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Mr Toufic Issa [private address details not published]	Mr Peter Serrao c/o Mr John Whelan Samuel Griffith Chambers Level 30, Civic Tower 66 Goulburn Street SYDNEY NSW 2000 john@jjwhelan.com.au	Mr Geoffrey Gerard c/o Mr John Ralston Pigott Stinson GPO Box 3380 SYDNEY NSW 2001 j.ralston@pigott.com.au

Via email and Express Post

6 June 2018

Dear Sir/Madam

Reference No. DF17/006689
Matter Disciplinary Complaint
Licence name Parramatta Leagues Club Ltd
Complainant Mr Sean Goodchild, Director Compliance Operations Liquor and Gaming New South Wales
Issue Fitness and propriety of former directors of the Club: Mr Stephen Sharp, Mr Toufic Issa, Mr Peter Serrao and Mr Geoffrey Gerard
Legislation Part 6A of the *Registered Clubs Act 1976*

Final Decision on Complaint under Part 6A of the *Registered Clubs Act 1976* in relation to the Parramatta Leagues Club Ltd, Parramatta

The Independent Liquor and Gaming Authority (Authority) has finalised a disciplinary complaint (Complaint) made under Part 6A of the *Registered Clubs Act 1976* (Act) to the Authority on 21 September 2016. The Complaint is made by Mr Sean Goodchild (Complainant), Director Compliance Operations of Liquor and Gaming New South Wales (LGNSW), in his capacity as a delegate of the Secretary of the NSW Department of Justice, now NSW Department of Industry.

The Complaint letter comprised some 75 pages and was supported by hundreds of pages of evidence and material. The Authority made a preliminary decision to show cause on four of the seven grounds specified in the Complaint (Grounds 1, 2, 3 and 4), which are based upon section 57F(3)(g) of the Act. The Grounds allege that four former directors of the Club, Mr Stephen Brian Sharp, Mr Toufic Issa, Mr Peter Benjamin Serrao and Mr Geoffrey Maurice Gerard are not fit and proper persons to act as a member of the governing body of the Club.

On 19 December 2017 the Authority sent a detailed letter to the interested parties, notifying them of its findings that each of the former directors are not fit and proper persons to act as a member of the governing body of the Club.

The Authority invited the parties to make submissions on the question of disciplinary action. The Authority has considered the submissions made during January and April 2018. It has also accepted, and had regard to, the voluntary written undertakings that have been provided by the four former directors, that they will not stand for election, be appointed to or hold office as a club secretary or member of a governing body in respect of any registered club in New South Wales, for a period of three years.


In light of the particular facts and circumstances of this case, the Authority has determined to **not** take any disciplinary action under the Act against those persons.

The Authority orders, pursuant to section 57H(2)(i) of the Act, that the Club pay the Secretary of the NSW Department of Industry **\$99,476.44** for the Secretary's costs on the investigation within 28 days from the date of this letter.

Enclosed is a statement of reasons for the Authority's decision.

If you have any questions about this letter, please contact staff at the Authority Secretariat via email at ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

INTRODUCTION

Complaint Material

1. On 21 September 2016 the Independent Liquor and Gaming Authority (Authority) received a disciplinary complaint (Complaint) from Mr Sean Goodchild (Complainant), Director Compliance Operations of Liquor & Gaming New South Wales (LGNSW), in his capacity as a delegate of the then Secretary of the NSW Department of Justice. On 1 April 2017, the NSW Department of Industry became the responsible department for LGNSW and for this Complaint.
2. The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (Act) in relation to the Parramatta Leagues Club Ltd (Club). It comprises a cover letter from the Complainant dated 21 September 2016 (Complaint Letter) and a bundle of 1,954 pages of supporting material (Complaint Material).
3. The Complaint Letter in its initial form specified seven grounds of complaint (Grounds), each of which concerned a former director of the Club. The Complainant alleges that each of these seven individuals is not a fit and proper person to act as a member of the governing body of a registered club, by reason of the allegations specified therein.
4. However, following a preliminary assessment of the Complaint, the Authority was not satisfied, on the evidence or material then before it, that it was in the public interest to pursue Grounds 5, 6 and 7. Notably, those Grounds concerned three former directors who had been appointed to the Club board during the latter part of the relevant period of this Complaint and who were not registered National Rugby League (NRL) Game Officials.

The Registered Club and the Parramatta National Rugby League Club

5. This Complaint is not based upon any alleged or proven contraventions of New South Wales liquor and gaming legislation. Rather, the allegations particularised in Grounds 1 to 4 concern acts or omissions by the Club's former directors *vis a vis* the NRL Rules (Rules) and/or NRL Code of Conduct (Code), administered by the NRL.
6. The NRL is a private commercial organisation that administers the national rugby league competition through a series of contractual relationships with the competing football teams and individuals who are registered to participate in that league. The Parramatta National Rugby League Club Ltd, ABN 66 092 536 519 (PNRL) is the relevant corporate entity through which the *Parramatta Eels* rugby league team participates in the NRL competition.
7. Nevertheless, the affairs of PNRL are directly relevant to the affairs of the Club in several important respects. First, PNRL is wholly owned by the Club. Second, during the relevant period of this Complaint the PNRL was directed by an identical board to the Club's board. Third, clause 12 of the Club's constitution specifies that the objects of this registered club include, *inter alia*:
 - (a) *To manage, conduct, control and promote the game of rugby league football in the Parramatta district or elsewhere.*
 - (b) *To assist generally in the promotion, conduct and propagation of rugby league football in the Parramatta district or elsewhere and to promote or assist in the provision of training and conditioning and teaching facilities for football played in accordance with the rules of the New South Wales Rugby League Limited.*
 - (c) *To render aid either by financial or other means to clubs and associations in the Parramatta district or elsewhere, which clubs and associations are playing or*

conducting football played in accordance with the rules of the New South Wales Rugby League Limited.

- (d) *To provide football grounds and ovals at or near Parramatta or elsewhere for the playing and practising of the game of football and for training for football and to layout, prepare, construct, alter and maintain grounds and ovals for football and other purposes of the Club and to provide, layout, prepare, construct, alter and maintain clubhouses, pavilions, dressing rooms, grandstands and other accommodation and facilities for spectators and other conveniences in connection therewith.*
- (e) *To provide financial or other assistance to other football codes, sports and activities in the Parramatta district or elsewhere.*
- (f) *To provide for members and their guests a social and sporting club with all the usual facilities of a club including residential and other accommodation, liquid and other refreshment, poker machines and other forms of gaming devices, and provision for sporting and other social and recreational facilities.*

8. All registered clubs in New South Wales must be established for a *bona fide* social, literary, political, sporting, athletic or any other lawful purpose within the meaning of section 10 of the Act. It follows that the legal entitlement of the *Parramatta Eels* to participate in the NRL competition is a major asset of the PNRL that is ultimately controlled by the Club through its ownership of PNRL. The Authority considers that this asset is of fundamental importance to the Club's pursuit of its relevant sporting purpose as a registered club notwithstanding that the PNRL requires substantial financial support each year from the Club.
9. The Club also conducts substantial liquor, gaming and hospitality operations which derived revenue in the order of \$82 million during the 2015 calendar year, as disclosed in the extract of the 2015 Annual Report for the Club which forms part of the Complaint Material. While the Club is open to membership from the broader community, the Authority considers it likely that *Parramatta Eels* supporters form a substantial component of Club members, who patronise the Club and consume its licensed entertainment services.
10. A copy of the Club's liquor licence as at 18 March 2016 extracted from the LGNSW *OneGov* database is included with the Complaint Material and records that this licence pre-dates the commencement of section 11A of the *Liquor Act 2007* (Liquor Act). Consequently, the Club may sell or supply liquor for consumption on the premises 24 hours per day should it elect to do so. The licence records that the Club may sell or supply liquor for consumption off the premises between 5:00am and 10:00pm on Monday through Saturday and from 10:00am to 10:00pm on Sunday. Notwithstanding the licence record, from 16 December 2016 clause 70AB of the *Liquor Regulation 2008* (Liquor Regulation) permits a licensed premises in the position of the Club to sell takeaway liquor until 11:00pm on Monday through Saturday.
11. The *OneGov* licence record also notes that the Club has a gaming machine threshold (being the maximum number of machines that may be kept on the premises pursuant to section 32 of the *Gaming Machines Act 2001*) of 520. The Club currently holds 520 gaming machine *entitlements* and is therefore operating to the limit of this very large threshold. The Club's gaming machines are subject to a mandatory daily shutdown period pursuant to section 39(1) of that Act that is fixed between 6:00am and 9:00am.
12. The Authority notes that on 20 July 2016, the Authority appointed Mr Max Donnelly of the insolvency practice *Ferrier Hodgson* as temporary administrator (Administrator) of the Club pursuant to section 41A of the Act. While the Complaint Letter briefly refers to this appointment, which was made in response to a submission from the LGNSW Director of Compliance alleging that the Club's board had ceased to be effective as a governing body, that previous LGNSW submission does not form part of the material before the Authority in this Complaint.

13. At the time of this letter the Administrator continues to exercise the functions and responsibilities of the governing body for the purposes of the Act.

GROUNDS OF COMPLAINT

14. Grounds 1 to 4 of the Complaint Letter, in respect of which the Authority has decided to show cause, are all based upon the statutory ground that is available under section 57F(3)(g) of the Act, which states:

that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such.

15. Section 57F(3)(g) must be read together with section 57E(1), which provides that a reference in Part 6A to “a secretary of a registered club” includes a reference to a person who was the secretary of the club, and a reference to “a member of the governing body of a club” includes a reference to a person who was a member of the governing body of any registered club.

16. **Ground 1** alleges that Mr Stephen Sharp, a former director and member of the governing body of the Club, has demonstrated that he is not a fit and proper person to act as such by reason of his:

- (i) Failure to exercise his duties as a director with a degree of knowledge, ability, honesty, care and diligence required for the position and expectations of members, industry and the community.
- (ii) Failure to act honestly and openly and in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.

17. **Ground 2** makes the same allegation against Mr Toufic Issa, a former Club director and member of the governing body of the Club.

18. **Ground 3** makes the same allegation against Mr Peter Serrao, a former Club director and member of the governing body of the Club.

19. **Ground 4** makes the same allegation against Mr Geoffrey Gerard, a former Club director and member of the governing body of the Club.

20. The Complaint Letter specifies numerous particulars (Particulars) in support of each of these Grounds that, it is said, establish a lack of fitness and propriety on the part of each former director. While the case against Mr Sharp in Ground 1 is the most extensive, there is a considerable degree of commonality in the allegations levelled against each former director in respect of each director’s responsibility for the adverse consequences to which the Club was exposed as a consequence of PNRL’s non-compliance with the NRL Rules and NRL Code. These Particulars and each former director’s response (if any) are discussed in the Findings below.

Background to the NRL Rules and NRL Code

21. In the introduction to the Complaint Letter the Complainant refers to relevant provisions of the NRL Rules and/or NRL Code. Noting that each of the four former directors in Grounds 1 to 4 were registered NRL “game officials”, the Complainant contends that these individuals were under an obligation to the NRL to comply with all NRL Rules and the NRL Code at all relevant times whilst holding that status.

22. The Complainant further submits that, in accordance with Rule 108 of the *Playing Contract and Remuneration* rules (PCR Rules), the Chairperson and Chief Executive Officer of each participating *NRL club* are required to submit pre-season and post-season declarations to the NRL, declaring their compliance with the NRL Salary Cap Rules.

23. Rule 108 of the PCR Rules states:

Post-Season Declaration of Remuneration

(1) *Prior to 31 October of each Season, the chief executive officer and the chairman of the board of directors of each Club (and such other Club Officials as the Salary Cap Auditor, in his absolute discretion, may in writing direct) shall each:*

(a) *Make all due and proper enquiries in order to ascertain the nature and the amount of all of the Remuneration, whether included Remuneration or Excluded Remuneration, which has been paid or is to be paid by, or on behalf of, the Club to, or on behalf of, each Player engaged by, or on behalf of, the Club for the Season just completed;*

(b) *Declare and execute a Post-Season Declaration of Remuneration, being a statutory declaration in accordance with the terms of Form 5 to these Rules setting out, to the best of his knowledge, information and belief:*

(i) *A list of the names of every Player engaged (whether by NRL Playing Contract, Playing Agreement or otherwise) by, or on behalf of, the Club during the Season just completed;*

(ii) *Details of the nature and the amount of all Remuneration, whether included Remuneration or Excluded Remuneration, which has been paid or is to be paid by, or on behalf of, the Club to, or on behalf of, each Player for the Season just completed; and*

(iii) *The total amount of the Remuneration, whether included Remuneration or Excluded Remuneration, which has been paid or is to be paid by, or on behalf of, the Club to, or on behalf of, all of its Players for the Season just completed; and*

(c) *Lodge that Post-Season Declaration of Remuneration with the Salary Cap Auditor by 31 October of each Season.*

(2) *Each of:*

(a) *The Club;*

(b) *The chief executive officer of the Club;*

(c) *The chairman of the board of directors of the Club; and*

(d) *Any Club Official that the Salary Cap Auditor has directed pursuant to sub-Rule (1);*

Shall ensure that the contents of any statutory declaration provided pursuant to sub-Rule (1) are true and correct to the best of the knowledge, information and belief of the person making it.

(3) *In any breach proceedings brought pursuant to Part 2 of the NRL Rules for a contravention of sub-Rule (2) against a Club, a chief executive officer of a Club, a chairman of a Club or a Club Official it will be sufficient proof that contravention if it is established that the statutory declaration in question was deliberately false in a material particular unless the Club, the chief executive officer of the Club or the chairman of the Club, as the case may be, proves that:*

(a) *The maker of the statutory declaration made all due and proper enquiries in accordance with sub-Rule(1)(a); and*

- (b) *The information included in the statutory declaration which was false was so included through no want of care of diligence on his part.*

24. The NRL Salary Cap (Salary Cap) is a limit that is imposed upon all participating NRL teams regarding the total remuneration that may be paid to NRL players. Compliance with the Salary Cap is governed by Rule 28(2) of the NRL Rules and Rule 60 of the PCR Rules, which states:

Rule 28(2)

Every Club and every person bound by these Rules shall comply in all respects with the NRL Playing Contract and Remuneration Rules.

Rule 60

- (1) *Subject only to the other provisions of this Chapter, each Club must ensure that the total aggregate Remuneration paid to its Players with respect to any one Season does not exceed the Salary Cap.*
- (2) *A Club shall be taken to have failed to ensure that the total aggregate Remuneration paid to its Players with respect to any one Season does not exceed the Salary Cap if:*
- (a) *Any agreement or arrangement (including an NRL Playing Contract, NRL Short Form Contract, Playing Agreement, Non-Playing Agreement or Third Party Agreement) is entered into by a Club;*
- (b) *A commitment is otherwise made by, or on behalf of, a Club;*
- the effect of which will be that the total aggregate Remuneration to be paid by the Club to its Players with respect to any one Season will exceed the Salary Cap, irrespective of whether that Remuneration is later paid to its Players within the meaning of Rule 68 or not.*
- (3) *For the avoidance of doubt, any reference in this Rule to "Remuneration" is intended to be a reference to Remuneration that is, or will be, included in the Salary Cap Calculation for a Club.*

25. Rule 59 of the PCR Rules provides for four separate divisions in respect of the Salary Cap, as follows:

Rule 59

- (a) *the maximum aggregate Remuneration that can be paid by a Club to all of the Players who were entered on the Top 25 NRL List for that Club at any one time in the applicable season (the Top 25 NRL Cap);*
- (b) *the maximum aggregate Remuneration that can be paid by a Club to all other Players who were registered to play and did play in the NRL Competition for that Club in the applicable season (the Second Tier NRL Cap);*
- (c) *the maximum aggregate Remuneration that could be paid by a Club to all of the Players who were entered on the Top 20 NYC List for that Club at any one time in the applicable season (the Top 20 NYC Cap); and*
- (d) *the maximum aggregate Remuneration that may be paid by a Club to all other Players who were registered to play and did play in the National Youth Competition for that Club in the applicable season (the Second Tier NYC Cap).*

26. The Complainant observes, by way of background, that "third party arrangements" (TPAs) may include *legitimate* arrangements entered into between NRL players and *other* entities,

outside of their playing contracts, which are *not* included in calculations of the salary cap for the relevant NRL club – provided that the club does not have any involvement in the establishment or conduct of such arrangement.

27. The Complainant submits that TPAs must be conducted and completed “at arm’s length” from the relevant NRL club and if not, the money earned by the NRL player pursuant to that TPA is required to be included within the Salary Cap calculation for their NRL club.
28. Paragraph 48 refers to Rule 16 of the NRL Code. The Authority has obtained a copy of the 2016 edition of the Code, which states:

If any Club or person bound by this Code reasonably suspects that a breach of the NRL Rules, including all Schedules and Guidelines to those Rules, that is:

- (1) This Code (including Addendum A and Addendum B);
- (2) Schedule Two – *NRL Anti-Doping Rules*;
- (3) Schedule Three – *NRL Anti-Vilification Code*;
- (4) Schedule Four – *NRL Judiciary Code of Procedure*;
- (5) Schedule Five – *NRL Appeals Committee Procedural Rules*;
- (6) Schedule Six – *NRL Playing Contract and Remuneration Rules*;
- (7) Schedule Seven – *NRL Player Welfare Rules*;
- (8) Schedule Eight – *NRL Operations Manual*; and
- (9) Schedule Nine - *NRL Testing Policy (Illicit & Hazardous Drugs)*.

has occurred, it is the duty of that Club or person to report that suspected breach to the NRL Integrity and Compliance Unit as soon as possible after forming the relevant suspicion.

29. As discussed below, it is the alleged failure by the Respondent Club and PNRL directors who were also Registered Game Officials, to disclose reasonable suspicions that certain TPAs had contravened the PNRL’s Salary Cap, that forms the core of the Complaint against these directors.

DISCIPLINARY ACTION RECOMMENDED BY THE COMPLAINANT

30. The Complainant alleges that the former Club directors named in Grounds 1 to 4 contravened the NRL Code by *failing to disclose* breaches of the NRL Salary Cap Rules with regard to the conduct of TPAs.
31. The Complainant contends that each of these directors failed to familiarise themselves with the NRL Rules which, if and/or when breached, gave rise to a significant risk to the *Parramatta Eels* NRL licence – and in turn put the business affairs of the Club and the best interests of the Club’s members at risk.
32. These failures, it is said, resulted in the imposition by the NRL of two significant financial penalties against the PNRL amounting to \$1,465,000.00 for which the Club is ultimately responsible as the parent entity.
33. The Complainant makes the general submission that registered club directors who act in a way that jeopardises the interests of club members are a threat to the industry as a whole, and that public confidence in registered clubs is undermined whenever governing bodies demonstrate a “lack of integrity and accountability”.
34. The Complainant submits that the conduct of the former directors fell well short of community expectations in managing the affairs of the Club with integrity, trust and accountability.
35. The Complainant recommends that the Authority make the following orders, should the respective Grounds of Complaint be established:

- Pursuant to section 57H(2)(g) of the *Registered Clubs Act 1976*, declare Messrs Stephen Brian Sharp, Toufic (Tom) Issa, Peter Benjamin Serrao and Geoffrey Maurice Gerard ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:
 - (i) The Club; and
 - (ii) All other registered clubs,for a period of 3 years.
- Pursuant to section 57H(2)(i)(i) of this Act, order the Club to pay the amount of any costs incurred by the Secretary in carrying out any investigation or inquiry under section 35A in relation to the Club.

CONSULTATION ON THE COMPLAINT

First Round of Submissions in Response to Show Cause Notices

36. On 10 April 2017, a Show Cause Notice was issued by the Authority to the Club and invitations to make written submissions were also sent to the four individuals named in Grounds 1 to 4 of the Complaint Letter (Respondents).
37. The entire Complaint Material was collated by the Authority into an indexed, searchable document in PDF format (Master PDF) and made available to the Club and Respondents in electronic form.
38. Submissions were initially sought pursuant to a timetable that would conclude by 8 May 2017. However, by reason that one of the respondent directors, Mr Gerard, was out of the country at the time that the invitations to make submissions were issued, the Authority extended this timetable so that any requests for particulars or submissions of an interlocutory nature may be made by 1 June 2017, with any submissions addressing the merits of the Complaint due by 13 July 2017. If no requests for particulars or submissions of an interlocutory nature were filed, submissions on the merits of the Complaint would be due by 1 June 2017.
39. The Respondents were invited to make submissions in writing, with any evidence to take the form of a statutory declaration.
40. On 8 May 2017 Mr Sharp made a submission addressing the merits of the Complaint. This took the form of a 16-page unsworn letter to the Authority providing some background about his history of involvement with the *Parramatta Eels* football team and the Club, the history of factionalism at the Club, his involvement as a Club director and Chairperson, his level of experience and training for the role and as an NRL Registered Official, submissions and contentions in response to certain allegations made in the Complaint Letter, and more general submissions going to his personal reputation and character.
41. On 19 May 2017 Mr Luke Hamblen, a solicitor with the law firm *King & Wood Malletsons*, provided a 2-page submission to the Authority on behalf of the Club's Administrator, Mr Donnelly. This letter provides concise submissions on why the Authority should not pursue a "costs sanction" against the Club. The Club does not provide any submissions or evidence addressing the merits of the Complaint, but requests the Authority to "confirm" whether or not costs will be ordered against the Club.
42. On 29 May 2017, Mr Serrao emailed the Complainant directly, copying the Authority Secretariat and seeking further and better particulars of the Complaint. Mr Serrao advised that he was instructing a Sydney barrister, Mr John Whelan, and requested the Complainant to provide him with a copy of Complainant documents "040" and "041" in the Complaint

Material, the “generic” guidelines referred to in paragraph 275 of the Complaint Letter and the “Induction” document that each Club director undertook when elected to the Club during the period between 2013 and 2016. Mr Serrao also requested information on the definitions of “fit and proper” and “arm’s length” relied upon in the context of this Complaint.

43. On 1 June 2017, Mr Serrao sent another email to the Complainant requesting further documents, being copies of the minutes of all Club board meetings from May 2013 until July 2016.
44. On 1 June 2017, Mr Issa made a submission addressing the merits of the Complaint. This took the form of a 5-page unsworn letter to the Authority providing a response to the “substantive issues” raised in the Complaint – being the breaches of the 2014, 2015 and 2016 season salary cap and NRL penalties issued against the PNRL, the failure to report breaches of the NRL Rules to the NRL and Police, and breaches of the NRL Code of Conduct and the Club Directors’ Handbook. Mr Issa also made some further general submissions on the Complaint.
45. Attached to Mr Issa’s submission is a 23-page submission letter that he had previously made to the NRL through Carroll & O’Dea Lawyers dated 8 June 2016, in response to the 2016 NRL Breach Notice issued by the NRL. Mr Issa also provided 16 annexures that had accompanied that submission. Those annexures comprised:
 - **Annexure A:** Letter from the Club to Assetlink terminating the agreement between those parties;
 - **Annexure B:** Deed of Release between the Club and Legends Lounge which terminated the agreement as of 27 March 2014;
 - **Annexure C:** Email between Chamoun of E-Group Security and Bevan Paul, where Mr Paul reduced the level of work being provided by E-Group Security to the Club in June 2014;
 - **Annexure D:** Email chain between Ms Cappelli of the Club and E-Group Security, completely cancelling the ongoing relationship with the Club in March 2015;
 - **Annexure E:** Financial Authority Matrix for the Club which was adopted in around January 2014;
 - **Annexure F:** Mr Issa’s diary note from a meeting between himself and Mr Seward discussing Mr Seward’s role and the unwritten code of conduct at the Club;
 - **Annexure G:** Text message exchange between *Parramatta Eels* coach Brad Arthur and Mr Seward regarding Mr Seward’s negotiations with NRL players;
 - **Annexure H:** Offer of contract made by Mr Seward to Will Hopoate;
 - **Annexure I:** Email dated 23 May 2015 where Mr Sharp instructed Mr Seward to hand over the contracts with NRL players Chris Sandow and Will Hopoate to PNRL Head of Football Mr Daniel Anderson;
 - **Annexure J:** Letter from the NRL to the Club identifying a “questionable clause” in the contract with NRL Player Kieran Foran to terminate his contract and receive full salary pay during the year he terminated;
 - **Annexure K:** Email exchange between Mr Seward and NRL player Anthony Watmough’s manager George Mimis, regarding the offer made to Mr Watmough;
 - **Annexure L:** Email from Mr Seward to Mr Arthur and Mr Anderson dated 16 October 2014 which includes an offer to Mr Watmough for the 2018 season;
 - **Annexure M:** Email chain between Mr Issa and Head of Communications at PNRL Mr Josh Drayton, showing the different proposed wordings of the press release announcing Mr Seward’s resignation;
 - **Annexure N:** Text message sent from Mr Arthur to Messrs Sharp and Issa regarding PNRL Football Operations Coordinator/Team Manager Mr Jason Irvine’s “tendency to act outside of his designated role”;
 - **Annexure O:** Copy of the minutes of the PNRL board meeting of 29 January 2014;
 - **Annexure P:** Salary Cap Sub-Committee Charter for the PNRL prepared by Mr Ian Schubert.
46. On 1 June 2017, Mr Gerard made a submission addressing the merits of the Complaint. This took the form of a 5-page unsworn letter to the Authority providing submissions and contentions in response to some of the allegations made in the Complaint Letter, submissions on the appointment of Mr John Boulous as the PNRL’s interim CEO, and some

further general submissions on Mr Gerard's role within the Club in the context of this Complaint.

47. On 14 June 2017, the Complainant submitted via email its response to Mr Serrao's request for further and better particulars dated 29 May 2017. Briefly, the Complainant states that Complainant documents "040" and "041" were not provided to LGNSW and are not relied upon in this Complaint; that the reference to "generic" guidelines in paragraph 275 of the Complaint Letter is an apparent reference to the former Club "Code of Conduct", which is *not* relied upon in this Complaint; and that LGNSW is not in possession of any Club "Induction" documents and does not rely upon such material for the purposes of this Complaint. The Complainant also provided some brief commentary on what the concepts of "fit and proper" and "arm's length" entail.
48. On 26 June 2017, Mr Serrao's request for access to the minutes of all Club board meetings from May 2013 until July 2016 was voluntarily attended to by lawyers for the Club, with a copy subsequently provided to the Authority.
49. On 14 July 2017 Mr Serrao made a submission addressing the merits of the Complaint as it concerns him. This took the form of a 22-page unsworn letter to the Authority dated 13 July 2017 providing some "general observations" about the Complaint, submissions on why it is "unreasonable" to hold him to account for the breaches of the NRL Rules by the PNRL, an account of the history of his involvement with the Club and as a Club director, and submissions on his level of experience and training for the role of Club director and an NRL Registered Official.
50. Mr Serrao provided some detailed submissions and contentions in response to certain allegations made in the Complaint Letter, and more general submissions going to his personal reputation and character. Attached to Mr Serrao's submission are six letters comprising character references in support of Mr Serrao, a copy of Mr Serrao's *curriculum vitae* and a list of seven additional people who Mr Serrao states can be contacted if required.

Second Round of Submissions

51. On 13 September 2017 the Authority Secretariat circulated the submissions made by the Club and the former directors Messrs Sharp, Issa, Serrao and Gerrard and the additional material provided by the Complainant and the Club in response to Mr Serrao's request for particulars among each of the Respondents, with a copy provided to the Complainant.
52. The Complainant was invited to provide any further submissions in response to that material by 26 September 2017 and the Respondents were given until 26 October 2017 to provide any submissions or evidence in reply to the Complainant, or each other.
53. On 26 September 2017 the Complainant advised that it relies upon the details and Grounds provided in the original Complaint and does not propose to provide any further submissions at this time, noting that there will be a further opportunity to make submissions on the question of any disciplinary action.
54. On 26 September 2017 the Authority received a one-page submission from Mr Serrao, with no further submissions made by any other Respondent. Mr Serrao makes several brief statements or observations in response to the submissions from the Club and Mr Issa.
55. In reply to paragraph 28 of Mr Issa's submission, where Mr Issa contends that during December 2015 the acting CEO of PNRL, Mr John Boulous, followed the advice of PNRL legal counsel in not making a disclosure to the NRL or Police, Mr Serrao states:

I am not aware of these matters that were raised at a PNRL Board meeting.

56. In reply to paragraph 29 of Mr Issa’s submission, where Mr Issa states that during December 2015 he sent an email to Club CEO Mr Bevan Paul about Mr Seward’s behaviour, Mr Serrao states:

Mr Issa never disclosed this to the full Board at Board meetings. Mr Paul never disclosed this matter at that time yet it is alleged that NRL is in possession of that email. If this exchange did take place then the discovery of material would have placed an obligation by both Mr Issa and Mr Paul to report this matter in a Board meeting to the full Board. I ask ILGA to source that material for clarity of this incident.

57. In reply to paragraph 2 of the Club’s submission, Mr Serrao comments or questions why, when Mr Paul asked Mr Sharp to report the Black Citrus matter to the NRL and Mr Sharp did not, Mr Paul did not raise this matter with the full board of the Club in order for it to take action.

58. Mr Serrao makes the general submission that:

I relied on fellow Directors and the CEOs, as well as other employed executives to provide any important detailed information necessary in a timely manner to make informed decisions.

59. Mr Serrao requests that the Authority provide a copy of a transcript of the prosecution of Mr Seward and the Police Statement of Facts in that matter, submitting that this would “assist in my defence” alleging that “it appears that Mr Seward has indicated that he was directed by two directors however Seward was not required to disclose this under oath”.

Meeting with Mr Serrao and Complainant

60. At 2pm on 28 November 2017 Mr Serrao attended an informal meeting under section 36B of the *Gaming and Liquor Administration Act 2007* with Authority Chairperson Crawford and Authority Members Parbery and Smith. Also in attendance was Mr Serrao’s barrister, Mr Phelan, the Authority’s General Counsel and two members of staff of the Authority Secretariat.
61. Although accompanied by Counsel, Mr Serrao primarily addressed the Authority directly. The key points that he sought to emphasise in oral submissions are summarised as follows.
62. Mr Serrao contends, by way of background, that there was a deep-seated culture of factionalism and corporate governance issues (including lack of probity and “some” financial impropriety) at the Club prior to his appointment in 2013. This factionalism remains evident from the recent voting down of suggested constitutional reforms proposed by the current Club Administrator, Mr Max Donnelly. Mr Serrao contends that he too had participated in previous attempts to reform the Club’s corporate governance that had been voted down by the members.
63. Mr Serrao specifies that his contribution to corporate governance matters during his time as a Club director included the following:
- Investigating previous conduct.
 - Placing new corporate governance controls and procedures in place.
 - Requiring board approval for the “Top 5” executive remuneration.
 - Requiring auditor concurrence with approval of staff bonuses.
 - Proper maintenance of a Register of Club directors’ personal interests.
 - Obtaining three quotes to review the performance of Club CEOs Mr Paul and Mr Seward.
 - Implementing changes to the Club’s financial authority matrix and delegations.
 - Introducing a purchase order system.

- Benchmarking the top 5 executive salaries against other clubs in the industry.
 - Going to an open market process for the appointment of a new PNRL CEO in September 2015.
 - Improved reporting, with the board requiring regular reports on expenditure, including cumulative reports each year to check whether any payments were being made in a manner that avoided delegation limits.
- 64.** Mr Serrao makes the more general contention that he was diligent with respect to his board work, reading board papers and attending meetings. However, some of the reforms that he supported were thwarted by Club members. During 2014 he sought the implementation of the Directors Code of Conduct as a formal part of the constitution, a rule requiring the periodic replacement of Club directors and the appointment of a non-elected independent director to the governing body. These measures were voted down by a “hostile” Annual General Meeting.
- 65.** Mr Serrao emphasises that he sought better regulation of the Club’s financial delegations and while those reforms were implemented, Mr Seward deceived the board in respect of the matters that are subject to this Complaint.
- 66.** In respect of PNRL’s Salary Cap compliance, Mr Serrao refers to his first written submission to the Authority in response to this Complaint, contending that as a board member he relied upon the advice of relevant full time executive staff at PNRL who had a duty under the NRL Rules to monitor and report on such matters. Mr Serrao notes former PNRL chief executives Mr Ken Edwards and Mr Scott Seward, PNRL Recruitment Manager Mr Peter Nolan, PNRL Head Coach Mr Brad Arthur, PNRL Head of Football Mr Daniel Anderson and the Club’s finance manager (who was not specified).
- 67.** Mr Serrao further submits that since he was not on any relevant PNRL committees pertaining to PNRL player remuneration or recruitment, he was reliant upon the information presented to the board with respect to any non-compliance.
- 68.** Mr Serrao also refers to the role of former PNRL CEO Mr Seward, submitting that the “mentor” relationship between Mr Greenberg and Mr Seward gave Mr Serrao and others on the board a degree of confidence about Mr Seward’s role and relationship with the NRL.
- 69.** Mr Serrao refers to the board’s response to the NRL Breach Notice in early 2015, contending that PNRL engaged expert external consultants, including Mr Ian Schubert and PricewaterhouseCoopers (PwC), upon whose advice and recommendations the board relied. Mr Serrao further contends that in response to the second NRL Breach Notice received during 2016, Mr Schubert had advised PNRL that the quantum of breach alleged by NRL was “worthy of reconsideration”. Mr Serrao also refers to the board’s reliance upon the PNRL/Club’s legal counsel, Mr De Mestre, contending that at no stage did Mr De Mestre advise the PNRL/Club board that they must report any matters to the NRL.
- 70.** Mr Serrao submits that his time on the Club/PNRL board was made quite difficult by reason of the lack of honest and transparent disclosure of information to the board by the former PNRL CEO, Mr Seward and some full-time executives (who are not specified), which made for a dysfunctional environment. Without naming them, Mr Serrao contends that some employees had allegiances to previous factional “warlords” with the CEO Mr Paul having to remove them by reason of them either withholding information or not fully disclosing information.
- 71.** Mr Serrao further submits that an investigation process was started by the board with regard to Salary Cap non-compliance. However, the environment on the board was combative, with the board split at times. Club directors resigned to create vacancies for former “factional” directors to come on board and directors would leak information discussed at board meetings to the media.

72. Nevertheless, Mr Serrao states that he trusted the PNRL staff and executives (particularly Mr Seward and Mr Paul) to do their jobs diligently, tell the truth and to report back any issues to the board.
73. Mr Serrao submits that it was his job as a director to ask questions, and this is what he did, as evidenced by Minutes recording Mr Serrao asking questions around Salary Cap compliance, the Premiership Club and TPAs. Mr Serrao contends that at times he was unable to make informed and diligent decisions by reason that relevant information was not provided to him.
74. Mr Serrao reiterates his reliance upon expert advisors and staff, submitting that while some of these experts provided information in a diligent matter (PWC and Mr Schubert) others, like Mr Seward, were “deceptive” and misplaced the board’s trust.
75. Mr Serrao makes the broader submission that he is a credible person, a senior public servant who works in a very “self-regulated” environment. His written referees attest to his integrity and credibility. He has never been involved in a disciplinary matter before, has performed numerous hours of community service, performed charity work and volunteer work. Having performed over 20 years of work with the Parramatta Junior Rugby League he was granted life membership. Mr Serrao contends that he was asked to run for the board by reason of his rugby league knowledge, commercial experience and lack of factional ties.
76. Mr Serrao emphasises the impact that the Salary Cap scandal has had upon him, particularly adverse media coverage, affecting his personal reputation and family. Mr Serrao submits that he was always undertaking his duties as a director in the best interest of the Club and asks that the Authority take no further action.
77. Mr Serrao’s Counsel, Mr Whelan made some brief submissions on the importance of procedural fairness and contrasted favourably the Authority’s conduct of this Complaint process with the NRL inquiry to which the Complaint refers. Mr Whelan notes the Authority’s role as an arbiter of fact and submits that proper weight should be given to the matters raised by Mr Serrao at this meeting, including Mr Serrao’s role as a senior public servant and his “reform agenda” while a director.
78. The Complainant, represented by Mr Sean Goodchild, made no further submissions and relies upon the written material before the Authority. The Complainant briefly noted, when questioned by the Authority Chairperson, that the additional material sought by Mr Serrao (the emails referred to in Mr Issa’s submission) were not before the Complainant and are not relied upon in this Complaint.
79. During the meeting Mr Serrao referred to the request made in his second submission on this Complaint dated 26 October 2017 to access certain emails referred to in the submissions from Mr Issa dated 29 May 2017, where Mr Issa had referred to advice sent from PNRL Legal Counsel to the acting CEO during December 2015 to not yet disclose matters to the NRL or the Police. Mr Issa claims that contrary to this advice, he instructed the CEO, Mr Paul, to notify Police and NRL of the issues that had been raised with respect to Mr Seward by Mr Boulous, Mr Mulherin, Mr Schubert and PwC.
80. Mr Serrao contends that any such email from PNRL Legal Counsel wasn’t provided to the full board and he was not aware of any email from Mr Issa to Mr Paul asking that Mr Seward’s conduct be reported to Police until he saw Mr Issa’s submission dated 29 May 2017.
81. In response to a question from the Authority General Counsel as to how obtaining those emails would assist Mr Serrao to respond to the matters raised against him, Mr Serrao states that he had not seen any reference to matters that may have involved a proposed report to Police before, which is suggested in the emails referred to by Mr Issa.

82. The Authority Chairperson observed that these emails are not before the Authority and it would only be if those emails were corroborative of some element of Mr Serrao's response to this Complaint that the Authority would need to obtain it.
83. Authority Member Smith noted Mr Serrao's reference to the investigations conducted by the PNRL board and drew Mr Serrao's attention to the September 2015 PNRL board meeting, where the PNRL Club Chairperson, Mr Sharp, advised that the proposed investigation into PNRL Salary Cap breaches would not continue, with comments to the effect of not "digging up too many skeletons" and to "let sleeping dogs lie". Mr Smith asked Mr Serrao why he did not take any further steps, after *that* time, once this investigation had ceased - given that a number of board members had expressed concern about fraud or fraudulent behaviour.
84. Mr Serrao responded that Mr Sharp had indicated to the board that he had spoken to Mr Paul and Mr De Mestre but there was now no compulsion upon Mr Seward to meet with anyone at that stage.
85. The Authority's General Counsel asked Mr Serrao why, as a Registered Game Official, Mr Serrao did not at that time write a letter to the NRL, since the board was now against taking any further action.
86. Mr Serrao responded with the contention that he had gone to the NRL three days prior to this September 2015 meeting, trying to speak with Mr Tony Crawford and Mr Dave Smith at the NRL, but they did not want to hear what he had to say about Mr Seward.
87. The Authority Chairperson noted that four of the Club's directors were Registered Game Officials, with a *personal* duty to self-report to the NRL and asked Mr Serrao why he did not do more to report when the PNRL Chairperson Mr Sharp had indicated that he wanted to draw a line in the sand yet Mr Serrao still wanted an inquiry.
88. Mr Serrao responded that the board was divided and that he did not have enough information or evidence to go to the NRL at that time. The Authority Chairperson reiterated the *personal* obligation on Registered Game Officials to self-report matters even if they are a minority on the board. Mr Serrao stated that he did not have enough information to write to the NRL at that point in time and that is why he wanted an independent investigator.
89. Mr Whelan intervened with the submission that an important question is what information is sufficient to reach a "threshold" to warrant reporting to the NRL. He noted that the "ultimate" reference of PNRL's Salary Cap non-compliance was made by the Club itself, to NSW Police.
90. In response to a question from the Authority's General Counsel as to whether he considered resigning from the PNRL/Club board when the board was adopting a course he did not agree with, Mr Serrao said that he did consider resigning but did not because he started the drive behind the reform measures and that he wanted to see those reform measures in place and ensure that the Club could move forward to a state where it would be successful in many ways.
91. The Authority Chairperson took Mr Serrao back to his personal obligation as a Registered Game Official and noted that it was implicit in the language used by Mr Sharp at the September 2015 meeting that there was an issue there and Mr Serrao had a personal obligation to disclose any of those sorts of matters to the NRL.
92. Mr Whelan summarised Mr Serrao's position on disclosure to the NRL by reference to the following factors:
 - 1) the sufficiency of information that was before Mr Serrao about the Salary Cap matters

- 2) his personal belief in the reform process for the Club
- 3) the proportionality of the response that he did make, in that Mr Serrao did speak to the NRL. It is a matter for the Authority whether that is a proportionate response to the information Mr Serrao had.

93. The Authority Chairperson observed that the situation with respect to Salary Cap breaches was an ongoing issue with respect to which Mr Serrao was concerned for a long time, with some opportunities whereby something could have been said or a disclosure made. This was not just a matter of good corporate governance, but an independent civil obligation personally imposed upon Mr Serrao as a Registered Game Official.
94. In response to a question from the Authority's General Counsel as to how specific were the concerns that he raised with the NRL three days prior to the September 2015 meeting, and whether there was any disclosure of the contracts that are the subject of this Complaint, Mr Serrao said he did not have information about those matters at the time of that meeting. He did raise concerns about Mr Seward's negotiation of a contract with PNRL player Kieran Foran, the re-negotiation of Mr Brad Arthur's contract (which still had two years to run), an offer made to NRL player Will Hopoate and offers made to Chris Sandow and others. He also made reference to the PNRL coach's contract.
95. Mr Serrao contends that the matters of Salary Cap non-compliance that are the subject of this Complaint were all matters that "came up in a period of probably two months... probably less than that", contending that the relevant information only came to light in July 2015, without much information being made available to him outside of board meetings. The other PNRL board members were not telling him information because they knew he would oppose the position they were taking.
96. Mr Serrao submits that it was only a short period of time when the "suspicion" was "discovered" and that information only came out as a result of the NRL investigation.
97. Mr Serrao further submits that the Club's CEO Mr Paul and PNRL finance manager Mr Farish had authority with respect to all Club financial records, yet even they did not discover the Salary Cap non-compliance. By contrast to their level of access, Mr Serrao was a non-executive director with a full-time job who was not getting the requisite information at board meetings.
98. In response to a question put to Mr Serrao by Mr Whelan as to what justifications were given at the time of the September 2015 PNRL board meeting for the proposed course of action, Mr Serrao contends that the PNRL Chairperson had spoken with the Club's legal counsel Mr De Mestre and its CEO Mr Paul and on that basis Mr Sharp decided it was best not to proceed with the investigation. This is recorded in the minutes for that meeting.
99. In response to a question from the Authority Chairperson whether, at the September 2015 meeting, each director got to vote on taking no further action, Mr Serrao responded that he cannot recall.
100. In response to a further question from Authority Member Parbery whether the PNRL Legal Counsel ever put any advice on this proposed course of action in writing, Mr Serrao stated that he did not.
101. Mr Serrao contends that the PNRL Chairperson, Mr Sharp, was in a "position of power" and that the prospect of any further investigation was shut down by "a couple of other people" (on the board).
102. In response to a question from Mr Serrao as to why the Authority had not issued Show Cause Notices to the directors named in Grounds 5, 6 and 7 of the Complaint Letter, the Authority Chairperson advised that a disciplinary complaint is dealt with on the merits of the

material provided to the Authority. The Authority's General Counsel advised that he may assume that the status of a director as a Registered Game Official played an important role in this Complaint and in the Authority's decision to issue Show Cause Notices.

- 103.** The Authority Chairperson put it to Mr Serrao that the Club holds a valuable asset in the franchise to play in the National Rugby League. If NRL Rules are breached, the NRL could take that franchise away from PNRL, which would in turn be a disaster for the Club. The Chairperson put it to Mr Serrao that the NRL had already levied fines against the PNRL of around \$1.5 million, which is a serious matter in respect of any domestic sporting code. Those with the status of NRL officials sign up to personal obligations, which are critical to the running of the Code. Since the PNRL and the parent Club have a common board of directors, breach of NRL Rules by those Club directors who are also Registered Game Officials puts at risk this valuable Club asset. This is not only an important matter for the NRL, but for the Authority as well.
- 104.** Mr Serrao responded with the observation that the Eels franchise was an "expensive asset" for the Club, in that the PNRL owes the parent Club something in the vicinity of \$60 million. He contends that the Rugby League franchise continues to cost the Club money.

FINDINGS

- 105.** A disciplinary complaint under Part 6A of the Act is an administrative matter, and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.
- 106.** There are numerous allegations of fact advanced in the Particulars for each Ground of Complaint that either pertain to background matters or go to the fitness and propriety of the former directors Messrs Sharp, Issa, Serrao and Gerard to be a member of the governing body of the Club. The Authority has grouped these allegations together by chronological order and subject matter and its findings are set out below.

Allegation 1: Messrs Sharp, Issa, Serrao and Gerard were members of the governing body of the Club and also Registered Game Officials of the NRL

- 107.** These allegations are made in paragraphs 18 to 20 of the Complaint Letter in respect of Mr Sharp, paragraphs 146 to 148 in respect of Mr Issa, paragraphs 226 to 228 in respect of Mr Serrao and paragraphs 296 to 298 in respect of Mr Gerard.
- 108.** The Authority is satisfied that Mr Stephen Sharp was a member of the governing body of the Club between 11 May 2013 and 20 July 2016 and an NRL Registered Game Official from 13 January 2015. This finding is made on the basis of the Australian Securities and Investments Commission (ASIC) Company Extract dated 6 May 2016 (Exhibit PLC02), page 4 of the transcript of the record of interview between Mr Sharp and LGNSW inspectors dated 11 August 2016 (Sharp LGNSW Interview) (Exhibit SS08) and the NRL Registration Certificate for Mr Sharp dated 13 January 2015 (Exhibit SS02).
- 109.** The Authority is satisfied that Mr Toufic (Tom) Issa was a member of the governing body of the Club between 11 May 2013 and 20 July 2016 and an NRL Registered Game Official from 14 January 2015. This finding is made on the basis of the ASIC Company Extract dated 6 May 2016 (Exhibit PLC02) and the NRL Registration Certificate for Mr Issa dated 14 January 2015 (Exhibit TI01).
- 110.** The Authority is satisfied that Mr Peter Serrao was a member of the governing body of the Club between 11 May 2013 and 20 July 2016 and an NRL Registered Game Official from

5 January 2015. This finding is made on the basis of the ASIC Company Extract dated 6 May 2016 (Exhibit PLC02) and the NRL Registration Certificate for Mr Serrao dated 5 January 2015 (Exhibit PS01).

111. While paragraph 296 of the Complaint Letter incorrectly states that Mr Geoffrey Gerard was a member of the governing body between 11 May 2013 and 20 July 2016, the Authority is satisfied that Mr Gerard was a member of the governing body of the Club between 1 March 2014 and 20 July 2016 and an NRL Registered Game Official from 22 December 2014 to date. This finding is made on the basis of the ASIC Company Extract dated 6 May 2016 (Exhibit PLC02) and the NRL Registration Certificate for Mr Gerard dated 22 December 2014 (Exhibit GG02).

Allegation 2: Mr Sharp failed to ensure that the 2013 NRL Post-Season Declaration was true and correct with respect to PNRL's Salary Cap having regard to Rule 108 of the PCR Rules

112. This allegation is made in Particular 1 of Ground 1 of the Complaint against Mr Sharp only. This allegation is *not* made against Messrs Issa, Serrao or Gerard.
113. The Authority notes that in his submission to the Authority dated 8 May 2017 Mr Sharp contends that he had no prior understanding of any NRL requirements and responsibilities, no formal training in finance and accounting and received no induction from the NRL or any briefing on the PNRL clubs past history in relation to poor compliance to the salary cap when taking office. He further contends that prior to signing the 2013 post season declaration he sought confirmation from the PNRL CEO Mr Seward, the PNRL Head of Football Mr Anderson and the PNRL Club Group's then CFO, Mr Ciaran O'Flannagan, who all stated their view that the figures are true and correct to the best of their knowledge. Mr Sharp also contends that upon seeking advice from "past board members" and "management executives" he was advised that the board's role is not to get too involved in operational issues and was reminded that he was only honorary and there is a CEO to run the business.
114. Mr Sharp does not specify who advised him not to get involved in "operational" matters or how that advice was provided. The Authority accepts that he received comments to that effect but without greater specificity or an indication as to who provided this advice it is difficult to give that information much weight in explaining Mr Sharp's failure to disclose suspected breaches of the Salary Cap when he was in a position to do so.
115. The Authority accepts that Mr Sharp had no prior expertise in finance and accounting nor received any induction with respect to his role as a PNRL club director or an NRL Game Official. Nevertheless, Mr Sharp was elected to hold these positions. The Authority is satisfied, as alleged in paragraphs 21 to 23 of the Complaint Letter, that as PNRL Chairperson on 14 November 2013 Mr Sharp signed a Post-Season Declaration of Remuneration in respect of the *Parramatta Eels* 2013 Season in which he acknowledged that: all due and proper enquiries had been made in order to ensure the accuracy of the information contained within the declaration (for the 2013 Season) and that "to the best of his knowledge, information and belief, true and correct in every particular". These findings are made on the basis of the 2013 Post-Season Declaration dated 14 November 2013 signed by Mr Sharp (Exhibit SS03).
116. The Authority is further satisfied, as alleged in paragraph 24 of the Complaint Letter, that on 28 August 2014 the NRL undertook an audit of the PNRL 2013 season Salary Cap, which identified a total of **\$32,104.00** paid by the Club to PNRL players during 2013 that were *not* included in Mr Sharp's 2013 Post-Season Declaration of Remuneration. These findings are made on the basis of the 2013 Post-Season Declaration dated 14 November 2013 signed by Mr Sharp (Exhibit SS03). The fact that the audit occurred is established by the breach notice that was issued by NRL to PNRL dated 21 May 2015. The absence of any reference to the \$32,104.00 in question is apparent from the Post-Season Declaration.

117. The Authority is also satisfied, as alleged in paragraph 25 of the Complaint Letter, that Mr Sharp's failure to include these payments was detailed in a Breach Notice issued by the NRL to PNRL dated 21 May 2015 (2015 NRL Breach Notice). This Notice put to PNRL that the club's failure to include these payments in the 2013 Post-Season Declaration was in breach of Rule 108 of the PCR Rules. This finding is made on the basis of page 25 of the 2015 NRL Breach Notice (Exhibit PNRL03).
118. The Authority is further satisfied, as stated in paragraph 26 of the Complaint Letter, that Mr John De Mestre, Solicitor for the PNRL, submitted a response on behalf of PNRL to the 2015 NRL Breach Notice dated 12 June 2015 (Exhibit PNRL04) and the alleged breach of PCR Rule 108 by PNRL was neither addressed nor disputed by the club.
119. The Authority is further satisfied, as stated in paragraphs 27 to 28 of the Complaint Letter, that the NRL determined the 2015 NRL Breach Notice by finding, in relation to the alleged false 2013 Post-Season Declaration of Remuneration, that the PNRL had breached PCR Rule 108(1) by failing to ensure that the Post-Season Declaration of Remuneration for the 2013 season accurately disclosed payments made to, or on behalf of, PNRL players to a total value of \$32,104.00. These payments were made by an associated entity of the Club, namely the Parramatta Leagues Club. A financial penalty of **\$32,104.00** was imposed upon the PNRL in respect of this contravention.
120. The Authority makes these findings on the basis of pages 17 and 19 of the determination of the 2015 NRL Breach Notice dated 6 July 2015 (2015 NRL Breach Notice Determination) (Exhibit PNRL05).
121. The Authority is further satisfied, as alleged in paragraph 29 of the Complaint Letter, that at page 49 of the transcript of an interview on 14 April 2016 between Mr Sharp and members of the NRL Integrity Unit (Sharp NRL Interview) (Exhibit SS04), when asked about his completion of the declaration and any enquiries made by him to ensure that the declaration was true and correct in every particular, Mr Sharp responded:
- Yeah, that's my obligation to send that, and our – I'd have to take the word of the CFO on – on where the situation is.*
122. The Authority is also satisfied, on the basis of page 50 of the Sharp NRL Interview transcript that, as alleged in paragraph 30 of the Complaint Letter, when asked by the NRL about the process of the completion of the information within his declaration, Mr Sharp stated:
- They come to me with that and say – we've done the – completed the report", and I say, "How – is it all good?"*
123. At paragraph 31 of the Complaint Letter, the Complainant alleges, and the Authority accepts, that PCR Rule 108 placed an onus upon Mr Sharp to make all due and proper enquiries to ascertain that the information contained within the declaration is correct.
124. The Authority notes and accepts Mr Sharp's contention in his submission dated 8 May 2017 that he relied on the PNRL CEO Mr Seward, the Head of Football Mr Anderson and the PNRL CFO (first Mr Farish and then Mr O'Flannagan) to provide confirmation of the Post-Season Declaration's compliance with the NRL Rules and the Salary Cap Rules. The Authority is satisfied that this was the case, on the basis of its above findings and the evidence in respect of the allegations made in paragraphs 29 to 30 of the Complaint Letter.
125. The Authority is also satisfied, as alleged in paragraph 32 of the Complaint Letter, that during the Sharp LGNSW Interview, Mr Sharp acknowledged his personal requirement to comply with NRL Rules, and stated that he had relied upon the advice of both the CEO and CFO of the PNRL when seeking assurance as to the accuracy of the 2013 Post-Season Declaration.

This finding is made on the basis of page 19 of the transcript of the Sharp LGNSW Interview (Exhibit SS08).

126. The Authority is further satisfied, as alleged in paragraph 33 of the Complaint Letter, that despite being made aware by the CEO (Mr Seward) of issues in relation to PNRL's compliance with the Salary Cap in respect of the 2013 season some 17 days prior to signing the 2013 Post-Season Declaration, at a PNRL board meeting on 28 October 2013 Mr Sharp made no further enquiries as to the accuracy of this declaration, other than accepting the advice of the CEO and CFO.
127. This finding is made on the basis of page 3 of the minutes of the PNRL board meeting dated 28 October 2013 (Exhibit PNRL06), which states:

S Seward advised there are issues in relation to the salary cap in relation to contracts that are already committed. The Chair noted the importance of D Anderson to take control of the salary cap once he commences employment.

[The Authority notes that the board's reference to "D Anderson", as apparent from the minutes of the PNRL board meeting dated 28 October 2013, is a reference to Mr Daniel Anderson, then Head of Football for the PNRL.]

128. The Complainant further alleges in paragraph 33 of the Complaint Letter, that this conduct occurred in the context of the PNRL having previously been found by the NRL to be in breach of the PCR Rules for exceeding Salary Cap restrictions during 2010 and 2011 and despite PNRL having a poor compliance record with the NRL with respect to the Salary Cap Rules prior to Mr Sharp's tenure as Chairperson.
129. While the Authority accepts that PNRL had been found by the NRL to have exceeded the Salary Cap Rules in 2010 and 2011, and it is quite possible that Mr Sharp had a general awareness of PNRL non-compliance that preceded his appointment to the board, in the absence of evidence or specific allegations as to how Mr Sharp was made aware of PNRL's history of non-compliance, the Authority does not give great weight to the PNRL's prior history for the purposes of assessing Mr Sharp's fitness as a director.
130. In conclusion, the Authority is satisfied that Mr Sharp in fact failed to ensure that the 2013 NRL Post-Season Declaration was true and correct in that he did not make further enquiries as to its accuracy at the board meeting on 28 October 2013, despite being on notice of compliance concerns with respect to the 2013 Season 17 days prior to signing this document. This allegation is established.

Allegation 3: Mr Sharp failed to ensure that the 2014 NRL Post-Season Declaration was true and correct with respect to PNRL's Salary Cap having regard to Rule 108 of the PCR Rules

131. This allegation is made in Particular 2 of Ground 1 of the Complaint against Mr Sharp only. This allegation is not made against Messrs Issa, Serrao or Gerard.
132. The Authority is satisfied that, as alleged in paragraph 34 of the Complaint Letter, on 26 November 2014 Mr Sharp signed the 2014 Post-Season Declaration for PNRL in accordance with PCR Rule 108 and that within this declaration, Mr Sharp declared that the Salary Cap in respect of the "Top 25 NRL" had exceeded the limit by **\$49,112.00** [the Authority notes that the "Top 25 NRL" refers to the 25 highest paid *Parramatta Eels* players]. The Authority makes this finding on the basis of the 2014 Post-Season Declaration signed by Mr Sharp on 26 November 2014 (Exhibit SS05).
133. Paragraphs 35 to 36 of the Complaint Letter allege that on 15 December 2014 the NRL conducted an audit of the 2014 Post-Season Declaration, which identified a number of

additional payments totalling **\$52,606.00** (above the \$49,112.00 excess already declared) that had also not been disclosed to the NRL.

- 134.** The Complainant contends that the details of these payments should have reasonably been known to Mr Sharp if any review or assurance process was undertaken prior to signing the 2014 NRL Post-Season Declaration.
- 135.** It is possible that if more steps were taken to investigate or ensure the accuracy of the information attested to by Mr Sharp at this time, the non-disclosure of these payments in the 2014 Post-Season Declaration would have become apparent. However, the Authority accepts Mr Sharp's submissions that he was not briefed or trained about the nature of the PNRL's prior issues of non-compliance and that he relied upon the advice given to him by staff responsible for Salary Cap compliance that the declaration he was making was accurate.
- 136.** While PNRL did in fact have a problematic history of Salary Cap compliance from 2010 and 2011, the Authority does accept that the PNRL's previous record provides a sufficient basis for imputing knowledge to Mr Sharp that the information he was attesting to at this time was incorrect or that he could not rely upon the advice of staff charged with maintaining Salary Cap compliance.
- 137.** The Authority is satisfied, as alleged in paragraph 37 of the Complaint Letter, that the minutes of PNRL board meetings between October 2013 and November 2014 identify discussions among PNRL directors during those meetings regarding the PNRL's Salary Cap position and that these discussions establish the Club board's knowledge of continuing difficulties with respect to PNRL's management of its Salary Cap, as follows:
- At the PNRL board meeting of 28 October 2013, Mr Seward (the then CEO) advised that there are issues in relation to the Club's compliance with its Salary Cap;
 - At the PNRL board meeting of 29 January 2014, the board noted that the PNRL is still operating over its Salary Cap;
 - At the PNRL board meeting of 26 March 2014, the board noted that the PNRL is already "under duress" around the Salary Cap for 2015;
 - Also at the PNRL board meeting of 26 March 2014, issues in relation to the Salary Cap and potential repercussions were discussed;
 - At the PNRL board meeting of 23 April 2014, discussions followed in relation to the PNRL being substantially over its Salary Cap;
 - At the PNRL board meeting of 21 May 2014, Mr Anderson (then PNRL Head of Football) provided an update in relation to salary cap issues;
 - At the PNRL board meeting of 23 July 2014, the board noted the challenges in relation to compliance with the Club's Salary Cap;
 - Also at the PNRL board meeting of 23 July 2014, Mr Issa questioned how the PNRL could still be over the Salary Cap despite releasing some players;
 - Item 5.2 at page 4 of the minutes of the PNRL board meeting of 29 October 2014 notes "get salary cap in order".
- 138.** These findings are made on the basis of the following evidence or material:
- Page 3 of the PNRL board meeting minutes for 28 October 2013 (Exhibit PNRL06);
 - Page 6 of the PNRL board meeting minutes for 29 January 2014 (Exhibit PNRL07);
 - Pages 1 to 2 of the PNRL board meeting minutes for 26 March 2014 (Exhibit PNRL08);
 - Page 5 of the PNRL board meeting minutes for 23 April 2014 (Exhibit PNRL09);
 - Page 4 of the PNRL board meeting minutes for 21 May 2014 (Exhibit PNRL10);
 - Pages 1 and 5 of the PNRL board meeting minutes for 23 July 2014 (Exhibit PNRL11);
 - Item 5.2 at page 4 of the PNRL board meeting minutes for 29 October 2014 (Exhibit PNRL12).

139. Paragraph 38 of the Complaint Letter alleges that regular board discussions regarding the PNRL’s difficulties with managing the Salary Cap should have alerted Mr Sharp to the need to undertake additional assurance measures prior to the completion and signing of the 2014 Post-Season Declaration.
140. Mr Sharp contends in his submission dated 8 May 2017 that the NRL never briefed him, as a new Chairperson, of the Club’s past indiscretions; nor did they support his understanding of the NRL requirements with an induction session or program. Mr Sharp submits that his “only other defence” is that he relied heavily on the integrity of those advisors available to him.
141. The Authority is satisfied, on the basis of its findings on the allegations in paragraph 37 of the Complaint Letter, that despite repeated information being brought forward during board meetings in respect of PNRL’s compliance with the Salary Cap in respect of the 2014 season, Mr Sharp failed to report any concerns to the NRL, for the purposes of Rule 16 of the NRL Code.
142. The Authority accepts, as alleged in paragraph 39 of the Complaint Letter, that during his interview with LGNSW inspectors, Mr Sharp states that he had relied upon the verbal advice of the PNRL CEO and CFO when seeking assurance as to the accuracy of Salary Cap declarations that he was making. The Authority accepts the Complainant allegation that Mr Sharp provided no further evidence as to any *additional* measures that he had taken to verify the accuracy of the 2014 Post-Season Declaration and accepts that he made the following concession to LGNSW inspectors:
- Perhaps I should’ve had a greater understanding of what I was signing.*
143. These findings are made on the basis of page 19 of the transcript of the Sharp LGNSW Interview (Exhibit SS08).
144. In conclusion, the Authority is satisfied, as alleged, that Mr Sharp did not take any further steps to ensure that the 2014 NRL Post-Season Declaration was true and correct. While a more prudent Registered Game Official might have taken it upon himself to make further enquiries, the Authority accepts that at this early stage of his tenure Mr Sharp had not received a specific briefing about the past issues with the PNRL’s management of its Salary Cap and was in practice heavily reliant upon the advice of others. No adverse finding is made with respect to Mr Sharp’s conduct at this point in time.

Allegation 4: Messrs Sharp, Issa, Serrao and Gerard, as directors of PNRL, breached Rule 60(1) of the PCR Rules by exceeding the PNRL Salary Cap for the 2014 NRL season

145. This allegation is made in Particular 3 of Ground 1 against Mr Sharp, Particular 1 of Ground 2 against Mr Issa, Particular 1 of Ground 3 against Mr Serrao and Particular 1 of Ground 4 against Mr Gerard.
146. Briefly, the information in the relevant Particulars describes the circumstances in which the NRL issued a Breach Notice dated 21 May 2015 to PNRL in respect of the PNRL’s non-compliance with its Salary Cap for the 2014 NRL season, and the aggravating factors of the alleged breach, as contended by the NRL.
147. However, as noted in the Show Cause Notices issued to Messrs Sharp, Issa, Serrao and Gerard on 10 April 2017, the Authority has approached this allegation against the four directors as information pertaining to the general factual context, for consideration when assessing the other Particulars of the Complaint.
148. This allegation does not, in the terms specified, provide an independent basis for making an adverse finding as to any of Messrs Sharp’s, Issa’s, Serrao’s or Gerard’s fitness and propriety.

149. While the Authority accepts this information as accurate in the terms stated, it does not rely upon these Particulars as providing an independent basis for taking disciplinary action against any of Messrs Sharp, Issa, Serrao or Gerard.

Allegation 5: Messrs Sharp, Issa, Serrao and Gerard failed to disclose breaches of NRL Rules

150. This broad allegation is made in Particular 4 of Ground 1 against Mr Sharp, Particular 2 of Ground 2 against Mr Issa, Particular 2 of Ground 3 against Mr Serrao and Particular 2 of Ground 4 against Mr Gerard.

151. Paragraphs 49, 158, 237 and 308 of the Complaint Letter respectively state that Messrs Sharp, Issa, Serrao and Gerard, as NRL Registered Game Officials, are subject to compliance with Rule 16 of the NRL Code which places an onus upon any NRL Registered Game Official to report any breach of the NRL Code or NRL Rules to the NRL, where they reasonably suspect that a breach has occurred, as soon as possible after forming that suspicion.

152. The Authority accepts that these directors had a duty to report under Rule 16 of the NRL Code on the basis of Mr Sharp's Certificate of Registration as a Registered Game Official dated 13 January 2015 (Exhibit SS02); Mr Issa's Certificate of Registration as a Registered Game Official dated 14 January 2015 (Exhibit TI01); Mr Serrao's Certificate of Registration as a Registered Game Official dated 5 January 2015 (Exhibit PS01); Mr Gerard's Certificate of Registration as a Registered Game Official dated 22 December 2014 (Exhibit GG02) and the information provided in the Complaint Letter regarding the content of Rule 16 of the NRL Code.

Mr Sharp

153. The Complainant further alleges at paragraph 49 of the Complaint Letter, and the Authority accepts, on the basis of page 15 of the transcript of the Sharp LGNSW Interview (Exhibit SS08), that Mr Sharp stated that he had not familiarised himself with the NRL Rules until "mid 2015" despite commencing his tenure as a director of the Parramatta Leagues Club on 11 May 2013.

Mr Issa

154. The Complainant further alleges at paragraph 158 of the Complaint Letter, and the Authority accepts, on the basis of page 65 of the transcript of the interview between Mr Issa and LGNSW inspectors on 10 August 2016 (Issa LGNSW Interview) (Exhibit TI05), that Mr Issa stated that he was *not aware* of the NRL Rules regarding his obligation to self-report until February or March 2016, despite him commencing his tenure as a director on 11 May 2013.

155. The Authority notes that in an apparent reference to PCR Rule 108, Mr Issa states at page 66 of the transcript of the Issa LGNSW Interview that:

Well it wasn't, not something that we're proud of, we just, as I said, we did not know that the self-reporting 108 existed.

Mr Serrao

156. The Complainant further alleges at paragraph 237 of the Complaint Letter, and the Authority accepts, on the basis of paragraph 9 of Mr Serrao's statement dated 3 June 2016 which formed part of the Serrao Submissions on the 2016 NRL Breach Notice (Exhibit PS03), that Mr Serrao acknowledged that he:

...did not read or understand the NRL Rules in full when [he] was appointed as a director of the board, or at any time after [his] appointment to the board.

Mr Gerard

157. The Complainant further alleges at paragraph 308 of the Complaint Letter, and the Authority accepts, on the basis of page 24 of the transcript of the interview between Mr Gerard and LGNSW inspectors on 1 June 2016 (Gerard LGNSW Interview) (Exhibit GG01), that Mr Gerard stated to LGNSW that he was not aware of the NRL Rules regarding his obligation to self-report until August 2015, when he was provided with a “full explanation” of the NRL Rules.

158. The Authority notes Mr Gerard’s statement at page 24 of the transcript of the Gerard LGNSW Interview that:

...and it was actually a good explanation around so everybody in that Board meeting understood what our obligations were and what we could and couldn’t do ... that would have been at the next Board meeting I think which would have been in August.

159. The Authority accepts Mr Gerard’s contention in his submission to the Authority dated 1 June 2017 that he was “unaware” of the Salary Cap breaches pertaining to TPAs in respect of *Parramatta Eels* players until the PNRL was issued with a Show Cause Notice from the NRL in May 2015.

160. The Authority accepts Mr Gerard’s contention that he was not, at this time, copied in on any correspondence regarding the PNRL’s Salary Cap breaches, or what Mr Gerard describes as the “illegal” payments and “fraudulent” activities carried out by people within PNRL.

161. The Authority also accepts Mr Gerard’s contention that he has not been deregistered as a Registered Game Official by the NRL after the NRL Integrity Unit completed its investigations into the PNRL. The Authority accepts that Mr Gerard continues to hold the status of a Registered Game Official with the New South Wales Rugby League at this time.

162. Nevertheless, the Authority is also satisfied, on the basis of the above statement from the Gerard LGNSW Interview, that Mr Gerard was *not aware* of his personal obligation as a Registered Game Official to self-report suspected breaches of the Salary Cap to the NRL until August 2015.

Allegation 6: Messrs Sharp and Issa failed to disclose information they had about the PNRL’s breaches of the NRL Rules when they had the opportunity in May/June 2013

163. This specific allegation is made in paragraphs 50 to 54 of the Complaint Letter against Mr Sharp and at paragraphs 159 to 162 of the Complaint Letter against Mr Issa. The allegation is not made against Mr Serrao or Mr Gerard.

Mr Sharp

164. Paragraph 50 reiterates information provided in the introduction to the Complaint Letter to the effect that it is common for NRL players to enter into legitimate TPAs which, *provided that they are conducted on an arm’s length basis and do not involve the relevant NRL club*, may provide additional remuneration to an NRL player that is *not* counted towards that NRL club’s Salary Cap.

165. The Authority accepts, as alleged in paragraph 51 of the Complaint Letter, that when commencing his role as the Chairperson of the governing body of the Club and the PNRL in May 2013, Mr Sharp was contacted by individual managers of *Parramatta Eels* players claiming that the PNRL had failed to honour certain TPA payments to which previous PNRL

management had committed. This finding is made on the basis of pages 4 to 5 of the transcript of the Sharp NRL Interview (Exhibit SS04).

166. The Authority further accepts, as alleged in paragraph 52 of the Complaint Letter, that Mr Sharp informed the NRL that he had asked these individual players' managers to produce documents to confirm the claimed commitments made by PNRL and that PNRL "won't honour anything we don't know anything about". Mr Sharp informed the NRL that no player managers had been forthcoming in providing any documentary proof of these alleged TPAs, so he dismissed their claims. These findings are made on the basis of page 5 of the transcript of the Sharp NRL Interview (Exhibit SS04).
167. The Authority is satisfied, on the basis of the above findings and evidence in respect of paragraphs 51 to 52 of the Complaint Letter, that Mr Sharp's suspicions should have been raised at that time with regard to the claims being made by player managers of the commitments reportedly made to them by PNRL.
168. The Authority has considered the Complainant's contention that Mr Sharp's comments to the NRL indicate that had these player managers provided sufficient *documentation* of their claims, those commitments may have been honoured by PNRL, notwithstanding that this would appear to have placed PNRL in breach of NRL Rules, by reason that such TPAs would not have been made on an "arm's length" basis from PNRL.
169. While the Authority accepts that these early interactions between Mr Sharp and the player managers did occur and constituted a *possible* source of concern as to what PNRL *may or may not* have done with these claims, this involves a considerable degree of speculation.
170. The Authority accepts Mr Sharp's contention in his submission dated 8 May 2017 that he had only been in the role for less than two weeks and that he "never even knew what a third-party agreement was".

Mr Issa

171. With regard to the allegation made against Mr Issa, the Authority accepts that while the early interactions between Mr Issa and the player managers, as referred to in pages 4 to 5 of the transcript of the Sharp NRL Interview (Exhibit SS04) and page 4 of the transcript of the interview between Mr Issa and members of the NRL Integrity Unit conducted on 14 April 2016 (Issa NRL Interview) (Exhibit TI04), constitute a *possible* source of concern as to what PNRL may or may not have done with these claims, this involves a degree of speculation.
172. Mr Issa's submissions under the heading "Failure to report breaches to the NRL and to the Police" in his submission dated 1 June 2017 do not specifically address the alleged opportunity to disclose suspected breaches to the NRL during May/June 2013.
173. In conclusion, while accepting that no disclosure of these matters was made, in light of the fact that these claimed TPAs occurred prior to Messrs Sharp and Issa's appointment as PNRL directors and that PNRL did not *actually* move to honour any of these claimed pre-existing arrangements, no adverse finding is made against either Mr Sharp or Mr Issa on the basis of any alleged failure to report these matters to the NRL at that time.
174. This Allegation is not established.

Allegation 7: Messrs Sharp, Issa and Serrao failed to disclose information they had about the PNRL's breaches of the NRL Rules when they had the opportunity in January 2014

175. This specific allegation is made in paragraphs 55 to 64 of the Complaint Letter against Mr Sharp, paragraphs 163 to 171 of the Complaint Letter against Mr Issa and

paragraphs 239 to 246 of the Complaint Letter against Mr Serrao. This allegation is not made against Mr Gerard.

Mr Sharp

- 176.** The Authority is satisfied, as alleged in paragraphs 55 to 56 of the Complaint Letter, that the minutes of the PNRL board meeting of 29 January 2014 record that the then PNRL CEO, Mr Seward had advised the board that issues surrounding TPAs were an “immediate problem requiring rectification”. The minutes record a statement that:

The board noted that for 2014 there is in the order of \$589K in TPAs plus 2 cars that are outstanding and need to be secured.

- 177.** The Authority further accepts, as alleged at paragraph 56 of the Complaint Letter, that this meeting was chaired by Mr Sharp and the minutes were signed by him as a true and correct record on 25 February 2014. Messrs Issa and Serrao were also recorded as present at that meeting. The Authority makes these findings on the basis of the PNRL board minutes for 29 January 2014, in particular page 4 (Exhibit PNRL07).

- 178.** The Authority accepts the contention in paragraph 57 of the Complaint Letter that the board’s identification of such a precise figure (\$589,000.00) indicates that PNRL was involved in these TPAs to a greater degree than allowable under the NRL Rules.

- 179.** The records for this meeting also indicate an understanding on the part of the PNRL board that PNRL *must secure* the amount identified. It indicates that the board was aware that these commitments had *already been incurred* in respect of the PNRL players.

- 180.** Paragraphs 58 to 59 of the Complaint Letter allege, and the Authority accepts, that the PNRL board meeting minutes for 29 January 2014 record that the board also resolved that:

Player managers also need to be held accountable in relation to Third Party Arrangements.

- 181.** The Authority makes these findings on the basis of the PNRL board meeting minutes for 29 January 2014, in particular page 4 (Exhibit PNRL07), which evidences that the level of involvement or accountability of the PNRL in TPAs involving its players was such that it contravened the NRL Rules.

- 182.** Paragraph 60 of the Complaint Letter alleges that the discussions at this board meeting provided Mr Sharp with an opportunity to disclose breaches of the NRL Rules. While the Complainant is not specific, the Authority assumes that this is an alleged opportunity to disclose to the NRL. The Complainant alleges that Mr Sharp and the other board members instead resolved to engage an external consultant to source TPAs and for the PNRL to establish a new “coterie-style” club to be called the “Premiership Club”, whose purpose was to source TPA funding for PNRL players.

- 183.** The Authority has considered Mr Sharp’s contentions in his submission dated 8 May 2017, that these discussions were conducted in an “open and recorded fashion” with the intent of tabling ideas to find better ways to deliver a sustainable football club. He submits that on “numerous occasions” there was reference to the need to work within the NRL Guidelines. Mr Sharp states that these discussions by the PNRL board were conducted:

“in an open and recorded fashion with the intent of discussion to table ideas right or wrong to find better ways to deliver a sustainable football club. On numerous occasions there was reference to the need to work within the NRL guidelines. The resolution to engage an external consultant was believed by all at the meeting to be legitimate option. It was never followed through with as shortly after the meeting it was dismissed as not meeting the requirements of the rules.”

184. Mr Sharp further submits that the Premiership Club had a constitution that had been drafted by a law firm, HWL Ebsworth. The proposal was presented to Mr Sharp as being “above board” in relation to the NRL Rules. Mr Sharp contends that he had “very little involvement” in the proposed structure of this vehicle, apart from board level discussion and brief game day attendances at its functions.
185. The Authority is nevertheless satisfied that the allegation in paragraph 60 of the Complaint Letter is established, on the basis of page 5 of the minutes of the PNRL board meeting of 29 January 2014 (Exhibit PNRL07).
186. The Authority accepts, as alleged in paragraph 61 of the Complaint Letter, that on 3 May 2016 the NRL issued a second breach notice to the PNRL for alleged breaches of the NRL Rules (2016 NRL Breach Notice) and as further alleged in this paragraph, on 10 June 2016 Carroll & O’Dea lawyers provided a written response on behalf of PNRL. On 3 May 2016 three individual PNRL directors (Messrs Sharp, Issa and Serrao) were issued with separate Notices of Intention to Cancel Registration from the NRL and on 8 June 2016 Sarvaas Ciappara Lawyers provided submissions in response to the Notice on behalf of Mr Sharp. On 8 June 2016 Carroll & O’Dea Lawyers provided submissions in response to the Notice on behalf of Mr Issa and on 3 June 2016 TressCox Lawyers provided submissions in response to the Notice of behalf of Mr Serrao.
187. The Authority makes these findings on the basis of the 2016 NRL Breach Notice (Exhibit PNRL02); the submissions from Carroll & O’Dea on behalf of PNRL dated 10 June 2016 in response to the 2016 NRL Breach Notice (PNRL Submissions on 2016 NRL Breach Notice) (Exhibit PNRL13); the submissions from Mr Sharp dated 8 June 2016 in response to the 2016 NRL Breach Notice (Sharp Submissions on 2016 NRL Breach Notice) (Exhibit SS06); the submissions from Mr Issa dated 8 June 2016 in response to the 2016 NRL Breach Notice (Issa Submissions on 2016 NRL Breach Notice) (Exhibit TI03); and the submissions from Mr Serrao dated 3 June 2016 in response to the 2016 NRL Breach Notice (Serrao Submissions on 2016 NRL Breach Notice) (Exhibit PS03).
188. The Authority accepts, as alleged in paragraph 62 of the Complaint Letter, that the PNRL and Mr Sharp have both claimed in their submissions in response to the 2016 NRL Breach Notice that regardless of what was *recorded* in the PNRL board meeting minutes, it was the *intent* of the board that only “legitimate” TPAs would be “secured” to cover the identified figure of \$589,000.00. The Authority further accepts, as alleged by the Complainant in paragraph 62 of the Complaint Letter, that no submissions were provided in relation to or explaining the further statement recorded at the 29 January 2014 board meeting to the effect that player managers also needed to be held accountable.
189. The Authority makes these findings on the basis of the PNRL Submissions on 2016 NRL Breach Notice (Exhibit PNRL13) and the Sharp Submissions on 2016 NRL Breach Notice (Exhibit SS06).
190. The Authority accepts, as alleged in paragraph 63 of the Complaint Letter, that Mr Sharp told LGNSW inspectors that he “could not recall” Mr Seward’s comments regarding the PNRL’s TPAs being an “immediate problem requiring rectification” at the 29 January 2014 meeting and when questioned by LGNSW inspectors, Mr Sharp agreed that the Premiership Club had been established during this meeting, but he was of the opinion that this entity complied with the NRL Rules.
191. At page 31 of the Sharp LGNSW Interview he was asked at question 228 “Do you ever recall Mr Seward making a comment in January of 2014 to a board meeting, and certainly this may trigger a piece of your memory, that Mr Seward made a comment that the club was required to come up with 589,000 in TPAs and two cars that needed to be secured?”, Mr Sharp responds with the words: “I don’t recall him saying that”.

192. The Authority notes that the discussion with Mr Sharp with regard to the Premiership Club occurred at pages 65-66 of the Sharp LGNSW Interview.
193. These findings are made on the basis of page 31 of the transcript of the Sharp LGNSW Interview (Exhibit SS08).
194. The Authority is satisfied, as alleged in paragraph 64 of the Complaint Letter, that in the PNRL Submissions in response to the 2016 NRL Breach Notice it was conceded by PNRL that whilst Mr Seward had been *primarily* responsible for breaching the NRL Rules, the responsibility for that conduct rested, *in part*, with the PNRL club. This finding is made on the basis of page 2 of the PNRL Submissions on 2016 NRL Breach Notice (Exhibit PNRL13).

Mr Issa

195. With respect to Mr Issa, paragraphs 168 to 171 of the Complaint Letter allege that on 3 May 2016 the NRL issued a Breach Notice to the PNRL in respect of the alleged breaches of the NRL Rules discussed above. The Complainant contends that both the Club and Mr Issa personally made submissions in response to that Notice and during his interview with LGNSW inspectors, Mr Issa denied any knowledge of any arrangements or commitments made by Mr Seward during his time as CEO.
196. The Authority has considered Mr Issa's contention in his submission dated 1 June 2017 that the PNRL board meeting on 29 January 2014 was "extremely limited in time and content" and that it would have been "impossible" for any individual to form a "concerted opinion" on reportable TPA issues from this interaction.
197. The relevant portion of the minutes for the 29 January 2014 board meeting states:

Mr Libertini requested an update in relation to issues surrounding Third Party Agreements and Jarryd Hayne. S Seward advised that it is an immediate problem requiring rectification. The Board noted that for 2014 there is in the order of \$589K in TPAs plus 2 cars that are outstanding and need to be secured. P Serrao questioned the option of securing commercial revenues and J Boulous confirmed that currently the Corporate team are focused on sourcing sponsorship. The Board discussed the fact that there needs to be a clear determination as to whether a sponsor wants to be a corporate partner or TPA provider. S Seward advised and the Board noted that in addition to resolving Third Party Agreements the business requires \$10-12m per annum over the next 7 years for sustainability. S Seward tabled 2 options for the TPA program detailing an External Consultancy Option & Premiership Club. Discussion followed and the Board agreed that Player Managers also need to be held accountable in relation to Third Party Agreements. S Seward noted and D Anderson reiterated that moving forward the key is to honour TPAs by registering these with the NRL. The Board discussed the 2 TPA options presented noting that immediate attention to the matter is required and agreed J Boulous should be the central point of contact.

198. Mr Issa characterises this discussion as "delineating between potential corporate sponsors for the PNRL and parties contributing to TPAs". While the Authority accepts that the discussion was somewhat limited and included the focus of discussion that was ascribed to it by Mr Issa, the Authority finds that there was enough said to place those present on notice of *potentially* reportable issues regarding the PNRL's management of its TPAs.

Mr Serrao

199. With regard to the allegation made against Mr Serrao, paragraphs 244 to 246 of the Complaint Letter allege that on 3 May 2016 the NRL issued a Breach Notice to the PNRL for breaches of the NRL Rules with regard to the PNRL's compliance with its Salary Cap. Both the Club and Mr Serrao made submissions in response to that breach notice.

- 200.** Paragraph 245 of the Complaint Letter alleges that in his statement dated 3 June 2016, Mr Serrao stated that he was of the belief that the PNRL board had regarded Mr Seward's comments with suspicion and remained adamant that no illegitimate TPAs would be honoured.
- 201.** The Complainant submits that this statement is not consistent with the statement made at paragraph 9 of Mr Serrao's statement dated 3 June 2016, forming part of the Serrao Submissions on the 2016 NRL Breach Notice (Exhibit PS03), that Mr Serrao had not read and did not understand the NRL Rules. The former statement indicates that Mr Serrao had an understanding of which TPAs were legitimate and which ones were not, prior to the issue of the 2016 NRL Breach Notice.
- 202.** The Authority notes Mr Serrao's contention, made in his submissions dated 13 July 2017, that at the January 2014 board meeting he wanted to work within the NRL Rules, and that the people in the room at the time possessed knowledge of the NRL Rules in relation to TPAs. Mr Serrao contends that at that time (January 2014), he relied upon Mr Seward's statements and did not actually suspect that any breach of the NRL Rules had occurred.
- 203.** Mr Serrao further submits that there is no evidence to the contrary, and no evidence to suggest that he was in possession of sufficient knowledge to warrant a disclosure to the NRL, if there was a breach of any NRL Rules.
- 204.** Nevertheless, the Authority is satisfied that the allegations in paragraphs 244 to 246 of the Complaint Letter are established on the basis of the PNRL board minutes for 29 January 2014, in particular page 4 (Exhibit PNRL07); the 2016 NRL Breach Notice (Exhibit PNRL02); the PNRL Submissions on 2016 NRL Breach Notice (Exhibit PNRL13); and paragraph 98 of the statement by Mr Serrao dated 3 June 2016 provided as part of the Serrao Submissions on 2016 NRL Breach Notice (Exhibit PS03).
- 205.** While the PNRL board was given notice of *potential* problems with its Salary Cap compliance the January 2014 meeting, this was at a very early stage of the unfolding course of adverse information reaching the PNRL directors. The information was limited and the Authority does not find that the board failed to disclose relevant matters to the NRL at this time.
- 206.** Allegation 7 is not established.

Allegation 8: Messrs Sharp, Issa, Serrao and Gerard failed to disclose information they had about the PNRL's breaches of the NRL Rules when they had the opportunity during 5-10 June 2015

- 207.** This allegation is made in paragraphs 65 to 69 of the Complaint Letter against Mr Sharp, paragraphs 172 to 176 of the Complaint Letter against Mr Issa, paragraphs 247 to 251 of the Complaint Letter against Mr Serrao and paragraphs 310 to 315 of the Complaint Letter against Mr Gerard.
- 208.** The allegations refer to the following statements made by the PNRL in the PNRL Submissions in response to the 2016 NRL Breach Notice:
- Paragraph 45 of the PNRL Submission states that on 5 June 2015 "some members of the board" first became aware of the "possibility" that the CEO was engaging in fraudulent activities when "irregular practices in approving invoices...were brought to Issa's attention."
 - Paragraph 46 of the PNRL Submission states that on 8 June 2015 the board convened a meeting to discuss the CEO's player contract negotiations and irregular invoices. There were no minutes recorded for this meeting. The then CFO was instructed to review all invoices submitted or approved by the then CEO, Mr Seward. There are no

indications of any investigations regarding player contract negotiations, nor any reference to the PNRL disclosing their suspicions to the NRL.

- Paragraph 47 of the PNRL Submission states that two days later, on 10 June 2015, the board became aware that in addition to the “irregular invoices”, there was the “possibility” that Mr Seward “was misleading the board about monetary offers he was making to players...”

209. The Authority notes that although Mr Sharp addresses Particular 4 of Ground 1 in his submission dated 8 May 2017, he does not specifically address paragraphs 65 to 69 of the Complaint Letter.
210. The Authority has considered Mr Issa’s position, stated in his submission dated 1 June 2017, under the heading “Failure to report breaches to the NRL and to the Police”. Briefly, Mr Issa submits that it is not in dispute that PNRL’s then COO Mr John Boulous raised suspicion of “irregular invoices” with the board, that these allegations were serious (involving fraud) but in light of the “glowing” report provided by [NRL CEO] Mr Greenberg for Mr Seward, the board sought first to afford natural justice in respect of these allegations.
211. Mr Issa contends that PNRL’s CFO Mr Farish was tasked to examine these matters but then sought medical leave and resigned soon after receiving his instructions. This led to a “delay” in the PNRL board’s investigations, but the board put interim measures in place to take over the role of Mr Farish and appointed Mr Mullherin (a former Police officer) and Mr Ian Schubert (a former Salary Cap auditor) to review PNRL’s position. Mr Issa submits that it was “reasonable” for the board to await the outcome of two “aptly qualified and experienced individuals” examining the matters now before the PNRL board. He notes that PNRL also appointed PWC to undertake an extensive review of its Salary Cap position.
212. Mr Issa contends that during December 2015, then acting PNRL CEO Mr Boulous received advice from PNRL legal counsel [Mr De Mestre] to *not yet* disclose the matters before the board to the NRL or NSW Police.
213. Mr Issa further contends that once he “reached a threshold of comfort” about the allegations he followed “NRL Policy” by relaying his concerns to the Club’s CEO, Mr Paul and that he “instructed” Mr Paul “to make the relevant submissions on the issues the PNRL faced”. Mr Issa also contends that after receipt of Mr Seward’s sworn testimony from the NRL and his admission on record, Mr Issa saw “no hesitation on reporting this matter to the Police”.
214. The Authority has also considered the comments made by Mr Serrao in his submission dated 13 July 2017 in response to the Complaint Letter. Mr Serrao here addresses the alleged second opportunity to disclose the suspected breaches to the NRL by contending that during an informal board meeting on 8 June 2015 (convened to discuss Mr Seward’s player contract negotiations and irregular invoices) Mr Sharp instructed the PNRL CFO Mr Farish to review all invoices submitted or approved by Mr Seward. He contends that although Mr Farish initially told Mr Issa that there was nothing unusual and that everything was fine, Mr Sharp held suspicions that Mr Seward committed irregular practices in approving invoices, which were outside of his delegation.
215. Mr Serrao contends that at this point in time (which the Authority takes to be a reference to June 2015) the matters were “concerns only” with “no hard evidence”, and he had “no reasonable basis” to believe that this was a case of fraud.
216. Mr Serrao contends that the PNRL board members held a *suspicion* that they were being misled by Mr Seward but Mr Anderson [PNRL’s Head of Football] indicated that he was “unable to obtain” accurate details on the financial offers that Mr Seward had made to PNRL players and that the amounts Mr Seward had told Mr Anderson (PNRL Head of Football) had varied on several occasions.

217. Mr Serrao further contends that although it is “right” to conclude that there “were concerns” at the board level, it is wrong to conclude that these suspicions constituted “sufficient evidence” to warrant disclosure at this time.
218. Mr Serrao argues that it is a “grave over reading” of the available evidence to suggest that there was an opportunity to disclose in this period, and that there is no “fair basis” for claiming this particular breach was in any way his responsibility or caused by any action or inaction of him.
219. The Authority has also considered Mr Gerard’s statements made in his submission dated 1 June 2017 under the heading “Particular 2 – Failure to disclose Breaches of NRL Rules”.
220. Although Mr Gerard does not deal with each Particular separately, he contends that he was “unaware” of the Salary Cap breaches until the PNRL was actually issued with a Show Cause Notice from the NRL and that the evidence tendered during the NRL’s investigation into the matter “clearly showed” that Mr Gerard had not been copied into any of the correspondence regarding the unlawful activities including the club’s Salary Cap breaches.
221. Mr Gerard contends that it was only indicated to him that there were “some issues” surrounding the second tier Salary Cap *after* the NRL Integrity Unit had completed its investigations.
222. Mr Gerard submits that he has not been de-registered as a Registered Game Official as a result of these matters and continues to hold that status. Mr Gerard contends that he was “unaware” of the NRL Rule requiring him to self-report these matters and that he has pointed out to the NRL that the process could be improved by “having every official sign a document to say they have read the NRL Rules and accept them”.
223. The Authority is satisfied, as alleged at paragraphs 68, 175, 250 and 314 that the PNRL’s own submission to the NRL identified (at page 9 of the PNRL Submissions on 2016 NRL Breach Notice (Exhibit PNRL13)) that all of the board members *suspected* that they were being misled by their CEO, Mr Seward in relation to monetary payments actually being offered to PNRL players.
224. The Authority further accepts the Complainant’s contention at paragraphs 68, 175, 250 and 314 of the Complaint Letter that these offers had a direct impact upon the PNRL club’s compliance with the Salary Cap and the PCR Rules. The Authority further accepts, as alleged by the Complainant within the same paragraphs, that there is no indication of any intent on the part of Messrs Sharp, Issa, Serrao or Gerard or the PNRL board generally to report their suspicions to the NRL at this time being between 5 and 10 June 2015.
225. The Authority is also satisfied, as alleged at by the Complainant at paragraphs 69, 176, 251 and 315, that PNRL Submissions on the 2016 NRL Breach Notice identified that the PNRL board held suspicions that Mr Seward was “defrauding” the PNRL, in that they had identified “irregular practices in approving invoices” and “irregular invoices” at this time.
226. The Authority accepts the Complainant’s contention that no report was made at that time by PNRL to either the NRL or NSW Police as to any suspicions held by the board in this regard. The Authority makes these findings on the basis of the relevant statements made in the PNRL Submissions on 2016 NRL Breach Notice (Exhibit PNRL13).
227. In conclusion, the Authority is satisfied that Allegation 8 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 9: Messrs Sharp, Issa, Serrao and Gerard failed to disclose information they had about the PNRL’s breaches of the NRL Rules when they had the opportunity on 11 June 2015

228. This allegation is made in paragraphs 70 to 73 of the Complaint Letter against Mr Sharp, paragraphs 177 to 178 of the Complaint Letter against Mr Issa, paragraphs 252 to 253 of the Complaint Letter against Mr Serrao and paragraphs 316 to 317 of the Complaint Letter against Mr Gerard.

Messrs Sharp, Issa and Gerard

229. Paragraphs 70 to 71 of the Complaint Letter allege that on 11 June 2015 a number of PNRL directors, including Messrs Sharp, Issa, Serrao and Gerard, met with Mr Seward. At that meeting, Mr Seward was questioned about a number of invoices he had authorised for payment, together with the details of his contract negotiations with NRL player, Kieran Foran. Mr Seward responded to the directors’ questioning by saying that he “had done things that he was not proud of” and as a result of this meeting, Mr Seward’s employment with the Club was terminated on 14 June 2015. The Authority accepts these contentions on the basis of the PNRL Submissions on 2016 NRL Breach Notice, particularly paragraph 48 (Exhibit PNRL13).

230. The Authority accepts, as alleged in paragraph 71 of the Complaint Letter and on the basis of the same evidence, that this meeting with Mr Seward provided each director with *evidence* in support of their previously formed *suspensions* regarding breaches by PNRL of the NRL Rules and that no disclosures were made to the NRL or NSW Police at that time.

231. The Authority also accepts, as alleged in paragraph 72 of the Complaint Letter, that Mr Sharp later sought to arrange a meeting with the then CEO of the NRL, Mr Dave Smith, but Mr Smith declined to make himself available. This finding is made on the basis of page 31 of the Sharp Submissions on 2016 NRL Breach Notice (Exhibit SS06).

232. The Complainant further alleges in paragraph 72 of the Complaint Letter that Mr Sharp sent Mr Smith a number of text messages and had a “heated argument” with Mr Smith in Melbourne on 17 June 2015. While noting that no further detail as to this argument or the relevant text messages is provided by the Complainant, the Authority accepts that such argument occurred on the basis of page 38 of the transcript of the Sharp NRL Interview (Exhibit SS04).

233. The Authority is satisfied, as alleged in paragraph 73 of the Complaint Letter, that whilst Mr Sharp *attempted* to hold discussions with the NRL’s CEO, and was met with resistance regarding Mr Smith’s availability, Mr Sharp did not make any other efforts to contact any other members of the NRL, including the NRL Salary Cap Auditor (Mr Jamie L’Oste Brown) or the NRL’s Integrity Unit, and that no written disclosures were actually made to the NRL at this time.

234. The Authority notes that Mr Sharp, in his submission dated 8 May 2017, contends that when confronting Mr Dave Smith in Melbourne at a State of Origin luncheon, Mr Sharp requested Mr Smith to have the NRL step in and help the board of the PNRL deal with the ongoing factionalism which was “so entrenched in the club’s operations it had become difficult to manage with mistrust and deception becoming evident”. According to Mr Sharp, Mr Smith’s only advice was that the PNRL “needs to clean up its own back yard”. The Authority accepts that an exchange to this effect occurred on the basis of Mr Sharp’s submission dated 8 May 2017 and the Authority’s findings and the evidence in respect of paragraphs 70 to 72 of the Complaint Letter.

235. The Authority notes the submissions in the “Failure to report breaches to the NRL and to the Police” section of Mr Issa’s submission dated 1 June 2017 (as summarised in respect of Allegation 8 above). Mr Issa does not make any specific particular response to this alleged opportunity to disclose Salary Cap breaches to the NRL.
236. The Authority further notes the contentions made by Mr Gerard in his submission dated 1 June 2017 under the heading “Particular 2 – Failure to disclose Breaches of NRL Rules” which also do not specifically address this alleged opportunity to disclose Salary Cap breaches to the NRL.
237. The Authority is satisfied, as alleged at paragraphs 71, 178, 253 and 317 of the Complaint Letter, that Mr Seward’s employment was terminated as a result of Mr Seward’s statements. This allegation is established on the basis of the PNRL Submissions on 2016 NRL Breach Notice, particularly paragraph 48 (Exhibit PNRL13). The Authority is further satisfied, on the evidence and material before it, that no disclosures were made to the NRL nor reports made to NSW Police regarding suspected breaches of the NRL Rules at this time.

Mr Serrao

238. The Authority has considered Mr Serrao’s submission dated 13 July 2017 that Mr Paul had provided advice to the board in an email dated 16 March 2016 (made by reference to past allegations of Club membership tampering during 2014, not the subject of this Complaint) that NSW Police will not investigate a matter unless there is sufficient evidence to do so.
239. The Authority accepts that Mr Serrao and the other directors of the Club were actually advised by their CEO Mr Paul that they would require evidence to support their submissions. However, this advice from Mr Paul post-dates the relevant allegation, which concerns the board’s conduct as at 11 June 2015.
240. While the Authority is satisfied that Mr Serrao and other directors *did* hold suspicions as to breaches of the NRL Salary Cap Rules in respect of the 2013 and 2014 NRL seasons, the Authority accepts that they did not believe that they had sufficient evidence to go to NSW Police at that time. This does not, however, explain the lack of any report to the NRL made by Mr Serrao or the other Registered Game Officials of their suspicions to the NRL at this time.
241. In conclusion, the Authority is satisfied that Allegation 9 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 10: Messrs Sharp, Issa, Serrao and Gerard failed to disclose information they had about the PNRL’s breaches of the NRL Rules when they had the opportunity on 25 June 2015

242. This specific allegation is made in paragraphs 74 to 81 of the Complaint Letter against Mr Sharp, paragraphs 179 to 185 of the Complaint Letter against Mr Issa, paragraphs 254 to 260 of the Complaint Letter against Mr Serrao and paragraphs 318 to 325 of the Complaint Letter against Mr Gerard.

Mr Sharp

243. The Authority accepts, as contended in Paragraphs 74 to 75 of the Complaint Letter, that on 25 June 2015 the PNRL convened a board meeting which was chaired by Mr Sharp. That meeting was electronically recorded by the board for assistance in the preparation of the minutes.

- 244.** The Authority is further satisfied, as alleged in paragraphs 76 to 77 of the Complaint Letter, that PNRL’s new interim CEO, Mr Boulous, informed the board that he had been approached by Ms Tracey McKelligott regarding a TPA that she had entered into with the former CEO, Mr Seward. The Complainant specifies that Ms McKelligott was a contracted service provider to the PNRL for marketing services and the TPA was made under the company name of PJ Promotions, a company owned and managed by Ms McKelligott’s father. These findings are made on the basis of the transcript of the recording of the PNRL board meeting of 25 June 2015 (Exhibit PNRL15).
- 245.** The Authority is further satisfied, as stated in paragraphs 78 to 79 of the Complaint Letter, that Ms McKelligott alleged to Mr Boulous that, as a result of PNRL’s termination of Mr Seward’s employment, she was now exposed to making the required \$200,000.00 payment as part of a TPA she had entered into with the assistance of Mr Seward. While the date of this communication is not specified in the Complaint Letter, this communication from Ms Kelligott appears to have occurred between 11 and 25 June 2015.
- 246.** The Authority accepts, as alleged by the Complainant at paragraph 79 of the Complaint Letter, that the establishment of a TPA involving a contracted service provider to the PNRL is not an “arm’s length” transaction and for this reason the TPA is in direct breach of the PCR Rules.
- 247.** The Authority is further satisfied, as alleged in paragraphs 80 to 81 of the Complaint Letter, that the PNRL board and Mr Sharp identified their awareness that Ms McKelligott was a contracted service provider to PNRL at that time and that, as a matter of compliance with the NRL Rules, this TPA was “something we would want to shy away from” [in the words of Mr Sharp at the 25 June 2015 PNRL board meeting].
- 248.** The Authority has considered Mr Sharp’s contentions in his submission dated 8 May 2017 that Mr Boulous informed the board that no financial transactions had taken place with PJ Promotions and that this TPA arranged by Mr Seward had been terminated.
- 249.** The Authority finds these allegations with respect to Mr Sharp’s non-disclosure of the information provided by Mr Boulous to be established, because Mr Sharp did not disclose this information to the NRL. However, the Authority also accepts the explanation given by Mr Sharp that he understood (albeit wrongly) that Mr Boulous had made the NRL aware of this situation. In those circumstances, the Authority has given less weight to Mr Sharp’s failure to personally disclose these matters to the NRL at this time. The Authority further notes that Mr Sharp had not yet abandoned the PNRL’s investigation into these matters.
- 250.** The Complainant contends at paragraphs 179 to 185 of the Complaint Letter that Mr Issa was present at this meeting where the PNRL directors clearly identified, through their discussions, that Ms McKelligott was a contracted services provider to the PNRL and that her arrangement with Mr Seward was in direct breach of the PCR Rules. Further, the Complainant contends that there were no indications during the board meeting discussions of any intent to report *this* particular TPA to the NRL, in accordance with the NRL Rules – instead, the board agreed to arrange with the NRL to provide a list of all registered TPAs.
- 251.** The contentions made by Mr Issa in response to the alleged failure to disclose have been summarised in the Authority’s findings on Allegation 8 above. Mr Issa does not provide any specific response to the allegation that he failed to take an opportunity to disclosed PNRL’s breach of the Salary Cap at this point in time.
- 252.** The Authority is satisfied that these allegations are established in respect of Mr Issa on the basis of the transcript of the recording of the PNRL board meeting of 25 June 2015 (Exhibit PNRL15).

Mr Serrao

- 253.** The Complainant alleges at paragraphs 254 to 260 of the Complaint Letter that Mr Serrao was present at this meeting where the PNRL directors clearly identified through their discussions that Ms McKelligott was a contracted services provider and that her arrangement with Mr Seward was in direct breach of the PCR Rules. Further, there were no indications during the board discussions of any intent to report this TPA to the NRL, in accordance with the NRL Rules.
- 254.** The Authority notes Mr Serrao's contention in his submissions dated 13 July 2017 that it was not until the board meeting on 25 June 2015 that he was informed that Mr Seward had entered into a TPA with PJ Promotions.
- 255.** Mr Serrao contends that he relied on (PNRL director) Mr Cordwell's view that unless there was "hard evidence" of fraud, it would be difficult to alert Police with regard to any alleged fraud or alleged breaches [of the NRL Rules or Salary Cap Rules] by Mr Seward.
- 256.** Mr Serrao further contends that he relied upon PNRL CEO Mr Boulous and PNRL Chairperson Mr Sharp to report these matters to the NRL. Mr Serrao further contends that the board was "controlled" by its Chairperson Mr Sharp and Deputy Chairperson Mr Issa and that he was "never" privy to any information other than what was presented to him at board meetings.
- 257.** The Authority is satisfied that the allegations in paragraphs 254 to 260 of the Complaint Letter are established in relation to Mr Serrao on the basis of the transcript of the recording of the PNRL board meeting of 25 June 2015 (Exhibit PNRL15). The Authority accepts Mr Serrao's submissions to the effect that the board was controlled by Mr Sharp and that Mr Serrao was in the minority with respect to the suspected Salary Cap breaches, but this is not sufficient to excuse Mr Serrao's personal failure as a Registered Game Official to disclose.

Mr Gerard

- 258.** The Complainant alleges at paragraphs 318 to 324 of the Complaint Letter that Mr Gerard was present at this meeting where the PNRL directors clearly identified through their discussions that Ms McKelligott was a contracted services provider and her arrangement with Mr Seward was in direct breach of the PCR Rules. Further, there were no indications during the board discussions of any intent to report this TPA to the NRL, in accordance with the NRL Rules.
- 259.** The Authority also notes that the contentions made by Mr Gerard in his submission dated 1 June 2017 under the heading "Particular 2 – Failure to disclose Breaches of NRL Rules" do not specifically refer to this opportunity to disclose but that Mr Gerard's contentions have been summarised above under Allegation 8.
- 260.** The Authority is satisfied that these allegations are established on the basis of the transcript of the recording of the PNRL board meeting of 25 June 2015 (Exhibit PNRL15).
- 261.** Paragraph 325 of the Complaint Letter alleges that Mr Gerard stated to LGNSW inspectors that he did not recall any of the conversations recorded in the transcripts of the PNRL board meeting minutes and that he may have been out of the room at the time of the discussion. Mr Gerard did, however, provide his opinion that the transcripts of the meeting appeared to acknowledge the board accepted that the NRL Rules had been broken.
- 262.** The Authority notes that at page 45 of the transcript for the Gerard LGNSW Interview (Exhibit GG01), that Mr Gerard observed:

It's an admission that we were doing the wrong thing in my view ... I'm not involved in that discussion. I can't remember if I was there at that time, if I was in the room, whether I was doing something, getting a coffee, I don't know, I can't comment.

- 263.** The Authority is satisfied, on the basis of the above findings and evidence, that this allegation is established in respect of Mr Gerard.
- 264.** Noting that Mr Sharp and Mr Issa have contended that they were led to believe by Mr Boulous that the NRL were somehow “aware” of this TPA involving PJ Promotions. While there is little specificity surrounding this claim, even accepting that Mr Sharp was given information to this effect, it does not absolve Registered Game Officials from exercising their personal duty to notify the NRL as to any suspicions they held with regard to PNRL’s non-compliance with the Salary Cap arising from the PJ Promotions TPA.
- 265.** While the personal failure of Registered Game Officials to disclose to the NRL is established, the Authority accepts that they may have believed, albeit wrongly, that Mr Boulous had engaged in some level of communication about this matter to the NRL at this time. This reduces the weight given to this failure to disclose at this point.
- 266.** In conclusion, the Authority is satisfied that Allegation 10 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 11: Mr Sharp failed to disclose information he had about the PNRL’s breaches of the NRL Rules when he had the opportunity on 30 June 2015

- 267.** This specific allegation is made in paragraphs 82 to 91 of the Complaint Letter against Mr Sharp. This allegation is not made against Messrs Issa, Serrao or Gerard.
- 268.** The Authority accepts the Complainant’s allegations in paragraphs 82 to 84 of the Complaint Letter that at 11:58am on 30 June 2015 the CEO of the (registered) Club, Mr Bevan Paul, responded to an email sent to him by Mr Boulous, who had requested payment of invoices from a company called “Black Citrus”.
- 269.** In Mr Paul’s email to Mr Boulous and Mr Sharp, Mr Paul advised that he had identified a TPA entered into between a Parramatta player and a subsidiary company of Black Citrus, ScoreCube Pty Ltd. Mr Paul stated that, based on his understanding of the PCR Rules, this TPA was in breach [of the PCR Rules and the Salary Cap Rules] and he recommended that PNRL:

...report this to the NRL (Ed and/or Daniel) and advise them that we won't be actioning the agreement and will enter into discussions with the supplier and the player.

- 270.** These findings are made on the basis of an email from Mr Bevan Paul to Messrs Sharp and Boulous dated 30 June 2015 (Paul Email) (Exhibit BP03).
- 271.** The Authority is further satisfied, as alleged in paragraph 85 of the Complaint Letter, that Mr Paul advised LGNSW inspectors that he had:

...referred that [the email] to the PNRL Board because it's not within my jurisdiction.

- 272.** This finding is made on the basis of page 7 of the interview between Mr Bevan Paul and LGNSW inspectors dated 11 May 2016 (First Paul LGNSW Interview) (Exhibit BP01).

273. The Authority is satisfied, as alleged in paragraph 86 of the Complaint Letter, that at 2:12pm on 30 June 2015 the PNRL CFO, Mr Edwin Farish, forwarded a follow-up email to Messrs Paul, Sharp and Boulous when Mr Farish confirmed that:

...the auditor [NRL Salary Cap Auditor] will pick up the funding of the TPA and link it to Black Citrus as a supplier to the club.

274. Mr Farish also stated that:

...as a minimum I feel that we should self-report ScoreCube and flag that investigations are ongoing.

275. This finding is made on the basis of the email from Edwin Farish to Messrs Paul, Boulous and Sharp dated 30 June 2015 (which forms part of the Paul Email at Exhibit BP03).

276. The Authority accepts the Complainant's contention in paragraph 87 of the Complaint Letter that both of these emails (to which Mr Sharp was an addressee) identified a direct breach by PNRL of the PCR Rules by reason of a TPA that had been entered into with a 100% subsidiary of an existing PNRL supplier and that both emails provided Mr Sharp and Mr Boulous with a recommendation that the TPA arranged by the former PNRL CEO be reported to the NRL.

277. The Authority notes Mr Sharp's contentions in his submission of 8 May 2017 in response to the Complaint that at the time of the ScoreCube TPA being identified by both Mr Farish and Mr Paul as being non-compliant with the PCR Rules, it was not known to Mr Sharp that ScoreCube had only one director (Mr Stephen Moss) who was also a director of Black Citrus, a company Mr Paul had previously used for IT investigation work for the membership tampering allegations.

278. Mr Sharp was not aware at that time that Mr Seward had engaged Black Citrus to do work for the PNRL. When making enquiries, Mr Sharp was told that ScoreCube had a separate ABN and was not a company previously known to the Club. Mr Sharp was told by Mr Boulous that as requested by Messrs Farish and Paul, the NRL salary cap auditor had been notified and the Club was awaiting a reply on ScoreCube. Mr Sharp submits that once again he was "let down by trusting an executive".

279. Mr Sharp "cannot recall" why he did not report this directly to the NRL; however, the confusion around what is and what is not accepted by the salary cap auditor's discretion was "often confusing and frustrating" for the PNRL Head of Football, Mr Daniel Anderson.

280. Paragraphs 88 to 89 of the Complaint Letter further allege that in the Sharp Submissions on the 2016 NRL Breach Notice, Mr Sharp stated that he "vaguely recalled" receiving these emails and that he formed an opinion that Mr Farish was making further enquiries into the matter to assess the TPA's compliance with the NRL Rules.

281. The Authority accepts the Complainant's contention that Mr Sharp did not address Mr Paul's first recommendation regarding the reporting of this matter to the NRL and stated that he was of the opinion that a report would not be made until Mr Farish had finalised his enquiries. Mr Sharp also did not address Mr Farish's subsequent recommendation about self-reporting the ScoreCube TPA.

282. Paragraph 90 of the Complaint Letter alleges that regardless of the opinion formed by Mr Sharp about Mr Farish's enquiries, the content of the Paul Email clearly identified a breach of the NRL Rules which the Salary Auditor would identify, and provided advice to report the matter to the NRL.

283. The Authority agrees with the Complainant's characterisation of the Paul Email and the reply from Mr Farish. The Authority is satisfied, as alleged in paragraph 91 of the Complaint Letter (and on the basis of its findings and evidence in respect of paragraphs 82 to 86 of the Complaint Letter), that while Mr Farish stated in his email that the payment of certain invoices bought PNRL some time to assess their options, Mr Sharp, as Chairperson of the governing body, *should have* overruled this intention to "buy some time", having now been provided with clear evidence of a breach of the PCR Rules and the Salary Cap Rules on two separate occasions (that is, upon receipt of the Paul Email and upon receipt of the reply to the Paul Email by Mr Farish).
284. In conclusion, the Authority is satisfied that Allegation 11 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 12: Messrs Sharp and Issa failed to disclose information they had about the PNRL's breaches of the NRL Rules when they had the opportunity on 10 July 2015

285. This specific allegation is made in paragraphs 92 to 98 of the Complaint Letter against Mr Sharp and in paragraphs 186 to 191 of the Complaint Letter against Mr Issa. This allegation is not made against Messrs Serrao or Gerard.

Mr Sharp

286. The Authority accepts, as contended in paragraphs 92 to 93 of the Complaint Letter, that at 3:28pm on 10 July 2015 the PNRL CFO Mr Farish forwarded an email (Farish Email) to Messrs Sharp, Boulous, De Mestre and the PNRL's Head of Football, Mr Anderson. In the Farish Email, Mr Farish stated that he had identified "exposures around potential deals on TPAs" and believed that an upcoming NRL audit would provide a "good opportunity" for the PNRL to disclose each of these concerns to the NRL. Mr Farish identified two TPAs which were registered with the NRL, but involved companies with which PNRL had a direct relationship – ScoreCube and PJ Promotions.
287. These findings are made on the basis of the Farish Email (Annexure 6 to the Schedule of Preliminary Findings, which in turn is Annexure "A" to the Notice of Intention to Cancel Registration issued by NRL to Mr Sharp dated 3 May 2016).
288. The Authority is further satisfied, as alleged in paragraph 94 of the Complaint Letter, that Mr Sharp had by then become aware of each of these TPAs and their contravention of the NRL Rules. Mr Sharp had been informed of the PJ Promotions TPA during discussions at the board meeting of 25 June 2015 and had been informed of the ScoreCube TPA via emails from Mr Paul and Mr Farish on 30 June 2015. These findings are made on the basis of the transcript of the recording of the PNRL board meeting of 25 June 2015 (Exhibit PNRL15); the Paul Email (Exhibit BP03) and the email sent from Mr Farish to Messrs Paul, Boulous and Sharp dated 30 June 2015 (which forms part of the Paul Email at Exhibit BP03).
289. The Authority is also satisfied, as alleged in paragraph 95 of the Complaint Letter, that instead of reporting these detected breaches of the Salary Cap Rules to the NRL or ensuring that other persons made such report, Mr Sharp elected to advise Mr Farish, via return email, that PNRL were undertaking an audit via PwC on PNRL's Salary Cap position and that the PNRL "would await communication from PwC and legal counsel before making any assumptions". This finding is made on the basis of an email reply sent from Mr Sharp at 10:26pm on 10 July 2015 to Messrs Farish, Boulous, De Mestre, Anderson, Issa and Paul, which forms part of the Farish Email (Annexure 6 to the Schedule of Preliminary Findings, which in turn is Annexure A to the Notice of Intention to Cancel Registration issued by the NRL to Mr Sharp dated 3 May 2016).

- 290.** On the basis of these findings, the Authority is satisfied, as alleged in paragraphs 96 to 97 of the Complaint Letter, that Mr Farish had provided clear and concise material to Mr Sharp and other directors of the PNRL that the ScoreCube and PJ Promotions TPAs were in breach of the NRL Rules and should have been disclosed to the NRL.
- 291.** The Authority accepts the Complainant's contention that Mr Sharp's comments to the effect that an audit was being undertaken, inclusive of legal advice, confirms that Mr Sharp and the PNRL board had by that time formed a suspicion that there had been a breach of the NRL Rules by the former PNRL CEO Mr Seward. The Authority further accepts the Complainant's contention that, in forming this suspicion, Mr Sharp was under an obligation to report these suspected breaches to the NRL [pursuant to what the Authority notes is an apparent reference to the NRL Rules].
- 292.** The Authority is satisfied, as alleged in paragraph 98 of the Complaint Letter, that Mr Sharp had formed the opinion that Mr Boulous and PNRL's solicitor, Mr De Mestre, would lead the action to be taken in response to the Farish Email. The Authority accepts the Complainant's further contention that Mr Sharp did not provide any evidence to indicate how *he* ensured that any person *actually* reported these matters to the NRL at that time.
- 293.** The Authority accepts that Mr Sharp spoke to Mr De Mestre, who had advised him to await the outcome of the PwC report before reporting anything to the NRL. These findings are made on the basis of pages 35 to 36 of the Sharp Submissions on 2016 NRL Breach Notice (Exhibit SS06).

Mr Issa

- 294.** Paragraphs 186 to 191 of the Complaint Letter allege that Mr Issa's sixth opportunity as an NRL Registered Game Official to report concerns to the NRL regarding the PNRL's management of its Salary Cap in relation to TPAs pertaining to the 2014 NRL season arose on 10 July 2015 upon the sending of the Farish Email and Mr Sharp's reply to the Farish Email. The Complainant alleges that Mr Issa was made aware of each of the TPAs referred to in this email exchange during discussions at the board meeting on 25 June 2015.
- 295.** The Complainant contends that in the Issa Submissions on 2016 NRL Breach Notice, Mr Issa states that after reviewing Mr Sharp's email, he formed the belief that the PwC review would include the investigations of the TPAs and invoices identified by Mr Farish, whilst also acknowledging his obligation to self-report the issues to the NRL.
- 296.** The Authority notes that paragraphs 193 and 194 of the Issa Submissions on 2016 NRL Breach Notice state:
- I reiterate that I regret that the NRL was not informed of the behaviour of Seward and others earlier. I now understand that these problems need to be reported to the NRL before the Club begins internal investigation.*
- 297.** The Authority notes that the relevant section of Mr Issa's submission dated 1 June 2017 entitled "Failure to report breaches to the NRL and to the Police" does not make any specific references to this alleged opportunity to disclose to the NRL that arose at 10 July 2015. The various contentions made by Mr Issa in respect of his alleged failure to disclose are summarised above under Allegation 8.
- 298.** The Authority is satisfied that these particular allegations are established on the basis of the Farish Email (Annexure 6 to the Schedule of Preliminary Findings, which in turn is Annexure A to the Notice of Intention to Cancel Registration issued by the NRL to Mr Sharp dated 3 May 2016); the transcript of the recording of the PNRL board meeting of 25 June

2015 (Exhibit PNRL15); and pages 20 to 21 of the Issa Submissions on 2016 NRL Breach Notice (Exhibit TI03).

- 299.** In conclusion, the Authority is satisfied that by 10 July 2015 Messrs Sharp and Issa were in possession of information that gave rise to reasonable suspicion of non-compliance by PNRL with the Salary Cap. Both Mr Sharp and Mr Issa could have notified, but did not notify the NRL at this point in time, contrary to their personal obligation as Registered Game Officials.
- 300.** In conclusion, the Authority is satisfied that Allegation 12 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 13: Messrs Sharp, Issa, Serrao and Gerard failed to disclose information they had about the PNRL’s breaches of the NRL Rules when they had the opportunity on 8 August 2015

- 301.** This specific allegation is made in paragraphs 99 to 101 of the Complaint Letter against Mr Sharp, paragraphs 192 to 194 of the Complaint Letter against Mr Issa, paragraphs 261 to 262 of the Complaint Letter against Mr Serrao and paragraphs 326 to 327 of the Complaint Letter against Mr Gerard.
- 302.** The Authority is satisfied, as alleged in paragraph 99 of the Complaint Letter, that at the PNRL board meeting of 8 August 2015 a resolution was moved by Mr Issa, seconded by Mr Gerard and passed by the board that the Club would engage a private investigator to commence an internal investigation into the “fraudulent” actions of the former CEO, Mr Seward. This finding is made on the basis of the minutes of the PNRL board meeting of 8 August 2015 (Exhibit PNRL15).
- 303.** The Authority is further satisfied, as alleged at paragraph 100 of the Complaint Letter, that there are no records indicating that Mr Sharp informed the PNRL board that PwC were already investigating these matters as part of their “audit”, as inferred in his reply to the Farish Email on 10 July 2015.
- 304.** The Authority is also satisfied, on the basis of the totality of the Complaint Material, that there are no records indicating that Mr Sharp informed the PNRL board of the verbal advice he claimed to have received from Mr De Mestre to await the outcome of the PwC audit.
- 305.** The Authority is further satisfied that there are no records that any of Messrs Sharp, Issa, Serrao, Gerard or the PNRL board generally intended to report their suspicions to the NRL, in accordance with the NRL Rules, at this time. The Authority notes that the Club has produced in response to a request from Mr Serrao a complete set of minutes for PNRL board meetings for the period from May 2013 until July 2016 and this allegation has not been contested by any of the parties.
- 306.** The Authority is also satisfied, as alleged in paragraph 101 of the Complaint Letter, that the PNRL board’s resolution to engage a private investigator at the expense of the (registered) Club indicates that they must have held a significant level of concern *at that time* regarding the actions of the former PNRL CEO, Mr Seward.
- 307.** The Authority notes that although Mr Sharp addresses Particular 4 in his submission dated 8 May 2017, he does not provide a response to the respective paragraphs in the Complaint Letter for this allegation.
- 308.** The Authority notes that the contentions raised by Mr Issa in his submission dated 1 June 2017 have been summarised above under Allegation 8. Mr Issa does not make any specific

references to this alleged opportunity to disclose. The Authority further notes that the contentions made by Mr Gerard in his submission dated 1 June 2017, which has been summarised under Allegation 8, do not specifically refer to this opportunity to disclose.

309. The Authority notes Mr Serrao's contention made in his submissions dated 13 July 2017 that at this unscheduled board meeting of 8 August 2015 he was not "privileged" to see any information with regard to the possible "fraudulent" actions of the former PNRL CEO Mr Seward, whether in the form of emails or invoices. Mr Serrao contends that he relied upon PNRL director Mr Cordwell's understanding as to whether Mr Seward had engaged in any potentially criminal behaviour, in that:

"Mr Cordwell had explained the implications of alleging that someone had engaged in fraudulent conduct, based on his experience as an auditor. I relied on Cordwell understanding to determine if it was potentially criminal behaviour and whether to report accepted that information and advice".

310. The Authority accepts, on the basis of the totality of the Complaint Material, particularly the minutes of the PNRL board meeting of 8 August 2015 (Exhibit PNRL15), that concerns relating to matters of potential fraud or breaches of the NRL Rules were before the PNRL board, yet, there is no record of any resolution made by the board to report its then suspicions to either the NSW Police or the NRL.

311. The Authority notes that items 1.4 and 1.5 of the PNRL board meeting of 8 August 2015 (Exhibit PNRL15) state:

John Boulous to source details for Ian Schubert and seek whether he is an interested in being engaged by the club in providing immediate ongoing support around Salary Cap management.

The Board resolved to undertake a formal private investigation into any proposed fraudulent activity that may have been conducted by the previous CEO. Rob Mulherin will be engaged to undertake this investigation.

312. In conclusion, the Authority is satisfied that Allegation 13 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 14: Mr Sharp failed to disclose information he had about the PNRL's breaches of the NRL Rules when he had the opportunity on 14 September 2015

313. This specific allegation is made in paragraphs 106 to 108 of the Complaint Letter against Mr Sharp. This allegation is not made against Messrs Issa, Serrao or Gerard.
314. The Authority is satisfied, as alleged in paragraph 106 of the Complaint Letter, that on 14 September 2015 Mr Serrao attended a meeting with Mr Dave Smith (then CEO of the NRL) and Mr Tony Crawford (NRL Head of Club Services). The Complainant alleges, and the Authority accepts, that prior to attending this meeting, Mr Serrao asked Mr Sharp whether he could attend this meeting and Mr Sharp advised Mr Serrao that he was unable to.
315. The Authority accepts, as further alleged in paragraph 106 of the Complaint Letter, that despite knowing of this impending meeting with the NRL and the recent identification of breaches by PNRL of the NRL Rules, Mr Sharp did not provide any instructions to Mr Serrao to ensure that the NRL were made aware of the TPAs with PJ Promotions and ScoreCube.
316. These findings are made on the basis of page 133 of the interview between Mr Serrao and LGNSW inspectors dated 11 July 2016 (Serrao LGNSW Interview) (Exhibit PS04).

317. The Authority is further satisfied, as alleged in paragraph 107 of the Complaint Letter, that rather than providing instructions to Mr Serrao to ensure disclosure of the relevant TPAs, on 9 October 2015 Mr Sharp and Mr Issa called Mr Serrao into a meeting where he was “berated” for speaking outside of the Club [the Authority notes that this is an apparent reference to Mr Serrao’s attempts to contact NRL personnel regarding the issues concerning the PNRL’s management of its salary caps and TPAs]. This finding is made on the basis of paragraph 223 of the Serrao Submission on 2016 NRL Breach Notice (Exhibit PS03).
318. The Authority is further satisfied, as alleged in paragraph 108 of the Complaint Letter, that Mr Sharp called this meeting with Mr Serrao after receiving complaints from the NRL that Mr Serrao was constantly seeking contact with them. Mr Sharp was of the opinion that Mr Serrao’s approaches to the NRL were not consistent with the appropriate response to be taken by PNRL. This finding is made on the basis of page 40 of the transcript of the Sharp LGNSW Interview (Exhibit SS08).
319. The Authority notes that while Mr Sharp addresses Particular 4 in his submission dated 8 May 2017, he does not provide a specific response to this Allegation.
320. In conclusion, the Authority is satisfied that Allegation 14 is established in its terms. However, the Authority also finds that at this point in time PNRL had not yet abandoned its plans to verify the breaches of the Salary Cap. Given that context, the Authority does not consider that the failure to disclose to the NRL at this point in time is itself a matter to which weight should be given.

Allegation 15: Messrs Sharp, Issa, Serrao and Gerard failed to disclose information they had about the PNRL’s breaches of the NRL Rules when they had the opportunity on 17 September 2015

321. This specific allegation is made in paragraphs 102 to 105 of the Complaint Letter against Mr Sharp, paragraphs 195 to 196 of the Complaint Letter against Mr Issa, paragraphs 263 to 265 of the Complaint Letter against Mr Serrao and paragraphs 328 to 329 of the Complaint Letter against Mr Gerard.

Mr Sharp

322. The Authority is satisfied, as alleged in paragraph 102 of the Complaint Letter, that at the PNRL board meeting of 17 September 2015, Mr Serrao questioned the progress of the investigation and Mr Sharp replied as follows:

Yeah, I’ve done a bit of chase up on that, mate, to try and find out. I’ve spoken with Bevan [Paul] and with [John] De Mestre, and that sort of stuff. Their recommendation is that we probably not proceed with digging up too many skeletons and all that sort of stuff, on some of the stuff we were looking at, and the view is we just let sleeping dogs lie and we keep moving.

323. This finding is made on the basis of the transcript of the PNRL board meeting of 17 September 2015 (Exhibit PNRL16).
324. The Authority notes and accepts, on the basis of the totality of the Complaint Material, the (uncontested) contention made in paragraph 103 of the Complaint Letter that despite Mr Sharp receiving significant information regarding breaches of NRL Rules at the 25 June 2015 board meeting and despite receiving the information specified in the 30 June 2015 and 10 July 2015 emails from Mr Paul and Mr Farish; despite Mr Sharp providing a commitment to Mr Farish and others that an investigation was being conducted by PwC and despite PNRL passing a resolution at the board meeting of 8 August 2015 to conduct an investigation into the matter, no action was actually taken by Mr Sharp to conduct the said investigation and/or report the suspected breaches to the NRL at this time.

- 325.** The Complainant further contends in paragraph 103 of the Complaint Letter that the “reversal” by the PNRL board of its previous decision to conduct an investigation provided Mr Sharp with a further incentive to disclose the alleged conduct of Mr Seward to the NRL. The Authority accepts that this is a reasonable observation on what would have been a more prudent course for Mr Sharp to take in light of PNRL’s abandonment of the previously resolved internal investigation.
- 326.** The Authority is satisfied, as alleged in paragraph 104 of the Complaint Letter, that after Mr Bevan Paul spoke with the private investigator (Mr Mulherin), Mr Paul formed the view that an internal investigation might not be productive by reason that Mr Seward was no longer an employee of the PNRL or the Club and thus no longer compelled to answer any questions.
- 327.** This finding is made on the basis of page 13 of the transcript of the First Paul LGNSW Interview (Exhibit BP01) and page 32 of the transcript of a further interview between Mr Paul and LGNSW inspectors on 12 July 2016 (Second Paul LGNSW Interview) (Exhibit BP02).
- 328.** The Authority notes, as alleged in paragraph 105 of the Complaint Letter, that Mr Sharp stated to LGNSW officers that the terminology that he used during the 17 September 2015 board meeting (by reference to not “digging up skeletons”) had in fact been overheard during conversations that occurred outside of the board meeting and that he repeated these comments to others who were not present at that PNRL board meeting.
- 329.** The Authority accepts, as contended in paragraph 105 of the Complaint Letter, that Mr Sharp has conceded to LGNSW that he is disappointed with himself for making those comments. These findings are made on the basis of page 38 of the Sharp LGNSW Interview (Exhibit SS08).
- 330.** The Authority notes that although Mr Sharp addresses Particular 4 in his submission dated 8 May 2017, he does not provide a specific response to this Allegation.
- 331.** Allegation 15 is established against Mr Sharp.

Mr Issa

- 332.** The Authority notes and accepts, on the basis of the totality of the Complaint Material, the (uncontested) contention made in paragraph 196 of the Complaint Letter that despite Mr Issa receiving significant information regarding breaches of NRL Rules at the 25 June 2015 board meeting, despite receiving the information in the 10 July 2015 emails from Mr Paul and Mr Farish respectively to Mr Sharp and other Club directors and personnel; and despite Mr Issa passing a resolution at the board meeting of 8 August 2015 to conduct an investigation into the matter, no action was actually taken by Mr Issa to ensure the said investigation was completed and/or to report the breaches to the NRL at this time.
- 333.** The Complainant contends, and the Authority accepts, that the reversal by the PNRL board’s of its previous disposition to investigate the suspected breaches of the Salary Cap was clear at the September 2015 board meeting. This should have provided Mr Issa with an incentive to disclose the alleged behaviours of Mr Seward to the NRL by reason of his status as a Registered Game Official.
- 334.** The Authority notes that at page 85 of the LGNSW Interview with Mr Issa it was put to him that he developed a *suspicion* that Mr Seward was committing fraud in June 2015 and Mr Issa accepted this proposition.
- 335.** The Authority has considered Mr Issa’s submission dated 1 June 2017 on the alleged failure to disclose to the NRL. Mr Issa does not specifically address this alleged opportunity to disclose.

- 336.** The Authority is satisfied that by the meeting of 17 September 2015 the cumulative impact of adverse information and events should have given rise to reasonable suspicions that the ScoreCube and PJ Promotions TPAs were not compliant with the Salary Cap Rules and that it was now personally incumbent upon him, as a Registered Game Official, to disclose these matters to the NRL pursuant to Rule 16 of the NRL Code.
- 337.** The Authority is satisfied that Mr Sharp’s view was that it was best not to investigate the board’s suspicions nor take any further action regarding PNRL’s non-compliance with the Salary Cap in respect of the 2013 and 2014 NRL seasons. The board resolved to adopt this position and Mr Issa shares responsibility for that.
- 338.** Mr Issa’s various submissions in response to his failure to disclose, including his reliance upon others in the PNRL do not provide a satisfactory explanation as to why he did not, as a Registered Game Official, comply with his *personal* contractual duty to report his suspicions to the NRL. By 17 September 2015, Mr Issa, along with other members of the board, was now consciously avoiding disclosure of the suspect TPAs to the NRL.
- 339.** Allegation is established against Mr Issa.

Mr Serrao

- 340.** The Complaint alleges at paragraph 263 of the Complaint Letter that at a meeting between Mr Serrao and NRL representatives on 14 September 2015, Mr Serrao advised the NRL that Mr Seward’s employment had been terminated due to “misconduct”. The Complainant further alleges that Mr Serrao did not provide any detailed information regarding the Black Citrus or PJ Promotions TPAs that had been identified to him over the previous three months. The Complainant alleges that at this meeting, Mr Serrao informed the NRL that the PNRL was conducting an investigation into the activities of Mr Seward.
- 341.** At paragraph 264 of the Complaint Letter, the Complainant alleges that at the PNRL board meeting of 17 September 2015, Mr Serrao questioned the progress of the investigation and Mr Sharp replied as follows:
- Yeah, I’ve done a bit of chase up on that, mate, to try and find out. I’ve spoken with Bevan [Paul] and with [John] De Mestre, and that sort of stuff. Their recommendation is that we probably not proceed with digging up too many skeletons and all that sort of stuff, on some of the stuff we were looking at, and the view is we just let sleeping dogs lie and we keep moving.*
- 342.** The Authority is satisfied that these events occurred, on the basis of pages 94 to 95 of the transcript of the Serrao LGNSW Interview (Exhibit PS04), pages 45 to 46 of the Serrao Submissions on 2016 NRL Breach Notice (Exhibit PS03); and the transcript of the PNRL board meeting of 17 September 2015 (Exhibit PNRL16).
- 343.** The Authority is satisfied, on the basis of the totality of the Complaint Material and Mr Serrao’s submissions dated 13 July 2017 in response to the Complaint, that subsequent to Mr Serrao and the PNRL board passing a resolution at the 8 August 2015 meeting to conduct an investigation into Mr Seward, Mr Serrao took some steps to enquire as to whether the investigation was completed, including questioning the progress of the engagement on two occasions on 26 August 2015 and 17 September 2015.
- 344.** The Authority accepts that Mr Serrao met with the NRL on 14 September 2015 and advised them that Mr Seward’s employment had been terminated due to “misconduct”. However, the Authority rejects Mr Serrao’s submission that it is “wrong” to conclude that these suspicions constituted sufficient evidence to warrant disclosure to the NRL.

- 345.** The Authority accepts the contention made by the Complainant at paragraph 265 of the Complaint Letter, that the PNRL board’s decision not to pursue the investigation, three days after Mr Serrao had informed the NRL of this investigation, provided Mr Serrao with a further impetus to disclose the alleged behaviours of Mr Seward to the NRL.
- 346.** The Authority considers that reporting the suspected breaches of the Salary Cap Rules with respect to the 2013 and 2014 NRL seasons to the NRL at this point in time presents as a reasonable and prudent course to take in light of Mr Serrao’s personal obligations as an NRL Game Official and the PNRL board’s abandonment of the private investigation.
- 347.** The Authority is satisfied, on the basis of the above findings, that by 17 September 2015 Mr Serrao was in a position to disclose, yet failed to disclose, suspected breaches of the Salary Cap Rules.
- 348.** The Authority accepts that all of the opportunities to disclose suspected breaches of the Rules in respect of PNRL’s compliance with the Salary Cap as alleged by the Complainant became cumulatively more and more pressing as each further opportunity to disclose these matters to the NRL came and passed, culminating in the meeting with representatives from the NRL on 14 September 2015.
- 349.** The Authority is satisfied that by 17 September 2015 Mr Serrao should reasonably have been aware that disclosure of the suspected breaches to the NRL with regard to the ScoreCube and PJ Promotions TPAs was now personally required of him as a Registered Game Official.
- 350.** The Authority notes Mr Serrao’s various attempts to raise concerns with the PNRL board from June 2015. Mr Serrao’s opposition to PNRL’s resolution to take no further action to investigate the breaches provides some circumstances of mitigation, but it does not explain why he did not, as a Registered Game Official, comply with his personal contractual duty to report his suspicions to the NRL. By 17 September 2015, Mr Serrao along with other members of the board, were aware of and were now consciously avoiding disclosure of the suspect TPAs to the NRL.
- 351.** This Allegation is established against Mr Serrao.

Mr Gerard

- 352.** Paragraphs 328 to 329 of the Complaint Letter allege that Mr Gerard’s fifth opportunity as an NRL Registered Game Official to report concerns to the NRL regarding the PNRL’s management of its Salary Cap in relation to TPAs pertaining to the 2014 NRL season arose on 17 September 2015 when, at the PNRL board meeting of 17 September 2015, Mr Serrao questioned the progress of the investigation and Mr Sharp replied as follows:
- Yeah, I’ve done a bit of chase up on that, mate, to try and find out. I’ve spoken with Bevan [Paul] and with [John] De Mestre, and that sort of stuff. Their recommendation is that we probably not proceed with digging up too many skeletons and all that sort of stuff, on some of the stuff we were looking at, and the view is we just let sleeping dogs lie and we keep moving.*
- 353.** The Authority accepts, on the basis of Mr Gerard’s submissions dated 1 June 2017, that Mr Gerard was not present at this board meeting of 17 September 2015. However, the Authority is satisfied that this exchange occurred, on the basis of the transcript of the PNRL board meeting of 17 September 2015 (Exhibit PNRL16).
- 354.** The Authority further notes and accepts, on the basis of the totality of the Complaint Material and the (uncontested) contention in paragraph 329 of the Complaint Letter, that despite Mr Gerard and the board passing a resolution at the board meeting of 8 August 2015 to conduct an investigation into the matter, no action was actually taken by Mr Gerard to

ensure the said private investigation was completed and/or to report the breaches to the NRL at this time. It is not in dispute that the investigation did not proceed.

- 355.** The Complainant contends at paragraph 329 of the Complaint Letter that no evidence was offered by Mr Gerard regarding any follow-up actions undertaken by him to ensure this investigation was completed at any subsequent board meetings or after reviewing the minutes of the 17 September 2015 board meeting. The Authority notes Mr Gerard's statement in his submissions dated 1 June 2017 that he subsequently reviewed the minutes of the PNRL board meeting of 17 September 2016 [The Authority assumes that this is a typographical error and should instead be 17 September 2015], questioned Mr Sharp as to why the investigation was not going to proceed, went on the record in newspaper articles and in radio interviews at the time stating that the PNRL needed to work with the NRL integrity unit to get to the bottom of the alleged Salary Cap breaches and wrote an email to Mr Paul concerning the legal action against the NRL in the Supreme Court not being backed by the PNRL board resolution. The Authority accepts the Complainant's allegations as a reasonable observation on what would have been a more prudent course for Mr Gerard to take in light of the abandonment of the previously resolved investigation.
- 356.** The Authority is satisfied, on the basis of the above findings, that following the 17 September 2015 board meeting Mr Gerard was in a position of holding reasonable suspicions about the PNRL's breach of the Salary Cap but failed to provide specific disclosure of his suspicions to the NRL thereafter.
- 357.** The Authority accepts that all of the alleged opportunities to disclose suspected breaches of the Rules in respect of PNRL's compliance with the Salary Cap did in fact occur and the duty to disclose should have cumulatively become more pressing as each further opportunity to disclose these suspected breaches to the NRL came and passed.
- 358.** The Authority accepts Mr Gerard's contention made in his submissions dated 1 June 2017 that he was unaware of any breaches by the PNRL of its Salary Cap until the NRL issued a Breach Notice in May 2015 (without specifying to which Show Cause Notice he refers).
- 359.** Nevertheless, the Authority is satisfied that by shortly after the PNRL board meeting of 17 September 2015 Mr Gerard should have been aware that disclosure of the suspected breaches to the NRL with regard to the ScoreCube and PJ Promotions TPAs was required of him as a Registered Game Official.
- 360.** The Authority accepts, that like Mr Serrao, Mr Gerard did not *endorse* the approach taken by the majority of the PNRL board to take no further internal action with regard to suspected Salary Cap non-compliance during the 2013 and 2014 NRL seasons, yet he failed to report his now pressing reasonable suspicions to the NRL.
- 361.** The Authority is satisfied, on the basis of the above findings and evidence, that Allegation 15 is established in respect of Mr Gerard.

Allegation 16: Mr Sharp failed to disclose information he had about the PNRL's breaches of the NRL Rules when he had further opportunities to do so between November 2015 and April 2016

- 362.** This specific allegation is made in paragraphs 109 to 115 of the Complaint Letter against Mr Sharp. This allegation is not made against Messrs Issa, Serrao or Gerard.
- 363.** The Authority is satisfied, as alleged in paragraph 109 of the Complaint Letter, that during late 2015 and early 2016 the NRL was in receipt of information regarding alleged Salary Cap breaches by the PNRL in respect of the 2013 and 2014 NRL seasons. During this time, Mr Sharp and other members of the governing body were in regular contact with NRL representatives and had been asked on a number of occasions to disclose all known

potential breaches. This finding is made on the basis of paragraphs 161 to 168 of the 2015 NRL Breach Notice (Exhibit PNRL02).

- 364.** The Authority is further satisfied, as alleged in paragraph 110 of the Complaint Letter, that on 6 November 2015 Mr Sharp was contacted by Mr Nick Weeks, Head of Integrity at the NRL, to discuss an upcoming salary cap audit. During this call Mr Weeks advised Mr Sharp that the NRL had received information from an anonymous source alleging violation of the Salary Cap. Mr Weeks made contemporaneous notes of the call, recording that:

Steve assured me that any suspicious transaction, breach or potential breach had been brought to the attention of the NRL already.

- 365.** The Complainant also contends, and the Authority accepts, that there is no indication within Mr Weeks' notes or the Sharp Submissions on 2016 NRL Breach Notice that enquiries were made by Mr Sharp to determine what, if any, breaches had already been disclosed to the NRL. These findings are made on the basis of paragraph 161 of the 2016 NRL Breach Notice (Exhibit PNRL02).
- 366.** The Authority is satisfied, as alleged in paragraph 111 of the Complaint Letter, that on 16 December 2015 Mr Sharp and others from the PNRL attended a meeting with NRL representatives. At this meeting the PNRL was directed to undertake a thorough review of its records and to identify any payment irregularities or unusual or fraudulent transactions that may contribute or point to breaches of the Salary Cap Rules. No disclosures regarding any of the then known TPA violations were made by Mr Sharp or other members of the PNRL present at that meeting. This finding is made on the basis of paragraph 162 of the 2016 NRL Breach Notice (Exhibit PNRL02).
- 367.** The Authority is further satisfied, as alleged in paragraph 112 of the Complaint Letter, that on 11 March 2016 Mr Weeks wrote a letter to the PNRL regarding a meeting held on the previous day with Mr Sharp present at that meeting. At the end of the letter, Mr Weeks provided a further opportunity for the PNRL to make disclosures regarding "all information which is relevant to any instances, or suspected instances, of non-compliance with the PCR Rules". This finding is made on the basis of paragraph 166 of the 2016 NRL Breach Notice (Exhibit PNRL02).
- 368.** The Authority is satisfied, as alleged in paragraph 113 of the Complaint Letter, that rather than providing disclosures to the NRL, Mr Sharp attended a meeting with them on 18 March 2016 where Mr Weeks recorded that no further information was disclosed. This finding is made on the basis of paragraph 167 of the 2016 NRL Breach Notice (Exhibit PNRL02).
- 369.** The Authority is satisfied, as alleged in paragraph 114 of the Complaint Letter, that as a result of receiving no further information from the PNRL, on 1 April 2016 the NRL sent an email confirming no new information had been received. In response, Mr Sharp sent a reply email to the NRL, copying in each governing body member, which declared that the PNRL was taking legal advice and that the PNRL felt that it had been fully compliant with the requests from the NRL. This finding is made on the basis of paragraph 168 of the 2016 NRL Breach Notice (Exhibit PNRL02).
- 370.** The Authority is further satisfied, on the basis of its above findings and as alleged in paragraph 115 of the Complaint Letter, that despite Mr Sharp being in possession of sufficient information to support the removal of the PNRL's former CEO in June 2015; despite receiving confirmatory evidence of breaches of the NRL Rules and despite now having had multiple opportunities to make disclosures to the NRL, Mr Sharp failed to report any of the known breaches to the NRL.

371. The Authority is satisfied, on the basis of the above findings, that Mr Sharp was in a position to disclose, but failed to disclose, suspected breaches of the Salary Cap Rules on numerous occasions.
372. While the Authority does not accept that Mr Sharp was reasonably required to disclose suspected breaches during the first claimed point of contravention – with respect to breaches that may have occurred prior to his appointment that were pressed by player managers (but not acted upon by PNRL) during May/June 2013, the Authority accepts that all of the subsequent alleged opportunities to disclose suspected breaches of the Rules in respect of PNRL’s compliance with the Salary Cap became cumulatively more and more apparent as each further opportunity to disclose these suspected breaches to the NRL came and passed.
373. Mr Sharp has admitted to LGNSW officers that he was on notice of the alleged breaches of the PNRL’s Salary Cap by June 2015.
374. Even making allowances for a reasonable period during which Mr Sharp may have sought legal advice on PNRL’s approach to the NRL, the Authority has no difficulty reaching the conclusion that by 17 September 2015 Mr Sharp should reasonably have been aware that disclosure of the suspected breaches to the NRL with regard to the ScoreCube and PJ Promotions TPAs was required of him as a Registered Game Official, but Mr Sharp had formed a view that it was best not to dig up “skeletons” regarding PNRL’s non-compliance with regard to the 2013 and 2014 NRL seasons.
375. The Authority notes that although Mr Sharp addresses Particular 4 in his submission dated 8 May 2017, he does not provide a response to the respective paragraphs in the Complaint Letter for this allegation.
376. The Authority is satisfied that by this time in 2015 Mr Sharp was consciously avoiding disclosure to the NRL. The Authority is satisfied, on the basis of the above findings and evidence, that Allegation 16 is established.

Allegation 17: The PNRL were issued a fine by the NRL for \$465,000 for the submission of false post-season declarations for the 2013 and 2014 NRL seasons and salary cap breaches during 2014

377. This allegation is made in Particular 5 of Ground 1 with respect to Mr Sharp, Particular 3 of Ground 2 with respect to Mr Issa, Particular 3 of Ground 3 with respect to Mr Serrao and Particular 3 of Ground 4 with respect to Mr Gerard.
378. The Complainant alleges that as a result of the submission of false declarations for the 2013 and 2014 Post-Season Declarations and the salary cap breaches during 2014, the PNRL were issued a fine by the NRL in the amount of \$465,000.00.
379. As noted in the Show Cause Notice issued to Messrs Sharp, Issa, Serrao and Gerard on 10 April 2017, the Authority considers this allegation to form part of the general factual context for consideration of the other Particulars of the Complaint.
380. While accepting that such fines were actually issued in NRL determinations dated 6 July 2015 and 9 July 2016, this information is accepted by way of background information to the Complaint and these Particulars of the Complaint Letter do not provide an independent basis for taking disciplinary action against any of Messrs Sharp, Issa, Serrao or Gerard.
381. Allegation 17 is established.

Allegation 18: Messrs Sharp, Issa, Serrao and Gerard did not act in accordance with the PNRL’s Code of Conduct in that they failed to act in the best interests of the PNRL and Club

- 382.** This specific allegation is made in Particular 6 of Ground 1 with respect to Mr Sharp, Particular 4 of Ground 2 with respect to Mr Issa, Particular 4 of Ground 3 with respect to Mr Serrao and Particular 4 of Ground 4 with respect to Mr Gerard.
- 383.** By way of background, the Complainant notes that in “late 2015” the Club redeveloped its *Directors’ Guidelines* document. This document was then re-titled “Directors’ Handbook” and detailed the roles and responsibilities of directors within all companies of the Parramatta Leagues Club Ltd Group, inclusive of the Club and the PNRL. A copy of this document forms part of the Complaint Material.
- 384.** The Complainant alleges in paragraph 126, 206, 276 and 339 respectively of the Complaint Letter that given that this document was developed, reviewed and accepted during Mr Sharp’s tenure as Chairperson and Messrs Issa’s, Serrao’s and Gerard’s tenure as directors, they may be assumed to be fully aware of the *Directors’ Handbook* content, had made an assessment of that content and accepted this document as an official document of the Club.
- 385.** The Authority accepts that this is a reasonable assumption and accepts that Messrs Sharp, Issa and Gerard would likely have been aware of the content of the *Directors’ Handbook*. The Authority notes Mr Serrao’s contention made in his submissions dated 13 July 2017 in response to the Complaint, that Mr Serrao was involved in driving governance reforms at the Club and the PNRL. The Authority accepts this contention and is satisfied that Mr Serrao would also likely have been aware of the content of the *Directors’ Handbook*.

Mr Sharp

- 386.** The Authority notes the requirement, specified in paragraph 127 of the Complaint Letter, that section 11(b) of the Parramatta Leagues Club’s *Code of Conduct* [which the Authority notes should actually be a reference to 11.1(b)] identifies that the Club’s directors must “act in good faith and in the best interests of Parramatta Leagues Club and Parramatta National Rugby League Club”. The *Code of Conduct for Directors of the Club* forms part of the 2015 *Directors Handbook* and is in evidence in this Complaint (Exhibit PLC06).
- 387.** Paragraph 128(i) of the Complaint Letter alleges that through his conduct Mr Sharp has *failed to act in the best interests of the Club* and the PNRL by reason of PNRL incurring a \$1 million financial penalty in respect of breaches by the PNRL of the NRL Rules. Paragraph 128(i) alleges that this fine will in turn “require funding” by the parent Club of the PNRL to make up for the reduction in revenue to the PNRL.
- 388.** The Authority is satisfied, on the basis of the 2016 NRL Breach Notice (Exhibit PNRL02) that the PNRL has *in fact* incurred a \$1 million financial penalty. The Authority notes that this penalty has subsequently been reduced by the NRL to \$750,000.00.
- 389.** The Authority is satisfied that the financial impost caused by the penalty will likely require funding by the parent (registered) Club.
- 390.** While the reasons for the NRL determination on the 2016 Breach Notice are not in evidence, a Media Release published on the NRL website on 3 May 2016 states that the PNRL was issued with a \$1 million penalty by the NRL by reason of PNRL paying players undisclosed remuneration from its own resources; procuring TPAs for players in breach of the Salary Cap Rules; and conspiring with PNRL club suppliers to inflate or issue fictitious invoices to raise cash that was then relayed to PNRL players.
- 391.** The NRL media release also states:

Head of Integrity, Nick Weeks said the club and its registered officials had been given numerous opportunities to meet their obligations to come forward with details of any breaches but had not done so.

This was despite the fact the club appears to have been aware of some of the matters which have been reported to the NRL.

- 392.** It is apparent from the media release that the PNRL Club's non-disclosure of Salary Cap breaches was a factor in the issue of a substantial penalty against the Club by the NRL. The allegation in paragraph 128(i) is established.
- 393.** The Authority has also considered the allegation in paragraph 128(ii) of the Complaint Letter, that Mr Sharp has failed to act in the best interests of the Club and PNRL in respect of his alleged failure to report suspicion of fraud to the NSW Police until June 2016, almost 12 months after the formation of his suspicion.
- 394.** The allegation in respect of failure to report these matters to NSW Police has not been squarely put. If the implication is that Mr Sharp has *failed to report a serious crime* to Police (which is an offence against section 316 of the *Crimes Act 1900*), that allegation has not been squarely put to him. Section 57F(2) of the Act requires that a disciplinary complaint be made *in writing* and *specify* the grounds of complaint.
- 395.** Out of caution, and given the gravity of an allegation of this nature, the Authority considers that it would be procedurally unfair to make an adverse finding against Mr Sharp to the effect that he failed to report a serious crime on the Complaint as it has been specified. The Authority makes no adverse finding in respect of any failure by Mr Sharp to report to the Police.
- 396.** The Authority has considered the allegation in paragraph 128(iii) of the Complaint Letter that Mr Sharp failed to act in the best interests of the Club by reason of his role in PNRL's failure to engage a professional investigator to conduct an investigation into Mr Seward's suspected fraudulent activity, even after a resolution to that effect had been made by the PNRL board.
- 397.** While the Club's change of position is a matter of concern, the Authority is satisfied, on the basis of page 39 of the Sharp Submissions on the 2016 NRL Breach Notice (Exhibit SS06), that Mr Sharp was advised by Mr Paul, who in turn was advised by the PNRL's solicitor Mr De Mestre, that an internal investigation may no longer prove fruitful in light of Mr Seward's dismissal as CEO of PNRL, meaning that he could no longer be compelled to cooperate with any investigation.
- 398.** The Club's apparent assessment that a private investigation was no longer viable in those circumstances appears to be reasonable on its face and the abandonment of the proposed investigation does not, of itself, establish a failing on Mr Sharp's part to act in the best interests of the Club.
- 399.** The Authority is satisfied, as alleged in paragraph 128(iv) of the Complaint Letter, that Mr Sharp then failed to act in the best interests of the Club and PNRL through his failure to disclose suspected breaches of the NRL Rules during numerous meetings and telephone calls with the PNRL board and/or NRL representatives between September 2015 and April 2016. This finding is made on the basis of the Authority's findings above on Particulars 1, 2 and 4 of Ground 1.
- 400.** The Authority is also satisfied, as alleged in paragraph 128(v) of the Complaint Letter, that Mr Sharp failed to act in the best interests of the Club and PNRL through his failure to read and familiarise himself with the NRL Rules, which constitutes a significant aspect of the business affairs of the Club, at the commencement of his tenure as Club director.

- 401.** This finding is made on the basis of page 15 of the transcript of the Sharp LGNSW Interview (Exhibit SS08), where Mr Sharp stated that he had not familiarised himself with the NRL Rules until “mid 2015” despite commencing his tenure as a director of the Parramatta Leagues Club on 11 May 2013.
- 402.** In determining this allegation, the Authority has considered Mr Sharp’s submission dated 8 May 2017 in which Mr Sharp makes generalised contentions including that: he put the club first; he has never been involved in any financial dealings with players, players manager or financial parties; whenever a suspect situation surfaced it was eradicated as soon as possible; and the board openly discussed all aspects of the business and recorded discussion is evidence that the board was not hiding anything.
- 403.** In conclusion, the allegations in Particular 6 of Ground 1 are established, but only in respect of the allegations contained in paragraphs 128 (i), (iv) and (v) of the Complaint Letter. The allegations contained in paragraphs 128, (ii) and (iii) are not established.

Mr Issa

- 404.** Paragraph 208(i) of the Complaint Letter alleges that through his conduct Mr Issa has *failed to act in the best interests of the Club* and the PNRL by reason of PNRL incurring a \$1 million financial penalty at the hands of the NRL during 2016 in respect of breaches by PNRL of the NRL Rules. Paragraph 208(i) alleges that this fine will in turn “require funding” by the parent Club of PNRL.
- 405.** The Authority repeats the analysis and finding that it has made with respect to similar allegations made against Mr Sharp in respect of paragraph 128(i) of the Complaint Letter.
- 406.** With respect to Mr Issa’s alleged failure to report suspicion of fraud to NSW Police that is specified in Paragraph 208(ii) of the Complaint Letter, the Authority repeats the analysis and finding that it has made with respect to similar allegations against Mr Sharp in paragraph 128(ii) of the Complaint Letter.
- 407.** With respect to the allegation in paragraph 208(iii) of the Complaint Letter that Mr Issa failed to act in the best interests of the Club through his failure to engage a professional investigator to conduct the investigation into Mr Seward’s suspected fraudulent activity, even after a resolution to that effect had been made by the PNRL board, the Authority repeats its analysis and finding with respect to a similar allegation against Mr Sharp in paragraph 128(iii) of the Complaint Letter.
- 408.** The Authority is satisfied, as alleged in paragraph 208(iv) of the Complaint Letter, that Mr Issa failed to act in the best interests of the Club and PNRL through his failure to disclose suspected breaches of the NRL Rules.
- 409.** The Authority notes Mr Issa’s submissions dated 1 June 2017 that he “sought to introduce” the Directors’ Handbook for the Club and the PNRL and that he was the “driving push” to engage PwC to conduct an extensive governance review into the Club and the PNRL.
- 410.** While the Authority accepts that Mr Issa played a role in implementing such corporate governance measures for the Club and PNRL, the Authority does not accept that these positive contributions overcome a substantial personal failure on his part to act in the best interests of the Club at all times with respect to non-disclosure of the PNRL’s breaches of the NRL Rules, given the serious implications of that conduct for the PNRL and the parent Club. This finding is made on the basis of the Authority’s findings and evidence specified in respect of Particular 2 of Ground 2, set out above.
- 411.** The Authority is also satisfied, as alleged in paragraph 208(v) of the Complaint Letter, that Mr Issa failed to act in the best interests of the Club and PNRL through his failure to read and

familiarise himself with the NRL Rules, at the commencement of his tenure as Club director. The NRL Rules constituted a significant aspect of the business affairs and constitutional purpose of the Club, and Mr Issa's status and personal obligations as a Registered Game Official underscored the importance of the NRL Rules for the PNRL and also the parent Club.

412. This finding is made on the basis of the Authority's findings and evidence specified in respect of Particular 2 of Ground 2, set out above and on the basis of page 65 of the transcript of the Issa LGNSW Interview (Exhibit TI05), where Mr Issa stated that he only became aware of the self-reporting requirement under rule 108 of the NRL Rules in "February, March of 2016" despite commencing his tenure as a director on 11 May 2013.
413. In conclusion, the allegations in Particular 4 of Ground 2 are established against Mr Issa, but only in respect of the allegations contained in paragraphs 208(i), (iv) and (v) of the Complaint Letter. The allegations contained in paragraphs 208(ii) and (iii) are not established.

Mr Serrao

414. Paragraph 278(i) of the Complaint Letter alleges that through his conduct Mr Serrao has *failed to act in the best interests of the Club* and the PNRL by reason of PNRL incurring a \$1 million financial penalty at the hands of the NRL during 2016 in respect of breaches by PNRL of the NRL Rules. Paragraph 278(i) alleges that this fine will in turn "require funding" by the parent Club of PNRL.
415. The Authority repeats the analysis and finding that it has made with respect to similar allegations made against Mr Sharp in respect of paragraph 128(i) of the Complaint Letter.
416. With respect to Mr Serrao's alleged failure to report suspicion of fraud to NSW Police that is specified in Paragraph 278(ii) of the Complaint Letter, the Authority repeats the analysis and finding that it has made with respect to similar allegations against Mr Sharp in paragraph 128(ii).
417. With respect to the allegation in paragraph 278(iii) of the Complaint Letter that Mr Serrao failed to act in the best interests of the Club through his failure to engage a professional investigator to conduct the investigation into Mr Seward's suspected fraudulent activity, even after a resolution to that effect had been made by the PNRL board, the Authority repeats its analysis and finding with respect to a similar allegation against Mr Sharp in paragraph 128(iii) of the Complaint Letter.
418. The Authority is satisfied, as alleged in paragraph 278(iv) of the Complaint Letter, that Mr Serrao failed to act in the best interests of the Club and PNRL through his failure to disclose suspected breaches of the NRL Rules. This finding is made on the basis of the Authority's findings above on Particular 2 of Ground 3.
419. The Authority is also satisfied, as alleged in paragraph 278(v) of the Complaint Letter, that Mr Serrao failed to act in the best interests of the Club and PNRL through his failure to read and familiarise himself with the NRL Rules, at the commencement of his tenure as Club director. The NRL Rules constituted a significant aspect of the business affairs and constitutional purpose of the Club, and Mr Serrao's status and personal obligations as a Registered Game Official underscored the importance of the NRL Rules for the PNRL and also the parent Club. This finding is made on the basis of the Authority's findings above on Particular 2 of Ground 3 and on the basis of paragraph 9 of the Serrao Submission on 2016 NRL Breach Notice (Exhibit PS03) in which Mr Serrao states "I did not read or understand the NRL Rules in full when I was appointed as a director of the board, or at any time after my appointment to the board" despite commencing his tenure as a director on 11 May 2013.
420. In determining this allegation, the Authority referred to Mr Serrao's submission dated 13 July 2017. In this submission, Mr Serrao addressed Particular 4 specifically and contended that

he understood that there were issues with the previous management in relation to governance matters in June 2013, that he supported the engagement of Russell Corporate Advisory Services Pty Ltd to review the governance environment of the Leagues Club with this report being referred to the then Office of Liquor Gaming and Racing now LGNSW in November 2013. In this submission Mr Serrao discusses his various roles and actions taken as a member between 2013 and 2014.

- 421.** Mr Serrao further contends that at no time during 2014 to 2015 did he receive advice from Mr Paul or Mr De Mestre that he should report any suspicion of fraud to NSW Police. Mr Serrao contends that it was only upon receiving evidence from the NRL in May 2016 and then reading the statements of Mr Seward and Mr Irvine, who admitted to fraud, that Mr Serrao and the board then instructed Mr Paul to contact the Police. Mr Serrao contends that he acted in good faith and in the best interests of the Club and PNRL. Mr Serrao contends that there is much evidence that proves he was “actively acting” in the best interests of the Club and PNRL by driving reform. The Authority accepts that Mr Serrao was in a minority position and unable to advance any investigation once the board had decided not to pursue that option any further, but this does not explain his personal failure, as a Registered Game Official, to report what he knew about suspected breaches of the Salary Cap to the NRL *after* the board had abandoned any further investigation at the September 2015 meeting.
- 422.** The Authority accepts the contentions made by Mr Serrao that he had supported reforms to corporate governance at PNRL and further accepts that he did not receive express advice from PNRL General Counsel or others to report any matter to NSW Police.
- 423.** In conclusion, the allegations in Particular 4 of Ground 3 are established, but only in respect of the allegations contained in paragraphs 278 (i), (iv) and (v) of the Complaint Letter. The allegations contained in paragraphs 278 (ii) and (iii) are not established.

Mr Gerard

- 424.** Paragraph 341(i) of the Complaint Letter alleges that through his conduct Mr Gerard has *failed to act in the best interests of the Club* and the PNRL by reason of PNRL incurring a \$1 million financial penalty at the hands of the NRL during 2016 in respect of breaches by PNRL of the NRL Rules. Paragraph 341(i) alleges that this fine will in turn “require funding” by the parent Club of PNRL.
- 425.** The Authority repeats the analysis and finding that it has made with respect to similar allegations made against Mr Sharp in respect of paragraph 128(i) of the Complaint Letter.
- 426.** With respect to Mr Gerard’s alleged failure to report suspicion of fraud to NSW Police that is specified in Paragraph 341(ii) of the Complaint Letter, the Authority repeats the analysis and finding that it has made with respect to similar allegations against Mr Sharp in paragraph 128(ii).
- 427.** With respect to the allegation in paragraph 341(iii) of the Complaint Letter that Mr Gerard failed to act in the best interests of the Club through his failure to engage a professional investigator to conduct the investigation into Mr Seward’s suspected fraudulent activity, even after a resolution to that effect had been made by the PNRL board, the Authority repeats its analysis and finding with respect to a similar allegation against Mr Sharp in paragraph 128(iii) of the Complaint Letter.
- 428.** The Authority is satisfied, as alleged in paragraph 341(iv) of the Complaint Letter, that Mr Gerard failed to act in the best interests of the Club and PNRL through his failure to disclose suspected breaches of the NRL Rules. This finding is made on the basis of the Authority’s findings above in respect of Particular 2 of Ground 4.

- 429.** The Authority is also satisfied, as alleged in paragraph 341(v) of the Complaint Letter, that Mr Gerard failed to act in the best interests of the Club and PNRL through his failure to read and familiarise himself with the NRL Rules, at the commencement of his tenure as Club director. The NRL Rules constituted a significant aspect of the business affairs and constitutional purpose of the Club, and Mr Gerard's status and personal obligations as a Registered Game Official underscored the importance of the NRL Rules for the PNRL and also the parent Club.
- 430.** This finding is made on the basis of page 24 of the transcript of the Gerard LGNSW Interview (Exhibit GG01), where Mr Gerard stated that he was not aware of the NRL Rules regarding his obligation to self-report until August 2015, when he was provided with a "full explanation" of the NRL Rules.
- 431.** The Authority is also satisfied, as alleged in paragraph 341(vi) of the Complaint Letter, that Mr Gerard has failed to act in the best interests of the Club and PNRL through his failure to complete the ClubsNSW Director's Training.
- 432.** The Authority notes that this allegation has only been made against Mr Gerard, and not against Messrs Sharp, Issa or Serrao, but this finding is made on the basis of page 72 of the transcript of the Gerard LGNSW Interview (Exhibit GG01), where Mr Gerard stated, "No, I don't think I have" in response to a question asking whether he had completed the ClubsNSW mandatory directors' course.
- 433.** Clause 26 of the *Registered Clubs Regulation 2015* (Clubs Regulation) provides that a person who is a member of the governing body of the registered club (other than a small club) must, within 12 months of becoming a member, complete the required training, specified in clause 26(5) of the Clubs Regulation.
- 434.** In reaching a determination on this allegation, the Authority has considered Mr Gerard's submission dated 1 June 2017. In this submission Mr Gerard contends that he acted honestly and professionally in his duties. In relation to the Premiership Club, Mr Gerard contends that this was recommended by NRL staff as a "businessman's club" to attract corporate sponsors and for members to invite guests who may be interested in joining or becoming a third-party sponsor. Mr Gerard contends that the directors were "constantly assured" by NRL staff that the Premiership Club had been reviewed by the Salary Cap Auditor and that it complied with the NRL Rules. Mr Gerard further contends in his interview that he "constantly argued" for the Premiership Club to be shutdown.
- 435.** While the Authority accepts Mr Gerard's position with regard to the status of the Premiership Club in relation to the NRL Rules, these submissions do not explain the failure on his part, as a Registered Game Official, to be aware of his self-reporting obligations under the NRL Rules. The Authority accepts that like Mr Serrao, Mr Gerard was in a minority position and unable to advance any investigation once the board had resolved not to pursue that option further, but this does not explain his personal failure as a Registered Game Official to report what he knew about the suspected breaches of the Salary Cap to the NRL after the board had abandoned any further investigation at the September 2015 meeting. While Mr Gerard was not at the September 2015 board meeting, he became aware of the position the board was taking shortly thereafter.
- 436.** In conclusion, the allegations in Particular 4 of Ground 4 are established, but only in respect of the allegations contained in paragraphs 341 (i), (iv), (v) and (vi) of the Complaint Letter. The allegations contained in paragraph 341 (ii) and (iii) are not established against Mr Gerard.
- 437.** The matters specified in Allegation 18 are established in part.

Allegation 19: Messrs Sharp, Issa, Serrao and Gerard did not act in accordance with the PNRL’s Code of Conduct in that they failed to report fraudulent behaviour

438. This broad allegation of failing to report fraudulent behaviour is made in Particular 7 of Ground 1 with respect to Mr Sharp in June 2015, Particular 5 of Ground 2 with respect to Mr Issa in June 2015 and August 2015, Particular 5 of Ground 3 with respect to Mr Serrao in June 2015 and Particular 5 of Ground 4 with respect to Mr Gerard in August 2015.
439. The Authority notes that section 11.2(j) of the *Code of Conduct* places an obligation upon the member of the governing body of a registered NRL club to “report any fraudulent or corrupt behaviour” (Exhibit PLC06). The Authority notes that this Code of Conduct is silent about *to whom* the directors must report any such fraudulent or corrupt behaviour.
440. This obligation arises separately to the obligation in Rule 16 of the NRL Rules that requires *NRL Registered Game Officials* to disclose suspected breaches of the NRL Rules or the NRL Code.

Mr Sharp

441. The Authority is satisfied, as alleged in paragraph 130 of the Complaint Letter, that by his own admission, Mr Sharp acknowledged that he first became aware that Mr Seward “had been involved in suspicious invoices” and “admitted he had undertaken improper actions” during June 2015. This finding is made on the basis of page 31 of the Sharp Submissions on 2016 NRL Breach Notice (Exhibit SS06).
442. The Authority refers to Mr Sharp’s submission dated 8 May 2017 in which he raises general points in relation to Particulars 6, 7 and 8 of Ground 1 of the Complaint, as noted above in relation to Allegation 18.
443. In addition to these comments, Mr Sharp himself has stated that his “ignorance to the finer detail of the NRL and PCR rules” such as his responsibility to “report suspicious behaviour” is “evident throughout these findings” and that he “lost sight” of his requirements to report it as in most occasions he “trusted those in the executive to have done the reporting”.
444. Mr Sharp states that during 2015 with the mounting strain of the PNRL Salary Cap issues and the “irretrievable differences” that the PNRL board and executive management were experiencing, Mr Sharp wrote to the then Deputy Premier about the matter. He characterises this conduct as evidence of him putting the Club’s interests first.
445. The Authority accepts the allegation in paragraph 131 of the Complaint Letter, that Mr Sharp and other members of the PNRL governing body did not report the fraudulent invoices or improper actions by Mr Seward to the NSW Police. The Authority accepts the allegation, and that this non-reporting to Police occurred in circumstances when the board had deemed Mr Seward’s conduct sufficient to warrant termination of employment.
446. However, the Complaint Letter does not specify the nature of any duty to report this matter to Police, or that the board’s conduct involved failing to report a serious crime contrary to section 316 of *the Crimes Act 1900*. In these circumstances, no adverse finding is made with respect to any alleged failure to report to NSW Police as the suggested duty to report to Police is unclear. No adverse finding is made in respect of this allegation.
447. While the PNRL *Code of Conduct* is an internal policy document with the club and does not have the same legal force as a statutory duty or a contractual obligation, it is another instance of Mr Sharp acting in a manner contrary to his duties as a director of PNRL. However, it is not clear from the wording of the Complaint Letter how the Code gives rise to a duty to report Salary Cap compliance issues to *Police* and no adverse finding is made in this regard.

Mr Issa

- 448.** The Authority is satisfied, as alleged in paragraph 210 of the Complaint Letter, that Mr Issa had stated in the Issa Submissions on 2016 NRL Breach Notice that during June 2015 he was only aware of Mr Seward’s poor contract negotiations, including exceeding his authority, and approving invoices for a project not being managed by him. This finding is made on the basis of page 10 of the Issa Submissions on 2016 NRL Breach Notice (Exhibit TI03).
- 449.** The Complainant also states at paragraph 211 of the Complaint Letter that by August 2015 Mr Issa had formed the suspicion that Mr Seward had been involved in fraud which is said to be evidenced by the board’s proposal, at the 8 August 2015 PNRL board meeting, to conduct a private investigation (Exhibit PNRL15).
- 450.** The Complainant further alleges that no report was made by Mr Issa to the NRL or NSW Police at this time, nor one month later in September 2015 when the board decided that no such investigation would be conducted.
- 451.** The Authority notes that the minutes for this meeting stated:

The Board resolved to undertake a formal private investigation into any proposed fraudulent activity that may have been conducted by the previous CEO. Rob Mulherin will be engaged to undertake this investigation.

- 452.** Mr Issa’s submission to the Authority dated 1 June 2017 includes a number of contentions in respect of the alleged breaches of the Director’s Code of Conduct and Handbook.
- 453.** Mr Issa contends that a “quasi-judicial investigation” into the Salary Cap matter should now be conducted, by reason that the NRL’s investigation was “biased” with no independent oversight. Mr Issa makes the general submission that he acted in the “best interest of the club at all times” while a director.
- 454.** Nevertheless, the Authority repeats its observations made with respect to Mr Sharp in respect of the alleged failure to report to Police and alleged breach of the PNRL Code, and makes no adverse findings in this regard.

Mr Serrao

- 455.** The Authority is satisfied, as alleged in paragraph 280 of the Complaint Letter, that Mr Serrao stated in the Serrao Submissions on the 2016 NRL Breach Notice that after the PNRL board meeting in June 2015, Mr Serrao was aware that Mr Seward “may have defrauded the Club”. This finding is made on the basis of paragraph 162(b) of Mr Serrao’s statement which forms part of the Serrao Submission on the 2016 NRL Breach Notice (Exhibit PS03).
- 456.** The Authority has considered Mr Serrao’s submission dated 13 July 2017 in which he specifically addresses Particular 5 of Ground 3 of the Complaint Letter. He contends that although by the June 2015 board meeting he was aware that Mr Seward “may have defrauded the Club” there was no “hard, definite evidence of fraud” at that time.
- 457.** Mr Serrao contends that there was not “sufficient suspicion to warrant disclosure”. Mr Serrao contends that “no advice” was provided to him personally by Mr De Mestre, Mr Paul or Mr Farish and that he relied upon “others, such as these individuals together with Mr Sharp”.
- 458.** Mr Serrao submits that an alleged breach of a duty arising through inaction requires “conscious knowledge of the conduct in issue” and “an understanding that comes with the knowledge that there is a responsibility to do something about that knowledge”.

459. Mr Serrao also contends that he had a full-time job outside of his directorship of the PNRL and that other full-time employees of PNRL had day-to-day responsibilities to deal with these (Salary Cap) matters who may reasonably be expected to comply with their obligations fully and honestly.

460. Accepting that Mr Serrao had a full-time job outside of the PNRL and there were employees of PNRL with the day to day responsibility for managing PNRL's compliance with the Salary Cap, the Authority is nevertheless satisfied, as alleged in paragraph 281 of the Complaint Letter, that in late June 2015 Mr Serrao had personally formed the suspicion that Mr Seward had been involved in fraud and despite forming this suspicion, failed to make a report to NSW Police or the NRL. The Complainant alleges that:

“By the statement within his personal submission to the NRL, Mr Serrao had formed the suspicion that Mr Seward had been involved in fraud in late June 2015.”

461. Nevertheless, the Authority repeats its observations made with respect to Mr Sharp in respect of the alleged failure to report to Police and alleged breach of the PNRL Code, and makes no adverse findings in this regard.

Mr Gerard

462. Paragraph 343 of the Complaint Letter alleges that at the 8 August 2015 board meeting Mr Gerard seconded a proposal put forward by Mr Issa to pass a resolution to conduct a private investigation into suspected “fraudulent” activity by Mr Seward.

463. The Authority notes Mr Gerard's submission of 1 June 2017 that he was “unaware” of the “fraudulent behaviour” that resulted in the PNRL being fined and docked premiership points during 2016 and that he only became aware that the PNRL had breached the NRL Rules *after* the NRL investigations into the PNRL began.

464. The Authority is satisfied that at the 8 August 2015 board meeting, Mr Gerard was suspicious of fraud having been being committed by Mr Seward yet failed to make a report to the NSW Police or the NRL as stated by the Complainant in paragraph 343 of the Complaint Letter. This was despite him being moved, according to his own account to go “on the record” in newspaper articles and in radio interviews to the effect that PNRL needed to work with the NRL Integrity Unit to “get to the bottom of” the alleged Salary Cap breaches. This finding is made on the basis of the Authority's findings above on Particular 2 of Ground 4.

465. The Authority repeats its observations made with respect to Mr Sharp in respect of the alleged failure to report to Police and alleged breach of the PNRL Code, and makes no adverse findings in this regard.

Allegation 20: Messrs Sharp, Issa, Serrao and Gerard did not act in accordance with the PNRL's 2015 *Directors' Handbook* with regard to conflicts of interest

466. This allegation is made in Particular 8 of Ground 1 with respect to Mr Sharp, Particular 6 of Ground 2 with respect to Mr Issa, Particular 6 of Ground 3 with respect to Mr Serrao and Particular 6 of Ground 4 with respect to Mr Gerard.

467. The Complainant specifically alleges that Messrs Sharp, Issa, Serrao and Gerard failed to comply with Item 7.4 of the 2015 *Directors' Handbook* with regard to an alleged conflict of interest in that these individuals, who acted as either Chairperson or directors of both the Club and PNRL, failed to ensure that the liabilities of the PNRL did not exceed the approved budget for funding by the Club.

468. Clause 7.4 states:

Serving on other boards raises the issue of conflict of interest to the extent broadly that a decision made in the best interests of PNRL may not necessarily be in the best interests of PLC. Therefore the Directors must keep in the forefront of their minds meeting their obligations to avoid conflicts of interest and be mindful of when they must act as Directors of PLC and when they act as Directors of PNRL. There is a distinct separation of each of these functions.

In acting for PNRL the Directors must always be aware of PNRL's financial and other obligations to PLC. For example, a Director of PNRL must ensure that liabilities incurred by PNRL do not exceed PLC's approved underwriting of those liabilities.

Additionally, the board of PNRL must be acutely aware of PNRL's own obligations. For example, PNRL has obligations to the NRL under the NRL Licence to comply with the salary cap rules. Decisions and conduct by PNRL board that are non-compliant with those rules may cause a termination of the NRL Licence under clause 18. These decisions would arguably mean that the board of PNRL have acted in conflict of their duties to PLC because the business of PNRL is that of running an NRL Team known as the Parramatta Eels. Termination of the NRL Licence means that the business of PNRL comes to an end and PNRL (and its member PLC) will suffer loss and harm.

A strict fiduciary duty to avoid conflict of interests has been applied by the Courts in a variety of situations that have been categorised as:

- (a) Self-interested transactions with the company;*
- (b) Personal profits arising from acting as a director;*
- (c) Bribes and other undisclosed benefits;*
- (d) Misuse of company funds;*
- (e) Taking up a corporate opportunity;*
- (f) Misuse of confidential information;*
- (g) Improper use of position;*
- (h) Improper use of information.*

These broad categories are all relevant to the Directors functions as board members of PLC and PNRL and should always be kept in mind when Directors make decisions. This includes keeping in mind which 'hat' a Directors wears in every board meeting or in making every decision as a Director – that is 'Am I wearing my PLC Director's hat or am I wearing my PNRL Director's hat?'

- 469.** The Complainant further alleges that Messrs Sharp, Issa, Serrao and Gerard held significant knowledge of breaches of the NRL Rules [in respect of the Salary Cap Rules and the Player Contract Remuneration Rules], yet failed to disclose these breaches in accordance with Rule 108 of the PCR Rules.
- 470.** The Complainant alleges at paragraphs 136, 216, 286 and 348 of the Complaint Letter that not disclosing these breaches placed the NRL licence held by the *Parramatta Eels* at risk, and therefore conflicted with Messrs Sharp's, Issa's, Serrao's and Gerard's obligations as Chairperson or director of the Club, as defined within the *Directors' Handbook*.
- 471.** As noted in the Show Cause Notice issued to Messrs Sharp, Issa, Serrao and Gerard on 10 April 2017, by reason of the manner in which it has been specified the information provided as background to this allegation should be regarded as part of the general factual context, for consideration of the other particulars of the Complaint rather than as an independent basis for taking disciplinary action.

CONCLUSION ON FITNESS AND PROPRIETY

Fitness and Propriety at General Law

- 472.** It is well established at common law for the purposes of licensing that to be "fit and proper" a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.

473. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455.
474. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

The expression 'fit and proper person' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Conclusion on Mr Stephen Sharp's Fitness and Propriety

475. Paragraph 19 of the Complaint Letter in respect of Ground 1 alleges that Mr Sharp, a member of the governing body of the Club, has demonstrated that he is not a fit and proper person to act as such by reason of his:
- (i) Failure to exercise his duties as a director with a degree of knowledge, ability, honesty, care and diligence required for the position and expectations of members, industry and the community.
 - (ii) Failure to act honestly and openly and in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.
476. The Authority is satisfied that Ground 1 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority's findings on the allegations contained in the Particulars of Ground 1, discussed above. Mr Sharp has not demonstrated the knowledge, honesty and ability required of a member of a governing body of a registered club.
477. The Authority has given particular weight to the findings on particulars of Complaint that are set out as Allegation 2 and Allegation 15 above. The Authority is satisfied that Mr Sharp failed to ensure that the 2013 NRL Post-Season Declaration was true and correct despite being on notice of compliance concerns with respect to the 2013 Season 17 days prior to signing this document.
478. The Authority is satisfied that Mr Sharp failed to ensure that the 2014 NRL Post-Season Declaration was true and correct in that he did not make further enquiries as to its accuracy.
479. The Authority has given decisive weight to Mr Sharp's conduct at the 17 September 2015 board Meeting and is satisfied that by this time Mr Sharp had sufficient information to hold a reasonable suspicion that the Post-Season Declarations that he had signed in respect of the 2013 and 2014 NRL Seasons were incorrect, particularly by reason of the information he had about the ScoreCube and PJ Promotions TPAs.

- 480.** Much has been made in the Respondent directors' submissions to their reliance upon executive staff who had the operational responsibility for managing PNRL's Salary Cap and that as club directors they were entitled to rely on such advice. But there was advice encouraging Mr Sharp to self-report their concerns to the NRL.
- 481.** In an email from PNRL's CEO Mr Paul dated 30 June 2015 (Exhibit BP03). Mr Paul stated that Mr Sharp should "report this to the NRL (Ed and/or Daniel) and advise them that we won't be actioning the agreement and will enter into discussions with the supplier and the player".
- 482.** Another email dated 10 July 2015 from PNRL's CFO Mr Farish (Annexure 6 to the Schedule of Preliminary Findings, which in turn is Annexure "A" to the Notice of Intention to Cancel Registration issued by NRL to Mr Sharp dated 3 May 2016) stated that "as a minimum I feel that we should self-report Scorecube and flag that investigations are on-going"
- 483.** The Authority notes Mr Sharp's submissions dated 8 May 2017 that the NRL offered no induction, no briefing and no training for persons who were new to the administration of the game.
- 484.** The Authority accepts that Mr Sharp did not have experience or qualifications in finance or law. Mr Sharp and other members of the governing body may well rely upon the day to day advice of Chief Executive Officers, senior executives or other staff or contractors who are tasked with the day to day management of the PNRL Salary Cap and the parent Club's responsibilities with respect to PNRL.
- 485.** While Mr Sharp contends that he was poorly advised, it is difficult to appreciate what further advice was required for Mr Sharp to become aware of his personal duty to self-report suspected breaches of the Salary Cap to the NRL. The evidence of what transpired at the PNRL board meeting of 17 September 2015 is that the board members were on notice of information giving rise to a reasonable suspicion that PNRL had not complied with its Salary Cap and that PNRL's returns submitted to NRL for those seasons were incorrect.
- 486.** It is no answer for Mr Sharp to blame operational staff once PNRL directors were actually on notice of information that they, as Registered Game Officials, had a personal duty to disclose to the NRL yet chose not to.
- 487.** Mr Sharp claims in his submission dated 8 May 2017 that the "poor legal advice" supplied to him by the Club's General Counsel Mr De Mestre in respect of the PNRL's Salary Cap declarations and the proposed conduct of internal investigations has cost him personally "more than \$70,000" and "thousands of hours of my life". Mr Sharp also refers to his reliance upon advice from HWL Ebsworth in relation to the establishment of the Premiership Club entity and the operation of the Salary Cap Rules.
- 488.** However, this claim as to reliance upon third party legal advice lacks sufficient specificity and supporting evidence as to what legal advice was sought, what legal advice was received – let alone providing a practical explanation as to how legal advice was necessary for Mr Sharp to understand and comply with a plainly expressed self-reporting obligation imposed upon him personally as a Registered Game Official by Rule 16 of the NRL Code.
- 489.** The Authority is satisfied that Mr Sharp and a majority of the board made the conscious decision *not* to provide specific disclosure to the NRL of the concerns raised with them with regard to the relevant TPAs. From this point onwards, notwithstanding the clear and continuing personal duty on the part of those directors who were Registered Game Officials to disclose reasonable suspicions of Salary Cap breaches to the NRL, they failed to correct the record – despite having several opportunities to do so in the latter part of 2015 and early 2016.

- 490.** Mr Sharp contends in his submission dated 8 May 2017 that he has been “scarred” by his experiences and has no intention to ever sit on the board of any club or organisation again. He resigned his perpetual membership of the Club in writing, effective as of 12:00pm on Friday, 22 July 2016 after 36 years of continual membership. The Authority accepts that his negative experiences with the Club and PNRL has caused a great deal of stress to Mr Sharp and that he has resigned Club membership.
- 491.** Mr Sharp contends in his submission dated 8 May 2017 that he has an “impeccable personal record” and has never been in any legal trouble throughout his 59 years, and that there are “numerous profiled persons” who would swear to his personal character. He refers to his action in writing to the former NSW Minister for Justice inviting the appointment of a Temporary Administrator in the interests of the Club.
- 492.** Mr Sharp provides a list of his achievements during his time as a Club director. They include *inter alia* the construction and establishment of the first ever one stop training facility, his contribution to the State Government’s construction of a new stadium on the site of the existing Parramatta Stadium, his role in gaining approvals for the Club’s construction program, presiding over three consecutive record profits for the Club in years 2014, 2015 and 2016, growing the extent of financial aid for the Club’s charity partners, and returning to profit the Vikings Sports Club in Dundas. The Authority accepts those contentions.
- 493.** While the Authority accepts that Mr Sharp is generally a person of good character, and that the Club has been financially successful during the period in which he has Chaired the Club board, the Authority must assess Mr Sharp’s fitness to direct the Club on the evidence and material before it.
- 494.** The Authority has assessed, on a cumulative basis, the acts and omissions found by the Authority which demonstrate a lack of care and diligence on the part of Mr Sharp to notify the NRL in a timely manner of suspected breaches of the Salary Cap, particularly with respect to the suspect ScoreCube and PJ Promotions contracts, and the serious concerns of board members regarding possible fraudulent activity following the termination of the PNRL CEO, Mr Seward, on 15 July 2015. Mr Sharp had personally sworn statutory declarations verifying PNRL’s compliance with the Salary Cap during the relevant seasons. Mr Sharp received a mounting body of adverse information as to suspected non-compliance with Salary Cap and calling into question the accuracy of his declarations, culminating in PNRL’s termination of the employment of its CEO, Mr Seward, arising from conduct in relation to PNRL’s Salary Cap.
- 495.** Mr Sharp’s failure to exercise diligence with respect to his personal duty to disclose his suspicions to the NRL culminated with the PNRL board abandoning, at his suggestion (albeit with majority support), a previous commitment to investigate suspected breaches of the Salary Cap at the board’s 17 September 2015 meeting. The Authority is satisfied that in Mr Sharp’s case there was also an element of dishonesty in that by September 2015 he was consciously avoiding reporting suspected breaches of the NRL Salary Cap to the NRL, thus allowing his Salary Cap declarations to mislead the NRL.
- 496.** This conduct was contrary to Mr Sharp’s personal contractual obligation as a Registered Game Official to the NRL under Rule 16 of the NRL Code. It placed in jeopardy PNRL’s *Parramatta Eels* Rugby League franchise, being one of the most valuable assets owned and controlled by the Club, through its wholly owned subsidiary, PNRL.
- 497.** The *Parramatta Eels*’ ability to participate in the NRL is fundamental to the parent Club’s pursuit of its relevant sporting purpose, as expressed in clause 12(a) of its constitution – to “manage, conduct, control and promote the game of rugby league football in the Parramatta district or elsewhere”.

- 498.** The Club's obligation to provide financial support to the PNRL is evident from the *Notes to the Consolidated Financial Statements* as extracted in the 2013, 2014 and 2015 *Annual Reports* for the Club, which form part of the Complaint Material. This material establishes that the Club is the ultimate parent entity for the group, holding 100% of the issued ordinary shares for the PNRL and the Parramatta Power Soccer Club Ltd.
- 499.** In a practical sense PNRL's non-compliance with the Code brought about a major reduction in what would otherwise be its entitlement to revenue from the NRL - through the issue of over \$1 million in penalties. While the Authority understands that this penalty was recently reduced by the NRL to \$750,000, this represents a substantial negative impost or reduction in revenue upon the PNRL that is borne by the parent Club.
- 500.** By reason of the parent Club's association with the PNRL and its common board of directors, Mr Sharp's conduct also exposed the Club and its members to substantial reputational damage, in addition to financial loss through NRL penalties. As noted in the introduction to this decision, the parent Club is a major community enterprise deriving \$82 million in revenue during the 2015 calendar year.
- 501.** Given the constitutional importance to the registered Club of promoting the game of rugby league and the likelihood that a significant driver of the Club's patronage and lucrative liquor and gaming revenue comprises *Parramatta Eels* supporters, it is entirely at odds for Club directors who are also Registered Game Officials to cover up PNRL's subversion of the Salary Cap Rules, which are designed to ensure the integrity of the National Rugby League competition.
- 502.** Mr Sharp's position as Chairperson of both PNRL and the Club, combined with his personal knowledge of the relevant non-compliance and his disclosure obligations as a Registered Game Official, underscore the extent of his personal responsibility for PNRL's failure to report its non-compliance to the NRL in a timely manner.
- 503.** Ground 1 is established.

Conclusion on Mr Toufic (Tom) Issa's Fitness and Propriety

- 504.** Paragraph 147 of the Complaint Letter in respect of Ground 2 alleges that Mr Issa, a member of the governing body of the Club, has demonstrated that he is not a fit and proper person to act as such by reason of his:
- (i) Failure to exercise his duties as a director with a degree of knowledge, ability, honesty, care and diligence required for the position and expectations of members, industry and the community.
 - (ii) Failure to act honestly and openly and in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.
- 505.** The Authority is satisfied that Ground 2 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority's findings on the allegations contained in the Particulars of Ground 2, discussed above.
- 506.** Mr Issa has not demonstrated the knowledge, ability, honesty, care and diligence required for a position within the governing body of the Club. He has also failed to act honestly and openly and in accord with his obligations as a director of the Club. His personal conduct, by way of an ongoing failure, as a Registered Game Official, to report suspected breaches by the Club's subsidiary, PNRL to the NRL contributed to the Club's exposure to substantial financial penalties in respect of the 2013 and 2014 NRL seasons.

- 507.** The acts and omissions of Mr Issa found by the Authority primarily demonstrated a lack of care and diligence to notify the NRL in a timely manner. There was also an element of misleading conduct in that, Mr Issa was part of a governing body that had resolved to avoid further investigating or reporting suspected breaches of the Salary Cap to the NRL, thus allowing the Salary Cap declarations that had previously been sworn by Mr Sharp to stand uncorrected.
- 508.** The Authority repeats the observations it has made in respect of Mr Sharp to the effect that by 17 September 2015 and thereafter Mr Issa was on notice that the PNRL had exceeded its Salary Caps in respect of the 2013 and 2014 NRL seasons, by the operation of the ScoreCube and PJ Promotions TPAs – yet failed to take action within a reasonable time to correct the record, despite having several opportunities to do so in later 2015 and early 2016.
- 509.** While Mr Issa does not provide a great deal of evidence as to character and reputation the Authority has considered Mr Issa’s general submissions that:
- “At all times, I acted honestly and sought immediate reporting when actually facts surrounding actions had been obtained.”
- [he spent] “significant time attempting to extract from the NRL a comprehensive list of Directors and Club duties during my tenure as a Director”
- “It was in part, my efforts, working with OLGA (sic) and ILGA that, the actions of previous directors of the Club were raised with the regulator and subsequent actions taken against those directors”.
- 510.** The Authority has also considered Mr Issa’s submission dated 1 June 2017 to the effect that PNRL is not a registered club and the Complainant is relying upon the retention of future grant monies by the NRL from PNRL as a sufficient nexus to conclude that the registered Club has been adversely affected to the standard alleged.
- 511.** For the same reasons explained with respect to Mr Sharp above, the Authority is satisfied that there is a sufficient nexus between Mr Issa’s dual responsibilities as a director of PNRL and Registered Game Official and his role as a director of the parent Club.
- 512.** It is open to the Complainant to pursue disciplinary action against Club directors on the basis of factual allegations of a lack of honesty, knowledge and ability in respect of commercial obligations that have real consequences for the reputation and financial position of the registered Club.
- 513.** The Authority notes Mr Issa’s contentions in his submission dated 1 June 2017 that upon his appointment, the NRL did not provide any materials relating to the NRL Code of Conduct or duties of members to the NRL. Mr Issa spent “significant time” attempting to extract a comprehensive list of director and club duties during his tenure as a director. Additionally, from May 2013 to April 2015, the board of directors was “deeply divisional and factional” which often hampered much needed reform to the Club’s practices and procedures. The Authority accepts these contentions.
- 514.** Mr Issa further makes the general submission that he relied on the advice of external legal counsel and “aptly qualified and experienced” professionals employed by the Club and PNRL, including the PNRL Head of Football, Mr Anderson and the former PNRL CEO, Mr Seward.
- 515.** The Authority repeats its findings made above with respect to Mr Sharp’s claims as to reliance upon the advice of executive staff and third party legal advisors. Such day to day reliance upon third parties does not explain Mr Issa’s failure to discharge a clearly expressed personal obligation under Rule 16 of the NRL Rules to disclose his reasonable suspicions of

Salary Cap breaches to the NRL, arising from matters that the board had clearly contemplated at its meeting of 17 September 2015. The Authority has made allowances for Registered Club Officials to receive advice about the suspected breaches of the Salary Cap, but by the September 2015 board meeting the board had effectively decided not to disclose its concerns to the NRL.

- 516.** The Authority notes that in a statement signed by Mr Issa on 8 June 2016 (a submission previously made to the NRL through Carroll & O’Dea Lawyers in response to the 2016 NRL Breach Notice) and attached to his 1 June 2017, Mr Issa contends that he: instilled positive changes from the time of his appointment; spent large amounts of time developing skills in corporate governance; has undertaken a number of training courses in financial management; enrolled to attend an Australian Business Directorship Course; implemented governance changes recommended by PwC; has always attempted to conduct himself with honesty and integrity in his dealings as a representative of the PNRL Club; and the investigation has caused great reputational damage and distress.
- 517.** Taking these into consideration, the Authority is satisfied that Mr Issa is generally a person of good character. However, the Authority must assess Mr Issa’s fitness to be a member of the governing body of the Club on the basis of the all the material before it, including the Complaint Material.
- 518.** The Authority repeats the above discussion in relation to Mr Sharp’s fitness as to the commercial scale of the parent Club and the importance of the *Parramatta Eels* participation in the NRL to the constitutional purpose and commercial success of the Club. The Authority finds that Mr Issa’s conduct contributed to the reputational and financial loss of the parent Club, which arises through the Club’s ownership and control of PNRL and its common board of directors.
- 519.** The Authority is satisfied that Mr Issa’s position as a director of PNRL and the registered Club, combined with his personal knowledge of the relevant non-compliance and obligations as a Registered Game Official, underscore his personal responsibility for PNRL’s failure to report the suspected breaches of the NRL Salary Cap to the NRL.
- 520.** Ground 2 is established.

Conclusion on Mr Peter Serrao’s Fitness and Propriety

- 521.** Paragraph 227 of the Complaint Letter in respect of Ground 3 alleges that Mr Serrao, a member of the governing body of the Club, has demonstrated that he is not a fit and proper person to act as such by reason of his:
- (i) Failure to exercise his duties as a director with a degree of knowledge, ability, honesty, care and diligence required for the position and expectations of members, industry and the community.
 - (ii) Failure to act honestly and openly and in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.
- 522.** The Authority is satisfied that Ground 3 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority’s findings on the allegations contained in the Particulars of Ground 3, discussed above.
- 523.** Mr Serrao has not demonstrated the knowledge, ability, care and diligence required for a position within the governing body of the Club. He has also failed to act in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to

comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.

524. The Authority accepts that Mr Serrao is generally a person of good character and that his acts and omissions primarily demonstrated a lack of care and diligence to notify the NRL in a timely manner.
525. The Authority accepts that he did not support the position taken by the majority of the PNRL board to the effect that it was better not to dig up “skeletons” (that is, report suspicions of non-compliance with the Salary Caps to the NRL).
526. Nevertheless, the Authority has found that by 17 September 2015 Mr Serrao must have been aware that the PNRL had exceeded its Salary Caps in respect of the 2013 and 2014 NRL seasons, by the operation of the ScoreCube and PJ Promotions TPAs – yet he failed to take action within a reasonable time to correct the record and make specific disclosures of these matters to the NRL, despite being personally and contractually obliged to do so as a Registered Game Official, and despite having several opportunities to do so in late 2015 and early 2016.
527. The Authority finds that Mr Serrao’s acts or omissions primarily indicate a lack of care and diligence as a director of the Club. The Authority repeats its observations made with respect to Mr Sharp as to the constitutional importance to the Club of the *Parramatta Eels* rugby league franchise, and the financial and reputational damage to the parent Club that flowed through a failure by those Club directors who were also Registered Game Officials to comply with their personal contractual duties under Rule 16 of the NRL Code.
528. While Mr Serrao’s conduct was not tainted by any willingness to deceive the NRL, his failure to report reasonable suspicions to the NRL in a timely manner was a product of his lack of knowledge as to his duty to disclose, and his lack of ability, knowledge and skill as a Club director to recognise the interconnection between his obligations as a Registered Game Official, the importance of protecting the *Parramatta Eels* franchise and his duty to act in the best interests of the Club.
529. The Authority accepts Mr Serrao’s contentions in his submission dated 13 July 2017 that he attempted to raise his concerns internally with the PNRL board on several occasions and that he also met with the NRL on 14 September 2015, but that conduct fell short of specific disclosure to the NRL of his reasonable suspicions of PNRL’s non-compliance with the Salary Cap.
530. Mr Serrao states and the Authority accepts, that he was not aware of his obligation to report suspected breaches of the NRL Rules to the NRL as soon as possible after forming that suspicion. Accepting this contention, this evidences that Mr Serrao’s personal failure to notify the NRL was the product of a *lack of knowledge* with respect to a relevant matter that was of considerable importance to the Club, given the Club’s constitutional purpose to promote the game of Rugby League and Mr Serrao’s dual status as a Club director and a Registered Game Official.
531. The Authority has considered Mr Serrao’s submissions dated 13 July 2017 that he never received a formal induction by either the PNRL or the NRL; and that he relied and acted on the advice of professional PNRL officials including the advice of PNRL CEO Mr Seward, advice provided to the PNRL by legal advisers, and professional PNRL officials with full time responsibility for ensuring Salary Cap compliance.
532. The Authority accepts that Mr Serrao had no such induction and repeats the observations that it has made in relation to similar submissions from Mr Sharp vis a vis his reliance upon executive staff, contractors and legal advisors. Those submissions do not provide a satisfactory answer as to Mr Serrao’s failure to disclose, from 17 September 2015 onwards,

matters of non-compliance with respect to the Salary Cap about which he was personally on notice and under a duty to disclose pursuant to Rule 16 of the NRL Code. The Authority is satisfied that Mr Serrao *must have* reasonably held suspicions of Salary Cap breaches that were not disclosed to the NRL by that point in time – this much is implicit in Mr Sharp’s language of “not... digging up too many skeletons” and “let sleeping dogs lie”. Despite this, Mr Serrao did not make an adequate disclosure of those suspicions to the NRL.

533. While the Authority accepts that Mr Serrao made some attempt to orally raise certain concerns three days prior to the September board meeting, he failed to follow through with proper disclosure. As a senior public servant he was well placed to know that detailing his concerns in writing and disclosing what he knew to the NRL was a reasonable and prudent course to take, even if some NRL staff had expressed initial reluctance to engage with him personally. Mr Serrao’s duty as a Registered Game Official to self-report was clear, and he did not display the necessary assertiveness to defy the course taken by the board.
534. The Authority is satisfied that, like Mr Gerard, Mr Serrao’s instincts were honest and his stated preference was for the PNRL board to have formally disclosed its suspected non-compliance with the Salary Cap to the NRL. Nevertheless, Mr Serrao has fallen short with respect to his ability to discharge an important contractual disclosure obligation with respect to the subject matter that posed serious adverse financial and reputational consequences for the PNRL and the Club.
535. Mr Serrao always had the option of resigning as a director of PNRL and the parent Club if he could not countenance the PNRL board’s avoidance of disclosing suspected breaches of the Salary Cap to the NRL. This would have limited and perhaps removed any scope for exposure to a disciplinary complaint against him.
536. The Authority has considered Mr Serrao’s submissions dated 13 July 2017 with regard to his character that he is involved in local community initiatives and has participated in numerous fundraising appeals for a variety of charitable organisations. The Authority notes Mr Serrao’s contention that he had a record of good faith dealings, of driving reform at Parramatta and of displaying the highest levels of integrity in a senior position in the NSW Public Service.
537. Mr Serrao also contends that there is nothing in his character or reputation that is suggestive of any lack of respect for the rule of law or the rules of the NRL or PNRL. The Authority has also taken into consideration the information provided by Mr Serrao in his written submission under the headings “Character” and “Reputation” where Mr Serrao lists the committees he has served on, awards he has received, volunteer work performed and events he has been involved with to raise money for charities. Mr Serrao details how he was committed to improving governance, implementing positive change and taking active steps to rectify past non-compliance at PNRL and the Club.
538. The Authority has also taken into consideration six character references provided as attachments to Mr Serrao’s submission dated 13 July 2017.
539. The Authority accepts that Mr Serrao is generally a person of good character, but must assess Mr Serrao’s fitness to direct the Club on the evidence and material before it.
540. Repeating the Authority’s discussion on with respect to Messrs Sharp on the commercial scale of this community enterprise and the constitutional and financial importance of the affairs of the *Parramatta Eels* NRL franchise to the parent Club, Mr Serrao’s conduct as a Club director and Registered Game Official contributed to the damage to the reputation and financial losses that will ultimately be borne by the parent Club, which arises through the Club’s ownership and control of PNRL and its common board of directors.
541. In conclusion, while Mr Serrao’s conduct is in a less serious category than Mr Sharp and Mr Issa, he still shares responsibility, as a Club director and Registered Game Official, for the

PNRL's failure to report the suspected Salary Cap breaches to the NRL and he shares responsibility for the consequential reputational and financial damage that impacted the parent Club. He had the option to, but did not, resign from the PNRL if he could not condone the position taken by the PNRL board at 17 September 2015 to no longer conduct any investigation and not disclose the Salary Cap breaches to the NRL.

542. He has not demonstrated the degree of knowledge and ability that the Authority would expect of a reasonably diligent Club director for a registered club of this scale and sophistication and with this constitutional purpose.

543. Ground 3 is established.

Conclusion on Mr Geoffrey Gerard's Fitness and Propriety

544. Paragraph 297 of the Complaint Letter in respect of Ground 4 alleges that Mr Gerard, a member of the governing body of the Club, has demonstrated that he is not a fit and proper person to act as such by reason of his:

- (i) Failure to exercise his duties as a director with a degree of knowledge, ability, honesty, care and diligence required for the position and expectations of members, industry and the community.
- (ii) Failure to act honestly and openly and in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the salary cap that applies to the PNRL.

545. The Authority is satisfied that Ground 4 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority's findings on the other Particulars of Ground 4, discussed above.

546. Mr Gerard has not demonstrated the knowledge, ability, care and diligence required for a position within the governing body of the Club. He has also failed to act in accord with his obligations as a director of the Club and under the terms of his contract with the NRL to comply with NRL Rules and report to the NRL breaches of those Rules including breaches of the Salary Cap that applies to the PNRL.

547. The Authority has found that by around 17 September 2015, Mr Gerard had reasonable suspicions that PNRL had exceeded its Salary Caps in respect of the 2013 and 2014 NRL seasons, by the operation of the ScoreCube and PJ Promotions TPAs. Although Mr Gerard did not attend the board meeting of 17 September 2015, the Authority is satisfied on the basis of Mr Gerard's submission dated 1 June 2017 that Mr Gerard reviewed the minutes of that meeting and likely became aware, shortly after that meeting, that the private investigation that he had sought would no longer be proceeding.

548. By this point in time Mr Gerard had enjoyed a reasonable opportunity to obtain internal advice or obtain further information about the allegations, yet Mr Gerard, like other Club directors who were also Registered Game Officials, failed to take action within a reasonable time thereafter to make specific disclosures to the NRL, despite being personally and contractually obliged to do so and despite having several opportunities to do so in late 2015 and early 2016.

549. The Authority has considered Mr Gerard's contention in his submission dated 1 June 2017 that he was "unaware" of the ongoing "fraudulent" behaviour engaged in by certain directors of the PNRL until after the NRL Investigation began; that he only became aware of possible fraudulent activity in August 2015; and that the management staff at PNRL's office

“continually and repeatedly” reported to the PNRL board that there were “no issues” regarding any possible breach of the NRL Salary Cap.

- 550.** The Authority accepts that Mr Gerard is generally a person of good character and that his conduct was not tainted by a lack of honesty. The Authority has considered Mr Gerard’s submission dated 1 June 2017 in which Mr Gerard contends that he has acted “honestly and professionally” in his duties as a director representing the members of the PNRL Club. The Authority is satisfied that Mr Gerard did not endorse the approach that had been taken by the PNRL board at its meeting of 17 September 2015 to take no further action with regard to the identified non-compliance by PNRL with the Salary Cap for the 2013 and 2014 NRL seasons.
- 551.** The Authority also accepts that Mr Gerard went “on the record” in various newspaper articles and radio interviews at around that time as stating that the “Parramatta Club” (an apparent reference to PNRL) needed to work with the NRL’s Integrity Unit to get to the bottom of the alleged NRL Salary Cap breaches and uncover what had been done and by whom.
- 552.** Notably, however, Mr Gerard concedes in his submission dated 1 June 2017 that he was not aware of his obligation to report suspected breaches of the NRL Rules to the NRL as soon as possible after forming that suspicion. This indicates that Mr Gerard’s failure to report non-compliance with the Salary Cap to the NRL was in part the product of a lack of knowledge as to matters of some considerable importance to his role as a Registered Game Official and of some considerable consequence for the *Parramatta Eels* NRL franchise.
- 553.** The Authority repeats its findings with respect to Messrs Sharp, Issa and Serrao with regard to the constitutional and financial importance of the affairs of the *Parramatta Eels* NRL franchise to the parent Club. Mr Gerard’s conduct as a Club director and Registered Game Official contributed to the reputation and financial losses that will ultimately be borne by the parent Club, arising through the Club’s ownership and control of PNRL and its common board of directors.
- 554.** Like Mr Serrao, Mr Gerard always had the option of resigning as a director of PNRL and the parent Club if he was so opposed to his fellow directors’ approach to the suspected breaches of the Salary Cap in respect of the 2013 and 2014 NRL seasons. He did not do so, while not disclosing his genuine concerns to the NRL.
- 555.** In conclusion, while Mr Gerard’s conduct is in a less serious category than Mr Sharp and Mr Issa, he shares some responsibility, as a Club director and Registered Game Official, for the PNRL’s failure to report the suspected Salary Cap breaches to the NRL and he shares responsibility for the consequential reputational and financial damage that impacted the parent Club. He has not demonstrated the degree of knowledge and ability that the Authority would expect of a reasonably diligent Club director for a registered club of this scale and sophistication and with this constitutional purpose.
- 556.** Ground 4 is established.

CONSULTATION ON DISCIPLINARY ACTION

- 557.** On 19 December 2017 the Authority sent a detailed letter (Findings Letter) to the Complainant, the Club and former directors Mr Sharp, Mr Issa, Mr Gerard and Mr Serrao (Former Directors) notifying its findings on the Complaint and inviting final submissions confined to the issue of what, if any disciplinary action should be taken.

Submission from the Complainant dated 19 January 2018

- 558.** The Complainant sent a two-page submission letter to the Authority dated 19 January 2018 continuing to press for disciplinary action “as sought in the Complaint (from page 73) and in

so far as those submissions relate to the former directors of the Club”. This letter was sent to the Authority, the Club’s Administrator and lawyers and each of the Former Directors.

- 559.** The Complainant also included, for the purposes of section 57H(i) of the Act, a summary of the costs incurred by the Secretary in carrying out the investigation relating to the Complaint, in the sum of \$99,476.44. Section 57H(i) provides the Authority with the power to order the registered club to pay the amount of any costs incurred by the Secretary in carrying out any investigation or inquiry under section 35A in relation to the club, or by the Authority in connection with the taking of disciplinary action against the club or any other person under this section.

No submission from the Club in response to the Findings Letter

- 560.** The Authority has received no submission from the Club in response to the Findings Letter or the submission from the Complainant seeking an order that the Club pay the Secretary’s costs of the investigation.

Submission from Mr Stephen Sharp dated 20 January 2018

- 561.** On 20 January 2018, Mr Sharp sent a two-page email to the Authority responding to the Findings Letter. Briefly, Mr Sharp apologised for not being in a financial position to engage the services of a legal representative and advised that he is having to sell his family home to meet the costs associated with the “extremely poor” executive and legal advice given to him by those engaged by the Club. Mr Sharp contends that he now has a clear understanding of the Authority’s expectations on directors of licensed clubs but that the constitutions of most clubs do not specify these matters as minimum requirements for a person to nominate as a club director. Mr Sharp submits that the Authority allows clubs to appoint directors with limited or no skills in the required areas of regulatory knowledge and that “very little consideration” has been afforded to his defence - that he relied upon highly paid and qualified professionals for advice and direction.
- 562.** Mr Sharp revisits the NRL Salary Cap Rules and submits that the rules are open to interpretation by Salary Cap auditors. In relation to the signed Post-Season Declarations for 2013 and 2014, at the time of signing those declarations he was under the belief that the relevant TPAs were “approved” and it was not until well after the signing of these documents that the Salary Cap auditor determined that these TPAs were unapproved and would count towards the Salary Cap, resulting in a breach of the threshold.
- 563.** Mr Sharp submits that his breaches concern matters relating to what he “should have or ought to have known” and not that he acted with any criminality. That is, while he may not be fit and proper on the basis of his lack of qualifications or experience at the required times he refutes any inference that he acted dishonestly.
- 564.** Mr Sharp requests the Authority to take into consideration that there have been no contraventions of the liquor and gaming legislation in this matter, that the board worked tirelessly to secure the financial future of the registered Club, that he personally approached the former Office of Liquor Gaming and Racing seeking the appointment of an Administrator under the clubs legislation, that he is of good character and has only attended another registered club for a meal during the past 18 months and that the NRL has demonstrated an inability to manage its Salary Cap rules for some time and has taken inconsistent positions on TPAs.
- 565.** Mr Sharp apologises for his failure to possess the skill set or experience to meet the Authority’s expectations and contends that wherever a compliance situation arose he brought the matter to the attention of the board and the board made efforts to address these matters but failed to understand its obligation to report.

Submission from Mr Toufic Issa dated 22 January 2018

- 566.** In a five-page response to the Findings Letter dated 22 January 2018, Mr Issa submits that the Authority has erred in finding that he is not a fit and proper person and that no action should be taken to disqualify him from the industry. Without repeating the details of this submission (which mainly revisits the merits of the findings) Mr Issa traverses what he says is required by the NRL Rules, the NRL Salary Cap and makes another round of submissions on the allegations made by the Complainant, in addition to further submissions on his fitness and propriety.
- 567.** With respect to the NRL Rules, Mr Issa contends that he had requested a copy of the Rules on numerous occasions from the NRL and that he did not receive any induction program from NRL. Mr Issa submits that the edition of the Rules furnished by NRL and supplied to him by the Authority during the course of this Complaint does not cover the relevant period; that the Rules are silent as to the concept of “Registered Game Officials” and the Authority has acted arbitrarily when dealing with the Rules, particularly with respect to its decision not to show cause in respect of Grounds 5-7 of the Complaint (in relation to three other directors at the relevant time as noted at paragraph 4 above).
- 568.** Mr Issa contends that he personally worked with and reported to the NRL on Salary Cap issues. This included appointing qualified and experienced Salary Cap auditors and working in conjunction with the NRL to address the compliance issues identified in respect of the PNRL. Mr Issa submits that to now “punish” him for fulfilling his obligations is “manifestly unjust”.
- 569.** More generally, Mr Issa submits that any statutory declaration made by another person in respect of PNRL’s Salary Cap compliance is a *personal* declaration made by the declarant; that the NRL has presumably sought two declarations to ensure no discrepancies in disclosure; that the NRL has not requested access to board meeting minutes validating expenditure items that would “demonstrate collegiate responsibility” for the PNRL’s non-compliance and that both the Chair and CEO receive remuneration that Club directors do not, as compensation for the additional workloads and responsibilities that their roles entail. Mr Issa submits that if there is any error with statutory declarations provided by PNRL to the NRL, the NRL would presumably have recourse against the declarants.
- 570.** Mr Issa submits that a reasonable person would accept the “mistakes” made by the Club for what they are. The NRL Rules allow for the exercise of some discretion in these circumstances.
- 571.** Mr Issa makes no comment on allegations 2, 3, 4, 6, 7, 11, 14, 16 and 17 of the Complaint, as they were set out in the Findings Letter. In response to allegations 9, 10, 12 and 13, Mr Issa advises that he does not agree generally with the findings but sees no utility in elaborating. Mr Issa admits allegation 1 and submits that the Authority’s findings on allegation 5 in paragraphs 160 and 161 of the Findings Letter have been “decontextualized”, advising that he did not have a copy of the NRL Rules at the time. Mr Issa considers it “obtuse” for the NRL and the Authority to impose a “penalty” in respect of his “lack of knowledge” in those circumstances. Mr Issa “disagrees” with the Authority’s finding on allegation 8.
- 572.** In response to allegation 15, Mr Issa disagrees with the Authority’s analysis of how the NRL Code and Rules applied to him personally. Mr Issa submits that as a registered game participant, it was incumbent on him to report to NRL if he had a reasonable suspicion of a breach. Mr Issa then makes (what the Authority assumes) reference to unspecified case law with respect to the prohibited drugs field of criminal law and submits that the Authority has imputed to him a “far stricter” test for holding a reasonable suspicion than what is accepted under common law principles. Mr Issa “disagrees” with the Authority’s finding on this

allegation and contends that it should be set aside when determining what action to take against him.

- 573.** In relation to allegations 18 to 20, Mr Issa “vehemently” disagrees with the Authority’s “imputations”.
- 574.** Mr Issa submits that the Authority discounts the need for an individual to be satisfied of their suspicions given the risk of libel and defamation for making unsubstantiated allegations. Mr Issa relies upon section 189 of the *Corporations Act 2001* (Cth) in support of the proposition that as a director he acted upon information or professional advice in good faith and after making an independent assessment of the advice.
- 575.** Finally, as the Authority is satisfied that he is generally a person of good character, he submits that no disciplinary action should be taken against him.

Submission from Mr Geoffrey Gerard dated 22 January 2018

- 576.** In a submission made through his solicitors, Piggot Stinson, dated 22 January 2018, Mr Gerard submits that it would be unnecessary for the Authority to make a declaration under the Act that he is ineligible to serve in a regulated role, in light of his offer to provide an undertaking not to seek office as a director or secretary of the (Parramatta) Club.
- 577.** After discussing the Authority’s principal findings against him, Mr Gerard submits that the model whereby the directors of the registered Club are also directors of the football club (PNRL) is “seriously flawed” given the potential for ongoing and substantial conflict of interests, which is partially acknowledged in the 2015 Directors Handbook; that it is not possible for a distinct separation of the functions of the directors of the Club and functions of the directors of PNRL to be made; that many decisions that need to be made by directors of PNRL would attract the provisions of sections 191 and 195 of the *Corporations Act 2001* (Cth) such that they would have to make a declaration of material personal interest and then disqualify themselves from participating in debate and voting; that this would hamstring the governance of PNRL because all directors would be similarly unable to vote; that the skills, knowledge, experience and abilities to be a director of a NRL club are in many significant respects different to those required of the director of a registered club; that the directors of the Club are selected by popular vote from among the general body of members with the expectation that they would have the skills and ability to also be directors of an NRL club, but without any training or prior experience for such a position and by reason that the training required of club directors by the club industry is generic and not focused on any issues specific to NRL clubs. Mr Gerard contends that he accepted this model, without realising its flaws, or being aware of the personal risks he was taking on.
- 578.** Mr Gerard’s submits only one of the findings made by the Authority against him concern his conduct as a director of the registered club as a “standalone entity”. Mr Gerard’s failure to complete the ClubsNSW Director’s Course should not of itself warrant disqualification from holding a regulated role and Mr Gerard undertakes to attend such course promptly.
- 579.** Mr Gerard notes that he had previously resigned from the Club during the former presidency of Mr Spagnolo, who was found not fit and proper in a previous complaint against the Club. This time, rather than resigning, Mr Gerard elected to stay on the board of both the Club and the PNRL to continue to fight for a proper investigation into the Salary Cap breaches.
- 580.** When the Authority considers the question of disciplinary action Mr Gerard submits that his failure to properly inform himself of his obligations to report suspected breaches of the Salary Cap to the NRL should be considered in light of: the fact that the NRL Rules is a document running to hundreds of pages; NRL did not provide a summary of key features of the Rules nor provide any induction or training; NRL has taken no action against Mr Gerard as a

registered official of the NRL, notwithstanding that it has investigated him and Mr Gerard remains a current board member of the NSW Rugby League Limited.

- 581.** Mr Gerard submits that his failings are an error of judgement and that such errors are a feature of commercial life generally notwithstanding the skills and ability of the people concerned.
- 582.** In the alternative to the Authority disqualifying him from the industry, Mr Gerard proposes to enter into a contractually binding arrangement that he will not again seek office as a director or secretary of the Club. He submits that the Club could amend its Constitution to provide that persons who have been disqualified by the Authority are ineligible to be elected or appointed to the board, although the willingness of members to pass the requisite special resolutions may be difficult to muster given the rival political camps which still exist within the Club membership.
- 583.** Mr Gerard submits that the power to disqualify a person from the industry is not a punitive power but one purely for the protection of registered clubs. It is open to the Authority not to impose any disqualification in this case, noting that no disqualification was imposed in a previous complaint against previous officers of the Club, notwithstanding that adverse findings were made. Mr Gerard submits that his failings were not made in relation to the registered Club but PNRL, being a different club and a corporation that is operating in an entirely different commercial setting to that of the registered club.
- 584.** Mr Gerard submits that this Club is one of the few registered clubs in New South Wales which supports and funds a separate corporation that fields a National Rugby League team. Its affairs are structured in such a way that the shares of the football club are wholly owned by the registered Club and the directors of the registered Club are also directors of the football club. Mr Gerard reiterates that structure is flawed and his problems arose out of his activities as director of the football club.
- 585.** On this basis, there is nothing that warrants action to protect other clubs from the possibility that Mr Gerard might become a director. Mr Gerard notes his 30 years business experience within waste and recycling management, alongside his contribution to Rugby League. Mr Gerard has also been a director of the NSW Leagues Club Limited since 2015 which ceased trading last year and will not resume until it finds new premises.
- 586.** Mr Gerard concludes that he has the honesty, experience and business skills which would be welcome on many registered club boards, should he choose this option and if that be available to him following the Authority's final decision.

Submission from Mr Peter Serrao dated 23 January 2018

- 587.** On 23 January 2018 the Authority received a three-page submission from Mr Serrao in response to the Findings Letter. Mr Serrao asks the Authority to “conduct an internal review” of the findings made against him in the Findings Letter and submits that they are the product of a “cumulative assessment” of “untested information” that was provided to the Complainant and then provided to the Authority.
- 588.** Mr Serrao submits that in concluding he is not fit and proper the Authority has discounted Mr Serrao's good reputation; contributions to the community; record of driving reform at the PNRL; record as a senior public servant; character references; evidence as it related to Scott Seward and his relationship to Todd Greenberg; disclosures to the then NRL CEO Dave Smith; the credibility of Scott Seward; reliance upon expert legal advice at the Club; reliance on expert Salary Cap advice and the trust Mr Serrao placed in advice from the PNRL CEO.

589. Mr Serrao submits that “inflated weight” has been given to the way matters of concern were raised by Mr Serrao with the NRL, the bona fides and findings of the NRL investigation and comments made by other directors at PNRL that were not made by Mr Serrao.

590. Mr Serrao submits that no disciplinary action should be taken against him for four reasons:

- The Authority being satisfied as to Mr Serrao’s good character, community service, standing in the public sector and attempts to raise issues of concern with both the PNRL and the NRL then Chief Executive.
- Disciplinary action is now inappropriate and excessive in light of the “unjustifiable public shaming” that Mr Serrao has suffered.
- Applying disciplinary action would display a “lack of proportionality” given the Authority’s finding that Mr Serrao’s acts and omissions primarily demonstrated a lack of care and diligence to notify the NRL in a timely manner.
- The directors at the PNRL seem to have been singled out for selective treatment by the Complainant. This is evidenced by the fact that other directors at other Rugby League Clubs where Salary Cap breaches have been detected have not been subject to this type of Complaint.

591. Mr Serrao concludes with the submission that the Authority’s decision to find that the Complaint is established against him is “unbalanced, arbitrary and unfair” and the action taken by the Authority should be “reviewed, withdrawn and no further action should be taken”.

Proposed written undertakings

592. On 5 April 2018, the Authority sent a two-page letter to the parties, noting Mr Gerard’s proposal that a voluntary undertaking be provided by him to not be appointed to, or hold office in, the position of secretary or member of a governing body of the Club for a period of three years.

593. The Authority sought advice as to whether all of the Former Directors would offer an undertaking not to stand for election, be appointed to or hold office as a club secretary or member of a governing body in respect of *any* registered club in New South Wales for a period of three years. The Authority advised that were such an undertaking provided, it would take this into account when exercising its discretion as to whether any formal disciplinary action should now be taken under the Act.

Final Submission from the Complainant

594. No further submissions from the Complainant have been received on this further proposal.

No final submission from the Club

595. The Authority has received no submission from the Club in response to the letter dated 5 April 2018 regarding an alternative to disciplinary action.

Final submission from Mr Stephen Sharp dated 9 April 2018

596. On 9 April 2018 Mr Sharp provided a three-sentence email submission undertaking to “not seek office as a director or secretary of a registered club in NSW for an indefinite period”. Mr Sharp adds that he has no intention of “ever nominating” for office as a director of a licensed club again while maintaining his submission that the findings against him with respect to the NRL were “flawed and suggestive”.

Final submission from Mr Peter Serrao dated 10 April 2018

597. On 10 April 2018 Mr Serrao provided a one-page email submission undertaking to “not stand for election, be appointed to or hold office as a club secretary or member of a governing body in respect of any registered club in New South Wales for a period of three years”. Mr Serrao states that he intends to appeal the original findings of the Authority which are in error.

Final submission from Mr Toufic Issa dated 12 April 2018

598. On 12 April 2018 the Authority received a one-page email submission from Mr Issa requesting that the Authority finalise the Complaint, take no disciplinary action and record no adverse findings against him. Mr Issa provides a voluntary undertaking to “not stand for election, be appointed to or hold office as a club secretary or member of a governing body in respect of any registered club in New South Wales for a period of three (3) years”.

599. Mr Issa also states that “at or before the expiration of the three years and always before and if I seek to stand for election, be appointed to or hold office as a club secretary or member of a governing body in respect of any registered club in New South Wales undertake that I will complete the Company Director Course as offered by the Australian Institute of Company Directors or if that course is no longer available, a course that is substantially similar”.

Final submission from Mr Geoffrey Gerard dated 12 April 2018

600. On 12 April 2018 the Authority received a two-page letter via Pigott Stinson on behalf of Mr Gerard undertaking “not to stand for election for or be appointed to or hold office as a club secretary or member of a governing body in respect of any registered club in New South Wales for a period of three years”. While he initially proposed that this undertaking not apply to his membership of the governing body of NSW Leagues Club Limited, on 25 May 2018 the undertaking was communicated without this exception.

DECISION AND REASONS

601. The Authority’s disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the NSW Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.

602. Nevertheless, as observed by Basten JA of the NSW Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 (*Lambert*), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

603. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the “punitive effects” may be relevant to the need for protection in that:

...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.

604. At paragraph 85 of the judgment, Basten JA observes that:

...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.

- 605.** The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint up until its final determination is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).
- 606.** While it is common for respondents to disciplinary complaints to offer voluntary undertakings that they will not participate in the industry, as an alternative to disciplinary action, the Authority will carefully consider whether it is in the public interest to exercise its discretion to take no action, particularly when a regulated person has been found not fit and proper.
- 607.** As noted above, there are some unusual aspects of this Complaint. The allegations giving rise to the Authority's adverse findings are not founded upon the commission of licensing or other statutory offences but arise from the contravention of a contractual obligation to the NRL that had real reputational and financial consequences for the (parent) Club and that demonstrated a lack of diligence by the Former Directors as directors of the Club. The Authority accepts the submission made by Mr Gerard that there are few clubs in New South Wales with similar constitutional and governance arrangements between the registered club and a related vehicle that operates a major sporting franchise.
- 608.** The Authority is satisfied that the adverse findings it has made on the fitness of the Former Directors will send an appropriate signal to others in the industry, should they be placed in similar circumstances. However, on the facts and circumstances of this case, the public interest is adequately served at this time by accepting the voluntary undertakings that have been provided by the Former Directors that they will not seek or occupy a regulated role in the industry during the next three years. The Authority has decided, under section 57H(2) of the Act to **not take any action** against the Former Directors.

ORDER

- 609.** Noting that the Club has not made any submissions opposing the Complainant's request for payment of the Secretary's costs, the Authority orders, pursuant to section 57H(2)(i) of the Act, that the Club pay the Secretary of the NSW Department of Industry **\$99,476.44** for the Secretary's costs on the investigation within 28 days from the date of this letter.



Philip Crawford
Chairperson