



Civil and Administrative Tribunal

New South Wales

Case Name: Allam v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2020] NSWCATAD 325

Hearing Date(s): 2, 24 September 2020

Date of Orders: 23 December 2020

Decision Date: 23 December 2020

Jurisdiction: Administrative and Equal Opportunity Division

Before: A Britton, Principal Member

Decision: (1) The decision made by the Independent Liquor and Gaming Authority on 7 January 2020, in relation to Mr Allam is set aside. In substitution for decision the Tribunal makes the following decision:

- (a) Mr Allam's gaming machine technician's licence is suspended for a period of six months from the date of these orders.
- (b) Mr Allam is also disqualified from applying for or holding any other form of gaming-related licence under the Gaming Machines Act 2001 (NSW) for a period of six months from the date of this decision.
- (c) Mr Allam is ordered to pay a monetary penalty of \$4,500 to the Secretary of the New South Wales Department of Customer Service within 30 days of the date of this decision.
- (d) Mr Allam is ordered to pay to the Secretary of the New South Wales Department of Customer Service, the sum of \$20,000 within 30 days of the date of this decision being the costs of the investigation giving rise to the complaint.

(2) Pursuant to s 66 of the Administrative Decisions Review Act 1997 (NSW), these orders will come into effect in 35 days from the date of this decision.

Catchwords: ADMINISTRATIVE LAW — whether gaming machine technician contravened Gaming Machines Act 2001 (NSW) — whether gaming machine technician is a fit and proper person to hold a gaming machine technician — disciplinary action

STATUTORY INTERPRETATION — whether subject gaming machines were “approved gaming machines” for the purpose of Gaming Machines Act 2001 (NSW)

Legislation Cited: Administrative Decisions Review Act 1997 (NSW)
Civil and Administrative Tribunal Act 2013 (NSW)
Gaming Machines Act 2001 (NSW)
Gaming Machines Regulation 2010 (NSW)
Interpretation Act 1987 (NSW)

Cases Cited: Proudman v Dayman [1941] HCA 28; (1941) 67 CLR 536
Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336

Texts Cited: None cited

Category: Principal judgment

Parties: Riad Allam (Applicant)
Independent Liquor and Gaming Authority (First Respondent)
Secretary, Department of Customer Service (Second Respondent)

Representation: Counsel:
A Oakes (Applicant)
J Davidson (Second Respondent)

Solicitors:
Holman Webb Lawyers (Applicant)
NSW Crown Solicitor (Respondents)

File Number(s): 2020/00031950

Publication Restriction: Nil

REASONS FOR DECISION

1 Since 1993, Mr Riad Allam has worked as an electrical engineer and gaming machine technician in Australia. On 7 January 2020, after finding that a

complaint under the *Gaming Machines Act 2001* (NSW) (“the Act”) made by a delegate of the Department of Customer Service against Mr Allam had been made out, the Independent Liquor and Gaming Authority (“the Authority”) cancelled his gaming machine technician licence, disqualified him from holding a licence for a period of three years, imposed a monetary penalty of \$11,000 and ordered that he pay the costs of the investigation, a sum of \$55,122.39.

- 2 Mr Allam applied to the Tribunal, on 31 January 2020, for administrative review of the Authority’s decision under s 131C(1) of the Act. By consent, the operation of the Authority’s decision was stayed.
- 3 The task of the Tribunal on review is to make the correct and preferable decision having regard to the material then before it, any relevant factual material and any applicable written or unwritten law: s 63 of the *Administrative Decisions Review Act 1997* (NSW).
- 4 The key issues to be determined in this review are whether, as alleged Mr Allam contravened the Gaming Machines Regulation 2010 (NSW) (“the Regulation”); whether Mr Allam is a fit and proper person to hold a gaming technician’s licence, and, whether any action should be taken in respect of Mr Allam under s 131 of the Act. Mr Allam urges the Tribunal to set aside the Authority’s decision and to instead impose a reprimand. The second respondent, the Secretary of the Department of Customer Service (“the Secretary”) urges the Tribunal to affirm the Authority’s decision. The Authority, the first respondent in these proceedings, played no active role in these proceedings and filed a submitting appearance.

The complaints against Mr Allam

- 5 The complaint brought against Mr Allam before the Authority was based on three grounds, the second and third of which depended on the findings made in respect of Ground 1.
- 6 Ground 1 alleged six contraventions of the Act and the Regulation by Mr Allam. The Authority found proven four of those particulars :
 - (1) Particular 1: that Mr Allam breached s 71(2) of the Act by purchasing 47 approved gaming machines from a person who was not authorised to sell them, between January 2016 and April 2017;

- (2) Particulars 2 and 5: that Mr Allam breached s 85(1) of the Act by selling approved gaming machines without an appropriate licence between 2015 and April 2017, including to overseas buyers;
 - (3) Particular 6: that Mr Allam breached cl 72(1) of the Regulation by conducting his technician's business from premises other than that approved at the time of the grant of his licence, from around 2013.
- 7 Particular 3 was found to be established in part: that Mr Allam breached s 85(1) of the Act by selling one (not seven as alleged in the complaint) approved gaming machine. The Authority was not satisfied that there was sufficient evidence to find that Mr Allam contravened s 80(4) of the Act: Particular 4.
- 8 Ground 2, based on s 129(3)(e)(iv) of the Act, alleged that, due to the misconduct alleged in Ground 1, Mr Allam was no longer a fit and proper person to hold a gaming technician's licence.
- 9 Ground 3 alleged that Mr Allam had not exercised his licence in the public interest: s 129(3)(j) of the Act.
- 10 The Authority found that Ground 2 had been made out. Ground 3 was dismissed.
- 11 The parties agree that the Tribunal should proceed on the basis, as found by the Authority, that Particular 4 of Ground 1, part of Particular 3 and Ground 3, are not established.

Factual background

- 12 Most of the salient facts in this matter are not significantly in contest. Mr Allam was licensed under the Act to "service, repair and maintain approved gaming machines" within NSW: s 83(1)(c)(i). Mr Allam is a director and secretary of a business known as Tonita Enterprise which is the commercial vehicle for his gaming technician's business. His wife is also a director of the company. At the time of the alleged breaches, Mr Allam conducted his business from a warehouse in Chipping Norton, Sydney. Those premises were not licensed and Mr Allam concedes that this was a breach of the Regulation (Particular 6, Ground 1).
- 13 In March 2017, a manufacturer of licenced gaming machines learned that two approved gaming machines that had been had consigned for destruction were in the process of being installed in the Hornsby RSL Club. They had been

condemned for destruction in November 2016. The machines had been handed over by the manufacturer, Scientific Gaming, to Mr Habib Kayrouz, a scrap dealer, for destruction. On discovering this surprising development in Hornsby, the manufacturer notified Liquor and Gaming NSW which then commenced an investigation. It resulted in the complaint against Mr Allam.

- 14 Over a period of time, without the manufacturer's knowledge, Mr Kayrouz sold to Mr Allam a number of gaming machines, which were supposed to be destroyed. Whether, when they were sold to Mr Allam, the condemned machines were "approved gaming machines" for the purposes of the Act is an issue to be resolved, but the evidence shows that more than 40 machines were purchased by Mr Allam from Mr Kayrouz. Mr Kayrouz was not licensed under the Act. A number of these machines, including the two discovered at the Hornsby RSL Club, had been sold to Mr Justin Layden, a licensed dealer in gaming machines, by Mr Allam. A number of machines were also sold to overseas buyers by Mr Allam. Invoices in the name of Tonita Enterprises, were discovered by Liquor and Gaming NSW inspectors during the investigation. These business records, on their face, suggested that Tonita Enterprises had exported complete gaming machines to overseas buyers.
- 15 Gaming machines are regulated in NSW. Persons or bodies manufacturing, buying, selling or servicing and repairing gaming machines must be licensed under the Act.

The statutory framework

- 16 The NSW legislative scheme for regulation of gaming machines has five objects:
- (i) to minimise harm associated with the misuse and abuse of gambling activities;
 - (ii) to foster responsible conduct in relation to gambling;
 - (iii) to facilitate the balanced development, in the public interest, of the gaming industry;
 - (iv) to ensure the integrity of the gaming industry;
 - (v) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme: s 3(1).

- 17 In this case, the fourth object is perhaps the most important but the others are also relevant.
- 18 All persons with functions under the Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under the Act: s 3(2).
- 19 Part 5 of the Act deals with administrative control in relation to gaming machines. Division 1 (ss 56 – 61B) relates to the keeping and disposal of gaming machines. Division 2 (ss 62A - 66) concerns the approval of gaming machines by the Authority.
- 20 Section 56 provides that a hotelier or club must not keep or dispose of an approved gaming machine unless authorised by the Authority. The Authority caps the number of approved machines that a hotel or club may operate on its premises.
- 21 Section 4 of the Act defines an “approved gaming machine” to mean a gaming machine declared under s 64 and includes:
- (a) any subsidiary equipment approved by the Authority for use in connection with the gaming machine, and
 - (b) any component of the gaming machine (other than a component prescribed by the regulations as not being part of the gaming machine), and
 - (c) any specially approved gaming machine within the meaning of section 141.
- 22 Pursuant to s 64(1), the Authority may declare a device to be an approved gaming machine. Although a declaration may refer to a specific device, generally it will be made in respect of a class or description of devices.
- 23 Under s 63 of the Act, an application for the approval of a gaming machine can be made by the holder of a dealer's licence. An approved gaming machine is declared by the Authority following an application being submitted for consideration under s 64.
- 24 At the relevant time, s 64 provided that an approved gaming machine ceased to be an approved gaming machine in two sets of circumstances:
- (1) If the approved gaming machine was “modified in such a way that it is in the form of a different approved gaming machine” unless the

modification was carried out by a dealer and authorisation was granted to keep the approved gaming machine in the modified form: s 64(4).

(2) If a declaration made under s 64 is revoked on the grounds of public interest or at the expiry of a temporary declaration: s 64(6). Section 64(7) provides that “a device ceases to be an approved gaming machine if its declaration as an approved gaming machine is revoked”.

25 It should be noted that in 2018, s 64 was amended to insert sub-section (6A) which provides:

“A device ceases to be an approved gaming device if the Authority has authorised the destruction of that device or devices of that class or description under section 81A”.

That sub-section was not in force when Mr Allam bought and sold machines but, according to Mr Allam, is relevant to the issues raised by his application for administrative review.

26 Part 7 of the Act creates a statutory scheme in respect of gaming-related licences. Section 83 provides for different types of gaming-related licences, in broad terms: a dealer’s licence, seller’s licence and technician’s licence. Each type of licence allows the holder to engage in certain activity with respect to gaming machines. Mr Allam’s technician’s licence did not permit him to engage in buying or selling approved gaming machines. A technician’s licence merely authorises the licensee to service, repair and maintain approved gaming machines: s 83(1)(c). To sell approved machines, Mr Allam needed a dealer’s or seller’s licence: s 83(1)(a) or (b). Purchasers of approved gaming machines must purchase from licensed sellers or dealers: s 71(2).

27 Section 71(2) of the Act (within Pt 6, which contains miscellaneous offences) provides for an offence in respect of the purchase of an approved gaming machine from a person who is not authorised under the Act to sell the machine. The maximum penalty is 100 penalty units or imprisonment for 12 months, or both.

28 Section 85(1) of the Act (within Pt 7, which concerns gaming-related licences) provides that a person who sells an approved gaming machine is guilty of an offence unless the person is the holder of a gaming machine dealer’s or seller’s licence, or the director or secretary of a corporation holding such a licence. The maximum penalty is 100 penalty units or imprisonment for 12 months, or both.

29 Clause 72(1) of the Regulation provides that a technician must not without the approval of the Authority, conduct his or her business from premises other than the premises approved by the Authority at the time of the grant of the technician's licence. Contravention of this provision was the subject of ground 1, particular 6 of the complaint.

30 The Act also contains an evidentiary provision that in some circumstances reverses the onus of proof. Section 194(1) provides:

In any proceedings under this Act (whether or not for an offence under this Act or the regulations), any one or more of the following allegations is taken to be proved unless the contrary is proved—

(a) that a specified gaming machine is or is not an approved gaming machine...

31 Although that section falls within Part 14 which is headed “Criminal proceedings and related matters”, its effect is not confined to criminal proceedings under the Act. Headings to parts of an Act are part of the statute: s 35(1) of the *Interpretation Act 1987* (NSW). However, while headings may assist in interpreting general expressions in statutes, they do not override clear and unambiguous operative words in a provision. Notwithstanding the reference to criminal proceedings in the heading to Part 14, s 194 clearly and unambiguously applies to “any proceedings under this Act”, criminal or otherwise. For these reasons, I reject Mr Allam’s submission that s 194 does not apply in this matter.

The issues

32 Mr Allam has raised five issues for consideration:

- (a) Whether the relevant gaming machines were “approved gaming machines” within the meaning of the Act. Mr Allam argues that the machines subject of the complaint were not “approved gaming machines” and therefore he has not contravened the Act in relation to buying or selling them;
- (b) If they were approved gaming machines at any time, whether, by reason of being condemned for destruction, they had lost their status as “approved gaming machines” by the time he bought or sold them;
- (c) If the machines were in fact approved gaming machines, whether as claimed, Mr Allam had an honest and reasonable belief that they were not “approved gaming machines” at the relevant times;

- (d) Whether Mr Allam is not a fit and proper person to hold a gaming licence; and
- (e) If the Tribunal finds the complaint substantiated, whether the penalty imposed by the Authority is excessive.

33 For the reasons which follow, I have concluded that the machines the subject of the complaint were “approved gaming machines” within the meaning of the Act at all relevant times. I do not accept Mr Allam’s submission that condemning individual approved gaming machines for destruction resulted in the loss of their status as approved machines. In my view, whether or not Mr Allam held an honest and reasonable belief that, as a result of their condemnation, the machines had lost their approved status, his mistake was a mistake of law not fact and the defence of reasonable and honest belief has no application in these circumstances.

34 That said, an honest and reasonable mistake of law can be a mitigating circumstance when considering whether a person is fit to hold a licence and in relation to penalty. Taken together with Mr Allam’s lengthy history in the industry, with only one previous minor breach of the legislation proven against him, I am not satisfied that he is not a fit and proper person to hold a gaming machine technician’s licence. In my view, given the circumstances as I have found them to be, the penalty imposed by the Authority appears excessive and should be reduced.

Were the machines “approved gaming machines”?

35 To establish the breaches under s 71(2) of buying an approved gaming machines and under s 85(1) of selling approved gaming machines, it must be proven that machines bought and sold by Mr Allam were “approved gaming machines”.

36 Mr Allam admitted to the Liquor and Gaming NSW inspectors, and in his evidence to the Tribunal, that he had bought machines from Mr Kayrouz. He also admitted selling machines from his warehouse to Mr Layden. Once the allegations of buying and selling approved machines were made, s 194(1)(a) imposed on Mr Allam an evidentiary burden of proving that the machines specified in the complaint were not “approved gaming machines”. The standard of proof is on the balance of probabilities.

- 37 To reverse the onus of proof under s 194(1)(a), the respondent had only to aver that the machines in question were “approved gaming machines”. It did more than that, however. Liquor and Gaming NSW inspector, Mr Anthony Vescio, gave evidence that approvals are given both for hardware and software components of approved gaming machines. In some cases, approvals for software and hardware are combined. The definition of approved gaming machine covers not only complete machines but “subsidiary equipment” and “any component of the gaming machine”: s 4(1).
- 38 It would appear to follow that if a component, such as the cabinet or box, is approved, the administrative controls relating to approved gaming machines then apply. It is unnecessary to conduct an autopsy of the whole machine, its hardware and software, for it to fall within the definition of “approved gaming machine”. In this case, the inspectors identified the relevant machines as approved machines by the approvals for their cabinets and other hardware components. (See Appendices A-K of Mr Vescio’s statement, 20 July 2020) Mr Vescio inspected the machines identified at Mr Allam’s warehouse and the others which had been sold to Mr Layden. The only machines not inspected were those which had been sent overseas.
- 39 Mr Allam submitted that if s 194 applied at all, the Secretary had failed to identify the relevant machine with sufficient particularity. I do not accept this submission. It is plain from the evidence of Mr Vescio, especially the appendices to his statement, the Tonita invoices and the complaint taken together, which machines are relevant in these proceedings. That threshold was crossed and Mr Allam therefore bore the onus of proving the machines were not approved gaming machines.
- 40 The machines sent overseas were, according to Mr Allam, incomplete and sold only for spare parts. In his evidence to the Tribunal, he said that the machines could be converted to juke boxes or to operate arcade games but not operate as gaming machines. Whether or not the machines were complete, as the invoices suggested, or had been cannibalised as Mr Allam claimed in his evidence, appears to make little difference if components, such as the cabinets of the machines, had been approved. If any of the main hardware components,

such as the cabinets, were approved that was sufficient to bring the machines within the definition in the Act.

- 41 The Secretary submitted that until the 2018 amendments introducing ss 64(6A) and 81A, approved machines remained approved unless the conditions in ss 64(4), 64(6) or 64(7) were met or they were destroyed.
- 42 Mr Allam submitted that this would lead to an absurd result and that attention should be paid to the implications of s 64(4) and (5) together with s 78. He argued that modification of the machines stripped them of their approved status. This submission must be rejected. It takes the two sub-sections of s 64 and s 78, out of context. Sections 64(4) and 64(5) are concerned with unauthorised modification of approved gaming machines in the possession of clubs and hotels. They can be read with s 78. That section provides that it is an offence to modify approved gaming machines without the work being done by a licensed technician and the performance of the machine is not altered so as to take it out of the parameters of the approval. It is obvious that this is intended to prevent clubs, hotels and gamblers from manipulating the operation of machines. That is the limited context within which those provisions must be considered. It has nothing to do with Mr Allam's activities or the machines he purchased and sold.
- 43 The Secretary's interpretation of s 64 must be accepted. Despite the unintended consequence of unwanted, undestroyed machines remaining "approved" under the Act, it is not for the Tribunal to fill in the legislative gap for the period preceding the amendments. The world is full of unwanted, unused and obsolete objects. But until they no longer exist, or their legal status is altered by law, they remain what they are. This point is emphasised by the very fact that the amendments were made to the Act.

Did condemnation for destruction dissolve the approved status of the machines?

- 44 Mr Allam submitted that it would be "incongruous and irrational" to construe the Act so as to preserve the "approved" status of gaming machines once they had been designated for destruction. This argument is really an elaboration of the

contentions made in respect of the first issue and for the same reasons must be rejected.

- 45 I accept that up to 2018 the failure of the legislature to provide for administrative procedures for the regulated destruction of approved gaming machines resulted in unintended consequences. As Mr Allam points out in his submissions, in the circumstances of this case, the manufacturer of the machines given to Mr Kayrouz to dispose of was potentially at risk of disciplinary action, as were Mr Kayrouz and the scrap yard. Counsel for Mr Allam complained, with some possible justification:

... Mr Vescio's evidence [implies] that potentially tens of thousands of machines have been disposed of in this way without ratifications by the authority... in the last 20 years or so there have been tens of thousands of contraventions of the Act if one accepts the construction of the Act proposed by the [Department].

- 46 For all that, the law as it stood up to 2018 is unambiguous in my view. Merely designating a machine for destruction, or abandoning it, was insufficient to dissolve its approved status. This is because individual approved machines remained members of an approved class, just as a rusty FJ Holden sitting in a junkyard remained an FJ Holden, like all other FJ Holden's, until destroyed.

Was this a reasonable and honest mistake of fact?

- 47 In his evidence, Mr Allam gave somewhat convoluted explanations as to why he thought the discarded machines he bought from Mr Kayrouz were no longer approved gaming machines. He claimed that if a machine was no longer listed on the Quickchange system, he assumed that it was no longer an approved gaming machine. His basis for claiming this appears to be that he assumed that machines in clubs and hotels were approved but machines not listed there were not.
- 48 Quickchange is, as was explained by Mr Vescio, a system enabling approved gaming machines to be moved around the market. It had nothing to do with the approval process. While all machines on the Quickchange system must have approval, because they were being moved around licensed venues which could only use approved machines, it does not follow that machines outside the Quickchange system could be assumed not to have approval. Mr Allam's evidence, assuming it was honest, betrayed a fundamental ignorance both of

the law relating to the approval of gaming machines and the Quickchange system itself. His explanations boil down to a belief that machines being scrapped were abandoned and therefore could be assumed no longer to be approved gaming machines because they were no longer being used in clubs and hotels. But he made no inquiry with Liquor and Gaming NSW or the Authority to clarify the status of the machines. In my view, it is most likely that because the machines were headed for the scrapheap, he simply did not turn his mind to their legal status and assumed that no harm could be done if he used the machines for parts and/or sold them to Mr Layden.

49 Mr Allam submits that his mistake was a mistake of fact and that it was honest and reasonable. His counsel made the very reasonable concession that the bigger question was whether the mistake was reasonable. Although counsel did not refer to it directly, he was referring to the principle enunciated in *Proudman v Dayman* [1941] HCA 28; (1941) 67 CLR 536 ("*Proudman*").

50 A reading of that case is instructive. In it, the High Court held that in relation to strict liability offences that an accused person will be found 'not guilty' if he or she held an honest and reasonable belief (although a mistaken belief) in a state of facts which, if they existed, would have made the accused person's act innocent. It is perhaps worth noting the facts of the case in *Proudman*. Ms Proudman permitted an unlicensed driver to drive her vehicle. While the principle for which the case is famous was enunciated by the court, the car owner failed because the High Court was of the view that she had done nothing positive to fulfil her duty of ensuring that the driver actually held a licence. She had made no inquiry and had not been misled into a mistake. In deciding against Mr Proudman, Dixon J said (at 535):

In the present case, the assigned reasons for her alleged belief which neither the magistrate nor the Full Court found convincing or sufficient. Indeed, it may be doubted if she thought at all upon the question whether the person she permitted to drive her car did or did not hold a subsisting licence.

Agreeing as we all do in the view of the Full Court on this question of fact, it is enough to say that there is no support in the circumstances of the case for the defence of honest and reasonable mistake.

51 The Secretary contends that the mistake was a mistake of law, namely, how the law operated in relation to the approval of gaming machines. Mr Allam's

reference, a number of times in his evidence, to machines being “de-licensed” illustrates the problem. He used it in relation to machines designated for disposal but the term is not a synonym for destruction. It has a legal connotation similar to “deregistered”, a legal term. He emphasised in his evidence that his honest belief was that the machines were “de-licensed”. His legal error in thinking that condemnation of a machine dissolved its approved status had, as I have discussed above, no basis.

52 Even if the mistake could be characterised as one of fact, for the same reason and also because he made no inquiries about the legal status of abandoned or condemned machines, in my view that mistake was not reasonable. If this was a mistake of fact, for the same reason as the appellant in *Proudman* failed on lack of reasonable inquiry, Mr Allam must also fail here.

53 I do not think, however, that the evidence proves that he formed that view dishonestly. In my view, Mr Allam’s lack of inquiry about the legal status of the machines most likely reflected a simple lack of interest in, and certainly an ignorance of, the law relating to these machines.

Conclusion

54 It follows that Particulars 1, 2 and 5 of Ground 1 are proven. Particular 3 is established in part, that is, in relation to the sale of one gaming machine. Particular 6 is admitted.

Is Mr Allam no longer a fit and proper person to hold a licence?

55 Mr Allam has worked in the gaming machine industry for about 30 years. He is now 61 years old. He has previously only come to notice by the authorities once for a relatively minor infraction more than 10 years ago. While he was not a particularly convincing witness, demeanour evidence is difficult to assess and certainly should not be regarded as decisive. Whether he gave untruthful testimony or merely mistaken evidence to the Liquor and Gaming NSW inspectors is difficult to determine. I had some concerns about his evidence concerning the overseas sales. His claim that the machines were not complete was inconsistent with the descriptions in the Tonita invoices. His claim that the machines were to be converted into juke boxes or arcade games did not seem consistent with the sale of machines to the Honiara casino. This seems

possible but improbable. However, his past history of good conduct, the fact that English is his second language, and the pressure and anxiety he was probably feeling when he was interviewed and also when he gave evidence in these proceedings, must be taken into account together with the facts that some of the relevant events took place some time ago. I am not prepared to make a finding that he was deliberately dishonest or was dishonest to such a degree that he is unfit to work in the industry. His lengthy history of good conduct weighs heavily in his favour in drawing that conclusion, notwithstanding suspicions to the contrary.

- 56 Mr Allam's knowledge of the legislation was imperfect to say the least. Nevertheless, as his counsel contended, the Act and regulations and other sources of information concerning gaming machines are complex. Mr Allam is a hands-on technician, not a lawyer or public servant. As a licensed technician, he should understand the law better than he did when the events with which we are concerned took place. The investigation and legal proceedings will, no doubt, have been an education for him that he will remember for a long time.
- 57 Mr Allam was obviously motivated by profit, but this should not be regarded as an indicator of criminality or an attitude of deliberate flouting of the law. He was, after all, dealing with machines headed for the scrap heap. His arrangements with Mr Kayrouz and Mr Layden appear to have begun opportunistically and proceeded on the basis of both ignorance and a sense of little harm, if any, being done. Mr Allam was not engaging in a high risk, high profit enterprise. It was a side business that added to his profits but little more.
- 58 It is appropriate when considering whether or not to make a finding of fitness such as this to apply the standard in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336. As Dixon J said (at 362):
- The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.
- 59 In this case, the gravity of the consequences for Mr Allam of an adverse finding is severe and, in my opinion, must be taken into account. A finding that Mr Allam is not a fit and proper person to hold a licence would inflict severe

reputational damage upon him and would drive him out of the industry in which he has worked for about 30 years causing little trouble.

- 60 Taking all the evidence and submissions into account, I am not satisfied on the balance of probabilities that Mr Allam is not fit to hold a gaming-related licence.

What is the appropriate penalty?

- 61 Mr Allam submitted that if the findings of fact were proven against him, the penalty imposed by the Authority was excessive and should be reduced. It was submitted that his licence should be suspended for “perhaps three months”. This, it was said, would reflect the fact that contraventions of ss 71 and 85 are serious but would acknowledge that if the same circumstances were to have occurred under the 2018 amendments, there would probably not have been contraventions at all. According to Mr Allam, that is a mitigating factor.
- 62 It was submitted that a disqualification for three years would deprive Mr Allam of his capacity to work because, at his age, it would be difficult to retrain. It is common knowledge also that older workers find it harder to regain employment once they have lost it. It was also submitted that costs in excess of \$55,000, Mr Allam was ordered to pay in respect of the investigation were extraordinary, unreasonable and based on mere assertions. He contends that costs in the sum of \$7,000 would be reasonable. Finally, the Tribunal was reminded by Mr Allam that the Secretary had not been wholly successful before the Authority. It was argued that that fact should be reflected in the outcome of this case.
- 63 The Secretary submitted that the decision of the Authority should be confirmed. With respects to the costs of the investigation, the Secretary contends that they were reasonable and proportionate given the complexity of the investigation. However, the Secretary no longer presses the cost of transporting and storing the devices seized in the course of the investigation.
- 64 It would be an error in my opinion, to accept the argument that the gravity of Mr Allam’s misconduct is mitigated by the later amendments. His conduct should be assessed on the basis of the law as it stood before 2018, that is, as it stood at the time of the contraventions of the Act.

65 Several factors, however, are, in my opinion, mitigating. First, Mr Allam has had a long, relatively unblemished history working in the industry; second, he is now 61 and it is highly likely that he would find it difficult to gain employment outside the industry, especially in a time of economic crisis as at present, with unemployment levels currently standing about 7 per cent and under-employment rates at about 11 per cent; third, his contraventions of the Act were based on ignorance rather than deliberate criminality; fourth, as Mr Vescio conceded in cross-examination, the machines Mr Allam repaired and sold to Mr Layden did not add to the aggregate number of approved machines in the market; fifth, the experience of being investigated and disciplined by the Authority and the Tribunal is likely to have a powerful personal deterrent effect on Mr Allam; and, finally, Mr Allam will be required to pay both a monetary penalty and significant costs. If, as is likely, the outcome of these proceedings becomes known within the industry, a desirable general deterrent effect can be achieved without imposing a punishment as severe as that imposed by the Authority.

66 The Tribunal stands in the shoes of the Authority in imposing disciplinary penalties pursuant to s 131 of the Act. Those powers include powers to suspend licences, disqualify licensees, and to impose monetary penalties.

67 In this case, taking into account both the severity of the misconduct and the mitigating factors, I think it is appropriate to suspend Mr Allam's licence as a technician for a period of six months, to impose a monetary penalty of \$4,500. I have also decided that Mr Allam should be disqualified from applying for any other licence under the Act for a period of six months. Having reviewed the material used to support the claimed costs of the investigation and taken together with the Secretary's concession in relation to the costs claimed for storage of the devices, I have decided that costs in the sum of \$20,000 are reasonable and proportionate.

68 Given this decision will be handed down shortly before Christmas and given that Mr Allam will be required to make arrangements for his business, I have decided that these orders will come into effect in 35 days from the date of this decision.

Conclusions

69 I find the particulars of Ground 1 of the complaint before the Tribunal substantiated. I dismiss Ground 2 as unproven on the balance of probabilities.

Orders

- (1) The decision made by the Independent Liquor and Gaming Authority on 7 January 2020, in relation to Mr Allam is set aside. In substitution for decision the Tribunal makes the following decision:
 - (a) Mr Allam's gaming machine technician's licence is suspended for a period of six months from the date of these orders.
 - (b) Mr Allam is also disqualified from applying for or holding any other form of gaming-related licence under the Gaming Machines Act 2001 (NSW) for a period of six months from the date of this decision.
 - (c) Mr Allam is ordered to pay a monetary penalty of \$4,500 to the Secretary of the New South Wales Department of Customer Service within 30 days of the date of this decision.
 - (d) Mr Allam is ordered to pay to the Secretary of the New South Wales Department of Customer Service, the sum of \$20,000 within 30 days of the date of this decision being the costs of the investigation giving rise to the complaint.
- (2) Pursuant to s 66 of the Administrative Decisions Review Act 1997 (NSW), these orders will come into effect in 35 days from the date 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

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.