



Civil and Administrative Tribunal
New South Wales

Case Name: Layden v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2020] NSWCATAD 274

Hearing Date(s): 15 April, 27 May, 8 July 2020

Date of Orders: 5 November 2020

Decision Date: 5 November 2020

Jurisdiction: Administrative and Equal Opportunity Division

Before: S Leal, Senior Member

Decision:

1. The decision of the Independent Liquor and Gaming Authority on 7 January 2020 to uphold complaints and to make disciplinary orders against the applicant is set aside.
2. In substitution, the Tribunal makes the following decision:
 - (1) The applicant contravened s71(2) of the Gaming Machines Act by purchasing five approved gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 from Mr Riad Allam who was not the holder of a dealer's or seller's licence;
 - (2) The applicant contravened s71(2) of the Gaming Machines Act by purchasing an approved gaming machine with the serial number XSG303406 from Mr Riad Allam who was not the holder of a dealer's or seller's licence;
 - (3) The applicant contravened s79(1) of the Gaming Machines Act by consigning eighteen approved gaming machines outside NSW without written notification to the Independent Liquor & Gaming Authority or manufacturer;
 - (4) Pursuant to section 131 (2) (a) (i) of the Gaming Machines Act, the applicant is ordered to pay a

monetary penalty to the Secretary, NSW Department of Customer Services in the sum of \$8000.00 within 30 days of this decision;

(5) Pursuant to section 131(2)(i)(i) of the Gaming Machines Act, the applicant is ordered to pay the Secretary of NSW Department of Customer Services the amount of \$26 486.47 in costs within 30 days of this decision.

Catchwords:

GAMING MACHINES - gaming-related licences – disciplinary complaints – disciplinary action - purchase of gaming machines - consigning of gaming machines overseas – role of the Centralised Monitoring System (CMS) - whether applicant fit and proper to hold a gaming machine seller's licence – honest and reasonable belief - whether penalty appropriate.

Legislation Cited:

Administrative Decisions Review Act 1997
Gaming Machines Act 2001
Gaming Machines Regulation 2019
Gaming Machine Tax Act 2001

Cases Cited:

Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321
Clearihan v Registrar of Motor Vehicle Dealers in the ACT (1994) 117 FLR 455
Director of Public Prosecutions v D'Arcy [2009] NSWLC 1
Environment Protection Authority v Wattke,
Environment Protection Authority v Geerdink [2010] NSWLEC 24
Ex parte Meagher (1919) 36 WN 175
Hughes & Vale Pty Ltd v New South Wales (No 2) (1955) 93 CLR 127
Ostrowski v Palmer (2004) 218 CLR 493
Pinner v Everett [1969] 3 All ERD 257
R v Einfeld [2009] NSWSC 119
Sakellis v Police (1968) 88 WN (Pt 1) (NSW) 541
Sobey v Commercial and Private Agents Board (1979) 22 SASR 70
Tasman Logistics Services Pty Ltd v Seaco Global Australia Pty Ltd [2020] VSC 100
Walden v Hensler (1987) 163 CLR 561

Texts Cited:	None cited
Category:	Principal judgment
Parties:	Justin Layden (Applicant) Independent Liquor & Gaming Authority (Respondent)
Representation:	Counsel: J Davidson (Respondent) Solicitors: Applicant (Self Represented) Crown Solicitor (Respondent)
File Number(s):	2020/00015176
Publication Restriction:	None

REASONS FOR DECISION

Introduction

- 1 Since 2000, Mr Layden has been the holder of a gaming machine seller's licence. Gaming machine licences – including gaming machine seller's licences and gaming machine technician's licences - are regulated by the *Gaming Machines Act* 2001 (NSW). Complaints related to gaming machine licences are dealt with by the Independent Liquor & Gaming Authority.
- 2 On 1 March 2018, a delegate of the Secretary of the Department of Customer Services lodged a disciplinary complaint against Mr Layden to the Independent Liquor and Gaming Authority, in accordance with s129 of the *Gaming Machines Act*.
- 3 The Independent Liquor and Gaming Authority considered the complaint and found that Mr Layden had contravened the *Gaming Machines Act*:
 - (1) in April 2017, by purchasing five approved gaming machines ('Vegas Star multi-terminal machines' with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206) from Mr Riad Allam who was not the holder of a dealer's or seller's licence (see s71(2));
 - (2) in 2016, by purchasing an approved gaming machine ('Vegas Star Roulette' serial number XSG303406) from Mr Riad Allam who was not holder of a dealer's or seller's licence (see s71(2)); and

- (3) by consigning or moving approved gaming machines outside NSW without written notification to the Independent Liquor & Gaming Authority or manufacturer (see s79(1))
- 4 The Independent Liquor and Gaming Authority also found that as a result of these breaches, Mr Layden was not a fit and proper person to hold a gaming-related licence. (see s129(3)(e)(iv))
- 5 The Independent Liquor and Gaming Authority suspended Mr Layden's gaming machine seller's licence for a period of 12 months, imposed a fine of \$8000 and ordered him to pay \$26 486.47 in costs.
- 6 Mr Layden applied to this tribunal under s131C of the *Gaming Machines Act* for administrative review of the decision to uphold the complaints and to make disciplinary orders against him. On 21 January 2020, the Tribunal stayed the decision by the Independent Liquor and Gaming Authority.
- 7 The administrative review is pursuant to the *Administrative Decisions Review Act 1997* and the Tribunal may exercise all of the relevant functions that are conferred or imposed by the *Gaming Machines Act* on the Independent Liquor and Gaming Authority. In determining this review, the Tribunal may, in accordance with s63(2) of the *Administrative Decisions Review Act*:
- (1) affirm the decision;
 - (2) vary the decision;
 - (3) set aside the decision and make a decision in substitution;
 - (4) set aside the decision and remit the matter for reconsideration by the administrator in accordance with any directions or recommendations of the Tribunal.
- 8 The Independent Liquor and Gaming Authority has filed a submitting appearance in these proceedings which are instead being conducted by the Secretary of the Department of Customer Service (Secretary), who is empowered to do so under s129(1) of the *Gaming Machines Act*.

Background

- 9 Mr Layden has had a gaming machine seller's licence since 2000. In 2003, he started his own business, Better Returns Holding Pty Ltd, to buy and sell second-hand gaming machines. In 2016, he bought a gaming machine ('Vegas Star Roulette' serial number XSG303407) from Mr Riad Allam who holds a

gaming machine technician's licence but not a gaming machine seller's licence. At the time of the purchase, Mr Layden was aware that Mr Allam held a gaming machine technician's licence.

- 10 It is not in dispute that on 16 March 2016, the manufacturer, Scientific Gaming, had sent this Vegas Star Roulette machine to be destroyed and that a destruction certificate was issued by Sydney Metal Traders on 16 March 2016. The machine had not, in fact, been destroyed and was instead sold to Mr Allam who then onsold the machine to Mr Layden.
- 11 Mr Layden accepts that he sold this gaming machine to Balgowlah RSL club, arranged for it to be installed there (along with two other Vegas Star Roulettes, serial numbers XSG304424 and XSG304421) and processed the installation through the authorised online system Quickchange.
- 12 On April 2017, Mr Layden agreed to purchase five further second-hand gaming machines - Vegas Star multi-terminal machines - with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 which, according to the Secretary, had earlier been dispatched by the manufacturer Scientific Gaming for destruction. It is accepted that, despite the dispatch directions, the machines were not destroyed. It is also accepted that the compliance plates of these machines were not removed by Scientific Gaming.
- 13 Because the compliance plates had not been removed and no alert or refusal had been triggered when two of these machines were transferred to Hornsby RSL on the online Quickchange system, Mr Layden contends there was no way to check that the five machines had, in fact, been sent for destruction:
- 14 It is not in dispute that Mr Layden offered to purchase the five Vegas Star multi-terminal machines from Mr Allam and that Mr Layden paid a deposit to Mr Allam, which was later refunded. It is similarly not in dispute that Mr Allam held, at this time, a technician's licence (and not a seller's licence or a dealer's licence).
- 15 In late 2016, Mr Layden sold a number of approved gaming machines to a business, Aumaas Dooel. The Secretary claims that Mr Layden then arranged for eighteen of these approved gaming machines to be sent to Columbia. Mr

Layden agrees he was informed that the machines were being sent to Columbia but denied having arranged their delivery himself.

Issues

16 The following issues arise in this case:

- (1) Were the six gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 (the five Vegas Star Roulette multi-terminal machines referred to above) and the serial number XSG303407 (the single Vegas Star Roulette referred to above) 'approved gaming machines'? If so, did the generation of an authorisation for the 'disposal' of these gaming machines mean they were no longer 'approved gaming machines'?
- (2) What is the role of Quickchange?
- (3) Did the generation of an authorisation for the installation of three of these machines at Balgowlah RSL Club and Hornsby RSL Club by the online Quickchange system have the effect of authorising or approving Mr Layden's transactions with Mr Allam?
- (4) Did Mr Layden hold an honest and reasonable belief that he was not in breach of the *Gaming Machines Act* by purchasing gaming machines from Mr Allam? If so, what if any is the relevance of such a belief?
- (5) In s79 of the *Gaming Machines Act*, should the words 'outside the State' be read as limited to places within Australia, so there is no requirement to notify the Independent Liquor and Gaming Authority in cases where approved gaming machines are consigned to places outside Australia?
- (6) Did Mr Layden consign or move eighteen gaming machines to a place 'outside the State' for the purpose of s79(1)(c) of the *Gaming Machines Act*?
- (7) Is Mr Layden a fit and proper person to hold a gaming-related licence?
- (8) Was the penalty imposed on Mr Layden an appropriate one?

Were the six gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 (the five Vegas Star Roulette multi-terminal machines referred to above) and the serial number XSG303407 (the single Vegas Star Roulette referred to above) 'approved gaming machines'? If so, did the generation of an authorisation for the 'disposal' of these gaming machines mean they were no longer 'approved gaming machines'?

17 As set out above, it is not in dispute that Mr Layden agreed to purchase the five Vegas Star Roulette multi-terminal machines (serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206) from Mr Allam. It is also

not in dispute that Mr Layden agreed to purchase a single Vegas Star Roulette gaming machine (serial number XSG303407).

- 18 The question for the Tribunal is whether these six machines were 'approved gaming machines' at the time of the applicant's offer to purchase them.
- 19 Section 64(1) of the *Gaming Machines Act* provides that the Independent Liquor and Gaming Authority may declare a device to be an approved gaming machine. The declaration in each instance may refer to a specific device or to a class or description of devices. An approved gaming machine is declared by the Independent Liquor and Gaming Authority following an application being submitted for consideration under s64 of the *Gaming Machines Act*. A device ceases to be an approved gaming machine if its declaration as an approved gaming machine is revoked. (s64(7))
- 20 Relevantly to this application, an approved gaming machine ceases to be approved if:
 - (1) it has been modified in such a way that it is in the form of a different approved gaming machine unless the modification was conducted by a dealer and conducted in accordance with a variation to an authorisation to keep an approved gaming machine (s64(4));
 - (2) the Independent Liquor and Gaming Authority considers it to be in the public interest to revoke an approval declaration (s64(6));
 - (3) its declaration as an approved gaming machine is revoked. (s64(7)).
- 21 In March 2018, s64(6A) was inserted into the *Gaming Machines Act* to provide that 'a device ceases to be an approved gaming device if the [Independent Liquor and Gaming] Authority has authorised the destruction of that device or devices of that class or description under section 81A of the Act.' Section 81A of the Act, which also commenced in March 2018, sets out the circumstances in which an authorisation can be given to destroy approved gaming machines.
- 22 The reasons behind these amendments to the Act are explained in the second reading speech for the *Liquor and Gaming Legislation Amendment Bill 2018*:

The bill will also amend the *Gaming Machines Act* 2001 to correct an anomaly in the legislation that severely hampers the lawful destruction of a gaming machine. It is proposed that gaming machines will now be able to be destroyed with the authorisation of the authority. It is expected that this will promote the proper disposal of damaged and obsolete gaming machines, and reduce the risk of machines being illegally re-purposed.

- 23 As these proceedings concern actions taken in 2016 and 2017, neither s64(6A) or s81A apply. The amendments are, however, relevant to a consideration of Mr Layden's evidence in relation to the difficulty in verifying whether a particular gaming machine had been ordered to be destroyed.
- 24 In relation to the process for declaring an approved gaming machine, I accept the evidence provided by Ms Rena Dakis, Manager of the CMS Project Team and Principals Systems Lead of the CMS within Liquor & Gaming NSW, that:
- (1) gaming machine approval applications are generally made by licensed dealers (who are commonly referred to as gaming machine manufacturers) for the approval of new gaming machine and subsidiary equipment specifications;
 - (2) the approval process ensures such matters as adherence of a game to legislation, gaming machine technical standards, player fairness etc;
 - (3) a specification number is allocated to an approval, which uniquely identifies it to facilitate a range of administrative and legislative needs. Physical gaming machine devices are not declared as approved. What is declared as approved is the licensed dealer's specifications (i.e. make, model, game software, electronics, cabinet type) for a gaming machine. Once these specifications are declared as an approved gaming machine, the licensed dealer can manufacture the physical devices in accordance with the declaration, for use in NSW, in accordance with the conditions of the declaration.
- 25 Attached to Ms Dakis' evidence is a declaration of approval dated 25 September 2013 granted to Shuffle Master Australasia Pty Ltd for a Vegas Star Classic Roulette multi terminal gaming machine with an approval number X16718, and further approvals to Bally Technologies for Vegas Star Multigame 2.0C MC gaming machines dated 20 November 2014 and to Stargames Corporation for Vegas Star Roulette gaming machines dated 24 October 2006.
- 26 I accept the evidence of Ms Dakis that database records confirm that the relevant approvals remain current and have not been revoked.
- 27 Mr Layden contends that because the six gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 and XSG303407 were listed as 'authorised to be disposed' of under the Quickchange system, they are no longer 'approved gaming machines.' According to Mr Layden, this is because s64(6A) of the *Gaming Machines Act* provides that 'a device ceases to be an approved gaming device if the

Independent Liquor and Gaming Authority has authorised the destruction of that device or devices of that class or description under section 81A.' For the reasons that follow, I do not agree with Mr Layden's submissions.

- 28 As subsection 64(6A) and section 81A of the *Gaming Machines Act* only came into effect in March 2018, the provisions are not relevant to these proceedings, which concern actions taken in 2016 and 2017.
- 29 I accept the evidence of Ms Dakis that at all times, including 2017, the Independent Liquor and Gaming Authority has maintained control of the approval of gaming machines under s64 of the *Gaming Machines Act*, with certain functions being delegated to officers of Liquor and Gaming NSW. I accept that at no time has the Centralised Monitoring System (CMS), the licensed operator of the CMS (Maxgaming Pty Ltd) or Quickchange held any delegated authority, functions or legislative control over the declaration of approved gaming machines in NSW under s64 of the *Gaming Machines Act*.
- 30 I do not agree that the six machines referred to above ceased to be approved as a result of the confirmation through Quickchange that the machines were authorised to be disposed. This is because, contrary to Mr Layden's submission, the meaning of 'disposed' in Quickchange means only that the machine is authorised to be removed from a particular venue's premises, such that it can no longer lawfully be kept and operated by the venue. Such notification through Quickchange that a machine is authorised to be 'disposed' does not imply anything at all about the authorised status of the machine under s64 of the *Gaming Machines Act*. There is thus no basis for Mr Layden's contention that an authorisation through Quickchange to 'dispose' of gaming machines means that the machines ceased to be 'approved' gaming machines for the purposes of the Act.
- 31 Furthermore, the function given to the CMS system under cl 7 of the *Gaming Machines Regulation 2019* – which refers to an authorisation to keep approved gaming machines that are connected to an authorised CMS - concerns authorisation to keep (or dispose of) approved gaming machines, not the approval of gaming machines.

- 32 I accept the evidence in Ms Dakis' statement that Quickchange has never held any delegated authority, functions or control in relation to the declaration of approved gaming machines in NSW under s64 of the *Gaming Machines Act*. I accept the evidence of Ms Dakis that the authorisation granted via Quickchange to 'dispose' of an approved gaming machine does not trigger any consequence under s64 of the Act. This is because, as set out above, the concept of 'disposal' of machines for Quickchange purposes is wholly distinct from the concept of withdrawal of approval under s64 of the *Gaming Machines Act*.
- 33 Pursuant to section 64(1) of the *Gaming Machines Act*, the Independent Liquor and Gaming Authority may declare that a device referred to in such a declaration is an approved gaming machine for the purposes of the Act. However, such device ceases to be an approved machine if its declaration as an approved machine is revoked under section 64(7).
- 34 I accept that XSG303407 was an approved gaming machine at the time it was sent for destruction. In the absence of any indication that gaming machine XSG303407 ceased to hold this status, I am satisfied that at the time of its sale, gaming machine number XSG303407 was an approved gaming machine.
- 35 There is no evidence before me that the five gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205 and XSG306206 have been approved for destruction at any point in time, nor have been the subject of pending applications or approvals for destruction. There is no evidence that any of these machines had their approval revoked pursuant to s64(7) of the *Gaming Machines Act*.
- 36 For these reasons, I am satisfied that the six gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 and the serial number XSG303407 were all 'approved gaming machines' when Mr Layden agreed to purchase them. For the reasons set out above, I find that the generation of an authorisation of the 'disposal' of these gaming machines did not mean they were no longer 'approved gaming machines.'

What is the role of Quickchange?

37 Quickchange is the name of the centralised monitoring system (CMS) used to monitor the operation and performance of approved gaming machines in NSW.

38 The centralised monitoring system is defined in the *Gaming Machines Act* as follows:

centralised monitoring system (or *CMS*) means a system that:

- (a) monitors the operation and performance of approved gaming machines, and
- (b) facilitates the calculation and collection of tax under the *Gaming Machine Tax Act 2001* that is payable in respect of approved gaming machines, and
- (c) is capable of performing other related functions.

39 The company Maxgaming is responsible for all operations of the CMS including the collection and assessment of metered gaming data and integrity events.

40 In its website, Maxgaming describes the Quickchange system as follows:

Quickchange is an internet-authorisation system for installations, disposals and configuration changes to gaming machines. Unlike paper-based systems, Quickchange enables users to identify and correct errors prior to submission, leading to approval of machine changes within minutes. Quickchange can be accessed by any internet-enabled device

41 It is agreed that the Quickchange system does not include any functionality for holders of a gaming-related licence to seek authorisation to destroy an approved gaming machine.

42 In her evidence in these proceedings, Ms Dakis explained that the CMS monitors the operation and performance of approved gaming machines in NSW and facilitates the calculation and collection of tax under the *Gaming Machine Tax Act 2001*, as well as performing a range of other related functions in line with the *Gaming Machines Act* and regulations. This includes the authorisation to keep and operate approved gaming machines in line with the Act and regulations, within licensed Clubs and Hotels in NSW, which Quickchange facilitates online.

43 According to Ms Dakis, Quickchange is 'a CMS internet-authorisation product/application whose primary purpose is to facilitate Part 5 Division 1 of the *Gaming Machines Act*, in authorising the keeping and operation of gaming machines in NSW Club and Hotel premises. Quickchange authorisation

applications can be raised for gaming machine configuration changes (i.e. to install, dispose, convert, or attach/detach) online and subsequently be authorised online if all regulatory-imposed gaming machine authorisation related system validations ('business rules') pass.'

44 According to Ms Dakis, 'at no time has [Maxgaming], the CMS nor Quickchange held any delegated authority, functions or legislative control over the declaration of approved gaming machines in NSW under s64 of the *[Gaming Machines] Act*.'

45 On its website, however, Maxgaming describes its NSW responsibilities as follows:

MAX is responsible for all operations of the Central Monitoring System (CMS) including the collection and assessment of metered gaming data and integrity events. Our key purpose is to help uphold and maintain gaming integrity within the state, and to calculate the amount of gaming tax payable by each club and hotel.

46 The website also advertises Quickchange's ability to 'easily manage your gaming machine authorisations with the enhanced Quickchange...Now accessible via your MAXsys account, the refreshed Quickchange seamlessly tracks the full life-cycle of gaming machines in one online destination.'

47 In his record of interview on 13 April 2017, Mr Layden explained his understanding of the role of Quickchange:

Quickchange is the Max Gaming record of transfer of machines whenever you convert a machine, where you install a machine, whether you change a link, any time you affect a gaming floor you have to do an electronic transfer and have it, it comes through as approved or not approved by the government. So it's Max Gaming's equipment on behalf of the government. So it's the CMS record of what's on the floor of the installation.

48 In his record of interview on 13 April 2017 with Liquor and Gaming NSW, Mr Layden explained the Quickchange approval or authorisation process:

If...I put in a serial number that wasn't matched up to the machines that I put in, that wasn't a registered serial number, that application would have come through as..not verified. So whenever you do that, if you put in a wrong serial number it would come up invalid machine. If you put in the correct serial number it will come up valid machine...Once this is approved, this is the record for the government but it's also for us it's confirmation that we're putting the things that are totally acceptable to be put in.

49 On the evidence before me, and in particular that provided by Ms Dakis, I find that the Quickchange system has a more limited function than the material on the Maxgaming website would imply. For this reason, I find that the material on the Maxgaming website could be confusing to readers. I will consider the implications of this later in my decision.

Did the generation of an authorisation for the installation of three of these machines at Balgowlah RSL Club and Hornsby RSL Club by the online Quickchange system have the effect of authorising or approving Mr Layden's transactions with Mr Allam?

50 It is agreed that:

- (1) in December 2016, Mr Layden purchased from Mr Allam a gaming machine with the serial number XSG303407; and
- (2) in April 2017, Mr Layden offered to purchase from Mr Allam two other gaming machines with the serial numbers XSG306202 and XSG306203.

51 It is also agreed that Mr Layden sold the gaming machine with the serial number XSG303407 to Balgowlah RSL Club in December 2016 and arranged for the machine to be installed there on 16 December 2016. The installation process was successfully processed through the online Quickchange system.

52 It is similarly agreed that Mr Layden negotiated the sale of the gaming machines with serial numbers XSG306202 and XSG306203 to Hornsby RSL Club on 23 March 2017 and arranged for the two machines to be installed there. The installation application was successfully processed through the online Quickchange system.

53 I accept the evidence of Ms Dakis that the generation of an authorisation for the installation of these three gaming machines at Balgowlah RSL Club and Hornsby RSL Club by the online Quickchange system did not have the effect of authorising or approving Mr Layden's transactions with Mr Allam. This is because the Quickchange system does not override the provisions of s71 of the *Gaming Machines Act* which provides that:

a person who purchases or offers to purchase an approved gaming machine is guilty of an offence unless the gaming machine is purchased from, or the offer is made to, a person authorised by or under this Act to sell the gaming machine.

- 54 Only the holder of a gaming machine dealer's licence or a gaming machine seller's licence is authorised to sell an approved gaming machine (s83).
- 55 It is agreed that Mr Allam has never held a gaming machine dealer's licence or a gaming machine seller's licence and has only ever held a gaming machine technician's licence. According to s83 of the *Gaming Machines Act*, a gaming machine technician's licence authorises Mr Allam to service, repair and maintain approved gaming machines but not to sell them.
- 56 For these reasons, I am satisfied that the generation of an authorisation for the installation of three of these machines at Balgowlah RSL Club and Hornsby RSL Club by the online Quickchange system did not have the effect of authorising or approving Mr Layden's transactions with Mr Allam.

Did Mr Layden hold a reasonable and honest belief that he was not in breach of the Gaming Machines Act by purchasing gaming machines from Mr Allam? If so, what, if any, is the relevance of such a belief?

Background

- 57 It is accepted that in 2017, in his capacity as director of Better Return Holdings Pty Ltd, Mr Layden agreed to purchase five gaming machines (serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206) from Mr Riad Allam in Mr Allam's capacity as director of the company, Tonita Enterprise.
- 58 It is accepted that as the holder of a gaming machine technician's licence, Mr Allam was not permitted to sell gaming machines. As set out above, this is made clear under the provisions of s71 and s83 of the *Gaming Machines Act*.
- 59 Despite these legislative provisions, when Mr Allam took part in a record of interview with Liquor and Gaming NSW on 17 May 2017, he did not appear to recognise that he was not permitted to sell gaming machines, instead stating that:
- I technician I can sell the whole machine to anyone who have a license, even technician or even a salesperson but if I want to put it in any club or pub I cannot do it, the salesman will do it.
- 60 In these proceedings, Mr Layden conceded that whilst he hadn't been aware of it at the time, he now knows and accepts that he breached s71 of the *Gaming Machines Act* by purchasing a gaming machine from Mr Allam. This, he now

knows, is because it is prohibited to purchase a gaming machine from the holder of a gaming machines technician's licence. Mr Layden told the Tribunal that had he previously been aware of that, he would never have purchased gaming machines from Mr Allam.

Honest belief

- 61 On 13 April 2017, Mr Layden agreed to participate in a record of interview with Liquor and Gaming NSW in relation to his dealings with Mr Riad Allam. In his interview, Mr Layden readily admitted having purchased gaming machines from Mr Allam. He also stated that he was aware that Mr Allam was the holder of a gaming machine technician's licence. There is no evidence before me that Mr Layden believed Mr Allam was the holder of any additional gaming-related licence.
- 62 Mr Layden told investigators from Liquor and Gaming NSW that he believed Mr Allam was entitled to sell gaming machines to him because Mr Allam had said that he 'routinely acquired machines from some of the biggest players in the market.'
- 63 On the evidence before me, I accept that Mr Layden was unaware that Mr Allam's licence did not permit him to sell machines. I accept that this belief may have arisen from what Mr Layden understood to be Mr Allam's practice of selling gaming machine parts to many of the larger gaming machine venues.
- 64 I am also satisfied that Mr Layden believed that, because he himself held a current gaming machine seller's licence, he was entitled to purchase any gaming machine, provided it was 'still licenced and able to be reused, e.g. they had a valid serial plate and that machine would be approved by Quickchange.'
- 65 It is not in dispute that when Mr Allam's name was entered in the Quickchange system, he was approved as a poker machine 'supplier.'
- 66 According to the Collins dictionary, 'a supplier is a person, company, or organization that sells or supplies something such as goods or equipment to customers.'
- 67 Mr Layden relies on this definition in support of his argument that he honestly believed Mr Allam was permitted to sell poker machines.

68 According to Mr Layden:

Section 67 of the *[Gaming Machines] Act* plus regulation 7 confirms that the electronic Quickchange system operated by Max Gaming (which is the company authorised CMS) 'is permitted to exercise any function of the Authority.' Which indicates if Quickchange are approving someone as a supplier the authority is aware of this situation. If the authority under the Act does not recognise technicians as suppliers then; like they do with every other step in the process, they can reject the application on that ground. Not only does the Quickchange accept the Technician's licence number as a supplier, it also provides the approval for the application where they are actually recorded as the supplier.

69 In her statement, Mr Dakis clarified the meaning of 'supplier' for the purposes of Quickchange:

In the context of Quickchange, the Seller is the party who has responsibility to perform the work, and the Supplier is the party that has responsibility to deliver the supplies (be it approved gaming machines or party). With the exception of gaming machine testing facility licences, any person with a current gaming-related licence..is able to be either a Seller or Supplier in Quickchange. A Quickchange Supplier may also be another Venue.

70 I accept that the use of the word 'supplier' is confusing and that the terminology used in Quickchange in addition to its approval processes might well have encouraged Mr Layden's belief that Mr Allam was authorised to sell him gaming machines.

71 I also accept that, according to receipts for Mr Allam's company, Tonita Enterprise, it would appear that other gaming machine companies have conducted business with Mr Allam. The nature of this business is not clear and I make no findings in this regard. I do accept, however, that this evidence of other gaming machine companies' dealings with Mr Allam, and Mr Layden's consequent understanding that these companies were purchasing gaming machines from Mr Allam, may well have encouraged Mr Layden's belief he was permitted to purchase gaming machines from Mr Allam.

72 I agree with Mr Layden that email correspondence on file from May 2013 between Mr Allam and Peter Taylor from the Development company would further imply that Mr Allam was permitted to purchase gaming machines. In an email to Mr Taylor, Mr Allam states that he had been 'granted permission from the Liquor Administration Board to move the machines to my warehouse (approved license warehouse).' He then states 'I am happy to relocate and store all gaming machines and any gaming device at my premises for 2 weeks

free of charge and clean the factory; take all rubbish to recycle. During this time I or another suitable buyer will hopefully be arranged.'

73 Mr Taylor then replies, 'We are trying to finalise matters with the OLGR [Liquor and Gaming NSW] and the former tenant. Please confirm at what price you would be prepared to acquire all the goods and equipment currently within the property above.' When Mr Allam gives an offer, Mr Taylor gives the following reply: 'I will be seeking OLGR [Liquor and Gaming NSW]'s consent to you acquiring the equipment so once I have that, I will advise you. Do you have a licence number and registered company name that I need to provide to them?' Mr Allam then provides the licence number as requested.

74 It would appear from this exchange that Mr Allam seemed confident that he was both in a position to purchase the gaming machines and had no qualms in providing his licence number to Mr Taylor to enable him to request consent from Liquor and Gaming NSW for Mr Allam to purchase the machines. I accept this correspondence as evidence that other parties seem to have also believed that Mr Allam was authorised to sell gaming machines.

75 For all these reasons, I accept that Mr Layden had an honest belief that Mr Allam was authorised to sell gaming machines and that he honestly believed that he was not in breach of the *Gaming Machines Act* for purchasing gaming machines from Mr Allam.

Reasonable belief

76 On the evidence before me, I accept that Mr Layden was both aware that Mr Allam held a technician's licence and believed that this was the only gaming-related licence held by Mr Allam.

77 In evidence before me, Mr Layden agreed that he did not make enquiries of the Independent Liquor and Gaming Authority as to whether Mr Allam was licensed to sell gaming machines. He told the Tribunal, however, that he was unable to locate any information on the Liquor and Gambling NSW website to clarify who is authorised to sell gaming machines. According to Mr Layden:

As [Liquor and Gaming NSW] have NO information on who is able to sell gaming machines on their website and that the department is relying on participants to contact their office directly, there can be no confidence that

accurate information is available for participants in relation to legal matters in these circumstances.

- 78 Notwithstanding this submission, as the holder of a gaming machine seller's licence, Mr Layden should have been aware of s83 of the *Gaming Machines Act*, which sets out the authority conferred on gaming-related licence holders and which clarifies that the holder of a technician's licence has the authority only to service, repair and maintain approved gaming machines. Mr Layden should also have been aware of s71(2) of the *Gaming Machines Act* which states that 'a person who purchases or offers to purchase an approved gaming machine is guilty of an offence unless the gaming machine is purchased from, or the offer is made to, a person who is authorised by or under this Act to sell the gaming machine.'
- 79 Mr Layden's ignorance of the legislation does not excuse non-compliance with the Act (see *Ostrowski v Palmer* (2004) 218 CLR 493 at 500 per Gleeson CJ and Kirby J; *Walden v Hensler* (1987) 163 CLR 561 at 606 per Gaudron J)
- 80 Having heard from Ms Dakis and considered the evidence set out in her statement, I accept that the Quickchange system does not give assurance that the 'Supplier' party holds a seller or dealer licence, as distinct from another kind of gaming licence. I also accept that an online application cannot confirm that what Quickchange deems to be an authorised 'approved gaming machine' is compliant. I accept Ms Dakis' evidence that 'where gaming machines are being installed into a venue, Quickchange does not ensure that the Supplier party holds a Seller or Dealer licence, as distinct from another kind of gaming-related licence.' I also accept that this responsibility sits with the nominated Seller's and Supplier's legislative obligations. I also accept that the role of Quickchange is not to ascertain or verify compliance with the requirements of s71 of the *Gaming Machines Act*, which Mr Layden was found to have contravened.
- 81 On the evidence before me, the terminology used by Quickchange is such that may mislead a user into thinking that a particular person was authorised to sell gaming machines. This is because of the use of the terms 'Supplier' and 'Seller' and the acceptance by Ms Dakis that in the context of Quickchange, the 'Seller' is the party who has responsibility to perform the work, and the

‘Supplier’ is the party that has responsibility to deliver the supplies (be it approved gaming machines or parts). With the exception of gaming machines testing facility licences, any person with a current gaming-related licence is able to be either a Seller or Supplier in Quickchange.

- 82 I accept that this was confusing for Mr Layden, particularly as, on the evidence before me, other gaming machine venues also paid Mr Allam to supply gaming machines as well as parts.
- 83 For the reasons set out above, I also accept that the statement on the Maxgaming website that ‘the refreshed Quickchange seamlessly tracks the full life-cycle of gaming machines in one online destination’ could have been confusing to readers such as Mr Layden as to the limitations of the Quickchange system.
- 84 Whilst I accept that Mr Layden had an honest belief that he was allowed to buy the authorised gaming machines from Mr Allam, in all the circumstances, this belief was not reasonable. This is because Mr Layden should have been aware of s83 and s71 of the *Gaming Machines Act* and should have made his own inquiries as to whether Mr Allam was the holder of a licence authorising him to sell the machines.

In s79 of the Gaming Machines Act, should the words ‘outside the State’ be read as limited to places within Australia, so there is no requirement to notify Independent Liquor and Gaming Authority in cases where approved gaming machines are consigned to places outside Australia?

- 85 Section 79 of the *Gaming Machines Act* provides as follows:

79 Consignment or movement of gaming machines

(1) The holder of a dealer’s licence or seller’s licence who consigns or moves an approved gaming machine:

- (a) to or from any place at which the licensee carries on the business authorised by the licence, or
- (b) from outside the State to a place within the State, or
- (c) to any place outside the State,

must give the Authority (and, if the gaming machine is being consigned or moved to any place outside the State, the manufacturer of the gaming machine) a written notification stating the particulars required by this section no later than 7 clear days before the consignment or movement or within such other time as may be approved by the Authority.

Maximum penalty: 50 penalty units.

(2) The required particulars are as follows:

- (a) the number and type of approved gaming machines,
- (b) the manufacturer's serial number for each of the approved gaming machines,
- (c) the origin and destination of the approved gaming machines,
- (d) the intended dates of transportation,
- (e) the intended method of transport and the name of the carrier.

(3) The Authority may, conditionally or unconditionally, grant an exemption from the operation of this section in a particular case or a particular class of cases.

86 It is Mr Layden's view that the words 'to any place outside the State' mean to any place within Australia, outside of NSW, and should not be construed to include any overseas country.

87 In support of this submission, Mr Layden has referred to the definition of 'out-of-state' contained in the Collins Dictionary, which states that:

Out-of-state is used to describe people who do not live permanently in a particular state within a country but have travelled there from somewhere else

88 According to Mr Layden, a judge of the District Court of NSW found that 'outside the state' in the context of s79 of the *Gaming Machines Act* did not include anywhere outside of Australia. As neither a copy of the judgment or a transcript of the proceedings has been provided to the Tribunal, I give no weight to this submission.

89 It is the Secretary's view that that the words 'to any place outside the state' should, instead, be widely construed to include any other Australian state or any place outside of Australia. For the reasons that follow, I agree with the Secretary's view.

90 The definition for 'out-of-state' provided by Mr Layden is not helpful to an interpretation of the quite different phrase 'to any place outside the state.

91 It is a common rule of statutory construction that "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute" (*Pinner v Everett* [1969] 3 All ERD 257 per Lord Reid at 258)

- 92 Relevantly here, 'any' can also mean 'every' and according to the Macquarie Dictionary, 'outside' means 'beyond the boundary'. Giving to these words their ordinary meaning and reading the phrase as a whole in its context in the statute, I find that the phrase 'to any place outside the state' is not limited to other Australian states but includes any places in any countries beyond the boundary of NSW.
- 93 On this basis, I find that there is a requirement to notify the Independent Liquor and Gaming Authority whenever an approved gaming machine is consigned or moved beyond NSW, whether that be to another Australian state or beyond Australian to another country.

Did Mr Layden consign or move eighteen gaming machines to a place 'outside the State' for the purpose of s79(1)(c) of the Gaming Machines Act?

- 94 It is agreed that Mr Layden has not been granted an exemption from the requirements of s79(1) of the *Gaming Machines Act* by the Independent Liquor and Gaming Authority (see s79(3)).
- 95 According to the Macquarie Dictionary, 'consign' means to hand over or deliver formally; commit; to transfer to another's custody or charge; entrust; to set apart, as to a purpose or use; assign; to transmit, as by public carrier, especially for sale or custody; to address for such transmission.
- 96 The meaning of 'consign' was considered in *Tasman Logistics Services Pty Ltd v Seaco Global Australia Pty Ltd* [2020] VSC 100 at [69]-[77]. Justice Garde was of the view the word was of a 'protean character' varying with its context, and considered various dictionary definitions of the word where used as a verb at [74] including 'to hand over or deliver formally; commit, to transfer to another's custody or charge; entrust, to set apart, as to a purpose or use; assign.' At [75], Justice Garde concluded that 'in the cases cited, and in the dictionary, the word "consign" is given a meaning appropriate to the context with the underlying concept being the delivery of goods by one person to another.'
- 97 Counsel for the Secretary submits that the word 'consign' where used in the context of s79(1) of the *Gaming Machines Act* should not be given a meaning that is any more constrained than its ordinary meaning. In this case, Counsel

for the Secretary submits that the ordinary meaning of the word 'consign' extends to taking steps to transfer a gaming machine to another person's custody (relevantly in the context of s79(1)(c), for the purpose of movement of that machine to a place outside NSW).

- 98 Taking into consideration both the dictionary meaning of the word 'consign' and the judgement in *Tasman Logistics Services Pty Ltd v Seaco Global Australia Pty Ltd* [2020] VSC 100, I agree with Counsel for the Secretary that in this case, the word 'consign' should not be given a meaning more constrained than its ordinary meaning and should extend to taking steps to transfer a gaming machine to another person's custody.
- 99 I accept Mr Layden's evidence that in 2016, he sold eighteen gaming machines, namely poker machines, to Mr Alexander Slamkov, who is an international agent for second-hand gaming machines and who was then living in Macedonia. According to Mr Layden, Mr Slamkov had a client wanting to purchase NSW poker machines and who then ordered eighteen of them from Mr Layden. On advice from Mr Slamkov, Mr Layden issued an invoice to Aumaas Dooel, a company located in Macedonia (but otherwise unknown to Mr Layden), to enable the company to confirm the order of the poker machines and to pay a deposit to secure them.
- 100 I accept Mr Layden's evidence that in December 2016, Mr Slamkov came to Australia and collected the eighteen poker machines from Mr Allam's warehouse. I accept Mr Slamkov also collected other poker machines during his visit to Australia and, in accordance with Mr Layden's evidence - which I accept - Mr Slamkov then 'took them all [to] a location in Mascot where Mr Slamkov packed the machines in to containers and sent them to numerous locations around the world through a freight forwarding company.' I accept Mr Layden's evidence that Mr Slamkov told him that the eighteen poker machines sold to him by Mr Layden were going to Colombia. I also accept Mr Layden's evidence that he has never been to Colombia and does not know 'of a person, company, district, suburb or street in Colombia.'

- 101 Mr Layden agrees that, in relation to these eighteen machines, he provided a handwritten note to the Independent Liquor and Gaming Authority that 'these machines were a part of two deliveries that went to Colombia.'
- 102 In oral evidence, Mr Layden confirmed that he had provided the machines to Mr Slamkov who picked them up and took them overseas. Mr Layden also confirmed that Mr Slamkov had advised him that the gaming machines were to be taken to Columbia. It was on the basis of this information that Mr Layden added the comment in the annexure to his statutory declaration dated 13 June 2017 that the relevant machines were 'part of 2 deliveries that went to Columbia.'
- 103 I accept that Mr Layden agreed to sell eighteen gaming machines to Mr Slamkov who was to come from Macedonia to Australia to collect the machines. I accept Mr Layden's evidence that Mr Slamkov collected the machines himself and arranged shipping overseas himself. I accept Mr Layden's evidence that, at Mr Slamkov's request, he invoiced the company Aumaas Dooel so that payment could be arranged prior to collection. I accept Mr Layden's evidence that he was not sure to which country the machines ended up going as Mr Slamkov was in charge of forwarding the machines overseas as requested by his client. I accept Mr Layden's evidence that Mr Slamkov had advised him that the eighteen machines were to be sent to Columbia which is why Mr Layden included this information in his statutory declaration.
- 104 In a bank statement for Mr Layden's company, Better Returns Holdings Pty Ltd, a withdrawal of \$5400 is made from the account with the description 'Transfer to ...A/c.... –freight alek dated 5 January 2017.'
- 105 In cross examination, Mr Layden agreed that this related to a payment for Mr Slamkov and that he would have used the word 'freight' for Mr Slamkov's purposes. Mr Layden told the Tribunal that he would have sent the \$5400 'to whoever arranged freight' that is, that he was paying for freight on Mr Slamkov's behalf, and that the money would have gone either to the freight company or to Mr Slamkov for the purposes of paying for freight.

106 In oral evidence before the Tribunal, Mr Layden was taken to the following concession made by his former barrister to the Independent Liquor and Gaming Authority in 2018:

Subsection 79(1) – The offshore consignment allegation

For the purposes of this complaint, Mr Layden admits that the offshore consignment of those machines occurred without the requisite notice and that this was due to a failure on his part to appreciate the need for the relevant notices to be given.

107 When asked in cross-examination in these proceedings whether the consignment had taken place without the requisite notice, Mr Layden said:

Yes because I did not know there was a notice provision and yes, the machines went overseas...I agreed to let them go overseas..I supplied the machines to someone who sent the machines overseas.

108 Despite the bank transfer from his account with the notation 'freight alek', in oral evidence before the Tribunal, Mr Layden denied organising the overseas transportation of the machines he'd sold to Mr Slamkov. He told the Tribunal that he had been told that the machines were going overseas, but that he didn't pack them and he didn't know anything about the company who had bought the machines.

109 When asked about the entry 'freight alek' in his bank statement, Mr Layden gave the following evidence:

I normally do not sell machines overseas because I don't have replacement parts. I don't know where [the machines] went, I was just told what country they were going to...He sold them to a range of countries. I don't know where. He paid for the machines, he paid the freight and did the transaction as normal but he was not in Australia. Alek was in Australia before he went to Macedonia.

110 Mr Layden agreed that he sent the money to Mr Slamkov's account:

I don't know what it was: on behalf of Alek for freight of Alek's company, the money was sent for freight Alek. It could have been that he sent the money and I forwarded it on his behalf. He would have been in Australia to collect the machines. He probably charged the customer more than the freight cost, probably charged out higher.

111 Mr Layden speculated that it might have been that Mr Slamkov charged more for freight than it cost, that the customer had then paid the money to Mr Layden who had then split the profit with Mr Slamkov. This, Mr Layden told the

Tribunal, would explain the money transfer to Mr Slamkov's account and the notation 'freight alek.'

112 From this evidence, I infer that Mr Layden took steps to arrange to freight the gaming machines in question to their offshore recipients. I accept that Mr Layden was aware that the machines in question were to be sent overseas (there is no dispute that Mr Slamkov told him they were to be sent to Columbia), that he gave the machines to Mr Slamkov in that knowledge, invoiced a Macedonian company accordingly and transferred an amount of money flagged to freight the machines overseas. For these reasons, I find that s79(1)(c) of the *Gaming Machines Act* applied to Mr Layden and that he was in breach of the section for failing to notify the Independent Liquor and Gaming Authority in accordance with the section.

113 It is agreed that the Quickchange system does not include any functionality for holders of a gaming related licence to seek authorisation to consign or move an approved gaming machine for the purposes of s79(1) of the *Gaming Machines Act*. Furthermore, on the evidence before me, I am not satisfied that the Independent Liquor and Gaming Authority website provides advice as to how such a notification is to be made, where it is to be sent or in what form.

Is Mr Layden a fit and proper person to hold a gaming-related licence?

114 Section 129(3)(e)(iv) of the *Gaming Machines Act* allows a complaint to be made about a licensee on the basis that the gaming-related licensee is no longer a fit and proper person to hold a gaming-related licence.

115 Relevant consideration of a person's fitness to exercise particular functions and authorisations under the Act includes an objective assessment of common law principles of honesty, knowledge and ability. Also relevant is a person's character and the likelihood of future improper conduct. (see *Hughes & Vale Pty Ltd v New South Wales* (No 2) (1955) 93 CLR 127)

116 To be 'fit and proper', a person must have a requisite knowledge of the Act of Acts under which he or she is to be licensed and the relevant obligations and duties imposed: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541 (see also *Sobey v Commercial and Private*

Agents Board (1979) 22 SASR 70 at 76, *Hughes & Vale Pty Ltd v New South Wales* (No 2) (1955) 93 CLR 127 at 156-157).

117 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.

118 In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia 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 the 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 indication of likely future conduct) or reputation (because it provides 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.

119 On the evidence before me and for the reasons set out above, I am not satisfied that Mr Layden has been dishonest in his gaming-related activities. I am satisfied that, in his police record of interview and in his evidence before me, he has been open and forthcoming.

120 I am further satisfied on the evidence before me that Mr Layden has extensive experience in the gaming industry and that he has the ability required to hold a gaming machine dealer's licence.

121 On the evidence before me, the question that arises in this case is whether Mr Layden has the knowledge required of the holder of a gaming machine dealer's licence.

122 Mr Layden has conceded that whilst he hadn't been aware of it at the time, he now knows and accepts that he breached s71 of the *Gaming Machines Act* by purchasing gaming machines from Mr Allam. He now understands that it is prohibited to purchase a gaming machine from the holder of a gaming

machines technician's licence. I accept Mr Layden's evidence that, had he been aware of this, he would never have purchased the gaming machines from Mr Allam.

- 123 Mr Layden has also admitted that in 2016, he had been unaware of the provisions of s79 of the *Gaming Machines Act* which require notification to the Independent Liquor and Gaming Authority when gaming machines are consigned anywhere out of state. I agree with the Secretary that Mr Layden's lack of knowledge of the notification provisions would bring into question his overall knowledge of his legislative obligations. Since this time, however, Mr Layden has actively engaged with the requirements of the *Gaming Machines Act*, culminating in his appearance in these proceedings without legal representation. In the course of these proceedings, Mr Layden displayed an extensive knowledge of the *Gaming Machines Act* and his obligations under it.
- 124 On the evidence before me, I am satisfied that, at the time of this decision, Mr Layden has the knowledge required of a holder of a gaming machines seller's licence. For these reasons, I am satisfied that Mr Layden is a fit and proper person to hold a gaming machine seller's licence.

Was the penalty imposed on Mr Layden an appropriate one?

- 125 If satisfied that the grounds of a complaint have been made out, the Independent Liquor and Gaming Authority (and on review, this tribunal) has the power under s131 of the *Gaming Machines Act* to take no action or to impose the following disciplinary action on the holder of a gaming-related licence:
- (1) a monetary penalty;
 - (2) cancel the gaming-related licensee's licence for such period as the Independent Liquor and Gaming Authority thinks fit;
 - (3) suspend the gaming-related licensee's licence for such period as the Independent Liquor and Gaming Authority thinks fit;
 - (4) impose or vary a condition to which the gaming-related licence is subject,^{[L]_{SEP}}
 - (5) disqualify the gaming-related licensee from holding a gaming-related licence for such period as the Independent Liquor and Gaming Authority thinks fit,
 - (6) reprimand the licensee,

- (7) order the licensee to pay the amount of any costs incurred by the Secretary in carrying out any investigation or inquiry under section 128 in relation to the licensee; or by the Independent Liquor and Gaming Authority in connection with the taking of disciplinary action against the licensee.

126 The Independent Liquor and Gaming Authority imposed the following penalty on Mr Layden:

- (1) the suspension of his gaming machines seller's licence for a period of twelve months;
- (2) a monetary penalty of \$8000;
- (3) the payment of \$26486.47 in costs.

127 In giving reasons for this penalty, the Independent Liquor and Gaming Authority determined that, having regard to the public interest in protecting the industry and the community, 'some significant regulatory response' was necessary. According to the Independent Liquor and Gaming Authority, a suspension would 'send an appropriate signal to others in the industry to ensure they take reasonable steps to ensure that any dealings with regard to gaming machines comply with the requirements of sections 71 and 29 of the Act.' It was also determined that the private prejudice to Mr Layden was 'a necessary consequence of ensuring public confidence in the regulatory scheme through appropriate disciplinary action.'

128 The additional monetary penalty was imposed 'as an additional deterrent to others in the industry who may be tempted to disregard their obligations under section 71 and 79 of the Act.'

129 On 21 January 2020, the decision was stayed. This means that Mr Layden's licence has not been suspended nor has he paid the monetary penalty or the costs ordered.

130 On the evidence before me, I find that the sanctions imposed by the Independent Liquor and Gaming Authority were too harsh. This is because I am satisfied that Mr Layden held an honest belief that he was not in breach of the *Gaming Machines Act* by purchasing gaming machines from Mr Allam and that, on the evidence before me, he is now a fit and proper person to hold a gaming machines seller's licence.

- 131 I am also satisfied that Mr Layden has received extra-curial punishment as a result of the extensive media generated by a media release of the Independent Liquor and Gaming Authority which stated that ‘two NSW gaming machine industry licence holders are facing lengthy bans and combined fines and legal costs of \$100 000 for their roles in a gaming machine rebirthing racket’
- 132 I am satisfied that this media attention has caused Mr Layden great reputational damage and threatened the viability of his business. I accept the evidence provided by Mr Layden that, as a result of this media attention, many licensed hoteliers and registered clubs will not do business with him. I accept that this had adversely affected Mr Layden’s business. I also accept that the media attention was humiliating and damaging to his personal life.
- 133 I accept Mr Layden’s evidence that the media’s description of his purchase of gaming machines from Mr Allam as a ‘rebirthing racket’ was detrimental to his reputation. I agree that the words ‘rebirthing racket’ imply that theft was somehow involved in the transaction, given that, as Mr Layden submits, rebirthing is a concept that describes the transferring of an identification-related part from an otherwise obsolete, faulty but essentially different machine onto a stolen machine (ordinarily from a damaged or insurance write off motor vehicle to a stolen motor vehicle) in circumstances that transform and conceal the true identity of the stolen machine. I agree with Mr Layden that, in the circumstances of this case, there was no transfer of identity consistent with rebirthing: the gaming machines and serial number plates remained intact and there was no suggestion of any theft.
- 134 According to *Environment Protection Authority v Wattke*, *Environment Protection Authority v Geerdink* [2010] NSWLEC 24 at [79]:
- extra curial punishment refers to any serious loss or detriment an offender has suffered or will suffer as a result of committing an offence, quite apart from any punishment imposed by a sentencing judge, *R v Einfeld* [2009] NSWSC 119 at [154]. What weight is to be given to any extra curial punishment is a factor for the Court to consider on the particular facts and circumstances of the matter before it, *Director of Public Prosecutions v D’Arcy* [2009] NSWLC 1 at [26].
- 135 I am also satisfied that Mr Layden has shown remorse for breaching the provisions of the *Gaming Machines Act* and that he has since gained the

knowledge of the Act he requires to ensure he will not be in breach of its provisions in the future.

Conclusion

136 For the reasons set out above, I am satisfied that Mr Layden contravened the *Gaming Machines Act*:

- (1) in April 2017, by purchasing five approved gaming machines ('Mojo units' with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206) from Mr Riad Allam who was not the holder of a dealer's or seller's licence (see s71(2));
- (2) in 2016, by purchasing an approved gaming machine ('Vegas Star Roulette' serial number XSG303406) from Mr Riad Allam who was not holder of a dealer's or seller's licence (see s71(2)); and
- (3) by consigning or moving approved gaming machines outside NSW without written notification to the Independent Liquor & Gaming Authority or manufacturer (see s79(1))

137 Despite these breaches, and for the reasons set out above, I am satisfied on the evidence before me that Mr Layden is a fit and proper person to hold a gaming machine seller's licence.

138 For the reasons set out above, the decision of the Independent Liquor and Gaming Authority on 7 January 2020 to uphold complaints and to make disciplinary orders against Mr Layden is set aside.

139 In substitution, the Tribunal makes the following decision:

- (1) The applicant contravened s71(2) of the *Gaming Machines Act* by purchasing five approved gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 from Mr Riad Allam who was not the holder of a dealer's or seller's licence;
- (2) The applicant contravened s71(2) of the *Gaming Machines Act* by purchasing an approved gaming machine with the serial number XSG303406 from Mr Riad Allam who was not holder of a dealer's or seller's licence;
- (3) The applicant contravened s79(1) of the *Gaming Machines Act* by consigning eighteen approved gaming machines outside NSW without written notification to the Independent Liquor & Gaming Authority or manufacturer;
- (4) Pursuant to section 131 (2) (a) (i) of the *Gaming Machines Act*, the applicant is ordered to pay a monetary penalty to the Secretary, NSW Department of Customer Services in the sum of \$8000.00 within 30 days of this decision;

- (5) Pursuant to section 131(2)(i)(i) of the *Gaming Machines Act*, the applicant is ordered to pay the Secretary of NSW Department of Customer Services the amount of \$26 486.47 in costs within 30 days of this decision.

Orders

140 The decision of the Independent Liquor and Gaming Authority on 7 January 2020 to uphold complaints and to make disciplinary orders against the applicant is set aside.

141 In substitution, the Tribunal makes the following decision:

- (1) The applicant contravened s71(2) of the Gaming Machines Act by purchasing five approved gaming machines with the serial numbers XSG306202, XSG306203, XSG306204, XSG306205, XSG306206 from Mr Riad Allam who was not the holder of a dealer's or seller's licence;
- (2) The applicant contravened s71(2) of the Gaming Machines Act by purchasing an approved gaming machine with the serial number XSG303406 from Mr Riad Allam who was not the holder of a dealer's or seller's licence;
- (3) The applicant contravened s79(1) of the Gaming Machines Act by consigning eighteen approved gaming machines outside NSW without written notification to the Independent Liquor & Gaming Authority or manufacturer;
- (4) Pursuant to section 131 (2) (a) (i) of the Gaming Machines Act, the applicant is ordered to pay a monetary penalty to the Secretary, NSW Department of Customer Services in the sum of \$8000.00 within 30 days of this decision;
- (5) Pursuant to section 131(2)(i)(i) of the Gaming Machines Act, the applicant is ordered to pay the Secretary of NSW Department of Customer Services the amount of \$26 486.47 in costs within 30 days of this decision.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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