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Dear Sir/Madam

**Complaint in relation to Manly-Warringah Rugby League Club Limited  
under Part 6A of the *Registered Clubs Act 1976***

**INTRODUCTION**

1. I refer to a letter of complaint (Complaint) made to the Independent Liquor and Gaming Authority (Authority) on 27 February 2014 by Mr Anthony Keon (Complainant), Director, Compliance and Enforcement Division, Office of Liquor, Gaming and Racing (OLGR) in his capacity as delegate of the Secretary (Secretary) of the (then) NSW Trade and Investment, now Justice NSW.
2. The Complaint concerns the registered club known as the "Manly-Warringah Rugby League Club", liquor licence number LIQC300228452, which is located at 563 Pittwater Road, Brookvale (the Club).
3. The Club has been in operation since 1957 as a social and sporting club assisting in the promotion, conduct and propagation of rugby league football in the Manly-Warringah district.
4. An extract of the Club's liquor licence accompanied the Complaint, from the licensing database now known as *OneGov*. It discloses that as of 27 August 2012 (being the last date of any significant change to the licence prior to the making of the Complaint) the Club has an unrestricted licence enabling it to potentially sell or supply liquor for consumption on the Premises, 24 hours a day. [The Authority notes that the Club's licence pre-dates the operation of the mandatory 6-hour daily closure period provided by section 11A of the Act.]

5. As a consequence of recent legislative changes with regard to the sale of packaged liquor in NSW, the Club may sell or supply liquor for consumption off the Premises from 5:00am to 10:00pm on Monday through Saturday and 10:00am to 10:00pm on a Sunday.
6. The licence also indicates that the Club has a gaming machine threshold (the maximum number of machines that may be kept on the Premises) of 200, and that the Club actually holds 200 gaming machine entitlements - that is, it is operating machines to the limit of its threshold. The licence notes that those machines may operate subject to a mandatory gaming machine shutdown period that is fixed between 3:00am and 9:00am on Monday through Friday and between 6:00am and 9:00am on Saturday, Sunday and public holidays.
7. Notwithstanding its potential 24-hour licensed trading hours, the Club's website indicates that the *actual* hours traded by the Club are from 9:30am to 1:00am on Mondays and Tuesdays; 9:30am to 2:00am on Wednesdays and Thursdays, 9:30am to 4:00am on Fridays and Saturdays and 9:30am to 11:00pm on Sundays.

## THE COMPLAINT

8. The Complaint is made under part 6A of the *Registered Clubs Act* 1976 (Act) in relation to the Club. While all complaints under Part 6A are made in relation to the Club itself, it also concerns two former members of the Club's Governing Body, Mr Robert Reilly and Mr Peter Spray (collectively referred to as the Former Officers).
9. The Complaint comprises a 7-page cover letter (Complaint Letter) agitating six grounds of Complaint (Grounds), all of which are statutory grounds provided by section 57F(3) of the Act that may potentially be relied upon in a Part 6A complaint. The Complainant specifies numerous particulars (Particulars) - usually allegations of fact made in support of each Ground.
10. The Complaint Letter is accompanied by a Brief of Evidence comprising approximately 1,300 pages of submissions, evidence, and other material upon which the Complainant relies (Brief of Evidence).
11. The Brief of Evidence material has been prepared by OLGR staff and consists mainly:
  - a) statements of evidence from OLGR Inspectors
  - b) records of interview between OLGR Inspectors and members of the Club's Governing Body
  - c) correspondence between OLGR, the Club and the Respondents
  - d) copies of Club Board meeting minutes, Club credit card statements and reward points histories, QANTAS Frequent Flyer reward points histories
  - e) cheques presented to the Club
  - f) other miscellaneous documents gathered during the course of the OLGR investigation.
12. The Complaint Letter states, by way of background, that Mr Robert Reilly was a member of the Club's Governing Body from 2007 and was the Chairman of the Club from 2008 until his resignation from the Governing Body on 26 June 2012. Mr Reilly resigned his membership of the Club on 20 August 2012.
13. The Complaint letter also states, by way of background, that Mr Peter Spray had been employed at the Club since 1994. [The Authority notes that Mr Spray refers in his submissions to 25 October 1993 as being the date that he commenced employment at the Club. The Authority accepts Mr Spray's date for the purposes of this decision.]

14. The Complainant states that Mr Spray held the position of General Manager, later re-titled Chief Executive Officer (CEO) and Club Secretary from 29 July 2004 until his resignation from the Club on 17 January 2013. [The Authority notes that Mr Spray refers in his submissions to *4 February 2013* as the date of his resignation. The Authority accepts Mr Spray's date for the purposes of this decision.]

## **GROUND OF COMPLAINT**

15. The full text of the six Grounds of the Complaint specified in the Complaint Letter are set out below, along with references to the evidence or other material relied upon by the Complainant in support of each Ground.

### **Ground 1**

16. This Ground alleges as follows:

*Section 57F(3)(a) - The club has failed to meet the requirements of s.10 of the Act.*

*Between June 2009 and March 2012 the Club failed to meet the requirements of section 10(1)(i) of the Act when it made available to Messrs Reilly and Spray benefits and advantages which were not offered equally to every full member of the Club.*

### **Particular 1.1 - Benefits and Advantages to Mr Robert Reilly**

#### **Particular 1.1.1**

17. Particular 1.1.1 of the Complaint concerns the alleged payment to Mr Reilly of cash advantages exceeding \$400.00 each and states as follows:
- (a) On 98 separate occasions between June 2009 and March 2012, the Club deposited cash exceeding \$400.00, by electronic funds transfer, to the personal account of Mr Reilly
  - (b) On receipt of the funds, Mr Reilly transferred them on the same day to another account - usually "Brycorp Investments Pty Limited" [the Authority notes that this Particular appears to contain a mistaken reference to *Brycorp Investigation Services Pty Limited* which is the name disclosed on the ASIC Searches provided by the Complainant] but on occasions the funds were also transferred to Brike Investigations (Aust) Pty Limited
  - (c) For each electronic funds transfer, Mr Reilly provided the Club with a cheque for the amount advanced to him, usually drawn by Brycorp Investigation Services Pty Limited, but on occasions by Brike Investigations (Aust) Pty Limited or himself personally. [The Authority notes, on the basis of the ASIC Searches provided by the Complainant, that Mr Robert William Reilly is recorded as the sole director and secretary of Brycorp Investigation Services Pty Limited, a company for which a strike-off action, initiated by ASIC, is currently in progress. The Authority also notes that Mr Reilly is listed as a former director of Brike Investigations (Aust) Pty Limited, a company that was deregistered on 22 January 2006. Mr Reilly's directorship of that company ceased on 10 October 2002.]
  - (d) The Club retained these cheques, usually for up to about three days, but on occasions longer periods, before depositing them into the Club's account
  - (e) The total of the funds advanced by the Club in these 98 transactions was \$448,600.00. Each transaction was approved by Mr Spray, the Club Secretary, and recorded in the Club's "Cash Disbursements Journal" (Journal)
  - (f) The Journal was then presented at the following monthly meeting of the Club's Governing Body for retrospective approval.

18. In support of Particular 1.1.1, the Complainant relies upon the evidence or material listed in Schedule 1 to the Complaint Letter, comprising a statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:
- KM042-KM076** Board meeting minutes for the Club dated between 16 December 2008 and 25 October 2012, including the attachment entitled "Cash Disbursements Journal"
  - KM077-KM176** List of transactions for the Club dated between 23 June 2009 and 1 March 2012
  - KM278-KM312** Account summary and transaction list for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012, and Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
  - KM177-KM277** Bundle of cheques dated between June 2009 and March 2012
  - KM406** Record of interview between OLGR Inspectors and Mr Robert Reilly dated 22 August 2013 (Reilly Interview) at pages 15-17
  - KM401** Record of interview between OLGR Inspectors and Mr Peter Spray dated 8 August 2013 (Spray Interview) at pages 22-24
  - KM397** Record of interview between OLGR Inspectors and Mr Peter Bryant dated 10 July 2013 (Bryant Interview) at pages 22-25
  - KM398** Record of interview between OLGR Inspectors and Mr Brian Smith dated 13 July 2013 (B Smith Interview) at pages 19-23
  - KM394** Record of interview between OLGR Inspectors and Mr Peter Peters dated 3 July 2013 (Peters Interview) at pages 25-32
  - KM405** Record of interview between OLGR Inspectors and Mr Max Delmege dated 21 August 2013 (Delmege Interview) at pages 18-21
  - KM396** Record of interview between OLGR Inspectors and Mr Damian Smith dated 9 July 2013 (D Smith Interview) at pages 23-29
  - KM399** Record of interview between OLGR Inspectors and Mr David Costello dated 30 July 2013 (Costello Interview) at pages 9-14.

*Particular 1.1.2*

19. Particular 1.1.2 of the Complaint concerns the alleged payment of expense claims, without assessment or approval by the Governing Body, which the Complainant alleges were *not* for the benefit of the Club *nor* approved by the members at a general meeting *nor* otherwise permitted by section 10(6) of the Act.
20. The specific allegations are as follows:
- (a) Between 2009 and 2012, the Club paid to Mr Reilly expense claims totalling \$16,828.61 as detailed in the schedule to the Complaint letter marked "A"
  - (b) These claims were not individually assessed and approved, as required by resolutions passed at each of the Club's annual general meetings (AGM) in 2008, 2009 and 2010 permitting the approval of expenses for the "professional development" of the members of the Governing Body
  - (c) Each of the claims was approved for payment by Mr Spray and none of these claims were for Mr Reilly's "professional development".
21. In support of Particular 1.1.2, the Complainant relies upon the evidence or material listed in Schedule 2 to the Complaint Letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:
- KM016-KM017** Club AGM Minutes for 2008-2010
  - KM042-KM076** Board meeting minutes for the Club dated between 16 December 2008 and 25 October 2012, evidencing no Board approval for expenses

**KM313-KM388** Invoices for unapproved excessive expenses incurred by the Club Directors and CEO between 17 December 2008 and 28 October 2011

**KM406** Reilly Interview at pages 6-12

**KM401** Spray Interview at pages 8-19

**KM397** Bryant Interview at pages 7-19

**KM398** B Smith Interview at pages 8-16

**KM394** Peters Interview at pages 8-20

**KM405** Delmege Interview at pages 6-15

**KM396** D Smith Interview at pages 6-18

**KM399** Costello Interview at pages 6-7.

### ***Particular 1.2 - Benefits and Advantages to Mr Peter Spray***

#### *Particular 1.2.1*

22. Particular 1.2.1 of the Complaint concerns the alleged payment of expense claims without the assessment or approval of the Governing Body and which the Complainant alleges were *not* for the benefit of the Club nor otherwise permitted by section 10(6) of the Act.
23. The specific allegations are as follows:
- (a) Between 2009 and 2012, the Club paid to Mr Spray expense claims totalling \$6,983.55 as detailed in the schedule to the Complaint letter marked "B"
  - (b) Each of the claims was approved for payment by Mr Reilly.
24. In support of Particular 1.2.1, the Complainant relies upon the evidence or material listed in Schedule 3 to the Complaint Letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:

**KM042-KM076** Board meeting minutes for the Club dated between 16 December 2008 and 25 October 2012, including the attachment "Cash Disbursements Journal"

**KM316-KM317; KM324; KM326; KM334-KM335; KM339-KM340; KM343; KM349; KM356; KM358; KM366; KM380; KM383** Invoices in respect of travel by directors of the Club between 2009 and 2012

**KM406** Reilly Interview at pages 12-13

**KM401** Spray Interview at pages 8-19

**KM397** Bryant Interview at page 20

**KM398** B Smith Interview at page 16

**KM394** Peters Interview at pages 20-22

**KM405** Delmege Interview at pages 15-16

**KM396** D Smith Interview at pages 18-19

**KM399** Costello Interview at page 7.

#### *Particular 1.2.2*

25. Particular 1.2.2 of the Complaint concerns the alleged improper redemption by Mr Spray of American Express (AMEX) reward points. The specific allegations are as follows:
- (a) Mr Spray was the holder of a Club AMEX card
  - (b) Mr Spray redeemed 472,800 of the Club's AMEX reward points, which had been accumulated by use of the AMEX card, by transferring the points to the credit of his *personal* Qantas Airways Limited Frequent Flyer account number 454584 as follows:
    - (i) 30,000 points on 9 February 2010
    - (ii) 186,800 points on 10 May 2010
    - (iii) 40,000 points on 12 February 2011

- (iv) 2,013 points on 9 August 2011 [the Authority notes that this Particular should refer to 216,000 points]
  - (c) The redemption was not part of his employment contract with the Club and had not been approved by the Governing Body.
- 26. In support of Particular 1.2.2, the Complainant relies upon the evidence or material listed in Schedule 4 to the Complaint letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:
  - KM030-KM034** AMEX Reward transaction history and reward points history
  - KM036-KM040** QANTAS Frequent Flyer reward points records
  - KM406** Reilly Interview at pages 13-14
  - KM401** Spray Interview at pages 19-28
  - KM397** Bryant Interview at pages 20-22
  - KM398** B Smith Interview at pages 16-19
  - KM394** Peters Interview at pages 22-25
  - KM405** Delmege Interview at pages 16-18
  - KM396** D Smith Interview at pages 19-23
  - KM399** Costello Interview at pages 7-9.

## **Ground 2**

27. This Ground alleges as follows:

*Section 57F(3)(a) - The club has failed to meet the requirements of s.10 of the Act.*

*Between June 2009 and March 2012, the Club failed to meet the requirement of section 10(1)(m) of the Act when it lent money to Mr Reilly, contrary to section 41N of the Act, by making cash advances to the account of Mr Reilly, and receiving cheques from him drawn on the account of Brycorp Investigation Services Pty Limited, Brike Investigations (Aust) Pty Limited (a "struck off" company) or R W Reilly.*

### **Particular 2.1 - Loans to Mr Robert Reilly**

#### **Particular 2.1.1**

28. Particular 2.1.1 of the Complaint alleges that each of the 98 cash advances made from the Club to Mr Reilly in Particular 1.1.1 of the Complaint was:
- (a) A loan
  - (b) Made at a time when Mr Reilly was a member of the Governing Body of the Club
  - (c) Made at a time when the Club's cash flow was "tight"
  - (d) Made in breach of section 41N of the Act.
29. In support of Particular 2.1.1, the Complainant relies upon the evidence or material listed in Schedule 1 to the Complaint Letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:
- KM042-KM076** Board meeting minutes for the Club dated between 16 December 2008 and 25 October 2012, including the attachment "Cash Disbursements Journal"
  - KM077-KM176** List of transactions for the Club dated between 23 June 2009 and 1 March 2012
  - KM278-KM312** Account summary and transaction list for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012, and Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
  - KM177-KM277** Bundle of cheques dated between June 2009 and March 2012

**KM406** Reilly Interview at pages 15-17  
**KM401** Spray Interview at pages 22-24  
**KM397** Bryant Interview at pages 22-25  
**KM398** B Smith Interview at pages 19-23  
**KM394** Peters Interview at pages 25-32  
**KM405** Delmege Interview at pages 18-21  
**KM396** D Smith Interview at pages 23-29  
**KM399** Costello Interview at pages 9-14.

### **Ground 3**

30. This Ground alleges as follows:

*Section 57F(3)(a) - The club has failed to meet the requirements of s.10 of the Act.*

*Between 2009 and 2010, the Club failed to meet the requirements of section 10(1)(k) of the Act when it paid bonuses that were calculated indirectly by reference to receipts of the Club for liquor sold and the operation of gaming machines at the Club.*

#### **Particular 3.1 - Bonuses to Mr Peter Spray**

##### **Particular 3.1.1**

31. Particular 3.1.1 of the Complaint alleges that the Club paid bonuses to Mr Peter Spray by reference to receipts of the Club for liquor supplied and the operation of approved gaming machines, in that:
- (a) On 4 November 2009, the Club entered into an employment contract with Mr Spray whilst he was the Club Secretary, which provided for the payment of a bonus, at the discretion of the Governing Body, based upon the Club achieving its budgeted sales and profit before tax
  - (b) The Club's budgeted profit included:
    - (i) Receipts from the sale of liquor
    - (ii) The operation of gaming machines
  - (c) On each of 20 November 2009 and 20 May 2010, Mr Spray requested the payment of bonuses in the sum of \$12,000.00 on the basis that the Club had exceeded its budgeted profit before tax for the years 2008 and 2009 respectively
  - (d) In each case, the bonus was approved by Mr Reilly, without the knowledge of the Governing Body, in breach of section 10(1)(k) of the Act
  - (e) Bonus payments were made as directed by Mr Spray (without the knowledge of the Governing Body) between 21 March 2010 and 2012.
32. In support of Particular 3.1.1, the Complainant relies upon the evidence or material listed in Schedule 5 to the Complaint letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:

**KM024** Executive Employment Agreement between the Club and Mr Peter Spray dated 4 November 2009  
**KM025-KM026** Letters from Mr Spray to Mr Reilly dated 20 November 2009 and 30 November 2010 requesting the bonuses that were subsequently signed and approved by Mr Reilly  
**KM019-020** Annual Reports for the Club for 2009 and 2010  
**KM406** Reilly Interview at pages 21-28  
**KM401** Spray Interview at pages 29-37  
**KM397** Bryant Interview at pages 32-36  
**KM398** B Smith Interview at pages 26-30  
**KM394** Peters Interview at pages 41-45

**KM405** Delmege Interview at pages 26-32

**KM396** D Smith Interview at pages 33-37

**KM412** Bonus payments to Mr Peter Spray dated 24 November 2008.

#### **Ground 4**

33. This Ground alleges as follows:

*Section 57F(3)(j) - Any other ground that the complainant considers appropriate.*

*The Club contravened provisions of the Gaming Machines Regulation 2010 (the **Regulation**).*

#### **Particular 4.1 - Cashing Cheques for Mr Reilly**

##### *Particular 4.1.1*

34. Particular 4.1.1 of the Complaint alleges that each of the cash advances made to Mr Reilly that are detailed in Particular 1.1.1 of the Complaint occurred when the Club was authorised to keep approved gaming machines and was made in exchange for a company cheque, and that each cash advance:
- (a) Was for an amount in excess of \$400.00 in cash [per clause 29(1)(b) of the Regulation]; and
  - (b) Were variously:
    - (i) Made when more than one cheque had already been cashed for Mr Reilly on the same day, as precluded by clause 29(1)(c) of the Regulation; and
    - (ii) Not banked within two days of presentation, as required by clause 29(2) of the Regulation.
35. In support of Particular 4.1.1, the Complainant relies upon the evidence or material listed in Schedule 1 to the Complaint letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:

**KM042-KM076** Minutes of Club Board Meetings dated between 16 December 2008 and 25 October 2012, including the attachment "Cash Disbursements Journal"

**KM077-KM176** List of Transactions for the Club dated between 23 June 2009 and 1 March 2012

**KM278-KM312** Account Summary and Transaction List for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012, and Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012

**KM177-KM277** Bundle of Cheques dated between June 2009 and March 2012

**KM406** Reilly Interview at pages 15-17

**KM401** Spray Interview at pages 22-24

**KM397** Bryant Interview at pages 22-25

**KM398** B Smith Interview at pages 19-23

**KM394** Peters Interview at pages 25-32

**KM405** Delmege Interview at pages 18-21

**KM396** D Smith Interview at pages 23-29

**KM399** Costello Interview at pages 9-14.

#### **Ground 5**

36. This Ground alleges as follows:

*Section 57F(3)(g) - A member of the governing body is not a fit and proper person to act as such.*

*By reason of the conduct of Mr Reilly whilst a member of the Governing Body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.*



**Particular 5.1 - Mr Reilly not being "fit and proper"**

**Particular 5.1.1**

37. Particular 5.1.1 of the Complaint alleges that Mr Reilly is not a "fit and proper" person by reason that:
- (a) The conduct outlined in Particular 1.1.1 occurred at a time when the Club was experiencing "extremely tight" cash flow
  - (b) Mr Reilly approved a contract which provided for the payment of bonuses to Mr Spray, Club Secretary and Mr Reilly subsequently approved payments to Mr Spray of a \$12,000.00 bonus in respect of the following completed financial years:
    - (i) In respect of 2009, the bonus was paid based on a pre-tax profit of \$600,000.00, when the annual reported profit was \$540,145.00 (i.e. \$59,855.00 less than the budgeted profit)
    - (ii) In respect of 2010, the bonus was paid based on a pre-tax profit of \$800,000.00, when the annual reported profit was \$559,366.00 (ie, \$200,634.00 less than the budgeted profit)
    - (iii) When Mr Peter Spray had not qualified for their payment
  - (c) Mr Reilly undertook, charged, but did not complete, investigation work in 2009 in the name of Brike Investigations (Aust) Pty Limited, a deregistered company, without disclosing his personal business interest in the work to the Governing Body and deposited payment by the Club into his own bank account
  - (d) Mr Reilly undertook the investigation work in the name of Brike Investigations (Aust) Pty Limited in order to shield his improper involvement from the Governing Body [the Complainant refers to page 29 of the Reilly Interview]
  - (e) Mr Reilly continued to operate a bank account in the name of a company which was deregistered [Brike Investigations (Aust) Pty Limited].
38. In support of Particular 5.1.1, the Complainant relies upon the evidence or material listed in Schedules 1, 5 and 6 to the Complaint Letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:

*Schedule 1 –*

- KM042-KM076** Minutes of Club Board Meeting for the Club dated between 16 December 2008 and 25 October 2012, including the attachment "Cash Disbursements Journal"
- KM077-KM176** List of Transactions for the Club dated between 23 June 2009 and 1 March 2012
- KM278-KM312** Account Summary and Transaction List for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012, and Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- KM177-KM277** Bundle of Cheques dated between June 2009 and March 2012
- KM406** Reilly Interview at pages 15-17
- KM401** Spray Interview at pages 22-24
- KM397** Bryant Interview at pages 22-25
- KM398** B Smith Interview at pages 19-23
- KM394** Peters Interview at pages 25-32
- KM405** Delmege Interview at pages 18-21
- KM396** D Smith Interview at pages 23-29
- KM399** Costello Interview at pages 9-14.

*Schedule 5 –*

- KM024** Executive Employment Agreement between the Club and Mr Peter Spray dated 4 November 2009
- KM025-KM026** Letters from Mr Spray to Mr Reilly dated 20 November 2009 and 30 November 2010 requesting bonuses that were subsequently signed and approved by Mr Reilly
- KM019-020** Annual Reports for the Club for 2009 and 2010
- KM406** Reilly Interview at pages 21-28
- KM401** Spray Interview at pages 29-37
- KM397** Bryant Interview at pages 32-36
- KM398** B Smith Interview at pages 26-30
- KM394** Peters Interview at pages 41-45
- KM405** Delmege Interview at pages 26-32
- KM396** D Smith Interview at pages 33-37
- KM412** Bonus payments to Mr Peter Spray dated 24 November 2008.

*Schedule 6 –*

- KM012** Tax Invoice from Brike Investigations (Aust) Pty Limited to Delmege Commercial Pty Limited dated May 2009
- KM413** Record of payment of invoice from Brike Investigations (Aust) Pty Limited.

**Ground 6**

39. This Ground alleges as follows:

*Section 57F(3)(g) - The secretary is not a fit and proper person to act as such.*

*By reason of the conduct of Mr Peter Spray whilst he was the Club Secretary, he has demonstrated that he is not "fit and proper" to hold such a position.*

**Particular 6.1 - Mr Spray not being "fit and proper"**

*Particular 6.1.1*

40. Particular 6.1.1 of the Complaint alleges that Mr Spray is not a "fit and proper person" by reason of:
- (a) Mr Spray's conduct outlined in Particular 1.1 of the Complaint
  - (b) Mr Spray continuing to transfer funds to Mr Reilly in exchange for company cheques, notwithstanding his knowledge that the Club's cash flow was "extremely tight"; in light of his understanding that it "probably was not allowable" and in circumstances when he did so without bringing the conduct to the specific attention of the Governing Body
  - (c) Mr Spray transferring AMEX reward points to himself in the absence of an entitlement to them
  - (d) Mr Spray's approval and authorisation of the payment by the Club of 81 expenses, which included an expense of \$16,828.61 paid to Mr Reilly, in the absence of approval from the Governing Body or independent assessment
  - (e) Mr Spray writing to the Club requesting the payment of bonuses to himself on the basis of the Club exceeding its pre-tax profit budget:
    - (i) Of \$600,000.00 in 2009, when the annual reported disclosed profit for that year was actually \$540,145.00 (ie, \$59,855.00 less than the actual budgeted profit)
    - (ii) Of \$800,000.00 in 2010, when the annual reported disclosed profit for that year was actually \$559,366.00 (i.e. \$200,634.00 less than the actual budgeted profit)

- in circumstances when Mr Spray "must have known" that he had overstated the profit and that Mr Spray had not qualified for payment of the bonuses
- (f) Mr Spray's authorisation of the payment of cheque number 002145 in May 2009 for a tax invoice for \$7,700.00 issued to the Club by Brike Investigations (Aust) Pty Limited that was not approved by the Governing Body [the Complainant refers to page 5 of the Spray Interview].

41. In support of Particular 6.1.1, the Complainant relies upon the evidence or material listed in Schedules 1, 4 and 5 to the Complaint Letter, comprising the statement of OLGR Inspector Karen McCluskey dated 3 October 2013 and the following annexures to that statement:

*Schedule 1 –*

**KM042-KM076** Minutes of Club Board Meetings dated between 16 December 2008 and 25 October 2012, including the attachment "Cash Disbursements Journal"

**KM077-KM176** List of Transactions for the Club dated between 23 June 2009 and 1 March 2012

**KM278-KM312** Account Summary and Transaction List for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012, and Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012

**KM177-KM277** Bundle of Cheques between June 2009 and March 2012

**KM406** Reilly Interview at pages 15-17

**KM401** Spray Interview at pages 22-24

**KM397** Bryant Interview at pages 22-25

**KM398** B Smith Interview at pages 19-23

**KM394** Peters Interview at pages 25-32

**KM405** Delmege Interview at pages 18-21

**KM396** D Smith Interview at pages 23-29

**KM399** Costello Interview at pages 9-14.

*Schedule 4 –*

**KM030-KM034** AMEX Reward Transaction History and Reward Points History

**KM036-KM040** QANTAS Frequent Flyer Reward Points Records

**KM406** Reilly Interview at pages 13-14

**KM401** Spray Interview at pages 19-28

**KM397** Bryant Interview at pages 20-22

**KM398** B Smith Interview at pages 16-19

**KM394** Peters Interview at pages 22-25

**KM405** Delmege Interview at pages 16-18

**KM396** D Smith Interview at pages 19-23

**KM399** Costello Interview at pages 7-9.

*Schedule 5 –*

**KM024** Executive Employment Agreement between the Club and Mr Peter Spray dated 4 November 2009

**KM025-KM026** Letters from Mr Spray to Mr Reilly dated 20 November 2009 and 30 November 2010 requesting bonuses that were subsequently signed and approved by Mr Reilly

**KM019-020** Annual Reports for the Club for 2009 and 2010

**KM406** Reilly Interview at pages 21-28

**KM401** Spray Interview at pages 29-37

**KM397** Bryant Interview at pages 32-36

**KM398** B Smith Interview at pages 26-30

**KM394** Peters Interview at pages 41-45

**KM405** Delmege Interview at pages 26-32

**KM396** D Smith Interview at pages 33-37

**KM412** Bonus payments to Mr Peter Spray dated 24 November 2008.

### **Complainant Recommendations on Disciplinary Action**

42. The Complainant submits that the conduct of the Club, Mr Reilly and Mr Spray is such that disciplinary action is "warranted" and that Messrs Reilly and Spray ought to be found not fit and proper to be members of the governing body of a registered club or a secretary of a registered club.
43. The Complainant submits that the conduct complained of individually and collectively is such that Messrs Reilly and Spray ought not to continue to be involved in the management or a governing body of a registered club.
44. The Complainant contends that the evidence establishes a "continuing course of conduct" that was known, or ought to have been known, by Messrs Reilly and Spray to be "unlawful, dishonest and for their own benefit".
45. The Complainant further contends that the conduct which has been identified, particularly the payment of money and the provision of benefits to Messrs Reilly and Spray, calls for "significant disciplinary action" which would reflect the "seriousness" of their conduct and act as a deterrent to others involved in the club industry - that taking personal advantage from their involvement in a club is an "unacceptable standard of behaviour".
46. The Complainant submits that the Authority should make the following Orders:
  - a) Declare that each of Messrs Reilly and Spray are ineligible to stand for election or to be appointed to hold office in the position of secretary or member of the governing body (or both of these positions) of:
    - i. The Club; and
    - ii. All other registered clubs (in New South Wales); and
  - b) That the Club pay the investigation costs of the Office of Liquor, Gaming and Racing in connection with the investigation and the taking of disciplinary action against the Club and Messrs Reilly and Spray.

### **PROGRESS OF COMPLAINT BEFORE THE AUTHORITY**

47. The Complaint was received by the Authority on 27 February 2014.
48. On 1 April 2014, the Authority issued a Show Cause Notice by Express Post to the Club and Messrs Reilly and Spray (collectively referred to as the Respondents) inviting written submissions addressing the merits of the Complaint by 29 April 2014. [The Authority notes that this timetable would be substantially delayed by the Complainant's delay in providing further particulars but also to some extent by requests for extensions of time made by the solicitors for Messrs Reilly and Spray to complete their submissions addressing the merits of the matter.]
49. Enclosed with the Show Cause Notice sent to the Respondents was a disc containing a Master PDF file which consolidated into electronic format all of the physical documents comprising the Complaint and Brief of Evidence that the Complainant had filed with the Authority.

50. For ease of reference by the Respondents, staff assisting the Authority produced a Master Index, which formed part of the Master PDF file, identifying each document in the OLGR Complaint material with electronically bookmarked links to each document.
51. On 24 April 2014, the legal representative of the Club, Mr John Ralston of Pigott Stinson Lawyers, wrote to OLGR requesting further and better particulars in relation to the Complaint.
52. Briefly, the Club sought clarification on the legal basis upon which the Complainant is authorised to bring the Complaint; the specific allegations (if any) against the separate legal entity of the Club; and details of any investigation or inquiry carried out by OLGR in relation to the Club pursuant to section 35A of the Act.
53. On 29 April 2014, the legal representative of Mr Reilly, Mr Tim Mitchell of *Bay Legal*, wrote to OLGR seeking clarification as to why the Complainant only relies upon extracts of the Club's Board meeting minutes, and not the complete records.
54. On 13 May 2014, the legal representative of Mr Peter Spray, Ms Susan Doherty of Johnson Winter and Slattery Lawyers, wrote to OLGR requesting further and better particulars in relation to the Complaint.
55. Briefly, Mr Spray sought clarification on the legal basis upon which the Complainant is authorised to bring the Complaint and further information in relation to the specific allegations detailed in the Complaint.
56. On 25 June 2014, OLGR issued letters to the respective legal representatives of the Respondents, addressing the requests made by Mr Ralston, Mr Mitchell and Ms Doherty for further and better particulars in relation to the Complaint.
57. With respect to the Club's request for further and better particulars on the Complainant's power to make the Complaint, the Complainant advised that pursuant to section 6A of the Act and in his capacity as the (then) Acting Director, Compliance and Enforcement Division of OLGR, he is authorised to make the Complaint. The Complainant clarified that as of the date of the Complaint, there were no specific allegations of misconduct against the separate legal entity of the Club. The Complainant also provided a schedule detailing the dates and times of any tasks that were undertaken, as well as the costs incurred, by OLGR in carrying out its investigation in relation to the Club.
58. With respect to Mr Reilly's request for further and better particulars, the Complainant advised that the extracts of the Board meeting minutes that have been provided as annexures to the Complaint are "those which are considered relevant" to the Grounds of the Complaint. The Complainant also advised Mr Reilly that full copies of the Board minutes and cash disbursement journals could be made available for inspection by appointment at a mutually convenient time on the OLGR premises.
59. With respect to Mr Spray's request for further and better particulars of the Complainant's power to make the Complaint, the Complainant advised that pursuant to section 6A of the Act and in his capacity as the Acting Director, Compliance and Enforcement Division of the OLGR, he is authorised to make the Complaint.
60. The Complainant also took the opportunity to correct a number of errata in the Complaint document, and offered Mr Spray the opportunity to inspect the documents upon which the Complainant relies by appointment at a mutually convenient time in the OLGR premises.
61. On 4 August 2014, Ms Doherty provided the Authority with a submission addressing the merits of the Complaint as it concerns Mr Spray.

62. On 6 August 2014, Mr Mitchell provided the Authority with a submission addressing the merits of the Complaint as it concerns Mr Reilly.
63. On 11 August 2014, Mr Ralston provided the Authority with a submission dated 8 August 2014 addressing the merits of the Complaint as it concerns the Club.
64. On 28 August 2014, Mr Mitchell provided the Authority with a supplementary submission in response to some of the matters arising from the Club's submission dated 8 August 2014.
65. On 5 September 2014, Mr Ralston provided the Authority with a further submission on behalf of the Club in reply to Mr Mitchell's supplementary submission dated 28 August 2014.
66. On 25 September 2014, Mr Spray provided a short supplementary submission to the Authority in the form of a letter from his solicitor, Ms Doherty.
67. On 21 November 2014, Mr Spray provided a further supplementary submission as to why the Authority should not make a finding that he is not a fit and proper person, for the purposes of the Act. This submission was not provided to the other parties by reason that it contains information that is personal to Mr Spray and his character.

#### **SUBMISSION FROM MR PETER SPRAY DATED 4 AUGUST 2014**

68. On 4 August 2014, the Authority received Mr Spray's primary submission addressing the merits of the Complaint under the cover of a letter from his legal representative, Ms Susan Doherty. Briefly, the cover letter to his submission makes the following submissions:
  - a) Mr Spray's response to the Complaint addresses Ground Six of the Complaint, which contains the allegations against him regarding not being a "fit and proper" person to hold a position in the Governing Body of the Club
  - b) Ms Doherty refers to Particular 1.1.2 of the Complaint, which alleges that Mr Spray authorised the payment of Mr Reilly's expense claims without assessment or approval by the Board. Ms Doherty submits on behalf of Mr Spray that, with the exception of the expense for the *Hugo's Manly* restaurant dated 28 October 2011 and "some" of the Cabcharge fares claimed by Mr Reilly - all of the expenses authorised by Mr Spray were "for the benefit of the Club" and therefore cannot be considered to represent a "profit, benefit or advantage" derived by Mr Reilly. Ms Doherty submits that the non-authorisation of these payments cannot therefore constitute a breach of section 10(1)(i) of the Act
  - c) Ms Doherty submits in the alternative that the expense claims paid to Mr Reilly fall under section 10(6)(a) of the Act and therefore do not infringe the prohibition contained in section 10(1)(i) of the Act, as the payment of Mr Reilly's expenses - which were incurred in his role as Chairman - were "pursuant to an agreement with the Club". Mr Spray contends that:
    - i. The expenses were incurred in "fulfilling the objects of the Club pursuant to the Club's Constitution"
    - ii. The payment of such expenses "had been the practice of the Club" since at least 1993, when Mr Spray commenced employment at the Club
  - d) Ms Doherty submits that based upon Mr Spray's response to the Complaint, the Authority "would be satisfied" that the expenses paid by the Club were "reasonable" in the circumstances and that section 10(6)(a) of the Act applies
  - e) Ms Doherty further submits that the exception contained in section 10(6)(d) of the Act is applicable in relation to the *Hugo's Manly* expense dated 28 October 2011, which was the only "out-of-pocket" expense paid by the Club to Mr Reilly of those listed in Schedule A to the Complaint letter.

69. Mr Spray's substantive response takes the form of a written statement made by Mr Spray himself dated 4 August 2014. Without purporting to recount here all of the submissions made by Mr Spray, the key observations and contentions contained within this statement may be summarised as follows:
70. By way of background, Mr Spray provides a brief history of the context in which the Club operates, stating that:
- a) The Club was registered on 24 January 1957. The Club's objects include: *To assist generally in the promotion, conduct and propagation of Rugby League Football in the Rugby League Football District of Manly-Warringah or elsewhere...*
  - b) The first grade rugby league competition was run by the Australian Rugby League (ARL) up until the 1997 season, and from 1998 by the National Rugby League (NRL). The ARL and then the NRL licence for the Manly-Warringah Sea Eagles was held by the Manly-Warringah District Rugby League Football Club Limited (Football Club)
  - c) Historically, the Club was the main funder of the Sea Eagles team
  - d) In late 2004, the members of the Football Club approved the privatisation of the Football Club, and Manly-Warringah Sea Eagles Limited (the Sea Eagles Company) was formed. The Football Club "just became a group of supporters". At the point of privatisation, Delmege Commercial Pty Limited was the major shareholder and the Football Club the minority shareholder of the Sea Eagles Company. The Club was entitled to have two directors on the 7-member board of the Sea Eagles Company
  - e) In January 2006, Penn Sport Pty Limited acquired an equivalent number of shares to Delmege Commercial Pty Limited, thus making them joint major shareholders because of the Club's delay in paying the contribution of \$3 million to the Sea Eagles Company, which it had committed to pay at privatisation
  - f) In about 2009, the Club obtained about 8 per cent of the shares in the Sea Eagles Company, but in late 2011, the Club sold all its shares and lost its position on the board of the Sea Eagles Company
  - g) The Club's own board consisted of 7-members who were elected bi-annually. For the duration of Mr Spray's employment at the Club, at least five of the seven Club directors needed to be either *life members* or *current directors* of the *Football Club* (this was known as the "special qualification" in the Club's Constitution). From 1993 to the early 2000s, the Football Club's CEO was also on the Club board.
71. Mr Spray contends that the "dynamics" between the Club, the Football Club, and the Sea Eagles Company were as follows:
- a) The Football Club "could basically control" the board of the Club because of the "special qualification" in the Club's Constitution.
  - b) As the five individuals with the special qualification had a "very strong" rugby league background, their passion was for the Sea Eagles team "more so than the Club".
  - c) The Club directors "liked" being involved with the Sea Eagles team and "did things to support" the Sea Eagles Company.

### **History of Spray's employment at the Club**

72. Mr Spray states that he was employed by the Club on 25 October 1993 as Financial Controller, and that this role "had not existed" at the Club before he commenced employment.
73. Mr Spray submits that he had "no real training" for this role or in relation to the Act, and had never previously worked for a registered club. Mr Spray contends that when he

commenced employment at the Club, its internal systems and controls were "poor" and that his "main instruction from the Board" was to "improve" them.

74. When Mr Spray commenced employment at the Club, Mr Ken Arthurson was the Chairman. Mr Spray submits that Mr Arthurson was a "strong leader" and that other directors "let him run the show" and "never questioned his authority or actions". The Board meetings Mr Arthurson chaired were "not lengthy" and Mr Spray contends that a "significant amount" of Club business appeared to be carried out by Mr Arthurson alone and without the involvement of other directors. Mr Spray submits that the Board would be updated by Mr Arthurson next meeting "sometimes...but not always".
75. Mr Spray provides the following further outline of his employment by the Club:
- a) In the mid to late 1990s, Mr Spray became Assistant General Manager at the Club
  - b) In about 2003, Mr Paul Cummings became Chairman of the Club. He ran the Board in "much the same way" as had Mr Arthurson
  - c) On 3 May 2004, when Mr Brian Smith resigned, Mr Spray was appointed General Manager of the Club, effective 19 April 2004
  - d) On 9 November 2005, upon the initiative of (then) Chairman Mr Paul Cummings, Mr Spray received a bonus and a "significant" salary increase, which Mr Spray perceived to be "a reflection of the Club's satisfaction with [his] performance"
  - e) On 20 December 2006, again upon the initiative of Mr Cummings, Mr Spray received a further salary increase
  - f) On 19 December 2007, Mr Spray entered his Executive Employment Agreement, which had been drafted by Mr Geoff Bellew, reviewed by Mr Spray's lawyer, Ms Michelle Archer, and then approved by the Board. The agreement contained a bonus payment provision
  - g) In the second quarter of 2008, Mr Robert Reilly took over from Mr Paul Cummings as Chairman of the Club. Mr Spray treated him "the same" as he had done Mr Arthurson and Mr Cummings - that is, he viewed the Chairman and the Board as being his "boss" and he followed their instructions, viewing any instruction from the Chairman as being an instruction from the Board
  - h) Sometime shortly after he became Chairman, Mr Reilly changed Mr Spray's title from "General Manager" to "CEO"
  - i) On 4 November 2009, Mr Spray entered into a new Executive Employment Agreement, at his own instigation, in order to obtain "greater security" in his employment by returning to the "open-ended arrangement" that had been in place from 1993 until 2007. Mr Spray states that "that was the only detail" he sought to change. This agreement was prepared and reviewed by lawyers before being approved by the Board. This agreement also contained a bonus provision
  - j) In 2012, Mr Spray also assumed the role of Chief Financial Officer of the Club
  - k) In March 2012, Mr David Costello became Chairman. He was a "very different" Chairman from what Mr Spray had experienced previously. He had "extensive" club industry experience and "dedicated much time" to improving the Club business
  - l) Mr Spray resigned from the Club on 4 February 2013.
76. Mr Spray provides a list of the various directorships of other related entities which he held while employed by the Club from the late 1990s until his resignation in 2013.
77. Mr Spray then addresses in turn each Particular relevant to the conduct alleged in Ground Six of the Complaint.



## **Spray response to Ground 6 - Particular 6.1.1(a)**

### ***Spray's position on Particular 1.1.1 of the Complaint***

#### *On the origin of the practice of advancing Club money to Reilly –*

78. With regard to the practice of advancing Club money to Mr Reilly, Mr Spray contends that on or about 5 February 2009, Mr Reilly approached Mr Spray and asked if he would accept a cheque made payable to the Club for \$3,550.00 and transfer the same amount to Mr Reilly's business bank account from the Club's account, as he was "short of funds". Mr Spray states that he agreed to do this as he saw this request as a "direction from my boss", the Chairman.
79. Thereafter, Mr Reilly made "many similar requests" for funds to be transferred from the Club's account to other accounts nominated by Mr Reilly - initially to Mr Reilly's Police Credit Union account, but thereafter and primarily to his account with the Manly-Warringah Credit Union, and occasionally to Mr Reilly's company account, Brike Investigations (Aust) Pty Limited. Mr Spray notes that the depositing of these cheques and the transfer of funds are all set out in the evidence relied upon by the Complainant.
80. Mr Spray contends that generally, the cheques were banked on the "next available Club banking day" after their receipt. Mr Spray submits that on a "few" occasions, Mr Reilly asked him to hold the cheques for a few days before depositing them with the Club's bank.
81. Mr Spray contends that on one occasion, at Mr Reilly's request, he (Mr Spray) withheld depositing a cheque for 10 days after the funds had been transferred from the Club's bank account to Mr Reilly's nominated account.
82. Mr Spray contends that an EFT payment of \$4,000.00 was made from the Club's account to one of Mr Reilly's accounts on 15 March 2011. On that occasion, Mr Reilly did not provide a bankable cheque until 29 April 2011 - approximately six weeks later.
83. Mr Spray submits that the Club "was repaid every dollar" that was transferred to Mr Reilly's bank account(s), and that "on most occasions" this occurred within two to three days of the transfer.

#### *Spray's account of his attempts to stop the practice –*

84. Mr Spray submits that he "hated" the practice of advancing funds to Mr Reilly as it "just didn't seem right" to him. Mr Spray "wanted it to stop" but also saw the Chairman as his "boss" and "did not want to upset him by refusing his requests".
85. Mr Spray contends that Mr Reilly had "control of the Board" and Mr Spray was "fearful" that he could lose his job by refusing his requests - particularly as he had seen how Mr Grant Mayer had been "forced to resign" as CEO in 2009 after a conflict with Mr Reilly.
86. Mr Spray contends that the Club office staff were also "involved" in the transfers and had expressed their concerns to him that the arrangement was "not proper". Mr Spray submits that the staff were also "well aware" of the pressure that he was under.
87. Mr Spray contends that at that time, he was "unaware" that section 41N of the Act provides that a registered club must not lend money to a member of the governing body of a registered club.

88. Mr Spray contends that on several occasions, commencing a short time after the practice started, Mr Spray expressed his concerns to Mr Reilly and advised him that the payments were likely a breach of the Act. Mr Spray contends that Mr Reilly told him (Mr Spray) that he would not seek Board approval of the payments and "made promises that the practice would cease".
89. Mr Spray contends that from late 2010 to early 2012, the Club's cash flow was "extremely tight" and that from time to time, the Club had to draw against credit cards in order to pay wages and in order to pay creditors who were "pressing" for payment.
90. Mr Spray further contends that the Club was also behind in making its superannuation guarantee contribution payments for staff, and that "other accounts were being juggled around in order to pay creditors". Mr Spray also contends that Mr Reilly was aware of this situation, as he was informed of these matters by Mr Spray, yet Mr Reilly "continued" to ask Mr Spray to transfer funds to him in return for cheques provided by Mr Reilly.
91. Mr Spray contends that the transfers which Mr Reilly was requiring him to make at this time "added to the difficulties which the Club was experiencing" in meeting its financial obligations to staff and to creditors.
92. Mr Spray states that not long after this practice started, Mr Spray spoke to the Club's auditor, Mr Bill Edmondson of Edmondson & Co. Mr Spray contends that although Mr Edmondson considered the practice of transferring funds to Mr Reilly to be "not best practice", Mr Edmondson told Mr Spray that, in his opinion, it was "quite possibly not illegal".
93. Mr Spray states that is his "belief" that at that time, neither he nor Mr Edmondson had considered whether the advances of funds could be a loan.
94. Mr Spray contends that he told Mr Reilly what Mr Edmondson had said to Mr Spray about the practice, but Mr Reilly "seized on" Mr Edmondson's comment to the effect that the practice was "not illegal" and then continued to "pressure" Mr Spray to effect these "almost weekly" transfers.

*Spray's position on Board knowledge of the practice –*

95. Mr Spray contends that the payments made to Mr Reilly were listed in the monthly disbursement reports prepared by the Club's contracted accountant and which were tabled at each Board meeting.
96. Mr Spray states that the information provided to the Board did not include any information regarding Mr Reilly giving the Club cheques to repay these transfers, but it just showed the transfers having been made to Mr Reilly's companies.
97. Mr Spray contends that "at no time" during a Board meeting did a Club Director ever comment on these payments, which generally exceeded \$20,000.00 each month. Mr Spray refers to the Bryant Interview and the B Smith Interview in support of his position.
98. Mr Spray denies that one Director, Mr Peter Peters, ever asked about a transfer to Mr Reilly during a Board meeting, as stated by Mr Peters in the Peters Interview.
99. Mr Spray believes that "some" of the directors "may have known" that the payments were going to Mr Reilly or to his businesses.

100. Mr Spray contends that on one occasion, Club Director Brian Smith raised with Mr Spray the payments being made to Mr Reilly, but this happened outside of a Board meeting. On that occasion, Mr Spray explained what was happening and Mr Smith said that he considered the practice to be "wrong", but to Mr Spray's knowledge, Mr Smith did not subsequently raise this issue at a Board meeting.
101. Mr Spray refers to the B Smith Interview, where Mr Smith states that he himself also brought the practice to the attention of the auditor. Mr Spray denies Mr Smith's claim that Mr Spray said to Mr Smith words to the effect that "everything was all right, everything was approved". Mr Spray notes that Mr Smith stated in the B Smith Interview that Mr Smith "expected the practice to stop".
102. Mr Spray refers to Mr Costello's statement made during the Costello Interview to the effect that Mr Spray had told Mr Costello that the practice of these transfers had been approved by the Club's auditor. Mr Spray contends that he "cannot specifically recall" what he told Mr Costello, but contends that Mr Costello was aware that, on occasions, Mr Spray had held back Mr Reilly's cheques from banking.

*After the practice stopped –*

103. Mr Spray observes that during 2012, after Mr Reilly was replaced as Chairman and the practice had ceased, the Club auditor, Mr Bill Edmondson sought the opinion of Mr John Ralston from Pigott Stinson, the Club's lawyers. That correspondence is attached to Mr Spray's submission.

***Spray on Particular 1.1.2 of the Complaint***

104. Mr Spray submits in relation to this Particular of the Complaint that:
  - a) He did authorise the payment of Mr Reilly's expenses, as listed in Schedule A to the Complaint
  - b) These expense claims were not "assessed"
  - c) All of the items listed in Schedule A, with the exception of the *Hugo's Manly* entry (the last entry) were not "payment of expense claims" in the sense of *reimbursement* but they were "up-front payments" for goods or services
  - d) With the exception of the *Hugo's Manly* expense and "some" of the Cabcharges, Mr Spray contends that these expenses "were for the benefit of the Club"
  - e) Mr Spray agrees that all of the expenses "were not approved" by the Club members at a general meeting.

*Spray's position on the procedure for processing the Chairman's expenses –*

105. Mr Spray submits that in relation to the Chairman's expenses, he "followed the example" of the General Manager who preceded him (Mr Brian Smith) and that he generally approved Mr Reilly's expenses "without question".
106. Mr Spray submits that he "did not want to go against" Mr Reilly, as he was "concerned about losing [his] job".
107. Mr Spray contends that there was "no Club policy" requiring directors' expenses to be approved by the Board or to be independently assessed.
108. All payments made by the Club were listed in the monthly Disbursement Report that was tabled and approved at each Club Board meeting, as confirmed by Mr Reilly in the Reilly Interview. In addition, Directors' and Staff Expenses was an un-itemised line item in the Profit and Loss Statements tabled and approved each month by the Club directors.

109. Mr Spray contends that prior to Mr David Costello joining the Board in late 2011, Mr Spray "cannot recall" an occasion when a Club director ever queried either the monthly Disbursement Report or the Profit and Loss Statement in relation to costs incurred by directors or staff.
110. Mr Spray submits that up until Mr Spray was notified of this Complaint by the Authority, he was "not aware" of the requirements of section 10(6) of the Act or of the resolutions passed at the Club's AGMs in 2008, 2009 and 2010 in relation to the payment of expenses.

*Spray's position on the nature of the expenses claimed by Reilly –*

111. Mr Spray contends that the expenses claimed by Mr Reilly and listed in Schedule A to the Complaint (with the exception of the *Hugo's Manly* expense and the Cabcharge expenses) were paid "for the benefit of the Club".
112. Mr Spray submits that these expenses mostly relate to attendances at interstate Sea Eagles games and attendances at the Leagues Club of Australia (LCA) Annual Conference.
113. Mr Spray submits that "many" of these expenses include the cost of Mr Reilly's wife attending these events, as it was "standard practice" ever since he started work at the Club that the Chairman's partner would attend the LCA Annual Conference.
114. Mr Spray notes that "some" of Mr Reilly's wife's expenses were charged back to Mr Reilly's honorarium.
115. To cover expenses while he was away, Mr Spray gave Mr Reilly a "per diem" allowance at a level that was sourced from information provided on the Australian Taxation Office website regarding reasonable travel expense amounts.
116. In relation to some of the specific expenses cited in the Complaint, Mr Spray submits that:
  - a) "Payment for packages" refers to payment for accommodation packages
  - b) Mr Reilly attended "many" of the events for which the expenses were incurred in the company of other Club directors
  - c) Payment of travel for Melinda Gainsford-Taylor to Melbourne was "reasonable" since she was a "big supporter" of the Club. Overall, her support and presence was "great promotion" of the Club
  - d) The reference to *Lee's Fortuna Court* restaurant is a reference to a lunch that Mr Spray attended with Mr Reilly with the two principals of Regency Artists, the company that had "looked after" Club promotions and entertainment for more than 20 years. This meeting was to discuss future promotion and entertainment ideas. Usually, Regency Artists paid the bill for these meetings.
117. In relation to the lunch at *Hugo's Manly* on 28 October 2011, Mr Spray submits that although he considered this matter to be "for the benefit of the Club", he considered that the quantum of the expense claimed was "excessive". However, because Mr Reilly had already incurred this expense to the restaurant and presented it to Mr Spray for payment, Mr Spray reimbursed him for this "out-of-pocket" expense.
118. In relation to the *Cabcharge* expenses identified by the Complaint, Mr Spray submits that the purpose of having the Cabcharge vouchers was "to enable staff and other officers of the Club to use taxis specifically for the purpose of Club business" and nothing else.

119. Mr Spray authorised the payment of the monthly account received from Cabcharge, which was "only or primarily used by Mr Reilly" during the period covered by Schedule A, because "clearly" these expenditures had actually been incurred and it was a "debt" owed by the Club to Cabcharge.
120. Mr Spray submits that he "relied" on Mr Reilly using these Cabcharges "for the benefit of the Club". However, Mr Spray contends that Mr Reilly's use of Cabcharge vouchers "caused surprise and concern" for Mr Spray and other Club finance staff.
121. Mr Spray contends that Club finance staff "could not believe" that at a time when the Club was experiencing "extreme financial difficulty", such "substantial" sums were being expended by the Chairman on taxis.
122. Mr Spray submits that he is "unable to say definitively" whether any of the Cabcharge expenses listed in Schedule A were for Club business - although he found some of them to be "excessive".
123. Mr Spray contends that he spoke to Mr Reilly about his concern that Mr Reilly's use of the Cabcharge vouchers was "excessive and extravagant". However, Mr Reilly's use of Cabcharge vouchers "did not change".
124. Mr Spray contends that the Club Board was aware of the Club's Cabcharge expenditure as it was an item in the monthly Disbursement Statement which was presented to the Board. Mr Spray contends that "at no time" did a Club director raise a concern with Mr Spray about the monthly Cabcharge expense.
125. Mr Spray contends that in late 2009 or early 2010, Mr Spray closed the Cabcharge account in order to "prevent what [he] saw as Mr Reilly's excessive use of the Cabcharge vouchers" and he informed Mr Reilly of this. Mr Spray contends that Mr Reilly "did not respond in any way" to this action.

*Spray's position on the Club Board's knowledge of expense claims –*

126. Mr Spray submits that a number of the Club directors were asked during their records of interview with OLGR Inspectors about directors' expenses. Mr Spray makes the following observations:
  - a) Mr Damian Smith said he supported the attendance by directors at Sea Eagles away games, including with spouses
  - b) Mr Peter Bryant said he did not recall any specific procedures for the treatment of directors' expenses
  - c) Mr Brian Smith said that he told Mr Spray that he did not consider Sea Eagles interstate game expenses to be Club expenses. In response to this statement, Mr Spray contends that he "does not recall" Mr Smith ever saying this to him and Mr Spray contends that it was "never" raised at a Board meeting.

**Spray response to Ground 6 - Particular 6.1.1(b)**

127. In response to this particular of the Complaint, Mr Spray relies upon his submissions in respect of Particular 6.1.1(a) of the Complaint.

**Spray response to Ground 6 - Particular 6.1.1(c)**

***Spray on Particular 1.2.2 of the Complaint***

128. Mr Spray refers to his response to Particular 1.2.2 of the Complaint.

*Spray's position on his entitlement to AMEX points (as noted in Ground 6, but initially noted in Particular 1.2.2 of the Complaint) –*

129. Mr Spray refers to the AMEX conditions for use of the Club credit card, which indicate that Mr Spray had "shared liability" with the Club for the expenses incurred on the card.
130. Mr Spray contends that during his employment, the Club "did not at any time" have a policy for redemption of corporate credit card reward points (which vest with the individual). Mr Spray contends that it is "not unusual" for corporations to allow the holders of corporate credit cards to keep their points.
131. Mr Spray submits that his employment contract was "silent" on the use of his Club AMEX card. Mr Spray's understanding was that the points were held in his name and that they expired when he no longer held the card.

*Spray's practice in respect of redemption of AMEX reward points –*

132. Notwithstanding the above, Mr Spray submits that he "always considered" that any reward points earned on his Club AMEX card "belonged to the Club" and therefore should be used for Club purposes. Accordingly, Mr Spray charged his salary package on those occasions when he used points from the Club AMEX card. In this way, the Club "retained the financial benefit of the points".
133. Mr Spray contends that his practice was to summarise his salary package at the end of every quarter to show entitlements compared to actual monies paid or received. He would give his quarterly Salary Package Calculation sheet and the working papers to the Chairman every quarter for his approval, and refers to copies of those documents, which are attached to his submission.
134. Mr Spray makes the following specific submissions in relation to his quarterly Salary Package Calculation sheets:
  - a) Quarter ending 31 March 2010 - AMEX Points Redeemed - \$1,207.00. It is "likely" that this entry includes a charge for the 30,000 AMEX reward points that were transferred by Mr Spray on 9 February 2010
  - b) Quarter ending 30 June 2010 - AMEX Points Redeemed - 186,250 - \$1,570.00 (later reversed on the Chairman's instruction). This is "presumably" a charge for almost all the 186,800 points transferred by Mr Spray on 10 May 2010. Although Mr Spray "cannot explain the difference" of 550 points, he notes that this difference represents approximately \$5.00 in value
  - c) Quarter ending 31 December 2010 - AMEX Points June 2010 - this was a reversal of a transaction "as per Chairman's instruction" to the value of \$1,570.00
  - d) Quarter ending 31 December 2011 - Other - the points cashed plus a gym membership was to the value of \$1,000.00.
135. In relation to the 40,000 points transferred on 12 February 2011, Mr Spray submits that based on his email to the Club's auditor, Mr Bill Edmondson, it is likely that these points were transferred to the credit of Mr Spray's personal Qantas Frequent Flyer account in order to reimburse him for flights (for 11 and 13 March 2011) which he purchased using 64,000 Qantas Frequent Flyer points on 11 January 2011 for Club directors Robert Reilly and Peter Bryant to attend a Sea Eagles game in Melbourne. However, Mr Spray "cannot explain" why he only transferred 40,000 points when the cost to him was actually 64,000 points.
136. In relation to the transfer of points on 9 August 2011 (which Mr Spray observes should be 216,000 and not 2,013 points as stated in the Complaint) Mr Spray's quarterly Salary

Package Calculation sheets "do not show specifically" that he charged these to his salary package.

137. Mr Spray contends that he may have included them as an "FBT" or "No FBT" charge against his salary package. Mr Spray submits that he charged his salary package \$1,000.00 for using AMEX reward points during the following quarter and therefore believes it is "unlikely" that he would have failed to charge his salary package for this transfer of 216,000 points, as it was "inconsistent" with his "demonstrated practice" - unless he did not do so "at the direction of the Chairman".

*Spray's position on Board knowledge of his use of AMEX points –*

138. Mr Spray refers to the questions put by OLGR to the Club directors about the use of AMEX reward points in their respective records of interview. He notes the following:
- a) Mr Damian Smith said words to the effect that Mr Spray should have asked the Board for approval to use the points for his personal benefit. Mr Spray notes Mr Smith's comments that he (Mr Smith) "certainly [would have been] more likely to have approved it"
  - b) Mr Peter Bryant said that AMEX reward points should be used "for the benefit of the Club"
  - c) Mr Brian Smith said that he did not even know that Mr Spray had an AMEX card. In response to this, Mr Spray contends that he was issued with a corporate AMEX card in 2001 at a time when Mr Smith was the General Manager. Mr Spray contends that Mr Smith was the only existing Club corporate AMEX cardholder at that time and that Mr Smith authorised Mr Spray's application for the AMEX card. Mr Spray "does not accept" that Mr Smith did not know that Mr Spray had a Club AMEX card
  - d) Both Brian Smith and David Costello observed during their interviews that Mr Spray had removed the last page of the AMEX statements (which covered reward points) from the copies sent to Accounts. Mr Spray agrees that he "filed these separately" with the Accounts section but contends that he did so in order to "confirm that the points had been correctly deducted and accounted for" on the *next* AMEX monthly statement and on his quarterly Salary Package Calculation. Mr Spray submits that his separate filing of the main part of the AMEX statements from the last page of those statements was "not done to deceive anyone"
  - e) Mr Costello said during his interview with OLGR that Mr Spray was instructed to use the AMEX points for the benefit of the Club. Mr Spray contends that he "does not recall this" but submits that in any event, the points were "not for his personal use" and that Mr Spray was already using the reward points "for the benefit of the Club"
  - f) Mr Reilly said in his interview with OLGR that he was "not aware" of AMEX reward points or whether there was a system in place for their use. Mr Spray responds that he "does not agree with this". Mr Spray contends that during 2010, Mr Reilly "specifically told" Mr Spray to reverse a charge in the sum of \$1,570.00 that had been made against Mr Spray's salary package, which Mr Spray had made in order to cover Mr Spray's personal use of AMEX reward points.

**Spray response to Ground Six - Particular 6.1.1(d)**

139. In addressing this particular of the Complaint, Mr Spray refers to the annexure to OLGR Inspector Karen McCluskey's statement dated 3 October 2013, entitled "Unapproved /Excessive Expenses Incurred by Directors & CEO" (Expenses Schedule).
140. In relation to these expenses, incurred by several of the Club directors, Mr Spray contends that:

- a) He "followed the practice of [his] predecessor" in relation to the payment of Club expenses
  - b) There "was no procedure" at the Club for the independent assessment of expenses and Mr Spray "was not aware" that this was a requirement
  - c) The "vast majority" of the expenses listed on the Expenses Schedule were paid for using Club credit cards. The credit card statement was "generally approved" by Mr Reilly for payment. The remainder of the expenses were cash advances for Club trips, Cabcharge expenses or reimbursement for out-of-pocket expenses
  - d) Apart from the specific transactions indicated below, Mr Spray submits that these expenses paid were "for the benefit of the Club"
  - e) The expenses were all "approved by the Board" as part of the Disbursements Report "without question".
141. In relation to the expenses of Mr Reilly, Mr Spray submits that "all but two" of the expenses listed on the Expenses Schedule are also items that are included in Schedule A to the Complaint letter. They have been addressed in Mr Spray's response to Particulars 6.1.1(a) to (c) above.
142. The two expenses noted in the Expenses Schedule that are *not* noted in Schedule A are two Cabcharge expenses for \$58.50 and \$62.40 respectively, both dated 28 August 2009. Mr Spray refers to his previous submissions in relation to Mr Reilly's use of Cabcharges.
143. In relation to his own expenses, Mr Spray submits that "all but two" of the expenses listed in the Expenses Schedule appear in Schedule B to the Complaint (which he addresses below).

*Spray's position on his responsibilities with the Club –*

144. Mr Spray submits that from at least 2007, his formal responsibilities (as set out in Schedule 1 to his Executive Services Agreements) included the following:
- a) To encourage and develop the relationship between the Club and the Manly Sea Eagles Limited
  - b) To ensure that the Board of the Club is kept fully informed of all developments which impact on the Club, and the club industry generally
  - c) Such other duties as the Board of Directors of the Club may from time to time direct.
145. Mr Spray submits that from November 2009, his responsibilities were expanded, per paragraph 4 of his Executive Service Agreement 2009, to include:
- ...any duties that [he] may be required to perform for Manly-Warringah Sea Eagles Limited. [He] must devote [his] time, attention and skill exclusively to the business of the Club during all normal working hours and at other times reasonably necessary to fulfil [his] duties.*
146. Mr Spray submits that his appointments in relation to the Club, the Sea Eagles Company, the Northern Eagles and the Football Club, as set out above, involved "active participation and representing those bodies at meetings, interviews and various events".

*Spray's position on Sea Eagles away games and trips –*

147. Mr Spray contends that while he was a director of the Sea Eagles Company, he was "encouraged" by Sea Eagles Company senior management to attend away games in his role as director. Club Chairman Mr Reilly also encouraged Mr Spray to attend these



away games as he considered these trips were an "important opportunity" for Mr Spray to "expand his profile".

148. Mr Spray contends that "many" of the away games that he attended were also attended by other Club Board members Mr Peter Peters, Mr Kerry Sibraa, Mr Peter Bryant, Mr Max Delmege, Mr Damian Smith and Chairman Mr Reilly.
149. Mr Spray submits that on "some" occasions, Mr Spray made the bookings for the Board members. Mr Spray contends that it was "common knowledge" amongst Club Board members that Mr Spray attended these away games and "at no time" did any Club director question his presence or who was paying for his presence.
150. Mr Spray submits that "every" trip he made to a Sea Eagles away game was "as a representative of the Club" and this was "consistent" with the Club's objective of supporting rugby league and was done pursuant to Mr Spray's Executive Employment Agreements.
151. When planning these trips, Mr Spray contends that he "always endeavoured to minimise costs". He submits that the number of expenses claimed over a two year period from 22 April 2009 to 25 May 2011 is a reflection of the fact that he "did not regularly incur expenses". Mr Spray contends that to cover his expenses while he was away, Mr Spray took petty cash according to a "per diem" allowance, which he reduced in circumstances where meals were provided.
152. Mr Spray contends that in about 2009, two of the private owners of the Sea Eagles Company had a "falling out". The Football Club "aligned itself" with one of the owners, giving one of the private owners a majority on the Sea Eagles Company board. Mr Spray contends that this "caused great tension" within the Sea Eagles Company and the Club, which "became quite public".
153. Mr Spray contends that the Club was "heavily criticised" despite the fact that the Club had not played a role in those tensions. Mr Spray submits that he spent "considerable time" at the away game trips "trying to explain the Club's position to angry members, fans and sponsors".

*Spray's position on expenses claimed in respect of his wife –*

154. Mr Spray contends that on "some occasions" when Mr Spray travelled for the Club, his wife accompanied him. This "was clearly done with the knowledge of the other directors".
155. Mr Spray submits that "on every occasion", he charged his wife's flights to his salary package and made an allowance for Fringe Benefits Tax (FBT). These are included on Mr Spray's Salary Package Calculation sheets.

*Spray's position on Schedule B to the Complaint –*

156. Mr Spray then addresses each item that appears in Schedule B to the Complaint as follows:
157. With respect to the Brisbane trip of 9-11 May 2009 referred to in documents:
  - a) KM316 - 22 April 2009 - Sydney-Brisbane flights x 6
  - b) KM317 - 5 May 2009 - Per diem allowance

Mr Spray submits that these items both relate to a trip to Brisbane for a Sea Eagles home game held at Suncorp Stadium as part of a "double header". Mr Spray booked six

flights for himself and his wife, Chairman Reilly and his wife, and Mr Bryant and his wife. Mr Spray submits that he charged his wife's flights to his salary package and that he "personally met all her other costs".

158. With respect to the Gold Coast trip of 23-24 May 2009 referred to in documents:
- a) KM324 - 15 May 2009 - Sydney-Gold Coast flights
  - b) KM326 - 21 May 2009 - *Per diem* allowance

Mr Spray submits that these items relate to a trip to the Gold Coast for a Sea Eagles away game against the Titans. Mr Spray states that he booked the flights for himself, Chairman Reilly and Mr Bryant.

159. With respect to the Melbourne trip of 24-25 July 2009 referred to in documents:
- a) KM334 - 24 July 2009 - Payment for packages
  - b) KM335 - 25 July 2009 - Melbourne to Sydney
  - c) KM340 - Per diem allowances

Mr Spray submits that these items relate to a trip to Melbourne for a Sea Eagles away game. Payment for "packages" refers to accommodation. In this instance, Mr Spray states that his per diem allowance was for only \$110.00 because some meals were included and he only went for one night.

160. With respect to the breakfast meeting of 17 August 2009 referred to in document:
- a) KM339 - Four coffees

Mr Spray submits that this item relates to a breakfast meeting between Mr Spray, Chairman Reilly and either the chairman or the CEO of Dee Why RSL on 17 August 2009.

161. With respect to the Crown Casino Melbourne expenses dated 24 July 2009 (\$125.00) and 25 July 2009 (\$165.40) referred to in document:
- a) KM343 - dinner at the Crown Casino

Mr Spray contends that this dinner at the Crown Casino took place on an away trip and was with Club Chairman Reilly, director Peter Bryant and possibly also Kerry Sibraa. Chairman Reilly "initiated" the dinner and gave Mr Spray the bill to settle, which Mr Spray assumed was "authority" for him to pay using Club funds.

162. In relation to the two expenses from the Expenses Schedule which *do not* appear in Schedule B (namely, 24 July 2009 - \$125.00 - Flights and 25 July 2009 - \$165.40 - Flights), Mr Spray submits that these are the flights to attend the away game in Melbourne on the occasion that the directors had dinner at the Crown Casino.

163. With respect to the toll notice (\$4.00) referred to in document:
- a) KM349 - toll notice

Mr Spray submits that this expense was incurred when attending "something Club related", although he "cannot now say" what that was.

164. With respect to the LCA National Conference at the Gold Coast on 6-8 November 2009 referred to in documents:
- a) KM338 - 17 August 2009 - Sydney-Gold Coast flights x 4
  - b) KM356 - 2 October 2009 - LCA National Conference (6-8 November)
  - c) KM358 - 2 November 2009 - Cash payment voucher

Mr Spray submits that these expenses relate to his attendance at the LCA Annual Conference on the Gold Coast, which he attended with his wife. The Club was a senior member of the LCA with Mr Ken Arthursen, former Club Chairman, being the LCA Patron. Mr Spray booked the flights for himself and his wife, and Chairman Reilly and his wife.

165. Mr Spray contends that throughout his employment at the Club, it was "standard practice" that the Club's General Manager/Chief Executive Officer and his partner attend the LCA Annual Conference. "Sometimes" the Chairman and other directors would also attend.
166. Mr Spray states that he "cannot recall" this type of expense, when incurred by others, ever being tabled for approval by the Board.
167. Mr Spray notes that the Club paid for his wife's attendance at the conference in 2009. The LCA offered a delegate and partner combined registration for the conference and it was "customary" for the Club to pay for the Chairman and GM/CEO to attend with their partners.
168. Notwithstanding that Mr Spray thought it was "at least arguable" that his wife was also representing the Club by attending (as suggested by the combined registration for spouses), Mr Spray contends that he deducted the airfares for his wife from his salary package on his Salary Package Calculation Sheet for the quarter ended 30 September 2009.
169. Mr Spray submits that attending the LCA conference enabled him to "fulfil [his] obligation" to ensure that the Board of the Club was kept "fully informed" of all developments which impacted on the Club, and the club industry generally.
170. With respect to the Directors' taxi fares dated 26 May 2010 as referred to in document:
  - a) KM366 - \$100.00

Mr Spray submits that this expense was incurred to enable some Club directors to attend a Club related function, which Mr Spray did not attend.

171. With respect to the *Lee's Fortuna Court* restaurant expense dated 18 March 2011 referred to in document:
  - a) KM380 - 18 March 2011 - Lee's Fortuna Court lunch

Mr Spray contends that this expense was a lunch with Chairman Reilly and the two principals of Regency Artists, which was the company that had "looked after" Club promotions and entertainment for more than 20 years. These lunches took place once or twice a year to discuss future promotion and entertainment ideas, and usually Regency Artists paid the bill. On this occasion, Mr Spray contends that Club director Max Delmege and former Club director Scott Campbell "turned up unannounced" and joined the table. Mr Spray contends that they ordered "excessive" amounts of food and alcohol, which made him "annoyed and embarrassed". Mr Spray left early and paid the bill on the Club's credit card up to that point as he "did not feel it was appropriate" for Regency Artists to pay in those circumstances. He later "expressed his annoyance" to Mr Reilly regarding this lunch.

172. With respect to the inspection of Currumbin RSL Club, Mr Spray contends that on one trip to the Gold Coast, Mr Spray inspected Currumbin RSL Club, which had undergone significant renovations. The Club was proposing to use the same builder and Mr Spray met with RSL Club officials and representatives of the builder to discuss their

renovations. Mr Spray submits that this is confirmed by Peter Bryant in his record of interview; however Mr Spray is "unable to say" the date of this trip.

173. In relation to the expenses of other Club directors, which also appear in the Expenses Schedule, Mr Spray submits the following:
- a) The "majority" of these expenses concern the expenses of either Mr Spray or Chairman Reilly, which have already been addressed above by Mr Spray
  - b) The expenses of Mr Paul Cummings arose from either while he was Chairman or when he was assisting the Club to "resolve conflict" in relation to the Sea Eagles Company
  - c) There are "a number of expenses" where it is unknown who the director or officer was to whom the expense related. These include match tickets, hospitality, accommodation, award tickets, directors' travel or a directors' meeting expense
  - d) Mr Spray submits that he has "no reason" to say that these expenses were not incurred for the benefit of the Club.

*Spray's position on the approval of General Manager/CEO expenses –*

174. Mr Spray contends that when he commenced at the Club, the "usual practice" was that the Chairman would sign off on the General Manager/CEO's expenses. Mr Spray states that he saw the Chairman as a representative of the Board and he considered this practice to be "appropriate".
175. Mr Spray states that when he became General Manager/CEO, he did not change his practice, which remained the same until Chairman Costello's appointment in March 2012.
176. Mr Spray contends that the GM/CEO's expenses were "never" tabled at a Board meeting from the mid-1990s until March 2012, and that there was "no requirement" for this to happen.
177. Mr Spray submits that at no time did he consider that he was "doing the wrong thing" by incurring these expenses. He submits that he kept "complete financial records" of all the expenses and they were audited as part of the Club's annual audit.
178. Mr Spray contends that "at no time" was any anomaly raised by the Club's auditor or any Club director in relation to director and staff expenses. Mr Spray submits that the costs were included in the monthly accounts in the Director and Staff Expense category, and the payments were included in the monthly Disbursements Report; both of which "were tabled and approved at every Board meeting".

**Spray response to Ground Six - Particular 6.1.1(e)**

179. In response to this particular of the Complaint, Mr Spray "denies" the following allegations:
- a) That he overstated the Club's profit in requesting payment of his bonus
  - b) That he "overstated the profit and had not qualified for payment" of the bonuses
  - c) That he "must have known that he had overstated the profit and had not qualified for payment" of the bonuses.

*Spray's account of how bonuses were assessed by the Club –*

180. Mr Spray refers to his account of the circumstances in which he entered into his Executive Employment Agreements on 19 December 2007 or 4 November 2009.

181. Mr Spray refers in particular to clause 11 of his Executive Employment Agreement dated 19 December 2007, which states:

*...the manager shall, in respect of the 12 month period ending 31 October 2008, be paid the following bonuses on the following conditions:*

- (a) *A sum of eight thousand dollars (\$8,000) upon the Club achieving its budgeted sales for the financial year ending 31 October 2008*
- (b) *A further sum of twelve thousand dollars (\$12,000) upon the Club achieving its budgeted profit before tax for the financial year ending 31 October 2008.*

182. Mr Spray also refers to clause 12 of his Executive Employment Agreement dated 4 November 2009, which was in similar terms:

*...subject to paragraph 13 below, the Manager shall, in respect of the 12 month period ending 31 October of each financial year, be paid the following bonuses on the following conditions:*

- (a) *A sum of eight thousand dollars (\$8,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted sales for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10*
- (b) *A further sum of twelve thousand dollars (\$12,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted profit before tax for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10.*

183. Mr Spray argues that the "relevant measure" for the payment of bonuses was therefore whether the Club's "profit before tax" exceeded the budget.

*Spray's explanation of how Club Management Accounts were prepared –*

184. Mr Spray contends that from the time he joined the Club in 1993, the Club was "in the habit" of making grants, subsidies and donations every year. The biggest of these grants was always a grant to the Sea Eagles Company, but there were also smaller grants to sub-clubs and community groups.
185. Mr Spray contends that these amounts were referred to as "appropriations". They were "voluntary" payments and planned in advance, but they could change at any time during a financial year "at the discretion of the Board".
186. He argues that as a consequence of this practice, the Club's measure of its "profitability" was "traditionally" taken as the *profit before tax and appropriations*. That is, these appropriations were not considered by the Club as a trading expense.
187. Mr Spray contends that *profit before tax and appropriations* was the figure that the Board "was always interested in".
188. Mr Spray submits that the law relating to poker machines in New South Wales changed during 2004, requiring the Club to make donations to registered charities, being a certain percentage of poker machine revenue derived over \$1 million.
189. However, he contends that the Club's annual budget and the monthly management accounts continued to be prepared on the basis that these *compulsory* donations (together with the appropriations) were "not a trading expense". That is, these "compulsory donations" required by legislation were "included with the appropriations".
190. Therefore, he contends that the structure of the Club budget and the Management Accounts remained as follows:
- Trading Profit (trading revenue - trading expenses) - Taxation = *Profit after Tax*

- THEN deduct appropriations (including compulsory donations) = *Final Surplus/Deficit*.
191. Mr Spray contends that these management accounts formed part of the Board papers which were distributed to all directors prior to the monthly Board meetings. The monthly management accounts had to be prepared in the same structure as the annual budget so they could be readily compared.
192. Mr Spray contends that he "did not turn [his] attention" to the significance of the compulsory donations at the time, but submits that this would not have made a "significant difference" because the "compulsory donations" represented a "small" percentage of the total poker machine revenue.
193. Mr Spray submits that the Club's monthly Board minutes do not include the Board papers and therefore do not include the Financial Reports which he had prepared and which the minutes reflect were approved by the Board.
194. Mr Spray contends that each of those Board minutes show that the trading profit (or operating profit) was taken to be the *profit before the deduction of tax, appropriations and donations*. For instance:
- a) *Minute of Board meeting held on 17 November 2009*  
The result was an Annual Profit of \$1,476,000.00 (comprising \$684,000.00 trading profit plus poker machine and property sales). Then, after deduction of grants and donations, a "net surplus" of \$559,000.00 remained. It was resolved at the meeting that this financial report be approved. Mr Spray contends that the *trading profit of \$684,000.00 (before tax and appropriations)* is the figure upon which he based his request for a bonus.
  - b) *Minute of Board meeting held on 16 November 2010*  
An operating profit of approximately \$1,010,000.00 was recorded for 2010. Mr Spray submits that this comprised a Trading Profit of \$818,000.00 plus poker machine entitlement sales of \$192,000.00. He submits that after appropriations, this resulted in a "net surplus" of \$559,000.00. It was resolved that the 2010 draft financial report be approved. Mr Spray contends that the *trading profit of \$818,000.00 (before tax and appropriations)* is the figure upon which he based his request for a bonus.

*Spray's account of his request for payment of bonuses –*

195. Mr Spray contends that on 20 November 2009, he wrote to Chairman Reilly advising of the sales and profit figures for the financial year ending 31 October 2009 and requesting payment of a bonus as per clause 11 of his Executive Employment Agreement dated 19 December 2007 and clause 12 of his Executive Employment Agreement dated 4 November 2009.
196. Mr Spray submits that the Club's *profit before tax* for 2009 was \$684,000.00, while the *budgeted trading profit before tax and appropriations* for 2009 was \$600,000.00 - thus the trading profit before tax and appropriations that the Club had achieved had exceeded the budget by \$84,000.00. He submits that the *final actual trading profit before tax and appropriations* was \$666,000.00 and that this was "still well in excess" of the budgeted \$600,000.00.
197. Mr Spray contends that on 30 November 2010, he wrote to Chairman Reilly advising of the sales and profit figures for the financial year ending 31 October 2010 and requesting payment of a bonus as per clause 11 of his Executive Employment Agreement dated 19 December 2007 and clause 12 of his Executive Employment Agreement dated 4 November 2009.

198. Mr Spray submits that the Club's *profit before tax and appropriations for 2010* was \$818,000.00, while the budgeted trading profit before tax and appropriations for 2010 was \$800,000.00 - thus the *trading profit before tax and appropriations* achieved had exceeded the budget by \$18,000.00.

*Spray's account of the Club Annual Reports –*

199. Mr Spray contends that until about 2004, he prepared the management accounts for presentation to the Board. Once approved, he would prepare the Annual Report financials based on the financials approved by the Board, and pass them to the auditor who would advise him of presentation changes to make to arrive at the final version of the accounts for inclusion in the Annual Report.
200. Mr Spray submits that this process was "expensive and time-consuming", but a "necessary" and "important" one.
201. Mr Spray states that between the time when he became General Manager in 2004 and the time when he took on the role of Chief Financial Officer in 2012, he stopped doing the basic accounting work for the Club and instead a contracted accountant prepared the draft monthly management accounts and draft Annual Report financials. Once Mr Spray was "satisfied with the content", he would finalise the schedules for the Board and write the narrative and include it in his monthly report.
202. Mr Spray contends that throughout this period, he wrote the General Manager/CEO report for the Annual Report and, in conjunction with the auditor, prepared all the supporting financial information notes that were required.
203. He states that generally, he would see the first draft of the Annual Report in early January and the final version around 1 February. The auditor signed off on the Annual Report and Mr Spray would then take it to the Board and request their approval for the Chairman to sign.
204. Mr Spray submits that until the 2008 Annual Report, the Club's Annual Report was prepared in a similar format to the Club's management accounts. The Annual Report was prepared by the Club's auditor from the Annual Report financials which Mr Spray provided to him.
205. However, Mr Spray submits that from 2008, the Club's Annual Report was presented as follows:
- Trading Profit - Appropriations = *Profit before Tax*
  - THEN deduct Taxation = *Profit after Tax*.
206. Mr Spray submits that this change in the structure of the Annual Reports from 2008 is evident from the following material:
- a) The Club's 2006 Annual Report shows a Net Profit after Income Tax of \$659,716.00 before deducting appropriations to give Net Movement to Members' Funds for the year
  - b) The Club's 2007 Annual Report shows the Club's Net Profit after Income Tax of \$58,255.00 before deducting appropriations to give Net Movement to Members' Funds for the year
  - c) The Club's 2008 Annual Report shows the Income Statement for the year ending 31 October 2008 as "Profit/(Loss) before Income Tax", then deducting "impairment of non-current assets and support to the community" gives the "Profit/(Loss) before Income Tax" then deducting income tax arrives at "Profit/(Loss) after Tax"

- d) The Club's 2009 and 2010 Annual Reports used the same presentation structure as the 2008 Annual Report.
207. Mr Spray argues that notwithstanding the "change in the presentation format" of the accounts in the Club's Annual Reports, the "significant figure to indicate the profitability of the Club" was the "trading profit before deductions, tax, appropriations and donations".
208. Mr Spray submits that there was "almost no change" in content between his 2007 and 2009 Executive Employment Agreements. He submits that the 2007 agreement was prepared at a time when the Annual Report, management accounts and annual budget were presented in the same manner.
209. Mr Spray submits that when his 2009 agreement was negotiated, neither himself nor Peter Bryant nor the lawyers representing the parties "considered the significance" (to the assessment of his bonus entitlements) of the "change in the format" of the Club's Annual Report that occurred in 2008.
210. Mr Spray states that although he would have seen the Annual Reports for the years ending 31 October 2009 and 31 October 2010 and would have been aware of the "change in presentation", he "did not appreciate the significance of the change".
211. Mr Spray submits that a "change in the presentation" of the Club's accounts did not change the financial performance of the Club and that he considered that the relevant measure of his performance was the Club's *trading profit before income tax, donations and appropriations*.
212. Mr Spray submits that in calculating the Club's *profit before tax* in order to determine his bonus entitlement, he had been "very fair" as he had excluded the profits derived from such matters as the sale of poker machine licences and the sale of Club land.
213. Mr Spray submits that he believed that he "did not need" to make these deductions but did so because he considered it "the right thing to do" as these sources of revenue were "something [he] could not control" and therefore "should not have been measured on". Mr Spray submits that the Board minutes reflect the making of these deductions.

*Spray's response to the Particulars of the Complaint regarding his bonus –*

214. Mr Spray submits that the profit figures referred to in Mr Spray's letters to Chairman Reilly regarding his bonuses were *profit pre-tax* and **before** football-related (*Sea Eagles*) grants, other grants and donations were deducted.
215. Mr Spray notes that the Complaint states that the Annual Report disclosed profits for 2009 and 2010 of \$540,145.00 and \$559,366.00 respectively. Mr Spray argues that those were figures that represented the Club's *profit pre-tax*, but **after** football-related grants, other grants and donations had been deducted.
216. Mr Spray argues that it is "incorrect" for the Complainant to compare the *profit after tax and after deductions* (as appears in the Annual Reports) with the *budgeted profit* (for the purpose of determining his eligibility for a bonus), as the budgeted profit was calculated **before** tax and football-related grants, other grants and donations.
217. Mr Spray submits that *if* the Club's *budgeted profit* had also taken into account the *predicted grants and donations*, then the budgeted profit would have been set at a level "considerably lower" level than \$600,000.00 and \$800,000.00 respectively. Hence,



Mr Spray argues that there is "no doubt" that he would have exceeded the Club's budget.

**Spray response to Ground Six - Particular 6.1.1(f)**

218. Mr Spray contends that in January 2006, Penn Sport Pty Limited (a business run by the Penn family) acquired an equivalent number of shares to Delmege Commercial Pty Limited (a business run by Mr Delmege's family) thus making those two corporate entities joint major shareholders in the Sea Eagles Company.
219. Mr Spray contends that over the years, there was "well-known ill-blood" between the Delmege family and the Penn family.
220. He contends that on 26 May 2009, Mr Reilly advised Mr Spray that director Mr Delmege was investigating the Penn family in response to the Penns' conducting an investigation into Mr Delmege.
221. Mr Spray contends that Mr Reilly said to him words along the lines of: *"Pete, I need you to pay this invoice out of Max's honorarium. You know how the Penns are carrying out investigations into Max's affairs, well, he's doing the same to them. You know Brian Keys who does work for me, he's carrying out the work for Max"*.
222. On the issue of payment of honorariums to Club Board members that are referred to in the Club Board Charter dated 22 October 2012 and Particular 6.1.1(f) of the Complaint, Mr Spray states that these honorariums were an amount paid yearly by the Club to each director in respect of the services of directors in the "forthcoming" year. The payments were approved by Club members at the AGM every year.
223. Mr Spray submits that each Club director could spend their honorarium "as they wished" and it was "never [his] or the Board's responsibility" to decide how or where each director spent their honorarium. Mr Spray notes, by way of example, that some directors used their honorarium as a payroll payment and got a group certificate for it; one director paid the Sea Eagles Company money he owed to that entity and some directors used their honorarium for the purchase of wine or for the reimbursement of telephone or restaurant bills.
224. Mr Spray submits that his responsibility was to ensure that the honorariums were "tracked" and that any tax liabilities such as FBT were paid by the director. Mr Spray submits that from the time honorariums were introduced, "no expenses of this type" were ever put to the Board.
225. Mr Spray submits that "several times a year" he would distribute individual statements to each Club director showing how they had spent their honorarium, and what their unspent entitlement was at that time.
226. Mr Spray submits that he had "no reason to doubt" what Mr Reilly had said regarding the conduct of investigations. Mr Spray contends that Mr Reilly handed him an invoice from Brike Investigations (Aust) Pty Limited made out to Delmege Commercial Pty Limited, for the value of \$7,700.00, which Mr Reilly said was the invoice for the investigation into the Penn family undertaken at Mr Delmege's request.
227. Mr Spray contends that he called Mr Max Delmege and sought his approval to charge the \$7,700.00 including GST against his honorarium, which he then did. Mr Spray notes that at that stage, Mr Delmege's account was "significantly in credit".

228. Mr Spray submits that Mr Reilly "confirms" in his record of interview that he is aware that Mr Spray had called Mr Delmege and sought his approval. Mr Spray states that every few months, each director was given a statement for their honorarium and Mr Delmege "never raised an issue" with this charge against his honorarium.
229. Mr Spray states that he wrote out a Club cheque to Brike Investigations (Aust) Pty Limited for the sum of \$7,700.00. This cheque was signed by Mr Reilly and Mr Spray because, at the time, all cheques needed to be signed by at least one director of the Club. Mr Spray states that he charged the cheque against Mr Delmege's honorarium in the general ledger, and that this cheque was "no different" from a salary payment by EFT to a Club director as a means to make a payment from his honorarium.
230. Mr Spray submits that he viewed the invoice for the investigation into the Penn family as a "business expense of Mr Delmege or his company" that was incurred in protecting his business. As such, Mr Spray considered it an "otherwise deductible business expense for tax purposes" and claimed the GST input tax credit from the ATO in the Club's Business Activity Statement. As a result, the net charge to Mr Delmege's honorarium within the Club's general ledger was \$7,000.00.
231. Mr Spray submits that he "did not consider" that he needed to obtain approval from the Governing Body of the Club for the cheque made out to Brike Investigations (Aust) Pty Limited for the investigation into the Penn family, by reason that the money was coming out of Mr Delmege's honorarium and he "could use it as he pleased".
232. Mr Spray contends that he "was not aware" at the time he wrote out the cheque to Brike Investigations (Aust) Pty Limited that this entity no longer existed as a registered company.

### Spray Submissions on OLGR Recommended Disciplinary Action

*Spray's submissions on his personal circumstances –*

233. Mr Spray states that he is 59 years old. He and his wife have two children, now 24 and 21 years old.

234. [REDACTED]
- [REDACTED] As a result, Mr Spray's and his wife's ongoing employment was "crucial". [REDACTED]
- [REDACTED] *[redacted from published version]*

235. In May 2010, Mr Spray was diagnosed [redacted]
- [redacted]
- [redacted from published version]

236. Mr Spray notes that he has no criminal convictions.

*Spray's submissions on his employment at the Club –*

237. Mr Spray submits that he was "passionate" about the Club throughout his 19 years of employment. He submits that he experienced "many difficult situations" where he considers that he "fought significant battles in the interest of the Club, almost singlehandedly". By way of example, Mr Spray submits that he experienced the difficulties of meeting creditor commitments and staff wages and the "extremely stressful environment" that this created for himself and his staff; as well as "enduring the in-fighting" between the Club, the Football Club and the Sea Eagles Company and the "backlash" that the Club received from its members and the community whenever the details of the "bickering" were made public.
238. Mr Spray submits that during his time as General Manager/CEO, he:
- a) Changed many of the processes and procedures at the Club to ensure the Club had "improved control of its operations"
  - b) Introduced procedures to "improve" the way the Club managed its affairs, "improved" financial reporting and "eliminated" internal control issues
  - c) Encouraged the Board to undertake an online Directors' Foundation course and registered every director and himself for the course. However, only Mr Spray and one other Club director completed this course
  - d) With the assistance of *Pigott Stinson Lawyers*, Mr Spray introduced the directors' honorarium in the mid-1990s
  - e) Cancelled the *Cabcharge* account when his attempts at persuading Mr Reilly to limit his use of Cabcharges were unsuccessful
  - f) Ensured that throughout the period of the practice involving Mr Reilly's transfers, the Club was overall "never out of pocket"
  - g) Assisted the Football Club, on a voluntary basis from when he commenced at the Club in 1993, with accounting, financial and company secretarial matters. Mr Spray "did much of this work" out of normal hours. In 2007, this type of work was included in his Executive Employment Agreement
  - h) Took on the role of Chief Financial Officer as well as CEO in 2012. Mr Spray submits that this was on his initiative to save the Club the cost of a contract accountant and added "significantly" to his workload
  - i) At the request of Chairman Costello in April 2012, Mr Spray took an approximately \$56,000.00 decrease in his annual salary, despite his contract, to assist the Club with its financial issues. Mr Spray contends that the result was a "loss of income of around \$60,000.00", an amount which exceeds the sum of all the expenses referred to by the Complainant in the Expenses Schedule
  - j) When he left the Club in February 2013, Mr Spray proposed that the Club pay him his accrued leave entitlements on a weekly basis over the following five months as he understood that had he insisted on receiving all his entitlement immediately, it would have caused the Club "extreme cash flow issues"
  - k) Notwithstanding the "shared liability" he had for the Club's AMEX card, Mr Spray "allowed" the Club to continue to use it for several months after he left because he was aware that if he had cancelled it in February 2013, it would have caused "further cash flow issues" for the Club.
239. Mr Spray reiterates that he "had no training" when he commenced at the Club, as the position was "created" for him. He had never worked at a registered club before. Mr Spray submits that he thought he had a "reasonable" understanding of the Act, and that he attended industry meetings and had "continual interaction" with the Club's auditor, together with liaising with club specialist lawyers and consultants.
240. Mr Spray contends that his predecessor, Mr Brian Smith, was a 40 year club veteran and submits that they discussed the Act "from time to time only". Mr Spray contends

that, as far as he could see, only Mr Brian Smith and Mr Peter Bryant, a qualified lawyer, had a "thorough understanding" of the Act.

- 241. Mr Spray submits that he had an "excellent relationship" with the Club's auditor, Mr Bill Edmondson of Edmondson & Co, throughout his 19 years at the Club. Mr Spray submits that he sought the advice of Mr Edmondson on many occasions, and that he was a "great support".
- 242. Mr Spray states that he is "disappointed" that Mr Edmondson was not interviewed as part of the OLGR investigation, and notes that Mr Edmondson has provided him with a reference which is attached to his submission.

*Spray's submissions on Robert Reilly and the Board –*

- 243. With respect to the way in which he interacted with Chairman Reilly, Mr Spray states that he is "severely disappointed" that he did not take a "stronger stance" in relation to both his expenses and the transfer practice.
- 244. Mr Spray submits that he had expected that Mr Reilly would be like the two previous Chairmen, who were "strong and principled individuals", and that "by the time [Mr Spray had] worked out he was different, he [Mr Reilly] had changed the culture of the Club and its Board".
- 245. Mr Spray submits that, in hindsight, he was "far too hesitant" to stand up to Mr Reilly because of a "fear that he would lose his job" if he "did not do what [Mr Reilly] wanted". Mr Spray "just went along with" Mr Reilly's requests and "hoped that he [Mr Reilly] would stop of his own volition". Mr Spray concedes that he put his own interests before those of the Club in this respect.
- 246. Mr Spray "thoroughly accepts" that approval should have been obtained, in advance, for "many" of the expenses referred to in the Complaint, but that "was not the way the Club had ever operated" during Mr Spray's 19 years of employment at the Club.
- 247. Mr Spray submits that he "did not at any time think [he] was doing anything wrong" and is "very confident" that the Board would have approved all the expenses if they had been asked to do so in advance.
- 248. Mr Spray submits that he "never sought to hide anything" in that he kept "full records" of the calculation of his wages and all expenses incurred.

*Spray's submission on the impact of the OLGR investigation –*

- 249. Mr Spray submits that this OLGR investigation has had a "significant effect" upon him. He considers himself to be an honest person and submits that the allegations that have been made against him in the Complaint have had a "profound effect" on his self-confidence and self-esteem.
- 250. Mr Spray submits that ever since the OLGR investigation commenced in mid-2012, it has been "hanging over [his] head" and has "significantly affected [his] quality of life".
- 251. Mr Spray submits that while he has "obviously" discussed the matter with his wife, he has "not been able to bring himself" to tell his children because the allegations against him, "effectively of dishonesty", are "completely contrary" to how he has brought them up.

252. Mr Spray submits that this in itself has "put pressure" on his role as a father because he knows that he is "not being completely upfront" with his children. Mr Spray submits that apart from his wife, he has told "no one" of the Complaint against him, not even his mother or brother or sister, because he is "embarrassed".
253. Mr Spray submits that the investigation and the notification of the Complaint have caused him "a lot of stress" and has meant that he has been "reluctant to make plans for the future because of the worry".

*Spray's response to OLGR allegation of lack of fitness and propriety –*

254. Mr Spray does not believe that his conduct as alleged by OLGR was "unlawful, dishonest and for his own benefit". He does not consider that he obtained any personal benefit whatsoever from the conduct detailed in the Complaint. He submits that as a result of the conduct, he lost his employment at the Club after 19 years of "loyal service" when he is in his late 50s and is faced with the "daunting prospect of finding much-needed employment".
255. Mr Spray submits that he does not consider that he is not a "fit and proper" person to be a member of a governing body of a club or secretary of a club.
256. Mr Spray "sincerely asks" that the Authority *not* make an Order declaring him ineligible to stand for election or to be appointed to hold office in the position of secretary or member of the Governing Body of the Club and all other registered clubs.

**SUBMISSION FROM MR ROBERT REILLY DATED 6 AUGUST 2014**

257. On 6 August 2014, Mr Tim Mitchell, the legal representative of Mr Reilly, provided to the Authority Mr Reilly's submission addressing the Complaint as it concerns him. Attached to this submission are several annexures, including:
- a) a record of 98 cheque cashing transactions and their clearance periods; minutes of the Club Board meeting held on 2 April 2012
  - b) extracts from the minutes of the Club AGMs for 2008, 2009 and 2010
  - c) Income Statement in the 2009 Annual Report of the Club
  - d) Income Statement in the 2010 Annual Report of the Club
  - e) the Honorarium Summary for Mr Max Delmege for 2009 and 2013.
258. Mr Reilly's response takes the form of a written submission letter made by his solicitor. He does not provide a personal statement. Briefly, the key observations and contentions made by Mr Reilly through his solicitor may be summarised as follows:

**Reilly on Particular 1.1.1 of the Complaint**

259. Mr Reilly "admits" that from June 2009 to March 2012, he had an "arrangement" with the Club whereby he would write cheques to the Club in exchange for electronic funds transfers of the same amount.
260. Mr Reilly argues that this facility was a "convenience" for Mr Reilly, but not one that provided him with a "material advantage" or "impugned his honesty".
261. Mr Reilly contends [the Authority notes, without further elaboration] that there is "evidence" disclosing that the Board "had knowledge of these transactions and approved these transactions" in monthly Board meetings.
262. Mr Reilly submits that the Board "did not disallow" the abovementioned arrangement as the Club did not suffer any "material financial disadvantage" from these transactions.

263. Mr Reilly submits that the cheques that he made out to the Club were "immediately" presentable for banking, that "most" of the cheques were deposited on the Club's next banking day and that "none" of the cheques was dishonoured. In support of this contention, Mr Reilly refers to a document entitled "Cheque cashing transactions and clearing period of the 98 transactions", which is attached to Mr Reilly's submission.

***Reilly on best practice and financial detriment to the Club***

264. Mr Reilly concedes that he and the Board of Directors "agreed" that this arrangement "may not conform to the best practice in governance", as evident from the minutes for the Board meeting held on 2 April 2012.
265. However, Mr Reilly argues that it is "clear" that these transactions had "no material financial detriment" to the Club and that the statement in Particular 5.1.1(a) of the Complaint which infers that the Club was financially adversely affected as a result is "misleading".
266. Mr Reilly submits that although the Club was "not always in the best cash flow position", most of its payables during the time that Mr Reilly was Chairman were less than 30 days. He argues that the inference that his cheque transactions impacted detrimentally upon the financial position of the Club is "not able to be substantiated" and that even if one considers interest foregone on the Club's trading account for the amounts concerned, such interest would be "negligible" and "certainly not the basis nor incentive" for such an arrangement.
267. Mr Reilly refers to item 2 in the Compliance section of the Club's Board meeting minutes of 25 June 2012 and submits that the Club's auditor "was aware of this arrangement and noted that Mr Reilly had gained no financial benefit".

***Reilly on Board knowledge and approval of the cheque transactions***

268. Mr Reilly submits that the transactions are "clearly recorded" in the monthly Cash Disbursement Journals, showing Mr Reilly as the recipient of the funds, and that for 33 months, each and every transaction had been "duly approved" as recorded in the monthly Board meeting minutes.
269. Mr Reilly contends that the arrangement was "totally transparent" and followed "established corporate procedures" for cash disbursement approvals.

***Reilly on power and responsibility***

270. Mr Reilly submits that *if* it is the case that this arrangement "represents a lack of oversight", then it is the *Club through its Board* that is responsible for this oversight. Mr Reilly submits that at any point during the 33 months in which these transactions were taking place, the Board could have made reasonable enquiries as to the transactions and "exercised its power to terminate the arrangement". Mr Reilly notes that this did occur on 1 March 2012 when Mr Reilly was Chairman, and submits that this is reflected in the minutes for the Board meeting held on 2 April 2012.
271. Mr Reilly argues that it would be "manifestly unfair to single out one member of the Board for sanction when the entire Board had oversight of all disbursements".

## **Reilly on Particular 1.1.2 of the Complaint**

### ***Reilly on AGM approval and the meaning of "professional development"***

272. In relation to this Particular, regarding the payment of expense claims without assessment or approval, Mr Reilly refers to section 10(6)(b) of the Act, which requires that a profit, advantage or benefit be approved at an AGM of members.
273. Mr Reilly submits that he had "discharged that duty" as director and Chairman of the Club by obtaining these approvals in the AGMs for the years 2008, 2009 and 2010, the minutes of which are annexed to Mr Reilly's submission.
274. Mr Reilly submits that this was effected by Resolution, being Item 4.2 in the minutes of the 2008, 2009 and 2010 AGMs, which authorises the Club:

*...to budget, allocate and disburse such funds as may be considered reasonable expenditures of Directors for professional development, including but not limited to, industry related meetings, organised study tours, seminars, trade displays etc. as may be determined by the Board.*

275. Mr Reilly contends that the ambit of that power is "wide" and the Board "clearly had discretion" to determine what constitutes professional development. Mr Reilly argues that nothing in the Resolution requires that expenses incurred must be *individually* assessed and approved by the Board as alleged by Particular 1.1.2(b) of the Complaint.

### ***Reilly on the system and procedure for expenses at the Club***

276. Mr Reilly contends that in terms of corporate governance, the system and procedure at the Club for processing business related expenses of employees and directors at the Club was "no different from other established businesses".
277. Mr Reilly describes the system and procedure as follows:
- a) In practice, the Club Board or management acknowledged the need for senior officers of the Club to represent the Club at upcoming events. One or more members of management or the Board member would consent to attend the function, sometimes with their spouses. The participants would pay for the airfare of their spouses, while the Club would cover shared accommodation and meal expenses
  - b) If attendance at an event involved travelling, the Club's travel agency would arrange the tickets and bill the Club directly. Accommodation and entertainment expenses were either billed directly to the Club or paid by the participants, who would later be reimbursed by the Club. Board members were also given *Cabcharge* and a *per diem* allowance to cover meals and other expenses
  - c) On the receipt of the tax invoices, management would review the expenses for "relevance and reasonableness" and could reject an expense claim. In that case, the Club would ask the participant to repay the Club if there were issues about whether it was a private expense or whether the amount claimed was unreasonable in the circumstances.

### ***Reilly on the relevance of the Complainant's allegations in Particular 1.1.2***

278. Mr Reilly submits that Particular 1.1.2(a) of the Complaint, concerning payment by the Club of Mr Reilly's expense claims totalling \$16,828.61 between 2009 and 2012, "has no application" to Mr Reilly - by reason that section 10 of the Act clearly states that the requirements of that section apply only in relation to *the Club*.

279. Similarly, Mr Reilly "does not discern" the basis of Particular 1.1.2(b) of the Complaint, which alleges that the claims were not individually assessed and approved as required by resolutions passed at the Club's AGMs in 2008, 2009 and 2010, arguing that there is "nothing" in the Club's Constitution nor the resolutions passed at the 2008, 2009 and 2010 AGMs that requires such claims to be "individually assessed and approved" by the Board.
280. Mr Reilly contends that the management practice of "most companies" would be to delegate the approval of travel and entertainment expenses either to the General Manager or the Chief Financial Officer, who would advise the Board of any irregularity; therefore it is "entirely within good corporate practice" to have payments approved by Peter Spray.
281. Mr Reilly argues that if Mr Spray was not satisfied that the claims were genuine or reasonable, he "could have refused" to pay the expense or asked the member to reimburse the Club. This occurred on several occasions where Mr Reilly had reimbursed the Club for expenses that were "knocked back by management".
282. Mr Reilly argues that "professional development" is "not a closed category" and that the Board has "ultimate power" to determine what types of functions or events constitute "professional development". Mr Reilly submits that accordingly, there is "no discernible ground of complaint" in Particular 1.1.2 of any misconduct that relates to Mr Reilly's expense claims. Mr Reilly submits that he "would have been guilty of misconduct if he had falsified or inflated his expense claims and there is no evidence that this has occurred".

***Reilly on payment of Peter Spray's bonus***

283. In relation to Particular 5.1.1(b) of the Complaint, which alleges misconduct on the part of Mr Reilly in paying bonuses to Peter Spray, Mr Reilly argues that this Ground of the Complaint is "misguided" as the Club's *pre-tax profit* for 2009 was in fact \$684,000.00 - not \$540,145.00 as stated in the Complaint.

***Reilly on Generally Accepted Accounting Principles in Australia***

284. Mr Reilly submits that if the Generally Accepted Accounting Principles are applied to the Club's Income Statement for 2009, the *net profit figure* for 2009 was \$649,729.00 - which is well above the target \$600,000.00 profit figure that was specified in Mr Spray's employment contract.
285. Mr Reilly notes that the Complainant alleges that Mr Reilly improperly paid Mr Spray's performance bonus in 2010 when the actual profit before tax was \$200,634.00 below the targeted profit figure.
286. Mr Reilly submits that the actual profit before income tax *plus* \$450,470.00 worth of financial support to the community was \$1,009,836.00.
287. Mr Reilly then refers to the Club's Income Statement for 2010 and argues that the Club's support to the community is a form of "profit distribution, akin to dividends to shareholders", and that the figure of \$450,470.00 should not "under any accounting principle" have been included in the calculation of *profit before tax*.
288. Mr Reilly submits that Mr Spray was entitled to his 2010 bonus according to his employment contract and that Mr Reilly had "discharged his duty appropriately".



***Reilly on the reasonableness of the bonus payments to Spray***

- 289. Mr Reilly submits that the Board has discretion to make bonus payments, and that this discretion is "subject to the opinion of the Authority" that the entitlement is "reasonable in the circumstances".
- 290. Mr Reilly submits that the payment of a \$12,000.00 bonus for having achieved pre-tax profit of over \$500,000.00 was "in line with prevailing bonuses paid in the club industry" to executives in 2009 and 2010.

***Reilly on the Brike investigation***

- 291. Particular 5.1.1(c) of the Complaint alleges that Mr Reilly undertook and charged, but did not complete, investigative work in 2009 in the name of Brike Investigations (Aust) Pty Limited, a deregistered company, without disclosing his personal business interest in the work to the Governing Body, and deposited payment by the Club into his own bank account.
- 292. Mr Reilly submits that these allegations are "false".

***Reilly on Brike Investigations (Aust) Pty Limited (ACN 001 352 816)***

- 293. Mr Reilly notes that Brike Investigations (Aust) Pty Limited was a company that Mr Reilly formed with his business partners, John Scott and Brian Keys, in November 1997 to undertake commercial investigative work.
- 294. Mr Reilly contends that he left this company and resigned as a director in 2002 and that since leaving the company, he was "not aware" that the company had been deregistered until early 2012.
- 295. Mr Reilly contends that his former business partner then commenced operating another firm "whose name is unknown" to Mr Reilly.

***Reilly on the Delmege investigation***

- 296. Mr Reilly contends that in or around early 2009, Mr Max Delmege approached Mr Reilly and asked him to undertake some investigative work. Mr Reilly thought it would be "inappropriate" for him to do the work because the target of the investigation was involved in the Club. Consequently, Mr Reilly referred this work to Mr Brian Keys, who undertook the work.
- 297. Mr Reilly submits that he had "no obligation to disclose the assignment" even if he had accepted the work, because he would be acting in his "personal professional capacity".
- 298. However, he would have to disclose if he had used the Club's resources to pay for the investigation or otherwise "placed himself in a situation of conflict of interest".
- 299. Mr Reilly contends that in any event, Mr Brian Keys later gave Mr Reilly an envelope containing a tax invoice for Mr Delmege for the work done. Mr Reilly then gave the tax invoice to Mr Spray, but Mr Spray would not pay this invoice as it "had nothing to do with the Club".
- 300. Mr Reilly contends that Mr Spray then called Mr Delmege, who commissioned the work, in the presence of Mr Reilly. Mr Delmege asked the Club to pay the invoice and deduct this amount from Mr Delmege's honorarium.

301. Mr Reilly refers to Mr Delmege's Honorarium Summary to 30 June 2009, which reflects payment of the \$7,000.00 invoice taken out from Mr Delmege's honorarium in May 2009.

***Reilly on the allegation of shielding his improper involvement from the Governing Body***

302. Mr Reilly submits that the basis of this allegation arises from comments made by Mr Reilly during the Reilly Interview, the transcript of which shows "incomplete and contradictory remarks".
303. Mr Reilly contends that he did not undertake this investigation and that he "had nothing to disclose" to the Board. His role was only to "refer the assignment to a friend".
304. Mr Reilly submits that the allegation by the Complainant that Mr Reilly continued to operate a bank account in the name of a company which was deregistered is "factually wrong" by reason that the account in question was operated by Brike Investigations (Aust) Pty Limited, a company in which Mr Reilly had "no involvement" since 2002.
305. Mr Reilly "admits" that he remains a signatory to the bank account operated by Brike Investigations (Aust) Pty Limited and says that this is the case only because he had "given a personal guarantee" and was "responsible for an overdraft" attached to the account.

***Reilly on his fitness and propriety***

306. Mr Reilly's solicitor, Mr Mitchell, submits that the question of whether one is a fit and proper person for any role they seek to undertake has been considered in successive High Court cases. Mr Mitchell refers to *Australian Broadcasting Tribunal v Bond* [1990] HCA 33, where Mason J made the following remarks:

*The question whether a person is fit and proper is one of value judgment. In the process, the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration. It takes into account the seriousness of one's conduct, his honesty, knowledge and ability.*

307. Mr Mitchell also refers to *Hughes & Vale Pty Ltd v The State of New South Wales (No 2)* [1955] HCA 28, where Dixon, McTiernan and Webb JJ articulated the purpose and criteria for the "fit and proper person" test:

*...[the decision maker]...is to give the widest scope for judgment and indeed rejection. Fit (or "idoneus") with respect to an office is said to involve three things. Honesty, knowledge and ability...*

308. Mr Mitchell submits that the alleged conduct in the Complaint "did not reveal any dishonesty or lack of knowledge or ability" that would render Mr Reilly a person not fit and proper to be a member of the governing body of a club, and urges the Authority to find accordingly.

**SUBMISSION FROM THE CLUB DATED 8 AUGUST 2014**

309. On 11 August 2014, Mr John Ralston, the legal representative of the Club, provided to the Authority the Club's submission in response to the Complaint (Club Submission).
310. The Club Submission is based upon a statement dated 6 August 2014 from Mr David Costello OAM, the immediate past President of the Club from February 2012 until May 2013 (Costello Statement). The Costello Statement is in turn supported by 39 annexures, comprising Club documents including Annual Reports, copies of

resolutions passed at AGMs and minutes of Club Board meetings; communications between the Club and OLGR; and various communications between the Club and its own solicitors or the solicitors for the other parties.

### **Costello Statement**

311. Briefly, the key contentions made by Mr Costello in the Costello Statement may be summarised as follows:
312. The Club was first licensed in 1957 under the then *Liquor Act 1912* and has held either a certificate of registration or licence under the Act or under the relevant Liquor Act continuously since then.
313. For "many years" the Club has been a "successful and respected registered club providing community facilities" in the Manly-Warringah area and supporting the teams of the Manly-Warringah District Rugby League Football Club (Football Club).
314. In recent times however, the Club "has been and is still experiencing severe financial hardship". A copy of the most recent Annual Report (2013) is attached at Annexure 1 to the Costello Statement.
315. In 1993 and again in 1996, Mr Anthony Fiatarone, the Managing Director of Liquor Advisory Services Limited, was engaged by the Club to "review and make recommendations on areas of corporate governance". Those areas included directors' honorariums, contracts and agreements with the Club, out-of-pocket expenses for Club directors and staff, directors' training and other governance issues.
316. The recommendations made by Mr Fiatarone were adopted by the Board in 1993 and again in 1996 and "remained in place as best practice" for many years.
317. Mr Costello notes that the financial controller at the time of implementation of these practices was Mr Peter Spray. Mr Costello submits that Mr Spray "had responsibility for the compilation and presentation to the Board of Board papers relating to corporate governance" arising out of the recommendations adopted by the Board following Mr Fiatarone's advice.
318. Mr Costello notes that Mr Brian Smith, a current director and Deputy President of the Club, was the CEO of the Club at the time of implementation of these practices.
319. Mr Smith retired as Club Secretary/CEO of the Club in June 2004. Mr Peter Spray was appointed as his replacement as Club Secretary/CEO.
320. Mr Costello contends that Mr Smith informed him that, as at the time of his retirement in 2004, all the corporate governance procedures referred to above "were still in place".
321. In 2008, Mr Smith was elected as a director of the Club as a members' representative. Upon taking up his position on the Board, Mr Costello contends that Mr Smith "noticed a significant deterioration" in the way that the Board papers were presented, compared with the presentation of Board papers up to the time that Mr Smith retired in 2004.
322. Mr Smith observed to Mr Costello that "a voting block of directors existed" and that this voting block was "dominated by directors who were also representatives of the [Manly-Warringah Rugby League Football Club]".
323. Mr Costello submits that the Constitution of the Club provided at that time that the holders of five out of the seven positions on the Board must have "special

qualifications". Those "special qualifications" were that they were either members of the Football Club Board or Life Members of the Football Club.

324. Mr Costello notes that in 2008, Mr Robert Reilly was Chairman of the Board of the Club and he continued in this position until February 2012 when he was replaced as Chairman, but remained as a director of the Club.
325. On 19 December 2011, Mr Costello was appointed as a director to the Board of the Club and at the Board meeting on 19 December 2011 at which he was appointed, Mr Costello asked questions of Mr Spray regarding "contras" in the Cash Disbursements Journal. Mr Costello contends that Chairman Reilly "would not allow the question to be answered" and instructed Mr Costello to speak to Mr Spray after the meeting.
326. Following this meeting, Mr Spray informed Mr Costello that the contra payments in the Cash Disbursements Journal were "all okay" and "had been checked with the auditor". Page 4 of the minutes of the Board meeting of 19 December 2011 is attached at Annexure 2 to the Costello Statement.
327. Mr Costello contends that he later had a conversation with Mr Smith and the Club's auditor, Mr Edmondson and that Mr Edmondson "contradicted" Mr Spray's statement referred to in the above paragraph.
328. Mr Costello was informed by Mr Edmondson that Mr Edmondson had spoken to Mr Spray and told him that he (Mr Edmondson) "would talk with Mr Reilly to tell him that the practice of contra payments was questionable". Mr Costello contends that Mr Spray "declined Mr Edmondson's offer to speak to Mr Reilly" and stated that he (Mr Spray) would talk to Mr Reilly about it himself.
329. In December 2011 and January 2012, Mr Costello was approached by Mr Smith and another director of the Club, Mr Peter Peters. Mr Costello submits that the two directors informed him that they had "ongoing concerns" regarding a number of "questionable practices" involving the Chairman, Mr Reilly, and that their concerns were "either being ignored or they were being reassured by Mr Spray that professional opinion had been received as to the legality of the practices". Mr Costello contends that these identified practices involved cheque cashing and payment of the expenses of Mr Reilly.
330. Mr Costello was informed by Mr Smith that "the relationship between himself and Mr Peters on one side and the majority of the Board who aligned themselves with Mr Reilly on the other side was toxic".
331. In early February 2012, Mr Peters and another director, Mr Max Krilich, again "expressed concerns" to Mr Costello about the future of the Club and the practices that were being followed by Mr Reilly and apparently "tolerated" by Mr Spray as CEO. Mr Costello contends that Mr Peters and Mr Krilich asked Mr Costello and Mr Brian Smith to stand as Chairman and Deputy Chairman respectively.
332. On 29 February 2012, the Board of the Club elected Mr Costello and Mr Smith as Chairman and Deputy Chairman respectively.
333. On 1 March 2012, Mr Costello informed Mr Spray to "cease cashing Mr Reilly's cheques". Mr Costello notes that "no other cheques have been cashed by the debit/contra system" since then.
334. On 14 March 2012, Mr Costello contends that the Club's auditor addressed the Board on insolvency issues as the Club was "facing a deteriorating financial position".

335. In early April 2012, Mr Costello and Mr Smith "started an internal investigation" into expenditure by Mr Reilly and other financial matters involving Mr Reilly and the Club.
336. On 23 April 2012, Mr Costello informed the Board of a proposed review of Mr Spray's employment conditions and that a reduction in his salary was "close to finalisation".
337. Mr Costello submits that Mr Spray's employment contract at that time was "very favourable" to Mr Spray and contends that this "favourable" treatment "arose out of a review" conducted by Mr Reilly and a former director, Mr Peter Bryant.
338. On 16 May 2012, Mr Costello sent an email to Mr Reilly regarding the circumstances around changing Mr Spray's employment from "a fixed term to a continuous term". A copy of that email and Mr Reilly's reply is attached at Annexure 3 to the Costello Statement.
339. Also on 16 May 2012, Mr Costello received an email from Mr Spray answering questions that Mr Costello had asked of Mr Reilly in relation to the changed agreement. A copy of that email is attached at Annexure 4 to the Costello Statement.
340. On 31 May 2012, Mr Costello received an email from Mr Spray reporting a conversation he had had with Mr Reilly earlier that same day. A copy of that email is attached at Annexure 5 to the Costello Statement.
341. On 31 May 2012, Mr Costello sent an email to Mr Smith recommending "an approach to constitutional reform, the reintroduction of proper processes for monitoring and approving directors' and CEO's expenses and further improvements to governance". A copy of that email is attached at Annexure 6 to the Costello Statement.
342. On 10 June 2012, following a "substantial review" undertaken by Mr Costello and Mr Smith, concerns were raised by Mr Smith at a special Board meeting called specifically to discuss the Club's financial viability and that "directors' expenses may not have been approved in accordance with the Act and the *Gaming Machines Act*". Mr Smith requested that the matter be discussed at the full Board meeting.
343. On 13 June 2012, Mr Costello received a telephone call from Mr Spray in which Mr Spray reported that Mr Reilly had "made an offer" regarding a debt owed by the Club to the Football Club. Mr Costello's file note of that telephone conversation is attached at Annexure 7 to the Costello Statement.
344. On 15 June 2012, Mr Costello received an SMS from Mr Chris Branson QC, a "close associate and legal adviser" to Mr Reilly. In the SMS, Mr Branson sought contact details for Mr Smith and Mr Costello regarding "an alleged criminal conspiracy".
345. Mr Costello reported this SMS to Mr John Ralston of Pigott Stinson, whom Mr Costello had by that stage consulted "on a personal basis" in relation to Mr Costello's concerns regarding Mr Reilly's expenses.
346. In May, June and July 2012, Mr Costello and Mr Spray received further text messages from Mr Chris Branson QC. Correspondence from Mr Branson was also received by Mr Ralston. Mr Costello submits that this correspondence was "intimidating in its terms and made threats", including that Mr Smith would be "pursued under the corporations law" for allegedly taking Club records to his home.
347. On 25 June 2012, Mr Reilly resigned as a director of the Club at the commencement of a scheduled Board meeting on that day. At his request, the Board allowed him to stay until the end of the meeting. At that meeting, Mr Smith stated that he "had concerns that

directors' expenses and payments had not been approved by the Board". Mr Costello, as Club Chairman, advised the Board of the options available - namely, an independent investigation by a consulting firm, to refer the matter immediately to OLGR for investigation, or to request that the Club's auditor undertake a review and report back to the Board before any further action was considered.

348. Mr Smith recommended that the "most appropriate course of action" was an initial investigation by the Club's auditor, who would be required to report back to the Board on or before 30 July 2012. This recommendation was adopted "unanimously" by the Board. A copy of page 5 from the minutes of that Board meeting is attached at Annexure 8 to the Costello Statement.
349. At the same Board meeting, Mr Spray advised that he currently had 250,839 AMEX reward points and that they were "the property of the Club and would be used accordingly". Mr Costello contends that this statement from Mr Spray followed a direction made by himself and Mr Smith as Deputy Chairman and that they believed the points were "previously being used by Mr Spray for his personal benefit".
350. On 27 June 2012, Pigott Stinson Lawyers wrote to Mr Chris Branson QC demanding that his allegations of a "criminal conspiracy" be "withdrawn". A copy of that correspondence is attached at Annexure 9 to the Costello Statement.
351. On 4 July 2012, in order to ensure that "due process and accuracy occurred" a document entitled "Terms of Reference" prepared by Pigott Stinson Lawyers was provided to the Club's auditor, Bill Edmondson. A copy of that document is attached at Annexure 10 to the Costello Statement.
352. Mr Costello states that at a Board meeting on 30 July 2012, the Board received a written and verbal report from Mr Edmondson regarding his investigation in accordance with the Terms of Reference. A copy of his report dated 26 July 2012 is attached at Annexure 11 to the Costello Statement.
353. At the same meeting on 30 July 2012, Mr Costello informed the Board that the options available were, as a first step, to "cite Mr Reilly to answer charges that his conduct had been prejudicial to the interests of the Club" and that further legal advice be obtained from Pigott Stinson regarding the Notice of Charge. Mr Costello submits that these options were "followed by the Board unanimously". A copy of page 3 of the minutes of the Board meeting held on 30 July 2012 is attached at Annexure 12 to the Costello Statement.
354. Mr Costello states that on 31 July 2012, a Notice of Disciplinary Charge and Hearing prepared by the Club's lawyers, Pigott Stinson, was sent to Mr Reilly, along with a copy of the Club's Constitution. A copy of that Notice of Charge is attached at Annexure 13 to the Costello Statement.
355. Mr Costello states that on 1 August 2012, the Club received a letter from Mr Reilly's then solicitor, Mr Robert Storey, advising that Mr Branson QC had been retained and requesting a postponement of two weeks for the hearing of the disciplinary charge. A copy of that correspondence is attached at Annexure 14 to the Costello Statement.
356. The Board agreed to change the hearing date of the disciplinary charge against Mr Reilly to 22 August 2012.
357. On 20 August 2012, Mr Reilly resigned as a member of the Club by hand delivering a notice of resignation through a fellow Director, Mr Kerry Sibraa. A copy of that notice of resignation is attached at Annexure 15 to the Costello Statement.

358. On 22 August 2012, a letter was received from Mr Robert Storey advising that Mr Reilly would not appear at the disciplinary hearing set for later that day. A copy of that correspondence is attached at Annexure 16 to the Costello Statement.
359. On or about 22 August 2012, the Board received legal advice from Pigott Stinson that the Club "no longer had jurisdiction over Mr Reilly on the issue of conduct prejudicial" as Mr Reilly was no longer a member of the Club.
360. Also on 22 August 2012, Club directors Mr Kerry Sibraa and Mr Cliff Lyons, both of whom Mr Costello submits were "aligned with" Mr Reilly, resigned from the Board of the Club.
361. On 22 August 2012, the Board resolved to "prohibit" Mr Reilly from entering the Club as a visitor or a guest of a member. A copy of the minutes of the meeting at which this decision was made is attached at Annexure 17 to the Costello Statement.
362. On 22 August 2012, Mr Spray signed a statement prepared by Pigott Stinson with regard to cheque cashing and expenses. A copy of that statement is attached at Annexure 18 to the Costello Statement.
363. On 27 August 2012, the Board of the Club resolved to contact OLGR as soon as possible and request that a meeting be convened to "discuss the issues and the action taken by the Board". A copy of page 5 of the minutes of that meeting is attached at Annexure 19 to the Costello Statement.
364. Also on 27 August 2012, a proposal for reform of the Club's Constitution was tabled. A copy of page 2 of the minutes of that meeting is attached at Annexure 20 to the Costello Statement.
365. On 31 August 2012, a letter from Mr Robert Storey on behalf of Mr Reilly in relation to the Notice of Disciplinary Charge and Hearing was received by the Club. A copy of that letter is attached at Annexure 21 to the Costello Statement.
366. On 1 September 2012, Mr Costello received an email from Mr Spray responding to the letter from Mr Storey referred to in the above paragraph. A copy of that email is attached at Annexure 22 to the Costello Statement.
367. On 6 September 2012, Mr Costello submits that the Board "approved" that the Club send a letter to Ms Elizabeth Tydd of OLGR, outlining the Board's concerns in relation to cheque cashing, expenses and other matters. Mr Costello submits that that letter was sent by him on 7 September 2012. A copy of that letter is attached at Annexure 23 to the Costello Statement.
368. On 17 September 2012, the Club received a Notice under section 21 of the *Gaming and Liquor Administration Act 2007*. A copy of that Notice is attached at Annexure 24 to the Costello Statement. Mr Costello submits that the Club "produced the documents required by that Notice".
369. On 24 September 2012, the Club received a letter from the Club's auditor, Mr Edmondson, advising Mr Spray's "shortcomings in [maintaining] internal controls". A copy of that letter is attached at Annexure 25 to the Costello Statement.
370. On or shortly after 23 October 2012, Mr Costello submits that he received a letter from Ms Elizabeth Tydd, OLGR, acknowledging the letter sent by the Club on

7 September 2013 and the action by the Club to engage the auditor to investigate. A copy of that letter is attached at Annexure 26 to the Costello Statement.

371. On 31 October 2012, Mr Costello submits that a "letter of demand" was issued by Pigott Stinson on behalf of the Club to Mr Reilly demanding the repayment of \$39,187.95 for "unauthorised director's expenses". A copy of that letter is attached at Annexure 27 to the Costello Statement.
372. Mr Costello submits that despite further correspondence to Mr Reilly seeking payment, he "has never responded" to the letter of demand referred to in the above paragraph, and "has not made or offered to make any payment".
373. In early 2013, Mr Costello received a copy of form letters from Mr Spray in 2009 and 2010 with a handwritten undated note from Mr Spray detailing what portion of his bonus was "unclaimed". Copies of those form letters are attached at Annexure 28 to the Costello Statement.
374. Mr Costello submits that in January 2013, the Club was informed that two Penalty Notices from OLGR "would be issued". The total penalty was \$1,100.00. Mr Costello submits that OLGR "highlighted" that the statute of limitations applied to "most of" the cheque cashing issues. A copy of the letter advising of the Penalty Notices is attached at Annexure 29 to the Costello Statement.
375. On 3 February 2013, a special Board meeting was held to "discuss the performance" of Mr Spray and the "possibility that a property transaction involving Mr Reilly, Mr Delmege and Mr Spray be referred to Police". Mr Costello submits that he, as Chairman, was "instructed" to meet with Mr Spray as soon as possible to advise him that the Board had "lost confidence in him" and to "seek his resignation".
376. On 4 February 2013, Mr Costello submits that he received Mr Spray's resignation from his employment at the Club. A copy of that letter and a copy of Mr Costello's letter acknowledging and accepting Mr Spray's resignation are attached at Annexure 30 to the Costello Statement.
377. On 5 February 2013, at Mr Costello's request, a meeting was held at the OLGR premises at 323 Castlereagh Street, Sydney. In attendance were Mr Costello and Mr Smith (on behalf of the Club); Mr Paul Newson, OLGR Director of Compliance; Mr Daniel Zuccarini, OLGR Manager of Investigations; and Mr Nicholas Smith, OLGR Senior Compliance Officer. The meeting related to the Penalty Notices referred to above issued to the Club, and the fact that "no action appeared to have been contemplated against the persons responsible" - namely, Mr Reilly and Mr Spray - for the breaches, as well as "concerns about the effect of the statute of limitations applied by the investigation".
378. On or shortly after 18 February 2013, Mr Costello received a letter from Mr Newson. A copy of that letter is attached at Annexure 31 to the Costello Statement.
379. On 20 February 2013, the Club held its AGM. A copy of the Club's 2012 Annual Report and Notice of Special Resolutions which were to be considered at that meeting are attached at Annexure 32 to the Costello Statement.
380. On 3 March 2013, a short article in relation to the Club entitled "Club Rules" was published in the *Sun Herald*. On 4 March 2013, Mr Costello sent a letter to the Editor in Chief of that publication. A copy of that letter is attached at Annexure 33 of the Costello Statement.



381. On 6 March 2013, Mr Costello wrote to Mr Newson advising that his letter of 18 February 2013 "had been tabled" at the Board meeting and seeking further advice regarding any action against Messrs Reilly and Spray. A copy of that letter is attached at Annexure 34 to the Costello Statement.
382. Mr Costello submits that the 2013 AGM of the Club had been "hijacked" by relatives and colleagues of Mr Reilly, including Mr Chris Branson QC, which ultimately resulted in "important Constitutional reforms not receiving the required 75% majority". Mr Costello submits that during the course of that meeting, there were "constant interjections and abuse and defamatory statements of directors made by Mr Reilly's wife and his supporters".
383. On 7 March 2013, OLGR issued to the Club a further section 21 Notice pursuant to the *Gaming and Liquor Administration Act 2007*. A copy of that Notice is attached at Annexure 35 to the Costello Statement. Mr Costello submits that the Club "produced documents" in response to that Notice.
384. On 15 March 2013, Mr Chris Branson QC died. Mr Costello believes that his death was "a suicide".
385. On 18 March 2013, Mr Costello submits that he gave a witness statement to Detective Jenny Morris of Dee Why Police with regard to an investigation into a \$250,000.00 option to buy a property at 7-9 Federal Parade, Brookvale, involving Mr Reilly, Mr Spray and former director, Mr Delmege.
386. On 3 April 2013, Mr Brian Smith gave a witness statement to Detective Sergeant Bruce Lin of the NSW Fraud Squad in relation to the option to buy the property at 7-9 Federal Parade, Brookvale.
387. On 24 April 2013, OLGR issued a further section 21 Notice to the Club. A true copy of that Notice is attached at Annexure 36 to the Costello Statement. Mr Costello submits that the Club "produced documents" in response to this Notice.
388. Mr Costello submits that the Club "cooperated with and provided assistance to the officers of OLGR" in relation to their investigation into the Club.
389. On or about 7 April 2014, the Club received a Show Cause Notice dated 1 April 2014 from the Authority and a letter of complaint from the (then) Acting Director of Compliance of OLGR dated 27 February 2014. Copies of both letters are attached at Annexure 37 to the Costello Statement.
390. Attached at Annexure 38 to the Costello Statement is a true copy of a letter dated 28 July 2014 from the Commander of the Fraud and Cybercrime Squad of NSW Police to the General Manager of the Club. Mr Costello submits that he has "not seen the letter to the Authority" to which that correspondence refers.
391. Attached at Annexure 39 to the Costello Statement is a copy of the "Board Charter" which was adopted by the Board of the Club on 22 October 2012. Mr Costello submits that Parts 14, 15 and 16 are "relevant to expenses incurred by directors and payment of honorariums for directors".
392. Mr Costello retired as a director and Chairman of the Club in May 2013.

### Club Cover Submission from *Pigott Stinson Lawyers*

393. Briefly, the key observations and contentions made by Mr Ralston in the Club Submission may be summarised as follows:
394. The only order that OLGR recommends that the Authority makes against the Club is that the Club pay the investigation costs of OLGR "in connection with the investigation and the taking of disciplinary action against the Club and Messrs Reilly and Spray".
395. Section 57H(2) of the Act provides as follows:
- 57H *Disciplinary powers of Authority*  
(2) *If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the registered club or a person who is the secretary or member of the governing body of the club, the Authority may decide not to take any action or may decide to do one or more of the following:*
- ...  
(i) *Order the registered club to pay the amount of any costs incurred by:*  
    (i) *the Director-General in carrying out any investigation or inquiry under section 35A in relation to the club, or*  
    (ii) *by the Authority in connection with the taking of disciplinary action against the club or any other person under this section.*
396. Accordingly, the only costs that OLGR can claim are those of the "investigation or inquiry" giving rise to the Complaint and Show Cause Notice, but not in connection with the taking of disciplinary action itself.
397. Mr Ralston submits on behalf of the Club that it is "clear" by the use of the word "may" in section 57H(2)(i) set out above that the Authority has a discretion whether or not to order the Club to pay the costs of the investigation by OLGR.
398. The evidence submitted on behalf of the Club is a statement dated 6 August 2014 of Mr David Costello OAM, the immediate past President of the Club. Mr Costello was from December 2002 to July 2010 the CEO of *ClubsNSW*.
399. As far as the current Board and management of the Club is aware, this is the only occasion that the Club has come under notice of the relevant licensing authorities in relation to breaches of the relevant licensing legislation. However, OLGR has been requested to provide the record of any prior convictions or complaints.
400. The Club submits that the conduct of two former officers of the Club - namely, Mr Robert Reilly, the then President of the Club, and Mr Peter Spray, the then CEO and Club Secretary - has been *contrary to the Act*.
401. While acknowledging that this is a matter for the Authority to determine, the Club submits that the conduct in question was "totally unacceptable" to the standards that the Board of the Club had adopted when Mr Smith was the approved CEO and Club Secretary, and the current standards since Mr Costello became President of the Club.
402. The Club notes that the relevant conduct in question is identified in Particulars 1 to 6 of the Complaint. That conduct occurred between June 2009 and March 2012.
403. The Club submits that Mr Reilly "used his office and his influence" as President of the Club to prevent details of his activities coming to the attention of other directors. Nevertheless, it is "conceded" by the Club that for much of the time between June 2009 and March 2012, some of the other directors who were "aligned" with Mr Reilly either "acquiesced" in his actions in not allowing the details of his activities to become public, or found it "convenient" to simply support him without questioning him or informing themselves about those activities.

404. The Club also "acknowledges" that Mr Spray "simply acquiesced in Mr Reilly's activities" and failed to bring details of those activities to the attention of the Board. Mr Spray's own "impugned conduct" is also identified in the Complaint in addition to his acquiescence to and "failure" to report on Mr Reilly's conduct.
405. The Club contends that there were a "small number of directors" who were "concerned" about Mr Reilly's "lack of transparency about his expenses" and other matters. Most notably of these were Mr Brian Smith, Mr Peter Peters and, from 19 December 2011, Mr David Costello.
406. The Club notes that Mr Smith had been the previous CEO and Club Secretary. The Club contends that during his tenure in that office, Mr Smith had put in place reporting mechanisms and governance practices which, if they had been continued by his successor, would have prevented Mr Reilly from conducting himself in the way that he did, or at least as soon as he so conducted himself, would have brought the relevant facts, matters and circumstances to the attention of the full Board.
407. The Club contends that the "catalyst for change" was the appointment of Mr Costello as a director of the Club on 19 December 2011. The Club contends that Mr Costello "immediately started asking questions", but Mr Reilly initially "prevented" those questions from being answered.
408. On 29 February 2012, the Board elected Mr Costello as President and Mr Smith as Deputy President. The Club submits that Mr Costello "immediately" gave instructions that Mr Reilly's practice of cashing cheques was to cease.
409. Thereafter, under Mr Costello's chairmanship and at his specific direction and under his "personal control and involvement", the following steps were taken:
- a) The introduction of "proper processes" to monitor and approve the expenses of directors and management and to improve the governance of the Club, including the adoption of a Board Charter in October 2012
  - b) Commissioning an independent investigation by the Club's auditor into directors' expenses
  - c) Following receipt of the report from the Club's auditor, and based on that report and following further legal advice, disciplinary action was taken against Mr Reilly. That disciplinary action resulted in Mr Reilly resigning from membership at the Club before the Board of the Club could hear and determine the disciplinary charge. The Club submits that "there is little doubt" that the Board "would have found the charge proved" and would have expelled Mr Reilly from the Club
  - d) Mr Reilly's associates on the Board, Mr Kerry Sibraa and Mr Cliff Lyon, also resigned as directors shortly after Mr Reilly resigned his Club membership
  - e) The Club reported to OLGR all of the relevant facts, matters and circumstances relating to Mr Reilly's actions. When OLGR's initial reaction was to issue two Penalty Notices to the Club, the Club requested that OLGR investigate the matter more thoroughly and consider taking "appropriate action" against Mr Reilly and Mr Spray
  - f) The Club and its officers "cooperated fully" with the OLGR investigators and provided all relevant documentation and assistance
  - g) The Club's lawyers demanded payment from Mr Reilly of the funds that he had "improperly received" from the Club, and Mr Ralston notes that this matter may still be pursued
  - h) The Club reported these, and other matters, to Police and cooperated fully with Police in their investigations and provided them with "every assistance".
410. The Club contends that the actions of Mr Costello and Mr Smith were taken at a time when they were under "considerable personal pressure" from Mr Reilly's lawyer, who "attempted to intimidate and threaten them".

- 411. Additionally, the Club contends that Mr Reilly's supporters "attacked, heckled and insulted" Mr Costello and the members of the Board at the Club's AGM in 2013.
- 412. The Club argues that it is "difficult to conceive" of what further action the Board of the Club, under Mr Costello's leadership, could have done to remedy the conduct which Mr Reilly and Mr Spray undertook, and to rid the Board of Mr Reilly, his influence and his supporters.
- 413. The Board of the Club had the option of simply accepting the two Penalty Notices and "leaving the matter at that", but that would have left Messrs Reilly and Spray "untouched" by any penalty and "free to become involved" in other registered clubs where they may engage in similar conduct in those other registered clubs.
- 414. The Club submits that one of the policy objectives of the Act is "to provide high standards of corporate governance for registered clubs". It argues that "if those standards mean anything, they mean that good directors of registered clubs should be prepared to break ranks with their colleagues and report illegal or inappropriate behaviour by their colleagues to the appropriate authorities" - which is what has happened in this case.
- 415. The Club submits that the Board of the Club, under Mr Costello's leadership, "did the very thing that is required" by the high standards of corporate governance expected of club directors, such that this case could be used as an example of what club directors are expected to do when they find "wrongdoing" by one of their fellow directors or other officers. However, Mr Ralston submits that it would be "counterproductive to that outcome" if, as a consequence of such action, the clubs themselves are penalised by orders for costs where the Authority has the discretion *not* to make those orders.
- 416. The Club submits that the Authority should also have regard to the "parlous financial position" of the Club, as indicated by the most recent Annual Report - in 2012, the Club came "close to" insolvency. While the Club has now moved away from that critical position, Mr Ralston submits that its financial position is still "very weak, though improving" and an order for costs - which, according to particulars provided by OLGR, would be slightly over \$19,000.00 - would be a "substantial impost" on the Club and would "effectively be punishing the Club and its Board for doing the right thing in difficult circumstances".

#### **FURTHER SUBMISSION FROM MR ROBERT REILLY DATED 28 AUGUST 2014**

- 417. On 28 August 2014, Mr Reilly provided a further submission (in the form of a letter from his solicitor) in response to the Club Submission dated 8 August 2014.
- 418. Mr Reilly states through his solicitor that it is "necessary to respond to certain innuendos and unsubstantiated allegations" made in the Club Submission and Mr Costello's "unsworn statement" which if uncontested are "highly prejudicial" to Mr Reilly.

#### **Reilly on paragraph 11 of the Club Submission**

- 419. Mr Reilly "objects" to the statement made in paragraph 11 of the Club Submission that "the conduct in question is totally unacceptable to the standards that the Board had adopted when Mr Smith was the CEO and approved Club Secretary" on the basis that the appropriateness of the alleged conduct is the very matter yet to be determined by the Authority.

420. Mr Reilly notes that Mr Smith was a Board member of the Club during the relevant period (June 2009 to March 2012) when the alleged conduct was taking place. Mr Reilly submits that if Mr Smith had in fact put in place standards, systems and procedures as he claims that he did, then it was "entirely open to him" to oversee that these standards were adhered to and to ensure procedures were implemented.
421. Mr Reilly argues that if the conduct was unacceptable as the Club alleges, Mr Smith had "failed to exercise his responsibility" as a director by bringing the conduct to the attention of the Board and requesting immediate action. Mr Reilly submits that there is no evidence, by way of Board minutes or otherwise, that suggests that Mr Smith took such action.

#### **Reilly on paragraph 13 of the Club Submission**

422. Mr Reilly "strongly disputes" Mr Ralston's "opinion" in paragraph 13 of the Club cover submission that "Mr Reilly used his office and his influence as President of the Club to prevent details of his activities coming to the attention of the directors" on the basis that this is an "opinion" that is "unsupported" by any evidence. Mr Reilly submits that there is "no evidence to suggest that Mr Reilly did anything to prevent the details of his activities from coming to the attention of the Board".
423. Mr Reilly notes that this part of the Club Submission relies upon Mr Costello's "unsworn" statements in paragraphs 15, 16, 18 and 19 of the Costello Statement. Mr Reilly submits that none of these statements provides any evidence that Mr Reilly had "inappropriately used his office or influence" to prevent matters from being brought before the Board.

#### **Reilly on paragraph 15 of the Costello Statement**

424. Where Mr Costello observes that Mr Smith noticed a "significant deterioration in the way Board papers were presented", Mr Reilly submits that this is "hearsay". Notwithstanding this, Mr Reilly argues that the opinion is "subjective" and Mr Costello "does not particularise" what is meant by a "deterioration" of Board papers.
425. Mr Reilly submits that the statement is an apparent attempt to infer that Mr Reilly, by way of "neglect, incompetence or otherwise", used his office and influence to cause deterioration of the way Board papers were presented.
426. Mr Reilly submits that evidence from OLGR interviews reveals that Board papers were prepared by the Club Secretary before each Board meeting, and that Mr Reilly was "not involved" in the preparation of Board papers.
427. Mr Reilly also questions why, if Mr Smith was not satisfied with the quality of the Board papers, he had not raised the issue and "insisted on better presentation of Board papers".

#### **Reilly on paragraph 16 of the Costello Statement**

428. In response to Mr Costello relaying Mr Smith's opinion that there was a "voting block" on the Board, Mr Reilly submits that this is "hearsay". Notwithstanding this, he argues that given that Board members are independent, the presumption is that each Board member would form a view on any matter put before them and vote accordingly.
429. Mr Reilly argues that the fact that certain members tend to vote on the same side of an issue is "irrelevant" and "does not support a conclusion" that Mr Reilly somehow inappropriately used his office or influence.

### **Reilly on paragraph 18 of the Costello Statement**

- 430. In response to paragraph 18 of the Costello Statement alleging that Mr Reilly "did not allow" the question about the Cash Disbursements Journal to be answered, Mr Reilly submits that the Board minutes of the meeting held on 2 December 2011 indicate that the CEO agreed to provide "David Costello with the requested information via email".
- 431. Mr Reilly submits that Mr Costello's statement in the same paragraph confirms that an explanation was given by the CEO after the meeting, which Mr Reilly submits "contradicts" the proposition that Mr Reilly was somehow preventing having questions about cash disbursements answered.

### **Reilly on paragraph 19 of the Costello Statement**

- 432. In response to paragraph 19 of the Costello Statement, Mr Reilly notes that this relates to a conversation between Mr Edmondson, the Club's auditor, Mr Spray and Mr Costello in which Mr Edmondson expressed the view that the practice of contra payments was "questionable".
- 433. Mr Reilly submits that on page 2 of Mr Edmondson's report to the Board dated 26 July 2012, Mr Edmondson stated that: "it is possible that Mr Reilly had an arrangement with the Credit Union to provide him with instantly available "cleared" funds in his account, otherwise there does not appear to be any reason or advantage in doing this".
- 434. Mr Reilly notes that Mr Edmondson then added, "I have been unable to determine whether there was such an arrangement in place".
- 435. Mr Reilly submits that Mr Edmondson had not been able to determine whether these electronic fund transfers represent any advantage to Mr Reilly "other than convenience".
- 436. Mr Reilly submits that it is an "agreed fact" that all the cheques "appeared to have been honoured in presentation" and therefore the Club had "suffered no detriment" save the interest which it might have received between the time funds were transferred and the cheques deposited, which was "in most cases" the next banking day, or within a few days.
- 437. Mr Reilly submits that he had this cheque cashing arrangement in place "purely for convenience" as he was spending an "inordinate" amount of time in the Club. He argues that during the relevant time period, he was involved in "many crucial negotiations and significant management decisions" and this arrangement was "purely a facility of convenience" to "save him time".

### **Reilly on paragraph 14 of the Club Submission**

- 438. In response to the Club's submission that a number of directors were "concerned" about Mr Reilly's "lack of transparency" concerning expenses and other matters, Mr Reilly submits that paragraphs 20 and 21 of the Costello Statement are relied upon in this respect.
- 439. Mr Reilly submits that paragraph 20 of the Costello Statement relates to Mr Smith's and Mr Peters' ongoing concerns about "questionable practice" and it is said that their concerns were being ignored or they were assured by Mr Spray that the practice did not contravene any legislation.

- 440. Mr Reilly describes paragraph 21 of the Costello Statement as relaying Mr Smith's "subjective opinion" that the relation between certain directors of the Club was "toxic".
- 441. Mr Reilly "disputes the suggestion" that there was lack of transparency. He also submits that the Costello Statement clearly indicates that Mr Smith and Mr Peters had "constructive knowledge" of the cheque cashing practice.
- 442. Mr Reilly argues that if Mr Peters and Mr Smith had concerns about expenses and other matters, they "could very well have put these matters before the Board and put forward resolutions that would have prevented potential breach or rectified present misconduct".

#### **Reilly on paragraph 17(c) of the Club Submission**

- 443. Mr Reilly "objects" to the submission that "there is little doubt that the Board would have found the charge proved and would have expelled Mr Reilly from the Club" and argues that this statement is "unfounded and speculative...and irresponsible".
- 444. Mr Reilly submits that since no disciplinary hearing was ultimately conducted, Mr Reilly "had no opportunity" to respond to the charges against him. Mr Reilly submits that for the Club "to make such a damaging statement is to pronounce a person guilty before due process".

#### **Reilly on paragraph 17(e) of the Club Submission**

- 445. Mr Reilly "applauds" the transparency of the Club's action in reporting all relevant facts, matters and circumstances relating to Mr Reilly's conduct to OLGR. However, he "fails to discern the motive of the Club's insistence on continuing investigation" given that OLGR had initially decided to issue two Penalty Notices to the Club and advised that "no further action will be taken" in relation to the other offences under the *Gaming Machines Regulation 2010*.
- 446. Mr Reilly submits that on 18 February 2013, Mr Paul Newson of OLGR wrote to Mr Costello, advising him that the "age of these suspected contraventions precludes prosecution under the Act or Regulation".
- 447. Mr Reilly contends that on 6 March 2013, Mr Costello wrote to Mr Paul Newson and "insisted" that OLGR take disciplinary action against Mr Reilly and Mr Spray, notwithstanding Mr Newson's verbal warning that proceedings against the individuals would also mean initiating proceedings against the Club.
- 448. Mr Reilly submits that after he resigned as a member of the Club on 20 August 2012, the Board "prominently displayed" Mr Reilly's photograph at the entrance of the Club with the notation that under no circumstance should this individual be admitted to the Club.
- 449. Mr Reilly submits that this was an "extraordinary" measure which was "vindictive, damaging to the reputation of Mr Reilly and indicative of the state of mind of the new Board".

#### **Reilly on paragraph 17(h) of the Club Submission**

- 450. Mr Reilly notes that this paragraph of the Club Submission states that the Club reported certain matters to the Police. Mr Reilly observes that the matter referred to in this instance apparently relates to "a property transaction involving Mr Reilly, Mr Delmege and Mr Spray".

451. Mr Reilly submits that the investigation did take place and people were interviewed, but there was "insufficient evidence" to proceed.

**Reilly on paragraph 19 of the Club Submission**

452. Mr Reilly "objects" to the statement that "it is difficult to conceive of what further action the Board of the Club, under Mr Costello's leadership, could have done to remedy the conduct which Mr Reilly and Mr Spray undertook and to rid the Board of Mr Reilly, his influence and supporters".
453. Mr Reilly submits that this "carries the implication of wrongdoing" on the part of Messrs Reilly and Spray, which Mr Reilly contends is a determination yet to be made by the Authority on the evidence.

**Reilly on paragraph 21 of the Club Submission**

454. Mr Reilly "agrees" with the statement that "good directors of registered clubs should be prepared to break ranks with their colleagues and report illegal and inappropriate behaviour by their colleagues to the appropriate authorities".
455. Mr Reilly submits that independent and responsible directors have a duty to make reasonable enquiry to any matters presented to the Board for its approval. They can rely on professional opinions, and if they are not satisfied with the opinion, they should seek independent advice.
456. Mr Reilly argues that "evidence reveals" that Board members of the Club during the relevant period had "knowledge of the transactions" and "approved these transactions" in monthly Board meetings.
457. Mr Reilly submits that there was "no attempt" to conceal these transactions from the attention of the Board. Mr Reilly submits that professional advice was sought and the opinion was that these transactions "were not illegal" as long as the cheques presented were deposited in a timely manner.
458. Mr Reilly submits that the Club "had not suffered any material detriment".

**Further submission from Reilly on "context"**

459. Mr Reilly submits that given the nature of the submissions made by the Club and the "innuendo therein that targets Mr Reilly", it is appropriate to make some limited remarks concerning the "historical context" surrounding these assertions.
460. Mr Reilly submits that in his letter to Ms Elizabeth Tydd of OLGR dated 7 December 2012, Mr Costello wrote:

*Also, there were factions within the Club which were divided by personal allegiances and the politics around rugby league, the control of Manly Sea Eagles (the NRL Football team) and the separate football club called Manly-Warringah Rugby League Football Club Limited.*

461. Mr Reilly submits that ordinarily, these conflicting interests would be resolved in Board meetings within the confines of governance rules and corporations legislation. Mr Reilly contends, however, that it could be an "abuse of process" if one interest group seeks to "damage" their opponents by "trying to discover trivial breaches and insist that regulatory authorities take punitive action".



462. Mr Reilly submits that he is "confident" nevertheless that the Authority will make its determination on "salient facts and merits of the case" and find accordingly.

#### **FURTHER SUBMISSION FROM THE CLUB DATED 5 SEPTEMBER 2014**

463. On 5 September 2014, Mr Ralston provided to the Authority a further submission on behalf of the Club in reply to Mr Reilly's supplementary submission dated 28 August 2014.
464. Briefly, the key observations and contentions made by Mr Ralston may be summarised as follows:
- a) The Club "disputes the totality of Mr Reilly's supplementary submission" dated 28 August 2014
  - b) The Club "adheres to" the submission that Mr Reilly used his office and his influence as President of the Club to prevent details of his activities coming to the attention of the directors
  - c) The evidence in support of this submission is provided at paragraphs 13, 15, 16, 18 and 19 and Annexure 7 to the Costello Statement, which is a file note of Mr Costello dated 13 June 2012 entitled "Phone conversation with Mr Spray". Additionally, the Club refers to the submission filed with the Authority by Mr Peter Spray dated 4 August 2014, and in particular, paragraphs 38, 39 and 42 of that submission
  - d) In relation to Mr Reilly's submissions that Mr Smith's opinion of a "voting block" is "hearsay", the Club submits that the rules of evidence "do not apply" in this matter. Secondly, according to Mr Smith, when particular issues arose at Board meetings it was quite regularly the case that Mr Reilly and those directors who supported him would retire from the Board meeting to discuss the issues amongst themselves and then come back to the Board meeting and vote as a block
  - e) In reply to Mr Reilly's submission that the Club had "suffered no detriment" from the practice of cashing Mr Reilly's cheques, the Club refers to paragraphs 39 and 40 of Mr Spray's submission dated 4 August 2014. The Club submits that quite apart from this, it would be "obvious" to any director that even a short term loss of funds from the Club's account would be a detriment, particularly when the Club is facing "solvency issues". The Club contends that it must also have been "apparent" that Mr Reilly was receiving a benefit that was not offered equally to all other members of the Club, contrary to section 10(1)(i) of the Act, as well as receiving short term loans contrary to section 41N. The Club further contends that at the most basic level, breaches of the Act through the conduct of the Club's most senior officer will "always" be a detriment to the Club because of the "potential consequences for the Club" from such breaches
  - f) The Club "strenuously denies" Mr Reilly's submission that he "had no opportunity to respond" to the internal disciplinary charge against him. The Club submits that Mr Reilly was given a "full and detailed" notice of the disciplinary charge and all particulars. The hearing of the charge was adjourned to meet the convenience of Mr Reilly's (then) legal representative. However, on or shortly before the day of the hearing of the charge, Mr Reilly chose to resign his Club membership. Through his lawyer, he subsequently submitted a statement in response to the charge, but that statement "could not be tested" by way of cross-examination as he was no longer a member of the Club and the Board had no jurisdiction or power to deal with him under its Constitution. The Club submits that Mr Reilly "was given due process" in relation to the internal disciplinary charge but he "elected to abort the finalisation of that process" by resigning. The Club submits that the Authority "could well draw an inference" from this conduct on the part of Mr Reilly, who was the subject of the disciplinary charge.

- g) In reply to Mr Reilly's contentions that Board members during the relevant period had knowledge of and approved the transactions in relation to Mr Reilly at monthly Board meetings and there was no attempt to conceal these transactions from the attention of the Board, the Club submits that the only information provided to the Board was a "list of payments extracted from the Cash Disbursements Journal with no particulars as to the nature or purpose of the payments". The Club submits that *approval* of these transactions would have had to involve "full and detailed disclosure" of the transactions to the Board, with Mr Reilly declaring a "material personal interest" and then withdrawing from the meeting while the matter was discussed and voted on pursuant to section 41C of the Act and section 195 of the *Corporations Act 2001*, and then a formal resolution of the Board being passed. The Club submits that "none of this happened"
- h) In response to Mr Reilly's assertion that "the Club had not suffered any material detriment", the Club repeats its submissions made under point (v) above and further notes that there are also the "costs to the Club in responding to these show cause proceedings, including the possibility of having to pay the costs of the investigation into Mr Reilly's conduct". The Club further contends that Mr Reilly still owes the Club the amount of \$39,187.95 for "unauthorised expenses", as evident from paragraph 59 of the Costello Statement and the letter of demand sent to Mr Reilly on 31 October 2012, attached at Annexure 27 to that statement.

#### **SUPPLEMENTARY SUBMISSION FROM MR SPRAY DATED 25 SEPTEMBER 2014**

- 465. This short supplementary submission takes the form of a letter from Mr Spray's solicitor, Ms Doherty. Mr Spray addresses the submissions from the Club and Mr Reilly to the extent that they may concern his case. Briefly, the key points are as follows:
- 466. Mr Spray maintains his version of events provided in his submission dated 4 August 2014.
- 467. Mr Spray submits that a "number of matters" [the Authority notes that these are not specified] raised in the submissions of Mr Reilly do not concern matters arising from the Particulars of Complaint in relation to Mr Spray.
- 468. In many instances, Mr Spray disagrees with the version of events put forward by Mr Reilly and the Club but as they do not concern the Particulars of Complaint against Mr Spray, he will only address the following points:
  - a) Mr Spray denies the allegation in paragraph 13 of the Club Submission that he *"acquiesced in Mr Reilly's activities and failed to bring details of those activities to the attention of the Board"*. In reply, Mr Spray refers to Mr Reilly's submission of 6 August 2014 where Mr Reilly submits that *"on several occasions... Mr Reilly had reimbursed the Club for expenses that were knocked back by management"*. Mr Spray contends that he was in the role of "management" in relation to these occasions and he contends that there were occasions where he challenged Mr Reilly's expense claims
  - b) Mr Spray denies the contention in paragraph 14 of the Club Submission that Mr Smith had *"put in place reporting mechanisms and governance practices which, if they had been continued by his successor would have prevented Mr Reilly from conducting himself in the way that he did or at least as soon as he so conducted himself would have brought the relevant facts, matters and circumstances to the attention of the full Board"*. Mr Spray contends that he was employed in 1993 because of poor practices and procedures and was tasked with improving them, which he did. Mr Spray contends that from "prior to 2000" until his departure, Mr Spray was "in regular contact" with Bruce Gotterson, a

partner of Pigott Stinson, who "provided Mr Spray with advice in relation to the *Registered Clubs Act* and corporate governance". Mr Spray contends that in relation to the approval of the Chairman's expenses, Mr Spray "continued the practices" which Mr Smith had taught him. Mr Spray also disputes the Club contention that governance deteriorated when Mr Spray became General Manager, but "improved significantly" under his watch such as in relation to the "introduction of a tendering process for all significant contracts" (particularly the promotions and entertainment contract) and his initiation of the involvement of the entire Club Board in decisions regarding financial support for the Sea Eagles and players

- c) Mr Spray contends that he cooperated in full with OLGR and NSW Police investigations
- d) Mr Spray "denies" the Club's contention in paragraph 15 of the Costello Statement that between 2004 and 2008 there was a "significant deterioration" in the presentation of Board papers compared to when Mr Smith retired. In Mr Spray's "opinion" the Papers became "more detailed and professional" under his watch. He also states that in 2005 or 2006, he engaged Lawler Partners to review corporate governance and Board procedures in advance of an OLGR audit, whose advice he implemented. Mr Spray contends that "at no stage" did Mr Smith raise issues as to the quality of Board papers with him
- e) Mr Spray denies the contention in paragraphs 18 to 20 of the Costello Statement that Mr Spray told Mr Costello that Mr Reilly's cheque cashing practice was "all okay". Mr Spray submits that he was "always concerned" about the practice and raised it with the Club auditor on "several occasions"
- f) In relation to paragraph 27 of the Costello Statement, Mr Spray submits that he never received a pay increase while Mr Reilly was Chairman. He contends that the pay increase he received in December 2006 under the previous Chairman was the last pay increase he received. Mr Spray denies that he received any "favourable treatment" from Mr Reilly or anyone at the Club and rejects any suggestion that the conduct which is the subject of the Complaint "was in any way connected to his employment contract"
- g) Mr Spray "does not dispute" the remarks ascribed to him in the file note of 13 June 2012 that is Attachment 7 to the Costello Statement. He says that he "did not give any thought" as to whether Mr Reilly was trying to redirect Football Club funds to meet his personal obligations. Mr Spray contends that he "always expected that Mr Reilly would need to account to the Football Club if membership fees were used to extinguish his liability to the Club". Contrary to Mr Reilly's submission of "19 September 2014" [the Authority notes that this is an apparent reference to the submission provided to the Authority by Mr Mitchell on behalf of Mr Reilly on 28 August 2014], Mr Spray "denies" that he himself was "suggesting that membership fees be used for an improper purpose"
- h) Mr Spray submits that his email of 1 September 2012 (Annexure 22 to the Costello Statement) is "consistent with" Mr Spray's response to the Complaint
- i) Mr Spray "denies" that the letter to the Club from its auditor, Mr Edmondson advises of Mr Spray's "*shortcomings in internal controls*" in the words of paragraph 57 of the Costello Statement. Mr Spray submits that the letter speaks for itself and Mr Spray notes Mr Edmondson's statement that "*the controls were adequate right up to the top level of authorisation i.e. the Chairman and the Board*". Mr Spray submits that this letter confirms that Mr Spray had discussions with Mr Edmondson regarding the cheque cashing practice. Mr Spray adds that he (Mr Spray) was recommended to his current employer by Mr Edmondson.

**FURTHER SUPPLEMENTARY SUBMISSION FROM MR SPRAY DATED  
21 NOVEMBER 2014**

469. On 21 November 2014, Mr Spray provided a further supplementary submission to the Authority. This submission was provided on the basis that by reason that it contains information that is personal to Mr Spray and his character, it should not be provided to the other parties.
470. However, the gravamen of this submission was recounted by Mr Spray when he made oral submissions on his own behalf at the Conference.
471. Noting that the Authority is required to take into account material going to a person's character when making findings on their fitness and propriety, the key points in this document as to why the Authority should not make a finding that Mr Spray is not "fit and proper" to be a member of the governing body or secretary of a club may be summarised as follows:
- a) Such a finding would damage the "excellent reputation" Mr Spray has established over 40 years of employment.
  - b) It would "disregard" the fact that for almost all of his 19 years of employment at the Club, Mr Spray had received "favourable comments from the Board" and many "unrequested salary increases and bonuses".
  - c) It would "ignore the many good things he did" for the Club, the Sea Eagles and the community over and above his formal duties.
  - d) Such an outcome, together with Mr Spray's age and health issues, would "significantly reduce" his employment options.
  - e) Mr Spray "assures the Authority" that he "will not repeat the conduct the subject of the Complaint" and that he "will not come to its attention in the future".
  - f) Since he commenced employment at the Club in 1993, Mr Spray "used his personal and administrative skills" to support both the Club and the local community in many ways, including:
    - i. For at least five years he was a committee member of "Clubs in the Community - Northern Zone" which raises funds to support charities
    - ii. Mr Spray was the Chairman or a member of the Club Scholarship Committee for more than 15 years. During its last seven years, Mr Spray oversaw the program and mentored several of the scholarship winners
    - iii. For several years, together with his children, Mr Spray assisted the charity "Learning Links"
    - iv. For approximately 10 years, Mr Spray was the honorary auditor of the Forest Rugby Union Senior Club, a club which he played with for 22 seasons
    - v. Mr Spray was the honorary auditor of Terrey Hills Public School Parents and Citizens for more than five years
    - vi. Mr Spray served for four years as one of the three parents appointed to the Terrey Hills Public School executive committee
    - vii. Between 2004 and 2011, Mr Spray completed the annual Oxfam 100km *Trailwalker* five times and personally raised over \$25,000.00 for Oxfam
    - viii. Mr Spray is a qualified touch football referee and selector and for many years he volunteered his services to assist the Manly-Warringah Junior Touch Association
    - ix. For 10 years, Mr Spray has been a player/manager for Manly-Warringah Touch Football in the NSW Championships and for Sydney Scorpions (Northern Sydney) in the National Championships
    - x. During 2014, he volunteered to run twice weekly exercise classes for the retired residents of his unit block

- g) Mr Spray was "devoted" to the Club throughout his 19 years of employment and continues to be "supportive" of the Club notwithstanding the investigation and laying of the Complaint, as evidenced by the following:
- i. Although Mr Spray came to support the Club, he was "neither a Sea Eagles supporter nor even a keen fan of rugby league" when he first started to work for the Club. Seeing the Sea Eagles play was "not a personal pleasure for him" but he considered his attendance at Sea Eagles games as "part of his employment"
  - ii. Even when overseas on annual leave and when convalescing from his surgery in 2010, Mr Spray "checked his correspondence daily and was always contactable"
  - iii. Since he left the Club in February 2013, Mr Spray has, when requested, "continued to assist" the Club's staff, auditor, lawyer, directors and landlord with historical and/or operational information.

#### **CONFERENCE ON 30 JANUARY 2015**

472. A conference was convened by the Authority on 30 January 2015 for the purpose of considering any issues arising from the Complaint (Conference).
473. At the Conference, OLGR were represented by Messrs Brett Hearnden and Matt Gauci of Hunt and Hunt Lawyers, OLGR Compliance Officer Ms Karen McCluskey, OLGR Senior Compliance Officer Mr Michael Hanley and OLGR Principal Investigator Mr Paul Irving.
474. Mr Spray was represented by Mr Robert Johnston of Johnson Winter and Slattery Lawyers. Mr Reilly was represented by Messrs Tim Mitchell and Alex Ying of Bay Legal.
475. The Club advised the Authority some time in advance that in the interests of constraining further legal costs, it would prefer to rely upon its written submissions and did not attend the Conference.

#### **Oral Submissions on behalf of the Complainant**

476. Briefly, the oral submissions made by Mr Brett Hearnden (a partner from *Hunt and Hunt Lawyers*) on behalf of the Complainant were as follows:
- a) There are two "essential background matters" which have to be kept in mind at all times. The first is that the Club was in "certainly some financial constraints". The second is that Messrs Reilly and Spray had been working in the club industry "for a great many years" and thus it is "inconceivable" that they would not have been familiar with the legislation, the regulations and the obligations that they had to properly conduct the management of the Club - otherwise it must be "extraordinarily reckless" for them not to be aware of that legislation
  - b) On the basis of the acknowledgment and the admissions in relation to the evidence found in the submissions by both Mr Reilly and Mr Spray, the Complainant contends that there is "sufficient evidence" for action to be taken against each of them
  - c) The Complainant submits that there are "difficulties" with Mr Reilly's credibility in relation to some of his explanations, and this is most easily demonstrated insofar as it relates to his involvement with the struck off company known as Brike Investigations (Aust) Pty Limited. The Complainant submits that Mr Reilly, in his submissions, suggests that he was not involved with Brike Investigations when it was clear that he (Mr Reilly) wrote cheques and presented them to Mr Spray. There was also a tax invoice on behalf of that company which Mr Reilly presented for payment of \$7,700.00. The Complainant submits that it is not clear

- why Mr Reilly would "continue to deny" his involvement with the company, given the evidence before the Authority
- d) The Complainant submits that it is "inconceivable" that Mr Reilly would not have understood that there needs to be independent checks in relation to expenses incurred by him. The Complainant contends that if one accepts that, then one would prefer the interpretation as set out in the Grounds of Complaint
  - e) In relation to Mr Spray's explanation of his salary sacrifice arrangement with respect to AMEX reward points, the Complainant submits that there is a "lack of credibility" in that the amount of money allowed for the amount of points transferred appears to be "arbitrary"
  - f) The Complainant submits that it is "really not credible" for Mr Spray to take the position that he thought that he needed to "follow his boss" (Mr Reilly) and approve expenses which were paid, in circumstances where he (Mr Spray) was a senior officer of the Club, former Chief Executive Officer and a qualified accountant
  - g) The Complainant submits that the evidence in support of the Complaint is "strong", particularly with regard to the payment of expenses to Mr Reilly. The Complainant contends that a review of those expense items shows matters which are "inconsistent with the financial position of the Club". Even if they were not inconsistent with the state of the finances of the Club, it would be "reprehensible" for some of those amounts to have been approved "without any consideration or justification but rather as directed". The Complainant specifically refers to an expense item of \$420.00 for a taxi fare for Mr Reilly in this regard.

#### **Oral Submissions at Conference on behalf of Mr Spray**

477. Mr Johnston (a partner from Johnson Winter and Slattery Lawyers) submitted on behalf of Mr Spray that he (Mr Spray) has faced "difficulty" in gaining access to relevant records, being the missing management accounts, given that he is no longer an employee of the Club, and that this has "limited some of his responses".
478. At the Conference, Mr Spray tabled the following Club documents to supplement the submissions previously made on his behalf:
- a) Final management accounts for the year ending 31 October 2009
  - b) Mr Spray's calculation of his entitlement to a bonus for the years ending 31 October 2009 and 31 October 2010
  - c) Minutes for the Club Board meeting held on 17 November 2009
  - d) Board approved management accounts for the year ending 31 October 2010
  - e) Statement of comprehensive income for the year ending 31 October 2010 (extract from the 2010 Annual Report)
  - f) Letter from Mr Spray to Mr Reilly dated 30 November 2010 in relation to Mr Spray's performance bonus for the year ending 31 October 2010.
479. Mr Spray then personally addressed the Authority directly:
- a) Mr Spray explained that he calculated his bonus on the basis that 6,500 AMEX reward points equated to a \$50.00 gift voucher. He noted that he "always considered the points belong to the Club" and made deductions against his quarterly salary calculation as part of his salary sacrifice arrangement and also made regular adjustments against this for the use of AMEX reward points as well as other reward schemes that the Club was involved in
  - b) Mr Spray submitted that in light of the Club's suffering "cash flow issues" during 2011 and 2012, using these reward points was a means of reducing the Club's obligation to him
  - c) Mr Spray stated that he "found it really hard" to obtain records and so had to use his memory or what he could acquire through OLGR or records he may have

- kept over time, but submitted that he "generally" charged those points back to his salary sacrifice arrangement
- d) Mr Spray then provided a brief explanation of the four instances raised by OLGR. He noted that the first instance related to the use of 40,000 points for flights for some directors to fly to Melbourne, but submitted that he paid 64,000 points out of his personal account for that particular transaction
  - e) In relation to the second instance, Mr Spray submitted that there was another charge of \$1,570.00 for 186,000 points. That was originally charged to his salary package, but at the direction of Mr Reilly as Chairman of the Club, Mr Spray "reversed that transaction" and credited that amount back to his salary sacrifice
  - f) In relation to another instance raised by OLGR, Mr Spray submitted that there was another time where he "took it directly" from his quarterly salary statement, but that this was an amount of 216,000 points, not 2,013 points as alleged by OLGR in the Grounds of Complaint. Mr Spray submitted that these 216,000 points were charged in the third quarter of 2011 and that he charged himself \$1,000.00 for AMEX reward points in the fourth quarter of 2011. However, he "could not find" a charge in the third quarter when those 216,000 points were transferred from his AMEX account to his personal QANTAS Frequent Flyer account
  - g) Mr Spray submits that he "always considered [the reward points] were the property of the Club", despite the fact that they vested in Mr Spray's name and the fact that the Club did not have a policy on AMEX reward points.
480. The Authority's General Counsel questioned Mr Spray as to whether there was any written or oral contract with the Club as part of Mr Spray's employment that specifically dealt with AMEX reward points, and if not, why Mr Spray formed the view that such points belonged to the Club.
481. Mr Spray confirmed that there was no written or oral contract with the Club dealing with AMEX reward points and submitted that he formed that view because the points had been earned "spending money on behalf of the Club" while using the corporate credit cards to "balance the cash flow at times".
482. Mr Spray then submitted, in response to a question from his solicitor, Mr Johnston, that the card was "in joint names and there was a joint liability" shared between himself and the Club for any debts on that AMEX credit card. Mr Spray also noted that he "let the Club run the card" for another six months after his resignation as the Club was "in a difficult position".
483. When questioned by the Authority's Chairperson as to the basis upon which Mr Spray calculated the value of the reward points and whether or not this was discussed with anybody, Mr Spray submitted that "it was my idea because I thought it was a fair comparison" in that it was an "easier way to calculate what points were worth" based on the assumption that "gift cards was as close to cash as you could get".
484. Mr Spray also submitted that "all of this material was attached and explained" and that there were general ledger accounts with all the details of any personal expenses that had been incurred by the Club and subsequently charged back against his salary package. Mr Spray also stated that these summaries would have been signed off by the Payroll Officer and the Chairman of the Club, which had been the practice for anyone who was on salary sacrifice at the Club from about 1995 through to 2013.
485. Mr Johnston then submitted that Mr Spray was "open, transparent" and that the Board members and employees of the Club "were aware of all the matters" that have been the subject of complaints. The use of the AMEX reward points is a good example of this by reason that "at Mr Spray's own instigation", he devised "an open and fair way to assess

the cash value" of the points that were used. Noting that there was no policy about the use of AMEX reward points, Mr Spray "thought it was fair in the quarter following that he deduct from his salary the value of the points that were used and that was all done in an open manner with the payroll office".

486. Mr Spray submitted in response to a question from Mr Irving, Principal Investigator from OLGR, that the Chairman of the Club "definitely knew" about Mr Spray's treatment of AMEX reward points and that "sometimes the Deputy Chairman" would sign his quarterly salary statement. Mr Spray also noted that he included about five years' worth of quarterly salary statements in his previous submissions, but that he has about 18 years' worth of statements and they are "done in exactly the same way for everyone within the company".
487. Mr Johnston submitted on behalf of Mr Spray that there are a "lot of instances where there are no policies or procedures within the Club" but that Mr Spray "tried to put in place what were transparent, fair mechanisms" - for example, the way he dealt with his own personal expenditure when he was away on Club business. Mr Johnston submitted that there were "no formal policies and procedures" and that the Club "had its shortcomings in not providing that level of support and level of training for its officers".
488. Mr Johnston also submitted on Mr Spray's behalf that the theme coming through is that the manner in which Mr Spray conducted himself at the Club was "very open and honest". Mr Spray "devoted his life" to the Club and "made a lot of personal sacrifices, including financial sacrifices for the benefit of the Club". Mr Johnston contended that in every instance, "there is not one example of only him knowing what was going on" and that this is not "an instance of a man shovelling money in his own pocket".
489. Mr Spray once again addressed the Authority directly in relation to the issue of his bonus, explaining that the Club made "significant" discretionary donations and sporting grants, particularly to the Sea Eagles, each year. Mr Spray submitted that the measure was the budgeted operating profit versus the actual operating profit from the management accounts - the latter being the basis upon which the bonus was to be calculated. Then, once the management accounts had been agreed, the annual report would be prepared from the management accounts. However, Mr Spray submitted that the annual report format "changed every year" so that as accounting standards changed, so too did the way in which individual line items were described and reported.
490. Mr Spray submitted that the management accounts and the format of the budget that the Board considered did not change. Mr Spray contended, based on the material distributed to the Authority and other parties at the Conference, that the actual profit for the years 2009 to 2010 "substantially exceeded" the budget and that the Complaint compares profit *before* donations and grants to profit *after* donations and grants.
491. Mr Johnston submitted that Mr Spray's bonus was calculated on the operating profit and that Mr Spray "had no control" over the donations that were going to be made to the Clubs, as that was a matter for the Board. Mr Spray's performance was to be judged on how successful he was in delivering a "day-to-day operating profit" and the bonus was calculated on that basis.
492. In response to a question from the Authority's Chief Executive, Mr Spray clarified that the operating profit "includes depreciation, but it's a net profit from general trading operations before tax, before donations and grants".
493. Mr Spray also noted that the Club sold some poker machine entitlements and some Club property and made profits on those sales, and that in making his bonus calculation, Mr Spray made the decision to deduct those items from the calculation,



even though he did not have to, as he "didn't think [he] was entitled to those benefits because [he] had nothing to do with them".

494. Mr Johnston submitted on Mr Spray's behalf that in relation to the bonus, contractually Mr Spray was entitled to a higher amount, but "as a matter of fairness" and consistent with the grants and donations being beyond his control, the sale of those poker machines was "almost an extraordinary item". Mr Spray believed that he should be judged on his performance or operating profit, and "to his own detriment" put the calculation forward for approval of an amount lower than he was otherwise entitled to.
495. The Authority's General Counsel questioned Mr Spray as to how he derived the understanding that budgeted profit means profit less discretionary grants. Mr Spray submitted in response that when the "original document" [an apparent reference to Mr Spray's employment contract] was put together primarily in 2007, there was no differentiation made at the Club between the annual report and the accounts. However, during the period from 2007 to 2008, the accounting standards changed.
496. In response to questions from Authority Member Mr Brown, Mr Spray submitted that the Chairman (Mr Reilly) was a "very strong figure within our club" and that he (Mr Reilly) would sign off on Mr Spray's expenses. Mr Spray submitted that he (Mr Spray) as the General Manager/CEO would sign off on directors' expenses, but that these were "very few" as the Club "just wasn't a club that did that sort of entertaining".
497. Mr Brown then noted that the expenses claimable were to be confined to those which might be considered "professional development expenses" and questioned how "legitimate expenses of office" were met.
498. Mr Spray stated in response to this that the corporate credit card would meet all of these expenses (including those incurred in respect of other directors) and that, at the end of each month, Mr Spray would summarise all these expenses in a specific form, attach this form to the credit card statement, and then have the Chairman sign off on those expenses.
499. Mr Spray noted in response to a question from his solicitor Mr Johnston that each director received an honorarium of \$5,000.00 per year and \$7,000.00 for the Chairman, which was introduced by Mr Spray "in the late '90s".
500. Mr Spray then explained that each director had a "general ledger expense code" and that when a director used their honorarium to pay for any expense, that particular code would be applied when putting the expense through the system. A director seeking to use their honorarium to pay a particular expense would have to provide Mr Spray with "an invoice or a request" to pay that expense out of the honorarium - which is what happened with the \$7,700.00 invoice payable by Mr Delmege.
501. Mr Spray stated that there was "no restriction" on how a person could spend their honorarium - it was Mr Spray's responsibility to ensure that a director's honorarium was also charged with any tax liabilities that might arise from that particular payment, but it "wasn't [his] place to query how they spent it".
502. Mr Hearnden then submitted for the Complainant that under section 10(6) of the Act, the Club does not fail to meet the requirements specified in section 10(1) of the Act if one of the four circumstances specified by section 10(6) is satisfied. Mr Hearnden notes that the Act requires a current resolution approving the relevant expenses and submits that the only resolution of either the Governing Body or the members was a resolution made by the members in relation to professional development. He adds that there is a further

layer when considering expenses - that they be reasonable and that they relate to the purposes of which the Club is operating.

503. Mr Hearnden submitted that it is "hard to imagine" how some of the "very significant expenses" included in the material before the Authority (such as taxi fares and meals) "could possibly be a legitimate expense for the operation of the Club". Mr Hearnden submitted that this "identifies the extremes to which the expenses were taken" and contended that expenses of these types and magnitudes "could not be legitimate, would not be reasonable and could not be for the purposes of the Club".
504. Mr Hearnden further submitted that it "seems as though they were approved by Mr Reilly in relation to Mr Spray's expenditure and that Mr Spray approves in relation to Mr Reilly and at the end of the month there would be a list of general expenses provided to the Board".
505. Mr Johnston submitted on behalf of Mr Spray that this is "not a matter of this all being hidden and under the carpet" and that the Board members "were fully aware" that the Club was reimbursing the expenses incurred by the Chairman and other Board members in going to these football games and LCA Conferences.
506. The Authority's Chief Executive noted that the question at the core of this Complaint is whether or not these benefits (either legitimate or illegitimate) were provided with the requisite sequence to allow authorisation under the Act.
507. The Authority's Chairperson questioned Mr Spray as to the level of detail of the expenses that would be presented to the Board at Board meetings. Mr Spray confirmed that the line items would not disclose the identity of the person incurring a particular expense. That is, there would be a line item for total amount expended on, for example, Cabcharge but no specification as to who incurred that charge or for what purpose.
508. Mr Spray confirmed, in response to questions from Mr Hearnden, that nothing had been authorised other than expenses being incurred for professional development and that the Club had not gone so far as to authorise, in a general sense, the provision of out-of-pocket expenses for directors and their employees.
509. The Authority's General Counsel then noted that fitness and propriety to hold a certain role involves *knowledge* of the legislation that one is expected to administer. He questioned Mr Spray as to how the Authority should treat Mr Spray's admission that he was not aware of the requirements of section 10(6) of the Act.
510. Mr Spray submitted in response that he started working for the Club without having worked previously for a licensed club and that he "followed the procedures" implemented by his predecessors from 1993 through to about 2005, when OLGR gave notice that it would be conducting an audit of the Club. He states that prior to the OLGR audit, Mr Spray engaged Lawler Partners, a club industry consultancy firm, to conduct a "mock audit" of the Club and upon receiving Lawler Partners' recommendations, Mr Spray submitted that he "implemented all those changes immediately" and "followed those Lawler Partners guidelines right through until the day [he] left".
511. Mr Spray stated that he had completed the Directors Foundation course on club management, that he "read every circular" he received from ClubsNSW, that he was "very mindful of the harm minimisation laws" and that he thought he had a "reasonable knowledge" of the Act.

512. Mr Spray submitted that he was "surprised" when he was notified of the Complaint, given that the Club "went really well with every audit" conducted by OLGR over the years.
513. Mr Spray stated that he was aware of the restrictions in clause 29 of the Gaming Machines Regulation 2010 regarding the prohibition on the cashing of cheques with a value in excess of \$400.00 and that he knew about and applied, when relevant, other legislative provisions publicised in circulars from ClubsNSW, OLGR and the Authority, but conceded that he had not ever read the Registered Clubs Act or the Registered Clubs Regulation.
514. On the issue of travelling to away games and conferences, Mr Spray submitted that he "generally went for one night and tried to keep the cost to a minimum" by arranging flights at the cheapest times and trying to find the cheapest way of getting to and from the airport. Mr Spray submitted that he was "very conscious of the Club's financial position" and he was "worried that [he] couldn't control what people were spending", so gave a per diem allowance for each director, based on ATO guidelines. Mr Spray submitted that these trips "were not holidays" and that he was "basically on duty all the time" - these trips were "a PR exercise" for himself and his wife.
515. Mr Spray then made the following further submissions: *[redacted from published version]*
- a) This Complaint process started in March 2012 for Mr Spray and it "hasn't left [his] thoughts at any particular time". Mr Spray submits that it has "definitely impacted" on his health and notes that he was
  - b) Mr Spray submits that he "loves the Club" and he became "very passionate" about the team and the Club. He submits that he was "compelled to resign" and that he has had a lot of "longstanding friendships damaged" as a result
  - c) Mr Spray "understands" that had he done things differently, he would not be in this position. He submits that he should have "got involved more people and sought some assistance from people" and "should have paid more attention to protecting [his] position via greater disclosure"
  - d) Mr Spray submits that he thought the Sea Eagles related expenses were "acceptable" and that if he had "taken the simple action of taking these expenses to the Board", they would have been approved. Mr Spray submits that the other directors were "well aware" of the arrangement and that "perhaps there were times when it was wrong" to allow the Chairman to be the "key person in the Club"
  - e) Mr Spray "totally disputes" the notion that corporate governance was deteriorating as there were a number of things that Mr Spray "was not comfortable about" before he became General Manager, and submits that when he became General Manager, he "did [his] best to eliminate those and increase the communication with the Board". Mr Spray refers to the Club's promotions and entertainment contract (valued at over \$2 million a year) in support of that submission
  - f) Mr Spray submits that as General Manager/CEO of the Club, he kept records that were never kept before and introduced systems that were never used before, which is "why [he] got the job in the first place"
  - g) Mr Spray submits that he is "ashamed" of the Complaint against his conduct and refers to his further supplementary submission dated 21 November 2014 which lists a number of community activities and projects he was involved in, both for the Club and for his local community as a whole
  - h) Mr Spray "does not dispute" that he did not follow the *Registered Clubs Act* "to the letter", but states that he "didn't realise that [he] wasn't and there was never any intention to do the wrong thing".

## Oral Submissions at Conference on behalf of Mr Reilly

516. Mr Tim Mitchell of *Bay Legal* then made the following oral submissions on behalf of Mr Reilly: [redacted from published version]
- a) About four months ago, Mr Reilly had   
  
 Mr Mitchell submits that this is not mentioned "to garner any sympathy", but just to indicate that Mr Reilly "has been willing to participate in these proceedings from day one"; however these health concerns and "being under doctors' advice not to participate in anything that could cause stress" are responsible for the delay
  - b) Mr Mitchell submits in response to the first of Mr Hearnden's "essential background matters" that under Mr Reilly's chairmanship, the Club was making in excess of \$1 million profit, so to characterise the Club as being "financially stressed" is "unfair"
  - c) In response to the second of Mr Hearnden's "essential background matters", Mr Mitchell submits that Mr Reilly joined the Board of the Club in 2008 and he had never been a director of a registered club in New South Wales or any other State before then, so it could not be characterised that Mr Reilly "had been working in the Club industry for many years"
  - d) Mr Mitchell submits that the Club is not a "tin pot community suburban club" but a "major enterprise" in a multibillion dollar business involving "substantial PR responsibilities", and that Manly-Warringah is a "successful club" that has performed well as a club and performed well as a club on the field
  - e) Mr Mitchell questions if it is "really a major concern" when a Chairman of a registered club attends NRL matches and asks to be paid for their expenses and accommodation while they are there "representing the club, working hard"
  - f) Mr Mitchell notes that Mr Reilly is "more than happy to go into detail in relation to any specific expense".
517. Mr Alex Ying of *Bay Legal* then made the following further oral submissions on behalf of Mr Reilly:
- a) The Act requires that every year, at AGM, the Board receives a resolution to approve certain expenses and accordingly, in all those years and in each year under Mr Reilly's chairmanship, "these were obtained"
  - b) Mr Ying submits that the specific resolution that was passed in each year states that the Club is authorised to budget, allocate and disburse such funds as may be considered reasonable expenditures of directors for professional development. He contends that attending some Sea Eagles away games falls within the purview of the Board's "discretion" as to what constitutes professional development
  - c) Mr Ying submits that "after it is approved by the members, it has adopted the resolution, it is going to be adopted by the Board". Mr Ying also submits that the "oversight is with the Board", but it is "still the responsibility of the directors to make reasonable enquiry" regarding any expenses listed in the monthly disbursement statements. If some expenses were not reasonable, it was "under the purview of Mr Spray to reject those" and Mr Ying notes that in some cases, certain expenses incurred by Mr Reilly were not accepted and he paid them.
518. The Authority's Chief Executive questioned what is the "ambit of discretion" afforded to the Board in determining what are the expenses that fall within the general category of professional development, and whether this was set down in any particular Board minute or if it was just a "custom and practice without any real basis to it". Mr Mitchell submitted in response that identifying this was "probably an onerous exercise beyond us" as such a document "could be back there in 1958". Mr Mitchell submitted that this

was "clearly a long-established practice" and a practice that is "probably in any club in the NRL".

519. The Chairperson of the Authority questioned where is the authorisation, at the AGM, required by the Act for the Board, in its discretion, to approve the expenses incurred by, for example, the Chairman and the General Manager to attend a football game. Mr Ying submitted in response that the "chain of authorisation comes from the Board" and that "within the operating system of the Club, there [are] certain procedures, although not explicit".
520. Following some observations made by the Authority's Chief Executive, Chairperson and Deputy Chairperson as to the apparent lack of any resolution or other manifest authorisation in relation to the approval of expenses, Mr Mitchell submitted that the onus of proof lies on the Complainant and questioned whether the Complainant "can say that they've been through every Board meeting and every general members' meeting since 1957" [when the Club was first established] and say that an authorisation has never occurred. Mr Mitchell contends that the fact that the Board meets every month to approve expenses is "a matter of practice".
521. Authority Member Mr Brown then noted that the "specific expenses of the directors and the General Manager or Secretary were not put to the Board each month" in that the expenses have not been put to the Board of Directors for ratification; the Board has not authorised them and "there is no indication and there is nothing to suggest that there was a delegation provided by the directors to the Chairman or to the CEO".
522. Mr Mitchell submitted in response that the practice at the Club was that the Board, as a whole, if it had a problem with expenses, would be asking questions and that from time to time, specific expenses were sought to be refunded and they were rejected by the Board.
523. The Authority's General Counsel noted that the Board as a whole was responsible for interrogating the reasonableness of expense items reported to it and questioned whether Mr Reilly, as Chairman of the Board, was actually conducting those interrogations.
524. Mr Reilly then himself responded that "this was the process that was in practice" even before he started working for the Club. He then stated that he had "never been on the board of a licensed club, never worked in a licensed club...and had no formal training in relation to any licensed club". Mr Reilly submitted that he "just followed procedure, what was in place that was there before".
525. Mr Ying then submitted in relation to the "missing link of the authorisation" for directors' expenses that in the minutes for each Board meeting, there is generally an item for "cheques and direct debit payments" and they are to be adopted each month. Mr Ying noted that in the Board meeting of 27 August 2012, Mr Reilly recommended that he be represented at the Sea Eagles game on 5 December 2012.
526. Mr Ying submitted that this issue of approval of directors' expenses is "really within the internal control of the Club" and that this has been "properly implemented". Mr Ying contended that there was an AGM approval and there was a Board approved resolution that delegated the discretion to the Club to decide what is professional development.
527. The Authority Chairperson questioned why approval was sought from the Board in respect of directors' expenses on some occasions, but not all. Mr Ying submitted in response that the Board must have "some leeway for judgment" in that if a particular

expense is "very related" to the Club's business, then approval need not be sought. Given this evidence, Mr Ying contended that "the internal control is in place".

528. The Authority Chairperson then questioned Mr Hearnden as to why the lack of authority for these payments was not identified in any previous audits of the Club by OLGR.
529. Mr Hearnden submitted in response that there was "no evidence" in respect of when the audits were undertaken, what the nature of the audits was and how they related to the specific items under consideration in this Complaint. Mr Hearnden submitted that an audit "would not necessarily be a certificate of compliance to date".
530. The Authority's General Counsel questioned Mr Hearnden as to the Complainant's view of the culpability of Mr Spray in respect of use of the AMEX reward points when the Club itself had no defined the rules for that facility. Mr Hearnden submitted in response that this practice represented the "use of Club property which was for [Mr Spray's] own benefit and in a way which is not open and transparent to all members of the Board". In Mr Hearnden's submission, any use of the reward points "should have been clearly explained and recorded for the benefit of the Club" and the absence of a policy should have driven the Board members "to have created one or found one".
531. Mr Hearnden made the following final submissions:
- a) "Professional development" does not relate to things such as social events, attendance at football games and interrelating with members, but it would have involved attendances at educational courses
  - b) The failure by *other* Board members to "press for more detail" in relation to the payment of directors' expenses might reflect on them, but "is not relevant" in terms of this Complaint
  - c) In response to Mr Spray's suggestion that he "suffered a detriment" when he removed certain line items which he could have included with the calculation of his bonus, Mr Hearnden submits that the bonuses under the employment contract did not increase proportionately or in some way as the profit increased. It was a "flat target" in that once the target was achieved, the flat fee of the bonus was payable. Mr Hearnden contends that if one accepts this approach, Mr Spray would have been eligible for the bonus in any event and that there is "actually no detriment that can be reflected upon his credibility or credit worthiness" in relation to removing those particular line items from his calculations.

## POST CONFERENCE SUBMISSIONS

### Further Documents provided by OLGR on 12 February 2015

532. On 12 February 2015, Mr Brett Hearnden of Hunt and Hunt Lawyers provided the Authority with a statement made by OLGR Inspector Ms Karen McCluskey dated 10 February 2015, following OLGR's advice during the Conference that it would seek certain records and/or details of any OLGR audits conducted at the Club.
533. Briefly, the statement made by Inspector McCluskey indicates the following:
- a) On Monday 2 February 2015, Inspector McCluskey accessed the Enforcement Tracking System (ETS) maintained by the Compliance Branch of OLGR for details of inspections of the Club conducted prior to 2009
  - b) Inspector McCluskey's review of the ETS identified nine (9) inspections conducted at the Club between January 2005 and January 2008. A summary of those inspections is as follows:
    - i. Inspection X05/0059 conducted on 6 January 2005. The scope of this inspection was confined to a technical gaming machine audit

- ii. Inspection X05/0069 conducted on 10 May 2005. The scope of this inspection was confined to compliance with the sign-in register requirements under section 30 of the Act
- iii. Inspection X05/0367 conducted on 27 April 2005. The scope of this inspection was confined to the "Registered Clubs Proactive Investigations" program. This inspection focused on corporate governance at registered clubs
- iv. Inspection X05/2715 conducted on 8 June 2005. This inspection was confined to a web-based inspection only
- v. Inspection X05/3888 conducted on 15 August 2005. This inspection was in relation to a complaint lodged alleging certain gaming related offences
- vi. Inspection X05/5800 conducted on 15 November 2005. This inspection was confined to a web-based inspection only
- vii. Inspection X06/1808 conducted on 28 March 2006. The scope of this inspection was confined to a technical gaming machine audit
- viii. Inspection X06/3150 conducted on 2 June 2006. The scope of this inspection was confined to the State wide "Regional Audit" program. This inspection focused on compliance with gaming and liquor signage
- ix. Inspection X08/0292 conducted on 14 January 2008. This inspection was in relation to a complaint lodged alleging gaming related offences
- c) Inspection X05/0367 conducted on 27 April 2005 focused on corporate governance and included the completion of a compliance checklist by an OLGR Inspector. [The Authority notes that this checklist does not contain any specific reference to compliance with section 10(1)(i) of the Act.]
- d) Annexure A to Inspector McCluskey's statement comprises a copy of the "Registered Clubs Audit Task Force Inspector Checklist", as well as the "Club Inspector Checklist" (Version 2). Also annexed to Inspector McCluskey's statement are a Compliance Notice dated 27 April 2005 from the (then) Department of Gaming and Racing addressed to Mr Spray and a letter from Mr Spray to Mr Albert Gardner, the (then) Assistant Director of Compliance of the Department of Gaming and Racing dated 21 April 2005 identifying two items that had "not been properly treated" by the Club - being disclosure of interests of a director in contracts with the Club (pursuant to section 41C of the Act) and contracts approved by the Board (pursuant to section 41H(1)(e) of the Act)
- e) Inspector McCluskey then notes the following references in the checklist for inspection number X05/0367 conducted on 27 April 2005:
  - i. Does the Club provide senior management or directors with credit cards or mobile telephones?
  - ii. Are directors' allowances and expenses approved by the members at the previous AGM?
  - iii. Are directors' expenses approved at Board meeting (if not approved at AGM)?
  - iv. Are claims made by directors adequately supported by invoices or calculated on a sound basis? E.g. travel reimbursement, entertainment, meals, drinks, use of own vehicle (cents per kilometre) or use of taxis to attend Club business
- f) Inspector McCluskey notes that at the time of inspection number X05/0367 "no contraventions" were recorded or reported by the Inspector in relation to the above categories
- g) On Tuesday 10 February 2015, Inspector McCluskey accessed the Regulatory Information System (RegIS) maintained by the Compliance Branch of OLGR for details of inspections of the Club conducted after 2009
- h) Inspector McCluskey's review of RegIS identified five inspections of the Club conducted between August 2009 and October 2012. A summary of those inspections is as follows:

- i. Inspection I09/5438 conducted on 8 August 2009. This inspection was a "liquor-centric" inspection
- ii. Inspection I09/5439 conducted on 5 September 2009. This inspection was a "liquor-centric" inspection
- iii. Inspection I11/5440 conducted on 11 May 2011. This inspection was a remote inspection
- iv. Inspection I11/5437 conducted on 29 September 2011. The scope of this inspection was confined to a gaming machine audit
- v. Inspection I12/1205 conducted on 20 March 2012. The scope of this inspection was confined to a gaming machine audit.

### **Submission from Mr Reilly dated 13 February 2015**

534. On 13 February 2015, Mr Tim Mitchell of Bay Legal provided the Authority with specific submissions in relation to the operation of section 10 of the *Registered Clubs Act 1976* prepared by Mr Marcus Pesman SC on behalf of Mr Reilly. Briefly, the key observations and contentions made in that submission may be summarised as follows:
535. In essence, Mr Reilly contends:
- a) The factual material before the Authority does not establish that the reimbursement of expenses Mr Reilly incurred was not authorised pursuant to section 10 of the Act. Further, there is at least some support for the proposition that there was authorisation
  - b) In any event, it is at least "arguable" that the reimbursement of expenses did not constitute a "profit, benefit or advantage" to Mr Reilly
  - c) At least some of the reimbursed expenses fell within the professional development authorisations passed in 2008, 2009 and 2010.

### **Facts**

536. The facts relevant to this part of the enquiry are "largely uncontroversial" and may be summarised as follows:
- a) Mr Reilly became Chairman of the Club in 2008
  - b) In the years 2008 to 2010, the Club reimbursed expenses incurred by Mr Reilly in the order of \$16,000.00 (for all three years)
  - c) Mr Reilly contends that "there is no suggestion" that the expenses claimed by him were not properly incurred in the performance of his role as Chairman (accepting that there was some complaint at the Conference about a few items)
  - d) It was the practice of the Board to approve expenses by reference to *expense type* rather than by reference to the *person incurring the expenses*. Mr Reilly contends that "there is no suggestion" that any expenses were concealed from the Board or that enquiries by the Board in relation to expenses were not answered
  - e) These practices had been operating at the Board prior to Mr Reilly becoming Chairman
  - f) From time to time, OLGR has conducted compliance audits of various aspects of the Club's operations. Mr Reilly contends that Inspection number X05-0367 conducted on 22 April 2005 specifically considered corporate governance issues and that "no compliance issues were identified".

### **Legislation**

537. Section 10(1)(i) of the Act contains a prohibition in the following terms:

*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.*

538. Section 10(6) of the Act contains four exceptions to that prohibition. Relevantly, Mr Reilly submits, subsection (d) provides that a club does not fail to meet that requirement if:

*...the profit, benefit or advantage consists only of the payment of out-of-pocket expenses that are of a kind authorised by a current resolution of the governing body and are reasonably incurred by a member of the club, or by the secretary or any other employee, in the course of carrying out his or her duties in relation to the club.*

539. Mr Reilly contends that "there is virtually no authority" on the meaning of those provisions. The "only" superior court consideration of them was in *Labbozzetta v Director of Liquor & Gaming* (1999) NSWSC 96.
540. Mr Reilly submits that the suggestion at the Conference that those provisions of the Act require an *annual* resolution is "not made out" when the section is considered as a whole. Mr Reilly contends that "all that is required is that a resolution be current, not that it be repassed in each year".
541. Mr Reilly submits that the Club in general meeting could pass a resolution authorising the reimbursement of properly incurred expenses "until further resolution", which would represent a "current" resolution until such time as a further resolution was passed.

***Is there a current resolution?***

542. Mr Reilly concedes that "no [such] resolution has yet been identified". However, this does not mean that this aspect of the Complaint is made out, for two reasons:
- a) First, "plainly enough" the OLGR itself concluded that there was a current resolution in 2005
  - b) Second, "the presumption of regularity compels a conclusion that the Board conducts itself regularly unless there is some compelling reason for a contrary conclusion".
543. The presumption of regularity has recently been summarised in *Darley Australia Pty Ltd v Walfertan Processors Pty Ltd* [2012] NSWCA 48, [115] per McColl JA, as follows:
- The presumption of regularity has also been described as one which "arises from the ordinary course of business", being a "rule of very general application, that where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act": McLean Bros & Rigg Ltd v Grice [1906] HCA 1; (1906) 4 CLR 835 (at 850) per Griffith CJ (Barton and O'Connor JJ agreeing), citing Knox County v Ninth National Bank [1893] USSC 8; 147 US 91 (1893).*
544. In the present circumstances, Mr Reilly was "entitled to assume" that the reimbursement of his expenses was authorised, particularly given (according to Mr Spray) that the practice adopted in 2008 to 2010 had been in place for at least 18 years (predating the 2005 audit).
545. Mr Reilly submits that absent a reason to conclude that there was no relevant authorisation, then the presumption operates. He contends that, to the extent questions of onus were debated at the Conference, the onus "falls on the Complainant".

**Was there a relevant benefit?**

546. Mr Reilly submits that it was "assumed" at the Conference that the activities associated with the expense items amount to a profit, benefit or advantage to the Club directors that are not generally available to other members of the Club. Mr Reilly contends that that is a "contestable proposition" for the reasons identified by Simpson J in *Labbozzetta* at [61]. Mr Reilly submits that some of the activities were "integral parts of the duty and responsibilities" of the Chairman, directors and officers - supported by Mr Mitchell's pointing out at lines 40-41 of page 37 of the transcript of the Conference, "It's work. It's unpaid work".
547. Mr Reilly submits that as Chairman, he was "required to participate in a range of public relations activities for the Club in a large commercial industry", being the NRL. His work was unpaid or paid at an "extremely nominal stipend of \$7,000.00 per annum" and it "could not be expected" that he be required to pay his own expenses for performing official duties of the Club.
548. Mr Reilly submits that if this is a benefit, it is "arguably" available to any member of the Club if the member is performing an official duty for the Club. Any member may stand for election to the Board, and "clearly" there can only be one member who is chairman at any given time.
549. Mr Reilly submits that "there is no evidence to suggest" that these expenses were in connection to junkets, and that it is "remarkable" that the level of expenses is so low, given that it was over three years in a Club "generating substantial revenue".

**Authorisation**

*Members' Approval –*

550. Mr Reilly submits, per Schedule 1, KM16 of the OLGR Brief of Evidence, that it is "common ground" that in each of the years 2008, 2009 and 2010, members had passed resolution at AGM that:

*The Club shall be entitled to budget, allocate and disburse such funds as may be considered reasonable expenditure of Directors for professional development, including but not limited to, industry related meetings, organised study tours, seminars, trade displays etc. as may be determined by the Board. All expenditure must be supported by documentary evidence.*

*Meaning of "professional development" –*

551. Mr Reilly observes that OLGR argues that "professional development" does not include "social events, things such as attendance of football games and interrelating with members and so forth. It would have involved attendance at courses, attendances at educational courses".
552. Mr Reilly submits that a reading of the resolution, which defines professional development to include industry related meetings, "gives discretion to the Board to determine which activities may fall within the purview of professional development".

*Club Governance –*

553. Mr Reilly submits that ultimately, he "shares [the Authority's] concern that registered clubs, being community organisations, should adhere to the best governance practice". Mr Reilly submits that the evidence and conduct of Mr Reilly show that he "had acted

with competence and to the best of his abilities to discharge his duties" during his term as Chairman of the Club.

- 554. Mr Reilly's Club related expenses were approved by Mr Spray, who was the Secretary and Chief Financial Officer of the Club. Mr Reilly submits that if Mr Spray had questions about whether a particular expense was "legitimate and reasonable", he could either ask Mr Reilly for an explanation or bring the matter to the attention of the Board.
- 555. Mr Reilly submits that if the Club was not satisfied that an expense was legitimate or reasonable, the Club could decline to pay or reimburse the expense, and in some cases did ask Mr Reilly to reimburse the Club for expenses which it did not consider appropriate - consistent with "common accepted practice and procedure in corporate governance".
- 556. Mr Reilly concludes that legitimacy and reasonableness "always involve some degree of judgment" which the members had "clearly" delegated to the Board. Each expense also had a context which without explanation might seem "unreasonable or extravagant" at first glance, but "may not be so" under further scrutiny.
- 557. Mr Reilly submits that these are "manifestly matters that should be resolved within the management of the Club and not determined by the regulator *ex post facto* and not having access to the particular circumstance of each and every case".

#### **Submission from the Club dated 19 February 2015**

- 558. On 19 February 2015, Mr John Ralston of Pigott Stinson Lawyers provided the Authority with a (late) final submission on behalf of the Club. This final submission addressed specific issues raised in the transcript of the Conference, as follows:
  - a) Page 9, paragraph 35 - the absence of a written or oral policy in relation to the AMEX reward points "cannot condone or excuse" the fact that the points belonged to the Club and Mr Spray "appropriated" them to himself
  - b) Page 10, paragraph 50 - the practice was that the "front page" of the AMEX statement was presented to the Board, not the details
  - c) Page 11, paragraphs 10 and 15 - the employees of the Club in the accounts department processed the transactions. Mr Spray was the CEO and "in a position of authority and power" over them
  - d) Page 14, paragraph 45; page 16, paragraph 30; page 16, paragraph 45; page 17, paragraph 25 - all these highlight the problem, namely that Mr Spray and Mr Reilly "were really signing off each other's expenses without Board approval"
  - e) Page 24, paragraph 15 - the expenses given to the Board were in effect "lumped together so there was no way of knowing what the individual items were"
  - f) Page 29, paragraph 30 - the Club did make "good profits" in 2009 and 2010. The profits in 2009 were \$536,000.00 and \$555,000.00 in 2010. However, those profits reflected asset sales of \$808,000.00 in 2009 and asset sales of \$212,000.00 in 2010
  - g) Page 31, paragraph 5 - the Club is not aware of the "profit and loss statement" that was tabled at the Conference and whether it is accurate. If any weight is to be given to that document, the Club wishes to see it and have the opportunity to comment on it. The Club would also wish to know the source of the document.

[The Authority notes that after receiving this submission, the tabled profit and loss statement was later provided to Mr Ralston on 19 February 2015. On 20 February 2015, the Club advised that it would make no further submissions on that tabled material.]

- h) Page 31, paragraph 30 - Mr Spray "acknowledges" that expenses were not taken to the Board

- i) Page 36, paragraph 35 to page 37, paragraph 35 - the Club submits that the business of entertaining at football matches "had nothing to do with" the business of the Leagues Club. These are all activities of the Football Club
- j) The Club then makes some general submissions about the operation of section 10(6)(d) of the Act. The Club observes that it was inferred by the Respondents that the onus was on the *Complainant* to positively prove that there was *no such resolution* authorising the payment of out-of-pocket expenses, and it was further suggested that such resolution could have been passed years, if not decades earlier. The Club submits in reply that this proposition is "quite fatuous" as it "calls upon the Complainant to prove a negative". If there was such a resolution, then either Mr Reilly or Mr Spray "had to have been aware of it and could have readily pointed to it". The Club is "not aware" of any such resolution.

[The Club contends that any such resolution must be "current". While there has been no judicial determination of this point, the Club submits that the word "current" has "both a temporal and operational quality" - that is, it was "passed relatively recently and is still in operation at the time that the expenses are incurred". Given that the Club's finances run from year to year for audit purposes, that there is a Board election either every year or every two years and that Board meetings must be held once a month, the Club submits that a "current" resolution means that either a "generic resolution" is passed each year or there is a "standing item on the agenda of each monthly Board meeting" whereby the details of expenses incurred by directors in the previous month are tabled and a resolution passed in respect of those expenses.]

- k) The Club observes that the Authority "seems to be receptive to" accepting evidence of the health of both Mr Spray and Mr Reilly. The Club contends that these are matters which do not go to whether or not the Grounds of Complaint have been made out, because the health issues of each of them arose *after* the relevant facts, matters and circumstances giving rise to the Complaint occurred. The Club also notes that the Authority's jurisdiction under section 57H of the Act is "protective and not punitive" and submits therefore that sympathy or compassion for either Mr Reilly or Mr Spray because of their health issues, "while understandable at a human level", are not factors which are to be taken into account as to whether or not they are fit and proper for the purposes of the Act where the relevant events occurred prior to their health issues arising
- l) In relation to the evidence of character, the Club submits that persons of good character who are directors of clubs "can have no idea" of the requirements of the Act in what is a "highly regulated governance regime". The Club submits that while it is "reasonable" to allow them time to be educated about this governance regime, the people at the "head" of the Club - being the President and the Chief Executive Officer - "should have got well past this stage". The Club refers to *Sakellis v Officer in Charge of Police Paddington* (1968) 88 WN (Pt 1) NSW 541 at 458 and submits that the criteria for being fit and proper are "honesty, knowledge and ability" - in short, a person "may be honest and be of good character, but without knowledge and ability the person is not fit and proper"
- m) The Club submits that "it would be different" if Mr Reilly and Mr Spray were being prosecuted for *criminal* offences (where health and character can be taken into account on penalty) but they are not. Instead, the Respondents are "part of a disciplinary response that may be imposed on the Club" to ensure that the Club and other clubs are protected in the future from the sort of conduct which has been alleged in the Complaint.

### **Further Submission from Mr Reilly dated 6 March 2015**

559. On 6 March 2015, Mr Tim Mitchell of Bay Legal provided the Authority with a further submission on behalf of Mr Reilly in response to the Club's submission of 19 February 2015. Briefly, the key observations and contentions made in that submission may be summarised as follows:

#### ***How were business expenses of the Secretary and Board members approved?***

560. In response to paragraph (iv) of the Club's submission, Mr Reilly contends that there were two steps to the approval of management and Board member business expenses.
561. First, the Chairman or other Board member(s) gave "preliminary approval of business expenses" of the Secretary of the Club and conversely, the Secretary or other manager on duty gave preliminary approval for the Chairman or other Board members' expenses. This procedure "had been in place at the Club for many years and was no different to established practice" in most commercial and community organisations.
562. Second, the expenses were paid and submitted to the Board in its monthly Disbursement Journal for final approval.

#### ***Were the expenses "hidden" from the Board members?***

563. In response to paragraph (v) of the Club's submission, Mr Reilly regards this statement as a "misconception of governance principles and practices".
564. Mr Reilly contends that given the size of the Club, the matters that needed to be addressed at monthly Board meetings and the number of payments made each month to vendors and service providers, listing every payment in detail would necessitate the Journal running to "hundreds of pages" and would have been "impractical" given the time constraints of each Board meeting.
565. Mr Reilly submits that if any Board member had any question about an expense item, it was "entirely open to him or her" to make further enquiries before giving final approval.
566. Mr Reilly submits that generally, Board members were aware of duties of the Chairman that "may have involved travelling to NRL games and participating in public relations and other activities for the benefit of the Club". Mr Reilly refers to a particular instance on or around 11 June 2010, when he travelled to the Gold Coast for a game between the Manly Sea Eagles and the Gold Coast Titans at the invitation of the Titans. Mr Reilly submits that this travel also included a review of the Titans club, which had recently been renovated by Reed Constructions, a company which was also being engaged by the Manly-Warringah Rugby League Club to conduct extensive renovations there. Mr Reilly contends that this visit had a "direct connection to the Board's duties in the interest of the Club" and that the expenses were duly claimed.

#### ***Is there authority to adopt the current procedures?***

567. Mr Reilly submits that the "evidence establishes" that members' approval of business expenses of management and the Board was obtained in AGMs for the years of 2008, 2009 and 2010. Mr Reilly submits that it is "debatable" whether another *explicit* Board resolution was necessary to allow itself the authority to approve Board expenses and that ultimately these are matters of Club governance.

### ***Office of Liquor, Gaming and Racing Audits***

568. Mr Reilly submits that the audit conducted by OLGR on 27 April 2005 indicates that "no contraventions" were found by the Inspector at that time and Mr Reilly "reserves the right to comment" on any further audit material that may be forthcoming from OLGR.

### ***The profitability of the Club in 2009 and 2010***

569. Mr Reilly submits that paragraph (vi) of the Club's submission dated 19 February 2015 should be dismissed on the basis of "lack of relevance". Mr Reilly contends that Mr Spray's employment contract was referable only to the Income Statement, not the Balance Sheet.

### ***The Nexus between the NRL Club and the Leagues Club***

570. In response to paragraph (ix) of the Club's submission of 19 February 2015, Mr Reilly contends that the Club had a "huge interest" in the Football Club, as many decisions made by the Football Club directly affected the Leagues Club. Acting in the duty of a chairman, it was "right and proper" that a person in that role attend football games "for the purpose of advancing the interests of the Club".
571. Mr Reilly submits that his stipend was "modest", being only \$7,000.00 per annum and that it was "reasonable" that his expenses be paid when deemed by the Board to be "in the course of the business of the Club". On the question of whether paid expenses were available to any member of the Club, Mr Reilly submits that in theory, any member of the Club can be a Board member or indeed the Chairman of the Club. Mr Reilly argues that the fact that only one person can fill the role of Chairman at any particular time "does not mitigate [*sic*] against" the fact that any member may stand for and fill that role.

### ***"A kind authorised by a current resolution of the body"***

572. In response to paragraph (x) of the Club's submission of 19 February 2015, Mr Reilly refers the Authority to "each and every Board minute for the last five years" where there was always a standing item where cheques and direct debit payments, including business expenses, were approved.
573. Mr Reilly rejects the contention that the word "current" requires a resolution of the Governing Body every year. Mr Reilly submits that there is no authority for this and that "to arbitrarily set the bar in this fashion simply creates a meaningless stricture that every Club board would have to adhere to for no benefit. It discounts the capacity for Boards, who are ordinarily, or at least should be, comprised of persons of intelligence, experience and maturity, to exercise discretion".
574. Mr Reilly contends that in common parlance, "current" can refer to laws, regulations and governing principles that are "many years if not decades and centuries old". Mr Reilly notes, by way of example, that legislation prepared in 1901 can still be current and submits that there are "myriad examples" of this usage of the term.

### ***Health evidence of Mr Reilly***

575. In response to paragraphs (xi) and (xii) of the Club's submission of 19 February 2015, which refer to the use of certain health and character evidence, Mr Reilly submits that the condition of his health was mentioned at the Conference "solely for the purpose of administering necessary medication and not evidence relating to the matter". It was expressly stated by Mr Mitchell at page 32, line 47 of the transcript of the Conference that this reference was "not to garner sympathy".

576. Mr Reilly observes that at this stage, none of the Grounds of Complaint have been made out and that any evidence relating to health and character is "irrelevant".

***Honesty, knowledge and ability***

577. Paragraphs (xii) and (xiii) of the Club's submission of 19 February 2015 appear to imply that Mr Reilly is not a fit and proper person "for want of knowledge and ability". Mr Reilly submits that "there is no evidence for this assertion" and that Mr Reilly had the confidence of the Board or he would not have been in the position of Chairman.
578. Notwithstanding the above, Mr Reilly submits that his *character* is not called into question and makes no further submission nor tenders any references with respect to his character.

**Documents Provided by OLGR on 6 March 2015 and 11 March 2015**

579. On 6 March 2015, Mr Hearnden provided the Authority with copies of Club Board meeting minutes for the monthly meetings held in February 2005, March 2005, April 2005 and May 2005 in response to a request from Mr Johnston of Johnson Winter and Slattery Lawyers, who act for Mr Spray. Annexed to the minutes of the 10 May 2005 Board meeting was the "Prudential Review" of the Club conducted by Lawler Partners on 10 February 2005.
580. On 11 March 2015, following further correspondence with Mr Johnston, Mr Hearnden provided the Authority with a copy of a letter from the (then) Department of Gaming and Racing to Mr Spray dated 3 February 2005. This letter advised that the Club had been identified for an audit and attached a notice under section 35A of the Act requiring that certain information, records and documentation be produced and be made available for inspection at the Club on 27 April 2005.

**Supplementary Submission from Mr Spray dated 1 April 2015**

581. On 1 April 2015, Mr Johnston provided the Authority with a further submission on behalf of Mr Spray. Briefly, the key observations and contentions made in that submission may be summarised as follows:

***On the Statement of OLGR Inspector Karen McCluskey dated 10 February 2015***

582. Mr Spray "has consistently contended" that he had a "reasonable" understanding of the Act and that he did not knowingly breach the Act. In the event that Mr Spray became aware of an "inadvertent" breach of the Act, he took steps to correct it "immediately".
583. Mr Spray submits that the statement of OLGR Inspector Karen McCluskey dated 10 February 2015 "confirms" that any such breaches were "minor" and "few in number". Mr Spray contends that he "fully cooperated" with OLGR Inspectors on each of the fourteen (14) inspections of the Club and addressed any breaches identified "as soon as they were communicated" to him.
584. Mr Spray submits that he wrote to Mr Albert Gardner, the (then) Director of Compliance of the (then) NSW Department of Gaming and Racing on 21 April 2005 to "declare and explain" breaches of the Act by the Club. Mr Spray submits that he "cannot recall" receiving a response and that "no action" was taken against the Club in respect of these identified breaches.
585. Mr Spray's contention that the Club "performed well" under inspection is supported by Inspector McCluskey's statement.

***On the Lawler Partners Prudential Review of the Club in February 2005***

586. Mr Spray submits that in February 2005, he engaged Lawler Partners to undertake a Prudential Audit/Review of the Club in preparation for the OLGR audit of the Club on 27 April 2005. Mr Spray contends that he "took immediate steps to correct the issues" identified in the findings from the Lawler Partners Review, as follows:
- a) In response to the Review findings indicating that approval at a Board meeting was required for controlled contracts, functions authority and the list of cheque payments and direct debits, Mr Spray introduced a "Compliance" item to the Board agenda at the April 2005 Board meeting. He submits that he "continued to do so from that point onwards"
  - b) The Review findings also stated that credit card statements needed to be "correctly authorised" in that a director of the Club should prepare a summary of their credit card expenses in the form of an expense claim and ask the Chairman to sign off on that document. Mr Spray submits that he "immediately" commenced the preparation of a summary of his credit card expenses and from that point on, he gave this (together with the statements and any invoices or receipts) to the Chairman for approval. Mr Spray believes that by implementing this practice, he was "behaving correctly" and had satisfied Lawler Partners' recommendation. Mr Spray submits that the Review findings "did not make reference to the treatment of directors' expenses" and that since directors' expenses were "minimal" and not raised in the Lawler Partners Audit/Review, Mr Spray "did not appreciate" the need to table these expenses for approval by the Board.
587. Mr Spray submits that the Executive Summary of the Lawler Partners report states the opinion that the Club was "well managed", that its compliance issues were "mostly minor in nature" and concludes by complimenting Mr Spray on his "professionalism and commitment to the Club". The Lawler Partners report and the Review findings gave Mr Spray reason to believe that he and the Club were complying with the Act and that his knowledge of the Act was "sound".
588. Mr Spray submits that the agendas and minutes of the Board meetings held in February 2005, March 2005, April 2005 and May 2005 confirm that Mr Spray changed the agendas and reports tabled to comply with the Review findings.
589. Mr Spray submits that the Club had a "significant number" of documented operational and administrative procedures and that they were "continually being added" as the need arose. Mr Spray submits that all procedures were drafted in conjunction with Mr Spray and were "in a consistent format and reviewed annually" by Mr Spray.

***Further Submissions on the Complaint letter dated 27 February 2014***

*Ground 1: Payment of expense claims without assessment or approval by the Governing Body*

590. Mr Spray makes the following further submissions in relation to Ground 1 of the Complaint:
- a) This Ground of the Complaint refers to Mr Spray incurring two types of expenses between 2009 and 2012 - attendance at the LCA Annual Conference and attendance at interstate Sea Eagles matches. Mr Spray submits that the total expenses listed of \$6,983.55 included GST and further, that the travel costs incurred by his wife were deducted from his salary package under his salary sacrifice arrangement. Mr Spray's original submission includes his quarterly salary package summaries, which were not included in the OLGR evidence
  - b) Mr Spray submits that throughout his employment at the Club, it was "standard practice" for the Club's CEO/GM and his partner to attend the LCA Conference.



Mr Spray submits that the Board was "familiar" with the GM/CEO, Chairman and directors of the Club and that "at no time" can he recall any LCA Conference expenses being tabled for approval by the Board. Mr Spray "did not consider any requirement was being breached" by the LCA costs not being tabled for approval at a Board meeting

- c) Mr Spray submits that he was for a number of years the Club delegate to the Sea Eagles Board of directors and that he was "encouraged" to be involved in engaging with other Sea Eagles directors, owners, sponsors and supporters in order to "foster these important relationships". Mr Spray submits that he "managed the expenses closely but did not appreciate the need to obtain Board approval" as he and the other Club directors believed that the Chairman's approval was sufficient
- d) Mr Spray contends that if tabled at a Board meeting, all of his expenditure would have been approved by the Board. Mr Spray submits that it was "not his intention to deceive the Board" and the documentation of his expenses was "clear and accurately described and recorded".

*Ground 2: Mr Reilly's electronic funds transfers –*

591. Mr Spray makes the following further submissions in relation to Ground 2 of the Complaint:

- a) Mr Spray submits that he "disliked this practice and wanted it to stop" and contends that it "started as a one-off but kept going". Mr Spray viewed the Chairman, Mr Reilly as his "boss" and generally followed his instructions. Mr Spray raised the issue of the transfers with the Club's auditor, Mr Bill Edmondson, who viewed it as "not best practice but possibly not illegal"
- b) Mr Spray submits that Mr Reilly's repayment of each transfer with cheques were "not cash advances as defined in gaming legislation". Mr Spray submits that Mr Reilly's EFTs were not raised at a Board meeting until 2012 and that he (Mr Spray) had on several occasions requested that Mr Reilly cease the EFTs or seek Board approval. Mr Spray contends that he and Mr Edmondson "did not view the EFTs as loans, and neither realised the consequential breach of the Act in doing so".

*Ground 3: Transfer of AMEX reward points to himself (Mr Spray) –*

592. Mr Spray makes the following further submissions in relation to Ground 3 of the Complaint:

- a) The Club "had no policy" with respect to AMEX reward points. Any AMEX reward points accrued vested in Mr Spray and could only be used as directed by him
- b) The Complaint states that Mr Spray used AMEX reward points on four occasions, totalling 472,800 points. Mr Spray submits that on at least three of these occasions, he salary sacrificed in return for using the reward points. Mr Spray also acknowledges that in late 2010, he reversed a \$1,570.00 salary sacrifice for AMEX reward points "following an instruction from Mr Reilly"
- c) Mr Spray also confirms that in late 2011, he salary sacrificed \$1,000.00 in return for AMEX reward points accrued on his corporate card.

*Ground 4: Mr Spray approved Mr Reilly's expenses –*

593. Mr Spray makes the following further submissions in relation to Ground 4 of the Complaint:

- a) Mr Spray submits that he considered Mr Reilly to be his "boss and superior" and the expenses incurred by Mr Reilly were not unrelated to his role as Chairman of the Club. On occasions, Mr Spray "debated" the expenses and Mr Reilly contributed to the cost from his honorarium. Mr Spray does not believe the

- amount of \$16,828.61 (including GST) has been adjusted for these contributions or the amounts Mr Reilly contributed for his wife's expenses
- b) Mr Spray reiterates the submissions made in relation to Ground 1 with respect to the LCA Conference and Club directors' attendance at Sea Eagles interstate games
  - c) Mr Spray "strongly disputed" Mr Reilly's use of the Cabcharge account and as a result, there were occasions when Mr Reilly reimbursed Cabcharge expenses from his honorarium. Mr Spray submits that each month, the Cabcharge payment was listed in the monthly disbursement report provided to every Club director, but "on no occasion" was a concern ever raised by the Club directors. As Mr Spray was "unable to control" Mr Reilly's use of Cabcharge vouchers, Mr Spray cancelled the account in late 2009 to early 2010.

*Ground 5: Mr Spray's Bonuses –*

594. Mr Spray makes the following further submissions in relation to Ground 5 of the Complaint:
- a) Mr Spray contends that he was entitled to receive the net profit bonus in 2009 and again in 2010. The documents tabled by Mr Spray at the Conference included the Board approved Profit and Loss Statement from the management accounts for the years ending 31 October 2009 and 31 October 2010. These Profit and Loss Statements listed *actual* and *net* budgeted profit both *before* and *after* community support; whereas the OLGR Complaint letter compared actual net profit *after* deducting community support to budgeted net profit *before* deducting community support. As the actual community support was approximately \$918,000.00 in 2009 and \$450,000.00 in 2010, these made a "significant difference" to the comparison
  - b) Mr Spray submits that the OLGR Brief of Evidence did not include the Board approved budgets or management account Profit and Loss Statements. Mr Spray contends that it is "impossible" to determine his entitlement to the bonuses without reference to the budgeted net profit figures.

*Ground 6: Brike Investigations (Aust) Pty Limited Invoice –*

595. Mr Spray makes the following further submissions in relation to Ground 6 of the Complaint:
- a) The Brike Investigations invoice for \$7,700.00 was paid from Director Mr Max Delmege's honorarium based on a tax invoice given to Mr Spray by Mr Reilly. Mr Delmege approved the payment from his honorarium
  - b) Mr Spray submits that "at no time" did a directors' spending of his honorarium require Board approval and to Mr Spray's knowledge, no payment from a director's honorarium had ever been raised at a Board meeting during the 15 years that honorariums had been paid to Club directors
  - c) Mr Spray submits that he fulfilled his responsibility to ensure the director had funds available from his honorarium to meet the payment, he received appropriate documentation and obtained the approval of the director to support the payment, and he "correctly ruled" that it was an otherwise deductible payment and had "no tax implications for the Club"
  - d) Mr Spray submits that "at no time did he intentionally deceive or hide" any of the records relating to any of the Grounds of Complaint. OLGR did not interview any Club staff or speak to the Club auditor, and Mr Spray considers that their views would support his claims. Mr Spray submits that he has cooperated with OLGR and the Authority "in an open and honest manner".
596. Mr Spray concludes by reiterating two points from his original submission which he contends "give support to his commitment to the Club", as follows:

- a) In 2012, after Mr Reilly ceased to be Chairman, the Club experienced a "difficult period where cash flow was very poor". Upon Mr Spray's initiative, he ended the Club's contract accountant's engagement and personally took on the accounting responsibilities, which "added significantly to his workload". In addition, at the request of the Chairman, Mr Spray accepted a \$56,000.00 reduction in his annual salary in April 2012, resulting in a loss of income of \$60,000.00 from that date until he resigned from the Club
- b) Mr Spray submits that paragraph (xi) of the Club's submission dated 19 February 2015 which states that the issues in the Complaint occurred before Mr Spray's health issues arose is "incorrect". Mr Spray submits that he was

[redacted from published version]

#### FURTHER INFORMATION REQUESTED FROM OLGR

- 597. At its meeting on 30 April 2015, the Authority gave preliminary consideration to the Grounds of Complaint.
- 598. The Authority resolved to seek further clarification from the Complainant as to "blanks" recorded on page 29 of the transcript of the OLGR interview with Robert Reilly dated 22 August 2013 - that is, to discern whether the blank section reflected pauses in speech or material that the transcriptionist had been unable to transcribe. The Authority also sought clarification of alleged facts surrounding the payment by the Club of an invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited.
- 599. On 6 May 2015, the Authority's General Counsel sent the following email request to the Complainant, copying in the lawyers for the Club, Mr Reilly and Mr Spray:

*Dear Anthony*

*The Authority considered this matter at its meeting of 30 April 2015 and has nearly completed its deliberations, but seeks clarification of the following matters, if the Complainant is able to assist:*

- (1) *At page 29 of the transcript of the interview with Robert Reilly dated 22 August 2013 there are two large paragraphs recording Mr Reilly's account of the invoice from "Wright Investigations" (this would appear to refer to Brike Investigations).  
There are a number of blanks in those paragraphs where the transcriber has left dots trailing off. That could suggest either a pause in Mr Reilly's speech or the transcriber couldn't understand some of the words.*
  - (a) *Could you kindly provide the Authority with an electronic copy of the audio recording of this interview and advise the time code where this is discussed?*
  - (b) *If either of your OLGR interviewers at that interview are able to provide a statutory declaration with the text from the transcript from those two large paragraphs but also filling in any blanks (if there are words that have been missed) that may also assist.*
- (2) *With regard to the invoice for \$7700 for Brike Investigations Australia Pty Ltd (Document KM012), please confirm the Complainant's position on the following factual matters:*
  - (a) *Into whose account was payment for this invoice made?*
  - (b) *From whose account was this invoice paid? The Club?*
  - (c) *Who actually made this payment (a Club staff member?) and upon whose request was this payment made?*
  - (d) *Where in the material before the Authority is the answer to (a), (b) and (c) in evidence?**If you could kindly respond by 4pm Monday 11 May 2015 and copy Mr Reilly and Mr Spray in on your reply, they may then have until 4pm on Thursday 14 May 2015 if they need to reply.*

- 600. On 12 May 2015, the Complainant sent the following email in reply, copying in the other parties:

*I refer to the Authorities [sic] request for clarification dated 6 May 2015. I provide a statutory declaration completed Mr Mick Hanley responding to the matters in paragraph 1 (a) and (b).*

*In respect of the matters raised in paragraph (2), the OLGR's position is:*

(2) *With regard to the invoice for \$7,700 for Brike Investigations Australia Pty Ltd (Document KM012), please confirm the Complainant's position on the following factual matters:*

(a) *Into whose account was payment for this invoice made?*

***\$7,700.00 was deposited by cheque into Brike Investigations Australia Pty Limited's business account on 26 May 2009 [KM413]***

(b) *From whose account was this invoice paid? The Club?*

***Cheque number 002145 was issued for payment of the invoice by the Club. OLGR cannot state which of the Club's bank accounts the funds were paid from. [see KM402p 4 KM 411]***

***The invoice was initially paid from the Club's accounts but was later reimbursed to the Club from the honorarium of Max Delmege [refer to ROI of Delmege]***

(c) *Who actually made this payment (a Club staff member?) and upon whose request was this payment made?*

***OLGR are unable to state "who actually made this payment" but the payment was authorised by Mr Spray at the request of Max Delmege and Bob Reilly [KM012, KM402 p4. and stat dec of Hanley 12/05/2015]***

(d) *Where in the material before the Authority is the answer to (a), (b) and (c) in evidence?*

***See above.***

601. The email from Mr Keon attached a Statutory Declaration from OLGR Inspector Mike Hanley dated 12 May 2015. Mr Hanley had conducted the interview of Mr Reilly along with OLGR inspector Karen McCluskey.
602. Mr Hanley identifies certain errors on the transcript - the reference to "White Investigations" should read "Brike Investigations" and the reference to "Brian Cork" should read "Brycorp".
603. Mr Hanley is unable to provide any further information about those sections of the transcript represented by dots trailing off during the course of Mr Reilly's speech.

## **FINAL SUBMISSIONS IN REPLY FROM THE RESPONDENTS**

### **Submission from Mr Spray dated 14 May 2015**

604. At 10:03am on 14 May 2015, Ms Susan Doherty of Johnson Winter and Slattery Lawyers provided a brief email submission to the Authority on behalf of Mr Spray, copying in the other parties. The full text of that email states as follows:

*Dear colleagues*

*In reply to the information provided by Mr Keon at point (b) below and at paragraph 10(b) of Mr Hanley's affidavit, Mr Spray would like to submit the following:*

- *the cheque in favour of Brike Investigations was drawn on the Club's main account, records of which appear behind tab KM077 in the brief of evidence (although not for the relevant period);*
- *the payment was made by the Club and was charged against Mr Delmege's honorarium. The funds were never "reimbursed to the Club";*
- *the Club President at the time was Mr Reilly, not Mr Delmege; and*
- *it is Mr Spray's understanding that Mr Delmege did not initiate the investigation.*

### **Further advice from OLGR dated 14 May 2015**

605. At 11:13am on 14 May 2015, OLGR advised by email to the Authority that it had located the audio CD recording of the OLGR interview with Mr Reilly dated 22 August 2013, but noted that the quality of the audio is "quite poor, hence the gaps in the transcript".
606. The Authority's Chief Executive has listened to the recording and the Authority notes that no further information is discernible from the recording of the relevant portion of Mr Reilly's interview that was provided by the written transcript.

### **Late submissions from Mr Reilly**

607. At 5:35pm on 29 May 2015, Mr Mitchell provided a brief email submission to the Authority in reply to the submission on behalf of Mr Spray dated 14 May 2015, copying in the other parties. The full text of that email is as follows:

*In relation to the correspondence below, Mr Reilly says that Max Delmege did initiate the investigation. Mr Reilly has said this previously in his record of interview. Mr Reilly recommended Brian Keys of Brike Investigations.*

*Mr Reilly says that to his knowledge, Mr Delmege used his honorarium to pay for a number of things including bills and payments to players by way of example.*

### **No further submission from the Club**

608. No submissions in reply were received on behalf of the Club in response to the Authority's email of 6 May 2015.

## **FINDINGS ON GROUNDS OF COMPLAINT**

609. Some care should be taken when fact finding in the context of a disciplinary complaint and that, in accordance with the principle 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 relevant to deciding whether a matter is proved on the balance of probabilities.
610. Although this Complaint is yet to be finally determined, the Authority gave further consideration to this matter at its meeting on 27 May 2015 and is disposed to make the following findings on each Ground of Complaint.

## **FINDINGS ON GROUND 1**

### **1.1 - Benefits and Advantages to Mr Robert Reilly**

#### **1.1.1 Payment of cash advantages exceeding \$400.00**

##### *Particular 1.1.1(a)*

611. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
  - (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012

- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 17 of the Reilly Interview
- (g) pages 22 to 24 of the Spray Interview
- (h) pages 22 to 25 of the Bryant Interview
- (i) pages 19 to 23 of the B Smith Interview
- (i) pages 25 to 32 of the Peters Interview
- (k) pages 18 to 21 of the Delmege Interview
- (l) pages 23 to 29 of the D Smith Interview
- (m) pages 9 to 14 of the Costello Interview

that on 98 separate occasions between June 2009 and March 2012, the Club did deposit cash amounts, all exceeding \$400.00, by electronic funds transfer, to the personal bank account of Mr Robert Reilly.

612. The Authority is satisfied that Particular 1.1.1(a) of Ground 1 of the Complaint has been established.

*Particular 1.1.1(b)*

613. The Authority is satisfied, on the basis of:

- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
- (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
- (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 17 of the Reilly Interview
- (g) pages 22 to 24 of the Spray Interview
- (h) pages 22 to 25 of the Bryant Interview
- (i) pages 19 to 23 of the B Smith Interview
- (i) pages 25 to 32 of the Peters Interview
- (k) pages 18 to 21 of the Delmege Interview
- (l) pages 23 to 29 of the D Smith Interview
- (m) pages 9 to 14 of the Costello Interview

that upon receipt of the funds, Mr Reilly transferred those funds on the same day to another account - usually an account for Brycorp Investments Pty Limited but on some occasions the account for Brike Investigations (Aust) Pty Limited.

614. The Authority is satisfied that Particular 1.1.1(b) of Ground 1 of the Complaint has been established.

*Particular 1.1.1(c)*

615. The Authority is satisfied, on the basis of:

- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
- (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
- (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012

- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 17 of the Reilly Interview
- (g) pages 22 to 24 of the Spray Interview
- (h) pages 22 to 25 of the Bryant Interview
- (i) pages 19 to 23 of the B Smith Interview
- (j) pages 25 to 32 of the Peters Interview
- (k) pages 18 to 21 of the Delmege Interview
- (l) pages 23 to 29 of the D Smith Interview
- (m) pages 9 to 14 of the Costello Interview

that for each electronic funds transfer made to Mr Reilly, Mr Reilly did provide the Club with a cheque for the amount that had been advanced to him by the Club. These cheques were usually drawn against the account of Brycorp Investments Pty Limited, but on some occasions [27 May 2011; 10 June 2011; 17 June 2011 and 24 June 2011] were drawn against Brike Investigations (Aust) Pty Limited and on some occasions [6 January 2012; 12 January 2012; 27 January 2012; 9 February 2012; 17 February 2012; 24 February 2012 and 29 February 2012] against the personal account of Mr Robert Reilly.

616. The Authority is satisfied that Particular 1.1.1(c) of Ground 1 of the Complaint is established.

*Particular 1.1.1(d)*

617. The Authority is satisfied, on the basis of:

- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
- (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
- (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 21 of the Reilly Interview
- (g) pages 22 to 28 of the Spray Interview
- (h) pages 22 to 32 of the Bryant Interview
- (i) pages 19 to 26 of the B Smith Interview
- (j) pages 25 to 40 of the Peters Interview
- (k) pages 18 to 25 of the Delmege Interview
- (l) pages 23 to 33 of the D Smith Interview
- (m) pages 9 to 18 of the Costello Interview

that the Club did retain these cheques, as alleged, usually for up to about three days, but on some occasions [specifically, in relation to EFT transfers to Mr Reilly dated 13 November 2009; 20 January 2010; 8 June 2010; 14 October 2010; 15 February 2011; 8 March 2011; 10 March 2011; 15 March 2011; 3 May 2011; 5 May 2011; 17 May 2011; 2 June 2011; 28 June 2011; 12 July 2011; 21 September 2011 and 6 January 2012] for longer periods, before actually depositing those cheques into the Club's bank account.

618. The Authority is satisfied that Particular 1.1.1(d) of Ground 1 of the Complaint is established.

*Particular 1.1.1(e)*

619. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
  - (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
  - (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
  - (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
  - (f) pages 15 to 17 of the Reilly Interview
  - (g) pages 22 to 24 of the Spray Interview
  - (h) pages 22 to 25 of the Bryant Interview
  - (i) pages 19 to 23 of the B Smith Interview
  - (j) pages 25 to 32 of the Peters Interview
  - (k) pages 18 to 21 of the Delmege Interview
  - (l) pages 23 to 29 of the D Smith Interview
  - (m) pages 9 to 14 of the Costello Interview
- that the total of funds advanced by the Club in the 98 transactions was \$448,600.00.

620. The Authority is further satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) pages 15 to 17 of the Reilly Interview
  - (c) pages 22 to 24 of the Spray Interview
  - (d) pages 22 to 25 of the Bryant Interview
  - (e) pages 19 to 23 of the B Smith Interview
  - (f) pages 25 to 32 of the Peters Interview
  - (g) pages 18 to 21 of the Delmege Interview
  - (h) pages 23 to 29 of the D Smith Interview
  - (i) pages 9 to 14 of the Costello Interview
- that each transaction was actually approved by Mr Peter Spray, the Club's Secretary, and recorded in the Club's "Cash Disbursements Journal".

621. The Authority is satisfied that Particular 1.1.1(e) of Ground 1 of the Complaint is established.

*Particular 1.1.1(f)*

622. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012, including the "Cash Disbursements Journal"
  - (b) pages 15 to 17 of the Reilly Interview
  - (c) pages 22 to 24 of the Spray Interview
  - (d) pages 22 to 25 of the Bryant Interview
  - (e) pages 19 to 23 of the B Smith Interview
  - (f) pages 25 to 32 of the Peters Interview
  - (g) pages 18 to 21 of the Delmege Interview
  - (h) pages 23 to 29 of the D Smith Interview
  - (i) pages 9 to 14 of the Costello Interview
- that the "Cash Disbursements Journal" was actually presented to the Governing Body at the following monthly meeting of the Governing Body for retrospective approval.



623. The Authority is satisfied that Particular 1.1.1(f) of Ground 1 of the Complaint is established.

**1.1.2 Payment of expense claims without assessment or approval and which were not for the benefit of the Club or approved by the members at a general meeting or otherwise permitted by s.10(6) of the Act**

*Particular 1.1.2(a)*

624. The Authority is satisfied, on the basis of:

- (a) travel receipts and invoices dated between 22 January 2009 and 28 October 2011 in relation to expenses claimed by members of the Governing Body of the Club as provided by the Complainant
- (b) pages 6 to 12 of the Reilly Interview
- (c) pages 8 to 19 of the Spray Interview
- (d) pages 7 to 19 of the Bryant Interview
- (e) pages 8 to 16 of the B Smith Interview
- (f) pages 8 to 20 of the Peters Interview
- (g) pages 6 to 15 of the Delmege Interview
- (h) pages 6 to 18 of the D Smith Interview
- (i) pages 6 to 7 of the Costello Interview

that between 2009 and 2012, the Club actually paid to Mr Robert Reilly expense claims totalling \$16,828.61.

625. The Authority is satisfied that Particular 1.1.2(a) of Ground 1 of the Complaint is established.

*Particular 1.1.2(b)*

626. Particular 1.1.2(b) alleges that these expense claims were not individually assessed and approved, as required by resolutions passed at each of the Club's annual general meetings (AGM) in 2008, 2009 and 2010 permitting the approval of expenses for the "professional development" of the members of the Governing Body.

627. The Authority is satisfied, on the basis of:

- (a) Minutes of the Club Annual General Meetings for 2008, 2009 and 2010 dated 25 February 2008, 31 March 2009 and 7 March 2010 respectively
- (b) travel receipts and invoices dated between 22 January 2009 and 28 October 2011 in relation to expenses claimed by members of the Governing Body of the Club as provided by the Complainant
- (c) pages 6 to 12 of the Reilly Interview
- (d) pages 8 to 19 of the Spray Interview
- (e) pages 7 to 19 of the Bryant Interview
- (f) pages 8 to 16 of the B Smith Interview
- (g) pages 8 to 20 of the Peters Interview
- (h) pages 6 to 15 of the Delmege Interview
- (i) pages 6 to 18 of the D Smith Interview
- (j) pages 6 to 7 of the Costello Interview

that resolutions were passed at each of the Club's AGMs in 2008, 2009 and 2010 permitting the approval of expenses for the "professional development" of the members of the Governing Body in the following terms:

*The Club shall be entitled to budget, allocate and disburse such funds as may be considered reasonable expenditure of Directors for professional development, including but not limited to, industry related meetings, organised study tours, seminars, trade displays, etc. as may be determined by the Board. All expenditure must be supported by documentary evidence.*

628. However, while these resolutions were passed by the AGM, the Authority is satisfied, on the basis of the extracts of Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 that have been provided by the Complainant, that these expense claims were not individually assessed or approved by the Board.
629. The Authority is satisfied that Particular 1.1.2(b) is established.

*Particular 1.1.2(c)*

630. Particular 1.1.2(c) alleges that while each of the claims from Mr Reilly was approved for payment by Mr Spray, none of these claims were for Mr Reilly's "professional development".
631. In respect of this Particular the Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) travel receipts and invoices dated between 22 January 2009 and 28 October 2011 in relation to expenses claimed by members of the Governing Body of the Club as provided by the Complainant
  - (c) pages 6 to 12 of the Reilly Interview
  - (d) pages 8 to 19 of the Spray Interview
  - (e) pages 7 to 19 of the Bryant Interview
  - (f) pages 8 to 16 of the B Smith Interview
  - (g) pages 8 to 20 of the Peters Interview
  - (h) pages 6 to 15 of the Delmege Interview
  - (i) pages 6 to 18 of the D Smith Interview
  - (j) pages 6 to 7 of the Costello Interview
- that each of Mr Reilly's expense claims in question was actually approved for payment by Mr Spray.
632. The Authority is satisfied that the majority of the expenses claimed by Mr Reilly and approved by Mr Spray - particularly the Cabcharge vouchers - were *not* for Mr Reilly's "professional development".
633. However, the Authority is *not* satisfied, as alleged by this Particular, that *none* of these expense claims were for Mr Reilly's professional development. Having regard to the invoices presented by Mr Reilly to the Club for approval, the Authority is satisfied that the expenses claimed by Mr Reilly in relation to flights and accommodation in respect of the *Leagues Club of Australia Annual Conference* held at the Gold Coast between 6 and 8 November 2009 *were* expenses incurred for the purpose of Mr Reilly's professional development in his capacity as a member of the governing body of a registered club.
634. The Authority is satisfied that the expenses claimed by Mr Reilly in respect of the November 2009 *Leagues Club of Australia Annual Conference* were actually authorised by a current resolution passed by the Governing Body of the Club at the Club's AGM on 31 March 2009 and were also reasonably incurred by Mr Reilly in the course of carrying out his duties in relation to the Club, for the purposes of section 10(6)(d) of the Act.
635. Therefore the Authority is satisfied that Particulars 1.1.2(b) and 1.1.2(c) of Ground 1 of the Complaint have been established, save for that the expenses claimed by Mr Reilly in respect of his attendance at the *Leagues Club of Australia Annual Conference* in November 2009 were expenses incurred for the purpose of Mr Reilly's professional development.

## 1.2 - Benefits and Advantages to Mr Peter Spray

### **1.2.1 *Payment of expense claims without assessment or approval and which were not for the benefit of the Club or approved by the Governing Body or otherwise permitted by s.10(6) of the Act.***

#### *Particulars 1.2.1(a) and 1.2.1(b)*

636. Particular 1.2.1(a) alleges that between 2009 and 2012, the Club paid to Mr Spray expense claims totalling \$6,983.55 as detailed in the schedule to the Complaint letter marked "B".
637. Particular 1.2.1(b) alleges that each of these claims was approved for payment by Mr Reilly.
638. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) travel receipts and invoices dated between 22 January 2009 and 28 October 2011 in relation to expenses claimed by members of the Governing Body of the Club as provided by the Complainant
  - (c) pages 12 to 13 of the Reilly Interview
  - (d) pages 8 to 19 of the Spray Interview
  - (e) page 20 of the Bryant Interview
  - (f) page 16 of the B Smith Interview
  - (g) pages 20 to 22 of the Peters Interview
  - (h) pages 15 to 16 of the Delmege Interview
  - (i) pages 18 to 19 of the D Smith Interview
  - (j) page 7 of the Costello Interview
- that these expenses - which relate primarily to flights and accommodation for Mr Spray and his wife to attend interstate rugby league games, but also to Mr Spray's attendance at business meetings and other Club related events - were actually paid by the Club to Mr Spray, but they were paid in the *absence* of any prior resolution authorising the approval of these expenses.
639. The Authority is satisfied that Particulars 1.2.1(a) and 1.2.1(b) of Ground 1 of the Complaint have been established, in that these expenses were actually paid to Mr Spray, on the authorisation of Mr Reilly.

#### *Particular 1.2.1(c)*

640. Particular 1.2.1(c) then alleges that these expenses were paid without the required assessment or approval of the Governing Body. The Particular further alleges that these expenses were *not* for the benefit of the Club, nor were they otherwise permitted by section 10(6) of the Act.
641. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) travel receipts and invoices dated between 22 January 2009 and 28 October 2011 in relation to expenses claimed by members of the Governing Body of the Club as provided by the Complainant
  - (c) pages 12 to 13 of the Reilly Interview
  - (d) pages 8 to 19 of the Spray Interview
  - (e) page 20 of the Bryant Interview
  - (f) page 16 of the B Smith Interview

- (g) pages 20 to 22 of the Peters Interview
- (h) pages 15 to 16 of the Delmege Interview
- (i) pages 18 to 19 of the D Smith Interview
- (j) page 7 of the Costello Interview

that these expenses were not assessed or approved by the Board.

642. However, the Authority is satisfied that these payments were made for the benefit of the Club and were not "profits, benefits or advantages" to Mr Spray. Mr Spray conducted this travel as the Club's CEO with a broad range of duties and with the knowledge of fellow directors. The Authority is satisfied that the expenses were in the ordinary course of the business of the Club, even for attendance at "Sea Eagles" football matches, and were proper expenses for Mr Spray to incur. The Authority notes that expenses of Mr Spray's wife were reimbursed. These expenses were incurred by Mr Spray and paid by the Club pursuant to an ongoing agreement between the Club and one of its top executives, being Mr Spray. Any "profit, benefit or advantage" afforded to Mr Spray by the Club in this respect was reasonable in the circumstances.
643. Accordingly, this Particular is not established as the expenses were in the first instance not profits, benefits and advantages in the relevant sense and even if they were, would in any event fall within the exception provided by section 10(6)(a) of the Act. This finding is made on the basis of the above noted evidence or material, and the statements made by Mr Spray in his written submissions dated 4 August 2014 and oral submissions at the Conference.
644. The Authority finds that Particular 1.2.1(c) has *not* been established.

### **1.2.2 Redemption of AMEX reward points**

#### *Particular 1.2.2(a)*

645. Particular 1.2.2(a) alleges that Mr Spray was the holder of an American Express (AMEX) card that was issued to him by the Club.
646. While it is not in dispute that the Club issued an AMEX card to Mr Spray, the Authority is satisfied that this Particular is established by the following material:
- (a) *The Corporate Card Statement of Account* - AMEX credit card statements for Mr Peter R Spray issued by the Manly-Warringah Rugby League Club in respect of the period from 24 February 2010 to 22 August 2011
  - (b) AMEX Reward Points Transaction History for Mr Spray provided by the Complainant in respect of the period from 25 August 2009 to 8 December 2011.

#### *Particular 1.2.2(b)*

647. Particular 1.2.2(b) alleges that Mr Spray redeemed, for his personal use, 472,800 reward points that had been accumulated against the Club issued AMEX credit card by use of that card.
648. The Authority is satisfied, on the basis of:
- (a) *The Corporate Card Statement of Account* - AMEX credit card statements for Mr Peter R Spray issued by the Manly-Warringah Rugby League Club in respect of the period from 24 February 2010 to 22 August 2011
  - (b) AMEX Reward Points Transaction History for Mr Spray provided by the Complainant in respect of the period from 25 August 2009 to 8 December 2011
  - (c) QANTAS Frequent Flyer records for Mr Spray provided by the Complainant in respect of the period from 19 October 2009 to 27 December 2012
  - (d) pages 13 to 14 of the Reilly Interview

- (e) pages 19 to 28 of the Spray Interview
- (f) pages 20 to 22 of the Bryant Interview
- (g) pages 16 to 19 of the B Smith Interview
- (h) pages 22 to 25 of the Peters Interview
- (i) pages 16 to 18 of the Delmege Interview
- (j) pages 19 to 23 of the D Smith Interview
- (k) pages 7 to 9 of the Costello Interview

that Mr Spray did in fact redeem 472,800 AMEX reward points, which had been accumulated by the use of the AMEX card that had been issued to Mr Spray by the Club.

649. These points were redeemed by Mr Spray transferring the points to the credit of his personal Qantas Airways Ltd Frequent Flyer account number 454584 on four occasions between 2010 and 2011, as follows:
- a) 30,000 points on 9 February 2010
  - b) 186,800 points on 10 May 2010
  - c) 40,000 points on 12 February 2011
  - d) 216,000 points on 9 August 2011 [the Authority notes that the Complaint Letter misstates this figure as 2,013 points].

*Particular 1.2.2(c)*

650. Particular 1.2.2(c) then alleges that this redemption of reward points was not provided for by Mr Spray's employment contract with the Club and was not otherwise authorised by the Board.
651. The Authority is satisfied, on the basis of:
- (a) *The Corporate Card Statement of Account* - AMEX credit card statements for Mr Peter R Spray issued by the Manly-Warringah Rugby League Club in respect of the period from 24 February 2010 to 22 August 2011
  - (b) AMEX Reward Points Transaction History for Mr Spray provided by the Complainant in respect of the period from 25 August 2009 to 8 December 2011
  - (c) QANTAS Frequent Flyer records for Mr Spray provided by the Complainant in respect of the period from 19 October 2009 to 27 December 2012
  - (d) pages 13 to 14 of the Reilly Interview
  - (e) pages 19 to 28 of the Spray Interview
  - (f) pages 20 to 22 of the Bryant Interview
  - (g) pages 16 to 19 of the B Smith Interview
  - (h) pages 22 to 25 of the Peters Interview
  - (i) pages 16 to 18 of the Delmege Interview
  - (j) pages 19 to 23 of the D Smith Interview
  - (k) pages 7 to 9 of the Costello Interview
  - (l) Executive Employment Agreement for Mr Peter Spray dated 4 November 2009 that the redemption by Mr Spray of these 472,800 reward points was not provided for by the terms of Mr Spray's employment contract with the Club and that the redemption of these points had not been approved by the Governing Body.
652. In his oral submissions at the Conference and his written submissions dated 4 August 2014 Mr Spray does not dispute that these points were redeemed in the manner claimed by the Complaint. Mr Spray does not dispute that use of the AMEX corporate credit card and redemption of points was not provided for by his employment contract.
653. At the Conference and in his submission dated 4 August 2014, Mr Spray submits, however, that there was nothing improper or dishonest about his practice in that he

"always considered that any reward points earned on [his] Club AMEX card belonged to the Club and therefore should be used for Club purposes".

654. Mr Spray contends that he deducted from his salary package the value of reward points that were transferred to himself on the occasions when he redeemed points that had accrued by his use of the Club AMEX corporate credit card. Mr Spray also contends that several members of the Governing Body were aware that Mr Spray had been issued with a Club corporate credit card.
655. The Authority will return to Mr Spray's submissions on whether the use of these reward points was improper later in the decision, but insofar as it is alleged that the points were in fact redeemed and that this was not the subject of any provision within Mr Spray's written employment contract with the Club, the Authority is satisfied that Particulars 1.2.2(b) and 1.2.2(c) of Ground 1 of the Complaint have been established.
656. On the basis of the above findings on Particulars, the Authority is satisfied that Ground 1 is established.

## **FINDINGS ON GROUND 2**

### **2.1 - Loans to Mr Robert Reilly**

#### ***2.1.1 The 98 cash advances to Mr Reilly detailed in Particular 1.1.1***

##### *Particulars 2.1.1(a) to (d)*

657. These Particulars allege that each of the 98 cash advances made to Mr Reilly by the Club and detailed in Particular 1.1.1 was:
- (a) a loan
  - (b) made at a time when Mr Reilly was a member of the Governing Body of the Club
  - (c) made at a time when the Club's cash flow was "tight"
  - (d) a breach of section 41N of the Act.
658. The Authority is satisfied, on the basis of:
- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
  - (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
  - (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
  - (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
  - (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
  - (f) pages 15 to 21 of the Reilly Interview
  - (g) pages 22 to 28 of the Spray Interview
  - (h) pages 22 to 32 of the Bryant Interview
  - (i) pages 19 to 26 of the B Smith Interview
  - (j) pages 25 to 40 of the Peters Interview
  - (k) pages 18 to 25 of the Delmege Interview
  - (l) pages 23 to 33 of the D Smith Interview
  - (m) pages 9 to 18 of the Costello Interview
- that each of these 98 cash advances to Mr Reilly constitutes a "loan" as alleged in Particular 2.1.1(a) of Ground 2.

659. A "loan" is defined in the *Butterworths Concise Australian Dictionary* (3<sup>rd</sup> edition 2004) as:
- The temporary transfer of an asset, usually funds, from a lender who controls the funds to a borrower in return for payment, usually in the form of interest. The asset must be returned either in one sum at the maturity of the loan or in periodic payments.*
660. Notwithstanding that Mr Reilly furnished the Club with cheques for the amount that he requested the Club to advance to him, the Authority is satisfied that all of these payments, made by electronic funds transfer from the Club to Mr Reilly, were made on Mr Reilly's request and were effectively short term interest free loans of money to Mr Reilly.
661. The cheques furnished by Mr Reilly were not actually banked by Club staff until the Club's "next banking day", and in some cases, for a longer period. The practical effect of the Club's practice of not banking (and hence not clearing) Mr Reilly's cheques for some days after Mr Reilly requested these advances, was that Mr Reilly had the use of the funds that he requested to be transferred to himself electronically for several days, and sometimes longer, before each transfer was effectively "repaid" to the Club through its eventual banking and clearance of the cheques that Mr Reilly had furnished to the Club.
662. An example of an instance when there was some substantial delay between the cash advance and repayment of the money was on 17 May 2011, when the Club advanced \$8,000 to Mr Reilly via electronic funds transfer to the bank account of Mr Reilly's company, Brike Investigations (Aust) Pty Ltd. However, Mr Reilly did not provide a cheque in the amount of \$8,000 made out to the Club, in respect of this transfer, until 27 May 2011, some ten (10) days later.
663. This transaction is evidenced from the abovementioned bank statements for the Club and Mr Reilly and pages 15 to 21 of the Reilly Interview; pages 22 to 28 of the Spray Interview; pages 22 to 32 of the Bryant Interview; pages 19 to 26 of the B Smith Interview; pages 25 to 40 of the Peters Interview; pages 18 to 25 of the Delmege Interview; pages 23 to 33 of the D Smith Interview and pages 9 to 18 of the Costello Interview.
664. The Authority is satisfied that in some cases, Mr Reilly actually requested that the Club defer banking the cheques that Mr Reilly had furnished to the Club and the Club, through its CEO Mr Spray, in fact did so. This is established on the basis of pages 26 to 28 of the Spray Interview, pages 11 to 15 of the Costello Interview, and pages 1 to 2 of Mr Spray's statement dated 22 August 2012.
665. The Authority is satisfied, as alleged by the Complainant in Particular 2.1.1(b) of Ground 2 of the Complaint, that each of these cash advances was made between June 2009 and March 2012.
666. The Authority is further satisfied, as alleged by Particular 2.1.1(b) of Ground 2 of the Complaint, that at all relevant times when these transfers were made, Mr Reilly was a member of the Governing Body of the Club, being the Club's Chairman.
667. The Authority is satisfied, as alleged by Particular 2.1.1(c) of Ground 2 of the Complaint and on the basis of:
- (a) pages 6 to 12 of the Reilly Interview
  - (b) pages 8 to 19 of the Spray Interview
  - (c) pages 7 to 19 of the Bryant Interview
  - (d) pages 8 to 16 of the B Smith Interview
  - (e) pages 8 to 20 of the Peters Interview

(f) pages 6 to 15 of the Delmege Interview

(g) pages 6 to 18 of the D Smith Interview

(h) pages 6 to 7 of the Costello Interview

that each of the 98 cash advances made to Mr Reilly was made at a time when the Club's cash flow could reasonably be described as "tight".

668. The Authority is satisfied that there is some evidence or material indicating that the Club was experiencing poor cash flow at times during the relevant period within which these cash advances were being provided to Mr Reilly.
669. Mr Spray states at page 24 of the Spray Interview that the Club's cash flow situation "was always horrible". Mr Spray also submits, at pages 2 to 3 of his statement dated 22 August 2012 that from late 2010 to early 2012, the Club's cash flow was "extremely tight" and that the Club had to draw against credit cards in order to pay wages and certain creditors, such as breweries. Mr Spray also submits in this statement that the Club was behind in making its superannuation guarantee contribution payments for its employees and other accounts were being "juggled around" in order to pay its creditors. The Authority accepts, on the basis of Mr Spray's submissions, that the Club faced a challenging cash flow position at times during the period in which it was making cash advances to Mr Reilly.
670. The Authority has considered the alternative submission, made at the Conference on behalf of Mr Reilly by his solicitors, that the Club could not be said to have been in financial difficulty because it had actually achieved annual profits in excess of \$1 million under Mr Reilly's chairmanship - particularly during the years of 2009 and 2010.
671. However, Particular 2.1.1(c) alleges that the cash flow of the Club enterprise was "tight", *not* that the Club was running at an annual loss or that the Club was insolvent. The Authority notes and accepts the submissions from the Club made in its submission dated 19 February 2015 that the Club achieved an overall surplus in 2009 and 2010 and that *asset sales* happened to play an important role in achieving a profit during those two years. This finding is made on the basis of the Club's Annual Reports for 2009 and 2010 and the Final Management Accounts and Board Approved Management Accounts for the years 2009 and 2010 tabled by Mr Spray at the Conference.
672. The Authority is further satisfied, as alleged by the Complainant in Particular 2.1.1(d) of Ground 2 of the Complaint, that each of the 98 cash advances made to Mr Reilly between June 2009 and March 2012 was made in breach of section 41N(1) of the Act. Section 41N(1) states:

*A registered club must not lend money to a member of the governing body of the club.*

673. The Authority is satisfied that Particulars 2.1.1(a) through to 2.1.1(d) of Ground 2 of the Complaint are established.
674. On the basis of these findings, the Authority is satisfied that Ground 2 is established.

## **FINDINGS ON GROUND 3**

### **3.1 - Bonuses to Mr Peter Spray**

#### **3.1.1 *The Club paid bonuses to Mr Peter Spray by reference to receipts of the Club for liquor supplied and the operation of gaming machines at the Club***



*Particular 3.1.1(a)*

675. Particular 3.1.1(a) alleges that on 4 November 2009, the Club entered into an employment contract with Mr Spray whilst he was the Club Secretary, which provided for the payment of a bonus, at the discretion of the Governing Body, based upon the Club achieving its budgeted sales and profit before tax.
676. The Authority is satisfied that this Particular is established on the basis of a copy of the Executive Employment Agreement dated 4 November 2009 pursuant to which the Club employed Mr Spray. This agreement provided for the payment of a bonus in the following terms:

*...subject to paragraph 13 below, the Manager shall, in respect of the 12 month period ending 31 October of each financial year, be paid the following bonuses on the following conditions:*

- (a) A sum of eight thousand dollars (\$8,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted sales for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10*
- (b) A further sum of twelve thousand dollars (\$12,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted profit before tax for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10.*

*Particular 3.1.1(b)*

677. This Particular alleges that the Club's "budgeted profit" in respect of which Mr Spray's bonus would be calculated, included:
- (a) receipts from the sale of liquor
  - (b) the operation of gaming machines.
678. The Authority is satisfied, on the basis of:
- (a) Executive Employment Agreement for Mr Peter Spray dated 4 November 2009
  - (b) Requests by Mr Spray for bonuses dated 20 November 2009 and 30 November 2010, both of which were signed and approved by Mr Reilly
  - (c) Income Statement for the year ending 31 October 2009 from the Club's 2009 Annual Report
  - (d) Statement of Comprehensive Income for the year ending 31 October 2010 from the Club's 2010 Annual Report
  - (e) pages 21 to 28 of the Reilly Interview
  - (f) pages 29 to 37 of the Spray Interview
  - (g) pages 32 to 36 of the Bryant Interview
  - (h) pages 26 to 30 of the B Smith Interview
  - (i) pages 41 to 45 of the Peters Interview
  - (j) pages 26 to 32 of the Delmege Interview
  - (k) pages 33 to 37 of the D Smith Interview
  - (l) tables of bonus payments made to Mr Spray, Employee Payroll Reports for Mr Spray and emails from Mr Spray to accounts staff at the Club in relation to his remuneration
- that the Club's budgeted profit did include revenue from the sale of liquor and the operation of gaming machines.
679. The Authority is satisfied that Particular 3.1.1(b) of Ground 3 of the Complaint is established.

*Particular 3.1.1(c)*

680. This Particular alleges that on 20 November 2009 and on "20 May 2010" [the Authority notes that this date should be 30 November 2010], Mr Spray requested the payment to him of bonuses in the sum of \$12,000.00 on each occasion, on the basis that the Club had exceeded its "budgeted profit before tax" for the years ending 31 October 2009 and 31 October 2010 respectively.
681. The Authority satisfied, on the basis of a written request sent via letter from Mr Spray to Mr Reilly dated 20 November 2009, that Mr Spray did actually request the payment to himself by the Club of a bonus in the sum of \$12,000.00 on the basis that the Club had exceeded its budgeted profit before tax for the year ending 31 October 2009.
682. The Authority is satisfied, on the basis of a written request sent via letter from Mr Spray to Mr Reilly dated 30 November 2010 [the Authority notes that the Letter of Complaint incorrectly refers to "20 May 2010"], that Mr Spray did actually request the payment to himself by the Club of a bonus in the sum of \$12,000.00 on the basis that the Club had exceeded its budgeted profit before tax for the year ending 31 October 2010.
683. The Authority is satisfied that Particular 3.1.1(c) of Ground 3 of the Complaint is established - that Mr Spray did in fact request payment of the bonus on the basis of the Club having (according to Mr Spray) exceeded its budgeted profit before tax for the years ending 31 October 2009 and 31 October 2010 respectively.

*Particular 3.1.1(d)*

684. This Particular alleges that the bonuses requested by Mr Spray on 20 November 2009 and 30 November 2010 were approved by Mr Reilly, without the knowledge of the Governing Body and in breach of section 10(1)(k) of the Act in each case.
685. In respect of this Particular, the Authority notes that the Complainant relies upon the following evidence:
- (a) Executive Employment Agreement for Mr Peter Spray dated 4 November 2009
  - (b) the requests by Mr Spray for bonuses dated 20 November 2009 and 30 November 2010, both of which were signed and approved by Mr Reilly
  - (c) Income Statement for the year ending 31 October 2009 from the Club's 2009 Annual Report
  - (d) Statement of Comprehensive Income for the year ending 31 October 2010 from the Club's 2010 Annual Report
  - (e) pages 21 to 28 of the Reilly Interview
  - (f) pages 29 to 37 of the Spray Interview
  - (g) pages 32 to 36 of the Bryant Interview
  - (h) pages 26 to 30 of the B Smith Interview
  - (i) pages 41 to 45 of the Peters Interview
  - (j) pages 26 to 32 of the Delmege Interview
  - (k) pages 33 to 37 of the D Smith Interview
  - (l) tables of bonus payments made to Mr Spray, Employee Payroll Reports for Mr Spray and emails from Mr Spray to accounts staff at the Club in relation to his remuneration.
686. The Authority is satisfied, on the basis of the above evidence, that in each case the bonus to Mr Spray was approved by Mr Reilly without the knowledge or approval of the Governing Body of the Club.

687. Section 10(1)(k) of the Act requires that:

- (k) *The secretary or manager, or any employee, or a member of the governing body or of any committee, of the club is not entitled to receive, either directly or indirectly, any payment calculated by reference to:*
  - (i) *the quantity of liquor purchased, supplied, sold or disposed of by the club or the receipts of the club for any liquor supplied or disposed of by the club, or*
  - (ii) *the keeping or operation of approved gaming machines in the club.*

688. Mr Spray's Employment Agreement with the Club dated 4 November 2009 provided that Mr Spray's entitlement to a bonus shall be calculated on the basis of the Club achieving its "budgeted sales" and/or its "budgeted profit before tax". Upon agreement of that contract, the Club created an entitlement for Mr Spray to receive a minimum bonus of \$8,000 or \$12,000 with such minimum bonus to be calculated by reference to the Club achieving either its budgeted sales target and/or its budgeted profit target.

689. The Authority is satisfied, on the basis of the Income Statement for the year ending 31 October 2009 as published in the Club's 2009 Annual Report, that the Club actually received revenue of \$9,453,919 from "Poker machines", \$1,614,613 from "Beverage" and \$77,713 from "TAB and Keno". The Club's total revenue was \$13,777,741 for the year ending 31 October 2009. That is, the operation of gaming machines on the Premises accounted for 68.6% of the Club's total revenue during that year.

690. The Authority is satisfied, on the basis of the Statement of Comprehensive Income for the year ending 31 October 2010 as published in the Club's 2010 Annual Report, that the Club actually received revenue of \$9,010,934 from "Poker machines", \$1,526,193 from "Beverage" and \$81,238 from "TAB and Keno". The Club's total revenue was \$12,417,587 for the year ending 31 October 2010. That is, the operation of gaming machines on the Premises accounted for 72.6% of the Club's total revenue during that year.

691. Section 10(1)(k)(ii) of the Act requires that a secretary, manager, any employee or any member of a governing body "is not entitled" to "any payment" that is calculated "by reference to" the keeping or operation of approved gaming machines in the club.

692. The Authority has carefully considered the scope of this requirement. It notes that this subsection was inserted into the Act as part of the package of reforms introduced by the enactment of the *Gaming Machines Act 2001*. It formed part of a range of harm minimisation measures introduced by that Act to the liquor and gaming legislation.

693. As noted in the Minister's Second Reading Speech (Hansard page 19282, 30 November 2001):

*Section 10 of the Registered Clubs Act imposes various controls over payments and benefits that can be given to members, staff and directors. One of those controls prohibits the payment to employees of an amount calculated by way of reference to the quantity of liquor sold. The bill inserts a similar prohibition in relation to gaming machine operations...*

...

*As I said in my opening remarks, the bill is comprehensive and extensive, and is in keeping with the public interest in having very clear and detailed controls over gaming machine operations in clubs and hotels. While much of the new bill represents a direct lift of existing controls from the Liquor and Registered Clubs Act, there are also significant new measures in keeping with the Government's gaming reform package, as announced on 26 July. The bulk of the new measures can be found in parts 2 and 3, and divisions 1, 2 and 3 of part 4 of the bill. Finally, as honourable members would be aware, there is a national requirement to review legislation that restricts competition. The guiding principle of the National Competition Policy is that legislation should not restrict competition unless it*

*can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and that the objectives of the legislation can be achieved only by restricting competition.*

*The Government's gaming reform package was developed with those principles in mind. In view of the harm caused by problem gambling, the Government is confident that there are substantial public benefits associated with the Gaming Machines Bill, which is directed at harm minimisation. The Government has incorporated a basic market-based approach as part of the new package, in line with National Competition Policy principles. The transferable entitlement scheme uses the market to give clubs and hotels more flexibility. The bill also simplifies and streamlines the regulatory structure concerning gaming machines, benefiting all involved as it will be a less complex system. I commend the bill to the House.*

694. The Authority is satisfied that the statutory purpose of section 10(1)(k) of the Act is harm minimisation. The mischief to which the provision is directed is a registered club giving its staff or officers a financial incentive to maximise either that club's liquor sales or its gaming machine operations. The provision prohibits that.
695. The Authority observes that the requirement in section 10(1)(k)(ii) does not require that any payment be calculated by specific or express reference to the operation of gaming machines.
696. Notably, unlike the restriction in section 10(1)(k)(i) with regard to liquor, the requirement in section 10(1)(k)(ii) with regard to gaming machine operations is not specified to apply by reference to "sales" or "receipts". It is simply made by reference to the operation of gaming machines on the premises.
697. The Authority considers that the wording of section 10(1)(k)(ii) provides a textual indication that this provision has a broader operation than the requirement in section 10(1)(k)(i).
698. In the Authority's view, in circumstances where any total sales target or overall profit target at a registered club is, at the time a contractual bonus mechanism is agreed, overwhelmingly likely to be determined by the operation of gaming machines, then by necessary implication a bonus based upon that club achieving its budgeted sales or even its budgeted profit target is an entitlement to a payment that is made by reference to that club's gaming machine operations and is contrary to section 10(1)(k)(ii) of the Act.
699. The Authority is satisfied, on the basis of the above findings, that Ground 3 of the Complaint is established. Mr Spray's entitlement to a bonus payment in the terms agreed by the Club was to be calculated, by necessary implication from the facts and circumstances prevailing at this Club when the contract was agreed, by reference to the Club's extensive gaming machine operations, which accounted overwhelmingly toward the Club's achieving its budgeted sales and budgeted profit.
700. The Authority is satisfied that the Club's agreement to create an entitlement for Mr Spray to receive a bonus on the basis of the Club achieving its "budgeted sales", in circumstances where the overwhelming majority of those sales would almost certainly comprise gaming revenue, that such entitlement contravened section 10(1)(k) of the Act.
701. The Authority is also satisfied that the Club's agreement to create an entitlement for Mr Spray to receive a bonus on the basis of the Club achieving its "budgeted profit before tax" also contravenes the prohibition in section 10(1)(k) of the Act.
702. The Authority acknowledges that this conclusion with regard to profit based bonuses is more contentious, in that the Club's profit will also include income from other sources, and the Club's costs for a given year, but it is difficult to avoid the conclusion that when

most of the revenue of this Club is derived from gaming machines, the likelihood of the Club achieving a budgeted profit will be determined by its gaming machine operations. By necessary implication, a bonus entitlement calculated by reference to a club achieving its profit target will be a bonus that is calculated by reference to the operation of gaming machines on the premises.

703. Mr Spray stated in his record of interview that "I believe that you couldn't receive any bonuses that related to poker machine revenue" and that "my bonuses were never linked to - they were linked to revenue and profit. They weren't linked to either of those points [revenue from sales of liquor and gaming services]". The Authority does not accept Mr Spray's submission that the Club achieving its target for budgeted sales or budgeted profit were matters that are not linked to the operation of its 200 gaming machines. Gaming machines clearly played a substantial role in the Club achieving both targets, by reference to which Mr Spray's bonus entitlement was payable.
704. Mr Spray also stated in his written submission dated 4 August 2014 that he considered that he had been "very fair" in determining his bonus entitlement for the years ending 31 October 2009 and 31 October 2010 respectively as he had excluded the profit derived from the sale of poker machine entitlements and the sale of Club land. Mr Spray states that he believed that he "did not need" to make these deductions, but he did so as he considered it the "right thing to do" by reason that the sale of assets was something he "could not control and therefore should not have been measured on".
705. However, the Authority observes that there are numerous means by which a registered club may potentially engage a chief executive officer or other staff on terms that include a bonus mechanism that cannot be characterised as enabling a bonus to be "calculated by reference to" that club's liquor sales or the operation of gaming machines.
706. For example, a performance bonus may potentially be framed by reference to an annual increase in the number of members of the club; the number of individual patron visits to the premises during a financial year; an annual reduction in a defined basket of recurring operational costs; the delivery of specified major project(s) on time and on budget; a defined maximum exposure to certain adverse regulatory events (Compliance or Penalty Notices issued by Police, OLGR or Council, or maintenance of the club's declared premises status under Schedule 4 of the *Liquor Act 2007*); or through an independent annual survey of awareness of the Club within a defined community catchment area. Alternatively, were a contractual bonus entitlement to turn upon a club reaching a designated target figure for sales, that mechanism could expressly exclude any consideration of the club's liquor or gaming revenue when deriving that sales target.
707. All of these approaches avoid the risk of contravening section 10(1)(k) of the Act that may otherwise arise if a bonus is framed by reference to a club's overall sales, or even profit, in circumstances where the sale of liquor or the operation of gaming machines are likely to determine the level of overall sales or club profit/surplus in a given year.
708. While the Authority is not aware of any superior Court authority interpreting the scope and application of the requirement in section 10(1)(k) of the Act, the Authority considers that a broad interpretation of the scope of this provision will better serve the purpose to which this requirement is directed.
709. The Authority is satisfied, on the basis of the aforementioned evidence, that Mr Spray's requests for bonuses for the years ending 31 October 2009 and 31 October 2010 respectively were approved by Mr Reilly and without the knowledge of the Governing Body.

710. The Authority is also satisfied that the Club's creation of an entitlement to a bonus for Mr Spray to be paid by reference to the Club achieving its budgeted sales and/or its budgeted profit, in the circumstances of this Club, constituted a breach of section 10(1)(k) of the Act. The Authority notes that this contravention by the Club has *not* been pleaded as a matter going to either Mr Spray or Mr Reilly's fitness and propriety. The Authority would be unlikely to make an adverse finding against the Club, Mr Reilly or Mr Spray when the Authority is satisfied, on the basis of Mr Spray's submission dated 4 August 2014, that Mr Spray's employment contracts were agreed by the Club and Mr Spray on the basis of their respective legal advice.
711. Particular 3.1.1(d) is established, in respect of both the payment being made without the knowledge of the Governing Body and in contravention of section 10(1)(k) of the Act.

*Particular 3.1.1(e)*

712. This Particular alleges that bonus payments were made as directed by Mr Spray and without the knowledge of the Governing Body between 21 March 2010 and 2012.
713. The Authority is satisfied, on the basis of:
- (a) Executive Employment Agreement for Mr Peter Spray dated 4 November 2009
  - (b) Written requests by Mr Spray for bonuses dated 20 November 2009 and 30 November 2010, both of which were signed and approved by Mr Reilly
  - (c) Income Statement for the year ending 31 October 2009 from the Club's 2009 Annual Report
  - (d) Statement of Comprehensive Income for the year ending 31 October 2010 from the Club's 2010 Annual Report
  - (e) pages 21 to 28 of the Reilly Interview
  - (f) pages 29 to 37 of the Spray Interview
  - (g) pages 32 to 36 of the Bryant Interview
  - (h) pages 26 to 30 of the B Smith Interview
  - (i) pages 41 to 45 of the Peters Interview
  - (j) pages 26 to 32 of the Delmege Interview
  - (k) pages 33 to 37 of the D Smith Interview
  - (l) tables of bonus payments made to Mr Spray, Employee Payroll Reports for Mr Spray and emails from Mr Spray to accounts staff at the Club in relation to his remuneration
- that the payments of the bonuses were actually made as requested by Mr Spray and without the knowledge of the Governing Body of the Club, except Mr Reilly, between 21 March 2010 and 2012.
714. The Authority is satisfied that Particular 3.1.1(e) of Ground 3 of the Complaint has been established.
715. On the basis of these findings, the Authority is satisfied that Ground 3 is established.

## **FINDINGS ON GROUND 4**

### **4.1 - Cashing cheques for Mr Reilly**

- 4.1.1 *Each of the cash advances to Mr Reilly detailed in paragraph 1.1.1 above occurred when the Club was authorised to keep approved gaming machines and was made in exchange for a company cheque***

*Particulars 4.1.1(a) and 4.1.1(b)*

716. Particulars 4.1.1(a) and 4.1.1(b) allege that each of the 98 cash advances provided by the Club to Mr Reilly referred to in Particular 1.1.1 occurred when the Club was authorised to keep approved gaming machines and was made in exchange for a company cheque:

- (a) which was for amounts in excess of \$400.00, contrary to the provision in clause 29(1)(b) of the *Gaming Machines Regulation 2010*
- (b) were variously:
  - (i) made at a time when more than one cheque had already been cashed for Mr Reilly on the same day, as precluded by clause 29(1)(c) of the Regulation
  - (ii) presented by Mr Reilly but not banked by the Club within two days of presentation, as required by clause 29(2) of the Regulation.

717. Clause 29(1) of the *Gaming Machines Regulation 2010* states:

29 *Prohibitions on dealings with cheques*

- (1) *If a hotelier or registered club is authorised to keep approved gaming machines, the hotelier or club must not:*
    - (a) *exchange a cheque for cash unless the cheque is made out to:*
      - (i) *the hotelier or the hotel owner, or*
      - (ii) *to the club, or*
    - (b) *exchange a cheque for more than \$400 in cash, or*
    - (c) *exchange more than one cheque for the same person on a single day for cash, or*
    - (d) *exchange a cheque for cash if a cheque previously exchanged for the person who tendered the cheque has not been met on presentation (unless the amount of the cheque not met was subsequently paid to the hotelier or club).*
- Maximum penalty: 50 penalty units.*

718. In respect of Particular 4.1.1(a), the Authority is satisfied, on the basis of:

- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
- (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
- (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 17 of the Reilly Interview
- (g) pages 22 to 24 of the Spray Interview
- (h) pages 22 to 25 of the Bryant Interview
- (i) pages 19 to 23 of the B Smith Interview
- (j) pages 25 to 32 of the Peters Interview
- (k) pages 18 to 21 of the Delmege Interview
- (l) pages 23 to 29 of the D Smith Interview
- (m) pages 9 to 14 of the Costello Interview
- (n) the former Government Licensing Service database (now known as "OneGov") licence record for the Club dated 27 August 2012

that each of the cash advances made by electronic funds transfer to Mr Reilly that were detailed in Particular 1.1.1 of Ground 1 occurred at a time when the Club was authorised to keep 200 approved gaming machines and that those cash payments were made in exchange for Mr Reilly providing the Club with cheques which were all for

amounts in excess of \$400.00, contrary to clause 29(1)(b) of the *Gaming Machines Regulation 2010*.

719. Clause 29(2) of the *Gaming Machine Regulation 2010* states:

(2) *If a hotelier or registered club is authorised to keep approved gaming machines, the hotelier or club must bank any cheque that the hotelier or club has exchanged for cash within 2 working days after the day on which the cheque is accepted.  
Maximum penalty: 50 penalty units.*

720. In respect of Particular 4.1.1(b), the Authority has had regard to:

- (a) Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 including the "Cash Disbursements Journal"
- (b) the Northern Beaches Credit Union statements for the Club dated between 23 June 2009 and 1 March 2012
- (c) the bank statements for Mr Robert William Reilly dated between 28 September 2009 and 15 February 2012
- (d) the bank statements for Brike Investigations (Aust) Pty Limited dated between 19 April 2010 and 2 March 2012
- (e) copies of the cheques made out by Mr Reilly to the Club dated between 29 June 2009 and 29 February 2012
- (f) pages 15 to 17 of the Reilly Interview
- (g) pages 22 to 24 of the Spray Interview
- (h) pages 22 to 25 of the Bryant Interview
- (i) pages 19 to 23 of the B Smith Interview
- (j) pages 25 to 32 of the Peters Interview
- (k) pages 18 to 21 of the Delmege Interview
- (l) pages 23 to 29 of the D Smith Interview
- (m) pages 9 to 14 of the Costello Interview.

721. Among this material, the bank statements for the Club and Mr Reilly (in respect of his personal bank account, his business bank account for Brycorp Investigation Services Pty Limited and his business bank account for Brike Investigations (Aust) Pty Limited) satisfy the Authority that the 98 cash advances made by the Club to Mr Reilly included cash advances that, as alleged by Particular 4.1.1(b)(i), were made at a time when more than one cheque had already been cashed for Mr Reilly on the same day, as precluded by clause 29(1)(c) of the Regulation. .

722. An example of this contravention of the Regulation occurred on 16 February 2012, when two cash advances of \$3,500.00 and \$1,500.00 respectively were made by the Club to the bank account of Mr Reilly's company, Brike Investigation Services Pty Ltd, *on the same day*.

723. Furthermore, the copies of the cheques presented by Mr Reilly to the Club and the bank statements for the Club and Mr Reilly (in respect of his personal bank account, his business bank account for Brycorp Investigation Services Pty Limited and his business bank account for Brike Investigations (Aust) Pty Limited) satisfy the Authority that the 98 cash advances made by the Club to Mr Reilly included cash advances that, as alleged by Particular 4.1.1(b) of the Complaint, were exchanged for cheques that were *not banked within two days of presentation* as required by clause 29(2) of the Regulation.

724. An example of this contravention of the Regulation occurred in respect of a cash advance of \$8,000.00 to Mr Reilly via electronic funds transfer to the bank account of his company, Brike Investigations (Aust) Pty Ltd. However, Mr Reilly did not provide a cheque in the amount of \$8,000.00 made out to the Club, in respect of this transfer, until 27 May 2011, some 10 days later.



725. The Authority is satisfied that Particulars 4.1.1(a), 4.1.1(b)(i) and 4.1.1(b)(ii) have been established.

726. On the basis of these findings, the Authority is satisfied that Ground 4 is established.

## FINDINGS ON GROUND 5

### 5.1 - Mr Reilly not being "fit and proper"

#### 5.1.1 *Mr Reilly is not a "fit and proper" person*

727. Ground 5 alleges that Mr Reilly is not a fit and proper person to hold the position of a member of the governing body of the Club or any registered club in New South Wales.

728. However, an issue arises from the manner in which this Ground has been pleaded.

729. The Ground makes the broad assertion that:

*By reason of the conduct of Mr Reilly whilst a member of the Governing Body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.*

730. The Act requires that a complainant "specify" the grounds of a complaint. In this instance, Ground 5 particularises why it is alleged that Mr Reilly is not fit and proper person.

731. However, in doing so, Particular 5.1.1(a) simply claims that:

*The conduct outlined in Particular 1.1.1 occurred at a time when the Club was experiencing "extremely tight" cash flow.*

732. That is, the Complainant is asserting that *because cash flow was tight*, Mr Reilly's conduct in Particular 1.1.1 (which concerned the 98 cash advances) establishes a lack of fitness.

733. As noted with respect to the Authority's findings on Ground 1, the Authority is satisfied that Mr Reilly, a member of the Governing Body, was actually seeking, and receiving, financial benefits by way of numerous cash advances from the Club for significant amounts of money. These were clearly benefits not available to other members of the Club.

734. The fact that these cash advances were being made *at all* is of serious concern to the Authority - but unlike Ground 6 in respect to Mr Spray, Ground 5 has not been pleaded in a way that specifies that the cash advances *per se* establish a lack of fitness. Particular 1.1.1 focuses on the Club's cash flow position.

735. The Authority emphasises that the funds of a registered club are not the plaything of any member of a registered club's governing body. The financial benefits or advantages of the kind that have been established in Ground 1 of the Complaint should only be provided to members of the governing body in circumstances that are permissible under the Act.

736. As found with respect to Ground 1, the 98 alleged cash advances were actually made and the Authority is satisfied that these payments were made contrary to section 10(1)(i) of the Act.

737. However, the allegation as to Mr Reilly's *fitness* has been framed in Particular 5.1.1(a) of the Complaint *in a manner that turns upon an assessment of the Club's cash flow position*.
738. While there is evidence that the Club was in fact experiencing cash flow difficulties at times during the relevant period, the Authority is *not* satisfied that the challenging cash flow position of the Club, such as it is, over the period in which cash advances were made, is a persuasive enough factor for finding that Mr Reilly is not a fit and proper person.
739. The Complainant could potentially have pleaded (as it has done with respect to Mr Spray in Ground 6) that the making of the cash advances in contravention of the Act *per se* provided a basis for finding that Mr Reilly is not a fit and proper person to hold the position of a member of a governing body of a registered club - but that is not how the Complaint as to Mr Reilly's fitness has been specified in Ground 5.
740. The Authority can only make findings on the Complaint as it has been framed. To do otherwise would deny procedural fairness to Mr Reilly. The Act requires that a complainant "specify" the grounds upon which a disciplinary complaint is made.
741. Notwithstanding that the Complaint Letter has been particularised with some specificity in other respects, Particular 5.1.1(a) of Ground 5 of the Complaint has not been particularised with respect to the cheque cashing conduct in Ground 1 in the same manner as it has been specified with respect to Mr Spray's fitness.
742. Notwithstanding the Authority's findings with regard to Ground 1 of the Complaint, the Authority is not satisfied that Particular 5.1.1(a) *as it has been pleaded against Mr Reilly* provides a sufficient basis for finding a lack of fitness and propriety against Mr Reilly.

*Particular 5.1.1(b)*

743. This Particular alleges that Mr Reilly is not a fit and proper person to hold the position of a member of the governing body of the Club or any registered club in New South Wales by reason that he approved a contract for the payment of bonuses to Mr Spray, Club Secretary, for a completed financial year and subsequently approved payments of a \$12,000.00 bonus on two occasions - in 2009 based on a pre-tax profit of \$600,000.00 when the annual reported profit was \$540,145.00 (ie, \$59,855.00 less than the budgeted profit) and in 2010 based on a pre-tax profit of \$800,000.00 when the annual reported profit was \$559,366.00 (ie, \$200,634.00 less than the budgeted profit) - *and* in circumstances where Mr Peter Spray had not qualified for their payment.
744. It is noted that the allegations as to Mr Reilly's fitness and propriety in Ground 5 are not based upon the allegation in Ground 3 that the Club's agreement to Mr Spray's bonus entitlements are alleged to have contravened the requirement in section 10(1)(k) of the Act.
745. The Authority is satisfied, on the basis of:
- (a) Executive Employment Agreement for Mr Peter Spray dated 4 November 2009
  - (b) the requests by Mr Spray for bonuses dated 20 November 2009 and 30 November 2010, both of which were signed and approved by Mr Reilly
  - (c) Income Statement for the year ending 31 October 2009 from the Club's 2009 Annual Report
  - (d) Statement of Comprehensive Income for the year ending 31 October 2010 from the Club's 2010 Annual Report
  - (e) pages 21 to 28 of the Reilly Interview
  - (f) pages 29 to 37 of the Spray Interview

- (g) pages 32 to 36 of the Bryant Interview
- (h) pages 26 to 30 of the B Smith Interview
- (i) pages 41 to 45 of the Peters Interview
- (j) pages 26 to 32 of the Delmege Interview
- (k) pages 33 to 37 of the D Smith Interview
- (l) tables of bonus payments made to Mr Spray, Employee Payroll Reports for Mr Spray and emails from Mr Spray to accounts staff at the Club in relation to adjustments to his remuneration

that Mr Reilly did approve a contract for the payment of bonuses to Mr Spray, the Club Secretary.

746. As noted earlier in this decision, Mr Spray's employment agreement dated 4 November 2009 provided for two mechanisms for the payment of a bonus.

*...subject to paragraph 13 below, the Manager shall, in respect of the 12 month period ending 31 October of each financial year, be paid the following bonuses on the following conditions:*

- (a) *A sum of eight thousand dollars (\$8,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted sales for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10;*
- (b) *A further sum of twelve thousand dollars (\$12,000), subject to withholding of PAYG tax, or such higher figure as the Board may award, upon the Club achieving its budgeted profit before tax for the relevant financial year ending 31 October and any other targets as specified by the Board pursuant to clause 10.*

747. The Authority is satisfied, on the basis of the evidence outlined above, that Mr Reilly did in fact approve, on two occasions between 21 March 2010 and 2012, payment to Mr Spray of a \$12,000.00 bonus in respect of the years ending 31 October 2009 and 31 October 2010, as alleged by Particular 5.1.1(b) of Ground 5 of the Complaint.
748. As noted earlier in this decision, the Authority is satisfied that the bonuses were actually paid to Mr Spray by reason that the Club had met its budgeted profit before tax. The Authority does not find that Mr Spray had not actually qualified for these payments under the terms of his contract, which is the allegation upon which Mr Reilly's lack of fitness is based.
749. The Authority accepts the account provided by Mr Spray in his written submission dated 4 August 2014 and in his oral submissions at the Conference that the Club had in fact achieved its relevant budgeted profit before tax in accordance with the approach taken by *this* Club to calculation of that budgeted profit - that is, the bonus was determined on the basis of the Club having achieved, during both of the years in question, a profit or surplus that was assessed *before* discretionary payments were made to third party community groups.
750. The Authority is not satisfied that Mr Spray's bonus was paid in circumstances where the Club had not actually achieved the budgeted profit figure. Accordingly, the Authority is not satisfied that Mr Reilly's conduct in respect of the approval of Mr Spray's employment contract and subsequent approval of the payment to Mr Spray of bonuses of \$12,000.00 on two occasions between 21 March 2010 and 2012 is sufficient to ground an adverse finding as to Mr Reilly's fitness and propriety.
751. The Authority finds that Particular 5.1.1(b) of Ground 5 is *not* established.

*Particulars 5.1.1(c) and 5.1.1(d)*

752. Particular 5.1.1(c) alleges that Mr Reilly is not a fit and proper person by reason that he undertook, charged for, but did not complete, investigation work in 2009 in the name of Brike Investigations (Aust) Pty Limited, a deregistered company, without disclosing his personal business interest in that work to the Governing Body, and that he deposited payment made by the Club into his own bank account.
753. Particular 5.1.1(d) alleges that Mr Reilly is not a fit and proper person by reason that he undertook the investigation work in the name of Brike Investigations (Aust) Pty Limited in order to shield his improper involvement from the Governing Body.
754. The Authority is satisfied, on the basis of:
- (a) pages 28 to 31 of the Reilly Interview
  - (b) pages 26 to 27 of the Peters Interview
  - (c) the tax invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited to the Club dated May 2009
  - (d) the ASIC Company Extract for Brike Investigations (Aust) Pty Limited ACN 001 352 816 dated 10 September 2013
- that Mr Reilly in fact undertook, charged, but did not complete, investigation work during 2009 in the name of Brike Investigations (Aust) Pty Limited, which was in fact a deregistered company at the time.
755. Section 41C(1) of the Act provides:
- A member of the governing body of a registered club (other than a co-operative) who has a material personal interest in a matter that relates to the affairs of the registered club must, as soon as practicable after the relevant facts have come to the member's knowledge, declare the nature of the interest at a meeting of the governing body.*
756. The Authority is satisfied that Mr Reilly had, pursuant to section 41C of the Act, an obligation to disclose to the Governing Body his personal business involvement in the investigation work that was carried out in the name of his company, Brike Investigations (Aust) Pty Limited, by reason that he had a material personal interest in that matter and it related to the affairs of the Club.
757. The Authority is satisfied, on the basis of page 29 of the Reilly Interview that Mr Reilly did not disclose to the Governing Body his interest in the investigation work. The Authority is satisfied that Mr Reilly engaged another former director of Brike Investigations (Aust) Pty Limited to perform the investigation work in question and he did this in order to "shield...from the board that it was actually me doing the investigation".
758. The Authority notes the following exchange recorded in Mr Reilly's interview with OLGR Inspector Hanley shortly after the Brike Investigations invoice paid by the Club was presented to Mr Reilly:

MR HANLEY: *That's from - just describe the invoice.*

MR REILLY: *It's an invoice from [Brike] Investigations to ...*

MR HANLEY: *Are you aware what the invoice was for?*

MR REILLY: *Yes.*

MR HANLEY: *Explain what the invoice is.*

MR REILLY: *It was for.....the - there was an investigation that was required in 2009 after a discussion with myself and Max.....in court, where Max was constantly being harangued in the paper about his business affairs and.....affairs. And as a result of that conversation it was a request from him to me that he needed*

*me to find out more about the people who did the crime investigations, your investigator.....so what had happened was my.....nervous about doing it myself with my company because of the conflicts with the Penn family involved in the club. So I said I would ask a mate of mine, Mr Brian Keys, if he could be the head of the investigation, and he would outsource it twice a week. So that's why.....investigation around the Penn family which myself and my operatives did to find out about his business affairs. And what happened when Brian covered in, it was only just to shield from my legal.....from the board that it was actually me doing the investigation.*

*So - and we did, and we went - well, the investigation didn't get completed.....June, July, and of course.....and all that sort of stuff. So that's how it came about. It wasn't until later, after 2009 or something - '12, I can't recall, that I was.....actually registered in 2006. It was a mistake - it was a mistake.....and in hindsight I would have been better off doing the investigation myself.....but at the time, in 2009, my directors and my people were being smashed in the press every week, and he brought press clippings to me so I could understand how bad things were, and Max was in the paper every second day. And my directors on my.....were being attacked by.....in the media. So the last thing I wanted him to know was that I was doing - I would have.....had it have been exposed. It was - and it would have severely damaged my.....the owners of the club.*

759. The Authority is further satisfied, on the basis of:
- (a) pages 28 to 31 of the Reilly Interview
  - (b) the tax invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited to the Club dated May 2009
  - (c) an extract of the Northern Beaches Credit Union statement for Brike Investigations (Aust) Pty Limited, confirming that a cheque in the amount of \$7,700.00 in respect of that invoice was deposited into the Brike Investigations (Aust) Pty Limited bank account on 26 May 2009
- that Mr Reilly did deposit the payment made by the Club into the bank account for Brike Investigations (Aust) Pty Limited.
760. The Authority is satisfied that Particulars 5.1.1(c) and 5.1.1(d) of Ground 5 of the Complaint are established.

*Particular 5.1.1(e)*

761. This Particular alleges that Mr Reilly is not a fit and proper person by reason that he continued to operate a bank account in the name of a company that had been deregistered.
762. The Authority considers that this Particular, if established, does not fall within the scope and purpose of the Act.
763. While there is evidence that Mr Reilly did, in fact, operate a bank account in a company name that ASIC had deregistered, and this may raise some general concerns as to Mr Reilly's personal diligence with respect to non-Club related banking matters (in that, from the perspective of the bank, the account should have been closed) the Complainant has not specified whether or how this conduct is unlawful or contrary to the Act and the Authority is not able to make an adverse finding on Mr Reilly's fitness and propriety in this respect.

**Fitness and Propriety at General Law**

764. It is well established at common law for the purposes of licensing that to be "fit and proper" a person must have a requisite knowledge of the Act (or Acts) under which he is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher*

(1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127.

765. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

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

766. Noting that in the context of a Part 6A Complaint, the Authority is to some considerable extent in the hands of a complainant to specify the basis upon which a Club officer is alleged to be not fit and proper to hold that position, on the basis of the Authority's findings with regard to Particulars 5.1.1(a) through 5.1.1(e) as they have been alleged, the Authority has found only Particulars 5.1.1(c) and 5.1.1(d) are established.
767. The conduct of Mr Reilly as evident from the Complaint material (particularly with regard to the conduct relating to cash advances alleged by Particulars 5.1.1(a) and (b) of Ground 5 of the Complaint) gives rise to significant regulatory concern.
768. However, the Authority is not satisfied that these Particulars, *as they have been pleaded against Mr Reilly*, are sufficient to support a finding that Mr Reilly is not a fit and proper person to hold the position of a member of the governing body of the Club or any registered club in New South Wales.
769. Mr Reilly's conduct as alleged by Particulars 5.1.1(c) and (d) is of greater concern. The Authority is satisfied that Mr Reilly deliberately took action to conceal his involvement in the investigation into the Penn family, contrary to section 41C of the Act, and this involved a lack of honesty and diligence with respect to his duties, as a director of the Club and its Chairman, to the Club's Board.
770. The requirement in section 41C of the Act is not restricted to *contracts* with the registered club. The Authority is satisfied that Mr Reilly had a material personal interest in the engagement of Brike Investigation's services. Mr Reilly deliberately took steps to hide his interest from the other directors of the Club. The Authority does not accept Mr Reilly's submissions to the effect that the investigation work performed by Brike Investigations was a matter of Mr Reilly's personal business that did not involve the affairs of the Club. It is not credible for Mr Reilly to assert that an investigation into one of the owners of the Sea Eagles NRL club was of no interest to this Club, which is not only a registered club in own right but an organisation that provides significant support to the NRL Club, with some commonality among directors of the two clubs. Why else would Mr Reilly want to obscure his involvement in the investigation from the Board if it did not concern the Board?
771. Furthermore, the Authority is satisfied, on the basis of Mr Reilly's submission dated 6 August 2014, that it was only when Mr Spray objected to Mr Reilly's request that the Club process the Brike Investigations invoice that the proposal arose, apparently at the suggestion of Mr Delmege, that the Club make the payment but the amount be deducted from Mr Delmege's honorarium. The Authority is satisfied that Mr Reilly failed

to observe his duty at general law to disclose conflicts of interest to the Board regarding his involvement in the Brike Investigations work and that he failed with respect to his statutory duty under section 41C(1) of the Act to disclose matters relating to the affairs of the Club in which he had a material personal interest.

772. The Authority is satisfied that Mr Reilly is not a fit and proper person to hold the position of a member of the governing body of the Club or any registered club in New South Wales, on the basis of the evidence and material relied upon in the findings on Particulars 5.1.1(c) and (d), by reason that his conduct in respect of the investigation into the Penn family and his subsequent attempt to shield his improper involvement in the matter from the Governing Body demonstrates a lack of honesty and diligence with respect to his duties to the Board.

## **GROUND 6**

### **6.1 - Mr Spray not being "fit and proper"**

#### **6.1.1 Mr Spray is not a "fit and proper" person**

773. Ground 6 makes the general allegation that:

*By reason of the conduct of Mr Peter Spray whilst he was the Club Secretary, he has demonstrated that he is not "fit and proper" to hold such a position.*

774. However, by contrast to the manner in which Mr Reilly's fitness was specified in Ground 5, this Ground of Complaint is supported by Particulars that more squarely address and incorporate the earlier Grounds of Complaint involving Mr Spray, and more squarely raise the cheque cashing practice as a basis of Mr Spray's lack of fitness.

#### *Particulars 6.1.1(a) and 6.1.1(b)*

775. Particular 6.1.1(a) alleges that Mr Spray is not a fit and proper person by reason of his conduct outlined in Particular 1.1 above (that is, his conduct in respect of the practice of advancing Club funds to Mr Robert Reilly).
776. The Authority is satisfied that the practice of cashing cheques for Mr Reilly did occur as specified. The Authority is satisfied that this occurred at the instigation of Mr Reilly and that this placed Mr Spray in an invidious position, receiving what he perceived to be directions from his "boss" to provide him with this financial facility, which involved the payment by the Club of cash advances to Mr Reilly on 98 occasions between June 2009 and March 2012. The total value of these cash advances amounted to \$448,600.00.
777. This was an extraordinary financial facility being provided by the Club to Mr Reilly and not to other members of the Club. Mr Reilly's submission to the effect that he derived "no significant benefit" from these transactions is simply not credible. By obtaining electronic cash advances for significant sums, Mr Reilly actually had the use and hence the benefit of those funds for several days and sometimes longer periods before these cash advances were ultimately repaid once the Club eventually banked the cheques provided by Mr Reilly and those cheques cleared.
778. As discussed in the Authority's findings on Ground 1.1, this practice placed the Club in contravention of section 10(1)(i) of the Act in that Mr Reilly, a member of the Governing Body, was receiving a financial benefit not equally offered to other members of the Club. The practice did not fall within any of the exemptions available under section 10(6) of the Act.

779. Particular 6.1.1(b) alleges that Mr Spray is not a fit and proper person by reason of his continuing to transfer funds to Mr Reilly in exchange for company cheques, notwithstanding his knowledge that the Club's cash flow was "extremely tight" and "probably not allowable" and without bringing it to the "specific attention" of the Governing Body.
780. By contrast to the manner in which Mr Reilly's fitness was specified by reference to the cheque cashing practice, Particular 6.1.1(b) has been pleaded by reason of Mr Spray's continuing to transfer funds to Mr Reilly in exchange for company cheques, notwithstanding his knowledge that the Club's cash flow was extremely tight, and also by reason of his understanding that "it probably was not allowable" and by reason that the conduct occurred without bringing the conduct to the specific attention of the Governing Body of the Club.
781. Mr Spray has been candid in his submissions on the cheque cashing practice and impressed the Authority with his direct engagement and sincerity at the Conference. Unlike Mr Reilly, Mr Spray readily admits in his oral and written submissions that he personally considered the practice to be inappropriate from the outset, although his statements to the Conference satisfy the Authority that he was not aware that this conduct was also a contravention of the prohibition in section 10(1)(i) of the Act, which prohibits members of a governing body receiving benefits that are not equally offered to other members of the club (absent those exceptions provided by section 10(6) of the Act).
782. Alternatively, as noted in the findings in relation to Ground 1.1 above, the Authority is also satisfied that the cheque cashing practice effectively amounted to the provision of an interest free loan facility whereby Mr Reilly had the benefit of Club funds advanced to him for several days, and sometimes longer, before his cheques were actually banked and cleared. The Authority is satisfied that there were even occasions when Mr Reilly requested the Club to delay banking his cheques. By making these short term loans, the Club contravened the prohibition in section 41N of the Act against Clubs making loans to members of the governing body.
783. The Authority notes Mr Spray's statement that there was some informal discussion of the cheque cashing practice with the Club's auditor, Mr Bill Edmondson, in or around late 2009 during which Mr Edmondson expressed a view that the practice was "quite possibly not illegal".
784. However, it is not apparent that Mr Spray sought formal legal advice on the practice, notwithstanding his personal sense that the conduct was inappropriate. Some formal advice on the cheque cashing practice was provided to the Club in a report from its auditor, Mr Edmondson dated 26 July 2012, but that advice was not provided while the cheque cashing practice was still ongoing.
785. With respect to Particulars 6.1.1(a) and 6.1.1(b) of the Complaint, the Authority is satisfied that Mr Spray continued with this practice and that it was not "specifically" brought to the attention of the Board, although there is some evidence that Board members were generally aware that it was taking place.
786. Mr Spray submits that some members of the Governing Body were aware of this practice and that on one occasion, Director Mr Brian Smith spoke with Mr Spray about the issue of the payments to Mr Reilly, at which time he (Mr Smith) stated to Mr Spray that he (Mr Smith) considered the practice "wrong", but did not subsequently raise it at a Board meeting.



787. This is confirmed by Mr Smith's statements at page 20 of the B Smith Interview to the effect that in Mr Smith's opinion, the practice was "illegal"; however it "was never discussed" at a Board meeting and the cashing of cheques continued. Mr Costello, at pages 2 to 3 of his statement dated 6 August 2014, also submits that certain members of the Governing Body (Mr Brian Smith, Mr Peter Peters and Mr Max Krilich) were aware of the cheque cashing practice and raised concerns about its legality.
788. The Authority is satisfied, on the basis of the Authority's findings in relation to Ground 1 of the Complaint, that Particulars 6.1.1(a) and 6.1.1(b) are established.

*Particular 6.1.1(c)*

789. This Particular alleges that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales by reason that he transferred AMEX reward points to himself in the absence of an entitlement to them.
790. The Authority notes Mr Spray's oral submissions at the Conference and his written submissions dated 4 August 2014, where Mr Spray does not dispute that these reward points were redeemed in the manner claimed by the Complaint. Mr Spray does not dispute that use of the AMEX corporate credit card and redemption of points was not provided for by his employment contract.
791. The Authority also notes Mr Spray's submissions that there was nothing improper or dishonest about his practice in that he "always considered that any reward points earned on [his] Club AMEX card belonged to the Club and therefore should be used for Club purposes". Mr Spray contends that he deducted from his salary package the value of reward points that were transferred to himself on the occasions when he redeemed points that had accrued by his use of the Club AMEX corporate credit card. Mr Spray also contends that several members of the Governing Body were aware that Mr Spray had been issued with a Club corporate credit card.
792. However, as noted in the findings in relation to Ground 1.2.2 above, the Authority is satisfied that Mr Spray did in fact transfer the AMEX reward points to himself in the manner alleged.
793. The Authority is also satisfied, on the basis of the evidence set out in the findings in relation to Ground 1.2.2 above, that Mr Spray's conduct with regard to transfer of the reward points occurred in circumstances where there was no prior resolution of the Governing Body of the Club authorising the transfer or redemption of AMEX reward points.
794. The Authority is further satisfied, on the basis of Mr Spray's employment contract dated 4 November 2009, that there was no provision dealing with the transfer or redemption of AMEX reward points provided for by that contract. That is, the contract was silent as to his entitlement. The Club's credit card policy is a matter that the Club should have dealt with at the time of employing Mr Spray, either through his written contract of employment or by way of a written policy dealing with staff entitlements in this regard.
795. Nevertheless, the Authority accepts Mr Spray's account as to the manner in which he transferred the AMEX reward points, and notes that Mr Spray made reasonable adjustments to his own entitlements to reflect the value of benefit that he received for his redemption of reward points accumulated through use of the Club issued AMEX card for Club purposes. In all the circumstances in which this conduct occurred, while the redemption should have been more clearly disclosed to the Board, the Authority does not consider that this matter warrants an adverse finding as to Mr Spray's fitness

or propriety. The facts alleged by the Complainant are accepted, but so is Mr Spray's explanation as to the manner in which he dealt with the reward points.

796. Particular 6.1.1(c) of Ground 6 of the Complaint is *not* established.

*Particular 6.1.1(d)*

797. This Particular alleges that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales by reason that he approved and authorised payment of 81 expenses, including \$16,828.61 to Mr Reilly, in the absence of approval from the Governing Body or independent assessment.

798. The Authority is satisfied, on the basis of the extracts of Club Board meeting minutes dated between 16 December 2008 and 25 October 2012 that have been provided by the Complainant, that these expense claims were not individually assessed or approved by the Board.

799. The Authority is satisfied, on the basis of the evidence outlined in the findings in relation to Ground 1.1.2 above, that Mr Spray did in fact approve and authorise payment of 81 expenses, including \$16,828.61 to Mr Reilly, in the absence of approval from the Governing Body or independent assessment.

800. Particular 6.1.1(d) is established.

*Particular 6.1.1(e)*

801. This Particular alleges that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales by reason that he wrote to the Club requesting payment of bonuses for the Club's exceeding its pre-tax profit budget:

- a) in 2009 of \$600,000.00 when the annual reported disclosed profit was \$540,145.00 (i.e. \$59,855.00 less than the budgeted profit)
- b) in 2010 of \$800,000.00 when the annual reported disclosed profit was \$559,366.00 (i.e. \$200,634.00 less than the budgeted profit)

in circumstances where he "must have known" that he had overstated the profit and had not qualified for the payment of these bonuses.

802. The Authority is satisfied, on the basis of the evidence set out in the findings in relation to Particular 3.1.1(c) of Ground 3 above, that Mr Spray did request, on two occasions, the payment of bonuses of \$12,000.00 for the Club's exceeding its pre-tax profit budget for the financial years ending 31 October 2009 and 31 October 2010.

803. However, the Authority is *not* satisfied, as alleged by the Complainant, that Mr Spray "must have known" that he had overstated the Club's pre-tax profit and had not qualified for the payment of these bonuses.

804. The Authority accepts the account provided by Mr Spray in his written submission dated 4 August 2014 and in his oral submissions at the Conference that the Club had in fact achieved its relevant budgeted profit in accordance with the approach taken by this Club to the calculation of that budgeted profit - that is, the bonus was determined on the basis of the Club having achieved, during both of the years in question, a profit or surplus that was assessed *before* discretionary payments were made to third party community groups.

805. Particular 6.1.1(e) of Ground 6 of the Complaint is *not* established.

*Particular 6.1.1(f)*

806. This Particular alleges that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales by reason that he authorised payment of a cheque number 002145 in May 2009 for a tax invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited that was not approved by the Governing Body.
807. The Authority is satisfied, on the basis of page 27 of the Spray Interview and page 4 of Mr Spray's statement dated 22 August 2012, that Mr Spray was aware of Mr Reilly's interest in Brike Investigations (Aust) Pty Limited at the relevant time.
808. The Authority is further satisfied, on the basis of the evidence set out in the findings in relation to Particulars 5.1.1(c) and 5.1.1(d) in respect of Mr Reilly's fitness and propriety, and especially the following:
  - (a) pages 28 to 31 of the Reilly Interview
  - (b) pages 26 to 27 of the Peters Interview
  - (c) the tax invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited to the Club dated May 2009
  - (d) an extract of the Northern Beaches Credit Union statement for Brike Investigations (Aust) Pty Limited, confirming that a cheque in the amount of \$7,700.00 in respect of that invoice was deposited into the Brike Investigations (Aust) Pty Limited bank account on 26 May 2009
  - (e) Mr Spray's oral submissions at the Conference in relation to this matter that Mr Spray authorised payment of a cheque number 002145 in respect of a tax invoice for \$7,700.00 from Brike Investigations (Aust) Pty Limited that this was not approved by the Governing Body.
809. Particular 6.1.1(f) of Ground 6 of the Complaint is established.
810. However, the Authority notes and accepts, on the basis of Mr Reilly's written submission dated 4 August 2014, that Mr Reilly presented Mr Spray with the Brike Investigations invoice in the amount of \$7,700.00 including GST and requested that it be paid by the Club. Mr Spray challenged the appropriateness of this and then telephoned Club director Mr Delmege, in the presence of Mr Reilly. It was only then that the proposal arose, apparently at the suggestion of Mr Delmege, that the Brike Investigations invoice be paid by the Club but deducted from Mr Delmege's honorarium account. After having spoken to Mr Delmege, Mr Spray wrote out a Club cheque to Brike Investigations (Aust) Pty Ltd in the sum of \$7,700.00.
811. The Authority notes, on the basis of Mr Spray's written submission dated 4 August 2014, that Mr Spray did not consider that he needed to obtain approval from the Governing Body for the cheque because the money was charged against Mr Delmege's honorarium, which Mr Delmege "could use...as he pleased".
812. The actions taken by Mr Spray in challenging the propriety of Mr Reilly's request for the Club to pay the \$7700.00 invoice from Brike Investigations do not prevent a finding that the Particular 6.1.1(f) is established on the facts pleaded.
813. However, the Authority considers that Mr Spray's conduct in respect of this payment should *not* be taken into account on an assessment of Mr Spray's fitness and propriety by reason of those additional matters which are in Mr Spray's favour.
814. The Authority has had regard to Particulars 6.1.1(a) through 6.1.1(f) as alleged by the Complainant in relation to Mr Spray's fitness and propriety. The Authority has found

established, in whole or in part, Particulars 6.1.1(a), 6.1.1(b), 6.1.1(d) and 6.1.1(f) of Ground 6 of the Complaint.

815. The Authority is satisfied that the conduct established in those Particulars is sufficient to ground a finding that Mr Spray is *not* a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales.
816. In making this finding, the Authority has also taken into account the oral and written submissions made by Mr Spray in relation to his character and contribution to the Club and the local community.
817. The Authority is satisfied that Mr Spray is generally a person of good character who worked hard for the Club but was, regrettably, drawn into participating in conduct involving the use of Club funds for the benefit of the Chairman, Mr Reilly (specifically in relation to the provision of cash advances) that was in contravention of the statutory requirements of section 10(1)(i) of the Act, section 41N(1) of the Act and clause 29 of the *Gaming Machines Regulation 2010*. The Authority is also satisfied that Mr Spray facilitated a payment to Brike Investigations in the sum of \$7,700.00 without approval by the Governing Body.
818. The Authority is satisfied that this conduct establishes a lack of knowledge on the part of Mr Spray as to important statutory obligations that are imposed upon all registered clubs in New South Wales and a lack of diligence in ensuring that the Club complied with its statutory requirements with respect to matters that were within Mr Spray's knowledge and control.
819. As the Club's Secretary and as an accountant by training, Mr Spray should have been more familiar with the key statutory duties of a registered club under the liquor and gaming legislation (including the Act) and should have applied a higher standard of conduct. As chief executive officer, it was incumbent upon Mr Spray to withstand pressure from a member of the Governing Body to engage in conduct that placed the Club in contravention of the liquor and gaming legislation.
820. Mr Spray's conduct as established in Particulars 6.1.1(a), (b), (d) and (f) of the Complaint also demonstrates a lack of knowledge of the legislation pursuant to which the Club was subject, as evidenced by his conduct and some of his comments to the Authority.
821. As noted above, the issues of apparent deficiency as to Mr Spray's knowledge and diligence pertain to:
  - a) section 41N(1) of the Act - loans to members of the Governing Body
  - b) clause 29 of the *Gaming Machines Regulation 2010* - cheque cashing restrictions
  - c) section 10(1)(i) of the Act - benefits to members of the Governing Body and the exemptions under section 10(6) of the Act.
822. Were Mr Spray able to point to having obtained some formal expert advice that the cheque cashing practice was not in breach of the legislation, then that may have a bearing as to whether the Club's non-compliance warrants an adverse finding against the Club Secretary's fitness and propriety.
823. However, it is not apparent that Mr Spray or the Club ever received formal written legal advice on the cheque cashing practice at any time between June 2009 and March 2012, while the practice was ongoing.
824. In his written submissions and record of interview with OLGR Inspectors, Mr Spray states that he considered the cheque cashing practice to be inappropriate "from the

outset" and that it was "not best practice". The Authority accepts that Mr Spray's instincts were sound, but he did not act upon them as he felt pressure to meet the inappropriate expectations of the Chairperson.

825. Mr Spray also refers to some informal discussion about the practice, including what would seem to be a heavily qualified verbal observation from the Club's auditor, Mr Bill Edmondson, while the practice was underway, to the effect that the practice was "quite possibly not illegal".
826. Given Mr Spray's misgivings and some consternation within the Club about the cheque cashing practice, the prudent course would be for Mr Spray to have obtained some formal legal advice for the Club as to the legality of this practice, rather than relying upon an informal observation from the auditor to the effect that it was "quite possibly not illegal".
827. However, the Authority is satisfied that formal advice was sought only *after* the practice had ceased and no contemporaneous legal advice upon which the Club, Mr Reilly or Mr Spray may now rely is before the Authority.
828. The Authority notes that a report prepared by the auditor Mr Edmondson dated 26 July 2012 suggests that the cheque cashing practice did not constitute a "loan" until there was a delay of more than one day between the cash advances and the repayment of the funds by way of cheques presented to the Club by Mr Reilly. Mr Edmondson states that "...in the following year (2011) the time delays had become longer with some extending into weeks. These were clearly loans and therefore breached section 14N [*sic*, 41N] of the Registered Clubs Act".
829. With regard to Mr Spray's knowledge of the prohibition on loans to members of the governing body and employees of a registered club in section 41N of the Act, Mr Spray states in his written submission dated 4 August 2014 that "at that time I was unaware that section 41N of the Act provided that a registered club must not lend money to a member of the governing body of the club".
830. In his record of interview with OLGR Inspectors, Mr Spray states that he "wasn't specifically aware of [the prohibition in section 41N]...it would be fair to say that I, in my mind, would have thought that it probably wasn't allowable".
831. With regard to Mr Spray's knowledge of clause 29 of the Gaming Machines Regulation 2010 regarding the acceptance of cheques, Mr Spray stated at the Conference that he was "very much" aware of these requirements by reason that they were "very publicised" and "often mentioned in the circulars from ClubsNSW and [the Club] made sure [it] followed those to the letter".
832. However, Mr Spray's written and oral submissions do not seem to appreciate that clause 29 also had implications for the cheque cashing practice that he facilitated for Mr Reilly. As noted above, the Authority is satisfied that there were instances where the cheque cashing practice did breach this regulation.
833. Mr Spray conceded more generally at the Conference that while he had "read sections of" the *Registered Clubs Act* and the *Registered Clubs Regulation*, the gaming and registered clubs legislation was "not something that was ever really discussed at a Board meeting".
834. With regard to Mr Spray's knowledge of section 10(1)(i) of the Act in relation to benefits to members of the governing body and the exceptions provided in section 10(6),

Mr Spray stated at the Conference that "I still - I'm sitting here now and I don't know what 10(6) is".

835. The Authority is satisfied, on the basis of the above instances of lack of knowledge and skill in ensuring the Club's compliance with the liquor and gaming legislation, that Mr Spray is *not* a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales by reason of his lack of knowledge of the relevant legislation pursuant to which the Club was subject, and the lack of diligence and judgment on the part of Mr Spray, who was the chief executive officer, in ensuring that the Club complied with its statutory requirements, with respect to Club conduct that was within Mr Spray's knowledge and control.

## INVITATION FOR FINAL SUBMISSIONS ON DISCIPLINARY ACTION

836. On 16 July 2015, a 119 page decision letter was sent to the parties advising the Authority's findings on the Grounds of Complaint and inviting final written submissions on the question of what, if any, disciplinary action should be taken by the Authority pursuant to section 57H of the Act as a consequence of its findings.
837. Submissions from the Complainant were requested by 5:00pm on 23 July 2015. Submissions in reply from the Club were requested by 5:00pm on 30 July 2015 and submissions in reply from Messrs Reilly and Spray were requested by 5:00pm on 6 August 2015.

## Final Submission from the Complainant dated 23 July 2015

838. On 23 July 2015, Mr Brett Hearnden of Hunt and Hunt Lawyers provided a final submission to the Authority on behalf of the Complainant addressing the question of disciplinary action by reference to each of the Respondents, as follows:

### **Mr Reilly**

839. The Complainant notes that Mr Reilly has been found "not fit and proper" by the Authority in its decision dated 15 July 2015 by reason of his conduct in respect of the investigation into the Penn family and his subsequent attempt to shield his improper involvement in the matter from the Governing Body, "demonstrating a lack of honesty and diligence with respect to his duties to the Board".
840. The Complainant submits that a person who is "not fit and proper" ought to be excluded from being a member of a governing body of a registered club "by reason of the unfitness until they have established that they are again fit".
841. The Complainant refers to *Ex parte Tziniolis; Re The Medical Practitioners Act* [1966] 67 SR (NSW) 448 and notes that the New South Wales Court of Criminal Appeal has held at paragraph 461 of that judgment that, in respect of disciplinary action in relation to a medical practitioner:

*Reformations of character and of behaviour can doubtless occur but their occurrence is not the usual but the exceptional thing. One cannot assume that a change has occurred merely because some years have gone by and it is not proved that anything of a discreditable kind has occurred. If a man has exhibited serious deficiencies in his standards of conduct and his attitudes it must require clear proof to show that some years later he has established himself as a different man.*

842. The Complainant submits that honesty and diligence with respect to board duties are essential characteristics of any person who sits on a club board and that there is no evidence sufficient to support a finding that Mr Reilly's character could now be, or has

sufficiently been, restored such that he could resume the role of a secretary or member of a governing body of a registered club.

843. The Complainant submits that in this case, the conduct demonstrated by Mr Reilly goes directly to his character and that it is "appropriate" for an order to be made by the Authority pursuant to section 57H(2)(g) of the *Registered Clubs Act 1976* declaring Mr Reilly ineligible to stand for election to, or to be appointed to, or to hold office in, the position of secretary or member of a governing body of a club for the maximum period available to the Authority.
844. The Complainant further submits that in determining whether or not to declare Mr Reilly "ineligible" for election or office, and when considering the time period for ineligibility, regard should also be had to the conduct complained of in Ground 5.1.1(a), which the Authority noted was of "serious concern".
845. In respect of that conduct, the Authority was satisfied that Mr Reilly was actually seeking and receiving financial benefits by way of 98 cash advances from the Club for significant amounts of money which were not available to other members of the Club. The conduct of concern continued over an extended period of time and was found to be a breach of section 10(1)(i) of the Act.
846. The Complainant submits that the Authority's "rejection of the Complaint as particularised does not preclude its consideration in respect of the declaration".
847. The Complainant notes that section 57J(3) of the Act permits the Authority to make such a declaration under section 57H(2)(g) of the Act in relation to a person, provided the person has been given an opportunity to show cause why the declaration should not be made.
848. The Complainant submits that this opportunity has now been given by the Authority's invitation for the respondents to make submissions in paragraphs 832 to 836 of the Authority's letter dated 16 July 2015.

### **Mr Spray**

849. The Complainant submits that Mr Spray has been found to be "not fit and proper" by the Authority by reason of his "deficiency of knowledge and skill".
850. The Complainant submits that knowledge of the appropriate legislation is a "requisite skill" for any person who holds the position of a secretary or a member of a governing body of a registered club.
851. The Complainant refers to the above quoted passage of *Ex parte Tziniolis; Re The Medical Practitioners Act* and submits that a person who is "not fit and proper" ought be excluded from being a member of a governing body of a registered club by reason of their unfitness until they have established that they are again fit.
852. The Complainant submits that there is "no evidence on which the Authority could yet find comfort" in allowing Mr Spray to immediately resume the role of a member of a governing body of a registered club.
853. However, the Complainant notes that, in contrast to Mr Reilly, the Authority has found Mr Spray is a person of "good character".
854. The Complainant submits that a "deficiency of knowledge" is capable of rectification by Mr Spray - for example, by undertaking "appropriate training or study". The Complainant

submits that it is “open” to the Authority to impose a “shorter period of ineligibility” in respect of Mr Spray.

### **The Club**

855. The Complainant submits that it has been successful in establishing each of the Grounds of Complaint.
856. The Complainant submits that the facts recorded in the Complaint included “serious and concerning allegations” against Club officers, involving conduct covering an extended period of time, warranting “significant and detailed investigation” by OLGR inspectors.
857. The Complainant submits that the inherent nature of the matters the subject of the Complaint “necessitated a significant commitment of OLGR resources” over a lengthy period of time, to review the operations of the Club; examine a “very large number” of Club records; undertake interviews; and obtain third party documents.
858. The Complainant submits that the matters particularised in the Complaint, including breaches of the *Registered Clubs Act* and the *Gaming Machines Regulation*, were “largely established”.
859. Having regard to the evidence obtained during the investigations into the Club and the Authority's findings in respect of the Complaint, the Complainant submits that the investigations by OLGR officers were “warranted”.
860. Accordingly, the Complainant submits that it is “appropriate” for the Authority to order, pursuant to section 57H(2)(i), that the Club pay the costs of the Secretary in carrying out the investigation which gave rise to the Complaint in the amount of **\$19,188.44**.
861. The Complainant submits that these costs are “reasonable and not burdensome on the Club” and attaches to this submission a schedule itemising these investigation costs.

### **Submission from Mr Spray dated 23 July 2015**

862. On 23 July 2015, Ms Susan Doherty of Johnson Winter and Slattery Lawyers provided a final submission to the Authority on behalf of Mr Spray addressing the question of disciplinary action. Briefly, Mr Spray makes the following submissions:
863. Mr Spray notes that the Authority was satisfied that Mr Spray’s conduct of cashing cheques and approving expenses for Mr Reilly “is sufficient to ground a finding that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any registered club in New South Wales” (page 117 of the letter dated 16 July 2015). Accordingly, this is the relevant conduct that must be considered for the purposes of determining what, if any, disciplinary action to take against Mr Spray.
864. The Authority was satisfied that Mr Spray is not a fit and proper person to hold the position of secretary of the Club or any other registered club by “reason of his lack of knowledge of the relevant legislation pursuant to which the Club was subject, and the lack of diligence and judgement on the part of Mr Spray, who was the chief executive officer, in ensuring that the Club complied with its statutory requirement, with respect to Club conduct that was within Mr Spray’s knowledge and control” (paragraph 831 of the letter dated 16 July 2015).
865. Mr Spray submits that the “gravamen” of his misconduct was that he was “ignorant of the relevant legislation and showed a lack of diligence and judgment”.



866. Mr Spray “wholeheartedly accepts” that he was ignorant of the relevant legislation and that he displayed a lack of diligence and judgement (as was demonstrated in his statement dated 4 August 2014 and his answers to the Authority at the Conference).
867. Mr Spray submits that the Authority should take no action against him under section 57H of the Act in light of the above findings. In support of this submission Mr Spray relies upon his statement dated 4 August 2014 (particularly paragraphs 145 of his statement and following); his previous submissions to the Authority (particularly his submission dated 21 November 2014); his answers and conduct at the Conference and the following additional matters:
- (i) The Authority’s findings “clearly demonstrate” that the Authority accepted Mr Spray’s versions of events. Mr Spray submits that he has “never resiled from” his behaviour in cashing the cheques and in approving Mr Reilly’s expenses, notwithstanding his misgivings. Mr Spray notes that the Authority found that Mr Spray “has been candid in his submission on the cheque cashing practice and impressed the Authority with his direct engagement and sincerity at the conference” (paragraph 777 of the Authority’s letter dated 16 July 2015). Mr Spray submits that he has been “completely candid” with the OLGR and the Authority in relation to all matters the subject of the investigation, even to his own detriment.
  - (ii) Mr Spray concedes that his “lack of diligence and judgement” in relation to the cheque cashing practice clearly stemmed “at least in part” from his ignorance of the legislation and the position he was putting the Club in by doing so. Mr Spray “genuinely thought he was doing the best he could”. He undertook training as part of his CPA continuing professional development in areas which he thought most benefited the Club and which were the Club’s focus - including marketing, catering, entertainment, promotions, budgeting and cash flow. Mr Spray submits that he did not know, and nor was he “very encouraged” either by the Board or his predecessor, to undertake training in corporate governance or the relevant legislation. Mr Spray submits that he “did not know what he did not know” and he did not appreciate that it was his responsibility to make himself aware of the relevant registered clubs legislation.
  - (iii) Mr Spray submits that his inability to “withstand pressure from a member of the Governing Body” (paragraph 815 of the Authority’s letter dated 16 July 2015) was due to the pressure he felt to meet the “inappropriate expectations” of Mr Reilly and because he was “fearful” for his job. Mr Spray submits that he was unable to stand up to Mr Reilly in these matters and he “now fully recognises” that this demonstrated a weakness on his part. Mr Spray notes, without providing any further detail, that there was evidence from the Club before the Authority which “gives credence to Mr Spray’s concerns”. Mr Spray submits that his failure to obtain formal expert advice about Mr Reilly’s practices arose from that same concern.
  - (iv) Mr Spray notes that the Authority has accepted that Mr Spray is “*generally a person of good character who worked hard for the Club but was, regrettably, drawn into participating in conduct involving the use of Club funds for the benefit of the Chairman...in contravention of the statutory requirements...*” (paragraph 813 of the Authority’s letter dated 16 July 2015). Mr Spray submits that it is clear from the findings that he “obtained no financial or other advantage from his conduct” except perhaps the perceived benefit of retaining his employment, and that there were “no elements of fraud or dishonesty” on his part.
  - (v) Mr Spray submits that, in light of the Authority’s findings, there can no longer be any foundation for the Complainant’s request that “significant disciplinary action” be taken against Mr Spray for “a continuing course of conduct which was known, or ought to have been known, by [Mr]...Spray to be unlawful, dishonest or for [his] own benefit” to

“act as a deterrent to others involved in the Club industry that taking personal advantage from their involvement in a Club is an unacceptable standard of behaviour”. Quite clearly the Authority has found “no element of dishonesty or the seeking or obtaining of personal advantage” by Mr Spray.

- (vi) Mr Spray submits that the conduct the subject of the Complaint took place in the period up to March 2012 and came to light at that time. The OLGR commenced its investigation into this matter on 4 September 2012, but did not submit its Complaint to the Authority until 27 February 2014. It is now late July 2015. Mr Spray submits that the investigation into these matters (by the Club and OLGR) and the prosecution of the Complaint have been “hanging over Mr Spray’s head” for all this time. Mr Spray submits that the matter “has affected his health (including the additional stress while coping with [redacted] from early 2010 to late 2014), his finances and his relationships with friends and family”. The conduct cost him his job. Mr Spray contends that these matters alone have “constituted significant extra-curial punishment for his conduct which arose ultimately out of ignorance and weakness and not out of any desire for personal gain”.  
[redacted from published version]
  - (vii) Mr Spray submits that, as a person with a “hitherto unblemished record”, the recent finding that he is not now (more than three years after the conduct occurred, during which time he has not come to the attention of any authorities on any matter) considered a fit and proper person to be employed as a secretary of a registered club has had, in and of itself, a “significant negative impact” on Mr Spray.
  - (viii) Mr Spray notes that he is now employed as General Manager of CA Australia, a position he has held since July 2013. He is 60 years old. Even leaving aside his age, Mr Spray states that he has “no intention whatsoever” of seeking employment with a registered club. Mr Spray states that this Complaint has caused him “such considerable distress” that he would not even consider such employment if it were available to him.
868. Mr Spray submits that given that he is no longer employed by the Club, it would appear that the only disciplinary action available to the Authority to take under section 57H of the Act is to bar him from office, pursuant to section 57H(2)(g) of the Act.
869. For the reasons set out above, Mr Spray “strongly urges” the Authority not to take any action at all against Mr Spray. Given his conduct, the findings of the Authority, the fact he will never again seek employment with a registered club and the lapse of time between the conduct and the resolution of the Complaint, Mr Spray submits that he has “been punished enough and that such [disciplinary] action would serve no purpose”.

### **Submission from the Club dated 28 July 2015**

870. On 28 July 2015, Mr John Ralston of Pigott Stinson Lawyers provided a final submission to the Authority on behalf of the Club addressing the question of disciplinary action. Briefly, the Club makes the following submissions:
871. The Club notes that the only order that is proposed against the Club is that the Club pay the costs of the Secretary in carrying out the investigation which gave rise to the complaint in the amount of **\$19,188.44**. In relation to this, the Club relies upon the original submission on behalf of the Club dated 8 August 2014 filed in response to the Show Cause Notice.
872. The Club attaches a copy of its 8 August 2014 submission and refers to paragraphs 18 to 23 of that submission, which state as follows:

- 18. *The actions of Mr Costello and Mr Smith were taken at a time when they were under considerable personal pressure from Mr Reilly’s lawyer who attempted to intimidate and*

*threaten them (paragraphs 34, 35 and 38 of the Costello Statement). Also, Mr Reilly's supporters attacked, heckled and insulted Mr Costello and members of the Board at the Club's Annual General Meeting in 2013 (paragraph 70).*

19. *It is difficult to conceive of what further action the Board of the Club, under Mr Costello's leadership, could have done to remedy the conduct which Mr Reilly and Mr Spray undertook and to rid the Board of Mr Reilly, his influence and his supporters.*
  20. *The Board of the Club had the option of simply accepting the two penalty notices and leaving the matter at that, but that would have left Messrs Reilly and Spray (being the two persons primarily responsible) untouched by any penalty and free to become involved in other registered clubs where they may engage in similar conduct in those other registered clubs - unless of course the Authority does not find their conduct warranting of censure and does not make any declarations against them.*
  21. *One of the policy objectives of the Registered Clubs Act is to provide high standards of corporate governance for registered clubs (refer to sections 10(1)(i) and (j), section 10(6), section 10(6A), Division 4, Part 4 and Part 4A, and section 57F(2)(a) and (g)). If those standards mean anything, they mean that good directors of registered clubs should be prepared to break ranks with their colleagues and report illegal or inappropriate behaviour by their colleagues to the appropriate authorities. That is what has happened here.*
  22. *The Board of the Club, under Mr Costello's leadership, did the very thing that is required by the high standards of corporate governance expected of club directors, such that this case could be used as an example of what club directors are expected to do when they find wrongdoing by one of their fellow directors or other officers. However, it will be counterproductive to that outcome if, as a consequence of such action, the clubs themselves are penalised by orders for costs where the Authority has the discretion not to make those orders.*
  23. *The Authority should also have regard to the parlous financial position of the Club as indicated by the last annual report. It will be seen from Mr Costello's statement that in 2012, the Club was close to insolvency (paragraph 32 and Chairman's Report and Auditor's Report forming part of Flag 32 at paragraph 67). While the Club has moved away from that critical position, its financial position is still very weak, though improving (Annual Report at Flag 1, paragraph 6) and an order for costs, which apparently according to the particulars provided from the OLGR, would be a little over \$19,000.00, would be a substantial impost on the Club and would effectively be punishing the Club and its Board for doing the right thing in difficult circumstances.*
873. The Club submits that the Complainant's assertion that the costs sought by the Secretary "are...not burdensome on the Club" has to be considered in the context of the Club's financial position.
874. The Club attaches a copy of the most recent Annual Report for the Club, being for the year ended 31 October 2014, and submits that the final result for that year was a loss of \$229,282.00, which although better than the previous year (a loss of \$851,947.00), still leaves the Club in a "very tight" financial position. The Club submits that the cash flow of the Club also "remains very tight".
875. Alternatively, if the Authority is still minded to order the Club to pay OLGR's costs on the investigation, then the Club requests that such costs be payable by "reasonable instalments of \$1,500 per month" so that the total costs will be paid off in "a little over a year".

### **Mr Reilly and Mr Spray**

876. In response to the Complainant's submissions in relation to Messrs Reilly and Spray, the Club refers to the following passages of the Authority's letter dated 16 July 2015 and submits that:
- (i) In paragraph 14 of the Complainant's submission of 23 July 2015, Mr Hearnden states that the Authority has found Mr Spray is a person of "good character". The Club submits that this is "not accurate" and that paragraph 813 of the Authority's letter states that the Authority "*is satisfied that Mr Spray is **generally** a person of*

*good character who worked hard for the Club but was, regrettably, drawn into participating in conduct involving use of the Club funds for the benefit of the Chairman."* [emphasis added]

- (ii) The Club submits that in relation to the particular practice of cashing Mr Reilly's cheques, the Authority noted in paragraph 776 of its letter that Mr Spray knew that the Club's cash flow was "extremely tight" and that the practice was "probably not allowable"
  - (iii) At paragraph 777 of the Authority's letter, the Authority noted that Mr Spray had admitted in his oral and written submissions that he considered the cheque cashing practice "to be inappropriate from the outset", and at paragraph 781 of the Authority's letter, the Authority was satisfied that Mr Spray continued with the practice and did not bring it to the attention of the Board
  - (iv) Finally, the Club notes that although Mr Spray had the "sense that the conduct was inappropriate", he did not seek formal legal advice about it (paragraph 780 of the Authority's letter dated 16 July 2015).
877. The Club submits that this conduct by Mr Spray is not a matter that can be rectified by "undertaking appropriate training or study" as proposed by Mr Hearnden in the Complainant's submission dated 23 July 2015.
878. The Club submits that Mr Spray was "in effect aiding and abetting Mr Reilly in ongoing conduct which Mr Spray knew or at the very least sensed to be wrong"; as would "any reasonable person" regardless of how little they may have known about the law and administration of registered clubs.
879. Furthermore, the Club submits that "it was not that this conduct occurred on one or two occasions". The Authority found that cheques were cashed on 98 occasions between June 2009 and March 2012 and the total value of these cash advances amounted to \$448,600.00 (paragraph 772 of the Authority's letter).
880. The Club notes that in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court, when considering the expression "fit and proper person", held that: "*...in certain contexts, character (because it provides an indication of likely future conduct)...may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question*".
881. The Club submits that the conduct by Mr Spray referred to above is a "serious failure of character" which, although "not as egregious as that of Mr Reilly", nevertheless leads to the important qualification that arises by the use of the word "generally" in paragraph 813 of the Authority's letter.

### **Submission from Mr Reilly dated 24 September 2015**

882. Mr Reilly's submissions have been subject to three requests for extensions of time.
883. On 10 August 2015 (noting that this is several days after the deadline of 6 August 2015 set out in the initial timetable), Mr Reilly's solicitor, Mr Tim Mitchell of Bay Legal emailed the Authority seeking an extension of time of four weeks to make a final submission addressing the question of disciplinary action. That email states:

*Please be advised that Mr Reilly has been too ill to provide us with instructions since the issue of the Authority's decision.*

*The undersigned has today spoken with Mr Reilly for the first time since the date of issue of the decision. Mr Reilly informed me that he has been suffering from Influenza Type A which has caused respiratory problems and fluid build-up on his lungs with severe symptoms exacerbated by his heart condition. There have been associated problems with medication conflict causing arrhythmia to his*

*heart. This has caused Mr Reilly to be bedridden over recent weeks and he previously requested us by electronic email that he be given time to recover and not be placed under any further duress. Accordingly, due to his fraught condition we did not disturb him and have left further contact until today. As of today, we understand his condition is improving and we will hopefully soon be in a position to take instructions and respond to the issues raised in the Authority's decision. Accordingly, Mr Reilly seeks a further four weeks to respond to the Authority's decision and other partys' [sic] submissions. We note that we will require counsel's assistance in preparing Mr Reilly's further submissions.*

884. On 17 August 2015 after consideration by the Chief Executive, the Authority advised that by reason of Mr Reilly's medical circumstances only, an extension of time would be granted until 4:00pm on 8 September 2015.

885. At 3:40pm on 8 September 2015, Mr Mitchell emailed the Authority requesting a second extension of time to file the foreshadowed final submission on behalf of Mr Reilly. That email states:

*Mr Reilly has relied on funding from the Manly Warringah Rugby League Club directors' insurer (ACE Insurance) for legal advice in relation to the ILGA proceedings to date.*

*We have learnt only today that consequent to ILGA's findings that ACE has declined to assist Mr Reilly following the ILGA determination. The reasons for ACE's decision are set out in a four page letter that we have not yet had time to consider. The insurer has been tardy in providing this response as the application for this further funding was lodged on 18 August 2015, the day after your response below on 17 August.*

*Mr Reilly is not currently in a position to fund legal advice in relation to his response to ILGA's determination.*

*Without at this stage commenting on other findings, in relation to ILGA's interpretation of the facts relating to the "Brike investigation" it is apparent to us that there is a potential miscarriage of justice arising out of an entire misinterpretation of the facts. Not to mention that some of these facts are based on inaccurate or missing transcription of Mr Reilly's interview with OLGR.*

*At this time, we believe that Mr Reilly has strong grounds to refute the findings with respect to the Brike investigation.*

*We request a further two weeks to allow Mr Reilly to provide his reply. We are uncertain whether we will assist with that reply but are concerned that a lack of opportunity for Mr Reilly to reply will lead to a decision that is unfair in all the circumstances.*

886. On 21 September 2015, after consideration by the Chief Executive, the Authority advised Mr Mitchell that this latest request for an extension had been considered and that any final submission on disciplinary action must be received by 4:00pm on 22 September 2015 (being the 14 days Mr Mitchell requested in the second request for an extension).

887. That deadline was not observed. At 4:32pm on 23 September 2015, Mr Mitchell emailed the Authority, stating:

*My apologies, I have just read your email below. I was out of the office on Monday and Tuesday this week and in Court this morning and have just returned to the office and read your email.*

*My client sent me his comments for review to pass on to you last Friday afternoon but I was unable to attend to those comments until now.*

*I will send you on those comments by first thing tomorrow morning.*

*I note there is no prejudice to any party caused by this delay. Notwithstanding, it would be a potential denial of natural justice were our client's replies not received.*

888. At 4:42pm on 23 September 2015, the Authority advised Mr Mitchell that submissions must be made by the morning of 24 September 2015 in light of the competing matters on the Authority meeting agenda and the practical requirement for the Authority to

receive material well in advance of the meeting. This further deadline was also not observed.

889. At around midday on 24 September 2015, Mr Mitchell emailed the Authority, stating:

*My apologies. Despite my best endeavours, events and appointments have conspired against me and I am simply unable to complete Mr Reilly's submission, get client approval and email it to you this morning.*

*I have a couple of appointments now away from the office and will then be clear to email it to you before COB today.*

*Apologies again but I am doing my best in the circumstances.*

*I am grateful for your understanding.*

890. After the Authority's General Counsel communicated to Mr Mitchell the Authority's increasing concerns as to the repeated failure by Mr Reilly to observe his own requests for extensions of time, further submissions were finally received at around 5:00pm on 24 September 2015.

891. As with his previous submissions, Mr Reilly's final response takes the form of a six page letter from his solicitor rather than a personal statement or statutory declaration. Much of this submission attempts to reopen the findings made by the Authority in its letter dated 16 July 2015.

892. Mr Reilly's final submission may be summarised as follows:

***Conduct in relation to cashing of cheques***

893. Mr Reilly submits that the cheque cashing practice was "purely one of convenience" for Mr Reilly - it was not to derive a loan benefit. Mr Reilly submits that he gave evidence that he "checked and re-checked" the legality of the practice with Mr Spray "on numerous occasions" and that Mr Spray advised him that the practice had been "approved" by the Club's auditor, Mr Bill Edmondson.

894. Mr Reilly submits that at all times, he "sought guidance" from Mr Spray and relied on his "more than 20 years" of knowledge and experience and service in the clubs industry. Mr Reilly submits that he attended events where Mr Spray received awards for service to the clubs industry and that "at no stage" did Mr Spray ever tell Mr Reilly that the cheque cashing practice was illegal or unlawful.

895. Mr Reilly was aware that other similar arrangements had been made for his predecessors at the Club in previous years and submits that he was "reliant on Mr Spray's qualifications as CEO and financial controller and his many years of experience at the financial helm of the Club". Mr Spray was the "licensee" of the Club and all of the Club Board relied on Mr Spray's knowledge in relation to all financial and administrative matters at the Club. Had Mr Reilly been informed by Mr Spray, or any other person, that the practice was illegal or unlawful, Mr Reilly "would have ceased the practice".

896. Mr Reilly "entirely rejects" any inference, assertion or conclusion that he acted in any way to "intimidate or standover" Mr Spray or any other employee. Mr Reilly submits that he never threatened or bullied Mr Spray, nor did he give Mr Spray a direction at any time. Mr Reilly submits that his relationship with Mr Spray was "convivial", that Mr Reilly considered Mr Spray as a friend and that Mr Reilly had a "good working relationship" with Mr Spray. Mr Reilly submits that "it was hardly a board of shrinking violets or lackeys of Mr Reilly"; rather, the Club Board included "highly qualified and experienced directors with strong professional backgrounds and credentials". Mr Reilly questions

why, if Mr Spray was intimidated by Mr Reilly, he did not mention his concerns to any other Board directors.

897. Mr Reilly submits that he had “no prior experience” in the clubs industry or on the board of any other registered club. In those circumstances, Mr Reilly “relied heavily” upon the advice and approbation of employed officers of the Club, including Mr Spray. Mr Reilly submits that if he breached any “internal guidelines”, then he “was misled and did not intentionally do so”.
898. Mr Reilly rejects the assertion by Mr Spray that Mr Spray raised the cheque cashing practice with the Board and submits that “this was never done”.

### ***Payment of expenses and claims***

899. Mr Reilly submits that he relied upon the “vast experience” of paid employees of the Club and followed procedures that were put in place by these administrators and generally understood traditional practices at the Club. Mr Reilly “did not institute anything new” in this respect.
900. Mr Reilly does not accept that any of the expenses referred to in the Complaint were for personal or social use and submits that the purpose of these expenses was “legitimate and related to the interests of the Club”.
901. Mr Reilly never believed that he “was operating unlawfully or outside the guidelines” and completely relied upon the many years of experience of the full time paid employees of the Club to guide him with respect to all protocols. Mr Reilly submits that his attendance at events and representing the Club in his capacity as Chairman was “for Club business”. Mr Reilly submits that attending these events involved personal and financial costs, as they took time away from his family and his business.
902. Mr Reilly was “not aware at any material time, nor was it ever put to him that the standard to be applied in retrospect was that all expenses relating to his representation of the Club would have to be paid by him”. Mr Reilly submits that on the occasions where expenses were claimed and paid, these “were not social occasions but necessary obligations undertaken as the chairman and representative of the Club”.
903. Mr Reilly submits that his strength lay in his capacity to be a “social connector of key people” and a “networker and frontman [*sic*]” to attract business to the Club - however his strengths “did not lay [*sic*] in the technical and professional requirements of the Club”, whether administrative, legal and/or financial.
904. Mr Reilly submits that he “saw himself more as a salesman for the Club” and contends that until renovations started at the Club in 2010, the Club “was making good profits in excess of \$100,000 a month”.

### ***Benefits and advantages to Mr Spray –***

905. In relation to the benefits and advantages accorded to Mr Spray as alleged in Ground 1.2 of the Complaint, Mr Reilly submits that he followed Club procedures that were in place and did not “knowingly or intentionally” breach rules or guidelines. Once again, Mr Reilly relied upon the experience of the CEO and full time employees of the club who had set procedures in place.

*Loans to Mr Reilly –*

906. In relation to Ground 2 of the Complaint, Mr Reilly submits that “at no stage” was he ever made aware that he was in breach of any of the rules of the Club, or advised by any Club official or Board member or otherwise that this practice was illegal or breaking any rules of the Club. Mr Reilly submits that the concerns surrounding the Club’s tight cash flow throughout these periods “were never brought to Mr Reilly’s attention” and that had Mr Reilly been told that funds were tight and that the transfers were in any way detrimental to the Club, Mr Reilly “would not have requested that they be made”.
907. At no time did Mr Reilly regard this as a loan arrangement - it was purely one of convenience. Mr Reilly submits that a cheque was presented to the Club at the time it was cashed, and the Club banked the cheque on the next banking day or at its discretion.

*Bonuses to Mr Spray –*

908. Mr Reilly submits that he was not aware of any bonuses paid out being in breach of any legislation or Club rules, and notes that Mr Peter Bryant, a practising lawyer, was part of the Board subcommittee that approved Mr Spray’s employment contract. Mr Reilly submits that he relied on the expertise of others on the Board and the Board collectively. So far as he was aware, established Club procedures that had been in place for many years were followed and Mr Reilly was not made aware that there had been any breach of any of these guidelines in respect of Mr Spray’s bonuses.

***Brike Investigations - Brian Keys***

909. Mr Reilly submits that the Brike Investigations matter was between Mr Delmege and Mr Keys and that Mr Reilly was simply a “point of referral” for Mr Delmege. Mr Reilly had “no further involvement” in the investigation. Mr Reilly states that the investigation was to be conducted on Rick and Scott Penn of the Penn family, who were not on the Club’s Board.
910. Mr Reilly refers to the Authority’s findings on the Complaint and submits that the Authority makes its determination based on the belief that there was a conflict of interest in relation to the Club - however, no such conflict existed. Mr Reilly submits that the Penn family business was not directly connected to the Club’s Board, but rather to the Sea Eagles board.
911. Mr Reilly submits that, for a conflict of interest to have occurred, there must be evidence that Mr Reilly had a material personal interest in the matter, per section 41C(1) of the Act. Mr Reilly submits that there is no such evidence before the Authority.
912. Mr Reilly submits that the transcript of OLGR Inspector Hanley’s interview with Mr Reilly has been “misinterpreted”, and contends that the transcript “appears to be missing critical passages”.
913. Mr Reilly submits that the nub of the misinterpretation is Mr Reilly’s words which are quoted at paragraph 752 of the Authority’s letter dated 16 July 2015: *“shield...from the board that it was actually me doing the investigation...”* and a few sentences later in the transcript, where Mr Reilly states: *“...and in hindsight I would have been better off doing the investigation myself”*.
914. Mr Reilly submits that the above two statements are “incompatible” and submits that the “reality” of what occurred is that the invoice was from Brian Keys. The details of the payment of the invoice occurred at a meeting between Brian Keys, Max Delmege and



Mr Reilly where Mr Reilly advised Mr Keys and Mr Delmege that sub-contractors used by Mr Reilly in his own business were also used by Mr Keys for his investigation. Mr Reilly submits that these same sub-contractors are “free agents, persons free to sell their services and time as they please”.

915. Mr Reilly submits that it is “notable” that Mr Keys was never interviewed by OLGR about these events. Further, Mr Reilly notes that NSW Police subsequently interviewed Mr Keys as a consequence of action initiated by the Club’s Board after Mr Reilly’s departure from the Club - however, Police “found no grounds to pursue any action on the basis of conflict of interest”.
916. Mr Reilly submits that at no time did he participate in the investigation. Mr Reilly stated in his interview that directors of the Football Club were “nervous about adverse press reports” and that the directors of the Football Club and the Sea Eagles were aware that an investigation was under way in relation to the Penns’ former business activities.
917. Mr Reilly submits that there was also at the same time an investigation by the Penn family into Max Delmege’s business affairs, as a result of Mr Rick Penn advising Mr Delmege that the Penns would run a “Royal Commission” type inquiry into all of Mr Delmege’s business affairs. Mr Reilly submits that the results of these investigations were “well publicised” and that this was the reason and the context in which Mr Delmege requested Mr Reilly’s assistance in finding an investigator to conduct similar type inquiries into the Penns.
918. Mr Reilly submits that his professional expertise in the investigations industry was and is well known and that he continued to derive an income from his investigations work throughout his time on the boards of the Sea Eagles, the Club and the Football Club.
919. Mr Reilly argues that there was “no conflict of interest” in him “earning his living in this way”; nor was there any conflict with any of the Club’s Board members in relation to the investigation carried out by Mr Keys through his trading name, Brike Investigations.
920. Mr Reilly acknowledges that he was involved in the “initial introduction” between Mr Keys and Mr Delmege, but submits that at that time he (Mr Reilly) was deputy chairman of the Sea Eagles, while Mr Scott Penn was the chairman of the Sea Eagles.
921. Mr Reilly contends that, when Mr Delmege initially asked Mr Reilly to assist with the investigation, Mr Reilly said he did not believe that was appropriate as he was serving on the Sea Eagles board with the Penns, and suggested that Mr Delmege approach Mr Keys.
922. Mr Reilly contends that, when Mr Keys sought payment for his services, he (Mr Keys) met with Mr Spray and Mr Reilly in Mr Spray’s office. Mr Keys rendered the invoice. Both Mr Reilly and Mr Spray asked Mr Delmege if Mr Keys’ fee could be paid from Mr Delmege’s honorarium. Mr Delmege approved this request and Mr Spray facilitated it by writing a Club cheque. Mr Reilly submits that there was “no material benefit to Mr Reilly” in any of the above course of events.
923. Mr Reilly submits that the name “Brike Investigations” was merely a branding name for Mr Keys, and that “Brike” is a derivation of “Brian” and “Keys”. While the Northern Beaches Credit Union account was in the name of Brike Investigations, Mr Reilly submits that the company registered in that name “had long ceased to exist” and that Mr Reilly “had no involvement” in the investigation of the Penns as commissioned by Mr Delmege.

924. Mr Reilly submits that if he (Mr Reilly) had taken the role of investigating the Penns, then there would have been a conflict *at the Sea Eagles board level* in that both Mr Reilly and the Penn brothers served on the Sea Eagles board at the time and it would have been inappropriate for Mr Reilly to have taken a fee to investigate his fellow directors. However, Mr Reilly argues that even if this “hypothetical scenario” had occurred, then there would still be no conflict at the board level of the *Club*, which required a declaration of material benefit arising out of the *Club*’s affairs. Mr Reilly submits that directors are free to spend their honorariums on any good or service that they choose - it is their money.
925. Mr Reilly submits that the transcript of his OLGR interview concerning the Brike Investigation is “missing in key parts, inaccurate and lacks incisive and probing questioning to clarify the precise nature of the engagement of Mr Keys by Mr Delmege”.
926. Mr Reilly contends that if the Authority's finding at paragraph 756 of the Authority's letter of 16 July 2015 is sustained, the lack of evidential bases for this conclusion would be an “irrefutable denial of natural justice”.
927. Mr Reilly also notes, by way of background, that at the time of the inquiry by Mr Delmege into the Penn family, another inquiry instigated by the Sea Eagles board was under way into Mr Peter Peters, a director of the Club, who had, according to Mr Reilly, been accused of “stealing a fridge from a sponsor and supplier of the Sea Eagles, Riverina Milk”.
928. Mr Reilly notes that the investigation was headed up by himself as deputy chairman of the Sea Eagles and Ms Kerry Chrysiliou, a lawyer on the Sea Eagles board who was “brought in” by the Penn family. Mr Reilly submits that the findings made against Mr Peters in respect of this inquiry “were not salutary [*sic*]” and that Mr Peters’ evidence against Mr Reilly is “prejudicial”. Mr Reilly submits that the Authority must bear in mind the “context of intense conflict” between the protagonists at this time when taking into account evidence that is not otherwise corroborated.

### ***Mr Reilly’s contribution to the Club***

929. Mr Reilly contends that during the course of his directorship and chairmanship of the Club, Mr Reilly spent “countless hours” away from his business and his family in order to help the Club succeed. Mr Reilly submits that he worked as a “virtual unpaid salesman” organising numerous events and functions, including functions attended by two former Prime Ministers, Ms Julia Gillard and Mr Tony Abbott.
930. Mr Reilly submits that his “involvement and influence” in the Sea Eagles led to various awards nights, Eagles Angel functions, presentation nights and season launches being held at the Club.
931. Mr Reilly contends that since his resignation, “hardly any” of these functions have been hosted by the Club, resulting in “revenue shortfalls” and impacting on the Club’s trading position.
932. Mr Reilly submits that he operated under the practices and procedures that were in place prior to his election at the Club, and notes that Mr Ken Arthurson and Mr Paul Cummings (both of whom held the office of chairman before Mr Reilly) had operated under the same procedures, as noted in Mr Spray’s evidence.
933. Mr Reilly contends that there were “political and financial motivations” in relation to the initiation of the OLGR inquiry and the “specific targeting” of Mr Reilly in relation to the complaints.

934. Mr Reilly contends that at that time, the Penn family were trying to acquire the controlling interest in the Sea Eagles and that the Penn family, who had recently bought the building and had loans in place at the Club, had influence over some Club directors, including the chairman, Mr Costello and Mr Peter Peters who Mr Reilly states is a relative of the Penn family.
935. Mr Reilly contends that there was an “orchestrated campaign” targeting him alone in order for the Penn family to gain control of the Club, and this eventually carried through with the appointment of Mr Costello and other directors.
936. Mr Reilly contends that he was aware that the Penn family were trying to influence the Club’s operations, and resisted this outside influence. Mr Reilly contends that because of these actions and the influence Mr Reilly had on the Football Club board, he was “specifically targeted” in relation to these complaints in order to gain a political outcome.
937. Mr Reilly further submits that due to the adverse media coverage in relation to these matters, Mr Reilly has been locked out of the Club and banned from entering the Club as a visitor with any person since 2012. Mr Reilly submits that these matters have been “highly publicised” and as a result, have severely affected Mr Reilly’s health, business and home life.
938. Mr Reilly contends that the investigations industry depends greatly on networking and professional reputation and that as a direct result of the adverse press in relation to these matters, Mr Reilly has lost clients and now serves as an employee of a company known as *Capi Investigations*. Mr Reilly states that he has no intention of seeking office or employment in the registered clubs industry as it is “not his industry of expertise”.
939. Mr Reilly submits that his reputation is “vitally important to career success and his ongoing livelihood” and that he will protect his reputation and “take all steps to avoid any denial of natural justice”.
940. Mr Reilly has “deep and abiding concerns” that any adverse finding against him will continue to be used against him “relentlessly” by his detractors and as vindication for past actions by them. Mr Reilly submits that the “appropriate course” is that the Authority take no further action against Mr Reilly in respect of this Complaint.
941. Finally, Mr Reilly notes that he has not sought to provide any references in relation to his character during the course of the Complaint process but submits that if the Authority is to sustain a finding that is “severely detrimental to Mr Reilly’s career and reputation”, it would be appropriate that Mr Reilly be afforded a reasonable period of time to garner character references and provide them to the Authority.
942. Given that the consequences of an adverse finding to Mr Reilly’s professional reputation are “akin to a criminal conviction in the Court system”, Mr Reilly argues that it would in all the circumstances be appropriate that this opportunity be afforded him, as it would be were he to be sentenced in a Court.

#### **Further (unsolicited) submission from Mr Spray dated 29 September 2015**

943. On 29 September 2015, Ms Susan Doherty of *Johnson Winter and Slattery Lawyers* provided a short further submission to the Authority on behalf of Mr Spray.
944. Briefly, Mr Spray submits that the final submission from Mr Reilly dated 24 September 2015 does not only address the question of whether disciplinary action should be taken against Mr Reilly, but also seeks to revisit the Authority’s findings on

the Complaint. As such, Mr Spray “feels obliged” to respond to a number of matters raised on behalf of Mr Reilly where Mr Reilly seeks to “shift blame” onto Mr Spray.

945. Mr Spray submits that he has “candidly and unreservedly accepted responsibility” for his own actions in the matters that are the subject of the Complaint and that the Authority's findings clearly demonstrate that his version of events was accepted.

### ***Conduct in relation to cashing of cheques***

#### *Reliance on Mr Spray –*

946. In response to Mr Reilly’s submission that he “relied” upon Mr Spray for guidance at all times, Mr Spray does not disagree that it was reasonable for Mr Reilly to rely on Club staff (primarily Mr Spray himself and his secretary) for guidance in relation to day-to-day Club operations, but that Mr Reilly’s area of responsibility was “corporate governance and the operation of the Board”.
947. Mr Spray submits that Mr Reilly could not and should not have relied on operational staff for those responsibilities.
948. Mr Spray has “readily admitted” that his own knowledge of corporate governance was “deficient”.

#### *Cheque cashing practice –*

949. In response to Mr Reilly’s submissions in relation to the cheque cashing practice, Mr Spray refers to paragraphs 29 to 48 of his submission dated 4 August 2014 and further submits that:
- a) At the time the practice commenced, Mr Reilly had been a Board member for at least three years
  - b) Mr Spray denies that Mr Reilly “checked [the practice] with Mr Spray on numerous occasions”, or “checked and re-checked the practice with Mr Spray”. The only time the practice was ever discussed by the two men was when Mr Spray raised his “displeasure” about the practice with Mr Reilly
  - c) No similar arrangement existed with anyone other than Mr Reilly during Mr Spray’s employment at the Club
  - d) Mr Spray denies that he “repeatedly informed [Mr Reilly] that he had checked with the Club’s auditor and lawyers, Pigott Stinson, and believed that there were no breaches of the rules taking place”
  - e) Mr Spray contends that he made Mr Reilly aware of the Club’s cash flow difficulties, yet Mr Reilly continued to request that his cheques be cashed (paragraph 39 of Mr Spray’s submissions dated 4 August 2014)
  - f) Mr Spray contends that he updated Mr Reilly on the Club’s cash position “on an almost daily basis”
  - g) Mr Spray contends that on a Monday or Tuesday of most weeks, Mr Reilly would ask Mr Spray if there was enough money in the Club’s account to cash his cheque and that on some occasions Mr Spray said no, delaying the cashing of Mr Reilly’s cheque until later in the week
  - h) Mr Spray never raised the cheque cashing practice at a Board meeting, nor has he ever claimed to have done so (paragraphs 43 to 46 of Mr Spray’s submissions dated 4 August 2014)
  - i) Mr Spray submits that, “to the extent that [he] discussed the cheque cashing practice with Board members, this is not a matter upon which Mr Reilly is able to comment”.

*Relationship with Mr Reilly –*

950. Mr Spray submits that does not disagree that his relationship with Mr Reilly was amicable, but he (Mr Spray) did not view Mr Reilly as anything more than a work colleague and the two men did not socialise outside work. Mr Spray saw Mr Reilly as his “boss” (paragraph 29 of Mr Spray’s submissions dated 4 August 2014).
951. Mr Spray submits that he at no time asserted that Mr Reilly acted to intimidate, standover, threaten or bully him. Mr Spray submits that, to the extent that Mr Spray had a perception of the consequences of opposing Mr Reilly, this is entirely a matter for Mr Spray.

***Brike Investigations***

952. Mr Spray refers to paragraphs 136 to 144 of his submissions dated 4 August 2014 and contends that he never met Mr Keys with Mr Reilly in his office. On no occasion did Mr Spray ever discuss the matter of the Brike Investigations invoice with Mr Keys.

**Further (unsolicited) submission from Mr Reilly dated 1 October 2015**

953. On 1 October 2015, Mr Tim Mitchell provided a short email submission to the Authority on behalf of Mr Reilly in response to Mr Spray’s further submission dated 29 September 2015. That email states:

*We have sought instructions from Mr Reilly regarding the response received from Mr Spray yesterday.*

*It appears we misunderstood Mr Reilly’s instructions in relation to the meeting with Mr Spray concerning the Brian Keyes appointment for Mr Delmege’s investigation. We are instructed that Brian Keyes, Max Delmege and Mr Reilly met at Lees Fortuna Court restaurant. At a later date, Mr Reilly met with Mr Spray in Mr Spray’s office when Mr Spray called Mr Delmege to get approval for the invoice from Mr Keyes to be paid from Mr Delmege’s honorarium. Mr Keyes was only at the first meeting. Mr Spray was only at the second meeting. We apologise for this error.*

*Notwithstanding, the above correction makes no material difference to Mr. Reilly’s essential submission on the issue concerning Mr. Delmege’s engagement of Mr. Keyes. Mr Reilly had no material interest in that agreement.*

*Further, Mr Reilly does not concur with the assertion that the timing of his submission has been in any way prejudicial to Mr. Spray.*

954. On 29 September 2015 and 1 October 2015 respectively, the Authority sent emails to the parties circulating the further submissions from Mr Spray and Mr Reilly among the other parties, while confirming that (as advised in its letter dated 16 July 2015), the purpose of this final round of submissions was to invite submissions or evidence on what, if any, disciplinary action is appropriate.
955. The Authority reiterated in those emails that it will not be revisiting its findings on the Grounds of Complaint.

**DECISION ON DISCIPLINARY ACTION**

956. The Authority gave further consideration to this matter at its meeting on 2 October 2015, with the benefit of the final round of submissions from the parties.
957. Section 57H of the Act provides the powers of the Authority to take disciplinary action in the event that a complaint is established. The section states:

57H *Disciplinary powers of Authority*

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*
- (2) *If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the registered club or a person who is the secretary or member of the governing body of the club, the Authority may decide not to take any action or may decide to do any one or more of the following:*
  - (a) *order the club to pay a monetary penalty not exceeding 2,500 penalty units within such time as is specified in the order,*
  - (b) *suspend the club's licence for such period as the Authority thinks fit,*
  - (c) *cancel the club's licence,*
  - (d) *suspend or cancel any authorisation held by the registered club under this Act,*
  - (e) *impose a condition on the club's licence or on any authorisation held by the club under this Act,*
  - (f) *remove from office the secretary of the club or a member of the governing body of the club,*
  - (g) *declare that a specified person is, for such period (not exceeding 3 years) as is specified by the Authority, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:*
    - (i) *the club, and*
    - (ii) *if the Authority so determines - all other registered clubs or such other registered clubs as are specified (or as are of a class specified) by the Authority,*
  - (h) *appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club,*
  - (i) *order the registered club to pay the amount of any costs incurred by:*
    - (i) *the Director-General in carrying out any investigation or inquiry under section 35A in relation to the club, or*
    - (ii) *by the Authority in connection with the taking of disciplinary action against the club or any other person under this section.*

958. The Authority's disciplinary jurisdiction provided by Part 6A of the Act 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.*

959. 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 observes 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.

960. 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.*

961. At paragraph 85 of the judgment in Lambert, 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.*

962. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondents to a disciplinary complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licensees* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).

### **Mr Spray**

963. The Authority is satisfied, on the basis of Mr Spray's conduct during the course of the Complaint, and noting his willingness to engage with the Authority in a frank and direct manner, that he is unlikely to repeat the kind of regulatory failings that have been found against him in this matter, particularly with regard to his lack of ability to withstand pressure to facilitate the cheque cashing practices which were made at the instigation of the Club's Chairman, Mr Reilly.

964. The Authority notes that Mr Spray is working as a business manager in another industry at this time.

965. The Authority has identified in its findings on Mr Spray's fitness a number of instances whereby Mr Spray has conceded a lack of knowledge as to certain statutory requirements that club secretaries ought to be aware of under the Act.

966. Nevertheless, noting the extent to which Mr Spray has taken responsibility for his actions and having regard to the circumstances that gave rise to Mr Spray's conduct, the Authority is satisfied, looking forward, that a moderate period of disqualification for a period of 12 months is an appropriate protective action to take to protect the public.

967. While Mr Spray's failings do not demonstrate any great lack of honesty, they nevertheless indicate significant failings with respect to the degree of knowledge and ability that is expected of the secretary and Chief Executive Officer of a registered club of this scale.

968. The Authority is confident that the shortcomings demonstrated by Mr Spray could be rectified with an appropriate course of study, including but not limited to training for registered club secretary managers and directors. It considers that he should be disqualified for a period sufficient to enable him to undertake such a course should he wish to be considered in future for a position in the clubs industry,

### **Mr Reilly**

969. The Authority does not accept Mr Reilly's request for more time to provide character evidence. Mr Reilly has had ample opportunity to provide any such evidence or submissions as to his personal character, as Mr Spray has done. In particular he could have done so, if he so wished, when the Authority invited him to make submissions on what, if any, disciplinary action it should take.

970. Rather than taking the opportunity to marshal such evidence since receiving notice of the Authority's findings on the Grounds of Complaint (almost three months ago) Mr Reilly has focussed in his final submissions on re-arguing the Authority's factual findings.

971. Mr Reilly's responses to the Complaint, which primarily take the form of submissions through his solicitor rather than direct statements to the Authority, convey little sense of Mr Reilly taking responsibility for his actions.
972. In his latest submissions Mr Reilly emphasises once again his lack of prior experience in the clubs industry - notwithstanding that he had served as the Club's Chairman for several years before this Complaint commenced.
973. While the Authority accepts that Mr Reilly had a lack of prior industry experience, these submissions underscore that Mr Reilly has not made any real efforts to inform himself as to the duties of directors and the statutory compliance obligations of registered clubs. Mr Reilly has provided no evidence (or even a submission through his solicitor) to the effect that he has engaged in any relevant further study or industry training.
974. It is no answer to this Complaint for Mr Reilly to contend that he was mainly concerned with networking or relationship building, which the Authority accepts was the case. That is one aspect of a club chairman's role, but a director and chairman must also acquaint himself or herself with the core legislative obligations of a registered club, good corporate governance, and act in a manner that demonstrates frankness in his or her dealings with the rest of the board. This is particularly important with regard to matters that concern a substantial risk to the club's reputation, such as the sensitive investigation work performed by Brike Investigations and paid for by the Club.
975. If a person with no prior industry experience pursues election to a club governing body or appointment as a club secretary and yet does not promptly obtain suitable training as to corporate governance and/or club compliance with licensing legislation, he or she runs the real risk of exposure to disciplinary action if, as transpired in this case, the club operates in a manner that gives rise to a complaint and findings are made that reflect adversely upon that person's honesty, knowledge or ability.
976. The Authority notes and accepts Mr Reilly's submission (made through his solicitors during the Conference) that this Club is not a minor (or "tin pot") operation. It is a substantial community enterprise with revenue in the millions of dollars. It is inconsistent with that submission for Mr Reilly to still rely upon his lack of prior industry experience, his reliance upon other Club staff, or arguments that his focus was networking and relationship building rather than regulatory compliance. The adverse findings made against Mr Reilly concern matters that he was involved with - not matters within the remit of executive staff that were not brought to his attention.
977. Mr Reilly could have taken steps to acquire a better knowledge of this Club's statutory obligations and/or his own duties as a director but he did not. The Authority is satisfied that Mr Reilly has not demonstrated the degree of knowledge expected from the chairperson of a registered club of this scale and complexity. His conduct in relation to the Brike Investigations invoice demonstrates a lack of integrity and frankness in his dealings with the Board.
978. Mr Reilly contends that he has worked long hours for the Club, without quantifying or providing evidence as to what those hours were. He also contends that his personal and business life has suffered as a consequence of his work for the Club.
979. The Authority notes that unlike the Club's secretary, Mr Reilly's role as Chairman was not a full time position. The Authority is satisfied that Mr Reilly devoted some substantial, albeit unquantified, time outside of monthly Club board meetings and that his personal focus was networking and "salesmanship" on behalf of the Club.



980. Nevertheless, Mr Reilly *elected* to pursue this *regulated* role in the industry. He no doubt received a certain amount of prominence and status in the local community from his position. He no doubt pursued this role because he *wanted* the role and received personal satisfaction from his status as Club Chairperson.
981. If a person seeks election or appointment to a regulated role in the industry, they must also be committed to exercising their functions with a degree of honesty, skill and ability that is reasonably expected of the secretary or director of an enterprise of that scale and complexity.
982. The Authority has no evidence of any prior convictions or regulatory issues pertaining to Mr Reilly other than the matters that are the subject of this Complaint. Apart from the Complaint, the Authority has little material before it, positive or negative, going to Mr Reilly's character generally.
983. Mr Reilly has had every opportunity to provide further evidence or submissions as to his good character, in response to the Authority's decision on the Grounds of Complaint dated 16 July 2015. He has not done so.
984. The Authority is satisfied that its findings on the Grounds of Complaint made against Mr Reilly demonstrate a substantial failing as to his personal integrity or, at the very least, a lack of skill and ability in executing his duty as Chairman to deal frankly with the Club's board, particularly with regard to the Brike Investigations matter that is the subject of Particulars 5.1.1(c) and 5.1.1(d) of the Complaint.
985. For the avoidance of doubt, the Authority has *not* revisited its findings in relation to the Grounds of Complaint that were communicated to Mr Reilly in the Authority's decision on the Grounds of Complaint.
986. The Authority is satisfied that Mr Reilly currently works in the private investigations industry and does not, at this time, intend to work in the registered clubs industry. However, the Authority cannot rule it out in the future.
987. Whether or not Mr Reilly ever works in a regulated capacity in the registered clubs industry again, a period of disqualification will protect the public and send a clear message of the likely consequences to the individual concerned and to those in the industry who may be minded to act in a similar fashion in the future.
988. The Authority rejects Mr Reilly's submission that no further action should be taken in light of the adverse media exposure and other disadvantages that he submits have already flowed to him as a result of this Complaint.
989. The Authority is satisfied that a substantial period of disqualification is now warranted. An order for disqualification will send a signal to the directors of other registered clubs who are not frank in their dealings with their board and who fail to undergo appropriate training to bolster their knowledge of liquor and gaming legislation and matters of corporate governance. This is particularly important when members of governing bodies are responsible for clubs that derive (as this Club does) large amounts of revenue from liquor, gaming and other services.
990. The Authority agrees with the Complainant's submission that Mr Reilly's conduct warrants a stronger regulatory response than the disciplinary action taken against Mr Spray. The Authority is satisfied that it is appropriate, for the protection of the public and the industry, to disqualify Mr Reilly from participation in the registered clubs industry as a member of a governing body or a club secretary for the maximum period available under the Act.

991. The Authority notes that, unlike disciplinary complaints made under Part 9 of the *Liquor Act 2007*, the period of disqualification that may be ordered by the Authority in respect of a complaint made under Part 6A of the *Registered Clubs Act 1976* is limited to a maximum period of three (3) years.

## The Club

992. The Authority is satisfied that Grounds 1 through 4 of the Complaint have been established against the Club and notes that the Club opposes the Complainant's request that the Club meet the costs of the Secretary's investigation that preceded the making of this Complaint.
993. However, the Club makes the alternative submission that, if it is ordered to pay the Secretary's costs on the investigation, then such costs should be made payable "by reasonable instalments of \$1,500 per month" due to the Club's "very tight" financial position.
994. The Authority is satisfied, on the basis of the Complainant's submissions and in light of the substantial, if not complete, success that the Complainant has had in establishing its Complaint (noting the identified issues with the specification of Ground 5), that the Club should pay the Secretary's specified costs on the investigation that preceded this Complaint.
995. The Authority is satisfied, on the basis of the Club's final submissions and the Club's Annual Report for the year ended 31 October 2014, that the Club has recently been operating at a substantial loss for the last two reporting periods - albeit that the financial position is improving. The Club declared a loss of \$851,947 during 2012/13 and \$229,282 for 2013/14.
996. In those circumstances, the Authority grants the Club's request to allow a period for payment and orders that the Secretary's costs be paid back within 12 months of the date of this decision in instalments of not less than \$1,500 per month.
997. The Authority recommends that the Club contact the Complainant for details as to the preferred mode in which costs instalments shall be paid to the New South Wales Department of Justice and that the Club copy the Authority's General Counsel in to that communication so that the Authority will have a record of these payments being made.

## ORDERS

998. The Authority declares, under section 57H(2)(g) of the Act, that Mr Peter Spray is ineligible to stand for election to, or to be appointed to, or to hold office in, the position of both secretary or member of a governing body of the Club or any other registered club in New South Wales for a period of twelve (12) months from the date of this decision.
999. The Authority declares, under section 57H(2)(g) of the Act, that Mr Robert Reilly is ineligible to stand for election to, or to be appointed to, or to hold office in, the position of both secretary or member of a governing body of the Club or any other registered club in New South Wales for a period of three (3) years from the date of this decision.
1000. The Authority orders the Club, under section 57H(2)(i)(i) of the Act, to pay to the NSW Department of Justice the costs incurred by the (then) Secretary of the Department of Trade and Investment on the investigation or inquiry in relation to the Club under section 35A of the Act, being **\$19,188.44**, to be paid to the Department of Justice within 12 months of the date of this decision, in instalments of not less than \$1,500 per month.

## REVIEW RIGHTS

1001. Pursuant to section 57L of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (NCAT) by the Complainant, the Club or any person against whom disciplinary action is taken by the Authority under Part 6A of the Act. An application for review should be made within 28 days of the date of notification of this decision.
1002. 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 for further information.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie', followed by a period.

Micheil Brodie  
**Chief Executive**

09 November 2015