



Directors Fourtech Gaming Devices Pty Limited Unit 12, 22 Phillips Road Kogarah NSW 2217 [REDACTED]	Mr Dimitri Argeres Acting Director Liquor and Gaming NSW Department of Customer Service 4 Parramatta Square, 12 Darcy Street Parramatta 2150 cc: Mr Paul Irving [REDACTED]
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19 June 2020

Dear Sir/Madam

<b>Complaint reference No.</b>	DF19/010002
<b>Matter</b>	Disciplinary complaint against Fourtech Gaming Devices Pty Limited (GMS4010599), Mr Zvonko Mladenovski (GMT4011324) and Mr Borce Siskoski (GMT4011525)
<b>Complainant</b>	Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW
<b>Respondents</b>	Fourtech Gaming Devices Pty Limited (GMS4010599) Mr Zvonko Mladenovski (GMT4011324) Mr Borce Siskoski (GMT4011525)
<b>Primary Premises</b>	Unit 12, 22 Phillips Road Kogarah NSW 2217
<b>Issue</b>	Whether the grounds of complaint have been established
<b>Legislation</b>	Part 8 of the <i>Gaming Machines Act 2001</i> (NSW)

### **Decision with Reasons and Notice of Disciplinary Action**

#### **Complaint to the Independent Liquor and Gaming Authority concerning Fourtech Gaming Devices Pty Limited, Mr Zvonko Mladenovski and Mr Borce Siskoski under Part 8 of the *Gaming Machines Act 2001* (NSW)**

On 12 September 2019, the Independent Liquor and Gaming Authority ("Authority") received a disciplinary complaint ("Complaint") from Mr Sean Goodchild ("Complainant"), then Director of Compliance Operations, Liquor and Gaming New South Wales ("L&GNSW") as delegate of the Secretary of the New South Wales ("NSW") Department of Customer Service ("Secretary").

The Complaint is made under Part 8 of the *Gaming Machines Act 2001* (NSW) ("Act") in relation to:

- Fourtech Gaming Devices Pty Limited ("Fourtech") – licensee of Gaming Machine Seller ("GMS") licence GMS4010599.
- Mr Zvonko Mladenovski – licensee of Gaming Machine Technician ("GMT") licence GMT4011324.
- Mr Borce Siskoski – licensee of GMT licence GMT4011525.

The Complaint specifies two grounds of complaint (“Grounds”) that are available under section 129(3) of the Act. After considering the Complaint material and all submissions received in relation to the matter, the Authority is satisfied that Grounds 1 and 2 are established, in that:

- Pursuant to section 129(3)(a)(i) of the Act, Messrs Siskoski and Mladenovski, as gaming related licensees, contravened a provision of the Act or regulations – being sections 77(5) and 86(2) of the Act.
- Pursuant to section 129(3)(j) of the Act, the Fourtech GMS Licence GMS4010599 was not exercised in the public interest.

After considering further submissions on what, if any, disciplinary action should be taken, the Authority has determined, on the date of this letter, to take the following disciplinary action:

- (i) Pursuant to section 131(2)(a)(i) of the Act – Mr Mladenovski is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$2,200** by no later than 1 August 2020.
- (ii) Pursuant to section 131(2)(a)(i) of the Act – Mr Siskoski is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$2,200** by no later than 1 August 2020.
- (iii) Pursuant to section 131(2)(a)(i) of the Act – Fourtech is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$4,400**. This penalty is required to be paid by 10 monthly installments commencing on 1 October 2020 and on the first day of each month thereafter.
- (iv) Pursuant to section 131(2)(c)(ii) of the Act – The GMS licence held by Fourtech is suspended for a period of 3 months, commencing the day after any day upon which Fourtech does not make payment of any installment of the monetary penalty and costs payable to the Secretary. If the suspension has not commenced within 24 months from 1 August 2020 then this Order shall lapse.
- (v) Pursuant to section 131(2)(e) of the Act –the following conditions are imposed on the Fourtech GMS licence GMS4010599, commencing effect on 1 August 2020.
  - (1) *The company must maintain a register of all approved gaming machines transacted under the licence including any action taken in relation to each machine. The licensee must ensure that such records for each approved gaming machine are retained for a period not less than three years following the machines sale, disposal or destruction.*
  - (2) *All employees of Fourtech Gaming Pty Ltd must hold a gaming-related licence.*
  - (3) *The licensee must ensure that no other persons are permitted on the primary premises unless those persons are attending the premises as a function of the lawful sale, supply or repair of approved gaming machines.*
  - (4) CCTV Condition

- 1) *The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*
    - (a) *the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),*
    - (b) *recordings must be in digital format and at a minimum of six (6) frames per second,*
    - (c) *any recorded image must specify the time and date of the recorded image,*
    - (d) *the system's cameras must cover the following areas:*
      - (i) *all entry and exit points on the premises,*
      - (ii) *the footpath immediately adjacent to the premises, and*
      - (iii) *all areas (other than toilets) within the premises and any exterior areas of the premises where gaming machines are received or dispatched.*
  - 2) *The licensee must also:*
    - (a) *keep all recordings made by the CCTV system for at least 30 days,*
    - (b) *ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
    - (c) *provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*
- (vi) Pursuant to section 131(2)(i)(i) of the Act - Fourtech is ordered to **pay** the Secretary the amount of **\$7,500**, being a *portion* of the Secretary's costs on the investigation giving rise to this Complaint. This payment of costs is required to be paid by 24 monthly installments commencing on 1 August 2020 and on the first day of each month thereafter.
- (vii) Pursuant to section 131(2)(j) of the Act - Mr Mladenovski is **issued with a reprimand**.
- (viii) Pursuant to section 131(2)(j) of the Act - Mr Siskoski is **issued with a reprimand**.

Information regarding rights to seek review of this decision is provided at the end of the attached statement of reasons. If you have any questions about this letter, please contact the Authority via email to [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully



Philip Crawford  
**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## INTRODUCTION

1. On 12 September 2019, Mr Sean Goodchild (“Complainant”), then Director of Compliance Operations, Liquor and Gaming New South Wales (“L&GNSW”), as a delegate of the Secretary of the New South Wales (“NSW”) Department of Customer Service (“Secretary”), submitted to the Independent Liquor and Gaming Authority (“Authority”) a disciplinary complaint (“Complaint”).
2. The Complaint is made under Part 8 of the *Gaming Machines Act 2001* (NSW) (“Act”) in relation to:
  - Fourtech Gaming Devices Pty Limited (“Fourtech”) – licensee of Gaming Machine Seller (“GMS”) licence GMS4010599.
  - Mr Zvonko Mladenovski – licensee of Gaming Machine Technician (“GMT”) licence GMT4011324.
  - Mr Borce Siskoski – licensee of GMT licence GMT4011525.

## GROUND OF COMPLAINT

3. The Complaint specifies two grounds (“Grounds”) that are available under section 129(3) of the Act.
4. Ground 1 is based upon section 129(3)(a)(i) of the Act and alleges that the licensees (gaming-related licensees) Messrs Siskoski and Mladenovski have contravened a provision of the Act or the regulations. Ground 1 contains two particulars specifically alleging breaches of sections 77(5) and 86(2) of the Act.
5. Ground 2 is based upon section 129(3)(j) of the Act and alleges that GMS licence number GMS4010599 held by Fourtech has not been exercised in the public interest. Ground 2 contains 3 particulars, which make allegations about working conditions, record keeping and probity in relation to gaming machines held on the registered primary premises address of the Fourtech GMS licence.

## COMPLAINT MATERIAL

6. The Complaint comprises a one-page cover letter signed by the Complainant dated 12 September 2019 (“Cover Letter”) and a seventeen-page complaint submission letter (“Complaint Letter”) specifying the Grounds of Complaint, with a list of twenty-two Exhibits labelled “E01” to “E22” that are described in the attached Schedule.

## MATERIAL SOURCED BY THE AUTHORITY

7. On 1 October 2019, the Authority’s Reviews and Secretariat Unit (“Authority Secretariat”) sourced updates from the OneGov database for gaming-related licences GMT4011525, GMT1400251, GMT4011560, GMT4011324 and GMS4010599.
8. The Secretariat obtained further updated copies of those records on 29 May 2020 before issuing this decision letter.  
  
(collectively referred to as the “Updated OneGov Searches”).

## **CONSULTATION**

### **Show Cause Notice dated 26 November 2019**

9. On 26 November 2019 the Authority Secretariat sent a letter to Fourtech, Mr Zvonko Mladenovski and Mr Borce Siskoski (“the Respondents”) inviting them to show cause as to why disciplinary action should not be taken on the basis of the Grounds of Complaint. The notice was copied to the Complainant and specified a timetable for the filing of evidence or other material and submissions from the parties.

### **Respondents’ Submission Addressing the Merits of Complaint**

10. In a two-page letter dated 20 December 2019, the Respondents jointly addressed the merits of the Complaint (“Respondents’ Submission”). The Respondents “admit the allegations” and “do not dispute the complaint” but make the following contentions, apparently by way of mitigation:
- The matters identified in the Complaint were a “one-off situation”.
  - The conduct identified was the product of a “breakdown” in their “system” (in respect of disassembled gaming machines), which has since been addressed.
  - The Respondents had been “focussing on the serial number plate removal and retention” in respect of gaming machines and had trusted the employee [Mr Formosa] to do what he was asked to do
  - They “now realise” that they “should have been more active” in their supervision of this employee and the handling of the machines.
  - They have “learnt a valuable lesson” from the events specified in the Complaint and in future will be “less trusting” and “more vigilant”.
11. The Respondents also make submissions on the prospect of disciplinary action, requesting that the Complaint be dealt with “by way of a caution” on the basis that they have no prior offending and an “excellent record” in the industry. They submit that the offending was “out of character” and contend that they have now put the following procedures in place to reduce the likelihood of recurrence, including:
- Taking photos of gaming machines being disassembled;
  - One of the two directors being present and supervising any workers assigned to dismantle and to decommission machines;
  - Removal of serial number plate is to be done by a director;
  - Staff selection will have a “preference” for licensed persons;
  - Only licensed persons may do work requiring a licence;
  - There will be constant supervision of staff;
  - CCTV will be installed so that staff may be monitored;
  - Police checks will be undertaken each 6 months for staff and upon initial employment;
  - Gaming machine parts once disassembled will be accounted for and verified by a director;
  - The Respondents will read more industry news and publications to keep up with new procedures and systems used in the industry;
  - In future, if in any doubt about procedures, the Respondents will contact the Authority and clarify any issues.

12. The Respondents further submit that the company and its directors gained no benefit from the relevant transactions and the breaches identified “arose more out of ignorance and trust” and “not greed” on their part.
13. The Respondents submit that they have co-operated with L&GNSW investigators, reducing the potential costs of the Complaint, made appropriate admissions and demonstrated remorse. The Respondents refer to the transcripts of their interviews with L&GNSW Inspectors (“Inspectors”) and advise that the offending staff member has since had his employment terminated.
14. The Respondents submit they did not plan to circumvent the law and acknowledge the importance of industry regulation. However, they contend that the possibility of this type of conduct occurring again at their business is “nil” and the events in question occurred “a long time ago” with no subsequent offending.
15. On the question of their character, the Respondents submit that as of 2019 they have been licensed persons for almost 30 years and have been running this small business for 22 years. Mr Mladenovski and Mr Siskoski are “both family men, middle aged and the machines are [their] life”; they both “work hard and honestly”. They are “otherwise crime free” and “very sorry that this happened”.
16. The Complainant made no submission in reply to the Respondents’ Submission but have requested the opportunity to make final submissions on disciplinary action, discussed below.

## **FINDINGS**

17. A disciplinary complaint under Part 8 of the Act is an administrative matter and findings of fact are made on 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.

## **Complainant’s Background Contentions**

18. The Complainant makes a number of contentions about the business operations of Fourtech in the “Background” paragraphs 1 to 6 of the Complaint Letter. Both Grounds of Complaint incorporate this information by reference. The Authority makes the following findings on these uncontested matters, with the supporting evidence or material noted in square parentheses:
  - Fourtech operates GMS4010599 from approved primary premises situated at Unit 12, 22 Phillips Road, Kogarah NSW 2217 (since January 2000) which authorises Fourtech to buy and sell gaming machines in NSW [E01 – OneGov licence record for GMS licence GMS4010599 as at 25 July 2018 identifying Fourtech as the licensee].
  - Fourtech is operated by company directors Mr Mladenovski and Mr Siskoski who hold all shares in the company [E22 – Australian Securities

and Investments Commission Company Extract for Fourtech as at 28 September 2018].

- Mr Mladenovski is the gaming-related licensee of GMT4011324 and Mr Siskoski is the gaming-related licensee of GMT4011525 [E02 OneGov licence record for GMT licence GMT4011324 as at 27 September 2018 identifying Mr Zvonko Mladenovski as the licensee (“Zvonko GMT Licence Record”); E03 – OneGov licence record for GMT licence GMT4011525 as at 27 September 2018 identifying Mr Borce Siskoski as the licensee (“Borce GMT Licence Record”)].
- Fourtech employs two gaming related technicians, Mr Christian Mladenovski (licensee of GMT1400251) and Mr Dragi Suleski (licensee of GMT4011560) [E04 – OneGov licence record for GMT licence GMT1400251 as at 27 September 2018 identifying Mr Christian Mladenovski as the licensee; E05 – OneGov licence record for GMT licence GMT4011560 as at 27 September 2018 identifying Mr Dragi Suleski as the licensee; E10 – Transcript of the interview conducted by Inspectors with Mr Zvonko Mladenovski on 4 May 2018 (“Mladenovski Interview”) Q31-47; E12 – Transcript of the interview conducted by Inspectors with Mr Borce Siskoski on 4 May 2018 (“Siskoski Interview”) Q36]. [The Authority notes that any reference to “Mr Mladenovski” in this decision letter means Mr Zvonko Mladenovski and not Mr Christian Mladenovski (Zvonko’s son)].
- Fourtech employs two individuals who do not hold gaming related licences, Mr Peter Formosa (warehouse supervisor), and Ms Milena Jovanovska (office administration) [E06 – OneGov individual search for Mr Peter Formosa dated 28 September 2018; E10 – Q31-47; E12 – Q36].
- Both directors confirmed that Mr Formosa was a long-term employee of the company (in excess of ten years) [E10 – Q249; E12 – Q311-313; E14 – Transcript of the interview conducted by Inspectors with Mr Peter Formosa on 8 May 2018 (“Formosa Interview”) Q42-48].
- Fourtech provides gaming-related services under contract to licensed NSW hotels and clubs. This includes the service, repair and maintenance of approved gaming machines. Fourtech also trades in used gaming machines and gaming machine parts, utilising the company’s seller’s licence.

### **Complainant’s Common Facts of Complaint**

19. At paragraphs 7 to 32 under the heading “Facts of the complaint” the Complainant alleges that the following events lead to Inspectors interviewing the Respondents and issuing a section 21 Notice to Produce [E16 - L&GNSW Notice to Produce dated 18 May 2018 issued to Mr Mladenovski under section 21 of the *Gaming and Liquor Administration Act 2007* (NSW) (“Notice to Produce”)].
20. The Authority makes the following findings on the below allegations, with the supporting evidence or material noted in square parentheses:
  - On 3 May 2018 Inspectors assisted NSW Police during the execution of search warrants on commercial and residential premises owned by Mr Jihad Mohamad, who had unlawfully advertised approved gaming machines for sale on social media sites.

- As evidenced by E07 [OneGov individual search for Mr Jihad Mohamad dated 28 September 2018] Mr Mohamad does not hold any gaming-related licence and is not otherwise authorised to possess or sell gaming machines.
- A single gaming machine was seized by Police from Mr Mohamad's commercial premises, which is an automotive smash repair business located at 23 Phillips Road, Kogarah NSW, directly opposite Fourtech's primary premises (Unit 12, 22 Phillips Road, Kogarah NSW 2217). A further six gaming machines were located and seized at Mr Mohamad's residential premises at Alford's Point NSW.
- Inspectors located serial numbers within five of those machines, being XAW713176, XAW605024, XAW609534, XAW600829 and XAW605031.
- A review of those serial numbers identified that all five of those machines were last disposed to Fourtech, with those machines still operating the same software as when they were last recorded on the Central Monitoring System ("CMS") [E08 – CMS Device History Reports from 1 January 2014 to 3 May 2018 for NSW Police seized gaming machines with serial numbers XAW713176, XAW605024, XAW609534, XAW600829 and XAW605031].
- On 3 May 2018 Inspectors attended Fourtech and briefly spoke with Mr Formosa (who was working unsupervised). Mr Formosa denied any knowledge of the matter and could not explain how those machines came to be in Mr Mohamad's possession.
- Mr Mladenovski and Mr Siskoski later arrived at the premises and denied any knowledge of Mr Mohamad, or his possession of gaming machines [E10 – Q145-159, Q220-221; E12 – Q134-142].
- Mr Mladenovski and Mr Siskoski later advised Inspectors that their standard procedure for the destruction of gaming machines included the removal of the machine's compliance plate, removal of all parts and destruction of the gaming machine shell. They stated that their consistent practice was to retain the compliance plate as a record of destruction [E12 – Q78-84; E13 – Adopted Interview Documents from the Siskoski Interview (being material shown to Mr Siskoski during the interview) BS02; E10 – Q103-119; E11 – Adopted Interview Documents from the Mladenovski Interview (being material shown to Mr Mladenovski during the interview) ZM02].
- After reviewing the compliance plates of 208 gaming machines that had been destroyed by Fourtech, Inspectors seized a single compliance plate, XAW713176, which related directly to a gaming machine seized by NSW Police [E09 – L&GNSW Field Notice/Receipt for the seizure of an Aristocrat Gaming Machine Compliance Plate with Serial Number XAW713176 dated 3 May 2018 accompanied by a photograph of that compliance plate]. No other compliance plates were found relating to the other four serial numbers identified by Inspectors as linked to Fourtech.
- Both Mladenovski and Siskoski confirmed in their interviews that the seized machines had last been in the possession of Fourtech and should still be in the company's possession, with no reason for them being in Mr Mohamad's possession [E10 – Q162-219; E11 – ZM04-ZM14; E12 – Q152-246; E13 – BS03-BS13].
- Both Mladenovski and Siskoski indicated that Mr Formosa, who does not hold a gaming-related licence, was primarily responsible for stripping out and destroying gaming machines. They also stated that Mr Formosa had unrestricted access to the warehouse and would regularly work unsupervised [E10 – Q32-52, Q138-144; E12 – Q41-54].



- On 8 May 2018, during his interview with Inspectors, Mr Formosa admitted to selling gaming machines to Mr Mohamad confirming that he sold three machines on 20 April 2018, one machine on 27 April 2018 and four machines on 1 May 2018 [E14 – Q195-208, Q242-243; E15 – Note provided from Mr Peter Formosa to Inspectors]. The machines were of the same make and model as those seized by NSW Police from the unlawful possession of Mr Mohamad.
- Mr Formosa confessed that in total he had sold approximately 15 gaming machines to Mr Mohamad over a period of 18 months [E14 – Q244-246].
- On 18 May 2018, a Section 21 Notice to Produce was issued by L&GNSW to Mr Mladenovski requiring the production of records relating to the movement of gaming machines by Fourtech between 1 January 2017 and 3 May 2018 [E16].
- On 24 May 2018, the directors of Fourtech complied with this Notice to Produce. An analysis of records and relevant CMS data provided determined that 13 gaming machines had been transferred to Fourtech in instances where no compliance plate or physical machine existed and this included those seized by NSW Police [E17 – Fourtech gaming machine tracking document between 1 January 2017 and 3 May 2018]. The 13 gaming machines include the machines with the following serial numbers, which are thought to have been sold by Mr Formosa after he had removed their compliance plates:

XAW353443	XAW812372	XAW713176	XAW600829	XSG102284
XAW527314	XAW833190	XAW605024	XAW605031	XAW626380
XAW601203	XAW609534	XSG102240		

- Further, during the period from 1 January 2017 to 3 May 2018, an additional 25 gaming machines of the same make and model were destroyed by Fourtech, with a compliance plate retained by the company [E17]. Those 25 gaming machines included the following which are thought by L&GNSW to have been sold by Mr Formosa after he had removed their compliance plates:

XAW315926	XAW535248	XAW567670	XAW613908	XAW825487
XAW315927	XAW535250	XAW567671	XAW616925	XAW828176
XAW322152	XAW535251	XAW601202	XAW703317	XAW829976
XAW507596	XAW353252	XAW601465	XAW806095	XAW829994
XAW535247	XAW550337	XAW606633	XAW818087	XAW951103

- Inspectors identified 38 gaming machines that have “potentially” been sold by Mr Formosa [E17], seemingly without the knowledge of Fourtech directors. Those sales were the result of “flawed internal practices and processes” that afforded Mr Formosa, an unlicensed party, “unfettered” access to gaming machines.
- A search of the Justicelink system confirmed that Mr Formosa had been convicted and sentenced in 2003 to a 12-month custodial sentence for falsifying a foreign passport within Australia and using a false instrument with intent. [E18 - Justicelink record in the matter of *R v Peter Paul Formosa* [case 2004/00012691-004] recording that Mr Formosa was sentenced to a 1 year term of imprisonment to commence on 15 December 2003 and expire on 14 December 2004 with a non-parole period of 6 months for the offence of *Falsify a foreign passport within Australia*; E19 – Justicelink record in the matter of *R v Peter Paul Formosa* [case 2004/00012691-005] recording that Mr Formosa was

sentenced to a 1 year term of imprisonment to commence on 15 December 2003 and expire on 14 December 2004 with a non-parole period of 6 months for the offence of *Use false instrument with intent*]. The Complainant also relies on Exhibit E20 and E21 in respect of further contentions regarding Mr Formosa's criminal history at paragraph 28 of the Complaint Letter (and later at paragraph 85 of the Complaint Letter). However, these matters concern *spent convictions* and the Authority has had no regard to those matters.

- At the time of making this Complaint, Mr Formosa remained employed by Fourtech under tightened working conditions that do not allow his presence on the premises unsupervised.
- The conduct identified in the Complaint pre-dates the introduction of section 81A of the Act and as such, there was no requirement for licensees to obtain approval for destruction of gaming machines. However, it is contended that Fourtech's destruction process was "open to manipulation", as it did not provide the ability for the directors to accurately reconcile the *total gaming machines destroyed* by the company against the *compliance plates removed* and supposedly stored safely as a formal record of destruction.
- This inability to reconcile the company's gaming machine holdings was known to Mr Formosa and assisted his conduct, as he had deduced that no alarm would be raised for any missing gaming machines if the compliance plate was "put on the step" (meaning that if he removed the compliance plate and placed it on the step inside the premises for the directors of Fourtech to collect and place in the secure cupboard) [E14 – Q604-614].
- All gaming machines identified in the tables above were approved to operate in NSW. L&GNSW is not aware of any revocation of the approved status of these machines, pursuant to section 64(6A) of the Act. Therefore at all material times, the machines were *approved gaming machines* as defined by the Act.

## Ground 1

21. Ground 1 is based on section 129(3)(a)(i) of the Act and alleges that the licensees, Mr Siskoski and Mr Mladenovski, have contravened a provision of the Act or the regulations.
22. Section 129(3)(a)(i) of the Act states:
 

(3) *The grounds on which a complaint in relation to a licensee or close associate may be made are as follows—*

(a) *that the licensee—*

(i) *has contravened a provision of this Act or the regulations, or*
23. Section 127(1) of the Act defines a "licensee" to include the holder of a gaming-related licence (referred to as a gaming-related licensee) and section 127(2) of the Act states that a reference in Part 8 of the Act to a licensee includes a reference to a former licensee.
24. The types of gaming-related licences are set out in section 83 of the Act and include *inter alia* a GMS and GMT licence.
25. Ground 1 particularises two regulatory contraventions that are alleged to have occurred between 1 January 2017 and 3 May 2018.

26. On the basis of the Zvonko GMT Licence Record (E02), the Borce GMT Licence Record (E03) and the Updated OneGov Searches, the Authority is satisfied that:
- Mr Mladenovski commenced as the licensee of GMT licence GMT4011324 on 28 February 1989 and was still licensee as at 29 May 2020.
  - Mr Siskoski commenced as licensee of GMT licence GMT4011525 on 8 July 1993 and was still licensee as at 29 May 2020.
27. These records do not indicate any break in their status as gaming-related licensees since 1 July 2008.
28. At questions 32 to 43 of the Formosa Interview (E14) Mr Formosa confirms that at the date of his interview, 8 May 2018, Mr Formosa was working for Fourtech and had been for “about 13 years”.
29. The Authority is satisfied that from 1 January 2017 to 3 May 2018 (the period in which the allegations in Ground 1 [and Ground 2] relate) both Messrs Mladenovski and Siskoski were licensees and Mr Formosa worked for Fourtech.

**Ground 1 Particular 1 – Breach of Section 77(5) of the Act**

30. Ground 1 Particular 1 is specified at paragraphs 35 to 45 of the Complaint Letter and alleges breach of section 77(5) of the Act.
31. At paragraph 35 the Complainant refers to the Background and Facts set out in paragraphs 1 to 32 of the Complaint Letter and contends that Mr Formosa, being an unauthorised person, was permitted by Messrs Mladenovski and Siskoski to remove compliance plates from gaming machines on the Fourtech premises. The Authority accepts this, noting its above findings on these background matters.
32. The Authority notes the extracts of sections 77(3) and 77(5) of the Act cited at paragraphs 36 to 38 of the Complaint Letter and accepts that pursuant to section 77(6), an “authorised person” means an inspector or technician.
33. Sections 77(3), (5) and (6) of the Act state:

***77 Protection of sensitive areas of gaming machines***

...

*(3) A person (including an authorised person) who removes, alters or otherwise interferes with the compliance plate on an approved gaming machine is guilty of an offence.*

*Maximum penalty—100 penalty units.*

...

*(5) A person who authorises or permits another person to act in a way that is an offence under subsection (1) or (3) is also guilty of an offence.*

*Maximum penalty—100 penalty units.*

*(6) In this section—*

***authorised person*** means an inspector or a technician.

***compliance plate*** has the same meaning as in section 121.

***computer cabinet*** means the sealable part of an approved gaming machine that contains the game program storage medium and the random access memory.

34. The Authority accepts the contention in paragraph 39 of the Complaint Letter that during the Siskoski Interview (E12) Mr Siskoski told Inspectors that Mr Formosa was responsible for the removal of compliance plates when gaming machines are scheduled for destruction. The Complainant here relies on the following exchange at questions 113 to 115 of that interview:
- Q113: *O.K. So we've gone through what happens when you're destroying a gaming machine. You already explained that to me. What do you guys do with the compliance plates?*
- A: *Well Zvonko keeps them piled up in his cabinet there and, and in case we need to show where the machines are so we've got all the serial plates of them, the ones we destroyed.*
- Q114: *So who removes those plates?*
- A: *Most of the time Peter does that. Peter removes the plates.*
- Q115: *And what does he do when he's removed it?*
- A: *When he removes them he gives them to Zvonko.*
35. The Authority accepts the following further uncontested allegations in paragraphs 40 to 43 of the Complaint Letter, on the evidence or material noted in square parentheses below:
- Mr Mladenovski and Mr Formosa both confirmed that Mr Formosa would remove the compliance plates from gaming machines prior to destruction [E10 – Q142-144; E14 – Q118-131].
  - Mr Mladenovski and Mr Siskoski both confirmed that Mr Formosa would regularly work unsupervised within the premises, if other staff were out working in the field [E10 – Q52-62; E12 – Q45-54].
  - Mr Mladenovski stated that Mr Formosa was not licensed as a technician and that as he didn't have a drivers licence, there was no use in him obtaining one [E10 – Q256-258].
  - Mr Mladenovski and Mr Siskoski are both licensed technicians and therefore considered to be "authorised persons" under section 77(6) of the Act.
  - Mr Mladenovski and Mr Siskoski are directors of Fourtech, and are considered to be Mr Formosa's employer [E10 – Q31-32, Q249-250; E12 – Q36, Q40-41, Q61].
36. As contended in paragraph 44 of the Complaint Letter, both directors admitted that Mr Formosa would remove compliance plates from approved gaming machines and give them to Mr Mladenovski [E12 – Q114-117; E10 – Q142-144].
37. On this basis, the Authority accepts that Messrs Mladenovski and Siskoski, as authorised persons, have authorised or permitted Mr Formosa to remove compliance plates - contrary to sections 77(3) and 77(5) of the Act.
38. The Authority further accepts the contention in paragraph 45 of the Complaint Letter that between 1 January 2017 and 3 May 2018 Messrs Mladenovski and Siskoski, the holders of GMT licences, have breached section 77(5) of the Act.
39. Ground 1 Particular 1 is established.

**Ground 1 Particular 2 – Breach of Section 86(2) of the Act**

40. Ground 1 Particular 2 is set out in paragraphs 46 to 58 of the Complaint Letter and alleges a breach of section 86(2) of the Act.
41. At paragraph 46 the Complainant refers to the Background and Facts in paragraphs 1 to 32 of the Complaint Letter in support of the contention that Mr Formosa, an unlicensed individual, would conduct unsupervised technicians work at the premises of Fourtech under the instruction of Messrs Mladenovski and Siskoski. The Authority accepts this contention, noting its findings on these paragraphs above.
42. At paragraphs 47 and 48 the Complainant refers to sections 86(1) and (2) of the Act, which provide:
- (1) *A person who services or repairs an approved gaming machine is guilty of an offence unless the person—*
- (a) *holds a dealer's licence or is a technician, or*
- (b) *services or repairs the gaming machine under the supervision of the holder of a dealer's licence or a technician for the purpose of receiving training and instruction in respect of the servicing and repair of approved gaming machines.*
- Maximum penalty—100 penalty units or imprisonment for 12 months, or both.*
- (2) *The holder of a dealer's licence or a technician who services or repairs an approved gaming machine otherwise than in accordance with the authority conferred by the licence is guilty of an offence.*
- Maximum penalty—100 penalty units or imprisonment for 12 months, or both.*
43. The Authority accepts the submission in paragraph 49 that section 83(1)(c)(i) of the Act authorises the licensee of a GMT licence to service, repair and maintain approved gaming machines. Furthermore, as per paragraph 50, section 77(1) identifies certain sensitive areas of gaming machines that cannot be broken, removed or interfered with unless by an authorised person - being an inspector or a technician.
44. The Authority accepts the contention in paragraph 51 of the Complaint Letter that on 3 May 2018, Messrs Mladenovski and Siskoski indicated to Inspectors that Mr Formosa would complete gaming machine technician work, but only within the premises and never in the field [E12 – Q60-64; E10 – Q44-46]. Mr Mladenovski also told Inspectors that to his knowledge Mr Formosa did not require a licence if he was working within the licensed business premises [E10 – Q45-46].
45. The Authority accepts the contention at paragraph 52 of the Complaint Letter that during the Mladenovski Interview (E10), Mr Mladenovski told Inspectors that Mr Formosa would engage in conduct that is to be considered the work of technicians in the gaming machine industry - including removal of compliance plates and destruction of machines. The Complainant here relies upon questions 43, 138-140 and 142 -144 of the Mladenovski Interview (E10), which state:
- Q43:        *So what does he do?*
- A:            *What he does is when the machine needs to go out, when machine comes in he has to sort them out, put them where they're supposed to be, mark it, write down the serial number on the front where it*

*comes from so we can see where the machine is. We don't have to pull them off the pallet all the time. And he prepares the machines and as you know we get a lot of second hands and if it's something that we can sell, he cleans it, changes the game the way we need to change the game if we need to. Monitor - we'll accept the upgrades or whatever and then we sell it.*

...

Q138: *You mentioned when you were destroying the gaming machines that they get stripped for parts?*

A: *Yes.*

Q139: *Who does that?*

A: *Peter.*

Q140: *Peter?*

A: *Which Peter the one in our factory and we do as well sometimes, yeah. Not always - we don't rely on - on him hundred per cent. Sometimes Bob strips machines, sometimes I strip machines if I need to. Depends how busy we are but we make sure everything is out before.*

...

Q142: *And when you're destroying the compliance plates where are the compliance plates stored?*

A: *In the secure cupboard there.*

Q143: *And who has access to those compliance plates?*

A: *Me and Bob. Peter when he takes them off he puts them on the steps for us or on my desk and I put them there.*

Q144: *So it's safe to say Peter does a lot of work on gaming machines?*

A: *Yep.*

46. The Authority further accepts the following uncontested allegations in paragraphs 53 to 56 of the Complaint Letter, with the supporting evidence or material noted in square parentheses:
- Mr Siskoski confirmed the level of work completed by Mr Formosa as including the destruction of gaming machines, removal of compliance plates and changing of game software [E12 – Q41-44].
  - Mr Formosa confirmed that he was involved in the dismantling of gaming machines and as part of that process, he was required to remove the compliance plate [E14 – Q118-131].
  - All work conducted by Mr Formosa reportedly occurred only on the premises of Fourtech [E10 – Q46; E12 – Q42].
  - Mr Formosa was authorised by the company directors to work unsupervised within the premises and would regularly be trusted to both open and close the premises in the absence of other employees [E12 – Q45].
47. At paragraph 57 of the Complaint Letter the Complainant invites the “on balance” finding between 1 January 2017 and 3 May 2018, in performing the duties described by directors, Mr Formosa *regularly* carried out tasks similar to those described under section 77(1) of the Act - which may only be legally performed by an authorised person, being the holder of a technician’s licence.

Mr Formosa performed these tasks with the full knowledge and consent of Messrs Mladenovski and Siskoski.

48. The Authority accepts this uncontested contention and also accepts the allegation at paragraph 58 that, by employing Mr Formosa to undertake these activities, and knowingly permitting an unlicensed individual to service and repair machines on their behalf (often unsupervised), Messrs Mladenovski and Siskoski serviced or repaired approved gaming machines otherwise than in accordance with the authority conferred by their technician's licences and contrary to section 86(2) of the Act.
49. Ground 1 Particular 2 is established.

Conclusion on Ground 1

50. The Authority notes that the Respondents have not contested this Ground.
51. On the basis of its findings on Ground 1 above, the Authority accepts the uncontested submissions set out at paragraphs 96 to 106 of the Complaint Letter, that:
- Mr Mladenovski and Mr Siskoski are both licensed technicians and are therefore authorised persons under section 77(6) of the Act. Both are also directors of Fourtech, Mr Formosa's employer.
  - Both directors instructed Mr Formosa to service, repair and remove compliance plates from approved gaming machines as part of his routine work tasks. This work was often undertaken by Mr Formosa unsupervised and included situations where Mr Formosa would be specifically tasked with the destruction of gaming machines, and the removal of parts.
  - Mr Formosa carried out a variety of technical-based work that would normally be conducted by a licensed technician. This was done with the full knowledge and consent of both directors.
  - The defence in section 86(1) of the Act could not be successfully argued as a mitigating factor by the directors in this instance as both Mr Mladenovski and Mr Siskoski have indicated Mr Formosa removed compliance plates as part of his routine work tasks, and in some cases would do so when he was alone on the premises.
  - Mr Formosa was not provided with formal training by the directors of Fourtech as there was no intention for him to obtain a technician's licence.
  - Mr Formosa does not have a technician's licence and has therefore committed offences under sections 77(3) [the Complainant states 73(3) but the Authority considers this to be a typographical error] and 86(1) of the Act.
  - The directors of Fourtech are ultimately responsible for decisions relating to Mr Formosa's employment, given he is unlicensed and does not qualify as a close associate under the Act.
  - In authorising or permitting Mr Formosa to remove compliance plates, both directors have committed an offence under section 77(5) of the Act.
  - The directors indicated that Mr Formosa was often responsible for stripping machines, cleaning them, making changes to software and generally preparing them for sale. While the directors indicate they sometimes do these tasks themselves, and they don't rely on him a

hundred per cent, Mr Formosa does a lot of work on their gaming machines [E10 – Q140, Q144].

- By permitting (employing and paying) Mr Formosa to do this work regularly, both Mr Mladenovski and Mr Siskoski are servicing or repairing machines otherwise than in accordance with the authority conferred on them by their technician's licences, and contrary to section 86(2) of the Act.

52. The Authority is satisfied that Ground 1 is established. That is, between 1 January 2017 and 3 May 2018 Mr Siskoski and Mr Mladenovski, whilst licensees of GMT licences, contravened sections 77(5) and 86(2) of the Act.

## **Ground 2**

53. Ground 2 is based on section 129(3)(j) of the Act and alleges that the gaming related licence, GMS4010599, has not been exercised in the public interest.

54. Section 129(3)(j) states:

*(3) The grounds on which a complaint in relation to a licensee or close associate may be made are as follows—*

...

*(j) that the gaming-related licence has not been exercised in the public interest,*

55. At paragraph 59 of the Complaint Letter, the Complainant refers to the Background and Facts set out at paragraphs 1 to 32 of the Complaint Letter in support of the contention that the Fourtech GMS licence has not been exercised in the public interest.
56. The Authority accepts this contention, noting its findings on these paragraphs set out above. The Complainant further contends, and the Authority accepts, that the exercise of that licence by the company directors highlights a lack of effective control over the operation of the business including their record keeping, Mr Formosa's working conditions and his lack of probity to hold a gaming-related licence.
57. As contended in paragraph 61, Fourtech operates using a GMS licence (E01). Pursuant to section 83(1)(b)(ii), this licence type authorises the licensee to sell, as principal or agent, approved gaming machines.
58. The Authority further accepts the submission at paragraph 62 that, when assessing whether a gaming related licence has been exercised in the public interest, regard should be given to the objects of the Act - including the need to ensure the integrity of the gaming industry. Furthermore, due regard is to be had to section 3(3) of the Act - the need for gambling harm minimisation when considering what is not in the public interest for the purposes of the Act.
59. The Authority accepts the contention in paragraph 64, that Mr Formosa, who does not hold a gaming-related licence, was employed by Fourtech for the purpose of stripping out and destroying gaming machines [E10 – Q32-52, Q138-144; E12 – Q41-54]. Fourtech directors also stated that Mr Formosa had unrestricted access to the warehouse and would regularly work unsupervised [E10 – Q32-52, Q138-144; E12 – Q41-54].



60. The Authority also accepts the contention at paragraph 65 that Mr Formosa appears to have sold approved gaming machines without a seller's or dealer's licence contrary to section 85(1) of the Act.
61. The Authority accepts the submission in paragraph 66 of the Complaint Letter that there is no defence available to Mr Formosa under section 85(2) as Mr Formosa did not sell machines for the purpose of receiving supervised training or instruction in the exercise of the function.
62. The Authority further accepts the submission in paragraph 67 that the sale of gaming machines by Mr Formosa into the unlicensed market not only impacted the integrity of the gaming industry, but allowed the machines into unlicensed locations that could potentially expose vulnerable individuals including minors to harm without the benefit of the usual legislative and industry controls in place to mitigate that risk.
63. Furthermore, the Authority accepts the submission in paragraph 68 that Mr Formosa's actions in selling these machines while unlicensed fundamentally undermines the integrity of the licensing scheme for regulating the sale of gaming machines in NSW.
64. The Authority accepts the contention in paragraph 69 that in selling machines unlicensed, Mr Formosa appears to have been engaging in illegal conduct for his own advantage.
65. Furthermore, as contended in paragraph 69, while it appears the directors did not have actual knowledge of Mr Formosa's illegal activities, his opportunistic behaviour was facilitated and permitted by the Fourtech work environment.
66. The Authority accepts the contention in paragraph 70 of the Complaint Letter that Particulars 1 to 3 (discussed below) outline how inadequate the controls and oversight by the directors of Fourtech over key activities exercised under the GMS licence facilitated an environment of opportunity for the unlawful sale of gaming machines by an unlicensed employee.
67. The Authority accepts the uncontested submissions that control over how the authority of the licence was exercised was grossly inadequate, and ultimately, the GMS licence has not been exercised in the public interest to the extent that the unlicensed sale of gaming machines occurred.

*Ground 2 Particular 1 – Mr Formosa's Working Conditions*

68. The Authority accepts, as contended in paragraph 71, that Inspectors attended the premises of Fourtech and upon arrival were greeted by Mr Formosa, who was the only individual working within the premises [E10 – Q53-55]. Mr Formosa was observed by Inspectors destroying gaming machines and a short time later, Messrs Mladenovski and Siskoski returned to the premises and Inspectors engaged with them directly.
69. The Authority further accepts the contention in paragraph 73 of the Complaint Letter that Mr Mladenovski indicated that Mr Formosa was authorised to work in the premises *unsupervised* and that in the event that other staff were working away from the premises (including in Newcastle), Mr Formosa would

work the entire day, unsupervised, and was responsible for opening and closing the premises [E10 – Q52-62, 260-262].

70. As contended in paragraph 74 Mr Mladenovski indicated to Inspectors that to facilitate this arrangement, Mr Formosa had unrestricted access to the premises, including keys and alarm codes to gain entry [E10 – Q47-49].
71. The Complainant extracts question 53 of the Siskoski Interview (E12) and contends, at paragraph 75, that Mr Siskoski confirmed how Mr Formosa had unrestricted access to the premises, keys, alarm codes and was trusted to work unsupervised on gaming machines in situations where other staff members were working outside of Sydney. Question 53 states:
- Q53: O.K. With the people that work for you do any of them work unsupervised?
- A: Well, yeah, they do, they all work unsupervised. Like, like I said, Monday we're going to Newcastle. Peter's going to be there and he does his work. We sort of just tell him what to do before we leave and what has to be done and that's it we just expect him to do it. Yeah, they're all unsupervised and Dragi, he's on the field, he's, when Zvonko is there Zvonko is always downstairs with him so, like, when Zvonko is not there he's on his own.

72. The Authority further accepts the contention in paragraph 76 that Mr Formosa has conceded that the nature of his working conditions allowed him to sell gaming machines directly from the Fourtech premises, where Mr Mohamad was able to attend the premises, obtain the machines and pay Mr Formosa, without the knowledge or permission of the company's directors [E14 – Q344-359].
73. Ground 2 Particular 1 is established.

Ground 2 Particular 2 – Record Keeping

74. The Authority accepts, as contended in paragraph 77 of the Complaint Letter, that Mr Formosa told Inspectors that no internal controls existed that would have identified his conduct to the company directors prior to L&GNSW intervention [E14 – Q600-605].
75. The Authority further accepts the contention in paragraph 78 that Mr Formosa told Inspectors that he was able to avoid detection because the directors only required him to place the removed compliance plate from a gaming machine on a step within the premises to confirm destruction. No other process existed for the destruction of gaming machines and as such, Mr Formosa admitted that the directors “don't know if I dismantled it or sold it to him [Mr Mohamad]” [E14 – Q605].
76. The Authority also accepts the contention in paragraph 79 that Mr Mladenovski stated during his interview that Mr Formosa was required to put the compliance plate “on the steps” or “on his desk” and they were then placed in a secure cupboard [E10 – Q142-143].
77. Mr Mladenovski stated that the “best records” they kept for gaming machines coming into the premises were on the Quickchange database [E10 – Q340].

78. The Authority accepts the Complainant's explanation in paragraph 80 of the Complaint Letter that the Quickchange system tracks gaming machine movements into and out of venues, in support of the CMS. The database provides venues and dealers/sellers with reports on the authorisation, pursuant to section 56 of the Act, to keep or dispose of gaming machines, in addition to serving the purposes of other requirements in the Act, including sections 57, 71 and 85. As a licensed gaming machine seller, Fourtech requires transactions to be approved via the Quickchange system prior to conducting sales or purchases of gaming machines.
79. The Authority further accepts the contention in paragraph 81 that Mr Siskoski told Inspectors that, apart from the retained compliance plates, no detailed records of machines existed and Fourtech relied on the compliance plates of a machine to confirm that they had possessed that machine [E12 – Q122]. He also stated that to his knowledge, the company had not completed a stock take of gaming machines [E12 – Q123-127].
80. As contended in paragraph 82 of the Complaint Letter, Mr Formosa suggested during his interview that at no point was he advised by the Fourtech directors that the sale of gaming machines was illegal, nor was he provided with any instructions on how to protect gaming machines located on the premises [E14 – Q606-614].
81. As contended in paragraph 83, Mr Formosa stated that he was contacted by Mr Mohamad to repair gaming machines that were unlawfully in Mohamad's possession. On those occasions, Mr Formosa identified that a problem with the system software and was able to repair those issues for Mr Mohamad [E14 – Q703]. No internal controls existed at Fourtech to track gaming machine parts and software. As such, Mr Formosa was able to access parts and software without the knowledge of the directors and use them to repair gaming machines in Mr Mohamad's possession.
82. Ground 2 Particular 2 is established.

*Ground 2 Particular 3 - Probity*

83. The Complainant contends at paragraph 84, and the Authority accepts, that Mr Formosa does not hold a gaming-related licence. According to Mr Mladenovski, Mr Formosa was never required to have a licence by reason that he was working on the licensed business premises [E10 – Q45-46].
84. The Authority accepts, as contended at paragraph 85, that a check by the Complainant of the Justicelink court records database confirmed that in 2003 Mr Formosa was convicted and sentenced to a 12-month custodial sentence for falsifying a foreign passport within Australia and using a false instrument with intent [E18 and E19].
85. The Authority further accepts, as contended in paragraphs 86 and 87, that when applying for a GMT licence with L&GNSW, applicants are asked to provide evidence of training or practical experience as well as a National Police Certificate ("NPC"). Any application that includes adverse findings from an NPC attract a higher degree of scrutiny in the assessment process, and it is highly

unlikely, given the nature of Mr Formosa's criminal history [evidenced by E18 and E19] that he would be granted a gaming-related licence.

86. The Authority accepts the Complainant's uncontested submission at paragraph 88 of the Complaint Letter that in employing Mr Formosa to his position and allowing him unsupervised access to gaming machines, the directors demonstrated a significant level of trust in him. The directors either knew, or ought reasonably have known, that Mr Formosa was convicted of offences (in 2003) relating to dishonesty and obtaining benefits from dishonesty.
87. The Authority notes the submission at paragraph 89, that although it may be said that the directors were not aware of Mr Formosa's past, it is reasonable to expect a gaming-related licensee entrusted with possessing gaming machines to make reasonable enquiries to establish that employees have a certain level of fitness to work within the industry. The offences for which Mr Formosa has been convicted in 2003 cast doubt upon his honesty and integrity and would likely result in him being considered unfit to work in the gaming machine industry.
88. The Authority has considered the submission at paragraph 90 that the failure of Fourtech's directors to make reasonable inquiries into Mr Formosa's criminal history and/or recognise the high risk associated with Mr Formosa's convictions in 2003 in the context of his role casts doubt on the fitness of both Mr Mladenovski and Mr Siskoski as directors, and close associates of the Fourtech seller's licence.
89. While the Authority accepts that a failure to make reasonable enquiries of Mr Formosa's criminal history is adverse to an assessment of their knowledge and ability, this Complaint does not allege that the Respondents are not "fit and proper persons" to hold as licence.
90. Ground 2 Particular 3 is established to the extent found by the Authority.

#### Conclusion on Ground 2

91. The Complainant advises in paragraphs 91 and 92 of the Complaint Letter that L&GNSW does not intend to take any further action against Mr Formosa (who objected to answering questions under coercive powers) or Mr Mohamad (who was issued with Penalty Notices by NSW Police).
92. On a cumulative assessment of its findings on the particulars of Ground 2 above, the Authority accepts the Complainant's submissions in paragraphs 93 to 95 that:
  - The gaming machine industry is tightly regulated, reflecting the significant social and criminal harm that can result from gaming-relating activities. Gaming machines are used by venues and individuals to generate significant revenue, which makes the industry and more specifically, activities associated with gaming machines, attractive to persons and organisations with criminal intent.
  - By requiring anyone who sells, services, repairs or maintains gaming machines to obtain a licence, the Act aims to ensure probity within the gaming machine industry, and appropriate ownership and management of industry enterprises, including the selection of authorised sellers and

technicians who can demonstrate integrity and commitment to preserving a crime-free environment in, and in relation to, gaming machines.

- Mr Mladenovski and Mr Siskoski, as technicians and as directors of Fourtech have failed to meet their requirements under the Act and overall, to operate their gaming-related licences in the public interest.

93. The Authority accepts the uncontested concluding submissions at paragraphs 107 to 116 of the Complaint Letter, that:

- Fourtech and its directors hold licences that allow them to possess gaming machines. Gaming-related licensees generally have a responsibility to prevent the leakage of gaming machines into the unlicensed market by taking reasonable steps, including implementing controls, policies and procedures to ensure gaming machines in their possession are tracked and held securely.
- It appears Mr Formosa was allowed unfettered access to gaming machines within the business because of the trust placed in him by the directors of Fourtech. That access presented Mr Formosa with the opportunity to sell gaming machines without a licence.
- Mr Formosa was able to facilitate these transactions directly from the premises without the knowledge of the directors, including having the machines collected by Mr Mohamad.
- As long as Mr Formosa provided a compliance plate to the directors, they would not know whether a particular machine had been destroyed or sold. Mr Formosa was able to exploit these circumstances for his own benefit and the lack of internal controls and poor record keeping not only facilitated Mr Formosa's actions but served to keep the directors ignorant of the fact their machines were being sold illegally.
- Although the provision of the compliance plate to the directors could be considered a control in itself, even this control failed, as L&GNSW identified 13 gaming machines processed by Fourtech since 1 July 2017, where no machine or compliance plate could be located.
- Mr Formosa was routinely allowed unsupervised access to gaming machines as part of his employment with Fourtech. In employing him and allowing him such access, the directors have demonstrated a high level of trust in Mr Formosa, an individual who the directors knew, or ought reasonably to have known had been convicted in 2003 of offences relating to dishonesty and obtaining benefits from that dishonesty.
- It is possible that the directors were not aware of Mr Formosa's past. However, the strict requirements relating to gaming machines, including the need to obtain a licence to sell service or destroy them suggests that any gaming-related licensee should make reasonable enquiries to establish that employees have a certain level of fitness to work within the industry. In reality, Mr Formosa has been convicted in 2003 of a number of offences that cast serious doubt on his honesty and integrity.
- In these circumstances, the significant lack of controls within the business have allowed at least 13, and as many as 38 gaming machines to enter the unlicensed market. The gaming machines were sold to an unlicensed individual, located at an unlicensed premises, which also greatly increases the risk of harm both to society and the industry associated with any unlicensed use or trading of those machines.
- The directors of Fourtech have not exercised the seller's licence in the public interest. This is founded in the fact that any authority exercised under the licence must not only have due regard for gambling harm

minimisation as prescribed by the Act, but must also have regard for the integrity of the industry.

- The overall lack of oversight and controls implemented over key business processes at Fourtech cultivated an environment where illegal conduct could occur, largely undetected by the directors. Poor practices in relation to supervision of unlicensed staff, record keeping and probity checking allowed Mr Formosa to sell machines unlicensed. The lack of controls, combined with offences committed in relation to the technician's licences (which were also being utilised as part of Fourtech's operations) demonstrate the overall poor attitude of the directors to their legislative responsibilities and further support the Complainant's submission that the seller's licence was not exercised in the public interest.

94. The Authority notes that the Respondents have not contested this Ground, while making submissions to the effect that they have been in business for 22 years and the matters specified in this Complaint are the only instance of offending against the Act.
95. The Authority is satisfied that, to the extent that an unsupervised employee with no probity assessment was able, through a lack of control over gaming machines on the premises, to unlawfully deal in (by Mr Formosa's admissions) "15 or 16" gaming machines, Ground 2 is established. The licence has been exercised contrary to the public interest, in this respect. In particular, the conduct established by this Complaint is contrary to the statutory object of section 3(1)(d) - to ensure the integrity of the gaming industry.
96. Ground 2 is established.

## **FINAL SUBMISSIONS ON DISCIPLINARY ACTION**

97. At the conclusion of the Complaint Letter the Complainant seeks the opportunity to make further submissions on disciplinary action should the Authority find the Grounds of Complaint to be established. However, the Complainant expressed a preliminary view that any disciplinary action should include:
- a) A monetary penalty (at a quantum not specified).
  - b) The imposition of conditions on the gaming-related licences.
  - c) An order for the licensee to pay the costs incurred as a result of the investigation conducted.
98. On 21 April 2020 the Authority sent a brief email to the Respondents and Complainant advising that the Grounds had been established on the material before the Authority, having regard to the Respondents admissions. The Authority invited final written submissions confined to the question of what, if any, disciplinary action it should take on the basis of these findings.
99. On 28 April 2020 the Respondents provided a two-page joint submission proposing that the appropriate disciplinary action be "a caution".
100. The Respondents reiterated that they have admitted the allegations, assisted the investigation and demonstrated remorse – which "boosts" their prospects of rehabilitation and reduces the risk of re-offending.

101. They further submit that Mr Mladenovski is 55 years of age and has been married for 28 years with 2 children aged 22 and 26 who live at home. Mr Siskoski is 53 years of age, has been married for 32 years and has 2 children aged 30 and 28, one of whom lives at home.
102. The Respondents submit that Messrs Mladenovski and Siskoski are paid wages by the company and have financial commitments and families to support. They contend that they have been “severely financially disadvantaged” by the Covid-19 virus, which has “shut down all of their clients”. The company currently has “no revenue” with both directors having mortgages on their family homes and only receiving Commonwealth Government Jobkeeper payment.
103. The Respondents make the alternative submission that if a caution is not issued a “small fine” for the company might be appropriate. They provide the following supporting material:
- A one-page character reference letter from Mr Dennis J O’Dwyer, Group Chief Executive Office of City Club Group Sydney & Stockton dated 27 April 2020.
  - A one-page character reference letter from Mr Thomas Mitris dated 28 April 2020.
  - A one-page character reference letter from Mr Lex Elson-White, General Manager of Gaming at Zenith Hotels dated 28 April 2020.
  - Three Certificates of Appreciation presented to Fourtech by local community organisations dated 2001 and 2004.
104. On 28 April 2020 the Complainant provided a submission proposing that the Authority take the following disciplinary action:
- Impose a monetary penalty on Mr Mladenovski, Mr Siskoski and Fourtech.
  - Suspend the licences of Mr Mladenovski and Mr Siskoski for a period that the Authority deems appropriate.
  - Impose conditions on Fourtech’s licence (in the same form as imposed by the Authority in this decision).
  - Order Fourtech to pay \$26,646.87, being the costs incurred by the Secretary in carrying out the investigation. [A schedule of the Secretary’s costs accompanies this submission].

## **FINAL CONSULTATION**

105. On 19 May 2020, the Authority sent an email to the parties notifying the disciplinary action determined by the Authority specified in this letter but inviting final submissions on time to pay the monetary penalties.
106. On 19 May 2020, the Respondents wrote to the Authority submitting that:
- The company and themselves personally are “suffering financial hardship”;
  - They are a “small business suffering severely from the Covid-19 virus” which has shutdown all of their clients;
  - The company has “no revenue”;

- Clubs and Pubs are said to be opening from 1<sup>st</sup> July 2020, they have been closed for 3 months
- They are “paid by customers in arrears”;
- The amounts payable are “not insignificant for a small business”.

107. The Respondents are requesting the following payment terms:

Party	Amount	To be paid
Mr Mladenovski	\$2,200	Within 28 days
Mr Siskoski	\$2,200	Within 28 days
Fourtech	\$4,400	By 10 monthly installments commencing on 1/10/2020
Fourtech	\$7,500	By 24 monthly installments commencing on 1/8/2020
<b>TOTAL</b>	<b>\$16,300</b>	

108. On 3 June 2020 the Complainant sent a short email to the Authority advising no further submissions but expressing the view that it was generally comfortable with any approach taken by the Authority on time to pay, given the present circumstances.

## DECISION ON DISCIPLINARY ACTION

109. The Authority’s disciplinary jurisdiction provided by Part 8 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.*

110. Nevertheless, as observed by Basten JA of the New South Wales 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.

111. 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.*

112. 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.*

113. 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).

114. The Authority notes the observations of the South Australian Supreme Court in *Sobey v Commercial and Private Agents Board* 20 SASR 70 where Walters J held:

*"In my opinion what is meant by that expression is that the Applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities evolving upon him as the holder of a particular licence ... but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public ... as a person to be entrusted with the sort of work which the licence entails"*

115. The Authority has had regard the objective seriousness of the conduct of Mr Formosa. While he acted alone, his conduct was, at least in part, facilitated by the collective failures of the Respondents to have sufficient oversight and effective measures in place to mitigate the risk of such conduct occurring.
116. The Authority accepts the Complainant submissions that the conduct was the product of Mr Formosa, an unlicensed person, being allowed to work unsupervised on sensitive areas of gaming machines when not authorised to do so. It was open to the Respondents to verify, at the time of employing Mr Formosa in a sensitive role, whether he had a criminal history.
117. With no evidence before the Authority of the Respondents taking any enquiries about his background, this represented a significant risk to the security of their approved gaming machines. That risk was not managed and resulted in conduct that impacted not only the integrity of this licensed business but the industry more broadly. These failures with respect to diligence by Fourtech and its directors, threatens public confidence in the regulatory framework.
118. However, the Authority has given weight to the Respondents prompt and complete admissions in respect of all allegations made in the Complaint. This has substantially reduced the costs for all parties in this matter and demonstrates an acceptance of responsibility for the events and contrition regarding their lack of control over staff on the premises. They have terminated the offending employee and proposed a range of new internal controls and processes for the control and supervision of gaming machines and parts on

their premises. They have accepted all of the new licence conditions proposed by the Complainant.

119. The Authority notes that the maximum penalty available for an individual is \$22,000 and for a corporation \$55,000. The Authority accepts the Complainant submission that although the collective conduct of the Respondents is not considered at the higher end of seriousness, it is relevant that not all machines unlawfully sold by Mr Formosa have been recovered and the ongoing community risk they represent remains unknown and unresolved. The lack of control exercised over gaming machines is of some ongoing consequence to the integrity of the industry and warrants regulatory action beyond the issue of a caution or reprimand alone.
120. The Authority also accepts the Complainant submission that its claim for investigation costs is of itself a significant penalty for a small to medium sized business that is now seriously impacted, as with other industry participants, by the COVID-19 pandemic and related public health restrictions, including the closure of licensed Hotels and Clubs which represent a large proportion of the Respondents' business.
121. It is not in dispute that the Respondents had a good compliance history prior to the matters identified in this Complaint. The Complainant notes that they have not detected any further breaches or matters of concern since the Complaint was made.
122. The Authority also accepts the information provided by the Respondents that, aside from the matters specified in this Complaint there is no evidence of other offences and finds that Messrs Mladenovski and Siskoski are persons of good character.
123. The Authority has taken all of these matters into account when determining what level of disciplinary action is appropriate. It has reduced the quantum of monetary penalty and the proportion of investigation costs that would otherwise be ordered in response to this type of unlawful conduct, while the total penalties and contribution to costs payable remains financially significant in the current economic environment. The Authority has also extended the time to pay the Secretary well beyond its usual order of 28 days.
124. The Authority is satisfied that there should be some short-term suspension of Fourtech's GMS licence, but such suspension need not take effect if Fourtech makes payment of the monetary penalty and Secretary's costs in the time specified.
125. The Authority accepts the Complainant's contention that the licence conditions proposed by the Complainant (set out in the Orders below) are appropriate measures to ensure future compliance. There should be objective controls on the future handling and security of gaming machines on the premises that are enforceable and subject to ongoing audit and assessment. The Authority notes that the Respondents have already implemented measures along these lines, which will reduce the compliance burden with regard to this aspect of disciplinary action.

126. The Authority accepts that the payment schedule proposed by the Respondents in the prevailing circumstances is reasonable, noting some payment will be required within 28 days with the major payments to occur by instalments over 24 months.

## ORDERS

127. The Authority makes the following orders:

- (ix) Pursuant to section 131(2)(a)(i) of the Act – Mr Mladenovski is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$2,200** by no later than 1 August 2020.
- (x) Pursuant to section 131(2)(a)(i) of the Act – Mr Siskoski is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$2,200** by no later than 1 August 2020.
- (xi) Pursuant to section 131(2)(a)(i) of the Act – Fourtech is ordered to **pay a monetary penalty** to the Secretary in the sum of **\$4,400**. This penalty is required to be paid by 10 monthly installments commencing on 1 October 2020 and on the first day of each month thereafter.
- (xii) Pursuant to section 131(2)(c)(ii) of the Act – The GMS licence held by Fourtech is suspended for a period of 3 months, commencing the day after any day upon which Fourtech does not make payment of any installment of the monetary penalty and costs payable to the Secretary. If the suspension has not commenced within 24 months from 1 August 2020 then this Order shall lapse.
- (xiii) Pursuant to section 131(2)(e) of the Act –the following conditions are imposed on the Fourtech GMS licence GMS4010599, commencing effect on 1 August 2020.
  - (5) *The company must maintain a register of all approved gaming machines transacted under the licence including any action taken in relation to each machine. The licensee must ensure that such records for each approved gaming machine are retained for a period not less than three years following the machines sale, disposal or destruction.*
  - (6) *All employees of Fourtech Gaming Pty Ltd must hold a gaming-related licence.*
  - (7) *The licensee must ensure that no other persons are permitted on the primary premises unless those persons are attending the premises as a function of the lawful sale, supply or repair of approved gaming machines.*
  - (8) CCTV Condition
    - 3) *The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*
      - (e) *the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),*
      - (f) *recordings must be in digital format and at a minimum of six (6) frames per second,*

- (g) *any recorded image must specify the time and date of the recorded image,*
  - (h) *the system's cameras must cover the following areas:*
    - (iv) *all entry and exit points on the premises,*
    - (v) *the footpath immediately adjacent to the premises, and*
    - (vi) *all areas (other than toilets) within the premises and any exterior areas of the premises where gaming machines are received or dispatched.*
  - 4) *The licensee must also:*
    - (d) *keep all recordings made by the CCTV system for at least 30 days,*
    - (e) *ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
    - (f) *provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*
- (xiv) Pursuant to section 131(2)(i)(i) of the Act - Fourtech is ordered to **pay** the Secretary the amount of **\$7,500**, being a *portion* of the Secretary's costs on the investigation giving rise to this Complaint. This payment of costs is required to be paid by 24 monthly installments commencing on 1 August 2020 and on the first day of each month thereafter.
- (xv) Pursuant to section 131(2)(j) of the Act - Mr Mladenovski is **issued with a reprimand**.
- (xvi) Pursuant to section 131(2)(j) of the Act - Mr Siskoski is **issued with a reprimand**.

## REVIEW RIGHTS

128. Pursuant to section 131C of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal ("NCAT") by the licensee, person against whom any disciplinary action is taken by the Authority in relation to the Complaint or the Complainant, by no later than 28 days of the Authority's decision.
129. For more information, please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully



Philip Crawford

**Chairperson**

For and behalf of the **Independent Liquor and Gaming Authority**

## Schedule 1 – Complaint Material

1. A one-page cover letter signed by Mr Sean Goodchild, then Director of Compliance Operations, Liquor and Gaming New South Wales (“L&GNSW”), as a delegate of the Secretary of the New South Wales (“NSW”) Department of Customer Service dated 12 September 2019.
2. A seventeen-page complaint submission letter specifying the grounds of complaint, with list of twenty-two Exhibits, described below as “E01” to “E22”.
  - Exhibit E01: OneGov licence record for Gaming Machine Seller (“GMS”) licence GMS4010599 as at 25 July 2018 identifying Fourtech Gaming Devices Pty Limited (“Fourtech”) as the licensee.
  - Exhibit E02: OneGov licence record for Gaming Machine Technician (“GMT”) licence GMT4011324 as at 27 September 2018 identifying Mr Zvonko Mladenovski as the licensee.
  - Exhibit E03: OneGov licence record for GMT licence GMT4011525 as at 27 September 2018 identifying Mr Borce Siskoski as the licensee.
  - Exhibit E04: OneGov licence record for GMT licence GMT1400251 as at 27 September 2018 identifying Mr Christian Mladenovski as the licensee.
  - Exhibit E05: OneGov licence record for GMT licence GMT4011560 as at 27 September 2018 identifying Mr Dragi Suleski as the licensee.
  - Exhibit E06: OneGov individual search for Mr Peter Formosa dated 28 September 2018.
  - Exhibit E07: OneGov individual search for Mr Jihad Mohamad dated 28 September 2018.
  - Exhibit E08: Central Monitoring System Device History Reports from 1 January 2014 to 3 May 2018 for NSW Police seized gaming machines with serial numbers XAW713176, XAW605024, XAW609534, XAW600829 and XAW605031.
  - Exhibit E09: L&GNSW Field Notice/Receipt for the seizure of an Aristocrat Gaming Machine Compliance Plate with Serial Number XAW713176 dated 3 May 2018 accompanied by a photograph of that compliance plate.
  - Exhibit E10: Transcript of the interview conducted by L&GNSW Inspectors (“Inspectors”) with Mr Zvonko Mladenovski on 4 May 2018 (“Mladenovski Interview”).
  - Exhibit E11: Adopted Interview Documents from the Mladenovski Interview (being material shown to Mr Mladenovski during the interview).
  - Exhibit E12: Transcript of the interview conducted by Inspectors with Mr Borce Siskoski on 4 May 2018 (“Siskoski Interview”).
  - Exhibit E13: Adopted Interview Documents from the Siskoski Interview (being material shown to Mr Siskoski during the interview).
  - Exhibit E14: Transcript of the interview conducted by Inspectors with Mr Peter Formosa on 8 May 2018.
  - Exhibit E15: Note provided from Mr Peter Formosa to Inspectors.
  - Exhibit E16: L&GNSW Notice to Produce dated 18 May 2018 issued to Mr Mladenovski under section 21 of the *Gaming and Liquor Administration Act 2007* (NSW).
  - Exhibit E17: Fourtech gaming machine tracking document between 1 January 2017 and 3 May 2018.
  - Exhibit E18: Justicelink record in the matter of *R v Peter Paul Formosa* [case 2004/00012691-004] recording that Mr Formosa was sentenced to a 1 year term of imprisonment to commence on 15 December 2003 and expire on 14 December 2004 with a non-parole period of 6 months for the offence of *Falsify a foreign passport within Australia*.
  - Exhibit E19: Justicelink record in the matter of *R v Peter Paul Formosa* [case 2004/00012691-005] recording that Mr Formosa was sentenced to a 1 year term of imprisonment to commence on 15 December 2003 and expire on 14

December 2004 with a non-parole period of 6 months for the offence of *Use false instrument with intent*.

- Exhibit E20: Justicelink record in respect of a spent conviction relating to Mr Formosa. For the reason of this conviction being spent, the Authority has not placed weight on this Exhibit when making findings or when making the final decision in respect of this Complaint.
- Exhibit E21: Justicelink record in respect of a spent conviction relating to Mr Formosa. For the reason of this conviction being spent, the Authority has not placed weight on this Exhibit when making findings or when making the final decision in respect of this Complaint.
- Exhibit E22: Australian Securities and Investments Commission Company Extract for Fourtech as at 28 September 2018.