

Our Ref: DOC20/100106

Mr Dimitri Argeres Acting Director Liquor, Gaming & Racing Department of Customer Service Level 9, 323 Castlereagh Street Sydney NSW 2001 [REDACTED]	The Governing Body Dee Why RSL Club Limited C/O Mr Brett Boon Thomson Geer Level 14 60 Martin Place SYDNEY NSW 2000 [REDACTED]
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16 July 2020

Dear Sirs,

<b>Complaint reference No.</b>	DOC20/100106
<b>Matter</b>	Disciplinary Complaint
<b>Licence name</b>	Dee Why RSL Club Limited
<b>Licence No.</b>	LIQC300226883
<b>Premises</b>	932 Pittwater Road Dee Why NSW 2099
<b>Complainant</b>	Mr Paul Newson, former Deputy Secretary of Liquor, Gaming and Racing as delegate of the Secretary of the NSW Department of Industry (now the Department of Customer Service)
<b>Respondent</b>	Dee Why RSL Club Limited
<b>Issue</b>	Whether the grounds of the complaint have been established
<b>Legislation</b>	Part 6A of the <i>Registered Clubs Act 1976</i> (NSW) Part 8 of the <i>Gaming Machines Act 2001</i> (NSW)

**Notice of Disciplinary Action and Statement of Reasons on Complaint to the Independent Liquor and Gaming Authority in relation to Dee Why RSL Club Limited under Part 6A of the *Registered Clubs Act 1976* and Part 8 of the *Gaming Machines Act 2001***

On 27 May 2019, Mr Paul Newson, then Deputy Secretary of Liquor, Gaming and Racing as delegate of the Secretary of the NSW Department of Industry (the responsible department now being the Department of Customer Service) made a disciplinary complaint (Complaint) to the Independent Liquor and Gaming Authority (Authority).

The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (NSW) (RCA) and Part 8 of the *Gaming Machines Act 2001* (NSW) (GMA) in relation to Dee Why RSL Club Limited (Club), holder of registered club licence LIQC300226883 located at 932 Pittwater Road, Dee Why, NSW 2099.

The Complaint specifies two grounds (Grounds) that are available under section 129(3)(b) of the GMA and section 57F(3)(a) of the RCA. The Authority has considered the Complaint

material and all submissions received in relation to the Complaint and has decided to make the following orders, by way of disciplinary action:

1. In respect of Ground 1 of the Complaint and pursuant to section 131(2)(b) of the GMA, the Club is ordered to pay a monetary penalty to the Secretary of the New South Wales Department of Customer Service in the amount of \$80,000 by no later than 14 August 2020.
2. In respect of Ground 2 of the Complaint and under section 57H(2)(a) of the RCA, the Club is ordered to pay a monetary penalty to the Secretary of the New South Wales Department of Customer Service in the amount of \$20,000 by no later than 14 August 2020.
3. Pursuant to sections 131(2)(i)(i) of the GMA and 57H(2)(i)(i) of the RCA order the Club to pay the Secretary of the New South Wales Department of Customer Service the amount of \$99,628.05, being eighty per cent of the costs incurred by the Secretary in carrying out the investigation giving rise to this Complaint, by no later than 14 August 2020.
4. Pursuant to section 57H(2)(e) of the RCA, impose three conditions on the Club's licence LIQC300226883 in relation to a responsible conduct of gambling (RCG) marshal, RCG register and gaming machine player exclusion schemes. These conditions are set out in Schedule 1 below.

As a separate matter, the Authority gives notice, at the conclusion of the attached statement of reasons, that it is considering further administrative action, of its own initiative, should certain circumstances transpire within the next 12 months.

Information about review rights regarding this decision is provided at the end of the attached statement of reasons. If you have any questions about this letter, please contact [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

## STATEMENT OF REASONS

### THE COMPLAINT

1. On 27 May 2019, Mr Paul Newson (Complainant), then Deputy Secretary of Liquor, Gaming and Racing as delegate of the Secretary of the NSW Department of Industry (the responsible department now being the Department of Customer Service, or DCS) made a disciplinary complaint to the Independent Liquor and Gaming Authority (Authority).
2. The complaint is made under part 8 of the *Gaming Machines Act 2001* (NSW) (GMA) and part 6A of the *Registered Clubs Act 1976* (NSW) (RCA) against Dee Why RSL Club Limited (Club).
3. The correspondence comprised a one-page cover letter dated 27 May 2019 (Cover Letter), a 37-page complaint submission settled by Mr Nicholas Owens SC (Complaint) and 36 Complainant Exhibits labelled E01 to E36 comprising some 791 pages of evidence and material (Complaint Material).
4. The Authority does not purport to set out all of the Complaint Material and submissions made on the Complaint, but the evidence and material is briefly listed in Schedule 2 to this decision.

### GROUNDINGS OF COMPLAINT

5. The Complaint specifies two grounds (Grounds).
6. Ground 1 is available under section 129(3)(b) of the GMA. The Complainant alleges that the Club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities on the premises of the Club concerned.
7. Ground 2 is available under section 57F(3)(a) of the RCA. The Complainant alleges that the requirements specified in section 10(1) of the RCA, specifically section 10(1)(i), are not being met, or have not been met by the Club.

### BACKGROUND

8. Details of the Particulars, or factual matters that the Complainant asserts in support of each Ground, are referred to in the Authority's findings below.
9. Briefly, the Complaint concerns the Club's alleged conduct in relation to the late Mr Gary Van Duinen, who was a "Diamond" member of the Club's *Ambassador Rewards* program (Rewards Program). Mr Van Duinen achieved this status by reason of the high turnover of his gambling on Club gaming machines, with Club records of his Rewards Program membership card recording, inter alia, that between 1 July 2016 until his suicide on 31 May 2018 he put a total of around \$3,452,817.10 through the Club's gaming machines over 852 hours of play, losing a total \$229,668.00 during that period.
10. The Grounds of Complaint include the Club's provision of certain ad hoc "high roller" benefits to Diamond tier members like Mr Van Duinen, who were selected for these benefits by reason that they were assessed to be among the "top 100" gaming machine players at the Club, as recorded when using their Rewards Program membership card while playing gaming machines.
11. The Complaint also makes additional allegations regarding the adequacy of the Club's response to two complaints made by Mr Van Duinen's wife, Mrs Sonia Van Duinen (Mrs Van Duinen) during September 2017 and February 2018 about her husband's

gambling and the level of knowledge demonstrated by Club directors with regard to harm minimisation policies and procedures at the Club.

12. The Complainant alleges that the Club's acts or omissions specified in this Complaint with regard to Mr Van Duinen and others who have received high roller benefits amount to conduct that encourages, or is likely to encourage, the misuse and abuse of gambling activities on the Club premises.

## **THE CLUB**

13. A copy of the Club's licence record LIQC300226883 on the DCS OneGov licensing database was provided with the Complaint Material and searches performed by the Authority establish that this information remains current at the time of this decision.
14. The licence indicates that that Club premises are located at 932 Pittwater Road, Dee Why, NSW 2099 (Premises). The Premises have the benefit of a club licence issued under the *Liquor Act 2007* (NSW) (LA), which commenced on 1 July 2008. The Premises have been operated as club premises for the purposes of the previous licensing legislation since 8 October 1947. The licence is held by the Club itself while the Secretary/Manager responsible for the licence is Mr Grant Easterby, the Club's Chief Executive Officer (CEO).
15. Since the Club was registered prior to the commencement of the LA, it has the benefit of transitional provisions in the LA granting unrestricted licensed trading hours in respect of the sale or supply of liquor for consumption on the Premises. Under the current provisions of the LA, supplemented by clause 117 of the *Liquor Regulation 2018* (NSW) (LR), takeaway liquor may be sold from the Premises between 5:00 am and midnight Monday through Saturday and from 10:00 am to 11:00 pm on Sunday.
16. The OneGov licence also indicates that the Club has a gaming machine threshold of 494. This is the maximum number of gaming machines that may be kept on the Premises for the purposes of section 32 of the GMA. The Club holds 494 gaming machine entitlements and is currently authorised to keep 494 machines on the Premises.
17. The Club also has approval for a reduced gaming machine shut down period under section 40 of the GMA from 6:00 am to 9:00 am on Saturdays, Sundays and public holidays, with the standard shut down period from 4:00 am to 10:00 am on other days of the week.

## **CONSULTATION**

### *Show Cause Notice*

18. On 3 July 2019 the Authority issued a notice inviting the Club to show cause why disciplinary action should not be taken against it on the basis of the Complaint and specifying a timetable for the provision of written submissions from the parties.

### *Further and Better Particulars*

19. On 5 August 2019 the Club wrote to the Complainant through its solicitors, Thomson Geer, seeking further and better particulars of the Complaint (Request for Particulars). The Complainant provided its response (Response to Particulars) on 26 August 2019.
20. On 18 September 2019 a second request for further and better particulars of the Complaint was made through Thomson Geer (Second Request for Particulars). The Complainant response to this Second Request for Particulars was made on 23

September 2019 and was accompanied by three file notes dated 29 June 2018, 4 July 2018 and 11 July 2018 (Second Response to Particulars).

#### *Submission on the Merits and Reply Submission*

21. Following the Authority's grant of extensions of time, the Club provided its main response to the merits of the Complaint on 14 October 2019 (Club Response), comprising a one page cover letter, a two pages index of submissions, a three pages overview, a fifty three pages legal submission and some twenty two exhibits (Club Exhibits) labelled "C-01" to "C-22", with one Appendix (Club Appendix).
22. On 28 October 2019 the Complainant replied to the Club Response in a one-page cover letter with a seven pages legal submission (Complainant Reply).

#### *Conference*

23. On 6 November 2019, in response to a request from the Club, the Authority convened an informal conference under section 36B of the *Gaming and Liquor Administration Act 2007* (NSW) (GALAA). This was attended by members of the Authority and its legal counsel, officers of the Department responsible for the Complaint and their legal counsel and the Club's CEO Mr Easterby accompanied by the Club's solicitors and legal counsel. The parties made oral submissions in support of their respective positions specified in the written submissions and answered questions from the Authority arising from the evidence and material before it. A sound recording of the Conference was provided to the parties shortly thereafter.
24. Without repeating the full discussion, the Complainant made the following key submissions during the Conference:
  - The Complainant *does not know* whether the Club's Rewards Program did actually encourage the misuse and abuse of gambling but contends that the Club's conduct is *likely* to do so.
  - The "VIP" events identified in the Complaint pertain to only a *select group* of members going to the races and harbour cruises.
  - The Club's business plan identifies how "serious gamers" at this venue seek rewards, benefits and recognition and the Club seeks to obtain loyalty and grow or maintain revenue from these persons. The plan seeks to devise offers and strategies based upon these wants, with the first example being the conduct of VIP events.
  - The Complainant submits that it is difficult to see how the Club can say that VIP Events are not likely to encourage people to gamble, or be involved in gambling activities or the misuse and abuse of gambling if that's precisely what the business plan says is the purpose of these events at a point later in time.
25. Even though Ground 1 Particular 2 focuses upon one individual member (the late Mr Van Duinen), the Complaint is not about that individual alone, but the Club's conduct in relation to any person gambling in a manner described in paragraphs 18 to 20 of the Complaint. While the Club argues that it cannot possibly monitor the gambling of all of its 50,000 members, the Complainant submits that the Club maintained a list of "top 100" gaming machine players, based upon the level of their *theoretical losses* and the Club could have focussed on *those* members.

26. The Complainant contends that it must have occurred to the Club that Mr Van Duinen was on this top 100 list for 66% of the relevant period. Although the Club may say that it does not know about Mr Van Duinen's financial circumstances and personal life, the Complainant submits that this is not a satisfactory answer. The Club *needs to know* about its members when running a rewards program that rewards gaming machine gambling.
27. The Complainant submits that there is "no problem" with the Club having a rewards program *per se* but the Club could have prevented a person in Mr Van Duinen's position from being a member of the Rewards Program. It could also have provided that the top 100 members will *not* be rewarded for their continuous gambling, especially when the Club knew that Mr Van Duinen was losing the amount that he was losing each week. There were more options open to the Club that the Club has not *elected* to take.
28. The Complainant contends that on the evidence and material before the Authority one and perhaps two Club employees [an apparent reference to Mr Michael Wright (Customer Relations Manager) and Mr Brett Muirhead (Gaming Manager, Customer Service)] asked Mr Van Duinen how he was going with his gambling and the answer was "fine". The Complainant makes submissions on the recollection of events and expresses some concern in that an employee could not remember that interaction when questioned earlier, yet can remember their interactions later. Second, the Club never actually told Mr Van Duinen that he was on that "top 100" list for *gaming machine losses*.
29. The Complainant submits that the Club could have had "better conversations" with Mr Van Duinen. While the Complainant accepts that it could not have excluded him on the basis of the complaints provided by his wife Mrs Van Duinen (by reason of the Club's constitution) there was scope for the Club to do more than simply ask how Mr Van Duinen was going with his gambling.
30. When asked by the Authority Chairperson (Chairperson) what conversations the Club could have had, the Complainant contends that it could have discussed whether Mr Van Duinen was aware that he was gambling at a level that puts him in the "top 100" theoretical losers at the Club. Pointing out to someone their losses in "dollars and cents" might have been very helpful.
31. The Complainant told the Conference that it does not advance any Ground of complaint against the Club's board. Its concern with regard to the board is that it is difficult for the board to be presented with business plans specifying VIP events to encourage gamblers to stay on the Premises in circumstances when Club directors do not understand how the gambling laws with respect to the responsible conduct of gambling (RCG) work. The Complainant questions how the Club may claim that it has "highly qualified" board members if they do not know how the largest part of the enterprise (gaming machines) are operated. Furthermore, if the board is unaware of what it needs to know about RCG, how can it tell whether those employees in charge of the Club know what *they* are doing?
32. When questioned by Counsel assisting the Authority, Mr James Emmett, about the status of the NSW Liquor and Gaming *2018 Responsible Conduct of Gambling Student Course Notes*, (RCG Notes) [Complainant Exhibit E26] the Complainant submits that this material provides a clear benchmark and guidance to the Authority as to what information is provided to frontline staff regarding the signs of problem

gambling, what to do when they identify those signs and how to manage RCG in licensed premises.

33. The Complainant submits that it is a legal requirement that licensees hold RCG qualifications and many club boards are expected to have persons with RCG qualifications. Even if they do not, the “general principles and concepts” covered in the RCG Notes (Complainant Exhibit E26) should be known to venue staff. It is a state-wide benchmark for all staff engaged in any activity relating to the operation of gaming machines. According to the Complainant, the Authority may rely on the RCG Notes (Complainant Exhibit E26) for guidance on the indicia of problem gambling that staff should look out for. Notwithstanding that the RCG Notes are dated February 2018, similar guidance was provided to industry prior to publication of this document.
34. When questioned by Mr Emmett on the reference in the RCG Notes (Complainant Exhibit E26) to referring problem gamblers or third-party family members to counselling services, the Complainant concedes that the Club *has complied* with requirements to provide a self-exclusion scheme and to refer third party concerns to counselling services. The Complainant submits that some of these services were offered to Mrs Van Duinen but question whether the same could be said for the Club’s dealings with Mr Gary Van Duinen.
35. When questioned by Mr Emmett whether it is open to the Authority to find that the Club’s tiered Rewards Program *of itself* encourages the misuse and abuse of gambling unless accompanied by special harm minimisation procedures for those at the top of the list - like diamond members - the Complainant submits that rewards programs are not against the law, but the Club could change its program by, for example, providing that the “top 100” may no longer earn status points through their gambling.
36. When questioned about the contention in paragraph 23 of the Complaint that staff went to the Club’s automatic teller machine (ATM) for Mr Van Duinen the Complainant submits that this was an allegation made by Mr Molle, with some evidence from staff that they would on occasion get money for patrons but there was no specific supporting evidence in relation to staff obtaining cash for Mr Van Duinen.
37. During the Conference, the Club made the following key submissions:
  - This Complaint focuses on the provision of four VIP events that were outside the scope of the Rewards Program and that are alleged to constitute conduct likely to encourage the misuse and abuse of gambling activities at the Club.
  - There is no Complaint about the Rewards Program of itself.
  - This Complaint assumes that no one outside the managers who selected members for these events knew how people were selected to go on these events. To have any inducing effect at all, the Complainant would need to show a connection between *getting an invitation* and a member’s level of gambling. There is no evidence of this and the Complaint proceeds on the assumption that the basis for selection was *not* widely known.
  - Even the members invited to a VIP event didn’t know *why* they were invited, in that they would simply be contacted and invited to the event.
  - The business plan relied upon by the Complainant is dated 2018/2019 and one cannot draw a link between discussion of VIP events in this strategy document to events that occurred some four years earlier. The question is whether these four

events had the effect of encouraging misuse and abuse of gambling activities or were likely to have that effect. There is no evidence upon which the Authority can conclude that they did or were likely to have that effect.

- On the question of what the Club knew or was able to know about Mr Van Duinen's gambling, the Club contends that the evidence of the Club's knowledge is very scant. The only real evidence lies in email exchanges between the Liquor and Gaming NSW (L&GNSW) investigators and Mrs Van Duinen and Mrs Joy Van Duinen (the mother of Mr Van Duinen) (Mrs Joy Van Duinen), and that evidence is sparse.
- The Club contends that its "top 100" lists are prepared in respect of the Club's responsibilities under *anti-money laundering legislation* and are prepared "sometimes irregularly". They are used to determine any unusual fluctuations in spend to indicate potential issues with money laundering. The Club submits that they are not used "on a routine basis" nor are they required to be used for the purpose of monitoring the level of gambling by persons on the Premises.
- When questioned further by the Chairperson about the top 100 list, the Club submits that these reports are a mechanism or process to comply with reporting obligations, but not an actual report to AUSTRAC or any statutory authority. They are an internal "tool" to assist in relation to anti-money laundering obligations.
- The top 100 list is derived from a certain set of data but the Club in fact ensures that members are in the right "tier" of the Rewards Program through the online Ebet system that identifies all gaming machine play.
- When asked by the Chairperson whether we may or may not understand the full extent of Mr Van Duinen's gambling because he sometimes did not use his card, the Club stated that would be correct if there are occasions when his card is not used.
- The Club submits that "tiering" of members in the reward scheme happens automatically with no intervention by the Club. Under further questioning by the Chairperson, the Club concedes that it had the *ability* to know Mr Van Duinen was a Diamond member and that it should have been obvious to the Club that he was putting a lot of money through its gaming machines.
- The Club submits that it is not required to engage in an active monitoring process or to do welfare checks on a rolling basis for members who enter and leave the "top 100". Failure to do that is not conduct that is likely to encourage the misuse and abuse of gambling activities.
- There is very little evidence as to what transpired in relation to Mrs Van Duinen's approaches. The Club disputes the contention that Mr Wright did not take Mrs Van Duinen's concerns seriously. He raised the option of self-exclusion and counselling and did everything suggested in the RCG Notes (Complainant Exhibit E26), with the exception of not making a note of his actions.
- The Club questions what it was supposed to do in the circumstances. On the Complainant's suggestion that they tweak the Rewards Program, the Club submits that this Complaint only concerns the four VIP events that were *outside* of the Rewards Program.



- The Club concedes that its conduct of the four VIP events did not comply with section 10(1)(i) of the RCA but contends that tweaking the Rewards Program will not cure a problem arising from someone who likes to gamble and wants to gamble.
  - The Club submits that it is not a hotel and that its members have legal rights. Section 10(1)(i) prohibits the Club from treating Club members on a differential basis and the Club submits that this means it cannot remove Mr Van Duinen for gambling too much. The Club does not engage in conduct leading to the misuse and abuse of gambling by failing to do something that it does not have the legal power to do.
  - Other than asking Mr Van Duinen how he is and whether he is okay with his gambling, the Club questions what more it could reasonably do. The Club did not know anything about Mr Van Duinen's income or personal background.
  - When prompted by questions from the Authority Chairperson and General Counsel, the Club confirms that no one had a conversation with Mr Van Duinen about whether he should take a break from gambling. Mr Muirhead asked Mr Van Duinen "are you okay with your gambling" and Mr Van Duinen replied "yes".
  - On the role of its directors in relation to this matter, the Club submits that it does not understand what the directors are said to have done wrong. On the proposition that its directors exhibited a lack of awareness about RCG and this somehow is likely to lead to the misuse and abuse of gambling, the Club submits that its directors were "put on the spot" without notice when interviewed by L&GNSW inspectors and given very generalised questions. Their answers should not lead to a conclusion that they are "deficient" in their knowledge and responsibilities. Furthermore, the Club and directors have the benefit of highly trained managers employed to assist the conduct of the Club. All staff have undergone statutory training and one should not infer from the directors' answers that there is some "institutional" deficiency on the part of the directors.
  - On the status of the RCG Notes (Complainant Exhibit E26), the Club submits that they are a policy statement designed to implement the statutory RCG training requirement for staff in gaming venues [under the former clause 59 of the *Gaming Machine Regulation 2010* (NSW), now clause 57 of the *Gaming Machine Regulation 2019* (NSW) (GMR)].
38. When asked by Mr Emmett about the provision of contact details of counselling services to Mr and Mrs Van Duinen, the Club contended that no number was given. Counselling details were not offered to Mr Van Duinen but the prospect of counselling was raised with Mrs Van Duinen by Mr Wright when she approached the Club a second time. The Club contends that Mrs Van Duinen dismissed the option.
39. When asked by Mr Emmett whether the Authority should take into account the information in the RCG Notes (Complainant Exhibit E26) that a problem gambler may not act on that information immediately but may do so later - the Club concedes this point, but questions whether a mere failure to give a telephone number for counselling amounts to conduct that encourages or likely encourages the abuse and misuse of gambling. The Club contends that notwithstanding that this information was not provided by the employee, it was readily available on signage.

40. On the Club's alleged practice of going to ATMs for patrons, the Club submits that the Complainant has conceded that there is no evidence to justify a finding that anyone went to an ATM for Mr Van Duinen.
41. When questioned by Authority Member Sahlin, what further changes, aside from amending its constitution, the Club could implement to minimise harm from problem gambling, the Club submits that such a system could be implemented but that there isn't one currently on the market. The Club submits that it is a matter of practicality - noting the number of players that come into the Premises to use gaming machines each day. If the Club could "pick up" people of concern, it could potentially have "conversations" with them.
42. The Club advised during the Conference that it has now adopted a provision for third-party initiated exclusion of members within its constitution. The Club submits that it could institute other voluntary changes – including with respect to how people are spoken to by staff or other changes in response to some new regulatory requirement, but the issue will be whether such changes, in practice, have any positive effect.
43. The Club contends that at the time of his gambling on the Premises there was nothing to single out Mr Van Duinen. He was "not unique" in the amount of time he was spending at the Club, never misbehaved and never "overtly" gave out signs that he was having a problem.
44. The Club submits that it has nevertheless taken this matter "extremely seriously" and has "investigated" the following avenues:
  - a full review of the Club's processes to identify any improvements;
  - the introduction of an Incident Log;
  - joined the National Association of Gambling Studies including attending conferences in 2018 and 2019;
  - "conversations" including with RG Check, a Canadian company looking to introduce their program into Australia.
45. On the broader issue of its tiered Rewards Program, the Club submits that this program was presented to L&GNSW in February 2017 for its consideration. The Club received "no feedback" from the Department and presumed that it was acceptable on that basis.
46. The Club advised the Conference that it is happy to hear any views from the Authority on the Rewards Scheme, but as things stand, the Club considers the program to be "acceptable" and in line with most other similar programs in the industry. The Club is "unsure" as to the degree to which this issue is being reviewed by the Authority as part of this Complaint.
47. When questioned by the Chairperson about the Ebet facility, the Club advises that the Ebet card is a one card system that "does everything". It is a membership card but not *required* to be inserted to operate a gaming machine. Anyone who joins the Club is automatically in the Rewards Program and they may use the card at the bar for a discount on food and liquor. Ebet largely tracks a user's gaming machine activity and the Point of Sale system needs to integrate with the online system so the Club can process discounts and recognise what tier a member is in. If a member requests a statement, the Club will provide one, but they do not routinely supply them to members.

48. When the Chairperson put it to the Club that it would seem “natural” in order to protect the Club’s business to have some understanding of the Club’s top 200 people, given the money they are paying out, by monitoring *their* accounts, the Club conceded that it could do this.
49. In response to a proposition from Authority Member Sahlin that a Diamond level member may be a problem gambler, the Club disagrees. In response to further questions from the Chairperson, the Club clarified that in order to reach “Diamond” status this would require a gaming machine turnover of **\$150,000 every six months** and this represents, depending on the type of machine played, a theoretical spend (or loss) by the member of **\$13,000 to \$15,000** during every six months assessment period.
50. When also asked by Authority Member Parbery as to what Club members may expect from the Rewards Program, the Club submits that members will be aware that, in order to move up the tiers and obtain the rewards set out in the brochures, they will need to spend the specified amounts - but with regard to the four VIP events, there is no evidence that anyone in the membership knew *how* the Club picked people to go on those events.
51. When the Chairperson put it to the Club that to hit the top tier, you cannot simply get there by buying food and alcohol and it is largely based on gaming turnover, the Club conceded that in the vast majority of cases, to reach the upper tiers, it would be through gaming expenditure.
52. In response to a question from the Authority’s General Counsel, the Club confirmed its position that the broader issue of member progression through the ranks of this tiered scheme is not the subject of Complaint.
53. The Complainant concludes with the contention that Mr Van Duinen’s wife held the view that her husband enjoyed going to the Club because he was recognised and treated in a special way. The four VIP events were one way to treat a person in a “special” way, to have them be selected out of all members, to go on a special event. The business plan indicates that one should simply not look at the events from the perspective of what an individual member *subjectively perceived* – but the *objective purpose* of offering these additional benefits. The Complainant submits that it does not make a difference if an individual actually feels like they are induced to gamble more.
54. The Complainant submits that the “top 100” player reports were created by the Club on a weekly basis. If the VIP events were not designed to encourage gambling at this level, why have them at all? There is no other explanation as to why the Club holds these events when the only people invited were those who featured on the “top 100” reports.

#### *Correspondence following the Conference*

55. On 7 November 2019 the Club sent a two pages submission to the Authority identifying matters raised during the Conference that do not form part of the Complaint.
56. On 8 November 2019 the Complainant sent a one-page letter to the Authority in relation to the ATM cash withdrawals for members. The Complainant concedes that the investigation did not substantiate the allegation that ATM withdrawals had been made for Mr Van Duinen, although staff admit having made ATM withdrawals for members on limited occasions.

57. On 11 November 2019 the Club sent a two pages submission in reply, submitting that there has never been any clear case of the Club encouraging the misuse and abuse of gambling activities or conduct likely to encourage the abuse and misuse of gambling activities, by way of making cash withdrawals for Club members from ATM machines.

#### *Notification of Findings*

58. On 21 February 2020 the Authority wrote to the parties advising the Authority's proposed findings on the Grounds of Complaint (Findings Letter) and inviting written submissions on the question of what, if any disciplinary action is appropriate in light of those findings. The Authority gave notice that it was contemplating the range of disciplinary action available to it under the legislation, including but not limited to a monetary penalty. In that letter the Authority also proposed the imposition of four new conditions upon the Club's licence (Proposed Conditions). The Authority invited the parties to a second meeting if they were amenable to seeking a consent position on the imposition of conditions.
59. On 9 March 2020, following advice from the Club's solicitors indicating that it was not willing to engage in any further informal discussions, without Counsel, on the question of disciplinary action, the Authority confirmed that its Findings Letter represented the Authority's position on the Grounds of Complaint and the parties should now make final written submissions on the question of any disciplinary action.
60. On 17 March 2020 the Club sent a two-page letter to the Authority Reviews and Secretariat Unit (Authority Secretariat) seeking clarification on two questions arising from the Findings Letter. The Authority Secretariat responded in an email dated 19 March 2020.

#### *Final Submissions on Disciplinary Action*

61. On 21 March 2020 the Complainant made a final legal submission to the Authority of some eight pages dated 20 March 2020. This was accompanied by the Complainant's counter proposal on the imposition of new licence conditions and a concise breakdown of the heads of costs incurred by the Secretary on the investigation giving rise to the Complaint (Complainant Final Submission).
62. On 18 May 2020, after granting two extensions of time sought by the Club by reason of the Covid-19 public health crisis, the Club filed its final written submissions comprising a one page cover letter, a one page index, thirty four pages of legal submissions, a schedule summarising recent decisions of the Authority in relation to contraventions by other clubs and eight additional Club Exhibits labelled "C-23" to "C-30" (Club Final Submission).

### **FINDINGS ON BACKGROUND FACTS**

63. The Complainant alleges a number of background matters that are referred to and relied upon in the Grounds of Complaint. The Authority makes the following findings, on the evidence or material noted in parentheses:

#### *The Club and its Objects*

64. The Authority accepts the preliminary contentions in paragraphs 1-3 of the Complaint regarding the nature of the Club and its governing body. Briefly,
- The Club is a registered club pursuant to section 4 of the RCA and holds a current club licence number LIQC300226883 that was granted on 8 October 1947 [Complainant Exhibit E01 – OneGov licence record for LIQC300226883].

- It is a company limited by guarantee whose corporate objects include:
 

*“To provide for members and for members’ guests a social and sporting Club with all the usual facilities of a Club...” and to “promote all or any of the objects of the Returned and Services League of Australia (New South Wales Branch).”*

[Complainant Exhibit E02 – Club Constitution pages 4 and 5].
- Mr Grant Easterby has held the position of Secretary and CEO of the Club since March 1998 [Complainant Exhibit E01]
- The Club has over 50,000 members and meets its objects through maintaining a theatre, four restaurants, three bars, a bottle shop and 494 gaming machines [Complainant Exhibit E01].
- The board of the Club at the time of the conduct that is the subject of Complaint comprised of Mr Graeme Liddell (President), Mr Peter Bell, Mr Graham Heiser, Mr Peter St John, Mr Mark Pitt, Mr Mark Rendell, Mr Len Robinson and Mr Russell Parkes.

#### *Initial Information About Mr Gary Van Duinen and the L&GNSW Investigation*

65. Briefly, as contended in paragraphs 4-11 of the Complaint, on 29 June 2018 Mr Josh Molle provided information to L&GNSW officers complaining about the circumstances of his friend, the late Mr Gary Van Duinen [Annexure 1 to the Response to Particulars].
66. Mr Molle described the Club’s Rewards Program, of which Mr Van Duinen was a member, which enables a person to earn rewards points as they play gaming machines. Mr Molle claimed that Mr Van Duinen had:
- “so many points that he hadn’t paid for a drink there for a long time. He would also shout anyone with him drinks for as long as they were there. To me that’s rewarding your gambling with alcohol”.*
- [Annexure 1 to the Response to Particulars].
67. The Authority notes the contention in the Club Response that Mr Van Duinen spent \$514.10 in cash at the Club between 1 December 2017 and 31 May 2018 [Club Exhibit C-05 – Statutory Declaration of Mr Easterby dated 14 October 2019 - Annexure GE04]
68. At paragraph 7 of the Complaint, the Complainant states that soon after Mr Josh Molle’s complaint, Mrs Sonia Van Duinen and Mrs Joy Van Duinen also made a complaint to L&GNSW. According to the Complainant, they asserted that Mr Van Duinen had a gambling problem which was exacerbated by the Club’s Rewards Program and encouraged through the provision of additional benefits that were offered to Mr Van Duinen outside the scope of that program.
69. Sonia Van Duinen’s email to L&GNSW dated 1 August 2018 is Complainant Exhibit E06. The Authority notes that Mrs Van Duinen told inspectors that Mr Van Duinen’s problem gambling began around the time that he became a “Diamond” member of the Club Rewards Program and won two big jackpots within a two-week period totalling nearly \$60,000 (the dates not specified). Mrs Van Duinen stated that Mr Van Duinen would spend long sessions gambling and drinking at the Club without staff questioning it. She describes him being “treated like royalty” as a Diamond member and briefly mentions the way the marketing material from the Club was distributed. Mrs Van Duinen also provides details about Mr Van Duinen’s attendance at counselling sessions and how she reported her concerns about Mr Van Duinen’s gambling to a

Club staff member, Mr Wright, in September 2017 and February 2018 but the Club failed to take action or assist him.

70. The Authority notes that L&GNSW's engagement with Mrs Joy Van Duinen is recorded in a file note dated 27 July 2018 [Complainant Exhibit E20]. During that interview Joy Van Duinen told inspectors about her use of the Club facilities, her limited use of gaming machines, her attendance at the Club on 31 May 2018 when her son went missing and her request, on that date, to exclude him from the Premises. She also describes Mr Van Duinen seeking counselling, the loans advanced to Mr Van Duinen by his niece and herself, her opinion that both the Club and Mr Van Duinen were "accountable" for his gambling and her dealings with the media and The Hon Andrew Wilkie MP. She also told inspectors of her desire for law reform.
71. The circumstances surrounding Mr Van Duinen's death had received coverage in mainstream media, including *The Sydney Morning Herald*, *The Daily Telegraph*, *Michael West Media* and the *Manly Daily* [Complainant Exhibit E36 – Media articles]. The Authority notes the submission in the Club Response that these media articles are "rife with allegations that are untrue and inaccurate". The Authority has not relied upon these reports when determining whether Particulars of this Complaint are established.
72. The Authority accepts, as summarised in paragraphs 12-15 of the Complaint, that Mr Molle's information prompted L&GNSW compliance officers to conduct an investigation of the matter. L&GNSW obtained the following material:
  - Mr Molle [Annexure 1 to the Response to Particulars].
  - Mrs Van Duinen [Complainant Exhibit E06].
  - Club Secretary and CEO Mr Easterby [Complainant Exhibit E21 – Transcript of the record of interview between L&GNSW (Inspectors) and Mr Grant Easterby dated 16 November 2018 (Easterby Interview)].
  - Club Directors:
    - Club Director (President) Mr Graeme Liddell [Complainant Exhibit E28 – Transcript of the record of interview between Inspectors and Mr Graeme Liddell dated 5 November 2018 (Liddell Interview)].
    - Club Director (Vice-President) Mr Mark Rendell [Complainant Exhibit E33 – Transcript of the record of interview between Inspectors and Mr Mark Rendell dated 12 November 2018 (Rendell Interview)].
    - Club Director (Treasurer) Mr Mark Pitt [Complainant Exhibit E30 – Transcript of the record of interview between Inspectors and Mr Mark Pitt dated 7 November 2018 (Pitt Interview)].
    - Club Director Mr Peter Bell [Complainant Exhibit E27 – Transcript of the record of interview between Inspectors and Mr Peter Bell dated 5 November 2018 (Bell Interview)].
    - Club Director Mr Graham Heiser [Complainant Exhibit E29 – Transcript of the record of interview between Inspectors and Mr Graham Heiser dated 5 November 2018 (Heiser Interview)].
    - Club Director Mr Peter St John [Complainant Exhibit E31 – Transcript of the record of interview between Inspectors and Mr Peter St John dated 7 November 2018 (St John Interview)].

- Club Director Mr Russell Parkes [Complainant Exhibit E32 – Transcript of the record of interview between Inspectors and Mr Russell Parkes dated 12 November 2018 (Parkes Interview)].
- Club Managers:
  - Club Executive Manager Gaming Mr Arran Hodgkinson [Complainant Exhibit E03 – Transcript of the record of interview between Inspectors and Mr Arran Hodgkinson dated 15 August 2018 (Hodkinson Interview)]
  - Club Gaming Manager, Customer Service Mr Brett Muirhead [Complainant Exhibit E04 – Transcript of the record of interview between Inspectors and Mr Brett Muirhead dated 2 August 2018 (Muirhead Interview)]
  - Club Customer Relations Manager Mr Michael Wright [Complainant Exhibit E05 – Transcript of the record of interview between Inspectors and Mr Michael Wright dated 14 August 2018 (Wright Interview)].

73. The L&GNSW notices were not provided with the Complaint Material, but were provided to the Authority as Club Exhibit C-30 with the Club Final Submission, discussed below. The Authority accepts that these notices issued under the GALAA resulted in production of:

- *Player Activity Statements* for Mr Van Duinen;
- CCTV Records of Mr Van Duinen's attendance on the Premises;
- Club Point of Sale Records and
- Club *Employee Handbook*.

#### *Mr Van Duinen's Problem Gambling at the Club*

74. Paragraph 16 of the Complaint provides background information about Mr Van Duinen that is not in dispute. Mr Van Duinen was a 45 years old man who lived in the Sydney suburb of Cromer Heights, with his wife Mrs Sonia Van Duinen and his 18 years old son. He part owned a small construction business and primarily performed commercial and residential building work on Sydney's Northern Beaches.

75. The Authority accepts the following further contentions in paragraphs 16-23 of the Complaint:

- According to Mrs Van Duinen, Mr Van Duinen's problem gambling had its origins when on 19 June 2016 he had a jackpot win of over \$30,000 playing the Club's gaming machines followed by another jackpot win on 28 June 2016 of over \$35,000 [Complainant Exhibit E06].
- Mr Van Duinen continued to gamble at the Club and from June to December 2016 (a period that included the two jackpot wins) lost a total of around \$40,000.00 playing gaming machines [Complainant Exhibit E19 – Mr and Mrs Van Duinen's Gambling Summary by Month].
- During 2017 he lost a total of \$115,000.00 and during the first five months of 2018 he lost \$25,000.00 playing gaming machines at the Club [Complainant Exhibit E19].
- From June 2016 to May 2018 (taking into account his June 2016 winnings) Mr Van Duinen lost a total of \$180,000.00 playing the Club's gaming machines. From July 2016 to May 2018 he lost \$230,000.00 [Complainant Exhibit E19].

- From 1 June 2016 to his death on or about 31 May 2018 (24 months) [on the basis of Complainant Exhibits E14 and E19] Mr Van Duinen:
    - Visited the Club to play gaming machines 170 times.
    - Used the Club gaming machines for 930 hours.
    - Played the Club gaming machines for 5 hours 45 minutes each visit, with some visits extending to 13 hours.
    - Turned over - that is, played through the Club's machines, a total of \$3,796,694.00 at an average of \$22,333.00 per visit, with up to \$50,000 or more turned over on some visits.
    - Lost an average of \$1,070.00 per visit, with losses of more than \$8,000.00 on some visits.
76. The Authority accepts the contention at paragraph 20 that these detailed figures about Mr Van Duinen's gaming machine play can be stated because Mr Van Duinen was a member of the Rewards Program. The Rewards Program would: generate detailed information on gaming machine play through an eBet Player Activity Statement; assign reward points for every dollar spent at the Club or every five dollars turned over in a gaming machine and enable points to be redeemed for food, drinks or entertainment at the Club with "status" points accumulating to enable a member to advance through levels, with each higher status providing additional benefits.
77. At paragraph 22 the Complaint provides information that a review performed by L&GNSW officers of the Club's CCTV disclosed some occasions when Mr Van Duinen did not insert his membership card into a machine and on those occasions his gaming machine play would *not* be recorded on his membership records. The CCTV has not been provided to the Authority, although when questioned about this issue during the Conference, the Club's representatives conceded that we may not understand the full extent of Mr Van Duinen's play if he used gaming machines without inserting his card. Since the claim has not been contested the Authority accepts the proposition that not all of Mr Van Duinen's gambling may have been recorded during the relevant period.
78. More contentious are the further allegations made by Mr Molle, noted at paragraph 23 of the Complaint, that staff would get Mr Van Duinen's favourite brand of cigarettes from a service station across the road from the Premises, get cash for Mr Van Duinen from a Club ATM and serve Mr Van Duinen food in the smoking room.
79. At paragraph 23 of the Complaint, the Complainant alleges that these allegations have been denied by Club employees, although Mr Brett Muirhead, Mr Arran Hodgkinson and Mr Michael Wright told inspectors that staff occasionally obtain cigarettes for patrons when the Club cigarette machine is not working – although Messrs Hodgkinson and Wright say they are not aware of any instance where Mr Van Duinen was given free cigarettes.
80. The Authority is satisfied on the statements from Messrs Muirhead and Wright that staff have occasionally obtained cigarettes for patrons [E04 – Q451-466; E05 – Q300-321], but on the statements of Messrs Hodgkinson and Wright staff were not aware of any instances where *Mr Van Duinen* was purchased cigarettes from across the road by staff members [Complainant Exhibits E03 – Q343-348; E05 – Q300-321]. Staff otherwise deny the allegations about getting ATM cash and food for Mr Van Duinen [Complainant Exhibits E03 – Q343-348; E04 – Q451-466; E05 – Q300-321].



81. On the available evidence or information the Authority accepts Mr Molle's allegation that Club staff have, on occasions, procured cigarettes (but not free cigarettes) for Mr Van Duinen, but there is insufficient evidence to establish that staff brought food to Mr Van Duinen in the smoking area or obtained cash from the Club's ATM, noting the Complainant's concession in the 8 November 2019 submission.

*Mr Van Duinen's Last Hours – 30 and 31 May 2018*

82. Noting that the Authority has not reviewed the Club CCTV footage, but relies on the uncontested account of that footage provided in the Complaint, the CCTV time log (Complainant Exhibit E07) and the L&GNSW inspectors review of CCTV (Complainant Exhibit E11) which are not contested by the Club in relevant respects, the Authority accepts the following contentions at paragraphs 24 to 27 of the Complaint regarding Mr Duinen's movements on 30-31 May 2018:

- On 30 May 2018 Mr Van Duinen arrived at the Club around 4:50 pm and departed shortly afterward at 5:25 pm [Complainant Exhibit E07 – the Club's CCTV time log].
- A L&GNSW review of records obtained from the Manly Leagues Club indicates that Mr Van Duinen attended that club at approximately 6:20 pm. While at the Manly club, Mr Van Duinen played 15 gaming machines, turning over \$3671.65 resulting in a total cash loss of \$1646.95. He consumed three alcoholic beverages before departing at 7:50 pm [Complainant Exhibits E08 - Manly Leagues Ebet Audit Trail 30 May 2018; E09 – Manly Leagues Ebet Player Statement Summary; E10 – Manly Leagues Till Receipts 30 May 2018].
- Club CCTV shows that Mr Van Duinen returned to the Club with two unknown males at approximately 8:00 pm [Complainant Exhibit E11 – File Note CCTV Review for the Club]. Between 8:00 pm and 9:30 pm Mr Van Duinen and his companions roamed the gaming floor, drinking and playing 22 different gaming machines [Complainant Exhibit E12 – The Club's Ebet Audit Trail 30 May 2018 to 1 June 2018]. Mr Van Duinen purchased three rounds of alcoholic beverages using his Rewards Program points for himself and his companions [Complainant Exhibit E13 – The Club's Summary of Mr Van Duinen's Purchases and Receipts 30-31 May 2018]. At 9:30 pm, his two companions departed with an unknown female [Complainant Exhibit E11].
- From 9:30 pm on 30 May 2018 to 1:40 am on 31 May 2018, Mr Van Duinen randomly selected and played another 46 gaming machines alone [Complainant Exhibit E12]. Mr Van Duinen visited the ATM four times and consumed a further 10 alcoholic beverages [Complainant Exhibits E07; E13]. His last five beverages, Bundaberg Overproof Rum and Coke, contained 1.4 standard drinks in each serve. Mr Van Duinen departed by himself via the upper foyer at 1:40 am and proceeded to the Seven Eleven petrol station across the road. The CCTV footage did not reveal any overt signs of intoxication.
- On his last day at the Club, Mr Van Duinen consumed 12 alcoholic beverages [Complainant Exhibit E13] (utilising rewards points which entitled him to an 80% discount) and turned over \$15,000 on gaming machines in six hours [Complainant Exhibit E14 – Mr Van Duinen's daily gambling breakdown 1 June 2016 to 31 May 2018]. There were four hours of card recorded play on the Club's gaming machines, averaging \$4.25 per spin, estimated at 4 seconds

between spins. He only took breaks from gaming machine play to smoke and remained at the Club for four hours after his companions left, playing a total of 68 gaming machines, withdrawing money on four separate occasions from the ATM, with his gambling amounting to a loss of \$4,700 in one night [Complainant Exhibits E11, E12, E07 and E14].

### *The Ambassador Rewards Program*

83. The Authority accepts the following background information about the Rewards Program specified in paragraphs 28 to 35 of the Complaint:
- The Club has operated a rewards scheme for over 20 years [Complainant Exhibit E15 – Email correspondence from Mr Easterby October 2018].
  - A player rewards scheme is defined under section 45(1) of the GMA as “a system, used in connection with the operation of approved gaming machines in a hotel or on the premises of a club, in which the players of such gaming machines accumulate bonus or reward points from playing the gaming machines”, with a promotional prize defined as “any prize or reward (including bonus points) offered by a hotelier or club to the patrons of the hotel or the premises of the club in connection with a player reward scheme or any other marketing or promotional activity that involves approved gaming machines”.
  - In 2007 the Club introduced a “tiered loyalty program” that runs concurrently with the reward scheme [Complainant Exhibit E15].
  - A tiered program incentivises consumers to frequent a business and utilise the products and services on offer. Members accrue status points for their loyalty that progressively unlocks additional benefits, as one progressively moves from silver (all members) to gold, platinum, platinum plus, and finally, diamond.
  - There is no legislative prohibition (in New South Wales) against the use of a tiered loyalty program by this or any other registered club.
  - In 2016, the Club rebranded its loyalty program and introduced the “Ambassador Rewards Program” [Complainant Exhibit E03 – Q139]. For every dollar members spend on food, drinks or shows, or every five spent on gaming machine turnover, members accrue one Ambassador Reward point that may be redeemed for food, beverages and entertainment at the Club [Complainant Exhibit E16 - *Ambassador Rewards, “Your Guide to Exclusive Benefits”* brochure].
  - Mr Arran Hodkinson (the then Club’s Executive Manager Gaming & IT) told Inspectors that this program is designed to “make Dee Why RSL the preferred venue” through encouraging members to purchase the products and services offered at the Club by rewarding their loyalty with benefits [Complainant Exhibit E03 – Q145].
  - For every Ambassador Reward point accrued, members also gain one “status” point, which accumulate to elevate members to the next tier of benefits. Within a six-months period, the more status points earned, the higher the status a member achieves. The tier thresholds are:
    - All members begin at Silver Status;
    - 2,000 status points achieves Gold Status;
    - 6,500 status points achieves Platinum Status;
    - 15,000 status points achieves Platinum Plus Status;

- 30,000 status points to achieve Diamond Status [Complainant Exhibit E16].
- A member retains their tier and the related benefits by ensuring that they accrue the required status points during a six-months earning period. Once a member obtains a new status, the value of their reward points increases. Failure to reach the required level of status points for a tier during a 6-months period results in the person falling back to the previous tier [Complainant Exhibit E16].
- The volume and value of Mr Van Duinen's gambling at the Club meant he was promoted to "Diamond" status, being the highest of five levels. He entered an exclusive group of approximately 250 members [Complainant Exhibit E03 – Q134] entitled to:
  - VIP parking.
  - Private "red carpet" entry.
  - Personalised hosting.
  - Priority paging service (priority service on the gaming floor).
  - 80% discounts when redeeming loyalty points for food and beverages along with other benefits [Complainant Exhibit E17 – *Ambassador Rewards*, "Your Exclusive Diamond Benefits" brochure].
- Mrs Van Duinen told L&GNSW (in response to questions in an email) that "Gary, since becoming a Diamond member, was treated like royalty by the Club. He enjoyed it" [Complainant Exhibit E06].
- With the entry to Diamond status starting at 30,000 status points within a 6 month period [Complainant Exhibit E17], the only Club members to achieve this status are described by the Club in its 2018/19 business plan as "gaming enthusiasts" [Complainant Exhibit E18 – 2018/2019 Club Business Plan pages 2 and 7].
- The Club identifies "Platinum Plus" and "Diamond" members as "gaming enthusiasts" who represent just 1.5% of all members yet provide 66% of all carded gaming revenue (\$23.26 million) [Complainant Exhibit E18 – page 7].
- Within the parameters of the Rewards Program, new Diamond members are invited to private dinners in the *Flame* restaurant private dining room [Complainant Exhibit E04 – Q299-300] and a complimentary three course meal with drinks [Complainant Exhibit E04 – Q311]. During dinner they are asked what they like and what they don't like at the Club [Complainant Exhibit E03 – Q262].

*Targeted Ad Hoc Benefits to 'high rollers' Outside the Scope of the Ambassador Rewards*

84. At paragraphs 39 to 42 the Complainant specifies that certain targeted additional benefits were given to gaming machine "high rollers". The Authority accepts that one aspect of the benefits offered to Diamond members includes the Club organising ad hoc events to which some, but not all, "Diamond" members would be invited. The Authority accepts the following examples:

- On 7 June 2017 Mr Van Duinen (along with 53 other "Diamond" members and their guests) attended a cruise on Sydney Harbour to view the Vivid Festival light display. The cruise included return transfer from the Club, an open bar, canapes, and a seated meal [Complainant Exhibit E24 – Off site cruise records]. The Authority notes the contention in the Club Response that 60 people (including 6 Club employees) attended the 7 June 2017 cruise, and the cost per head was \$182, inclusive of return transport from the Club.

- On 8 June 2016 the Club introduced the top 50 gaming patrons to the new Ambassador Rewards program by inviting them to attend the “Dee Why RSL Penfolds Gold Dinner” Sydney Harbour Cruise. The event, attended by 44 Diamond status members and guests, included return transfer from the Club to King Street Wharf, an open bar, canapes and seated meal [Complainant Exhibit E24]. The Authority notes the contention in the Club Response that 51 people (including 7 Club employees) attended the 8 June 2016 cruise, and the cost per head was \$172.50, inclusive of return transport from the Club.
  - On 13 February 2016, the Club organised a second race day at the Royal Randwick Racecourse. The Club purchased the package at a charity event and does not have any records of the cost of the event. The Club again invited the top gaming patrons and their guests to the event (16 patrons in total) [Complainant Exhibit E25 – Off site race records]. The Authority notes the contention in the Club Response that 21 people (including 5 Club employees) attended the 13 February 2016 race day. This race day was bought by the Club for \$10,000 at a charity auction run by the Sargood Foundation, however the cost of the race day was likely to be comparable to that of the earlier race day (refer next bullet point), that is around \$270 per head.
  - On 3 November 2015, the Club organised a Melbourne Cup race day at the Royal Randwick Racecourse. The Club exclusively invited the top 12 gaming patrons (based on theoretical spend on the gaming machines) and their guests (20 patrons in total) to the event. The \$6,360 all-inclusive “VIP Gaming Party”, was signed off by Mr Hodkinson and included a limousine from the Club to Randwick Racecourse, a day of drinks and foods served on one of four private, centennial terraces and a limousine back to the Club [Complainant Exhibit E25]. The Authority notes the contention in the Club Response that 25 people (including 5 Club employees) attended the 3 November 2015 race day, and the cost per head was \$268.91, inclusive of return transport from the Club
85. The Authority accepts the Complainant contention at paragraph 40 of the Complaint that the Club’s practice of hosting special events for its “highest value” Diamond members is not publicised as part of the Rewards Program and that awareness of this practice, let alone the specific events, is limited to a small group of members [Complainant Exhibit E21 – Q276-279].
86. The Club’s business plan for 2018/2019 (at page 57 of Complainant Exhibit E18) specifically addresses the retention of gaming patrons. Referring to “Segment Retention Offers” the Plan states:
- Example: Serious Gamers*
- *They want: Rewards and Benefits, Recognition*
  - *We want: Retain loyalty, Grow or maintain revenue*
  - *So we will devise offers and strategies based on these wants (e.g. VIP events, VIP parking)*
87. The Authority accepts the Complainant submission that this business plan reinforces the nature, objectives and plans behind the targeting of certain members for ad hoc high roller benefits, noting that the four events discussed above occurred prior to the 2018/19 year.

### *Mr Van Duinen's loans from his family*

88. The Authority also accepts the contentions at paragraphs 43 to 47 of the Complaint that:

- As a Diamond member, between July 2016 and his death, Mr Van Duinen's problem gambling at the Club's gaming machines was increasingly apparent to his family [Complainant Exhibit E06], in that he was borrowing amounts of money from his mother [Complainant Exhibit E20 – File note of L&GNSW's engagement with Mrs Joy Van Duinen on 27 July 2018; Complainant Exhibit E34 – Mrs Joy Van Duinen's additional response to questions from L&GNSW].
- In 2016, Mr Van Duinen borrowed \$20,000 from his mother, Mrs Joy Van Duinen to "make tax payments". By May 2017, Mr Van Duinen had repaid \$3,000 of that loan before asking his mother for another loan to cover his expenses, as presumably he had spent all of his income on gaming machines. His mother again loaned Mr Van Duinen a further \$23,000, on the condition that Mr Van Duinen attended counselling and that he repaid her \$1000 a month [Complainant Exhibit E20]. Therefore, in or about May 2018 Mr Van Duinen owed his mother \$40,000.
- Mrs Joy Van Duinen observed her son attend two counselling sessions around May 2017, including one where she took him to Gamblers Anonymous and sat in on the session [Complainant Exhibit E20]. In May 2017 Joy Van Duinen took out a personal loan for \$30,000 to fund her loan(s) to Mr Van Duinen, and has been paying this loan back since then [Complainant Exhibit E34].
- Mrs Joy Van Duinen advised L&GNSW that Mr Van Duinen had allegedly spent the money lodged for three building jobs gambling at the Club [Complainant Exhibit E20].
- Mrs Joy Van Duinen advised L&GNSW that in early 2018 Mr Van Duinen obtained a further loan, which included loan insurance [Complainant Exhibit E34].
- In January 2018 Mr Van Duinen borrowed \$2,700 from his cousin but this was never repaid [Complainant Exhibit E34].

89. At paragraph 45 of the Complaint, the Complainant alleges that from May 2017, Mr Van Duinen began gambling at the Club without his wife and for the next six months, attended the Club 41 times (24 times without his wife) losing a total of \$68,000.00. On the Authority's analysis, Complainant Exhibits E19 establishes that from May 2017 to October 2017 Mr Van Duinen attended the Club **37** times having lost around \$60,623.35. The evidence is unclear as to the number of visits to the Club without his wife.

### *The Club's Harm Minimisation Programs*

90. At paragraphs 48 to 51 of the Complaint, the Complainant has detailed the Club's gambling harm minimisation programs. The Authority accepts this description and notes that during the time period to which this Complaint relates, the Club had several gambling harm minimisation programs in place - including an in-house Chaplain service, a self-exclusion and multi-venue self-exclusion scheme, and a subscription to the "ClubSAFE premium service" [Complainant Exhibit E21 – Q38, Q44, Q47].

91. ClubSAFE is a service provided by Clubs NSW. Among the features of its premium service includes a self-exclusion process, which is administered by any gaming supervisor or any of the more senior managers at a venue. As part of that process, members are taken into a private room located away from the gaming area where the nature of the exclusion document is explained and filled out online. The Authority notes that an extract from the ClubSAFE website depicting the inclusions of the premium program have been provided at Complainant Exhibit E22.

*Third Party Complaints and Requests to Exclude a (Family) Member*

92. The Authority accepts the contention at paragraph 52 of the Complaint that when a third party reports a member's problem gambling to the Club, as part of the ClubSAFE program a gaming supervisor would advise the third party that only the member themselves can self-exclude. The practice was for the supervisor to provide the third party with the contact details necessary for the person to contact ClubSAFE [Complainant Exhibit E03 – Q310].
93. The Authority further accepts the contentions in paragraph 53 that during their interviews with inspectors the Club's Executive Manager Gaming & IT (Mr Arran Hodkinson) and Gaming Manager Customer Service (Mr Brett Muirhead) confirmed that the Club's internal practice regarding third-party complaints provides that if the subject member is not available to be spoken to at the time of complaint, the approach is to be emailed to Gaming Managers and Executive Gaming Managers [Complainant Exhibit E04 – Q406-414] and recorded in the daily managers' report [Complainant Exhibit E03 – Q310-326]. That report tracks the daily activities at the Club and is available to all senior gaming employees (including management and executives). If the supervisor could not follow up with the member, the Senior Executive would informally "check-in" with the patron and conduct a "welfare check" [Complainant Exhibits E21 – Q340-344; Q77-79; Q87-96; E03 – Q310-324]. That may include asking how they are doing and, in the event that the member's responses indicate they are experiencing gambling related issues, the patron would be engaged with further and provided information about how to self-exclude.
94. While the Authority notes the Club contention in paragraph 149 of the Club Response that all of its relevant staff undergo RCG training, the Authority accepts the Complainant's contention at paragraph 54 of the Complaint that the Club's processes for third party complaints were not documented or recorded anywhere for staff reference.

*Mrs Sonia Van Duinen's Reports*

95. Paragraphs 55 to 67 of the Complaint refer to the third-party reports made by Mrs Van Duinen to the Club, being:
- The Gaming Manager's (Mr Brett Muirhead) report for 20 September 2017.
  - The approach by Mrs Van Duinen to the Club's Customer Relations Manager, Mr Michael Wright in about September 2017.
  - The conversation between Mr Michael Wright (Club's Customer Relations Manager) and Mrs Van Duinen sometime in the beginning of 2018.
96. As contended at paragraphs 55 and 56, the report from Mr Brett Muirhead for 20 September 2017 (Complainant Exhibit E23) noted that customer service staff had engaged with Mr Van Duinen and reported:

*“Gary Van Duinen is finding continual work and is currently in a place in Freshwater. Despite the amount of work he is receiving there is increasing friction between Gary and his wife Sonia”.*

97. The Authority accepts that this records the Club conducting a “welfare check” pursuant to its internal policy.
98. As contended at paragraph 57, when asked during the Wright Interview (Complainant Exhibit E05) whether the conversation with Mrs Van Duinen in early 2018 was the *only* occasion he could recall Mr Wright told inspectors (at question 238, 240 and more generally at questions 236 to 327), that Mrs Van Duinen "might have said something another time but I don't, I don't remember the, the specifics of it".
99. Mr Wright told inspectors that there was another approach made by Mrs Van Duinen (discussed below) and in her email at Complainant Exhibit E06, Mrs Van Duinen refers to her making a complaint to Mr Wright during September 2017 [Complainant Exhibit E06].
100. The Authority is satisfied that Mrs Van Duinen did speak to Mr Wright during September 2017 as she stated in her email [E06].
101. The Club appears to accept, at paragraph 27 of the Club Response, that the September 2017 conversation between Mrs Van Duinen and a staff member did occur and this was most likely Mr Wright. The Club cites Complainant Exhibit E06, Club Exhibit C-12 – Statutory Declaration of Mr Muirhead dated 11 October 2019 at [32]-[33] and Club Exhibit C-13 – Statutory Declaration of Mr Wright dated 11 October 2019 at [42] in support of this.
102. As contended in paragraph 58 of the Complaint, the Authority finds that during the month of September 2017 Mr Van Duinen attended the Club nine times for an average of about 6.45 hours per visit and lost \$7,255 [Complainant Exhibit E19].
103. The Authority further accepts the Complainant’s contentions regarding a conversation between Mr Wright and Mrs Van Duinen in the beginning of 2018 (discussed by Mrs Van Duinen in her email at Complainant Exhibit E06), set out at paragraphs 59 to 67 of the Complaint as follows:
  - In the beginning of 2018, while playing gaming machines at the Club, Mrs Van Duinen spoke to Mr Wright concerning Mr Van Duinen's gambling [Complainant Exhibit E06].
  - Mr Wright said to Inspectors there was a conversation with Mrs Van Duinen in the beginning of 2018 [Complainant Exhibit E05 – Q236-237].
  - Mrs Van Duinen in her email to L&GNSW responding to questions on notice refers to a complaint by her to Michael Wright in February 2018 [Complainant Exhibit E06]. Mrs Van Duinen said in this email that she told Mr Wright that Mr Van Duinen needed to be excluded from the Club.
  - Mr Wright advised Inspectors that he told Mrs Van Duinen (per the Club's policy) that Mr Van Duinen would have to exclude himself as self-exclusion is the only way a member can be excluded from using the gaming machines at the Club [Complainant Exhibit E05 – Q236-327].
  - Mr Wright advised Inspectors that he then provided Mrs Van Duinen with the self-exclusion and counselling service information available to Mr Van Duinen,

stating that he was "...willing to help you [Mrs Sonia Van Duinen] get the, get him to agree to come along and sign him up [to the self-exclusion scheme]" [Complainant Exhibit E05 – Q240].

- Mr Wright then advised Inspectors that he offered counselling to Mr Van Duinen and for Mrs Van Duinen [Complainant Exhibit E05 – Q236-327].
- Mr Wright also stated in his interview with Inspectors that in relation to this conversation he had with Mrs Van Duinen at the beginning of 2018 (likely in February), Mrs Van Duinen also said words to the effect of "Gary's, oh, you need to ban him... he's gambling too much... he'd been in gambling every night for the last... week or two weeks... every night until close" [Complainant Exhibit E05 – Q240 and generally questions 236-327].
- Mr Wright told inspectors that he did not take Mrs Van Duinen's concerns seriously as he had worked the night shift for the past two weeks and only recalled Mr Van Duinen attending the Club once. Mr Wright formed the opinion that Mr Van Duinen had not been gambling at the Club to the extent believed by Mrs Van Duinen [Complainant Exhibit E05 – Q240 and generally questions 236-327]. Mr Wright again advised inspectors that he told Mrs Van Duinen that the self-exclusion process was the only way for Mr Van Duinen to be banned. No report exists of this conversation. It was not included in the Gaming Manager's Report, which was done on a daily basis.
- A review by L&GNSW of Mr Wright's emails and managers reports indicates that Mr Wright did not report the conversation in his managers' report as required by the Club's internal practice as: "...didn't get to (sic) self-exclusion from it. I, didn't even think that, obviously I didn't realise that it was going to be all this [Mr Van Duinen's death], but, no I didn't, I, there was no self-exclusion or anything from it" [Complainant Exhibit E05 – Q241].
- In February 2018, Mr Van Duinen attended the Club twice for an average of about three hours per visit and lost over \$2,500.00 [Complainant Exhibit E19].
- From March 2018, Mr Van Duinen attended the Club six times and won on three occasions, winning just over \$9,000 at the Club in that month. In April and May 2018, Mr Van Duinen attended the Club 22 times losing over \$34,000.00 [Complainant Exhibit E19].
- Mr Van Duinen's mother indicated to Inspectors (as recorded in the L&GNSW File Note) that during the week prior to Mr Van Duinen's death, he broke down in front of her, telling her about his gambling and that he had spent deposits for contracted construction work on gambling. He again asked her to help pay the bills associated with his business. She ultimately paid his rent, staff wages and timber bills for his business (\$10,300.00) to open up his credit line [Complainant Exhibit E20] in the hope to thereby assist his work. During the following week, he attended the Club five times and lost \$7,300.00 [Complainant Exhibit E19]. In the Club Response the Club contends that whilst Complainant Exhibit E20 records Mrs Joy Van Duinen making a statement to that effect, this assertion is contradicted by her repeatedly telling inspectors that she "only became aware that Gary still had a problem once the media started asking questions". L&GNSW accepts the Club was not in fact aware of this alleged breakdown, if it occurred. Even if it is accepted that this alleged breakdown occurred, there is no



basis upon which the Authority could find that the Club ought to have been aware.

#### *Complainant Contentions On the Role of the Club Board*

104. As specified in paragraph 68 at the time of the relevant conduct, the Club's Governing Body (board of directors) comprised Messrs Peter Bell, Graeme Liddell, Graham Heiser, Mark Pitt, Peter St John, Len Robinson, Russell Parkes and Mark Rendell [Complainant Exhibits E27; E28; E29; E30; E31; E32; E33].

- As contended at paragraph 69, each Board member was interviewed, with the exception of Mr Len Robinson who was ill. The Authority makes the following findings on the matters arising from these interviews: On the contention that there was "little" engagement between the Club's senior executive and the Board with respect to *responsible gambling* and *gambling harm minimisation* [Complainant Exhibits E27- Q44-Q45, Q47; E28 – Q66-Q78, Q102-Q104; E29 - Q53-Q70; E30 - Q50-Q60; E31 - Q70-Q78; E32 – Q41-Q47, Q56-57; E33 - Q41-54] the Club refers to statements made in statutory declarations by Club directors to the effect that the Club subscribes to the highest available subscription of the "ClubSafe" program and the directors each receive and read the reports provided by that service [Club Exhibits C-06 – Statutory Declaration of Mr Liddell dated 3 October 2019 at [42]-[43]; C-07 – Statutory Declaration of Mr Rendell dated 3 October 2019 at [39]-[40]; C-08 – Statutory Declaration of Mr Pitt dated 3 October 2019 at [39]-[40]; C-09 – Statutory Declaration of Mr Heiser dated 3 October 2019 at [42(a)]; C-10 – Statutory Declaration of Mr Bell dated 3 October 2019 at [36]-[38]; C-11 – Statutory Declaration of Mr St John dated 3 October 2019 at [40(a)]]. The Authority accepts that this is the case but finds that the level of engagement between senior management and the Board was limited in this regard.
- On the contention that Club directors are silver members and do not have a great appreciation of the rewards and benefits associated with the Rewards Program [Complainant Exhibits E27- Q69-Q72, Q88-Q89; E28 - Q238-Q242; E29 - Q93-Q94; E30 - Q64-Q68; E31 - Q95-Q103; E32 - Q73-Q79; E33 - Q76-80], the Authority finds that this allegation is mostly correct, while accepting the Club's evidence that Messrs Pitt and Mr Rendell are Gold members although Mr Pitt has never redeemed any rewards and Mr Rendell only redeems loyalty points from time to time for a meal at the Club [Club Exhibits C-06 at [12]-[13]; C-07 at [12]; C-08 at [10]; C-09 at [10]; C-10 at [9]; C-11 at [10]].
- On the contention that the directors are not very familiar with the Club's literature including its brochures concerning the Rewards Program, the rewards on offer and the information regarding what is required to reach higher tiers of the Program [Complainant Exhibits E27 – Q66-86; E28 - Q178-Q198; E29 - Q112-Q122; E30 - Q63-Q80; E31 - Q88-Q112; E32 - Q73-Q94; E33 – Q75-Q101], the Authority has considered the directors declarations to the effect that directors may "readily acquire" any level of detail they require in relation to the program and this is a perfectly orthodox approach [Club Exhibits C-06 at [41]; C-07 at [16], [38]; C-08 at [16], [38]; C-09 at [18]; C-10 at [35]; C-11 at [17]]. Nevertheless, the exchange between directors and inspectors indicated limited awareness of the Program.

- On the contention that most directors are unaware of the Club’s off-site “high-roller” events, save for Club President Mr Liddell attending race days on 3 November 2015 and 13 February 2016 [Complainant Exhibits E27- Q122-Q135; E28 - Q315-Q330, Q354-Q364; E29 - Q226-Q230, Q242-243; E30 - Q115-Q121, Q132-Q134; E31- Q113-Q118, Q125-Q130, Q135-Q141; E32 - Q89-Q91, Q103-Q107, Q109-Q110; E33 - Q111-Q118], the Authority has considered the submission in the Club Response that this response was “unsurprising” due to the timing of these interviews and the lack of advance notice. The Club contends that the day-to-day planning, implementation and management of the Club’s events was the purview of the Club’s executive management. If the directors needed to know anything about the relevant events, they were and are able to consult the Club’s records and make enquiries with relevant Club staff. [Club Exhibits C-06 at [44], [46]-[47], [49(c)]; C-07 at [41], [43]-[44], [46(c)]; C-08 at [41], [43]-[44], [46(c)]; C-09 at [37], [39]-[40], [42(c)]; C-10 at [39], [41]-[42], [44(c)]; C-11 at [35], [37]-[38], [40(c)]]. Nevertheless, the Authority accepts that this contention is established.
- On the contention that the main reason why there is no longer any reserved parking for Platinum Plus and Diamond members is that the main car park is being redeveloped, with too few remaining spaces for this purpose [Complainant Exhibits E27- Q97-Q98; E28 - Q287-Q294; E29 - Q216-Q219; E30 - Q106-Q107; E31- Q42-Q48; E32 - Q158-Q163; E33 - Q33], the Authority has considered the response provided in the directors declarations, to the effect that this major redevelopment is causing a loss of a significant amount of parking [Club Exhibit C-06 at [32]; C-07 at [36]; C-08 at [28]; C-09 at [29], [36]; C-11 at [27]]. The contention is established.

105. Finally, the Authority accepts the Complainant’s information at paragraph 70 of the Complaint that a brief had been lodged with the NSW Coroner’s Court in relation to Mr Van Duinen’s death but the Coroner’s Court has since advised that the matter will not proceed to an inquest.

## **FINDINGS ON GROUNDS**

106. A disciplinary complaint is an administrative matter and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

### **Ground 1**

107. Ground 1 refers to section 129(3)(b) of the GMA and alleges that the Club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities on the premises of the Club.

108. Section 129(3)(b) of the GMA states:

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

...

(b) that the hotelier or club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the hotel or on the premises of the club concerned,

109. Section 127 of the GMA defines a reference to a licensee in part 8 of the GMA to include a club.
110. As submitted at paragraph 72 of the Complaint, a registered club is defined by section 4 of the GMA to mean a club that holds a club licence under Part 3, Division 3, sections 18-20 of the LA.
111. In response to this submission the Club argues that the Complainant has not identified the precise actions which it says were available to the Club and the Club was required to undertake to avoid contravening section 129(3)(b) of the GMA.
112. As submitted at paragraph 74, to “encourage”, is defined in the Cambridge dictionary to make someone more likely to do something, or to make something more likely to happen. It is defined in the Oxford dictionary as “to promote” or “to assist”. It also defines “misuse” as the wrong or improper use of something and “abuse” as using something to bad effect or for a bad purpose; to make excessive and habitual use of something.
113. On the question of “encouragement” the Club submits that the Complainant must show that the failure to take some identified action encouraged, or was likely to encourage, the misuse and abuse of gambling activities at the Club. The term “encourage” denotes some positive act of encouragement, rather than mere passivity, or absence of discouragement in the face of another’s activity. That has been held to be the meaning of the term “encourage a person” in a different but analogous legislative context, see: *Khammaneechan v Nanakhon Pty Ltd Atf Nanakhon Trading Trust t/as Banana Tree Café* [2011] FWA 651 at [21]. The legislature’s use of “encourage” rather than “allow” or “enable”, reflects a deliberate choice to require some degree of *active* encouragement in order to amount to a contravention.
114. The Club submits that as a matter of law, the Complainant must therefore establish more than the mere *absence of discouragement* of the misuse and abuse of gambling activities at the Club, but some conduct that gave, or was likely to give, some degree of active encouragement to the misuse and abuse.
115. At paragraph 75 the Complainant submits that whilst no definition is provided in the GMA as to “misuse and abuse” of gambling, some assistance may be derived from similar disciplinary complaint provisions found in section 139(3)(f) of the LA, which provides that conduct that is likely to encourage the misuse and abuse of liquor includes binge drinking or excessive consumption. At paragraph 76 the Complainant submits that applying a similar approach to the GMA, one may infer that a reference to misuse and abuse can include situations where the conduct of the Club has encouraged a player to engage in excessive gambling or binge gambling behaviour.
116. In the Club Response, the Club submits that the terms “misuse” and “abuse” are joined in section 129(3)(b) by the word “and”, and as such must be read as a composite expression. Use of the conjunction “and”, not “or”, is an integral part of the statutory expression. Giving the words their ordinary and natural meaning, “misuse and abuse”, for the purposes of section 129(3)(b) of the GMA, should be understood as meaning the “wrong or improper use to bad effect or bad purpose” of gambling activities.

117. The Club submits that the Authority cannot derive any assistance from the words in section 139(3)(f) of the LA. Section 129(3)(b) of the GMA and section 139(3)(f) of the LA are relevantly different in that:
- the LA uses of “misuse or abuse”, rather than “misuse and abuse”; and
  - the LA includes an explicit example in brackets which is clearly not used in the GMA.
118. The Club further submits that the omission of such an example from the GMA suggests a deliberate legislative choice *not* to include the example of “binge” activity within this concept in the GMA.
119. The Club further submits there is no evidence before the Authority of any correlation between the kinds of behaviour indicative of the “misuse or abuse” of *alcohol* (a physical intoxicant) and the kinds of behaviour indicative of the “misuse and abuse” of *gambling activities*. The Authority cannot and should not presume that a “misuse and abuse” of gambling is established solely by what, in another context, may be deemed “binge” activity.
120. The Authority notes the submission at paragraph 77 of the Complaint, that the Cambridge dictionary defines “binge” as “an occasion when an activity is done in an extreme way, especially eating, drinking, or spending money”. It is defined in the Oxford dictionary as “a spree; to indulge in uncontrolled eating, drinking etc”.
121. The Authority proceeds on the basis that binge gambling activity may not *necessarily* amount to the misuse and abuse of gambling if, for example, a person of some financial means is monitoring their expenditure. However, as discussed below, prolonged gambling sessions are a recognised factual indicium of problem gambling in the RCG Notes (Complainant Exhibit E26).
122. Whether a venue’s conduct encourages, or is likely to encourage, the *misuse and abuse* of gambling will vary according to the factual context. The Authority approaches section 129(3)(b) by reference to its understanding of the ordinary meaning of the words “misuse and abuse of gambling activities”. One of the objects of the GMA is to minimise harm associated with the misuse and abuse of gambling activities: section 3(1)(a). The Authority proceeds on the basis that “the misuse and abuse of gambling activities” includes engaging in gambling activities in a way that leads to the kind of harm that the GMA aims to minimise. The Authority did not find assistance in referring to the different statutory language and context of section 139(3)(f) of the LA.
123. The Authority accepts the submission at paragraph 78 that the gaming machine industry is tightly regulated, reflecting the level of social harm that can result from gaming-related activities. Gaming machines are used by venues across NSW to generate significant revenue.
124. The Authority accepts the contention at paragraph 78 of the Complaint that this Club derived **\$44,434,426.00** from gaming machine revenue (described as “poker machine revenue”) during the 2017-2018 financial year and this accounted for 66% of the Club’s total revenue [Dee Why RSL *Annual Report 2017-2018*, page 19 – accessed online].
125. The Authority further accepts the contention at paragraph 79 that this revenue can come at the expense of vulnerable individuals who struggle with problem gambling, and may result in financial turmoil, breakdown of family relationships, mental illness and in some extreme cases, self-harm. *Gambling Research Australia* acknowledges the broader impact of these consequences on the community in its definition of

problem gambling, being: “gambling is characterised by difficulties in limiting money and/or time spent on gambling, which leads to adverse consequences for the gambler, others and the community” [Complainant Exhibit E26 – page 58].

126. The Authority notes the Complainant’s discussion at paragraphs 80 to 85 of the Complaint regarding the statutory objects and considerations in section 3 of the GMA and those parties who are required to have due regard to the need to minimise gambling harm and foster responsible gambling practices. This includes industry participants, the Authority, the Minister and all other persons having functions under the Act – including Club staff working on the gaming floor, the Club Secretary and its board.
127. The Club submits in the Club Response that there is no ranking of those statutory objectives. Nor is there any express statement that certain objects are “primary” objects. In addition to the minimisation of harm associated with the misuse and abuse of gambling activities, and fostering of responsible conduct in relation to gambling, it is also an express object of the GMA to facilitate the “balanced development” of the gaming industry. That is reinforced by section 7 of the GMA, which expressly provides that the keeping or operating of an approved gaming machine on the premises of a club is lawful. The GMA takes as its premise that gambling using gaming machines is a lawful, albeit regulated activity. In the Complainant Reply, the Complainant draws the Authority’s attention to the full wording of section 3(1)(c) of the GMA which states “to facilitate the balanced development, in the public interest, of the gaming industry”.
128. The Club further submits that section 3(2) of the Act applies to “[t]he Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act...”. The obligation in question can only be construed as extending to “other persons” exercising statutory functions under the GMA, not *all* Club staff working on the gaming machine floor. The regulatory obligation for those staff is to undertake the relevant responsible conduct of gambling training as required under Part 3, Division 5 of the *Gambling Machines Regulation 2010* (NSW).
129. In the Complainant Reply, the Complainant submits that the minimisation of harm is not only an express object of the GMA under section 3(1)(a), it is also picked up in sections 3(2) and 3(3) of the GMA. Section 3(3) of the GMA feeds back into section 3(1)(c) so that, when considering the facilitation of the balanced development of the gaming industry, regard is to be had to gambling harm minimisation in assessing the public interest. The Complainant submits that it is clear from reading section 3 as a whole, the minimisation of harm is an object that assumes primacy under the GMA. The Complainant further submits that while section 3(2) of the GMA may not directly extend to all such patrons including Club staff working in the gaming room floor, it is the responsibility of those that do have functions under the GMA to ensure that staff are operating in accordance with systems that give due regard to gambling harm minimisation.
130. The Authority accepts that it must consider all statutory objects and considerations specified in section 3 of the GMA but it has the discretion to weight the objectives and considerations. In determining this Complaint the Authority has given weight to the object of minimising harm associated with the misuse and abuse of gambling in section 3(1)(a) and has had due regard to the need for gambling harm minimisation and fostering responsible conduct in relation to gambling pursuant to the statutory consideration in section 3(2). The Authority has also had regard to the need for

gambling harm minimisation when considering what is or is not in the public interest pursuant to section 3(3) of the Act.

131. While the Authority notes that Ground 1 does not specify a time period, paragraphs 17 and 18 of the Complaint indicate that Mr Van Duinen's problem gambling occurred between June 2016 and May 2018 and paragraph 39 of the Complaint indicates that the 4 VIP events are alleged to have occurred between November 2015 and June 2017.
132. Paragraphs 154 to 161 of the Complaint provide submissions on the statutory objects of the GMA, with an emphasis upon harm minimisation in relation to the misuse and abuse of gambling activities (section 3(1(a))) and to foster responsible conduct in relation to gambling (section 3(1)(b)). The Complainant submits that the Club and the Authority are required to have due regard to these matters and the Club has failed to do so.
133. The Complainant submits that the Club has a highly sophisticated rewards scheme, mirroring that of a casino and in circumstances when its customer experience is skewed toward gaming machine operations, the Club has not adequately applied its attention to harm minimisation controls. The Club has access to detailed information about the gambling conduct of its members, including Diamond class members like Mr Van Duinen, yet does not elect to use that information for harm minimisation purposes.
134. The Complainant submits that the additional VIP rewards provided to Mr Van Duinen above the Rewards Program provided encouragement to continue and increase his gambling. It was designed to encourage "high rollers" to feel special and spend more time on the Premises playing the Club's gaming machines. The Club failed to take action when approached by family members and its procedures for third party complaints were unstructured and discretionary.
135. The Complainant relies on the "collective" conduct of encouraging problem gambling behaviour and failing to act on complaints that amounts to conduct that has encouraged the misuse and abuse of gambling activities at the Club.

***Ground 1, Particular 1***

136. Particular 1 of Ground 1 is specified in paragraphs 86 to 97 of the Complaint, with the Complainant repeating and relying on the matters specified in paragraphs 1 to 85 in addition to the matters specified in Particulars 2 and 3 of Ground 1.
137. In Particular 1 the Complainant contends that the Club engaged in the offering of incentives and providing rewards beyond those forming part of the ordinary benefits and rewards of the Ambassador Rewards tiered loyalty program offered to members, encouraged or was likely to encourage Mr Van Duinen (and others) to misuse and abuse the gambling activities on the Premises.
138. As for the specifics of this Particular, the Authority accepts the contention in paragraph 88 that the Club had a practice of organising "ad hoc" events to which some (but not all) "Diamond" class members of the Rewards Program would be invited. Examples included a Sydney Harbour cruise on 7 June 2017; a Sydney Harbour cruise on 8 June 2016; a Melbourne Cup function at Royal Randwick racecourse on 3 November 2015 and a Royal Randwick race day on 13 February 2016 [Complainant Exhibits E21 – Q288, Q296; E24; E25; E03 – Q282, Q284, Q251, Q222-225, Q365; E04 – Q281-332, Q236, Q259-295, Q334-336].

139. The Authority further accepts the contention in paragraph 89 of the Complaint that the Club's practice of hosting these ad hoc off-site events for the "highest value" Diamond Members (described by the Complainant as "high rollers" rewards) is not publicised as part of the general Rewards Program. Awareness of the existence of this practice, let alone the specific events, is limited to a small group of Rewards Program members [Complainant Exhibit E03 – Q283, Q286, Q292; E04 – Q262-263, Q334-336; E21 – Q277, Q317, Q318].
140. As contended at paragraph 90, the Club Secretary and CEO Mr Easterby told Inspectors during his recorded interview that the off-site functions are approved as a line item in the Club budget each year by the governing body and form part of the Rewards Program under personalised hosting [Complainant Exhibit E21 – Q296-328].
141. As contended at paragraph 91, a review of the Diamond status information brochure says that personalised hosting is a benefit offered to Diamond status members. In that brochure, personalised hosting is said to include an executive host that will "acquaint you with the extensive range of dining offerings and entertainment options offered by the Club." [Complainant Exhibit E17]. The brochure's wording suggests benefits offered are connected with the Club's facilities or on Club grounds and that any such "acquainting etc" would be done on the Club Premises. No other part of the brochure makes reference to off-site events.
142. The Authority accepts the contention at paragraph 92 that these events conducted by the Club for top gaming patrons were exclusive, not publicised and designed to reward the higher level of Diamond patron, those patrons who far exceed the 30,000 status points required to become a Diamond status member [Complainant Exhibit E04 – Q332].
143. As contended at paragraph 93 of the Complaint, the Authority is satisfied, on the evidence and material provided about these rewards, that the high roller rewards fell into a "different category" than the rewards generally offered to participating members in that (i) eligibility depends solely on a member's gaming machine turnover and not other forms of spending at the Club (ii) the criteria for eligibility are neither fixed nor publicised in advance (iii) these rewards are not publicised to members generally (iv) offering of these rewards to members is based on the level of gaming turnover without regard to whether the gambling behaviour leading to that turnover was healthy or problematic, or is likely to legitimise and sanction the behaviour and may potentially undermine a member's ability to perceive the existence of a problem and (v) these rewards are "qualitatively different" to the "standard" rewards obtained through the program. At paragraph 94 the Complainant invites the Authority to conclude that the Club's practice of offering high-roller rewards can, on the balance of probabilities, be found to have encouraged, or was likely to have encouraged, use of the Club's gaming machines for problem gambling. Specifically:
- The high-roller rewards did in fact encourage Mr Van Duinen to use the Club's gaming machines for problem gambling.
  - There can be no real doubt that Mr Van Duinen had a gambling problem.
  - Mr Van Duinen displayed numerous objective indicators of problem gambling.
  - Mrs Van Duinen observed that Mr Van Duinen enjoyed being "treated like royalty by the Club".

- It is a reasonable inference in the circumstances that at least some part of that sense of being "treated like royalty" flowed from being invited to the special high-roller rewards events.
  - Mr Van Duinen was, at least in part, encouraged to use the Club's gaming machines in the way that he did, by reason of these high-roller rewards.
144. Even if *actual* encouragement of the misuse of gambling cannot be established on the basis of these matters, the high-roller rewards were *likely* to encourage the use of the gaming machines for problem gambling in that they provided a *significant* incentive to *gamble more and more* and were directed to the very category of person who might be perceived to be most at risk of developing a gambling problem.
145. At paragraph 94 the Complainant further contends that the uncertain and sporadic nature of the high roller rewards were likely to discourage the setting of limits or boundaries on gambling behaviour. The high quality of the rewards made them particularly attractive, and thus particularly likely to encourage very high levels of gaming machine use. To the extent that a gambler might otherwise be capable of perceiving the existence of a problem, these rewards served to sanction and legitimise the gambling. Overall, the nature of these rewards, and the circumstances in which they were awarded, were such as to create a real risk that the Club's gaming machines would be used for problem gambling.
146. At paragraph 95 the Complainant also contends that the only members invited to and apparently aware that this function existed were the top gaming patrons. This awareness creates the encouragement that if a member wants to be invited to future events held outside of the Rewards Program, they need to remain in the top list of gaming patrons. It was a free exclusive prestige benefit given to the "high-rollers". Rewarding "high-roller" activity is likely to encourage it. That approach is recorded in the Club's 2018/2019 business plan [Complainant Exhibit E18].
147. Moreover, that by his involvement in and awareness of exclusive events offered above and beyond the Rewards Program, Mr Van Duinen was encouraged, or likely to be encouraged, to misuse and abuse the gambling activities at the Club in order to maintain a level of spend, which would qualify him for additional benefits and a perceived lifestyle that was unsustainable and contributed to his misuse and abuse of gaming machines at the Club.
148. At paragraph 97, it is further contended that the Club's conduct in offering ad hoc rewards targeted at and available solely to very high turnover gamblers encouraged or was likely to encourage the misuse and abuse of the Club's gaming machines and that this conduct is contrary to the objects of the GMA.
149. The Authority notes the submission in the Club Response that the evidence does not establish that the conduct of the Club, in inviting certain members to the four relevant events in fact encouraged or was likely to encourage Mr Van Duinen or any other person to misuse and abuse gambling activities at the Club.
150. Briefly, the Club's key submissions in the Club Response are that:
- there is no evidence that any members or anyone outside the Club's management knew the basis on which invitees to these events were selected such that it was impossible for them to have encouraged gambling at all, much less encouraged abuse and misuse of gambling activities;



- there is no evidence that the future occurrence of any of the events was publicised or known to anyone outside the Club's management, such that it was again, impossible for them to have encouraged gambling at all, much less encouraged the abuse and misuse of gambling activities;
- the value of the invitation to each event was, in each case, less than \$300.00 per head, and there is no evidence that either the prospect of an invitation, or the fact of an invitation, had any effect or was likely to have any effect on encouraging people to gamble; and
- Mr Van Duinen himself attended only one of the four events, and there is no evidence that it had any effect or was likely to have any effect on his gambling.

151. The Complainant takes issue with the Club's submissions regarding the value of the events specified in the Complainant Reply - contending that members were invited to these events on the basis of their *presence on the Weekly 100 list* and the material value of these events is just one relevant matter. The Complainant disagrees with the Club's contention that in order for the likelihood of encouragement to be established (in the context of the offering of VIP events), there would need to be some demonstrated increase in the person's level of gambling. The Complainant submits that it is sufficient if the *offering* of events encouraged the person to *maintain an already problematic level of gambling*.

152. The Authority is satisfied that Ground 1 Particular 1 is established. The Club held four ad-hoc events for patrons who were high up in the Ambassador Rewards Scheme and who appeared from time to time on the Club's "Weekly 100" list [Complainant Exhibits E21 - Q269-303, Q316-320; E24; E25; E03 – Q163-169, Q222-255, Q282-287, Q365; E04 – Q236, Q259-263, Q281-332, Q334-336].

153. While the evidence does not establish that these events in fact encouraged the misuse and abuse of gambling activities, the Authority finds that this conduct was *likely* to encourage the misuse and abuse of gambling activities. This is because the ad hoc rewards were only targeted at gaming machine players maintaining the highest levels of gaming machine turnover during a relevant six-month period, and the individuals invited are made to feel special, exclusive or privileged because of their gambling activities [Complainant Exhibit E06]. The fact that the events were not widely publicised is also likely to have reinforced this sense of exclusivity [Complainant Exhibits E21 – Q277, Q317-318; E03 – Q283, Q286, Q292; E04 – Q262-263, Q334-336].

### **Ground 1, Particular 3**

154. Particular 3 of Ground 1 is specified in paragraphs 118 to 134 of the Complaint. The Complainant here repeats and relies upon the matters specified in paragraphs 1 to 85 in addition to the matters specified in Particulars 1 and 2 of Ground 1. It is convenient to deal with Particular 3 before Particular 2, because the Authority's findings on Particular 3 inform its findings on Particular 2.

155. In Particular 3 of Ground 1 the Complainant contends that the Club failed to take "any appropriate action" following approaches made by Mr Van Duinen's wife, Mrs Van Duinen on or about September 2017 and February 2018. This is said to constitute conduct that encouraged, or was likely to encourage, the misuse and abuse of gambling activities on the Club premises.

156. Paragraphs 119 and 120 of the Complaint describe the Club position that, pursuant to the ClubSAFE system, when a third party reports a member's problem gambling a gaming supervisor would advise them that only the gambler may self-exclude, but the third party would be given contact details for counselling services [Complainant Exhibits E05 – Q219-220; E03 – Q310-326; E21 – Q77]. Management would then informally perform a "check-in" with the gambler (asking them if they are OK, how they are going etc.) and a "welfare check" [Complainant Exhibits E21 – Q340-346; E03 – Q310].
157. At paragraphs 121 to 123 of the Complaint, the Complainant contends that:
- Mr Muirhead told inspectors that the third-party complaint would be reported by internal email to other managers [Complainant Exhibit E04 – Q411-16].
  - Mr Hodgkinson told inspectors that it was recorded into the daily managers' report [Complainant Exhibit E03 – Q315-321].
  - Both Messrs Easterby and Wright told inspectors that they were not aware of this procedure [Complainant Exhibits E21 – Q340; E05 – Q268-70].
  - Mr Muirhead told inspectors that there were no procedures or policies for third party complaints [Complainant Exhibit E04 – Q411-16, Q426-427]. (The Authority notes that Mr Muirhead told inspectors at questions 411-416 that there would be an "internal email" sent among gaming managers if a third-party complaint was made but does not ever recall receiving one from his colleagues).
  - Mr Easterby told inspectors that the third-party complaint made in relation to Mr Van Duinen was handled in a "textbook" manner, with a welfare check conducted with Mr Van Duinen, and a follow up with him [Complainant Exhibit E21 – Q89-90, Q96-98]. The Complainant submits that this is inconsistent with Mr Wright's evidence [Complainant Exhibit E05 – Q240-241] that there were no self-exclusion provisions and that nothing happened following Mrs Van Duinen's reports.
158. At paragraph 124 the Complainant contends that Mr Wright told inspectors that at the time of Mrs Van Duinen's second report (February 2018) he did not take her concerns seriously. Mr Wright advised that Mrs Van Duinen alleged that Mr Van Duinen had visited the Club every night in that past two weeks, but in his view her allegations were incorrect as Mr Wright had worked the night shift during that period and only recalled Mr Van Duinen attending once [Complainant Exhibit E05 – Q240-241]. Club records support Mr Wright's recollection of Mr Van Duinen's attendance, showing that during February 2018 Mr Van Duinen attended the Club twice, for an average of three hours per visit, and lost over \$2,500.00 [Complainant Exhibit E19].
159. At paragraph 125 the Complainant contends that there is no apparent recording of this third-party complaint having been made nor any "procedures" followed in relation to the earlier approach from Mrs Van Duinen in about September 2017.
160. At paragraph 126 the Complainant contends that in March 2018 Mr Van Duinen attended the Club six times and won on three occasions for a total of about \$9,000. In April and May 2018, Mr Van Duinen attended 22 times losing over \$34,000.00 [Complainant Exhibit E19].
161. It is submitted at paragraphs 127 and 128 of the Complaint that while the applicable regulatory regime does not enable a third party to give effect to the exclusion of

another person, that does not mean that a Club is justified in doing nothing in response to a third party notification. A fundamental difficulty is that the Club does not have a defined process for third party exclusion requests - or to the extent that there was a process, it involved managers and staff exercising significant “unstructured discretion”.

162. At paragraph 129, the Complainant refers to staff telling Inspectors that there was a lack of clarity around the Club's procedures for third party approaches [Complainant Exhibits E21 – Q340, Q342; E05 – Q268-270].
163. At paragraph 130 the Complainant submits that there was no clear procedure in place, and that any procedure that did exist involved significant discretion as to what should be done. As a result,
- there was no record made of the approach from Mrs Van Duinen in or about February 2018 or about September 2017;
  - there was no “welfare check” or other contact made with Mr Van Duinen following the February 2018 approach by Mrs Van Duinen;
  - the record of the conversation with Mr Van Duinen on 20 September 2017 does not make clear whether it was a “welfare check” following Mrs Van Duinen's approach or, if it was, whether it covered all topics that one would expect to be covered;
  - there is no evidence that other managers were made specifically aware of either the approach of Mrs Van Duinen, or her concerns.
164. The Complainant contends at paragraphs 131 and 132 that the discretionary nature of the Club's processes meant that Mr Wright effectively disregarded Mrs Van Duinen's concerns in February 2018 because of a view he formed about one aspect of her complaint (i.e., that Mr Van Duinen had not actually been present each night for the past week or two). The Complainant submits that it is beside the point that Mrs Van Duinen was wrong about the amount of time that Mr Van Duinen spent at the Club during those two previous weeks - she was plainly concerned about her husband's gambling, and any objective consideration of his record at the Club would have revealed those concerns could not be dismissed. Objectively, there was substance to her concerns.
165. According to paragraph 133 of the Complaint, there is no indication that the Club undertook its own assessment of Mr Van Duinen's gambling, including its records of his substantial losses when determining whether the Club was required to conduct a “welfare check” with Mr Van Duinen (and what level of detail was necessary for that welfare check to be effective).
166. The Complainant submits that overall the Club's conduct in failing to adequately deal with Mrs Van Duinen's approaches to staff encouraged, or was likely to encourage, the misuse and abuse of gambling activities on the Club Premises. This includes a failure to take *effective* action once the *serious possibility* of a gambling problem was raised, and this in turn is said to have permitted a state of affairs in which such misuse or abuse might occur, or was occurring, to continue. Such conduct is contrary to the objects of the GMA.
167. When making findings on this Particular, the Authority has taken into account the somewhat limited evidence of interactions between Mrs Van Duinen and Club staff and the Club's submissions at pages 32 to 41 of the Club Response. Without repeating

these submissions, the Club made the following submissions on its actions and the actions available to it:

- L&GNSW's RCG Notes [Complainant Exhibit E26] relevantly indicate that, if a third party exclusion request is received, staff: have a "moral obligation" not to ignore a third party exclusion request; should make the third party aware of professional counselling services – which Mr Wright did [Complainant Exhibit E06; Club Exhibit C-13 at [32]-[35]]; should make the third party aware of the venue's self-exclusion scheme – which Mr Wright did [Complainant Exhibit E06; Club Exhibit C-13 at [28]]; and advise the third party that self-exclusion can only commence when the problem gambler approaches the venue and agrees, in writing, to enter voluntarily into this scheme – which Mr Wright did [Complainant Exhibit E06; Club Exhibit C-13 at [28]].
- The only other step suggested is the procedural step of keeping a record of the request and response in case "problems arise later".
- No other steps were legally available to the Club in either September 2017, or February 2018, in response to a third-party exclusion request.
- The Club complies with the requirements in section 49(3) of the GMA and clause 45 of the GMR by subscribing to the Multi-Venue Self Exclusion Program (MVSE Program) operated by ClubsNSW.
- There is not currently, nor was there at any material time, any statutory analogue for third party exclusion requests. There has not at any time been any law in NSW empowering clubs to undertake non-voluntary third-party exclusions in relation to problem gambling. The utility of single venue third party exclusions must also be seriously doubtful. It is now clear from the Complaint that, although it was unknown to the Club at the time, the Club was not the only place that Mr Van Duinen liked to gamble.
- A Circular issued by ClubsNSW as at 4 September 2018 (Club Exhibit C-21) indicated that there are no laws empowering clubs to undertake non-voluntary third party exclusions in relation to problem gambling; the lack of legislation does not alone prohibit clubs from undertaking such exclusions; however, clubs require an express power to do so under their constitution (including provisions affording procedural fairness) and such single venue exclusions are likely of limited benefit given the likelihood the excluded member will simply frequent other venues in the vicinity; ClubsNSW has been advocating for legislated multi-venue third party exclusions since 2008 but does not recommend clubs changing their constitutions or seek to facilitate third party exclusions prior to any legislative protection.
- Noting the Club's constitution at the time, the Club did not at the relevant time have any power to suspend or expel a member solely by reason of any formal request made to the Club by a third party, much less an informal request made to the Club's staff. Indeed, it would have been a breach of the member's rights as a member to do so.
- At common law, a registered club owes no duty of care to its members to protect them from financial losses from gambling, even in circumstances where the club knows of the member's gambling problem and has been asked to stop cashing cheques: *Reynolds v Katoomba RSL All Services Club Ltd* (2001) 53 NSWLR 43

at 53 and 82; cited with approval in *Kakavas v Crown Melbourne Ltd* (2013) 250 CLR 392 at [24]-[26]. In *Reynolds*, the submission that the club in that case had a duty of care to advise the member to resign from the club, or to warn him whenever he appeared at the club and was gambling, was expressly rejected: (at 52, per Spigelman CJ).

168. The key submissions in the Club Response on third party exclusions are:

- Consistent with the lack of power available to the Club in response to a third-party request to exclude a member, the Club did not have any formal policy in relation to such requests. It cannot be seriously suggested that the absence of a policy about a matter that the Club had no power to undertake was conduct that encouraged, or was likely to encourage, the misuse and abuse of gambling activities.
- All relevant staff were trained in RCG and were thereby made aware of L&GNSW's suggestion that staff respond to a third-party exclusion request by raising self-exclusion and counselling. That is what Mr Wright did with Mrs Van Duinen. It cannot otherwise be suggested that the Club ought to have issued a formal policy merely reflecting the RCG training that its staff were required to complete and had completed.
- Rather, it was left to the Club's staff to ascertain how best to respond to a particular third-party exclusion request in the particular circumstances of any individual complaint. That was necessarily so, given the lack of availability of any direct action that could be taken by the Club. An element of discretion was necessarily required by the Club's staff in order to, for example, procure the subject of the exclusion request to themselves volunteer for participation in the MVSE Program.
- That policy has indeed succeeded in procuring participation in the MVSE Program by certain of the Club's patrons.
- Third party exclusion requests are complex.
- The Complainant's reference to inconsistencies in the evidence as to the Club's procedures in relation to third party exclusion requests are ill founded.

169. On Mrs Van Duinen's approach in September 2017, the Club submits that there is little direct evidence of the details of her conversation with Mr Wright in September 2017, including what was said or the nature of the conversation. That is because L&GNSW did not seek, let alone obtain, any evidence from Mrs Van Duinen about these matters.

170. The Club submits that the evidence rises to the level of Mr Muirhead's recollection that Mr Wright told him of Mrs Van Duinen raising concerns about the amount of time her husband was spending in the gaming area [Club Exhibit C-12 – at [33]].

171. The Club submits that its response to this conversation was entirely appropriate. Mr Muirhead expressly asked Mr Van Duinen whether everything was okay with his gambling and Mr Van Duinen said he was fine. Viewed within its "proper context" at the time and without the benefit of hindsight, Mr Muirhead's approach to Mr Van Duinen was both reasonable and justifiable.

172. On Mrs Van Duinen's February 2018 approach to staff, the Club makes the following submissions:

- The February 2018 approach needs to be understood in its context [Club Exhibit C-13 – at [14]-[40]] – that is Mrs Van Duinen had a history at the Club in regard to her drinking and Mr Wright was personally aware of that; Mrs Van Duinen did not directly approach Mr Wright, but rather called out to him as he was walking through the smoking area of the gaming room; at the time Mrs Van Duinen was seated at a gaming machine, smoking and holding a drink in her hand; during that conversation, she repeatedly emphasised that Mr Van Duinen had been at the Club every night for the past two weeks - a matter that Mr Wright knew to be untrue; Mr Wright expressly raised with her the two available options of facilitating a self-exclusion and arranging counselling; Mrs Van Duinen expressed no interest in either of these options, indicating her view that Mr Van Duinen would not agree to self-exclusion or counselling and Mrs Van Duinen never followed this matter up again in any way.
- Mr Wright indicates, consistently with all other Club staff, that the approach to be taken in relation to a conversation such as this would depend on the particular circumstances, including particularly the likelihood of facilitating a self-exclusion by the member in question. That is entirely consistent with the guidance given in L&GNSW's own RCG Notes [Complainant Exhibit E26 – page 78].
- Mr Wright did not make a formal record of his conversation with Mrs Van Duinen. It is unclear from the evidence whether or not he otherwise informally raised the conversation with any other Club staff member.
- Mr Wright's actions were both reasonable and justifiable. L&GNSW does not identify any further steps that Mr Wright should have undertaken.
- The only action at any stage identified by L&GNSW as appropriate in relation to a third-party exclusion request (although not directly in relation to the February 2018 conversation) is to record such a request in an incident log. The Club submits that it is unclear whether, or if so how, L&GNSW seriously contends that Mr Wright's failure to make a formal written record of his conversation with Mrs Van Duinen encouraged, or was likely to encourage, the misuse and abuse of gambling activities.
- L&GNSW's allegation that Mr Wright's actions were insufficient is contradicted by its RCG Notes (Complainant Exhibit E26) – which in substance suggest that a staff member should raise the possibility of self-exclusion and counselling in response to a third-party exclusion request. That is to say, Mr Wright took all of the substantive steps in response to his conversation with Mrs Van Duinen that L&GNSW itself advised ought to have been taken in its own student notes.
- The only step not taken by Mr Wright was a procedural one - keeping a written record of the approach. L&GNSW itself acknowledges that there is no legal requirement for gambling providers to implement incident logs at all.
- There is nothing improper in leaving to the discretion of trained staff members how to respond to a conversation in the nature of the one between Mr Wright and Mrs Van Duinen in February 2018. In exercising that discretion, Mr Wright determined that no specific action was required beyond maintaining his usual general conversations with Mr Van Duinen [Club Exhibit C-13 – at [39]-[40], [46]].
- The Complainant incorrectly asserts that Mr Wright disregarded the totality of his conversation with Mrs Van Duinen because he was aware that Mr Van Duinen

had not, contrary to what Mrs Van Duinen had told him, been at the Club every night for the past two weeks. There is no evidence at all that Mr Wright disregarded the conversation. The Complainant seeks, with the benefit of hindsight, to analyse and elevate a passing conversation to a significance which it could not reasonably have had at the time.

- There is no other proper basis for criticising Mr Wright’s response to his conversation with Mrs Van Duinen. He complied with the recommendations of L&GNSW. Mr Wright gives the following reasons for not squarely raising with Mr Van Duinen his particular conversation with Mrs Van Duinen: Mrs Van Duinen had indicated that her husband would not agree to self-exclusion, and had refused offers to put either her or Mr Van Duinen in contact with counselling; Mr Wright understood that he could not simply exclude Mr Van Duinen from the Club because Mrs Van Duinen wanted that; Mr Wright understood that Mrs Van Duinen’s primary concern was the *amount of time* that her husband was spending at the Club, rather than a “financial” concern regarding his gambling (which was reasonable understanding based off the conversation); Mr Wright knew that Mr Van Duinen had, contrary to Mrs Van Duinen’s belief, only been at the Club a couple of times in the preceding two weeks, rather than every night; Mr Wright inferred that Mr Van Duinen may be using the Club as an “alibi” for time spent elsewhere, and did not consider it appropriate to raise that topic (being a private matter) with Mr Van Duinen, one of his customers and Mr Wright had otherwise never observed anything unusual or out of the ordinary about Mr Van Duinen’s gaming or behaviour in the gaming area, other than that Mr Van Duinen spent quite some time in the gaming area [Club Exhibit C-13 – at [40].
- Mr Wright had at least one, and likely more, subsequent conversations with Mr Van Duinen in accordance with his usual practice in which he enquired as to Mr Van Duinen’s welfare and was told that “everything is fine” [Club Exhibit C-13 – at [39].
- Mr Wright was not under any duty to take any further actions in response to his conversation with Mrs Van Duinen in February 2018. Indeed, the Complainant cannot even identify any such sensible actions that were available to Mr Wright, let alone that he was required to take. There has therefore been no conduct that has in the requisite sense encouraged, or that was likely to encourage, the misuse and abuse of gambling activities at the Club.

173. In the Complainant Reply, the Complainant submits that it arguably was within the Club’s power to exclude a member who was engaging in problematic gambling behaviour under the general category of “conduct prejudicial to the interests of the Club” given its statutory obligations. In any event, it was at least open to the Club at all material times to take measures that increase its ability to address problem gambling, including through the revision of its constitutional powers.

174. The Authority is not satisfied with Club’s submissions on the adequacy of its response to Mrs Van Duinen’s complaints, in circumstances when the Club had detailed data available to it on the nature and extent of Mr Van Duinen’s gaming machine use. The Authority does not accept that the Club was incapable of analysing that information when, for example, it was readily able to put that information to use to establish Mr Van Duinen’s membership status, or when selecting him among “Top 100” gaming machine players or when engaging with him for the provision of special benefits.

Furthermore, the Authority does not accept that the Club's failure to keep a written record of Mrs Van Duinen's complaints should be dismissed as a "procedural" failure, given the importance of ensuring that other staff are aware of any concerns with his gambling.

175. Nevertheless, the Authority is not persuaded that the impugned conduct identified in this Particular, when viewed in isolation, *actually* encouraged, or was likely to encourage the misuse and abuse of gambling activities.
176. However, as is clear from the Authority's findings on Ground 1 Particular 2 below the Authority considers that the facts specified in support of this Particular are relevant to discerning whether Particular 2 of Ground 1 is established.

**Ground 1, Particular 2**

177. Particular 2 of Ground 1 is specified in paragraphs 98 to 117 of the Complaint. The Complainant here repeats and relies upon the matters specified in paragraphs 1 to 85 in addition to the matters specified in Particulars 1 and 3 of Ground 1.
178. In Particular 2 the Complainant contends that the Club failed to recognise or identify, or failed to take any appropriate action in response to, Mr Van Duinen's problem gambling activities and this constituted conduct by the Club that encouraged, or was likely to encourage, the misuse and abuse of gambling activities on the Club premises.
179. The Authority accepts the contention at paragraph 99 of the Complaint that the Department's RCG Notes (Complainant Exhibit E26) identify the following overt problem gambling indicators:
- Betting \$2.50 or more per spin;
  - Rushing from one machine to another;
  - Gambling continuously;
  - Spending more than \$300 in one session of gambling;
  - Avoids contact, communicates very little with anyone else;
  - Stays on to gamble while friends leave the venue;
  - Gets cash out on two or more occasions to gamble using an ATM.
180. The Authority further accepts the contention at paragraph 100 that on or about 30-31 May 2018, Mr Van Duinen turned over **\$15,000** in his last six hours at the Club averaging \$4.25 per spin [Complainant Exhibit E14]. Only breaking to smoke, he was recorded on CCTV remaining at the Club for **four hours after his companions left the venue** [Complainant Exhibit E11], playing a total of **68** machines [Complainant Exhibit E12], withdrawing money on **four separate occasions** from the ATM [Complainant Exhibit E07] and **losing \$4,700** [Complainant Exhibit E14]. During that evening, Mr Van Duinen displayed each of the indicators specified at paragraph 99 of the Complaint.
181. The Authority further accepts the following contentions and submissions at paragraphs 101 to 117 of the Complaint in support of the proposition that the extent of Mr Van Duinen's *misuse and abuse* of gambling on the Premises was, or should have been, evident from a pattern of Mr Duinen's conduct that spanned approximately two years from around July 2016 to around May 2018:



- From July 2016 to May 2018, Mr Van Duinen (following his two wins in June 2016) lost almost \$230,000 at the Club, visiting the Club 160 times, spending 852 hours turning over about \$3.4 million on gaming machines. On average Mr Van Duinen attended the Club twice per week, 5.3 hours each visit, losing an average of \$1,069.95 per visit [Complainant Exhibit E19].
- From June 2017 to September 2017, Mr Van Duinen attended two gambling counselling sessions [Complainant Exhibit E20] while still attending the Club 22 times losing \$27,134.19 [Complainant Exhibit E14]. The Authority considers that the Club was not aware of Mr Van Duinen's attendance at these meetings.
- From the beginning of October 2017, (after the first approach of Mrs Van Duinen to club staff), to the end of February 2018 (which was about the time of the second approach), Mr Van Duinen attended the Club on 23 occasions, losing \$43,665.00 [Complainant Exhibit E14].
- At the time of the September 2017 approach by Mrs Van Duinan (and indeed for the February 2018 approach), and in-line with the Club's internal third-party approach practice, all gaming managers, supervisors and executives should have been aware of Mr Van Duinen's potential gambling problem [Complainant Exhibit E04 – Q410-14]. However this did not happen.
- At about the same time (September 2017) the gaming manager's report for the night of 20 September 2017 indicates that the Club Gaming Manager, Customer Service, Mr Muirhead discussed with Mr Van Duinen his relationship issues and strength of current work/income yet not his apparent gambling issues [Complainant Exhibit E23]. The record of the conversation in the gaming manager's report does not contain any indication that the topic of Mr Van Duinen's gambling was raised.
- The document records that he was "finding continual work," [Complainant Exhibit E23] but does not note any discussion of whether that work was sufficiently remunerative to cover his losses. Indeed, it records that "despite the amount of work" [Complainant Exhibit E23] there was "increasing friction" [Complainant Exhibit E23] between Mr Van Duinen and his wife. The clear implication, therefore, is that the amount of work was not sufficient to overcome whatever the source of conflict was in Mr Van Duinen's marriage. And if the source of that conflict was gambling losses, then there was a strong implication that he was not earning enough at work to cover those losses. The Authority notes paragraphs 27 to 29 and 30 of the Club Response where it is contended that after Mr Muirhead was told of Mr Wright's September 2017 conversation with Mrs Van Duinen, Mr Muirhead had a conversation with Mr Van Duinen in which he expressly asked Mr Van Duinen "Are you ok with your gaming?"; to which Mr Van Duinen responded by smiling and saying "Yeah, I'm fine" [Club Exhibit C-12 at [35]-[37]]. Mr Muirhead did not make a formal record of that conversation [Club Exhibit C-12 at [38]] but on 20 September 2017, Mr Muirhead recorded a separate conversation with Mr Van Duinen in his daily shift report [Club Exhibit C-12 at [39]-[41]]. Nevertheless, the Authority finds that the record at E23 does not disclose any real probing of Mr Van Duinen's capacity to sustain his gambling, notwithstanding the Club was on notice of "friction" at home.

- Following the first approach by Mrs Van Duinen, in September 2017, Mr Van Duinen from 1 October 2017 to 31 May 2018 attended the Club on 51 occasions, losing approximately \$68,310 [Complainant Exhibit E14].
- There is no indication that any employee of the Club noticed or if they did, took any action as a result of any of the physical features of Mr Van Duinen's gambling on 30 and 31 May 2018 that would have been physically and objectively observable to employees of the Club, and which would have been consistent with the indicators of problem gambling as set out in NSW Government issued guidelines (the RCG Notes) [Complainant Exhibit E26].
- Although there is not equivalently detailed evidence in relation to earlier visits to the Club by Mr Van Duinen, it is inherently unlikely that he had not demonstrated at least some of those behaviours previously. It is also clear that Mr Van Duinen would regularly lose more than \$300 in a session (indeed he would regularly lose much more than that), and that he would spend more than three hours in a session playing the Club's gaming machines (and he would regularly play for much longer). The Authority accepts this inference.
- The Club had access to detailed information about the amount of money that Mr Van Duinen was losing on their gaming machines over an extended period of time. The sums of money being lost were such that no reasonable Club could have failed to consider the real likelihood that problem gambling was occurring. That is to say, while it could be possible that Mr Van Duinen could have afforded to lose so much money, and that his use of gaming machines might not be problematic - common sense and reality would dictate the likelihood that there was a potential issue of problem gambling clearly raised, and it required investigation. Special attention should be paid to the existence of overt indicators of problem gambling as identified above. The Authority accepts these submissions.
- The *amount and frequency* of Mr Van Duinen's gambling losses was recorded in reports associated with the Rewards Program as well as player activity statements. All gambling activity of the Club's Diamond members, especially their very highest turnover players, was regularly reviewed by the Club. In his record of interview, Mr Hodgkinson, the Executive Manager Gaming & IT gave the following information:
  - There was a gaming analyst employed at the Club [Complainant Exhibit E03 – Q37-38].
  - Players data is analysed with players' data reviewed weekly by the Customer Insights – Business Insights team [Complainant Exhibit E03 – Q158-161].
  - This review was also required to be done pursuant to the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth). During that analysis, members are categorized into tiers [Complainant Exhibit E03 – Q161-164].
  - Members of tiers are expected to spend a certain amount of money gambling.
  - A list of the top one hundred (100) players is compiled weekly. It is called the top hundred player list [Complainant Exhibit E03 – Q164, Q167].

- Mr Hodgkinson said if you get to the top of that list “you may get invited to these functions [the off-site functions]” [Complainant Exhibit E03 – Q169].
  - A reasonable Club ought to have used the systems they had in place to identify when members were losing money in the amounts and at the frequency of Mr Van Duinen. The Authority accepts this submission, having regard to all of the statutory objects in the GMA, but giving weight to the harm minimisation objects and considerations.
  - It can be concluded that the Club was aware of the size and frequency of Mr Van Duinen's losses, it ought to have recognised that there existed the serious potential for him to have a gambling problem. Once that potential was appreciated, then the Club should have taken steps to determine as best it could whether he did in fact have a problem. This did not occur. The Authority accepts this submission.
  - It follows that the Club's conduct in failing to recognise or identify that Mr Van Duinen may have had a gambling problem, or, to the extent that it did recognise that, failing to take appropriate action and further investigate and act, meant that the Club encouraged, or was likely to encourage, the misuse and abuse of gambling activities on its Premises. The Authority accepts this submission.
182. The Authority notes that in the Club Response, the Club submits that allegations that it failed to take “any appropriate action” in relation to Mr Van Duinen or in response to the two approaches made to staff by Mrs Duinen, are “misconceived” in that:
- The Club did not have, nor was required to have, available to it in real time the vast majority of the information relied upon by the Complainant as evidencing the detail of Mr Van Duinen's gambling activities (this information is the result of a painstaking and labour intensive hindsight analysis);
  - The Complainant has not demonstrated that the Club knew, or that it could have known and ought to have known, that Mr Van Duinen's gambling was a problem for him, and if it were the case (and it has not been established that he was) that he was gambling beyond his means;
  - The Club had no right to involuntarily exclude Mr Van Duinen from the Club, as he was engaging in a lawful activity and had all the rights of a member of a company limited by guarantee and a member of a registered club;
  - The Club's staff, in taking steps to respond to the “rather casual” request by Mrs Van Duinen to exclude Mr Van Duinen, followed the prescriptions of L&GNSW's own RCG Notes (Complainant Exhibit E26);
  - The criticisms of Mr Wright's handing of Mrs Van Duinen's casual request to exclude him are unjustified;
  - The only substantive act which L&GNSW alleges that the Club ought to have, but did not, undertake is to have spoken to Mr Van Duinen about his welfare. The Club in fact did so repeatedly;
  - The Club did not otherwise have any legal avenues open to it by which it could have otherwise intervened in Mr Van Duinen's activities at the Club without the consent of Mr Van Duinen (which Mrs Van Duinen had squarely told the Club would not be given).

183. In the Complainant Reply, the Complainant reiterates its submission that the Club *did* collect individual player data and that data was used, at least, to generate the “weekly 100” report. What was presumably the same data was later used to calculate the probability of deriving revenue, from the retention of persons identified as “gaming enthusiasts” in the 2018/2019 report. Yet this data was not used for any purpose directed towards gambling harm minimisation.
184. Ground 1 Particular 2 is established. The Authority is satisfied that it is possible to “encourage the misuse and abuse of gambling activities” by a course of conduct that involves both *acts* and *omissions*. In the present case, the relevant course of conduct occurred in the context of the Club making available its gaming machines to its members and operating the Rewards Program described above, in which Mr Van Duinen enjoyed the status and special treatment of being a Diamond member. In that context, the course of conduct that was likely to encourage misuse and abuse of gambling activity involved:
- (i) Inviting Mr Van Duinen to an ad-hoc VIP event [Complainant Exhibit E24].
  - (ii) Having regular conversations with Mr Van Duinen which might be regarded as contributing to him feeling special or privileged, while engaging in limited interventions that might have helped him identify or control problem gambling for himself [Complainant Exhibits E04 – Q435-440, Q447-448; E23; E06; Club Exhibit C-12 - at [21] - [22]; Club Exhibit C-13 - at [39]].
  - (iii) On the evidence of Mr Muirhead, only checking in with Mr Van Duinen once about his gambling, and failing to record this conversation in any incident log [Club Exhibit C-12 at [35] –[38].
  - (iv) Mr Wright having regular brief conversations with Mr Van Duinen, but giving no evidence that he raised the volume of Mr Van Duinen’s gambling with him expressly [Complainant Exhibit E05 Q296-298, Q322-323; Club Exhibit C-13 – at [39]-[40]].
  - (v) Not identifying that Mr Van Duinen was displaying signs of problem gambling [Complainant Exhibits E26 pages 59 to 61; E06; E19; E14; E06; E07; E23; E03 – Q38, Q158-164, Q166-167, Q169].
  - (vi) Failing to take any of the following steps after Mrs Van Duinen made her second approach to the Club in February 2018 [Complainant Exhibits E06; E05 – Q240-241; Club Exhibit C-13 – at [37]-[40]]:
    - Making a note in the incident log, which would have ensured that all staff were alive to the possibility of Mr Van Duinen being a problem gambler, and might have led to staff being more vigilant at later times, including on 30-31 May 2018;
    - Providing Mrs Van Duinen with the contact details of counselling services. The Authority is mindful that Mrs Van Duinen was offered these details and declined them and is also mindful that there was signage in the gaming room including those contact details. However, the RCG Notes at pp84-85 (Complainant Exhibit E26) advise that contact details should be actually provided, not just offered, noting that problem gamblers may not act on information immediately but may decide they want to approach counselling services later;

- Providing Mr Van Duinen with the contact details of counselling services, for the same reason;
- Drawing Mr Van Duinen's attention to the volume of his gambling expressly;
- Excluding Mr Van Duinen from the rewards benefits of the Ambassador Rewards Scheme, for example by saying to Mr Van Duinen and others that if they are assessed as having a certain number of indicators of problem gambling, then the reward entitlements will be withheld or limited.

185. In response to these matters, the Club submits in the Club Response that:

- The Club did not have an ability to access real time data and was not under any obligation to collect or analyse such data.
- The figures and data presented with the Complaint are instead the result of hours of painstaking and targeted work, focused solely on Mr Van Duinen following his death. The Club could not feasibly have undertaken that work in real time, in relation to all of its members, nor in relation to any logical subset of its members, such as its Diamond tier members.
- Whether or not Mr Van Duinen's losses of \$181,891.28 during a two-year period were "large", or beyond his means, would be entirely dependent on Mr Van Duinen's personal financial circumstances.
- The sole evidence supporting the contention that Mr Van Duinen's financial position was "diminishing" is the evidence given by Mrs Joy Van Duinen. Mrs Joy Van Duinen herself conceded that she was not sure about Mr Van Duinen's earnings.
- There is no way that the Club could reasonably have known about Mr Van Duinen's financial circumstances. It had no power to demand such information from him, or any other member.
- There is otherwise an air of unreality in the suggestion that the Club should have further singled out Mr Van Duinen for special attention.
- Ms Erana Fenton, a Club employee and personal friend of Mr Van Duinen who engaged on a social basis regularly with Mr Van Duinen and Mrs Sonia Van Duinen (and therefore was much better placed than the Club's staff to know something of the details of their personal lives) was never aware of anything out of the ordinary with respect to Mr Van Duinen's gambling activity.
- The Complainant applies nothing more than hindsight to criticise the Club's actions based solely on the events that subsequently unfolded, and which at the time of any conduct by the Club, were entirely unforeseeable.
- L&GNSW has been unable to point to a single action that it says that the Club could and should have taken with respect to Mr Van Duinen during the evening of 31 May. That is because no such actions were available to the Club on that evening. Mr Van Duinen was engaged in a lawful activity at the Club. He displayed no signs of intoxication, or any other anti-social behaviour, that would have warranted his exclusion from the Club. As a member who was not misbehaving, and who was engaging in a lawful activity, he had a right to be there.

- The bare assertion that the Club’s actions on that evening were insufficient amount to little more than an unfair criticism of the staff of the Club for not intervening in Mr Van Duinen’s evening in a manner that could only conceivably be justified with the full weight of hindsight, given his unfortunate death thereafter – an event which has not in any way been demonstrated to have been in any way causally related to anything that the Club did or did not do that night.
  - The problem gambling signs relied upon by L&GNSW reflect some of the less readily observable forms of behaviour, in that each of these forms of behaviour would require a degree of individual monitoring of Mr Van Duinen (amongst the hundreds of patrons in the gaming area on the particular night) in order for the Club to be able to detect these behaviours. That is in contrast to other forms of behaviour, such as the forms of behaviour listed under the heading “Emotional responses,” which are more overt in nature and which may have been more readily observable by the Club’s staff on the evening in question.
  - L&GNSW does not otherwise explain how it asserts the Club could or should have known of each of the potential indicators that it submits were displayed by Mr Van Duinen on the particular evening nor, more importantly, does L&GNSW identify any actions it alleges that the Club was required to have taken on the night in question in order to discharge its legal responsibilities. That is because there were no specific further actions that the Club could or should have taken on that particular night.
186. The Authority accepts the Complainant submission that there *were* sufficient indicators to warrant the Club paying special attention to Mr Van Duinen. Had the Club utilised the gaming machine data that it did use to formulate his Reward Program status and identify him for special treatment, it would have been reasonably open to the Club to identify concerns with his level of gambling, when prompted by the complaints made by Mrs Van Duinen. At 114 the Complainant submits that there is no information that anyone from the Club took any “serious steps” to investigate whether Mr Van Duinen had a gambling problem, and the closest they came was the conversation between Mr Muirhead and Mr Van Duinen on 20 September 2017 [Complainant Exhibit E23].
187. In response, the Club refers to the questions asked by Mr Muirhead on 20 September 2017 with Mr Van Duinen after Mr Muirhead was told of Mr Wright’s September 2017 conversation with Mrs Van Duinen.
188. The Authority accepts the Complainant’s submission. Club staff did not investigate to any great extent whether Mr Van Duinen had a gambling problem, aside from some limited enquiries made of him on 20 September 2017 and on a second unspecified date during September 2017.
189. While the Club’s amendment of its constitution is a welcome development, the Authority is not satisfied that its former constitution, or the requirement in section 10(1) of the RCA that a club member shall not be entitled to derive benefits or advantages that are not offered equally to every other full member, prevented the Club from requesting a problem gambler in Mr Van Duinen’s position from taking a break. There was a spectrum of further engagement that the Club might have explored, short of barring him from the gaming room, informed by the gambling data that it had, combined with the complaints that it had received from his wife.
190. The Authority is not persuaded, as contended at pages 2, 6, 7 and 25 in the Club Response and reiterated by the Club at the Conference, that the evidence establishes

that it was not practicable for the Club to analyse its data to identify its highest-volume gamblers, for the purpose of considering appropriate, targeted harm-minimisation interventions. The fact that the Club did not in fact have systems in place to analyse the data for this purpose does not demonstrate that it would be difficult to set up such a system, especially noting that the Club had the “Weekly 100” list which it used, among other purposes, to identify potential invitees to ad-hoc VIP events [Complainant Reply page 5; Complainant Exhibit E04 – Q335-336].

191. At paragraphs 111-113 the Complainant submits that it is not sufficient for the Club to submit that it could not reasonably “pick up” Mr Van Duinen’s problem gambling. The Complainant submits that it was important for the Club to use the information that it did possess about his gambling, to watch for signs that might have been missed. Specifically, the Complainant contends that:

- There were sufficient indicators known to the Club that would have required it to pay special attention to Mr Van Duinen and had such special attention been paid, then the warning signs are likely to have been noticed.
- Club employees should have paid attention to Mr Van Duinen’s conduct on 30 and 31 May 2018. There had been third party requests to exclude him.
- The data concerning his losses was concerning. He was a heavy gambler at the top level.
- Mr Van Duinen displayed overt problem gambling signs. It is submitted it is not sufficient for the Club to say that it would not be reasonable to pick them up absent a special focus on Mr Van Duinen. This serves to emphasise the importance of the Club using the information it did have, to watch for signs that might otherwise be missed.

192. Even accepting that some of the specific information may have been difficult for the Club to extract from its existing record-keeping system, the Club has not shown that systems for making such information readily available do not exist, or that they were not readily available to the Club. The fact that the Club did not have such data analysis systems in place may simply reflect that such data analysis was not a priority for the Club. The Authority does not make an affirmative adverse finding against the Club in this regard but rejects the Club’s apparent contention that such information could only be extracted and analysed through a painstaking and labour-intensive hindsight analysis.

193. The Authority finds that the Club’s course of conduct, taken as a whole, was likely to encourage the misuse and abuse of gambling activities by Mr Van Duinen.

#### **Ground 1, Particular 4**

194. Particular 4 of Ground 1 is specified in paragraphs 135 to 141 of the Complaint.

195. In Particular 4 of Ground 1 the Complainant contends that the Club’s Board of Directors, being ultimately responsible for the overall operation of the Club, failed to perform their directors’ duties to a satisfactory level, and in particular have the appropriate level of knowledge of gambling harm minimisation principles and responsible gambling practices to ensure that the Club was managed appropriately in light of these duties, principles and practices.

196. At paragraph 135 of the Complaint, the Complainant contends that the Club is a company limited by guarantee. The board members of the board are directors of this

company and the fact that the company operates as a club does not change the position. The directors still have responsibilities and obligations as imposed generally upon the directors of companies by the common law and statute, particularly the *Corporations Act (2001)* (Cth).

197. Furthermore, club directors have the responsibilities and obligations imposed by section 3 of the GMA when exercising functions under the GMA to “have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling”.
198. The Complainant further submits at paragraph 136 that the directors are officers of the Club and have an obligation to perform the duties of management of the business of the Club acting as a member of the board of directors [See section 198A(1) of the *Corporations Act 2001* (Cth)]. They embody the mind and will of the Club [*Tesco Supermarkets Ltd v Natrass* [1972] AC 153]. The directors sit in a corporate governance position. The board of a club is responsible to members for the overall governance and performance of the club.
199. At paragraph 137 the Complainant contends that, the directors must act in good faith in the best interests of the Club and its membership as a whole [For example, *Howard Smith Ltd v Ampol Exploration Ltd* [1974] 1 NSWLR 68]. There is also the duty to act with care, skill and diligence [For example, section 180 (1) of the *Corporations Act 2001* (Cth) and *Daniels v Anderson* (1995) 37 NSWLR 438]. These duties are also conditioned by the requirements of the section 3 objects of the GMA.
200. The Complainant submits at paragraph 138 that the Club’s board is responsible to members for the overall governance and performance of the Club. Its functions include:
  - Providing strategic direction to the Club by constructive engagement in the development, execution and modification of the Club’s strategy;
  - Appointing the Club manager and approving succession plans;
  - Monitoring the performance of the Club manager and approving senior management remuneration policies and practices;
  - Reporting to members and ensuring that all regulatory requirements are met;
  - Providing advice and counsel to management on a periodic and ad hoc basis, adding strategic value;
  - Ensuring appropriate compliance frameworks and controls are in place; Approving policies governing the operations of the Club;
  - Ensuring the Board’s effectiveness by operating as a team;
  - Monitoring financial results on an ongoing basis;
  - Ensuring the Club’s business is conducted ethically and transparently;
  - Overseeing strategic risk management.
201. The Complainant refers to the *Functions of the Board of Directors* as provided for in the ClubsNSW *Best Practice Guidelines* at page 38 in support of the above points, and further submits that the Club’s Director Charter (Board of Directors: Corporate Governance Document) [Complainant Exhibit E35 – Club Directors Charter – page 1] also sets out the role of the Club’s Board:



- The Board has responsibility to Club members for the conduct of affairs and activities of the Club. In carrying out its responsibilities, the Board undertakes to serve the interests of all Club members, employees, other stakeholders and the broader community.
  - Each Director of the Club will act in good faith in the best interests of the Club as a whole and collectively oversee and appraise the strategies, major policies, processes and performance of the company using care and diligence to ensure that the Club's long sustainability is assured.
202. Furthermore, the Complainant submits that the Club's Director's Charter [Complainant Exhibit E35 – pages 2-3] lists certain board responsibilities, which relevantly include:
- Selects and appoints the CEO and identifies an appropriate succession plan;
  - Determines the CEO's conditions of service, delegates responsibilities and monitors his/her performance against established objectives;
  - Approves significant changes of key policies;
  - Monitor compliance with legislative requirements and ethical standards and reporting back to members on these issues;
  - Appoints any such Committees of the Board as may be appropriate to assist in the discharge of its responsibilities, determines their responsibilities and approves a charter for each Committee;
  - Ensures that the Club conforms with the principles and practices of economic, social and environmental sustainability and best practice wherever possible;
  - Ensures that the Club's business is conducted ethically and transparently;
  - Oversee strategic risk management.
203. The Complainant submits at paragraph 141 of the Complaint that the Club's Board of Directors did not properly or adequately perform these above duties, obligations and responsibilities and their conduct was inadequate. The records of interview of directors are referred to at paragraphs 68 and 69 of the Complaint and show a lack of knowledge, care, rigour and diligence - a "rubber stamp" and "cruise control" approach with an un-supervised delegation to management.
204. The Complainant submits that this conduct caused or permitted or tolerated the situation as set out in particulars 1, 2 and 3. The situation was allowed and not corrected by inadequate management, and governance of the Club by the Board of Directors.
205. In reaching a finding on this Particular, the Authority has considered the Club's submissions in the Club Response submission regarding a lack of advance notice and precision in respect of allegations made against the directors. Briefly, the Club submits:
- None of the Club's directors were given any advance notice of their personal conduct being under investigation prior to the receipt of the Complaint or at the commencement of their compulsory interviews with L&GNSW.
  - The Complainant's submission at paragraph 141 of the Complaint is little more than a bare assertion that the directors have necessarily failed to discharge their

duties by reason of the Club's alleged contraventions. It is fundamentally incorrect.

- The corporate acts of the Club cannot, without more, be equated to acts of the individual directors of the Club. Directors' duties are not concerned with any general obligation owed by the directors of the Club at large to conduct the affairs of the Club in accordance with the law generally, see: *ASIC v Maxwell* [2006] NSWSC 1052 at [104].
- The Complaint does not otherwise identify at all any specific conduct of the directors that is relied upon by L&GNSW as the conduct which is alleged to have contravened section 129(3)(b) of the GMA.
- As best the Club can understand it from the language used in the Complaint, it appears that the principal duty which the Complainant alleges that each of the directors breached was their duty to act with care, skill and diligence at general law, and the corresponding duty arising under section 180(1) of the *Corporations Act 2001* (Cth).
- It is unclear what relevance the Complainant asserts that the duties owed by individual directors to the Club have to a disciplinary complaint made against the Club (and only the Club) pursuant to Part 8 of the GMA. The Authority does not have any jurisdiction under the GMA to rule on breaches of duties which directors owed, and continue to owe, to the Club and its members. Alleged breaches of such duties are justiciable by a court at the suit of the Club, its members, or other people expressly granted standing under the *Corporations Act 2001* (including Australian Securities and Investments Commission, the Commonwealth regulator).

206. After discussing the role of the Club's board and the scope of directors' duties, the Club submits that in the present circumstances, the directors were entitled to rely upon its "competent executive management" unless there was some particular cause for their suspicion or further enquiry, per *Morley v ASIC* [2010] NSWCA 331 at [34]-[35]. The Club submits that its internal governance documentation [Complainant Exhibit E35] is entirely consistent with the role of a club board.

207. The Club further submits that the duties imposed by the *Corporations Act 2001* (Cth) are not, as suggested in paragraph 137 of the Complaint, "conditioned" by section 3 of the GMA. First, the duties imposed by section 3 of the GMA apply only to persons exercising "formal" functions under the GMA. Second, the Club questions how a NSW State Act is legally capable of conditioning, limiting or affecting the scope or interpretation of provisions in the *Corporations Act 2001* (Cth), a Commonwealth Act.

208. The Club further submits, by reference to the statutory declarations provided by the directors at Club Exhibits C-06; C-07; C-08; C-09; C-10; C-11 that:

- The directors have performed their duties well beyond the minimum legal standard required of them.
- The board holds fortnightly meetings, each of which are attended by the Club's CEO and Chief Financial Officer (CFO). Each director is provided in advance with a detailed board pack, which each director considers in detail.

- Each director has an opportunity to, and does, raise any queries, comments or concerns they have arising from the board papers with executive management in advance of each board meeting.
- The board also attend approximately 5 days per year of offsite conferences, including one-day conferences in around March and September plus a three-day conference in around June. Each is attended by the CEO, CFO and each of the Club's six executive managers. The purpose is for the board to engage with its executive management to formulate, review and approve a detailed business plan for the upcoming financial year, and to track the Club's performance against that business plan.
- Prior to the three-day June conference each director receives a large folder running to hundreds of pages setting out a proposed business plan for the upcoming financial year. This plan is discussed with executive management during this conference, and at the end of this conference a board meeting is held to formally adopt the business plan for the relevant financial year.
- The Club does not accept the Complainant's contention that the directors, either individually or together, have exhibited a "lack of care, rigour and diligence", a "rubber stamp and cruise control approach", or an "un-supervised delegation to management". The directors devote significant time to overseeing the management of the Club. They work closely with executive management, both in regularly dealing with management in preparation for and during board meetings, and in developing and approving the Club's annual business plans. They perform their role entirely in accordance with the role described in the Club's Director Charter [Complainant Exhibit E35]. The criticisms levelled at the individual directors by L&GNSW are entirely unwarranted and unfair.

209. The Club submits that rather than focussing upon the actual corporate governance of the Club, the Complainant focuses upon a critique of the performance of each director during their interviews. The Club submits that such criticisms are ultimately "irrelevant" to the question of whether any of the directors' conduct, at relevant times, caused the Club to contravene section 129(3)(b) of the GMA by encouraging, or being likely to encourage, the misuse and abuse of gambling activities at the Club.

210. The Club argues that the questioning of its directors on gambling harm minimisation was "so vague as to be almost meaningless" and was done without notice. The Club contends that the directors were "struggling to understand" the precise nature of the questions put to them by Inspectors, and it is unsurprising that they were unable to uniformly provide a rote recital of all facets of the Club's gambling harm minimisation measures.

211. Furthermore, the Club submits that its day-to-day responsibility for gaming harm minimisation rests, quite appropriately, with executive management, with whom the board would make an inquiry in the event that any particular issue arose in relation to harm minimisation. There is nothing unorthodox about that position. The Club submits that certain specific criticisms of directors made by the Complainant are misleading.

212. Specifically, when Mr Peter Bell is initially asked about his "understandings of gambling harm minimisation", he discussed self-exclusion and the impending introduction of a new exclusion scheme within the Club [Complainant Exhibit E27 – Q44]. It was only when pressed to outline other strategies that Mr Bell gave the answer "I don't really know" [Complainant Exhibit E27 – Q45]. It was also immediately clarified

by Mr Boon, the Club's solicitor during the interview, that this comment concerned further strategies beyond exclusions [Complainant Exhibit E27 – Q45].

213. According to the Club, when Mr Graeme Liddell's answered "I don't know", in response to a repeated question on this issue (that he had indicated he did not understand) [Complainant Exhibit E28 – Q66-68] his answer was qualified by subsequent responses that included: "to ensure that management are conducting themselves as... legislated" and his mention of the Board receiving reports from executive management [Complainant Exhibit E28 – Q71-74].
214. With respect to the role of its directors and RCG, the Club contends that it employs highly trained and experienced professional staff, in whom the board places trust, to raise any issue that arises in relation to responsible gambling or harm minimisation within the Club as and when it arises. The Club otherwise subscribes to the highest available subscription to the ClubSAFE facility and each director receives and reads the reports generated by that service.
215. On the extent of the directors' knowledge of the Rewards Program, the Club submits that it is "unclear" why the Complainant considers that a director should have a "day to day" understanding of administration of this Program. The Club contends that its directors have "limited interaction" with the Program on a personal level, in that two directors have gold status while the others are silver members [the Club here refers to statutory declarations at Club Exhibits C-06; C-07; C-08; C-09; C-10; C-11].
216. Furthermore, since the Complainant has confirmed that it levels no criticism at the Rewards Program, it is unclear what relevance the directors' knowledge, or lack thereof, of the "internal mechanics" of the program has to establishing any contravention in relation to Particulars 1, 2 or 3 of Ground 1 of this Complaint.
217. On the question of the directors' knowledge of the four VIP events in question, the Club describes as "unsurprising" that, in interviews conducted between 16 and 40 months after the events, its directors were not, without advance notice, able to specifically recall any of the events in question. The Club submits that the day-to-day planning, implementation and management of events, including the relevant four VIP events, was the purview of executive management. If the directors needed to know anything about these events, they were and are able to consult the Club's records and make inquiries with relevant staff [the Club here refers to statutory declarations of the directors at Club Exhibits C-06; C-07; C-08; C-09; C-10; C-11].
218. On the issue of reserved parking, the Club submits that the Complainant has confirmed that it levels no criticism of the Rewards Program per se, so it is unclear what relevance this has to the Club's alleged contraventions in Particulars 1, 2 or 3 of Ground 1, or whether the directors have engaged in any conduct which encouraged, or was likely to encourage, the misuse and abuse of gambling activities.
219. The Club contends that its directors were "surprised" by many of the questions they were asked since they were unaware of any allegations as to their personal conduct as directors. Had they been given notice they would have reviewed relevant documentary material and prepared to answer such questions [the Club here refers to statutory declarations of the directors at Club Exhibits C-06; C-07; C-08; C-09; C-10; C-11].
220. In the Complainant Reply, the Complainant submits that no advance notice of its investigators' questions was required, that knowledge held by the Club's directors is an

indicator of the knowledge held by the Club and the Complainant's criticisms of the directors concern their duties with respect to gambling harm minimisation.

221. The Complainant contends that the Inspectors' questioning exposed a general lack of due consideration of gambling harm minimisation by the Club's directors, which is concerning in the context of a Club that generates 65.9% of its total revenue from gaming machine revenue during 2017-2018. Gambling harm minimisation is a matter that should be well within the contemplation of the directors given the nature of the club's activities and the GMA requires this. As to the relevance of their questioning to the Grounds of Complaint, Particulars 2 through 4 of Ground 1 concern alleged deficiencies in the Club's response to problem gambling. In considering each particular, regard may be had to the "overall context" of the Club's approach to problematic gambling, including the other particularised complaints. The particulars "contextualise" each other.

222. The Authority finds that this Particular is not established. The Complaint does not allege that the directors are not fit and proper persons and the Particular has not established what acts or omissions occurred at Board level that contributed to the Grounds specified in this Complaint.

Nevertheless, in making this finding the Authority has some concern about the adequacy of some board members' knowledge of the Club's harm-minimisation practices, as evident from their interviews with L&GNSW inspectors [Complainant Exhibits E27 - Q44-Q45, Q47; E28 - Q66-Q78, Q102-Q104; E29 - Q53-Q70; E30 - Q50-Q60; E31 - Q70-Q78; E32 - Q41-Q47, Q56-57; E33 - Q41-54]. The Authority does not accept that their questioning by inspectors was unfair or too general and stresses that the management of harm-minimisation from gambling activities should be a priority issue for all directors of companies operating gaming machines. This is particularly the case for a Club of this scale, sophistication, access to player information and economic reliance upon its gaming machine operations.

## **Ground 2**

223. Ground 2 refers to section 57F(3)(a) of the RCA and alleges that the requirements specified in section 10(1) of the RCA are not being met, or have not been met, by the Club.

224. Section 57F(3)(a) of the RCA states:

*(3) Disciplinary action may be taken by the Authority against a registered club or a person who is the secretary or a member of the governing body of a registered club on any one or more of the following grounds—*

*(a) that the requirements specified in section 10 (1) are not being met, or have not been met, by the club or the person,*

225. Relevantly, section 10(1)(i) of the RCA states:

*A member of the club, whether or not he or she is a member of the governing body, or of any committee, of the club, shall not be entitled, under the rules of the club or otherwise, to derive, directly or indirectly, any profit, benefit or advantage from the club that is not offered equally to every full member of the club.*

226. Ground 2 is set out at paragraphs 143 to 153 of the Complaint and relies on all the facts, matters and circumstances as particularised under Ground 1 Particular 1.

227. The Complainant's key contentions in support of Ground 2 are:

- While it may be concluded that offering a tiered rewards scheme does not *in itself* offend the requirement that a member shall not be entitled to a profit, benefit or advantage that is not offered equally to every member of the Club, the *targeted ad hoc high-roller rewards* are in a different category. That is not to suggest that if the high-roller rewards were offered equally to all members of the Club that they would be appropriate. For the reasons specified in Ground 1, the Complainant contends that the high quality and value of this type of reward is likely, in itself, to constitute an encouragement to misuse and abuse gaming machines.
  - The events conducted by the Club for top gaming patrons were exclusive and designed to reward the *higher-level diamond status patron* and it is the exclusive nature of these events that is likely to encourage the misuse and abuse of gambling activities.
  - The only members invited to and apparently aware that these functions even exist are the *top gaming patrons*. This awareness forms the possibility that if a member wants to be invited to future events held outside the Rewards Program, they need to *remain* among the top gaming patrons.
  - The criteria for being invited to a “high-roller event” appears to vary from event to event (sometimes it is the top 12, sometimes the top 16, sometimes the top 50, and so forth), and in a way that is entirely within the discretion of whichever manager is organising a particular event. Furthermore, the rewards are not publicised to members generally, so there is also no general awareness on the part of all members of the Club that they may be even potentially eligible for these rewards.
  - The offsite events were not included in the published list of benefits for members of the Rewards Program. Mr Hodkinson told inspectors that offsite events are not listed in the benefits in the brochure as the Club budgets for offsite events under the category of personalised hosting [Complainant Exhibit E03 – Q292-294]. However, Mr Hodkinson said it was for personalised hosting. Mr Easterby supported this approach [Complainant Exhibit E21 – Q308-311].
228. At paragraph 151 the Complainant describes the Club’s position as that these “high-roller rewards” are simply an aspect of the benefits conferred by “Diamond” status under the “personalised hosting” section of the Scheme. Therefore, the benefits conferred by these events were available to every member of the Club (as they all have the ability to become Diamond status members) and are thus permissible as part of the Club’s tiered loyalty scheme.
229. At paragraph 152 the Complainant submits that the Club’s position should not be accepted for the following reasons:
- First - the Club’s promotional material for Diamond status states that “personalised hosting” involves having an “Executive Host” assigned to the member who “will acquaint you with the extensive range of dining offerings and entertainment options offered by the Club”. In other words, it is a service designed to facilitate the member’s use of the Club’s generally available dining and entertainment options. There is no suggestion that the personalised hosting service involves dining and entertainment options that are not generally

available. Whereas these exclusive off-site events do involve dining and entertainment options that are not generally available.

- Second - it is apparent that the “high-roller rewards” are not, in fact, available to all Diamond members (and are, instead, only available to a changing number of the very highest turnover members). This fact reinforces that the high-roller rewards are not an incident of “Diamond” status: they are a discrete and separate set of rewards, not available to members generally. This is reinforced by the sporadic, selective and secretive nature of the events constituted as the high-roller rewards.
- Third - a review of the Diamond status information brochure identified that personalised hosting is a benefit offered exclusively to Diamond status members. In that brochure, personalised hosting is described to include an executive host who will “acquaint you with the extensive range of dining offerings and entertainment options offered by the Club”. Nowhere within that description, or anywhere else in the brochure does it say personalised hosting includes offsite events [Complainant Exhibit E17].

230. The Complainant submits at paragraph 153 that the offsite events provided by the Club identified as the “high-roller rewards” involves a contravention of section 10(1)(i) of the RCA. This is because they are clear examples of a club member/s deriving, directly or indirectly, any benefit from the club that is not offered equally to every full member of the club.
231. The Authority notes the Club’s key submission in the Club Response that in retrospect the Club’s position is that the manner in which members were selected to attend the four events was not compliant with section 10(1)(i) of the RCA, but those failures were isolated, and disciplinary action is not required under section 57F to remedy them but this is not linked in any way to the Club’s position in respect of Ground 1 of the Complaint.
232. The Authority finds that Ground 2 is established. The Authority is not persuaded that this is a minor matter. As explained in relation to Particular 1 of Ground 1, the Authority regards these ad-hoc events as being likely to encourage the misuse and abuse of gambling activities. The fact that this involved offering discriminatory benefits to members of the Club who appeared regularly on the “top 100” list, in a manner likely to increase their sense of having special status and privileged treatment, is itself a serious matter in the Authority’s assessment.

## **THE PROPOSED CONDITIONS**

233. In its Findings Letter the Authority briefly summarised its findings on the Particulars of the Complaint and gave notice that it was contemplating a range of disciplinary actions that may be available and appropriate in the Authority’s discretion, including a monetary penalty against the Club under section 57H(2)(a) of the Act.
234. The Authority also proposed that the parties consider four new licence conditions (being the Proposed Conditions) to provide new, enforceable requirements for the Club to observe. These included:
- Requiring the Club to engage an RCG qualified staff member with the primary responsibility of acting as an “RCG Marshal” to monitor the Club’s gaming operations at all times for any players displaying the problem gambling indicia described in the RCG Notes and request any such players to take a break from

gaming machine play for the rest of the day, or evening, as the case may be (RCG Marshal Condition).

- Requiring the Club to maintain an RCG Incident Register for every shift, to record any relevant interaction with gaming machine players and their response to the request to take a break from gaming machine play (RCG Register Condition).
- Requiring the Club to operate a third party/venue-initiated gaming machine player exclusion scheme (Third Party Exclusion Condition).
- Require the Club to not operate a rewards scheme that rewards gaming machine turnover that exceeds a threshold of \$6500 during any 6 months period, with statements indicating cumulative turnover and losses sent to all members by email each month (Rewards Scheme Condition).

### **COMPLAINANT SUBMISSIONS ON DISCIPLINARY ACTION**

235. In an eleven pages submission from Mr Dimitri Argeres, Acting Director of Compliance, DCS, dated 20 March 2020 the Complainant proposed that the Authority take the following disciplinary actions in response to the Findings Letter and the Proposed Conditions:
236. First, that the Authority impose a prescriptive version of the RCG Marshal Condition, preferring the description of a “Gambling Contact Officer” for consistency with certain industry pilot programs and requiring that the dedicated staff member *have at least five years’ experience* in gaming management or RCG Counselling. The Complainant also proposes to describe, with greater specificity, what the staff member is required to do each shift and does not support use of the expression “reasonable efforts” when describing the officer’s obligations.
237. Second, that the Authority impose a more prescriptive version of the RCG Register Condition which would specify seven categories of problem gambling indicia from the RCG Notes (Complainant Exhibit E26) that the staff member is required to monitor and record five categories of information about reportable matters, including what actions the Club Secretary or Executive Manager have taken, having reviewed this report on a daily basis. The Register should be a standing item at each monthly board meeting.
238. Third, that the Authority impose the Third-Party Exclusion Condition in the terms specified in the Findings Letter.
239. Fourth, that the Authority impose a broader version of the Rewards Scheme Condition that would require that *any* gaming machine player rewards scheme maintained by the Club *not be operated in connection with a tiered loyalty program*. The Complainant submits that the Authority’s proposal places an administrative burden upon the Club through the management of player activity statements and the allocation of reward points. The Complainant nevertheless acknowledges the potential for harm through encouraging problem gambling behaviour and encouraging players seeking higher status to gamble beyond their means.
240. Fifth, the Complainant refers to the number of this Club’s gaming machine entitlements (494), its gaming machine revenue (in excess of \$40 million per year) and its ranking as the 13<sup>th</sup> highest total gaming machine revenue (excluding the casino) and 36<sup>th</sup> highest average gaming machine “profit” (which in a regulatory sense refers to total turnover less payouts) of any licensed premises in the State.



241. The Complainant submits that on the basis of its findings the Authority should take meaningful disciplinary action, by way of specific and general deterrence, to ensure that this venue or others in the industry do not engage in the kind of conduct contrary to the GMA and RCA that has been established by this Complaint. The Complainant also submits that there are “circumstances of aggravation” within the meaning of section 131(5)(b) of the GMA which elevate the potential maximum penalty to 1000 penalty units (\$110,000.00) and the Authority should take the following action:
- Order a monetary penalty (the quantum not specified) under section 131(2)(b)(i) of the GMA for the Club’s conduct established in Ground 1.
  - Order a monetary penalty (the quantum not specified) under section 57H(2)(a) of the RCA for the Club’s conduct established in Ground 2.
  - Order that the Club’s licence be suspended (for an unspecified period) under section 57H(2)(b) of the RCA or section 131(2)(c)(ii) of the GMA.
  - Order that the Club pay the Secretary’s costs in the sum of \$124,535.06 on the investigation giving rise to the Complaint under section 57H(2)(i)(i) of the RCA or section 131(2)(i)(i) of the GMA.
  - Cancel, suspend or modify any authorisation to keep gaming machines held by the Club under section 131(2)(c)(iii). Specifically, that the Authority cancel 80 gaming machine entitlements held by the Club.
  - Impose pursuant to section 57H(2)(e) of the RCA, a condition on the Club’s licence “withdrawing” the reduced 3-hour gaming machine shutdown period enjoyed by the Club on weekends so that the standard 6 hours daily shut down period applies.

#### **CLUB SUBMISSIONS ON DISCIPLINARY ACTION**

242. On 18 May 2020 the Club made its final submissions on the question of disciplinary action. Without repeating all of these submissions, the Club makes the following response to the Findings Letter, the Authority’s Proposed Conditions and the Complainant Final Submissions.

243. On the question of a monetary penalty, the Club submits that:

- There is no basis for the Authority to find circumstances of aggravation, nor was this allegation specified in the initial Complaint, as required by section 131(5)(a).
- There is no basis to link the circumstances of Mr Van Duinen’s death to the contraventions of legislation found by the Authority on the Grounds of this Complaint.
- The Authority should proceed on the basis that the maximum penalty available under the RCA and GMA is 2,500 penalty units, or \$275,000.00 - which should only apply in the most serious case.
- The RCA and GMA have separate statutory purposes. Section 10(1)(i) of the RCA is designed to ensure equality among members, while section 129(3)(b) is designed to prevent conduct likely to encourage the misuse and abuse of gambling.
- The contravention of section 10(1)(i) of the RCA found by the Authority was the product of an honest but mistaken view by management that they could provide

such “personalised hosting” to Diamond members. The benefits provided were limited in value. The conduct was not engaged in by the Club for financial gain.

- The contravention of section 129(3)(b) of the GMA found by the Authority only concerns the four VIP events that were found likely to encourage, not actually encourage the misuse and abuse of gambling.
- Both contraventions established by this Complaint are “a long way from the most serious case”.
- The Authority should apply the “totality principle” when calculating the total monetary penalty.
- Having regard to the Authority’s penalty of \$100,000.00 that was issued against the Illawarra District Rugby League Football Club in 2018, this less serious case would attract a penalty “substantially lower” than \$100,000.00.

244. On the proposed suspension of the Club’s licence, the Club submits that:

- This action would be extraordinary, unprecedented and disproportionate, with no sufficient nexus to the matters found by the Authority on this Complaint to impose such a sanction.
- By comparison, the Authority’s cancellation of a club licence of the Paddington Bowling Club Ltd in 2016 occurred in the context of a lengthy list of contraventions by a club that was found to be not operating as a bona fide club, but more akin to a hotel.
- The Club estimates that closure of its Premises would cost \$2.34 million per month. The Club has 300 employees and provides substantial community benefits including \$2 million cash and in-kind benefits to local charities during the 2019 financial year.

245. On the Complainant’s request that the Club pay the Secretary’s costs on the investigation, the Club submits that on the extent of contraventions found by the Authority, it would be disproportionate and unwarranted to require the Club to pay the Secretary’s entire costs on this “wide ranging” investigation. The Club submits that it pay 50% of the costs.

246. On the Complainant’s proposal that the Authority cancel 80 gaming machine entitlements held by the Club, the Club submits that:

- The Authority does not have the power to reduce the Club’s entitlements or its gaming machine threshold.
- Gaming machine entitlements are a species of property, and neither the RCA nor GMA entitle the Authority to “appropriate” the Club’s property.
- If what is proposed by the Complainant is a reduction in the number of *authorised machines* that may be kept on the Premises under Part 5 of the GMA (and the Complainant has not specified this power in its submission) then there is no nexus between such a penalty and the contraventions found by the Authority.
- The offering of the four VIP events relates to gaming machines only by reason that members were selected from the Club’s “Top 100 list” which is derived by level of play. The conduct specified in Particular 2 concerns the gambling

activities of only Mr Van Duinen. To take action against the Club's wider authorised gaming machine operations would be to arbitrarily punish the Club.

- The estimated financial impact of reducing the Club's authorised gaming machines by 80 would be between \$1.13 and \$2.26 million per annum.
- To the extent that this proposal is based on a late contention by the Complainant that the Club has not demonstrated that it has sufficient harm minimisation measures in place to warrant continuation of the reduced shut down period, the Club was not called upon to address this allegation in the Complaint and it would be a denial of procedural fairness to now take disciplinary action on this basis.

247. On the Complainant's proposal that the Club's gaming machine shutdown period be modified through imposing a new licence condition under the RCA, the Club submits that:

- The Authority does not have the power to impose a licence condition in those terms.
- The Authority could revoke the reduced shut down period under section 40 of the GMA, but there is no such *disciplinary* power to impose such a condition under section 131 of the GMA.
- There is no nexus between the contravening conduct found by the Authority on this Complaint and this proposed disciplinary action. None of the alleged conduct regarding Mr Van Duinen is alleged to have occurred between the reduced shut down hours of 4:00 am to 6:00 am on the weekend or between 9:00 am and 10:00 am on the weekend, when the Club has the benefit of this period of additional gaming machine operation.
- Such an action would be an arbitrary punishment of the Club with no legitimate protective role.
- The cumulative financial impact of revoking the reduced gaming machine shut down period as proposed is estimated to cost the Club between \$4.26 and \$6.3 million per year.
- To the extent that this proposal is based on a late contention by the Complainant that the Club has not demonstrated sufficient harm minimisation measures in place to warrant continuation of the reduced shut down period, the Club was not called upon to address this allegation in this Complaint and it would be a denial of procedural fairness to take disciplinary action on this basis.

248. On the Authority's RCG Marshal Condition (and the Complainant's variation of them) the Club submits that:

- There is an insufficient nexus between the contravening conduct found by the Authority and the proposed RCG Condition.
- There is no evidence that Mr Van Duinen displayed the RCG Indicators or that if asked to take a break by staff he would have complied.
- There would be no utility in requiring the kind of approach proposed, as Mr Van Duinen would have gambled elsewhere.
- The proposed condition is onerous, requiring judgements to be made by staff and uncertainty as to how many of the published RCG Indicators must be

identified, whether they are all readily observable, whether there is a subjective or objective standard and how the reasonableness of the RCG Marshal's conduct is to be judged.

- The Club submits that to require a member to “take a break” from gaming machine play would contravene section 10(1)(i) of the Act by not treating members equally and expose the Club to legal liability from its members.
- The Club estimates the financial impact of requiring the appointment of an RCG Marshal to cover its operations would be \$480,000 per annum or \$535,000 if the Complainant's requirements regarding seniority are imposed.

249. On the Authority's RCG Register Condition (and the Complainant's proposed variation) the Club submits that:

- There is no sufficient nexus between the contravening conduct found by the Authority and the imposition of this condition.
- The closest conduct alleged in Particular 2 concerned Mr Wright's failure to make a note in the Club's existing incident register of his conversation with Mrs Van Duinen in February 2018.
- It would be unfairly onerous and prescriptive to impose this requirement on the Club's licence, particularly the level of reporting required in the Complainant's version.
- The Club repeats its submissions regarding the RCG Marshal Condition.

250. On the Authority's Third-Party Exclusion Condition the Club submits that:

- There is no nexus between the contravening conduct found by the Authority and the imposition of this condition.
- There would be “no utility” in the non-voluntary exclusion of Mr Van Duinen, even if it were lawful at the time, given evidence that he gambled at other venues.
- The Condition proposed by the Authority only requires the issue of a written request to the member, rather than their forcible exclusion.
- The Club already has a legal obligation to participate in a voluntary self-exclusion scheme.
- The Club has now amended its Constitution to enable a venue-initiated exclusion scheme, empowering the Club to exclude members by reason of its RCG policies.
- Any third-party exclusion from clubs is more appropriately implemented by way of wider legislative reform of the kind that has been officially foreshadowed by Government.
- It would be inappropriate for the Authority to use its disciplinary powers to cut across a broader legislative reform, which would be of limited value and only drive patrons to other venues.

251. On the Authority's Rewards Scheme Condition (and the Complainant's variation) the Club submits that:

- There is no nexus between the contravening conduct found by the Authority and this condition.

- The only part of the Particular 2 conduct that is of tangential relevance to this proposal is the finding that Mr Wright and the Club did not raise the level of Mr Van Duinen's gambling with him.
- The Rewards Program did not form any part of the Complaint, save for reference to what was and was not included in it. There is no proper basis to restrict the scope of this Program.
- The proposed gambling turnover threshold beyond which gaming machine players may not be incentivised has been arbitrarily fixed by the Authority.
- The Club advises all Club members may access a Player Activity Statements if they request it, but it would be "unnecessary and costly" to require the Club to send the proposed monthly statements to all 50,000 members.
- It is an offence against section 45 of the GMA to disclose player activity to a person other than whom the information concerns. The requirement to issue statements creates a risk of disclosure of personal and sensitive information.
- The Club estimates that implementation of the proposal would cost from \$50,000 to \$100,000.
- It is "possible" that imposing this requirement could cause a drop of 30% from the Club's gaming machine revenue.
- The Club would be placed at a commercial disadvantage to other clubs who do not have this obligation.
- The Complainant does not support the Authority's version of the condition.

## DECISION

252. When considering the question of what, if any disciplinary action should be taken on the basis of the Grounds established by this Complainant, the Authority has had regard to the statutory objects and considerations prescribed by section 3 of the GMA:

### *3 Objects of Act*

*(1) The objects of this Act are as follows—*

- (a) to minimise harm associated with the misuse and abuse of gambling activities,*
- (b) to foster responsible conduct in relation to gambling,*
- (c) to facilitate the balanced development, in the public interest, of the gaming industry,*
- (d) to ensure the integrity of the gaming industry,*
- (e) 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.*

*(2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this 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 this Act.*

*(3) In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.*

253. The circumstances of this case are tragic. However, the scope of Complaint and the supporting evidence constrains the extent to which remedial action may be taken by way of action on this Complaint. Disciplinary action must be reasonable and proportionate to the matters alleged and established.

254. The Authority's disciplinary jurisdiction provided by Part 8 of the GMA and Part 6A of the RCA is protective, rather than punitive in nature. As held by the New South Wales 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.*

255. 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.

256. 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.*

257. 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.*

258. 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).
259. The Authority has considered the final submissions from the Complainant and the Club and is satisfied that it is in the public interest, having regard to the statutory objects and considerations in section 3 of the GMA, to impose three new conditions upon the Club's licence, with effect from 14 August 2020.
260. First, given the scope of the Club's gaming machine holdings, its extended trading hours and professed difficulties during submissions as to its capacity to gather information about problem gambling among its many gaming machine users, the Authority considers it appropriate to impose a condition requiring a dedicated RCG Marshal on duty at all times that gaming machines are in operation. The staff member will be tasked with monitoring patrons with respect to a discrete subset of the recognised problem gambling indicia identified in the RCG Notes (Complainant Exhibit E26) and relevant third-party exclusion matters.
261. Responsible Service of Alcohol Marshals are a well-established harm minimisation requirement under New South Wales liquor legislation, and an RCG Marshal provides an appropriate harm minimisation measure, given the scope demonstrated by this

venue to accommodate numerous high gaming machine turnover gamblers on the Premises.

262. The Authority has decided, for ease of reference and certainty, to specify the problem gambling indicia within the text of this condition, rather than simply by reference to the RCG Notes (Complainant Exhibit E26), which are published elsewhere. Furthermore, the Authority has decided to only mandate the monitoring of a subset of more readily observable indicia specified in the RCG Notes (Complainant Exhibit E26), to reduce the scope for subjectivity and enhance the workability of this new requirement. The Authority is satisfied that the condition should refer to the Marshal making “reasonable” efforts, to avoid the condition being applied in a harsh or oppressive manner.
263. On balance, the Authority has not required the RCG Marshal to hold the level of seniority recommended by the Complainant. The Club should be trusted to engage persons with sufficient maturity and interpersonal skills to competently execute these functions, while having some flexibility to source suitable staff before the condition commences. There may be a range of existing hospitality or other staff with the skill set to interact with patrons and contemporaneously record any relevant matters arising during a shift. The Authority accepts that engaging staff with this primary (but not sole) function will come at some significant cost but is satisfied that this cost is proportionate for a Club of this scale, sophistication and gaming machine revenue.
264. Second, the Authority is also satisfied that a condition requiring an RCG Incident Register should be imposed upon the licence. The Authority accepts that the Club has a general incident register but considers that the Club ought to have a discrete system of recording any relevant information pertaining to problem gambling indicia and third-party exclusion, to support the intelligence gathered by the Club and increase the transparency of the Club’s problem gambling management.
265. In the interest of reducing the regulatory burden and directing the focus of this new initiative, the Authority has stopped short of prescribing the range of matters proposed by the Complainant. Greater specificity may be considered at some future time should recording practices prove inadequate. However, in light of the reliance placed by the Club’s directors upon managerial staff bringing any RCG related matters to its attention, the Authority considers it prudent to accept the Complainant recommendation that the RCG Incident Register become a standing item at each Club Board meeting
266. Third, the Authority has decided to impose a third-party exclusion condition upon the Club’s licence. The Authority is satisfied that this will provide a minimum assurance of response from the Club in circumstances when the Club is approached by persons with a direct interest in the welfare of a patron gambling on the Premises. Legislative requirements only require clubs and hotels with gaming machines to maintain a self-exclusion scheme. The Authority’s findings on this Complaint indicate some uncertainty among staff as to the Club’s processes in these circumstances.
267. While the Club amending its Constitution to facilitate third party or venue-initiated exclusion of members for problem gambling reasons is noted, some mandated minimum level of response is also in the public interest. This is a venue specific regulatory response, prompted by the facts and circumstances of this Complaint. The Complainant supports this proposed condition in the terms proposed by the Authority. The Authority does not accept the Club submission that it should await some broader legislative reform of the GMA in circumstances when it is not clear whether, or when,

such reform will be enacted. Were the Club's concern that this condition "cuts across" some legislative reform to materialise, it would be open to the Authority to consider varying or revoke the condition, for the sake of consistency, if appropriate.

268. The Authority accepts the Club submissions regarding the proposed condition restricting the Rewards Program. While the tiered rewards scheme formed part of the background facts and circumstances to Mr Van Duinen's gambling at the Club, the Complainant has not pursued a complaint against the Rewards Program per se, a point that was openly conceded by the Complainant during the Conference.
269. The Authority is not satisfied, by reason of the relatively narrow manner this Complaint has been framed, that the Club has been squarely placed on notice with any concerns as to whether a tiered Reward Program that encourages very high levels of gaming machine turnover is contrary to the public interest. It may be procedurally unfair for the Authority to take disciplinary action to restructure the Rewards Program on the basis of *this* Complaint.
270. Similarly, the Authority is not satisfied that the matters specified and established by this Complaint warrant the cancellation, suspension or modification of any authorisation to keep gaming machines under section 131(2)(c)(iii) GMA or to revoke the Club's gaming machine shut down period under section 40 of the GMA, on the basis of *this* Complaint. There is an insufficient nexus between the Grounds of this Complaint and those two proposed courses of disciplinary action.
271. As for the question of a monetary penalty the Authority accepts the Club's submissions that circumstances of aggravation were not specified in the initial Complaint and the Authority does not find that such circumstances are established.
272. The Authority finds that a more substantial penalty is warranted in respect of the established contravention of the GMA. Engaging in conduct that is likely to encourage the misuse and abuse of gambling activities is a most serious matter, contrary to the public interest in respect of the statutory objects in section 3(1)(a) and (b) and the statutory consideration in sections 3(2) and (3) of the GMA.
273. Contraventions of section 131(2)(b) of the GMA require a robust regulatory response by way of specific and general deterrence, given the considerable scope for harm to flow to the community from this type of conduct and to provide a sufficient economic disincentive to non-compliance, given the lure of maximising gaming machine revenue for either a commercial or community enterprise that is licensed to keep them.
274. Disciplinary action must pose a substantial deterrence to send a signal to others in the industry of the cost of non-compliance. Even though the non-compliance established by this Complaint took the form of four VIP events, the number of invitees, the commercial value of the tickets and the nature of the events (being horse racing/wagering events) were targeted at the Club's highest turnover gamblers. It was not inconceivable that such group may include a problem gambler like Mr Van Duinen.
275. A substantial monetary penalty is warranted in respect of this aspect of the Complaint and in the circumstance of this contravention of the GMA the Authority is satisfied that the Club should pay a monetary penalty of **\$80,000.00** to the Secretary on or before 14 August 2020.
276. The Club's unequal treatment of its members, through the offering of VIP events to an exclusive group of high roller gaming machine players, is conceded by the Club. The Authority considers this to be a significant matter warranting a moderate monetary



penalty by way of specific deterrence to this Club and general deterrence to others in the industry.

277. While the Authority accepts that relevant Club staff did not actually appreciate that they were breaching the RCA at the time, the Authority does not place significant weight on the Club's submission that the unequal treatment was the product of an error. The targeting of *high rollers* for these special events had the objective purpose of encouraging persons within this select group to maintain their gambling at the very high levels that saw them receive privileged and preferential treatment.
278. Registered clubs in New South Wales enjoy significant regulatory and tax benefits by reason of their status as community enterprises. The quid pro quo for that treatment is that they operate as bona fide community enterprises at all times.
279. Taking into account the limited number of events but the significant number of invitees and the significant commercial value of tickets to these VIP events, the Authority is satisfied that a monetary penalty of **\$20,000.00** should be paid by the Club to the Secretary on or before 14 August 2020.
280. Finally, the Authority is satisfied that it should order that the Club pay the bulk of the Secretary's costs on its investigation preceding this Complaint. There was a clear public interest in the pursuit of this investigation and the Complainant has been mostly successful in establishing the factual matters that it has alleged on the basis of the evidence and material obtained in support of the Complaint. In this respect, it is relevant to the Authority's assessment that, while Particular 3 of Ground 1 was not made out independently, the factual issues and findings raised in respect of that Particular were relevant to the Authority's conclusion that Particular 2 of Ground 1 was made out.
281. A substantial amount of investigation and analysis was required in the conduct of this investigation and there is nothing before the Authority to suggest that the heads of costs specified by the Complainant are unreasonable.
282. The public interest in respect of the regulation of the gaming machines and registered club industries calls for a responsive regulator that is capable of expending significant public resources on complex investigations where appropriate. The Authority is satisfied that it is in the public interest that the Club pay **80%** of the Secretary's costs on the investigation, being **\$99,628.05** on or before 14 August 2020.
283. The Authority has considered the totality of its disciplinary actions and is satisfied that they constitute an appropriate and proportionate regulatory response to this Complaint.

## **ORDERS**

284. The Authority considered this matter at its monthly board meeting of 17 June 2020 and has decided to take the following disciplinary action:
  - In respect of Ground 1 of the Complaint and pursuant to section 131(2)(b) of the GMA, the Club is ordered to pay a monetary penalty to the Secretary of the New South Wales Department of Customer Service in the amount of **\$80,000** by no later than **14 August 2020**.
  - In respect of Ground 2 of the Complaint and under section 57H(2)(a) of the RCA, the Club is ordered to pay a monetary penalty to the Secretary of the New South Wales Department of Customer Service in the amount of **\$20,000** by no later than **14 August 2020**.

- Pursuant to sections 131(2)(i)(i) of the GMA and 57H(2)(i)(i) of the RCA order the Club to pay the Secretary of the New South Wales Department of Customer Service the amount of **\$99,628.05**, being eighty per cent of the costs incurred by the Secretary in carrying out the investigation giving rise to this Complaint, by no later than **14 August 2020**.
- Pursuant to section 57H(2)(e) of the RCA, impose three new conditions on the Club's licence number LIQC300226883 that are specified in Schedule 1 below, commencing effect on **14 August 2020**.

### **Notice of Potential Further Action**

285. While noting the Complainant's concession, during the meeting, that the use of a tiered Rewards Program is *not* the subject of this Complaint, it is nevertheless apparent from the material before the Authority that a Club member's progression to the upper echelons of this scheme is contingent upon a member engaging in objectively high levels of gaming machine turnover and the maintenance of that expenditure each 6 months to retain their status and privileges.
286. On a prima facie assessment, there is considerable scope for a Club of this scale to accommodate problem and at-risk gaming machine gamblers who utilise the 494 machines that are licensed to operate for at least 132 hours per week (longer with public holidays).
287. Notwithstanding that this Complaint was framed in a manner that does not support taking *disciplinary* action to modify the Club's Rewards Program and gaming machine hours, the evidence and material before it combined with credible recent local research that post-dated this Complaint but is published on the Responsible Gambling NSW website (including the 2019 *New South Wales Gambling Survey Revised Report*, and 2019 *Report on Shutdown Periods for Electronic Gaming Machines*) moves the Authority to give notice that:

If, during the period 12 months from the date of this decision:

- (i) the Authority receives credible information that the Club has not complied with licence conditions imposed by the Authority in this decision, or
- (ii) the Authority receives credible information of further significant cases of problem or high-risk gambling on the Premises or
- (iii) the Club has not voluntarily reformed its Rewards Program so that it no longer rewards high turnover gaming machine play,

the Authority may consider taking the following further regulatory action, either of its own initiative or in the context of any further complaint, should one be made about such matters or related matters:

- Revoke, under section 42(3)(c) of the GMA, the Club's reduced gaming machine shut down period on weekends and public holidays so that the standard shut down period applies each day from 4:00 am to 10:00 am.
- Impose a new licence condition under section 53(1)(b) of the LA in the following terms:

*Any player reward scheme that the Club operates must not include or be operated in connection with a tiered loyalty program. A 'tiered loyalty program' includes a program that offers different, additional, or increasing benefits to members or*

*guests based on their gaming machine turnover, or the accumulation of bonus, reward or status points.*

## **REVIEW RIGHTS**

288. Pursuant to sections 131C of the GMA and 57L of the RCA, an application for review of the Authority's decision to take disciplinary action may be made to the NSW Civil and Administrative Tribunal (NCAT) by the registered club, the licensee, the 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.
289. 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

A handwritten signature in blue ink, appearing to read 'P. Crawford', enclosed in a thin black rectangular border.

Philip Crawford

**Chairperson**

for and on behalf of the **Independent Liquor & Gaming Authority**

**Schedule 1**  
**New Licence Conditions to commence from 14 August 2020**

**RCG Marshal**

- The Club shall ensure that one Responsible Conduct of Gambling (RCG) Marshal, being a dedicated staff member who holds a current RCG certificate, is on duty and monitoring each gaming machine area of the Club whenever gaming machines are operating.
- While RCG Marshals may undertake minor additional functions (such as cleaning machines) that do not detract from their monitoring role, they will be tasked with monitoring all gaming machine players for the following indicators of problem gambling (RCG Indicators):
  - Gambles every day of the week
  - Gambles for three hours or more without a break of 15 minutes or longer
  - Gambles so intensely that the person barely reacts to what was going on around them
  - Plays very fast (e.g. inserts large numbers of coins into the machine very rapidly,
  - presses the buttons very rapidly so that the spin rate is very fast)
  - Bets \$2.50 or more per spin most of the time
  - Gambles on 2 or more machines at once (where this is allowed by the venue)
  - Gambles continuously
  - Spends more than \$300 in one session of gambling
  - Stops gambling only when the venue is closing
  - Finds it difficult to stop gambling at closing time
  - Starts gambling when the venue is opening
  - Is rude or impolite to venue staff
  - Avoids contact, communicates very little with anyone else
  - Stays on to gamble while friends leave the venue
  - Become very angry if someone takes the person's favourite machine or spot
  - Borrows money from other people at venues
  - Asks for a loan or credit from the venue.
- The RCG Marshal shall make reasonable efforts to personally approach any gaming machine player (whether members, guests, visitors or staff) exhibiting RCG Indicators and request that the player to take a break from gaming machine play until the close of trade on that day or night as the case may be. For the avoidance of doubt, the player may remain on the premises and consume other goods and services.

**RCG Register**

- An RCG Register shall be maintained by the RCG Marshal on each shift recording the time, location and machine number(s) and brief description of any gaming machine player identified as exhibiting RCG Indicators with details of any request to take a break from gaming machine play and the player's response (including any further gaming machine play observed during that shift).
- The RCG Register shall also record any proposed or implemented self or third-party exclusions of gaming machine players (specifying the player's name, membership number and duration of any exclusion) and the patron's response to the same.
- All Club managers responsible for gaming machine operations shall review the Register on a weekly basis.
- The RCG Register shall be a standing item on the Club's monthly board meetings

**Third Party Gaming Machine Exclusion Scheme**

The Club shall operate a self-exclusion and third-party/venue-initiated exclusion scheme whereby a gaming machine player may be handed and sent a written request to not enter any gaming machines area of the Club for a period of 6 months.

## **Schedule 2**

### **Material Before the Authority**

1. Disciplinary complaint (Complaint) submitted to the Independent Liquor and Gaming Authority (Authority) by Mr Paul Newson (Complainant), then Deputy Secretary of Liquor, Gaming and Racing as delegate of the Secretary of the NSW Department of Industry (the responsible department now being the Department of Customer Service). The Complaint was made in relation to Dee Why RSL Club Limited (Club) with the Complaint material comprising a one page cover letter from the Complainant dated 27 May 2019, a 37 page complaint submission settled by Mr Nicholas Owens SC and 36 Complainant Exhibits labelled E01 to E36:
  - Exhibit E01: OneGov licence record for LIQC300226883.
  - Exhibit E02: Club Constitution.
  - Exhibit E03: Transcript of the record of interview between Liquor and Gaming NSW (L&GNSW) inspectors (Inspectors) and Mr Arran Hodgkinson dated 15 August 2018.
  - Exhibit E04: Transcript of the record of interview between Inspectors and Mr Brett Muirhead dated 2 August 2018.
  - Exhibit E05: Transcript of the record of interview between Inspectors and Mr Michael Wright dated 14 August 2018.
  - Exhibit E06: Email from Mrs Sonia Van Duinen (Mrs Van Duinen) dated 1 August 2018 responding to questions on notice from L&GNSW.
  - Exhibit E07: The Club's CCTV time log.
  - Exhibit E08: Manly Leagues Ebet Audit Trail 30 May 2018.
  - Exhibit E09: Manly Leagues Ebet Player Statement Summary.
  - Exhibit E10: Manly Leagues Till Receipts 30 May 2018.
  - Exhibit E11: File Note CCTV Review for the Club.
  - Exhibit E12: The Club's Ebet Audit Trail 30 May 2018 to 1 June 2018.
  - Exhibit E13: The Club's Summary of Mr Gary Van Duinen's Purchases and Receipts 30-31 May 2018.
  - Exhibit E14: Mr Van Duinen's daily gambling breakdown 1 June 2016 to 31 May 2018.
  - Exhibit E15: Email correspondence from Mr Grant Easterby.
  - Exhibit E16: *Ambassador Rewards, "Your Guide to Exclusive Benefits"* brochure.
  - Exhibit E17: *Ambassador Rewards, "Your Exclusive Diamond Benefits"* brochure.
  - Exhibit E18: 2018/2019 Club Business Plan.
  - Exhibit E19: Mr and Mrs Van Duinen's Gambling Summary by Month.
  - Exhibit E20: File note of L&GNSW's engagement with Mrs Joy Van Duinen (Mrs Joy Van Duinen) on 27 July 2018.
  - Exhibit E21: Transcript of the record of interview between Inspectors and Mr Grant Easterby dated 16 November 2018.
  - Exhibit E22: Extract from the ClubSAFE website depicting the inclusions of the premium program.
  - Exhibit E23: Report from Mr Brett Muirhead for 20 September 2017.
  - Exhibit E24: Off site cruise records.
  - Exhibit E25: Off site race records.
  - Exhibit E26: NSW Liquor and Gaming *2018 Responsible Conduct of Gambling Student Course Notes*.
  - Exhibit E27: Transcript of the record of interview between Inspectors and Mr Peter Bell dated 5 November 2018.
  - Exhibit E28: Transcript of the record of interview between Inspectors and Mr Graeme Liddell dated 5 November 2018.
  - Exhibit E29: Transcript of the record of interview between Inspectors and Mr Graham Heiser dated 5 November 2018.
  - Exhibit E30: Transcript of the record of interview between Inspectors and Mr Mark Pitt dated 7 November 2018.
  - Exhibit E31: Transcript of the record of interview between Inspectors and Mr Peter St John dated 7 November 2018.
  - Exhibit E32: Transcript of the record of interview between Inspectors and Mr Russell Parkes dated 12 November 2018.
  - Exhibit E33: Transcript of the record of interview between Inspectors and Mr Mark Rendell dated 12 November 2018.

- Exhibit E34: Mrs Joy Van Duinen’s additional response to questions from L&GNSW.
  - Exhibit E35: Club Directors Charter.
  - Exhibit E36: Media articles.
2. Show Cause Notice issued by the Authority on 3 July 2019.
  3. An eleven pages submission from Brett Boon of Thomson Geer, on behalf of the Club, dated 5 August 2019 seeking further and better particulars (Request for Particulars).
  4. A fifteen pages submission from the Complainant dated 26 August 2019 responding to the Request for Particulars (Response to Particulars). Annexure 1 to this submission contained the original enquiry lodged through the L&GNSW online portal on 29 June 2018 by Mr Josh Molle.
  5. A three pages submission from the Club dated 18 September 2019 making a second request for further and better particulars (Second Request for Particulars).
  6. A one-page submission from the Complainant dated 23 September 2019 responding to the Second Request for Particulars accompanied by three file notes dated 29 June 2018, 4 July 2018 and 11 July 2018 (Second Response to Particulars).
  7. The Club’s response to the merits of the Complaint (Club Response) comprising a one page cover letter, a two pages index of submissions, a three pages overview, a fifty three pages legal submission and some twenty two exhibits labelled “C-01” to “C-22”, with one Appendix:
    - Exhibit C-01: Request for Particulars.
    - Exhibit C-02: Response to Particulars.
    - Exhibit C-03: Second Request for Particulars.
    - Exhibit C-04: Second Response to Particulars.
    - Exhibit C-05: Statutory declaration of Mr Grant Easterby dated 14 October 2019 accompanied by:
      - GE01 – Reports produced by the Club including the door count and player count reports;
      - GE02 – Reports produced by the Club showing the dates visited by Mrs Van Duinen and by Mrs Joy Van Duinen (together with the points activity report and the E-bet player activity statement for each of them, on which the reports produced by the Club are based).
      - GE03 – A list of the steps one needs to perform to analyse the available data.
      - GE04 – Cash expenditure report together with an example of a cash transaction.
      - GE05 – A list of Mr Van Duinen’s position on the weekly 100 list for each week during the period 1 June 2016 and 31 May 2018.
    - Exhibit C-06: Statutory declaration of Mr Graeme Liddell dated 3 October 2019.
    - Exhibit C-07: Statutory declaration of Mr Mark Rendell dated 3 October 2019.
    - Exhibit C-08: Statutory declaration of Mr Mark Pitt dated 3 October 2019.
    - Exhibit C-09: Statutory declaration of Mr Graham Heiser dated 3 October 2019.
    - Exhibit C-10: Statutory declaration of Mr Peter Bell dated 3 October 2019.
    - Exhibit C-11: Statutory declaration of Mr Peter St John dated 3 October 2019.
    - Exhibit C-12: Statutory declaration of Mr Brett Muirhead dated 11 October 2019 accompanied by Mr Muirhead’s daily shift report for 10 March 2019.
    - Exhibit C-13: Statutory declaration of Mr Michael Wright dated 11 October 2019.
    - Exhibit C-14: Statutory declaration of Ms Erana Fenton dated 11 October 2019 accompanied by email correspondence recording Brett Boon’s questions and Ms Fenton’s responses on 9 May 2019.
    - Exhibit C-15: Current Constitution of the Club dated 18 November 2018.
    - Exhibit C-16: Minutes of the Club’s 74th Annual General Meeting dated 18 November 2018.
    - Exhibit C-17: Email chain between Mr Arran Hodkinson of the Club and Mr Brett Fowler of L&GNSW dated 16 February 2017.
    - Exhibit C-18: Club’s Anti-Money Laundering and Counter-Terrorism Financing program dated 2018.
    - Exhibit C-19: Summary of Mr Van Duinen’s position in weekly 100 lists.
    - Exhibit C-20: List of steps required to export and collate data to demonstrate individual member’s gaming losses.

- Exhibit C-21: ClubsNSW circular 18-074 dated 4 September 2018.
  - Exhibit C-22: Notice to Produce issued to the Club by L&GNSW and documents produced by the Club in response dated 13 July 2018.
  - Appendix 1 – Four-page submission dated 14 October 2019, addressing concerns with various media articles regarding Mr Van Duinen.
8. The Complainant's reply to the Club Response (Complainant Reply) comprising a one-page cover letter dated 28 October 2019 with a seven pages legal submission from junior counsel for the Complainant, Mr Sinclair Gray.
  9. Recording of the conference with all relevant parties dated 6 November 2019.
  10. A two pages submission from the Club dated 7 November 2019 identifying matters raised during the Conference that do not form part of the Complaint.
  11. A one-page submission from the Complainant dated 8 November 2019 in relation to the ATM cash withdrawals for members.
  12. A two-pages submission from the Club dated 11 November 2019 in reply.
  13. Letter from the Authority dated 21 February 2020 advising the Authority's proposed findings on the grounds of Complaint (Findings Letter) and inviting written submissions on the question of what, if any disciplinary action is appropriate in light of those findings. The Findings Letter was accompanied by proposed new licence conditions.
  14. Letter from the Authority dated 9 March 2020 confirming that its Findings Letter represented the Authority's position on the grounds of Complaint accompanied by the Authority's proposed new licence conditions.
  15. A two-pages submission from the Club dated 17 March 2020 seeking clarification on two questions arising from the Findings Letter.
  16. Email from the Authority Reviews and Secretariat Unit dated 19 March 2020 responding to the Club's questions.
  17. Final legal submission of the Complainant comprising an eight pages legal submission dated 20 March 2020, the Complainant's counter proposal on the imposition of new licence conditions and a concise breakdown of the heads of costs incurred by the Secretary on the investigation giving rise to the Complaint (Complainant Final Submission).
  18. The Club's final submission on the Complaint comprising a one-page cover letter dated 18 May 2020, a one page index, thirty four pages of legal submissions, a schedule summarising recent decisions of the Authority in relation to contraventions by other clubs and eight additional Club Exhibits labelled "C-23" to "C-30":
    - Exhibit C-23: Expert report of Mr Gregory Alexander Russell of Russell Corporate Advisory dated 5 May 2020 accompanied by:
      - Annexure 1: The Authority's proposed new conditions dated 9 March 2020.
      - Annexure 2: Complainant Final Submission.
      - Annexure 3: Club's financial information.
      - Annexure 4: Calculation of licence suspension losses.
      - Annexure 5: Summary of licence suspension losses.
      - Annexure 6: Calculation of gaming machine entitlement cancellation losses.
      - Annexure 7: Electronic gaming machine occupancy data.
      - Annexure 8: Calculation of increased shutdown losses.
      - Annexure 9: Electronic gaming machine hourly turnover data.
      - Annexure 10: Curriculum Vitae of Mr Gregory Alexander Russell dated April 2020.
    - Exhibit C-24: Statutory declaration of Mr Grant Easterby dated 18 May 2020.
    - Exhibit C-25: Minutes of meeting of the Club's board held 10 March 2020.
    - Exhibit C-26: Club's 2019 Annual Report dated September 2019.
    - Exhibit C-27: Letter from Liquor Administration Board to Club dated 22 December 2000.

- Exhibit C-28: Schottler Consulting report entitled “The harm minimisation impact of third-party exclusion schemes and possible future directions for NSW” dated 20 March 2017.
- Exhibit C-29: Memorandum of Understanding between NSW Government and ClubsNSW dated 13 October 2018.
- Exhibit C-30: Notices to produce issued by L&GNSW to the Club dated 29 June 2018 to 11 April 2019.

19. Additional material sourced by staff which included:

- Indicators of problem gambling from the *Responsible Conduct of Gambling Student Course Notes* February 2018.
- The draft *Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020*.
- The draft *Gaming Machines Amendment (Gambling Harm Minimisation) Regulation 2020*.
- OneGov licence record for LIQC300226883 as at 26 June 2020.