act in accordance with the trust deed.

EQT never had enough information, and certainly did not have it at the time the distribution was made, to be sure that the charitable objects of the Trust would be met when funding the purchase of various properties. EQT relied too heavily on the representations of the former Chief Executive Officer without independently and impartially considering the viability and net benefit of the project. The trustees owed to the Noongar people the obligation of examining the proposal in some depth. This obligation was not met.

I have therefore formed the view that EQT breached its duties as trustee of the Noongar Charitable Trust.

The Commission wrote to EQT and SWALSC on 12 August 2025 informing them of its findings and giving the entities until 15 September 2025 to provide submissions as to the quantum required to restore the Noongar Charitable Trust.

A further report will be provided by the Commission upon receipt and consideration of any submissions received.



Bevan Warner
Charitable Trusts Commissioner
11 August 2025

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List of Documents

1. Ltr to CTC from SWALSC dated 3 February 2023 “**SWALSC Complaint**”
2. Ltr ACNC to EQT dated 3 February 2023 “**ACNC Investigation Information**”
3. Ltr SSO to CTC dated 17 July 2023 with annexures listed “**Referral**”
4. Ltr to EQT dated 17 February 2023 “**Ltr to EQT**”
5. Ltr EQT to CTC 2 March 2023 with appendix “**EQT first response**”
6. Email to CTC from SWALSC on 20 April 2023 with attachments “**SWALSC Information**”
7. Email to CTC from SWALSC dated 3 July 2023 with attachments “**SWALSC July 2023 response**”
8. Ltr from EQT to CTC dated 12 July 2023 with attachments “**EQT July 2023 Response**”
9. 14 August 2023 and 19 September 2023 emails from SWALSC to CTC with additional information “**SWALSC August and September responses**”
10. Email from EQT to CTC dated 22 December 2023 enclosing EQT financial statements “**EQT financial statements**”
11. Burgess Rawson Retrospective Valuations of the properties as at 23 March 2020 “**Retrospective Valuations**”
12. Ltr to CTC dated 28 April 2025 “**EQT response to PV**”
13. Ltr from SWALSC to CTC dated 14 April 2025 with attachment “**SWALSC response to PV**”
14. Email from EQT to CTC 11 April 2025 with attachments “**EQT further disclosures 2025**”
15. Ltr to CTC from Burgess Rawson 19 June 2025 with updated retrospective valuations “**Updated retrospective valuations**”

This report is not intended to provide a complete and comprehensive analysis of all enquiries and investigative actions of the Commission. It is intended to provide a summary of reasons as to the findings reached, along with the disclosure of all materials sought and received by the Commission during its investigation.

1. Concerns raised by the Community

1.1. Complaints made to the Commission

On 3 February 2023, then-Chairperson of the South West Aboriginal Land and Sea Council Aboriginal Corporation (**SWALSC**), Mr Brendan Moore, wrote to the Commission to request an investigation into the actions of EQT (**EQT**) and 'its performance as Trustee of the Noongar Charitable Trusts' (**1: SWALSC complaint**). SWALSC allege that EQT breached its duties and legal responsibilities, as follows:

1. The Trust has not filed accounts for the financial years ended 30 June 2021 or 2022.
2. In 2020, the Trustee entered into a number of transactions which have resulted in a serious impairment of the Trust's assets. In particular:
 - A. The properties commonly known as El Caballo were acquired by the Trustee in 2020 for \$12m. We believe that this was done:
 - i. Without undertaking adequate due diligence;
 - ii. Without obtaining an independent market valuation;
 - iii. Without a credible business plan;
 - iv. Without evidence that the operational funding that was required to run the facility was in place; and
 - v. At a price that was significantly above market value, estimated to possibly be up to \$4m to \$6m above market value, and which is a principal cause of the impairment in the Trust's assets.
 - B. The purchase of El Cabello resulted in 30% of the Trust's assets being invested in a single illiquid asset, which is contrary to modern investment practice.
 - C. The Trustee paid \$5.25m to the Aboriginal Housing Recovery Centre Limited (**AHRCL**), as a capital distribution, for the purchases of two properties located at Guilford and Midland:
 - i. This capital distribution from the Trust totalled 14% of the total trust assets but only benefited 14 Noongar families.
 - ii. The Trustee did not manage conflicts of interest on the Trust's Advisory Council.

In addition, SWALSC requested that the Commission investigate whether the payments set out above at “C” were made in breach of clause 5.3 of the Trust Deed. On 14 February 2023, the Commission acknowledged receipt of the SWALSC complaint and confirmed an investigation into the matters raised had commenced.

1.2. Investigation by the ACNC

By email on 13 June 2023, the Commission sought information from the Australian Charities and Not-for-profits Commission (**ACNC**) on the status of any investigations into SWALSC, EQT or any related entities. By email on 20 June 2023, ACNC confirmed an investigation was undertaken of EQT, but none for SWALSC (**2: ACNC Investigation Information**). The ACNC investigation considered ‘whether [EQT met] its obligations as a registered charity’, including Governance Standard 5 of the Australian Charities and Not-for-profits Commission Act Regulation 2013. ACNC considered, as follows:

...the due diligence, decision making, and policies and procedures of the Charity in the context of activities it undertook to support a social housing project involving the purchase of properties known as Midland and Guildford, and El Caballo, which was proposed by a previous CEO of SWALSC.

The ACNC found ‘areas for governance improvement’ including ‘non-compliance with the requirements of Governance Standard 5’ by EQT, however, determined not to use the formal powers under the ACNC Act or Regulations. Instead, findings and advice were made, including:

1. The approval of a representative of SWALSC was overly relied upon in relation to the purchase of the property known as El Caballo and amendments to the trust deed in August 2019.
2. The due diligence undertaken by EQT in relation to the proposal to purchase the property known as El Caballo was rushed. Specifically, some aspects of the due diligence were incomplete, which may have been the result of pressure from the representative of SWALSC to complete the purchase. It is acknowledged that EQT raised due diligence matters with the CEO of SWALSC, including an independent valuation, details on ownership, pre-existing contracts, leases, and businesses associated with the El Caballo property, the additional funds sought for the project and the proposed Aboriginal Housing Trust. However, the CEO of SWALSC, and a consultant appointed by the CEO of SWALSC, were able to influence the due diligence process such that answers from the CEO, and advisers appointed by the CEO, were accepted. It is also acknowledged that EQT would not have foreseen the internal dispute that eventuated between members of the SWALSC board and its former CEO. However, it is evident that if decisions had been made with more robust due diligence, and decision making, then it is possible that the matters that are currently subject of the dispute could have been prevented.
3. Those within EQT making decisions about the trust, do not have a specific obligation to ensure all the ACNC governance standards are met before approving a proposal to distribute capital or use trust assets.

After reviewing the findings of the ACNC, the Commission formed the view that, while the administrative directions of the ACNC did go some way to address the complaints received by the Commission about the trustee's conduct, further investigation was warranted.

1.3. Referral from the Attorney General

Prior to referral to the Commission, complaints about the Trust and/or AHF were received by the office of the Attorney General of Western Australia (**AG complaints – see annexures 16-19 of 3: Referral**), including from:

- (a) Mr Noel Morich and Mr Ben Lisle;
- (b) Mr Laurence Riley dated 18 February 2022;
- (c) Mr Robert Stuart dated 8 September 2022; and
- (d) The Board of the South West Aboriginal Land and Sea Council dated 15 December 2021, 16 May 2022 and 3 February 2023.

The AG complaints raised various concerns in relation to three principal transactions authorised by the Trustee between 2019-2020:

- (a) a capital distribution to enable the purchase of properties in Midland and South Guildford for \$5m in April 2020 and July 2020 respectively, which are currently held by AHRCL (**Midland transaction**);
- (b) the purchase of El Caballo Blanco Resort and Lifestyle Village at 3349 Great Eastern Highway Wundowie and 3303 Great Eastern Highway/51 Jocosco Rise, Wundowie in Western Australia in Wundowie (**ECB properties**) for \$12m in March 2020 which is held by EQT on behalf of the Trust (**El Caballo transaction**); and
- (c) a \$1.5m working capital distribution to AHRCL, who was apparently appointed to manage the ECB properties, in May and June 2020 to fund renovation works (**AHRCL transaction**)(collectively referred to as the **Property Transactions**).

Concerns outlined in the AG complaints included:

1. The amendment to the Noongar Charitable Trust Deed (including to provide for distributions of capital and the change in trustee fees) and whether the amendment was valid;
2. The EQT distribution of funds for the Midland transaction;
3. EQT purchase of the ECB properties;
4. The apparent appointment by EQT of AHRCL as the manager of the ECB properties with responsibility for the day to day control and management of those properties and the Trustee's expenditure in relation to the ECB properties including \$1.5m funds for renovation works/improvements;
5. The establishment of AHRCL and the Aboriginal Housing Foundation and terms of that trust including amendments to that trust deed to allow interested persons to act notwithstanding personal benefit;
6. Whether any application of trust funds in relation to any of the above properties preferred particular individuals within the Noongar community and, if so, whether the payment was bona fide and fair remuneration for services properly provided to the Noongar Charitable Trust; and

7. The adequacy of the consultation that occurred with SWALSC and the Community in relation to the above matters.

On 17 July 2023, the then Attorney General referred under section 32(1)(b)(ii) of the *Charitable Trusts Act 2022* (WA) (**the Act**) the Noongar Charitable Trust (**Trust**) and the Aboriginal Housing Foundation (**AHF**) for investigation (**3: Referral**). The terms of referral were:

... including but not limited to the circumstances surrounding, including whether any breach of trust occurred in connection with:

1. the purchase of 12 Hamersley Street Midland and 11 Waterhall Road South Guildford in Western Australia using Trust funds;
2. the purchase, development and management of the El Caballo Resort and Lifestyle Village at 3349 Great Eastern Highway Wundowie and 3303 Great Eastern Highway/51 Jocosco Rise Wundowie in Western Australia using Trust funds; and
3. the amendments made to the Noongar Charitable Trust Deed and the Aboriginal Housing Foundation Trust Deed, and the validity of the amendments.

Parties who made the AG complaints were notified that the matter had been referred to the Commission for investigation along with a copy of their complaint and were informed to contact the Commission with any questions about the process.

2. Commission's Investigation Commences

2.1. Initial requests for information made by the Commission

On 17 February 2023, the Commission wrote to the trustees of the Trust, EQT Wealth Services Limited (**EQT**) informing it of its investigation in accordance with 32(1)(b)(i) of the Act (**4: Ltr to EQT**). The Commission put to EQT the allegations, in the form raised by SWALSC, and requested a response. EQT responded to the Commission on 2 March 2023 (**5: EQT first response with appendices**).

The Commission met with the then-CEO of SWALSC, and others, on 24 March 2023. This was followed by an email from Mr Brendan Moore, then-Chairperson of SWALSC, on 20 April 2023 with additional information regarding communications between SWALSC and EQT (**6: SWALSC Information with attachments**).

Further notices to produce were issued to both SWALSC and EQT on 13 June 2023; with responses provided on 3 July (**7: SWALSC July 2023 response**) and 12 July 2023 respectively (**8: EQT July 2023 Response**).

On 14 August 2023, lawyer for the SWALSC, Mr Tom Darbyshire, of McWilliam Davies Lawyers, provided to the Commission a 'Narrative Summary' and additional documents. On

29 September 2023, Part Two of the Narrative Summary was provided to the Commission with additional documents (**9: SWALSC August and September responses**).

I note that EQT provided the completed financial statements for the NCT for FY2021; FY2022 and FY2023 on 21 and 22 December 2023 (**10: EQT financial statements**).

2.2. Allegations the subject of the Commission's investigation

The numerous complaints were distilled and categorised by the Commission, as follows:

Allegation One: Amendments made on 21 December 2019 to the deed constituting the Noongar Charitable Trust to permit the trustee, EQT, to make capital distributions were not validly made.

Allegation Two: It was a breach of trust for EQT to apply, by investment, \$12 million of the Noongar Charitable Trust's funds for the purchase of two properties known collectively as the El Caballo properties.

Allegation Three: It was a breach of trust for EQT to make a capital distribution of \$1.5 million to Aboriginal Housing Recovery Centre Limited (**AHRCL**) as (then) trustee of the Aboriginal Housing Foundation as "working capital" to fund renovations to the El Caballo properties.

Allegation Four: It was a breach of trust for EQT to make a capital distribution of \$5 million to AHRCL as (then) trustee of the Aboriginal Housing Foundation for the purchase, by AHRCL as trustee of the Aboriginal Housing Foundation, of two properties located at South Guildford and Midland;

Allegation Five: The funds applied as described in Allegation Two to Four were not applied in accordance with the charitable objects of the Noongar Charitable Trust for the benefit of the Community (as defined in the relevant deed).

Allegation Six: It was a breach of trust for EQT to appoint AHRCL as trustee of the Aboriginal Housing Foundation its agent to manage the El Caballo properties.

Allegation Seven: Amendments made on 21 July 2020 to the deed constituting the Aboriginal Housing Foundation which permit the trustee or any officer, agent or employee of the trustee to exercise trust powers despite the presence of a conflict of interest or duty were not validly made.

Allegation Eight: EQT did not adequately consult with the South West Aboriginal Land & Sea Council Aboriginal Corporation (**SWALSC**), and the Noongar Community (as defined in the relevant deed) in relation to the transactions described in Allegations Two to Four.

Legal advice to the Commission was received on 13 June 2024 with respect to the above allegations. Considering this advice and all the information disclosed by EQT and SWALSC, for the reasons set out below, the Commission formed the preliminary view that **Allegations Two and Three** were made out against EQT.

3. Legislation, general law and the NCT Deed

The Commission's investigation included consideration of the relevant provisions of the Act, the *Trustees Act 1962* (WA) (**Trustees Act**), general law and the terms of the Noongar Charitable Trust Deed (**NCT Deed**).

3.1. Legislation

Part 4 of the Charitable Trusts Act 2022

Part 4, section 32 of the Act provides for the Commission to carry out an investigation of a charitable trust or class of charitable trusts.

- (1) An investigation of a charitable trust or class of charitable trusts (an investigation) may be carried out by the following (an investigator) —

...
 - (b) the Western Australian Charitable Trusts Commission —
 - (i) on a complaint to the Western Australian Charitable Trusts Commission; or
 - (ii) on referral by the Attorney General.
- (2) An investigator may, in the performance of a function under this Act, give to a person a written notice (a requirement) requiring the person to provide to the investigator —
 - (a) a document or other information —
 - (i) relating to a charitable trust; or
 - (ii) concerning any person involved in the administration of a charitable trust;or
 - (b) any other assistance that is reasonably necessary.

Part 4, section 41 of the Act requires the Commission to prepare a report on the investigation and give a copy of the report to the Attorney General of Western Australia.

41. Investigator's report

- (1) An investigator must prepare a report on the investigation (an investigator's report).
- (2) An investigator must give a copy of the investigator's report to the Attorney General.
- (3) An investigator's report may be accompanied by notice in writing directing that a relevant trustee must, within a period specified in the notice, take reasonably necessary action specified in the notice in response to the findings in the report.

- (4) If the investigator's report is accompanied by the notice, the investigator must give a copy of the notice to the relevant trustee.
- (5) If a relevant trustee fails to comply with the notice, the investigator must prepare an amended or further investigator's report.
- (6) A failure by a trustee to comply with the notice constitutes a ground for removal of the trustee under section 45(1)(b)(i).

Part 3 of the Trustees Act 1968

18. Investment power of trustees, exercise of

- (1) Subject to the instrument creating the trust, a trustee shall, in exercising a power of investment —
 - (a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or

...

19. Investment power of trustees, rules of law and equity apply

- (1) Any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment including, without limiting the generality of those duties, rules and principles that impose —
 - (b) a duty to invest trust funds in investments that are not speculative or hazardous

...

20. Investment by trustee, matters to be considered

- (1) Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee shall, so far as they are appropriate to the circumstances of the trust, have regard to —
 - (a) the purposes of the trust and the needs and circumstances of the beneficiaries; and
 - (b) the desirability of diversifying trust investments; and
 - (c) the nature of and risk associated with existing trust investments and other trust property; and
 - (d) the need to maintain the real value of the capital or income of the trust; and
 - (e) the risk of capital or income loss or depreciation; and
 - (f) the potential for capital appreciation; and
 - (g) the likely income return and the timing of income return; and

- (h) the length of the term of the proposed investment; and
- (i) the probable duration of the trust; and
- (j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment; and
- (k) the aggregate value of the trust estate; and
- (l) the effect of the proposed investment in relation to the tax liability of the trust; and
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property; and
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of a review of existing trust investments.

3.2. At Law and by Deed

There is common law to the effect that there is an ‘irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust’ (*Armitage v Nurse* [1998] Ch 241, 253). In addition, trustees also owe duties arising from the trust instrument, enforceable, in the case of a charitable trust, by the Crown as *parens patriae* acting through the Attorney General: see, *Jacobs’ Law of Trusts in Australia* [10-67].

Relevantly, in the trust instrument under consideration by the Commission:

- (a) by cl 5.1 of the NCT Deed, the trustee must hold the trust fund ‘on trust to pay or apply all or any part of the net income and capital for the charitable objects and purposes in accordance with the terms of’ the NCT Deed;
- (b) by cl 5.2(a) of the NCT Deed, the net income and capital of the trust fund shall be applied ‘solely’ in furtherance of the charitable objects and purposes; and
- (c) by cl 5.3 of the NCT Deed, the trustee ‘shall ensure as far as is practicable that distribution of the net income and capital of the Trust Fund is applied overall in a way that fairly and equitably benefits a broad cross section of’ the Noongar Peoples.

Further, at general law or pursuant to the Trustees Act:

- (a) in exercising a power of investment, if the trustee’s profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons: s 18(1)(a) of the Trustees Act;
- (b) a discretion to invest, however wide, will not permit speculation by the trustee; even if the investment is authorised the trustee must still act prudently and must be satisfied that the particular security is one which will protect the trust

assets: *Sidney v Huntly* (1900) 21 LR (NSW) Eq 104; *Jacobs' Law of Trusts in Australia* [18-06]; s 19(1)(b) of the Trustees Act; and

- (c) when exercising a power of investment, a trustee shall, so far as they are appropriate to the circumstances of the trust, have regard to a number of matters prescribed by statute, including: the need to maintain the real value of the capital of the trust; the risk of capital loss or depreciation; and the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment: s 20(1) of the Trustees Act.

The obligations of trustees were considered in the context of each of the complaints received regarding EQT acting as trustee for the Noongar Charitable Trust.

4. Consideration of Allegation Two

4.1. Due diligence completed by EQT

Background of purchase of El Caballo

In about March 2020, EQT purchased the El Caballo properties, in Wundowie Western Australia. The El Caballo properties are described as follows (hereafter referred to collectively as 'the El Caballo properties'):

Property 1

Name: El Caballo Resort

Address: Lot 87 (No. 3349) Great Eastern Highway Wundowie

Details: 4.61ha zoned 'Tourist' under Shire of Northam Local Planning Scheme No. 6

Property 2

Name: El Caballo Lifestyle Resort

Address: Lot 90 (No. 51) Jocosco Rise Wundowie

Details: 38.95ha - the Northern part of the parcel contained Stages 1 and 2 of a proposed four stage over 45's Lifestyle Village comprising 89 fully serviced homesites, with 38 park homes constructed on them. Of these, 34 were leased and occupied by village residents. The Western part was 'Special use Zone 9'. The Eastern Part was 'Special Use Zone 12'.

By letter to the Commission dated 2 March 2023, EQT stated they first became aware of the proposal to purchase the El Caballo properties in December 2019 when 'SWALSC requested a further capital distribution of \$12 million to fund the purchase of the El Caballo properties'. By email dated 19 December 2019, Benieka Lythgo, National Manager, Community Trusts, EQT, informed Wayne Nannup, then-CEO of SWALSC:

We've discussed this internally with our Senior Executive, and I'm pleased to advise that we are generally supportive of the acquisition of the El Caballo property for the purposes of a 'proof of concept' and allow SWALSC etc to demonstrate the

effectiveness and innovative approach of a new social housing model for the Noongar Community.

Ms Lythgo went on to say, the proposal will be considered in two parts, (i) the immediate proposal to acquire the El Caballo property; and (ii) the future establishment of the Aboriginal Housing Trusts and all related dependencies. At this time, Ms Lythgo identified the following 'due diligence matters' to discuss with Mr Nannup:

- Arranging independent valuation of the El Caballo property
- The structure of ownership of the properties already committed to and the El Caballo property
- Pre-existing contracts/leases/businesses etc associated with the El Caballo property
- Clarity over the additional \$5 Million committed to following the acquisition of El Caballo property mentioned at our meeting to support the project

It appears from this email that a meeting occurred prior to 19 December 2019, although no notes have been provided to confirm these discussions. On 20 December 2019, Ms Lythgo again emailed Mr Nannup in relation to the proposal to purchase the El Caballo properties. This email sets out informal minutes of a meeting held between herself and Mr Nannup, Mr Morley and Mr Westley (of EQT) that day. Relevantly, Ms Lythgo noted, amongst other things, that EQT 'need to validate the value of the property as identified in the Scoping Report before committing the funding'.

The reference to the 'Scoping Report' in the meeting minutes of 20 December 2019 appears to be a reference to a document provided to the Commission entitled "El Caballo – Scoping Paper" dated November/December 2019. It appears to have been prepared by Vincent Morley (apparently a consultant engaged by Mr Nannup), possibly with the help of Bruce Young of Spatial Property Group.

The Scoping Report suggested the properties had a value of \$32.63 million, although how this value has been calculated is not clear.

In her email of 20 December 2019, Ms Lythgo noted 'Vincent - the valuations discussed in the Paper were a result of analysis completed by professional Property experts'. The Commission has inferred that this is a record of what Mr Morley told Ms Lythgo at their meeting on 20 December 2019. Mr Young's email of 20 December 2019, 1:20 pm was forwarded to Ms Lythgo by Vin Morley with the introduction 'As discussed in this morning's meeting... Trust this is adequate'. Mr Young sets out his qualifications as follows:

I am the Managing Director of Spatial Property Group Pty Ltd, a specialist property developer, project management and real-estate company... I hold degrees in Science and Town Planning, am a Certified Practicing Planner and have been a UDIA WA council member between 2006 and 2019, and a National UDIA council representative in 2007-9.

Mr Young confirmed Spatial Property Group 'teamed up with a top tier town planning firm, Creative Design and Planning (CDP)' for the 'assessment of the Wundowie project'. Further

confirming 'we have jointly produced the assessment document for Wundowie' (this presumably being a reference to the Scoping Report), and confirmed:

Wundowie was originally contracted for \$13M however through the due diligence process and subsequent negotiations we managed to provide appropriate background reasoning to obtain a reduction in purchase price to \$12M. We believe that this purchase price represents excellent value of the site on a 'business as usual' basis when considering the elements including the retirement village, the resort and all associated infrastructure.

Mr Young also wrote, in terms that appear to directly respond to Ms Lythgo's concern to obtain an independent valuation, that:

The final scoping document has been sent to Valuers (Chris Geers, Managing Director MMJ Real Estate) whom are aware of the project and have been supportive of the assessment methodology. Due to this support and the relative uplift values involved it is my view that it is better off saving the cost of obtaining an independent valuation.

The Commission considers the suggestion that the trustee forgo obtaining an independent valuation in relation to the purchase of an asset purportedly worth in excess of \$12 million and requiring an application of half of the corpus of the trust fund, to avoid the cost of those valuations, which are likely to be modest compared to the purchase price, is unreasonable in the circumstances.

It is noted that Mr Young later issued an invoice to AHRCL paid out of additional funds obtained from EQT, in the amount of \$180,000 plus GST for 'Acquisition Assistance—El Caballo & Village Properties'.

On 24 December 2019, Mr Westley responded to Mr Morley's email, writing (amongst other things) that:

I note in Bruce's response he states that the scoping document has been shared with Chris Geers at MMJ Real Estate. Given Chris is a certified practising valuer, it would be useful for us to discuss the matter with him, are you able to arrange this or do you want me to contact him directly.

In response, Mr Morley wrote (amongst other things) that 'Wayne and I would like to speak to you by phone when convenient'. The Commission has no record of that call. On 9 January 2020, it appears that Mr Westley and Ms Lythgo had a Zoom meeting with Mr Morley and Mr Young about the proposed purchase of the El Caballo properties. On 10 January 2020, Mr Westley circulated a note of that meeting to someone called Mick O'Brien of EQT, in which he advised that 'as a result of the meeting I believe we can purchase the property for \$12m and recommend that we do so'.

The note of the meeting records the following background (amongst other things):

SWALSC provided a detailed project description [*i.e. the Scoping Report*], referencing valuation assumptions on the property itself (and ongoing concerns) but lacking in detail of the substance and source of those valuations.

[EQT] requested additional information around the valuation process, specialists used, and processes/procedures followed. Specifically, [EQT] were interested in the basis of the \$12Million purchase price – understanding that the property has been for sale for some time.

Property expert Mr Young provided “the background below” [a reference to Mr Young’s email of 20 December 2019] as to his credentials and his comfort over what he had assessed in the value of the acquisition. Bruce references an independent valuer that he also consulted – and [EQT] sought to contact this valuer to confirm his opinion.

[EQT] were advised by Vincent and Wayne (SWALSC) that valuer consulted did not perform a full valuation, instead just verified the procedure/process used to assess the whole proposal.

As to the matters discussed with Mr Young, Mr Westley’s note records (among other things):

As Trustee of the NCT we are being asked to allocate 50% of the current Capital. In order to commit to such an acquisition (being 50% of the then-capital of the NCT) [EQT] need to be comfortable that the investment sought (\$12M) represents a fair and reasonable price in today’s WA market.

[EQT] have the proposal, detailed report and credentials, but would like to confirm the process and methodology that resulted in the conclusion that the purchase is a prudent one.

Mr Young was able to identify that the unimproved value of the land could be calculated by considering it in ‘3 sections’:

1. 44 hectares of grazing land that is valued @ \$125,000 per hectare. To be conservative let’s say value is \$100,000 per ha. This values this section @ **\$4 Million**
2. 10,000m² of “buildings and associated infrastructure”, that is the “resort section (excluding the retirement village dwellings). Due to the yield and condition this could be conservatively valued @ \$1,000 per m² (replacement value – a conservative estimate from a third-party specialist estimating the replacement cost would be more like \$2,500 per m²). This values this section @ **\$10 Million**
3. Retirement village interest with current approvals (including assessment of the value of the income/revenue- 3-4 Display homes and additional “ready” sites including infrastructure estimated at - **\$6 Million** (original emphasis) **This leaves a total (conservative estimate of \$20 Million)**

At this point EQT enquired into why there seemed to be a ‘lack of competing interest in the property’ given that the purchase price offered ‘appears considerably lower than the

estimated value'. Mr Young offered the following by way of explanation for the discrepancies (amongst other factors):

- WA property market is at a record low.
- Typical property developers are not interested in this unique type of acquisition as to be profitable it would require development and then sale of many properties, which with the state of the market is too big a risk
- Retirement village operators similarly aren't likely to be interested given they typically are looking for sites that are closer to existing residential zones and allow for more units to be constructed.

...

.... the vendor is also under financial duress requiring a sale.

On the information provided to the Commission, it appears that no further steps were taken by EQT to value the properties. It does not appear that EQT obtained an independent valuation of the properties or took further steps to speak with Mr Geers of MMJ (as set out in the above email as potentially being 'useful').

In summary, EQT relied, in substance, on the following to meet its due diligence obligations:

1. The Scoping Paper;
2. Mr Young's email of 20 December 2019; and
3. The information it obtained from Mr Young on 9 January 2020.

On about 23 March 2020, seemingly based on these inquiries, EQT as trustee for the Noongar Charitable Trust purchased the El Caballo properties. EQT paid \$3.5 million for the El Caballo Blanco Resort and \$8.5 million for the El Caballo Lifestyle Village, a total expenditure of \$12 million for the El Caballo properties. Because the properties were purchased directly by EQT as trustee for the Noongar Charitable Trust, a distribution (of capital or income) was not required. Rather, the purchase was, it seems, treated as an investment made pursuant to the investment power in cl 6 of the NCT Deed (further discussion of this is below considering the arguments raised by EQT in 2025).

4.2. EQT responses prior to preliminary view

EQT was provided the opportunity to respond to the allegations raised against it by way of multiple notices to produce issued by the Commission prior to it forming its preliminary view. EQT in its responses to the Commission maintains that it undertook 'sufficient due diligence' prior to the purchase of the El Caballo properties. Responding to the Commission on 2 March 2023, EQT relied on the following in support of its position:

The complexity and uniqueness of the El Caballo properties (one a lifestyle village and the other a resort complex), meant that a standard market valuation that might be used in a typical residential or commercial property context was not able to be attained.

The Commission notes that no evidence was led by EQT to support that it endeavoured to source any further valuation information, or the appropriate cost of such a valuation. Further, EQT stated:

The proposals submitted by the SWALSC, contained advice from industry experts in its composition.

In making our decision we relied on the experts the SWALSC used in their reports, including interviewing these experts on their views around the commercial value. We carefully considered the housing project put forward by the SWALSC and notably the social value it would bring to the Noongar people in the years to come. In weighing these considerations, it was determined the purchase was an appropriate investment for the Trust.

I note the use of the plural for ‘interviewing these experts’ – on the information available Mr Young was the only ‘expert’ interviewed. EQT, in its response to the Commission, also discussed the impact of various factors on the value of the properties post-purchase, this will be considered below.

5. Consideration of Allegation Three

5.1. Management of the El Caballo properties and capital distributions to AHRCL

On or about 31 March 2020, EQT appointed AHRCL as its agent for the purposes of managing the El Caballo properties. The arrangements for the payment of fees charged by AHRCL for those services, and the funds required for the maintenance and upkeep of the properties, was to be agreed.

On 20 April 2020, AHRCL requested funding of \$1.5 million from EQT as ‘working capital’ to meet costs associated with the purchase and management of the El Caballo properties. I note that within the \$1.5 million was a sum of \$180,000 for Mr Young’s invoice (referred to above). That funding was provided.

Between about April 2020 and October 2020, the relationship between EQT and AHRCL/AHRCL Wealth Services Pty Ltd appears to have become frayed, and the relationship between SWALSC and Mr Nannup completely broke down. Ultimately, the board of SWALSC terminated Mr Nannup’s employment.

Further, according to EQT, from November 2020 the composition of the SWALSC board changed following elections at an annual general meeting. Those changes included the resignation of the chair of the board. Following this change, according to EQT, SWALSC removed support for the housing and homelessness project that had been advanced by Mr Nannup. The board subsequently instructed EQT to exercise its discretion to determine the future of the project (including, implicitly, the future of the El Caballo properties).

In about January 2021, EQT presented to the board of SWALSC. In that presentation EQT proposed to engage Ernst & Young to undertake a valuation and feasibility review of the El Caballo properties, including future options for management.

On 23 June 2021, Ernst & Young reported to EQT and observed, amongst other things, that:

- (a) \$13.5 million had been spent to date, and El Caballo was not in a condition capable of accommodating residents;

- (b) the estimated total sale value range were EQT to divest itself of the El Caballo properties, was between \$7.2 and \$7.5 million;
- (c) based on the audited financial accounts of AHRCL in the 12 months ending 31 March 2021, ARHCL had recorded a net loss of \$409,00 primarily due to the operating costs associated with El Caballo; and the property will continue to operate at a loss of about \$171,000 per annum;
- (d) revenue assumptions provided by AHRCL that underpinned revenue forecasts were not supported by “sufficient evidence or information”.

On 21 October 2021, a competing valuation report, prepared by Property Valuation & Advisory (WA) (**PVA**) on instructions from Mr Nannup acting as chief executive officer of AHRCL, valued the El Caballo properties at between \$17,940,000 and \$19,910,000 (on an ‘as is’ and ‘as if completed’ basis, respectively). Mr Nannup’s instructions to PVA were to assess the property ‘based on a Fair Value adopting the Cost Approach... as the property is to be put to charitable purposes and not an ongoing commercial enterprise’.

PVA made clear that the ‘assessed Fair Values may not reflect Market Values and should only be relied on for the specific purpose for which it has been instructed’. (page 25-28).

More specifically, the PVA valuation reveals (page 4, 13, and 14-15):

- The ‘Cost Approach reflects the amount that would be required currently to replace the service capacity of an asset’;
- The assessment adopted by PVA ‘comprises the summation of the underlying value of the land for the current use and the depreciated value of the improvements’;
- As at end of July 2021, \$2.4 million had been expended on refurbishments and a further \$1.6 million was required to complete refurbishment; and
- Of the \$17.94 million and \$19.91 million values arrived at by PVA, \$2.4 million is land value, with the balance being the assessed cost to replace the improvements on the land; and

Clearly the valuations arrived at by PVA do not reflect the market value of the El Caballo properties. Rather, the PVA report values the properties based on land value, together with the cost of replacing the improvements. The utility of this type of speculative valuation, when assessing whether the trustee made a prudent investment decision when purchasing El Caballo is highly questionable and not clear.

In 2022, EQT commenced a divestment process to sell the El Caballo properties. The El Caballo Lifestyle Village (Property 2) was sold in 2023 for \$4 million, a loss of \$4.5 million. By letter dated 15 November 2024, EQT confirmed it ‘has been seeking to sell the Resort’ and ‘have been in negotiations with a prospective buyer’. However, Property 1 of the El Caballo properties had not been sold at the time of writing.

6. Retrospective Valuations of the El Caballo Properties

In its letter to the Commission dated 2 March 2023, EQT submits:

While we are confident in the processes we undertook to satisfy ourselves of the commercial value of the properties at the time, the transaction settled in March 2020 prior to:

- the Covid pandemic which placed significant downward pressure on commercial property values;
- the disclosure of the social housing project to existing residents of the retirement village; and the publicity around the project, likely had a negative impact on the commercial value of the lifestyle village
- the introduction and commencement of amendments to the *Residential Parks (Long Stay Tenants) 2006 Act* (WA) which created additional unanticipated liabilities on the Trust that weren't evident at acquisition. This has likely impacted value considerably- as the original owner had made numerous representations to the residents that were not fulfilled. We expect that this impact alone potentially creates a liability of several millions of dollars to the Trust.
- Rising interest rates have has a significant impact on the property market with all sectors facing significant decreases in valuations

We estimate the combination of these factors has had a financial impact on the value of the properties in the millions of dollars.

The Commission notes that to the extent that the relevant amendments to the *Residential Parks (Long Stay Tenants) 2006 Act* (WA) are the amendments introduced by Part 2 of the *Residential Parks (Long- stay Tenants) Amendment Act 2020* (WA), that act was introduced as a Bill on 17 August 2018.

To assist in the assessment of EQT's claims the Commission engaged Mr Keith Collins of Burgess Rawson to undertake a retrospective valuation as of 23 March 2020 of the El Caballo properties. The relevant question for the Commission being, was the amount paid for the El Caballo properties (\$12 million), in 2020, representative of a fair market value as at the time of purchase.

A site visit to the El Caballo properties, with the Commission present, was conducted by the valuers. I note Mr Collins engaged both a planner and engineer to assist in the valuation, and considered a large volume of documents, including those disclosed by the Shire of Northam relating to planning approvals. In conclusion, the retrospective valuation of the properties, as of 23 March 2020, were determined by the valuer to be, as follows:

- The El Caballo Lifestyle Village - \$4,100,000; and
- The El Caballo Resort - \$1,800,000.

The total combined value of the El Caballo properties was calculated as \$5,900,000. Noting the price paid by EQT in March 2020 was \$12,000,000, this leaves a discrepancy of \$6,100,000 between the assessed market value and the price paid (**11: Retrospective Valuations**).

7. The Commission's Preliminary View

Having regard to the disconnect between the value of the El Caballo properties as assessed by Ernst & Young in 2021 and Burgess Rawson in 2024, as against the price paid by EQT in March 2020, the Commission formed the preliminary view that it is reasonably arguable

that the purchase was imprudent, and that EQT did not comply with the duties attending the exercise of its investment power.

On the information available, EQT failure to obtain an independent valuation of the properties before applying approximately half of the fund's value to their purchase, indicates that EQT failed to discharge its duties to:

- (a) exercise the care, diligence and skill that a prudent person engaged in the business of acting as a trustee would exercise in managing the affairs of the trust (s 18(1)(a) of the Trustees Act);
- (b) act prudently and be satisfied that the particular purchase was one which will protect the trust assets;
- (c) have regard to the need to maintain the real value of the capital of the trust; the risk of capital loss or depreciation; and the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment (s 20(1) of the Trustees Act).

EQT relied too heavily on information it received from Mr Nannup, Mr Morley and Mr Young, which appears to have stood in place of an independent valuation which would have served to confirm the prudence of the impending significant transaction.

In addition, and following from the above, it is reasonably arguable that the later distribution to AHRCL of \$1.5 million for 'working capital' was a distribution not made in the best interests of the Community (as defined in the NCT Deed). That is because the merit of that distribution is inherently infected by the imprudence of the transaction upon which it is based, that is, the purchase of the El Caballo properties in the first instance. Had EQT acted prudently by obtaining an independent valuation of the properties, EQT likely would have declined to make the purchase, and in so doing necessarily avoided the later distribution.

Accordingly, and after considering all the available materials, the Commission formed the preliminary view that it is reasonably arguable that a breach of trust has occurred in the purchase, development and management of the El Caballo properties (**Preliminary View of the Commission**). Specifically:

EQT acted imprudently in breach of its duties by not undertaking sufficient due diligence, including by obtaining an independent valuation, prior to the exercise of its investment powers when purchasing the El Caballo properties; and

As a result of this breach, the subsequent distribution to AHRCL of \$1.5 million as working capital for the refurbishment of the El Caballo properties was not a distribution made in the best interests of the Community.

The preliminary view of the Commission was provided to both EQT and SWALSC on 3 February 2025, with response submissions received on 28 and 14 April 2025, respectively (**12: EQT response to PV; 13: SWALSC response to PV**). I further note that on 11 April 2025, EQT provided previously undisclosed documents to the Commission (**14: EQT further disclosures 2025**).

8. Further considerations of the Commission

Arising from the further submissions of EQT and SWALSC, the Commission considered the following:

- Was the purchase of the El Caballo properties the exercise of the investment power, or was it undertaken pursuant to the power to apply moneys provided by cl 6.1 of the NCT Deed;
- Does section 50 of the *Trustees Act 1962* (WA) assist EQT;
- Do Clauses 7 or 8 relieve EQT from liability;
- Is there a sufficient causal link between the approval and distribution of the \$12.5 million purchase funds for the El Caballo properties and the \$1.5 million “working capital” funds for the renovation of those properties; and
- Does any of the additional information provided change the position of the valuers.

For the reasons set out below, the additional information provided, has not altered the views of the Commission.

8.1. Investment vs application

In response to the Commission’s preliminary view, EQT argued that, in fact, the purchase of the El Caballo properties was undertaken pursuant to the power to ‘apply moneys’ provided by cl 6.1 of the NCT Deed, and that it was not a purchase pursuant to the investment power in that provision. Specifically, EQT states:

- 3.3 It is not correct to say that the purchase of the property by the trustee for the purpose of facilitating the delivery of charitable services was intended to be or was treated as an “investment”, or that the trustee only had power to acquire the relevant property under the NCT Deed pursuant to the investment powers of the NCT Deed contained in clause 6.3, and the “invest” limb of clause 6.1.
- 3.4 Rather, properly construed, the El Caballo acquisition comprised the application of trust funds for the acquisition of property for a charitable purpose in accordance with the NCD Deed, for which the trustee had the express power (to exercise in its absolute and uncontrolled discretion) [Clauses 13.2-13.2 of the NCT Deed] pursuant to clauses 5, 6.1 and 6.15 of the NCT Deed. Specifically, EQT was empowered to purchase property (under clause 6.15) by applying funds (under clause 6.1), which application was subject to the requirements of clause 5 of the NCT Deed. ...

Accordingly, EQT argue that ‘the Commission’s assessment of the acquisition through the lens of commercial investment practices, and ultimate determination, is founded on a false premise’ and that ‘there is no basis to find that there has been a breach of trust when the [purchase] is properly viewed as an application of the Trust Fund’.

The Commission carefully considered the arguments put forward by EQT in support of this position, especially at paragraphs 3.6 to 3.14. In addition, the Commission received and considered legal advice on the point of law raised. In conclusion, for the reasons set out below, the Commission has formed the view:

It is reasonably arguable that the acquisition of the El Caballo properties was the exercise of the *investment power* (and consequently, all positions reached regarding the use of the investment power stand); and

If it was not an exercise of the investment power, it is reasonably arguable that the power to apply moneys is conditioned by a duty to take the same care and skill as an ordinary prudent man of business would in making that acquisition decision.

8.2. Language used by EQT

Initially, and at the time it sought legal advice in June 2024, the Commission considered that the acquisition was made through the exercise of the investment power as that appeared to be the position that EQT took in its correspondence with the Commission. For example, in annexure 2 to Equity Trustees' letter to Ms Warbey dated 2 March 2023, Equity Trustees wrote, as an answer to item 2, and amongst other things, that (emphasis added):

"... In weighing these considerations it was determined the purchase was an appropriate *investment* for the Trust.

It is important to note that in making the decision whether to *invest* capital, in consultation with the SWALSC, we assigned significant weight to the social impact of the *investment* rather than normal *investment* returns, and with a view the asset was going to be held and *invested* in for the long term for the benefit of the Noongar community." (see also EQT's response to item 2A(iv) and 2B)

Subsequently, EQT has submitted further documents in support of the argument that the purchase was undertaken pursuant to the power to apply moneys (cl 6.1 of the NCT Deed), including the submission made to the Obligations and Discretions Committee along with annexures, minutes of a meeting of that committee held 15 January 2020 and others. I note, the Commission was only provided these documents by EQT for the first time on 15 April 2025 (see **14: EQT further disclosures 2025**).

Each individual piece of evidence will not be addressed here; however, the Commission has formed the view that taken as a whole, the submission made to the Obligations and Discretions Committee together with its annexures supports rather than detracts from the proposition that the power that was exercised was the trustee's power to invest. Accordingly, the Commission remains of the view that it is reasonable arguable that the purchase of the El Caballo properties was the purchase undertaken in the exercise of EQT's power to invest.

8.3. Power to apply moneys

Even if the power that was exercised was the power to apply moneys it is settled law that this power is conditioned at common law by a duty to exercise it with the same care and skill 'as an ordinary prudent man of business would' (see Jacobs Law of Trusts, 8th Edition, [17-18]). There is a question in this case as to whether cll 13.2 and 13.3 of the NCT Deed, which in effect provide that the trustee's discretion is absolute and uncontrolled, means that the trustee is discharged from this duty. The Commission is of the view that it does not. The Commission refers here to both *Elovalis v Elovalis* [2008] WASCA 141 at [63] and *Elder's Trustee & Executor Co Ltd v Higgins* (1963) 113 CLR 426, 448-449.

In conclusion, for these reasons, the Commission is of the view that, it is reasonably arguable that the power exercised was one of investment and, if it was not, then it was still

a power conditioned by the obligation to apply the same care and skill as an ordinary prudent person of business would.

8.4. Section 50 of the Trustees Act

EQT argues that it complied with s 50 of the Trustees Act and that by doing so it bound the Attorney General, as *parens patriae*, to the valuation of the El Caballo properties set out in the Scoping Report. The Commission is of the view that Mr Young, on whom EQT relies to invoke section 50, is not a 'duly qualified person' to value property. In that email, Mr Young describes his qualifications as follows:

I am the Managing Director of Spatial Property Group Pty Ltd, a specialist property developer, project management and real-estate company, formed in 2010 after spending the previous 10 years working with a major nationally listed property company. I hold degrees in Science and Town Planning, am a Certified Practicing Planner and have been a UDIA WA council member between 2006 and 2019, and a National UDIA council representative in 2007-9.

None of those qualifications are valuer qualifications. Further, Mr Young in his email appears to recognise his own lack of expertise as he explains that he sent the Scoping Paper to independent valuers (but recommended not proceeding with the valuation). Accordingly, section 50 of the Trustees Act does not appear to assist EQT given Mr Young is not a 'duly qualified person' within the meaning of s 50(1).

8.5. Liability – cl 7 and 8 of the NCT Deed

The Commission is of the view that, on the information provided, Clause 7 is not available to EQT for relief as the loss suffered by the Noongar Charitable Trust can be reasonably attributed to the 'wrongful act or omission' of EQT.

8.6. Causative link between \$12.5 million and \$1.5 million payments

EQT contends that there is no causative link between the application or investment of \$12.5 million to purchase the El Caballo properties and the application of the \$1.5 million to AHRCL for working capital to fund renovations of the El Caballo properties. In the further documents provided by EQT, the submission to its Obligations and Discretions Committee dated 14 January 2020 highlights that EQT sought approval from that Committee of both the \$12.5 million acquisition amount and the \$1.5 million remedial costs amount. They stand or fall together. But for the approval of the \$12.5 million, the \$1.5 million would not have been approved. Accordingly, the Commission remains of the view that sufficient causal link exists.

8.7. Updated retrospective valuation

The Commission invited the valuer to consider whether their opinion on the retrospective variation of the El Caballo properties remained the same after viewing the comments made by EQT, specifically at paragraphs 6.8 – 6.11 of **EQT response to PV**. The full response of the valuer is provided at **15: Updated retrospective valuation**. In summary, the valuer formed the view that the valuation remained the same:

Having regard to [the Commission's] request and our comments above, it is our opinion that our valuation remains the same. Nothing detailed in this information, or questions forwarded would give us reason to change our valuation figure. In addition, we can only value the subject given the information to hand at the time of the valuation. As previously mentioned, we can only go on the documentation and our expert information from experts to draw our conclusion from.

We reiterate that the property has had a checkered history. We draw you to the Ernst Young report, specifically, the weaknesses and threats detailed in the SWAT which should read 'SWOT', and the comments especially on Lot 87 on page 13, where it details "it is unlikely to be viable in the current market, due to the location, low demand, for such a use in the area, coupled with the anticipated costs associated with reinstating and operating a resort of this size and scale". This would reiterate my opinion regarding the El Caballo resort section.

9. Summary and final view

9.1. The findings of the Commission

The above reasons are a summary only; however, they are provided here to demonstrate that all contentions raised were considered by the Commission and legal advice obtained accordingly. Despite additional documents and new arguments provided by EQT, on all the information available to it, the Commission remains satisfied that the following findings are reasonably open to it to make:

EQT acted imprudently in breach of its duties by not undertaking sufficient due diligence, including by obtaining an independent valuation, prior to the purchase of the El Caballo properties; and

As a result of this breach, the subsequent distribution to AHRCL of \$1.5 million as working capital for the refurbishment of the El Caballo properties was not a distribution made in the best interests of the Community.

Accordingly, the Commission is of the view that EQT breached its duties as trustee of the Noongar Charitable Trust.

9.2. Restoration of the NCT

A trustee must compensate the trust estate for any property lost to it by his default (*Young v Murphy* [1996] 1 VR 279). Lord Browne-Wilkinson, in *Target Holdings Ltd v Redfern* [1996] AC 421 said:

The equitable rules of compensation for breach of trust have been largely developed in relation to such traditional trusts, where the only way in which all the beneficiaries' rights can be protected is to restore to the trust fund what ought to be there. In such a case the basic rule is that a trustee in breach of trust must restore or pay to the trust estate either the assets which have been lost to the state by reason of the breach or compensation for such loss. ... If specific restitution of the trust property is not possible, then the liability of the trustee is to pay sufficient compensation to the trust estate to put it back to what it would have been had the breach not been committed.

The liability of a trustee for a breach appears to be settled at law. EQT must compensate the Noongar Charitable Trust estate for the loss that occurred due to its breach. Accordingly, the Commission has provided EQT to 12 September 2025 to provide submissions as to the appropriate restoration sum. SWALSC have also been provided with a further opportunity to make submissions on this point, however, the Commission notes that comprehensive submissions have already been provided by SWALSC on the issue of loss.

9.3. Referral of matters to ORIC

Throughout the Commission's investigation various concerns have been raised by community members and on the information at hand about the conduct of current and former office-holders of SWALSC. SWALSC was formed under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) and is regulated by the Office of the Registrar of Indigenous Corporations (ORIC). ORIC's role includes ensuring that corporations registered under that Act comply with the law. The Commission has determined that information obtained during its investigation warrants a proactive referral to ORIC, and this will be undertaken once this report is provided to the Attorney General.

(end of report)

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