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Dear Sir/Madam

**Decision on Ground of Complaint in relation to
Marrickville RSL Club Limited
under Part 6A of the *Registered Clubs Act 1976***

INTRODUCTION

1. I refer to a letter of complaint (Complaint) dated 20 March 2014 made to the Independent Liquor and Gaming Authority (Authority) by Mr Anthony Keon, (Complainant), Director, Compliance and Enforcement Division, Office of Liquor, Gaming and Racing (OLGR) in his capacity as a delegate of the Secretary (Secretary) of (then) NSW Trade and Investment, now a function within the jurisdiction of the NSW Department of Justice.
2. The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (Act) in relation to the registered club known as Marrickville RSL Club Limited, whose current office premises is located at 1/269 Marrickville Road, Marrickville (Club). The Club has been in operation since 1957, but ceased trading on 31 December 2007.
3. While all disciplinary complaints made under Part 6A of the *Registered Clubs Act* are made in relation to the registered club itself, in this case, the sole ground of the Complaint agitated by the Complainant concerns the fitness and propriety of Mr Dalley Robinson, the former secretary of the Club.

4. The Complainant has provided details of the Club's liquor licence number LIQC300228576 from an internal OLGR database. This licence extract, which formed part of the Complainant's brief of evidence, disclosed that as of 7 June 2012, the Club held an unrestricted licence enabling it to potentially sell, or supply, liquor for consumption on the Club premises, 24 hours a day.
5. This licence record provided by the Complainant also indicates that the Club has a "non-restricted area authorisation" pursuant to section 22 of the Act.
6. The Authority notes that the Club's liquor licence pre-dated the operation of the mandatory 6-hour daily closure period for licensed premises that is now provided by section 11A of the *Liquor Act 2007*. That is, the Club was licensed to sell or supply liquor for consumption on its former premises without this restriction. While its actual trading hours may have been more limited, the Club was licensed to operate 24 hours per day.
7. As the holder of a Club licence, the Club was able to operate gaming machines on its former premises. While the licence as of the date of this decision records that only 30 gaming machine entitlements within the meaning of the *Gaming Machines Act 2001* are associated with this licence, the Authority's historical records disclose that as of December 2007, when the Club closed its doors, there were some 132 gaming machine entitlements associated with the licence.
8. As of August 2005, when Mr Robinson's contract was last renewed by the Club, the Club held 228 gaming machine entitlements. As of April 2002, when gaming machine entitlements were first issued pursuant to the *Gaming Machines Act 2001*, the Club held 288 entitlements. As of January 1992, prior to Mr Robinson commencing employment with the Club, the Club held 168 poker machines that were authorised to operate on its premises.

BACKGROUND

9. In a published decision dated 7 February 2014 the Authority determined, in response to a previous complaint made by OLGR in relation to the Club (Previous Complaint), that the Club Board, since ceasing to trade on 31 December 2007, had engaged in a course of conduct which had placed the Club in contravention of the Act – principally the requirement of section 10(1)(f) that a registered club have premises of which it is a *bona fide* occupier to serve the purposes of the club.
10. The Authority also found that the Club had contravened section 93 of the *Liquor Act 2007* with regard to its failure to notify the Authority that it had ceased to trade for a continuous period of more than six weeks, which is an offence against the Act that (if prosecuted) is punishable by a maximum fine of 50 penalty units, or \$5,500.
11. The Previous Complaint was subject to extensive procedural delays, arising in no small part from medical evidence provided by Mr Robinson's legal representatives to the effect that Mr Robinson was suffering a major depressive episode.
12. The evidence relied upon was eventually provided in the form of a medicolegal report from a consultant psychiatrist, Dr Jagdeep Sachdev dated 30 August 2013, who submitted that, while Mr Robinson was not rendered unable to respond to the Previous Complaint, his circumstances were such that it would be unfair to require him to comply with the Authority's timetable for the Previous Complaint. In his report Dr Sachdev could not specify when Mr Robinson's symptoms were likely to abate, but noted that a

previous episode (for which Dr Sachdev had also been consulted) rendered Mr Robinson unfit for work for more than one year.

13. Mr Robinson's medical circumstances delayed determination of the Previous Complaint in two respects – firstly, with time spent by Mr Robinson obtaining medicolegal evidence and enabling submissions from the Complainant in reply. Secondly, the case as specified in the Previous Complaint with respect to the Club was, in some respects, intertwined with the case against Mr Robinson and his personal fitness.
14. The Complainant was reluctant to withdraw that part of the case that concerned Mr Robinson personally (with the option of recommencing that part of the Previous Complaint at some later time). The Club (with whom the Authority agreed) submitted that the Authority was required under the Act to deal with the whole of the matter before it. That is, it could not purport to deal with and take disciplinary action on one of the grounds regarding the Club while suspending its consideration of that part of the Previous Complaint that concerned Mr Robinson until some later time.
15. As a consequence of this impasse and given the overwhelming public interest in the Authority finalising that part of the Previous Complaint that concerned the Club's non-compliance with the Act, the Authority determined to withdraw the Show Cause Notice issued against Mr Robinson and proceeded to determine that part of the Previous Complaint that concerned the Club's non-compliance.
16. The Authority found that the ground of complaint regarding the Club's contravention of section 10(1)(f) of the Act and section 93 of the *Liquor Act* 2007 had been established. Having lost confidence in the Club Board and with a view to restoring the Club to a position of compliance with the Act, the Authority ordered the replacement of the Club's board with an external administrator, Mr John Vouris of Lawler Partners (now PKF Australia). The Authority also ordered that the Club pay the Secretary's costs on the OLGR investigation that had given rise to the Previous Complaint.
17. The Authority notes (by way of background only and making no adverse observation against Mr Robinson) that, since taking control of the Club, Mr Vouris has abandoned the proposed amalgamation with Hurstville RSL Club that was foreshadowed by the Club's former directors during the latter stages of the Previous Complaint.
18. This proposed amalgamation with Hurstville RSL Club had been raised by way of a submission in mitigation by the Club and formed a central part of the Club's response to its prolonged failure to comply with section 10(1)(f) of the Act for a period of over six years.
19. Following his appointment, Mr Vouris established an expert independent committee to oversee the amalgamation process. This committee prepared a shortlist of the top three potential amalgamation partners for the Club. At the time of this decision, an amalgamation with the Canterbury-Hurlstone Park RSL Club was almost finalised.

THE COMPLAINT

The Complaint Material

20. The new Complaint letter is four pages long. The sole ground of complaint (Ground) agitated is that the former Club secretary, Mr Dalley Robinson, is not a fit and proper person to act as such for the purposes of section 57F(3)(g) of the Act.

21. Within this Ground are specified 19 Particulars, mostly allegations as to factual matters that are contended by the Complainant in order to establish that Mr Robinson is not a fit and proper person.
22. The Complaint letter is accompanied by a brief of evidence prepared by OLGR officers comprising over 1,000 pages of material including submissions, evidence, and other material upon which the Complainant relies (Brief of Evidence).
23. The Brief of Evidence primarily comprises the entire brief of evidence that was relied upon by OLGR in the Previous Complaint. This includes:
 - a) statements of evidence prepared by OLGR Inspectors during 2012
 - b) records of interview between OLGR investigators and Club directors
 - c) various correspondence between OLGR officers and the parties
 - d) copies of internal Club reports
 - e) material produced to OLGR in response to Notices to Produce issued by OLGR pursuant to the *Gaming and Liquor Administration Act 2007*
 - f) minutes of Club Board meetings
 - g) minutes of Club Annual General Meetings
 - h) various Club internal guidelines and handbooks
 - i) various Club financial reports
 - j) Club annual reports
 - k) Club registers (including assets registers)
 - l) documents regarding the engagement of Club executives
 - m) various Club books, bank statements and other financial records
 - n) *ClubsNSW Guidelines and Codes of Practice*
 - o) other miscellaneous documents gathered by OLGR during the course of its investigation that preceded the making of the Previous Complaint.
24. The Brief of Evidence also contains some additional material updating the evidence provided with the Previous Complaint. This further material includes:
 - a) the Authority's decision on the Previous Complaint dated 7 February 2014
 - b) medical notes and reports provided by Mr Robinson during the course of the Previous Complaint
 - c) further Club Board meeting minutes and Club financial reports
 - d) various correspondence between Mr Robinson and a number of other registered clubs in New South Wales regarding proposed amalgamations while Mr Robinson was the secretary of the Club.

Letter of Complaint from Mr Anthony Keon, (then) Acting Director of Compliance and Enforcement Division, OLGR to the Authority dated 20 March 2014

25. Mr Keon states that this letter constitutes a complaint under Part 6A of the Act, that the complaint is made pursuant to section 57F(1)(a), and that there is one Ground of the Complaint.
26. In his introduction to the Complaint, Mr Keon states that the Club is a company limited by guarantee as provided by the Memorandum of Association and Rules of the Club, and as such the *Corporations Act 2001* (Cth) applies to it except in so far as that Act's provisions are excluded by the Club's rules, the *Corporations (New South Wales) Act 1990* (NSW) and the Act.
27. Mr Keon then sets out section 180 of the *Corporations Act*, which provides the "business judgment rule" with respect to corporations. Mr Keon submits that this section is relevant to judging the conduct of a secretary where the Club is a corporation to which the *Corporations Act* applies.

28. Section 180 of that Act provides that:

- (1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
 - (a) were a director or officer of a corporation in the corporation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Business judgment rule

- (2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:
 - (a) make the judgment in good faith for a proper purpose; and
 - (b) do not have a material personal interest in the subject matter of the judgment; and
 - (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
 - (d) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

NOTE: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)--it does not operate in relation to duties under any other provision of this Act or under any other laws.

- (3) In this section:
"business judgment" means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

Ground of Complaint

29. The sole Ground of Complaint is specified as follows:

That the former secretary of the Marrickville RSL Club Limited ("the Club"), Dalley Robinson, is not a fit and proper person to act as such within the meaning of section 57F(3)(g) of the Act.

30. The Complainant then provides nineteen (19) Particulars in support of the Ground. The Particulars are as follows:

1. *Dalley Robinson was the secretary of the Club from 13 March 1992 (except for the period between 27 March 2008 and 17 November 2009 when he was on sick leave) until 8 May 2013.*
2. *The Club sold its premises at 359-367 Illawarra Road Marrickville NSW and ceased to trade on 31 December 2007.*
3. *From 31 December 2007 to 8 May 2013 Dalley Robinson failed to perform his functions and duties as Secretary and Chief Executive Officer of the Club and as an officer of a company limited by guarantee, with the degree of knowledge, ability and honesty required and to the standard required in the industry and by the relevant legislation.*
4. *Mr Robinson failed to ensure that the Club complied with the Liquor Act 2007 by:*
 - a. *Failing to provide to the Authority a Cease to Trade Notice in respect of its former premises until on or about 12 April 2012, contrary to section 93 of that Act; and*
 - b. *Failing to apply to the Authority for approval to remove the licence to premises other than those specified in the licence, contrary to section 59 of that Act.*
5. *Mr Robinson failed to ensure that the Club complied with the provisions of section 10(1)(f) of the Clubs Act by having premises of which it was the bona fide occupier of the Club and which were provided and maintained from the funds of the Club.*
6. *Attempts by Mr Robinson to secure alternate premises following the closure of the premises owned by the Club on 31 December 2007, were not carried out with reasonable diligence or skill. Attempts to secure alternate premises were delayed by Mr Robinson until such time that the sale of the Club's premises were settled in full, being 21 July 2011. Certainly from after the first instalment of the purchase price was received by the Club in early 2009 the Club was in a*

position to obtain premises had the secretary fulfilled his obligations to ensure the Club complied with the Act.

7. Negotiations undertaken by Mr Robinson to amalgamate the Club with the Belmore Return Services Community Club Limited (November 2011), the Marrickville Hardcourt Tennis Club (November 2011) and the Arncliffe Scots Sports and Social Club (December 2011) failed due to a requirement that any alternate arrangement must secure the current positions of the Board and Mr Robinson.
8. Mr Robinson did not act with diligence, skill or integrity in pursuing "an amalgamation" which focussed on the acquisition or taking over of another club in a manner highly favourable to himself and to the members of the Club's Board.
9. Advertisements seeking expressions of interest to amalgamate the Club only were placed after the commencement of the investigation into the Club by the Office of Liquor, Gaming and Racing Compliance Branch.
10. Mr Robinson failed to ensure that the Club had premises which were suitable to accommodate members from 31 December 2007 until his separation from the Club on 8 May 2013.
11. Mr Robinson did not make alternate arrangements to accommodate the Club's members pending the purchase of new premises by entering into an agreement with another local club for the provision of temporary honorary membership, as is common practice in the industry.
12. Mr Robinson failed to ensure that the Club complied with the terms of its Liquor Licence by failing to provide suitable accommodation for members of the Club.
13. Mr Robinson did not take corrective action to rectify or halt the significant financial losses suffered by the Club following its closure on 31 December 2007.
14. Between 1 July 2007 and 31 December 2011 the [Club] sustained the financial losses as shown below:-

Financial year ended 30 June 2007	\$1,346,817.00
Financial year ended 30 June 2008	\$2,280,256.00
Financial year ended 30 June 2009	\$1,074,155.00
Financial year ended 30 June 2010	\$364,734.00
Financial year ended 30 June 2011	\$578,599.00
Financial year ended 30 June 2012	\$1,271,894 – Profit due to sale of equipment of \$2,442,590.00
Financial year ended 30 June 2013	\$1,587,973.00
15. Pursuant to the Club Code of Practice and Best Practice Guidelines 2011, Model Board Charter (Appendix 2) a Secretary Manager's responsibilities are outlined as including: "Monitoring compliance with the Club Constitution and this Charter";
16. Mr Robinson did not monitor compliance with the Club Code of Practice and Best Practice Guidelines 2011 (and its predecessor, 2008 edition) on the following matters:
 - a. The requirement in cl.22(a) in Part B concerning Conduct of Directors, Management and Staff that such persons make decisions that are consistent with these aims/purpose and the interest of members and the requirement in cl.22(h) obtaining value for Club money spent. The Club was losing money whilst it lacked premises because its only income was the interest received on funds it had in the bank. Members were clearly not getting value for the money spent on the remuneration of Board members and the Secretary.
 - b. Mr Robinson did not take diligent or effective action with respect to monitoring compliance with the Guidelines concerning Remuneration of Club Executives which requires at cl. 9 that the business and financial circumstances of the Club be a critical consideration when determining remuneration. Mr Robinson did not take action to limit the Club's liabilities associated with remuneration during a time when the Club was unable to trade. In particular:
 - i. Mr Robinson accepted a variation of his contractual obligations allowing him to work at his own discretion with no stipulated minimum hours of work notwithstanding the very generous remuneration package;
 - ii. Mr Robinson accepted an employment contract which did not include performance indicators, as required by the Guidelines; and
 - iii. On or about 31 August 2005 Mr Robinson accepted an extension of his contract from 1 January 2010 until 31 December 2014 knowing that the Club was experiencing significant financial losses (for financial year ended 30 June 2005 loss was \$686,866.00).
17. Mr Robinson failed to put any effective strategic goals or business plans in place for the Club. In this and other respects detailed above he failed to comply with clause 8 of the Guidelines for Board Operation which states:

- "The Club manager is responsible to the Board for the overall management and performance of the Club in accordance with the strategy, plans and policies approved by the Board to achieve the agreed results."
18. *The Club Code of Practice states at Clause 5:*
 "Club Directors, managers and staff are custodians of members' property and have an obligation to ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity".
 - a. *Mr Robinson failed to manage the Club's property in a manner which was fair to members and efficient, and;*
 - b. *Mr Robinson's conduct concerning his remuneration lacked integrity in that: (i) he accepted a salary which was far in excess of what the Club could afford to pay; (ii) he continued to accept a salary after the Club ceased to trade in circumstances where he could have found alternate premises for the Club which would have allowed the Club to recommence trading and thus earning funds from which it could pay his salary; (iii) he accepted the use of 2 motor vehicles when his contract provided for one.*
 19. *Mr Robinson has been medically unfit to act as a secretary of a registered club since May 2012.*
 - a. *Mr Robinson has been suffering depression since May 2012.*
 - b. *Mr Robinson's depression has affected his ability to think clearly and objectively.*
 - c. *Mr Robinson's concentration is poor, his thinking is negative, his judgment is impaired and his energy levels are low.*
 - d. *Mr Robinson's depression is proving difficult to treat.*
 - e. *The condition of depression makes a person more likely to commit errors.*
 31. The Complainant recommends that, should the Authority find that the Ground is established, the Authority declare pursuant to section 57H(2)(g) of the Act that Mr Robinson is 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 of the Club and all other registered clubs in New South Wales for a period of three years.
 32. The Authority notes that the maximum period of disqualification that may be imposed under the Act by way of disciplinary action against a current or former secretary or member of a governing body of a registered club under Part 6A of the Act is three years.

PROGRESS OF THE COMPLAINT

33. The Authority allowed some time to pass before issuing Show Cause Notices in relation to this new Complaint, wary that the only available medical evidence before the Authority from Dr Sachdev indicated that Mr Robinson may be subject to his recently diagnosed medical condition for some indeterminate time, and that a previous episode had rendered him unfit for work for over one year.
34. On 1 September 2014, the Authority issued a Show Cause Notice via email to the Club (sent to the Club's administrator, Mr Vouris) in relation to this new Complaint. The timetable specified was tight – requiring that the Club seek further or better particulars of the Complaint by 29 September 2014, and that it provide the Complainant with written submissions and/or evidence addressing the merits of the Complaint within 28 days after the Complainant's statement of further particulars is communicated. The Show Cause Notice also gave the Club the option to make oral submissions at a conference and sought advice on any unavailable dates for legal representatives.
35. On 1 September 2014, a separate letter was sent to Mr Robinson inviting him to make submissions on the Complaint. This letter was sent via email to the address that Mr Robinson had used for direct communication with the Authority during the Previous Complaint and via Express Post to his residential address.

36. This letter advised Mr Robinson that he may request any further particulars from the Complainant by 29 September 2014 and that, if he was proposing to put on any further medical evidence as to his previously diagnosed condition, then a full specialist medicolegal report must be provided to the Authority by 1 November 2014.
37. On 17 September 2014, Mr John Vouris provided a concise 1-page written submission in response to the Show Cause Notice on behalf of the Club, advising that the Club "does not defend" the Ground of Complaint.
38. Mr Vouris states that the Club is "of the view that Mr Dalley Robinson is not a fit and proper person to act as such within the meaning of section 57F(3)(g) of the Act".
39. Mr Vouris noted that he had provided the Authority with a report dated 21 February 2014 which addressed matters relating to this Complaint and that, as previously advised, he had reported these matters to the Australian Securities and Investments Commission (ASIC). Mr Vouris noted that ASIC have advised that they "will not take any further action in relation to potential breaches of the law".
40. Mr Robinson did not comply with the timetable specified in the invitation to make submissions dated 1 September 2014.
41. As is not uncharacteristic with the conduct of disciplinary complaints involving registered clubs (particularly when former officers are involved), substantial procedural delays then ensued. Most of those delays were attributable to requests for extensions of time sought by Mr Robinson's legal representatives, while one period of delay is attributable to the Complainant.
42. On 22 September 2014, Mr Robinson's solicitor, Ms Amanda Farmer of the law firm Lawyers Chambers on Riley wrote to the Authority claiming that Mr Robinson did not receive the invitation to make submissions in response to this Complaint until 11 September 2014 and that Mr Robinson had not been monitoring the email address that he had used during the course of the Previous Complaint. Ms Farmer sought an extension of time on behalf of her client.
43. On 23 September 2014, the Authority's General Counsel advised Ms Farmer that, while the Authority's Chief Executive was not completely satisfied with Mr Robinson's explanation, the timetable would be amended to allow for the ten days lost until Mr Robinson instructed his solicitors.
44. Notwithstanding this extension, Mr Robinson did not comply with this amended timetable.
45. On 30 October 2014, Ms Farmer advised the Authority that Mr Robinson had now seen a different psychiatrist and that they were expecting a report in "a couple of weeks".
46. No further medical report was produced to the Authority.
47. At about 4:45pm on 10 December 2014, the Authority's General Counsel emailed Ms Farmer, advising that Mr Robinson was now in default of the amended timetable and the Authority would consider the matter at its upcoming meeting on 17 December 2014 and that, as previously advised, the Authority may determine the Complaint on the material before it.
48. At 10:06pm on 10 December 2014, Ms Farmer advised the Authority that she had been in a meeting that afternoon and that Mr Robinson would now *not* be raising any psychiatric evidence regarding an inability to respond to the Complaint.

49. Ms Farmer proposed a further extended timetable for the making of preliminary and final submissions as follows:
1. *Mr Robinson seek further and better particulars of the Complaint by 30 January 2015;*
 2. *The Complainant provide a statement of further and better particulars to Mr Robinson by 20 February 2015;*
 3. *Mr Robinson provide the Complainant with written submissions and/or evidence addressing the merits of the Complaint by 20 March 2015.*
50. On 18 December 2014, the Authority's General Counsel advised Ms Farmer and the Complainant that the Authority had considered Ms Farmer's latest proposal at its meeting of 17 December 2014 and accepted her proposed further amended timetable.
51. On 30 January 2015, Ms Farmer requested that the Complainant provide further and better particulars of the Complaint.
52. On 6 February 2015, Ms Farmer sent a further letter to Ms Marina Rizzo of the Crown Solicitor's Office (who acts for the Complainant), stating that she is instructed to make an offer to "settle" the Complaint, including an undertaking as to Mr Robinson's future involvement with the clubs industry.
53. Ms Farmer stated that this offer would remain open until 5:00pm on 6 March 2015.
54. On 11 March 2015, Ms Rizzo emailed the Authority on behalf of the Complainant, copying Ms Farmer. Ms Rizzo stated that "a delay has been encountered by the Complainant in providing the statement of further and better particulars to Mr Robinson".
55. Ms Rizzo requested that the timetable for submissions be further amended to require the following:
1. *Statement of further and better particulars from the Complainant to be provided to Mr Robinson by 20 March 2015;*
 2. *Mr Robinson to provide the Complainant with written submissions and/or evidence addressing the merits of the Complaint by 17 April 2015 (being a 4 week period as contemplated in the original timetable).*
56. In a brief email dated 11 March 2015, Ms Farmer simply stated that Mr Robinson had "no objection" to the amended timetable now proposed by Ms Rizzo. That further amendment of the timetable proposed by the Complainant was accepted by the Authority.
57. As noted below, another request for an extension of the timetable would be made by Mr Robinson during April 2015, this time arising from directors' and officers' insurance that was apparently funding Mr Robinson's legal services in response to this Complaint. This matter and further procedural exchanges between Mr Robinson and the Complainant are discussed below.

First Statement of Further Particulars from the Complainant dated 20 March 2015

58. On 20 March 2015, Ms Rizzo provided a statement of further and better particulars in response to Mr Robinson's request for particulars dated 30 January 2015. Those further particulars are summarised, by reference to the relevant Particulars of the Complaint (reproduced in italics), as follows:

Particular 3

59. Particular 3 of the Complaint alleges as follows:

From 31 December 2007 to May 2013 Dalley Robinson failed to perform his functions and duties as Secretary and Chief Executive Officer of the Club and as an officer of a company limited by guarantee, with the degree of knowledge, ability and honesty required and to the standard required in the industry and by relevant legislation.

60. In response to Mr Robinson's request for particulars as to the allegation that Mr Robinson did not perform his functions and duties as Secretary during the period commencing on 31 December 2007 to 8 May 2013 (the Period), the Complainant refers to "the entirety of the Complaint" including the attachments to the Complaint, and the "entirety of the Notice of Decision and Disciplinary Action" dated 7 February 2014 in relation to the Previous Complaint (Previous Decision).
61. In response to Mr Robinson's request for particulars as to the alleged knowledge, ability and honesty required by the industry and that exhibited by Mr Robinson for each year during the Period, the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011), the legislative provisions set out in the Complaint, paragraphs 62 to 69 of the Previous Decision, and all minutes of the Board and Club House Committee Meetings listed in the Index of Documents submitted with the Complaint. The Complainant also refers to the document entitled "Guide to Documents Submitted with Complaint" (Guide to Documents).
62. [The Authority notes that the *Guide to Documents* is attached to the Complainant's Statement of Further and Better Particulars dated 20 March 2015. This is the same schedule of the evidence or other material that was relied upon by the Complainant in support of the Previous Complaint and that forms part of the Brief of Evidence in support of this Complaint.]

Particular 5

63. Particular 5 of the Complaint alleges as follows:

Mr Robinson failed to ensure that the Club complied with the provisions of section 10(1)(f) of the Clubs Act by having premises of which it was the bona fide occupier of the Club and which were provided and maintained from the funds of the Club.

64. In response to Mr Robinson's request for particulars as to the period during which Mr Robinson allegedly failed to comply with section 10(1)(f) of the Act, the Complainant submits that the relevant period is the period from 31 December 2007 when the Club sold its premises at 359-367 Illawarra Road, Marrickville and ceased to trade.

Particular 6

65. Particular 6 of the Complaint alleges as follows:

Attempts by Mr Robinson to secure alternate premises following the closure of the premises owned by the Club on 31 December 2007, were not carried out with reasonable diligence or skill. Attempts to secure alternate premises were delayed by Mr Robinson until such time that the sale of the Club's premises were settled in full, being 21 July 2011. Certainly from after the first instalment of the purchase price was received by the Club in early 2009 the Club was in a position to obtain premises had the secretary fulfilled his obligations to ensure the Club complied with the Act.

66. In response to Mr Robinson's request for particulars of the alleged attempts by Mr Robinson to secure alternate premises which were not carried out with reasonable

diligence and skill, and the occasions when these attempts occurred, the Complainant refers to paragraphs 89 to 94 of the Previous Decision, the entirety of the Complaint, and "in particular" the material referred to in the Guide to Documents. The Complainant submits that the allegation in Particular 6 of the Complaint refers to "ongoing conduct from 31 December 2007 until the date of Mr Robinson's retirement" and that it relies upon paragraphs 62 to 97 of the Previous Decision.

67. In response to Mr Robinson's request for particulars of the allegation that attempts to secure premises were delayed by Mr Robinson until such time that the sale of the Club's premises was settled in full, being 21 July 2011, the Complainant refers to paragraphs 62 to 63; 68 to 69; 80 to 90; 93 to 97; 101 and 104 of the Previous Decision and the evidence or material cross-referenced in the Guide to Documents which is listed against "Ground 2".
68. The Complainant submits that it also relies upon the statements of OLGR Inspector Thomas Transfield dated 31 October 2012 (Transfield Statement) and OLGR Inspector Louis Antoine dated 16 November 2012 (Antoine Statement) and the following interviews between OLGR investigators and:
- a) Mr Dalley Robinson dated 27 March 2012
 - b) Club director Mr Leonard Rodgers dated 29 February 2012
 - c) Club director Mr Peter Bowden dated 29 February 2012
 - d) Club director Mr Neville Peters dated 29 February 2012
 - e) Club director Mr Wayne Olsen dated 29 February 2012
 - f) Club director Mr Brian Webster dated 28 February 2012
 - g) Club director Mr John Wales dated 28 February 2012
 - h) Club director Mr Kenneth Fawles dated 28 February 2012
 - i) Club director Mr David Holmes dated 28 February 2012.
69. [The Authority notes that the Complainant does not specify which pages of those interviews provide the relevant evidence.]
70. In response to Mr Robinson's request for particulars of the "first instalment of the purchase price...received by the Club in early 2009", the Complainant refers to paragraphs 87 to 89 of the Previous Decision.
71. In response to Mr Robinson's request for particulars of what legal requirement or code "determines what is reasonable diligence or skill in an attempt to secure alternate premises", the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and "the legislative provisions set out in the Complaint".

Particular 7

72. Particular 7 of the Complaint alleges as follows:

Negotiations undertaken by Mr Robinson to amalgamate the Club with the Belmore Return Services Community Club Limited (November 2011), the Marrickville Hardcourt Tennis Club (November 2011) and the Arncliffe Scots Sports and Social Club (December 2011) failed due to a requirement that any alternate arrangement must secure the current positions of the Board and Mr Robinson.

73. In response to Mr Robinson's request for particulars of the "negotiations undertaken" by Mr Robinson and the allegation that the negotiations "failed" because of a "requirement that any alternate arrangement must secure the current positions of the Board and Mr Robinson", the Complainant submits that it relies upon paragraph 82 of the Previous Decision and the records of interview referred to therein, and paragraph 93. The Complainant also relies upon the OLGR interview with Mr Robinson dated

27 March 2012, the correspondence in relation to proposed amalgamations (Complainant documents LA4(33) and LA4(34) of the Brief of Evidence), and the additional documents and Board meeting minutes listed in the Guide to Documents at "Ground 2, Particular (q)".

Particular 8

74. Particular 8 of the Complaint alleges as follows:

Mr Robinson did not act with diligence, skill or integrity in pursuing "an amalgamation" which focussed on the acquisition or taking over of another club in a manner highly favourable to himself and to the members of the Club's Board.

75. In response to Mr Robinson's request for particulars of the allegations contained in this Particular, the Complainant submits that it relies upon "the entire complaint" and paragraphs 82 to 84 and 95 to 96 of the Previous Decision.

Particular 10

76. Particular 10 of the Complaint alleges as follows:

Mr Robinson failed to ensure the Club had premises which were suitable to accommodate members from 31 December 2007 until his separation from the Club on 8 May 2013.

77. In response to Mr Robinson's request for particulars of the allegation that Mr Robinson "failed to ensure that the Club had premises", the Complainant submits that it relies upon paragraphs 89 to 94 of the Previous Decision; the Transfield Statement; the Antoine Statement; and the transcripts of the records of interview between OLGR investigators and Mr Robinson dated 27 March 2012, Club director Mr Peter Bowden dated 29 February 2012, Club director Mr David Holmes dated 28 February 2012 and Club director Mr Kenneth Fawles dated 28 February 2012.

78. [The Authority notes that the Complainant does not specify which pages of those interviews provide the relevant evidence.]

Particular 11

79. Particular 11 of the Complaint alleges as follows:

Mr Robinson did not make alternate arrangements to accommodate the Club's members pending the purchase of new premises by entering into an agreement with another local club for the provision of temporary honorary membership, as is common practice in the industry.

80. In response to Mr Robinson's request for particulars of what is meant by "common practice in the industry" and the source of such alleged common practice, the Complainant submits that it relies upon the legislative provisions set out in the Complaint, paragraph 89 of the Previous Decision and the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011).

Particular 12

81. Particular 12 of the Complaint alleges as follows:

Mr Robinson failed to ensure that the Club complied with the terms of its Liquor Licence by failing to provide suitable accommodation for members of the Club.

82. In response to Mr Robinson's request for particulars of the terms of the liquor licence with which it is alleged Mr Robinson did not comply, the Complainant submits that it relies upon paragraphs 66 to 69 of the Previous Decision; the Antoine Statement; the application for Summary Liquor Licence (Complainant document LA1 of the Brief of Evidence); the email from OLGR licensing officer Mr Peter Hart to OLGR Inspector Louis Antoine dated 12 April 2012 (Complainant document LA15 of the Brief of Evidence) and the record of interview between OLGR investigators and Mr Robinson dated 27 March 2012.

Particular 13

83. Particular 13 of the Complaint alleges as follows:

Mr Robinson did not take corrective action to rectify or halt the significant financial losses suffered by the Club following its closure on 31 December 2007.

84. In response to Mr Robinson's request for particulars of the "corrective action" Mr Robinson failed to take, the Complainant submits that it refers to "the entire complaint" and the documents cross-referenced in relation to "Ground 2, Particulars (g), (h), (i), (j), (o), (p), (q), (r), (s) and (v)" in the Guide to Documents.
85. In response to Mr Robinson's request for particulars of the "significant financial losses" alleged to have been suffered by the Club, the Complainant refers to paragraph 95 of the Previous Decision and the evidence or material referred to in the Guide to Documents.

Particular 14

86. Particular 14 of the Complaint alleges as follows:

Between 1 July 2007 and 31 December 2011 the [Club] sustained the financial losses as shown below:-

<i>Financial year ended 30 June 2007</i>	<i>\$1,346,817.00</i>
<i>Financial year ended 30 June 2008</i>	<i>\$2,280,256.00</i>
<i>Financial year ended 30 June 2009</i>	<i>\$1,074,155.00</i>
<i>Financial year ended 30 June 2010</i>	<i>\$364,734.00</i>
<i>Financial year ended 30 June 2011</i>	<i>\$578,599.00</i>
<i>Financial year ended 30 June 2012</i>	<i>\$1,271,894 – Profit due to sale of equipment of</i>
	<i>\$2,442,590.00</i>
<i>Financial year ended 30 June 2013</i>	<i>\$1,587,973.00</i>

87. In response to Mr Robinson's request that the Complainant provide copies of all documents from which the above information has been sourced, the Complainant submits that "all relevant documents" have already been provided in the Brief of Evidence.

Particular 15

88. Particular 15 of the Complaint alleges as follows:

Pursuant to the Club Code of Practice and Best Practice Guidelines 2011, Model Board Charter (Appendix 2) a Secretary Manager's responsibilities are outlined as including: "Monitoring compliance with the Club Constitution and this Charter".

89. In response to Mr Robinson's question as to the basis on which it is suggested that the ClubsNSW Code of Practice and Best Practice Guidelines 2011 represent documents "with which Mr Robinson was required to comply", the Complainant submits that "this is

an inappropriate request for particulars and is a matter for submissions" and that "Mr Robinson was required to comply with the Code for the entirety of the time that Mr Robinson was the Club's secretary and the Code or its predecessor was in existence".

Particular 16

90. Particular 16 of the Complaint alleges as follows:

Mr Robinson did not monitor compliance with the Club Code of Practice and Best Practice Guidelines 2011.

- a. *The requirement in cl. 22(a) in Part B concerning Conduct of Directors, Management and Staff that such persons make decisions that are consistent with these aims/purpose and the interest of members and the requirement in cl. 22(h) obtaining value for Club money spent. The Club was losing money whilst it lacked premises because its only income was the interest received on the funds it had in the bank. Members were clearly not getting value for the money spent on the remuneration of the Board members and the Secretary.*
- b. *Mr Robinson did not take diligent or effective action with respect to monitoring compliance with the Guidelines concerning the Remuneration of Club Executives which requires at cl. 9 that the business and financial circumstances of the Club be a critical consideration when determining remuneration. Mr Robinson did not take action to limit the Club's liabilities associated with remuneration during a time when the Club was unable to trade. In particular:*
 - i. *Mr Robinson accepted a variation of his contractual obligations allowing him to work at his own discretion with no stipulated minimum hours of work notwithstanding the very generous remuneration package;*
 - ii. *Mr Robinson accepted an employment contract which did not include performance indicators, as required by the Guidelines; and*
 - iii. *On or about 31 August 2005 Mr Robinson accepted an extension of his contract from 1 January 2010 until 31 December 2014 knowing that the Club was experiencing significant financial losses (for financial year ended 30 June 2005 loss was \$686,866.00).*

91. In response to Mr Robinson's request for further particulars as to the Complainant's view that "members were clearly not getting value for money spent on the remuneration of Board members and the Secretary", the Complainant submits that "the amount the Club was paying on the remuneration of the Board and the Secretary was a considerable amount of money in itself".
92. In response to Mr Robinson's request for particulars as to the relevant "standard of diligent and effective action" and any "criteria required by law to determine such standard", the Complainant refers to pages 2 and 3 of the Complaint.
93. In response to Mr Robinson's request for particulars as to "the law that requires performance indicators to be included in employment contracts", the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and the legislative provisions set out in the Complaint.
94. In response to Mr Robinson's request for particulars of the alleged acceptance by Mr Robinson of the extension of his contract on or about 31 August 2005, the Complainant refers to the Antoine Statement and the minutes of the Club Board meeting held on 22 July 2005 (at which the Club Board discussed extending Mr Robinson's employment contract).

Particular 17

95. Particular 17 of the Complaint alleges as follows:

Mr Robinson failed to put any effective strategic goals or business plans in place for the Club. In this and other respects detailed above he failed to comply with clause 8 of the Guidelines for Board Operation which states:

"The Club manager is responsible to the Board for the overall management and performance of the Club in accordance with the strategy, plans and policies approved by the Board to achieve the agreed results."

96. In response to Mr Robinson's request for further particulars as to the "sort of effective strategic goals and business plans" which Mr Robinson allegedly should have put in place, the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and the legislative provisions set out in the Complaint.

Particular 18

97. Particular 18 of the Complaint alleges as follows:

The Club Code of Practice states at Clause 5:

"Club Directors, managers and staff are custodians of members' property and have an obligation to ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity."

- a. *Mr Robinson failed to manage the Club's property in a manner which was fair to members and efficient, and;*
 - b. *Mr Robinson's conduct concerning his remuneration lacked integrity in that (i) he accepted a salary which was far in excess of what the Club could afford to pay; (ii) he continued to accept a salary after the Club ceased to trade in circumstances where he could have found alternate premises for the Club which would have allowed the Club to recommence trading and thus earning funds from which it could pay his salary; (iii) he accepted the use of 2 motor vehicles when his contract provided for one.*
98. In response to Mr Robinson's request for particulars of the "alleged failure of Mr Robinson to manage the Club's property fairly", the Complainant refers to paragraphs 62 to 81 of the Previous Decision and "the entirety of the Brief of Evidence".
99. In response to Mr Robinson's request for particulars of the required "standard of fairness", the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and the legislative provisions set out in the Complaint.
100. In response to Mr Robinson's request for particulars of the alleged failure by Mr Robinson to "manage the Club's property efficiently", the Complainant refers to paragraphs 62 to 81 of the Previous Decision.
101. In response to Mr Robinson's request for particulars of the alleged "lack of integrity" exhibited by Mr Robinson in his conduct concerning his remuneration, the Complainant submits that "this is a matter for submissions" and in terms of the "standard of integrity", refers to the "relevant legislative framework and related principles" set out in the Complaint and in the Previous Decision.
102. In response to Mr Robinson's request for particulars of the allegation that the salary accepted by Mr Robinson was "far in excess of what the Club could afford to pay", the Complainant refers to paragraphs 95 and 96 of the Previous Decision and the material referred to therein.
103. In response to Mr Robinson's request for particulars of the "circumstances" in which it is alleged that Mr Robinson "could have found alternate premises" for the Club which

would have allowed the Club to recommence trading, the Complainant refers to paragraphs 89 to 93 of the Previous Decision and the Antoine Statement.

104. In response to Mr Robinson's request for particulars of the allegation that Mr Robinson "accepted the use of two motor vehicles", the Complainant submits that it relies upon the Transfield Statement; the record of interview between OLGR investigators and Mr Robinson dated 27 March 2012; and clause 10 of the Deed of Agreement as to Employment between the Club and Mr Robinson dated 27 November 2000 (Complainant document LA16 of the Brief of Evidence).
105. The Complainant also relies upon the following interviews between OLGR investigators and:
- a) Club director Mr Leonard Rodgers dated 29 February 2012
 - b) Club director Mr Peter Bowden dated 29 February 2012
 - c) Club director Mr Neville Peters dated 29 February 2012
 - d) Club director Mr Wayne Olsen dated 29 February 2012
 - e) Club director Mr John Wales dated 28 February 2012
 - f) Club director Mr Kenneth Fawles dated 28 February 2012.
106. [The Authority notes that the Complainant does not specify which pages of those interviews provide the relevant evidence.]

Particular 19

107. Particular 19 of the Complaint alleges as follows:

Mr Robinson has been medically unfit to act as a secretary of a registered club since May 2012.

- a. *Mr Robinson has been suffering depression since May 2012.*
- b. *Mr Robinson's depression has affected his ability to think clearly and objectively.*
- c. *Mr Robinson's concentration is poor, his thinking is negative, his judgment is impaired and his energy levels are low.*
- d. *Mr Robinson's depression is proving difficult to treat.*
- e. *The condition of depression makes a person more likely to commit errors.*

108. In response to Mr Robinson's request for particulars of this allegation including copies of any evidence or documentation relied upon, the Complainant submits that "the medical reports attached to the Complaint" are relied upon in support of this allegation and refers Mr Robinson to those medical reports.

Further procedural communications between the parties during April and May 2015

109. On 14 April 2015, Ms Farmer emailed Ms Rizzo, seeking the Complainant's consent to a further extension of the current timetable. The reasons for the request were, firstly, that the insurance coverage of counsel's fees for Mr Robinson's submissions had only been confirmed on 27 March 2015; secondly, due to the Easter break additional time is needed to obtain counsel's advice on evidence and to make any submissions; and thirdly, Ms Farmer states that the particulars provided by the Complainant "are not proper particulars" as they "merely refer back to the allegation".
110. Ms Farmer proposed that the Complainant prepare and serve its written submissions first in order to "resolve the insufficiencies" identified by Ms Farmer with the further particulars provided. Ms Farmer states that Mr Robinson is agreeable to the Complainant having a period of four weeks to prepare those further submissions, with Mr Robinson then serving his material within two weeks of being served with the Complainant's submissions. Ms Farmer states that Mr Robinson's intention is for the matter to be ready for conference once this has occurred.

111. On 15 April 2015, Ms Rizzo advised Ms Farmer that an application for an extension of time by Mr Robinson would not be opposed by the Complainant. In relation to Mr Robinson's request for further and better particulars, the Complainant does not agree that the particulars provided with the Complaint on 20 March 2014 were unsatisfactory, and rather that "many" of Mr Robinson's requests for further particulars were not "appropriate". Ms Rizzo also advised that, in order for the Complaint to be resolved without further delay, she (Ms Rizzo) is instructed to agree to Ms Farmer's proposal that the Complainant prepare and serve its written submissions first – that is, within four weeks.
112. On 17 April 2015, the Authority's General Counsel emailed Ms Farmer, enquiring as to whether there was any reason that a request for insurance coverage was not made by Mr Robinson until 24 February 2015, given that Mr Robinson had received the Show Cause Notice in relation to the Complaint on 11 September 2014. This email also sought advice on any unavailable dates for Mr Robinson's legal representatives to attend a conference in relation to this matter.
113. On 20 April 2015, Ms Farmer emailed the Authority, stating that the request for insurance coverage was first made by Mr Robinson in October 2014 but was not approved until 18 February 2015 – however that approval "did not cover counsel's fees", which was why a further request for insurance approval was sought on 24 February 2015. Ms Farmer also advised unavailable dates for Mr Robinson's legal representatives and proposed that the Complainant file and serve its written submissions by 15 May 2015, while Mr Robinson would file and serve his submissions and/or evidence addressing the Complaint by 29 May 2015.
114. On 20 April 2015, Ms Rizzo emailed the Authority, advising unavailable dates for the Complainant's legal representatives.

Submission by Ms Victoria Hartstein, Counsel for the Complainant dated 12 May 2015

115. This submission, which was sent via email from Ms Rizzo to Ms Farmer on 15 May 2015, provides submissions on the Complaint.
116. In this submission, Ms Hartstein refers to the case law on the meaning of the expression "fit and proper person", including *Australian Broadcasting Tribunal v Bond* [1990] HCA 33 in which Toohey and Gaudron JJ said at paragraph 380 that the expression "standing alone, carries no precise meaning", and per *Hughes and Vale Pty Limited v New South Wales (No 2)* [1955] HCA 28, that "each case must depend upon its own circumstances".
117. Ms Hartstein also cites case law on the purpose of the *Registered Clubs Act*, including a quote from Kirby P (as he then was) at paragraph 373C of *Seagulls Rugby League Football Club v Superintendent of Licences & Anor* (1992) 29 NSWLR 357 that:

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.
118. Ms Hartstein refers to this as the "Seagulls test" (Seagulls Test) in this submission.
119. Ms Hartstein provides the following submissions by reference to the Particulars as enumerated in the Complaint. They may be summarised below:

Particular 3

120. In relation to Particular 3, Ms Hartstein submits that:
- a) The Complainant relies on the entirety of the Previous Decision
 - b) Mr Robinson was asked in his interview with OLGR inspectors on 27 March 2012 what training he had done as a club secretary and did not give an answer; nor has Mr Robinson provided any evidence of having done any formal training
 - c) The "relevant legislation" is the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011), the *Liquor Act 2007* and the *Corporations Act 2001* – which "should have been within the knowledge" of Mr Robinson
 - d) The evidence must be read with the Seagulls Test in mind – that is, looking to the "total conduct or pattern of conduct disclosed".

Particular 4

121. In relation to Particular 4, Ms Hartstein submits that:
- a) Mr Robinson admitted in his OLGR interview of 27 March 2012 that he was not aware that the Club was required to lodge a Cease to Trade Notice until shortly before that interview
 - b) In the Previous Decision, the Authority found that the Club had not complied with the *Liquor Act* in this respect, which constitutes a "relatively serious infraction".

Particular 5

122. In relation to Particular 5, Ms Hartstein submits that:
- a) From 31 December 2007 when the Club sold its premises at 359-367 Illawarra Road, Marrickville, it did not have premises of which it was the *bona fide* occupier for the purposes of the Club
 - b) The purposes of the Club are stated in the Club's *Memorandum of Understanding* as being, briefly, "to provide for members' guests a social and sporting Club with all the usual facilities of a Club"
 - c) It is a matter for the secretary, Mr Robinson, to inform the Board of the Club what the legislation requires and what good governance requires, and then to ensure that those legislative requirements are met by the Club.

Particular 6

123. In relation to Particular 6, Ms Hartstein submits that:
- a) The Complainant relies on paragraphs 62 to 70 and 76 to 97 of the Previous Decision, including the finding at paragraph 77 that the Club acted as though the legislative requirement for the Club to have premises of which it was the *bona fide* occupier for the purposes of the Club was "discretionary" rather than "mandatory"
 - b) The Complainant also relies on the Transfield Statement; the Antoine Statement; and the OLGR interviews with Club directors Mr Peter Bowden, Mr Neville Peters, Mr Wayne Olsen, Mr Brian Webster, Mr John Wales, Mr Kenneth Fawles and Mr David Holmes (all provided in 2012), which formed part of the evidence in the Previous Complaint that have been resubmitted as evidence in support of this Complaint.

Particular 7

124. In relation to Particular 7, Ms Hartstein submits that the Complainant relies on paragraphs 82 and 93 of the Authority's Previous Decision and the correspondence in relation to the proposed amalgamation with Belmore Returned Services Community

Club Limited and Arncliffe Scots Sports and Social Club Limited provided by the Complainant in the Brief of Evidence.

Particular 8

125. In relation to Particular 8, Ms Hartstein submits that, in negotiating "an amalgamation", the Club insisted on having its own Board as the board of any amalgamated club and their secretary (Mr Robinson) as the secretary of any amalgamated club, which "undermined any attempts to amalgamate". Ms Hartstein also submits that the Complainant relies on paragraphs 95 to 96 of the Authority's Previous Decision and that Mr Robinson was "unable or unwilling" to answer this issue when it was put to him in his interview with OLGR investigators.

Particular 9

126. In relation to Particular 9, Ms Hartstein submits that, in his interview with OLGR investigators on 27 March 2012, Mr Robinson said: "We decided earlier this year that it would be a better idea to put out an expression of interest."

Particular 10

127. In relation to Particular 10, Ms Hartstein submits that the Complainant relies on paragraphs 89 to 94 of the Authority's Previous Decision; the Transfield Statement; the Antoine Statement; and the records of interview between OLGR investigators and Mr Robinson on 27 March 2012 and Club directors Mr Peter Bowden on 29 February 2012, Mr David Holmes on 28 February 2012 and Mr Kenneth Fawles on 28 February 2012.

Particular 11

128. In relation to Particular 11, Ms Hartstein submits that the Complainant relies on paragraphs 89 to 92 of the Previous Decision. The Complainant also submits that Mr Robinson "admitted" at page 22 of his interview with OLGR investigators that the Club did not make any alternate arrangements for members.

Particular 12

129. In relation to Particular 12, Ms Hartstein submits that the lack of *bona fide* premises for the purposes of the Club "represents a breach of a condition of the Club licence" that the Club shall have accommodation appropriate for a registered club with facilities for its members to enjoy. The Complainant submits that Mr Robinson "should have been aware of these provisions" (section 10(1)(f) of the Act and sections 19(1)(a) and 11(3) of the *Liquor Act 2007*) and refers to paragraph 69 of the Previous Decision.

Particular 13

130. In relation to Particular 13, Ms Hartstein submits that the Complainant relies on paragraphs 94 to 98 of the Previous Decision and pages 14 to 16 of Mr Robinson's interview with OLGR investigators on 27 March 2012, where Mr Robinson stated that he "could not see anything wrong with his failure to halt the huge financial losses the Club was suffering".

Particular 14

131. In relation to Particular 14, Ms Hartstein submits in support of the stated losses during this period that the Complainant relies on paragraph 12 of the Antoine Statement.

Particular 15

132. In relation to Particular 15, Ms Hartstein submits that Mr Robinson, as the secretary and chief executive officer of the Club, was "required to monitor compliance with the Club's constitution and ensure the Club complied with best practice guidelines" and that he failed to comply with these requirements between 31 December 2007 and 8 May 2013.

Particular 16

133. In relation to Particular 16, Ms Hartstein submits that:
- a) The Complainant relies upon the legislative provisions set out in the Complaint and the "business judgment rule" in section 180(2) of the *Corporations Act 2001* and submits that, in the circumstances of this Club, "the decisions made by Mr Robinson in relation to his contract were not made in good faith and for a proper purpose"
 - b) At a Club Board meeting on 27 February 2008, Mr Robinson agreed to the suspension of clause 11 of his contract which required him to work at least 40 hours per week, and yet retain his contracted rate of pay
 - c) It was "not in the interests of the Club" to have no premises as the Club was "losing money" and its only income was interest received on its funds in the bank, "yet it had outgoings for the remuneration paid to its secretary and directors"
 - d) On 31 August 2005, the Board approved a motion that an offer be made to Mr Robinson to extend the term of his contract to 31 December 2014, which Mr Robinson accepted. In his interview with OLGR investigators on 27 March 2012, the Complainant submits that Mr Robinson stated that he "needed the security of the extension" as he was "going through a hard time".

Particular 17

134. In relation to Particular 17, Ms Hartstein submits that the Complainant relies upon the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and the "legislative provisions set out in the Complaint".

Particular 18

135. In relation to Particular 18, Ms Hartstein submits that:
- a) The Complainant relies on paragraphs 62 to 81 and 93 to 96 of the Previous Decision; the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011); the legislative provisions set out in the Complaint; the Antoine Statement; the Transfield Statement; and the records of interview between OLGR investigators and Mr Robinson dated 27 March 2012 and Club directors Mr Leonard Rodgers dated 29 February 2012, Mr Peter Bowden dated 29 February 2012, Mr Neville Peters dated 29 February 2012, Mr Wayne Olsen dated 29 February 2012, Mr John Wales dated 28 February 2012 and Mr Kenneth Fawles dated 28 February 2012. The Complainant also relies upon clause 10 of the Deed of Agreement as to Employment between the Club and Mr Robinson dated 27 November 2000 (Complainant document LA16 of the Brief of Evidence)

- b) Clause 5 of the *ClubsNSW Code of Practice* requires Club staff to "ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity"
- c) In his interview with OLGR investigators on 27 March 2012, Mr Robinson agreed that he was then earning "about \$396,000 per annum" and he thought that was reasonable despite the fact that the Club had ceased to trade.

Particular 19

136. In relation to Particular 19, Ms Hartstein submits that:
- a) The Complainant relies upon Mr Robinson's treating psychiatrist's reports which were annexed to the Complaint. In the earliest report (which Ms Hartstein states was undated but received by the Authority on 29 May 2013), Dr Sachdev states: "In his current condition [Mr Robinson] is not able to attend to the paperwork and other preparation required for his hearing"
 - b) In his report of 3 June 2013, Dr Sachdev states that Mr Robinson "is not able to attend court matters"
 - c) In his report of 30 August 2013, Dr Sachdev states that "Mr Robinson's depression has affected his ability to think clearly and objectively" and that "his concentration is poor, his thinking is negative, his judgment is impaired and his energy levels are low"
 - d) The position of secretary of a registered club is a demanding position requiring not only knowledge and integrity, but the ability to "make decisions for the benefit of the Club and its members". The Complainant submits that when a person's judgment is impaired, "he does not have the capacity or ability to carry out the duties" of a secretary of a club.
137. In conclusion, Ms Hartstein submits that the Complainant does not rely upon the final Particular (Particular 19) to show that Mr Robinson is not fit and proper.
138. Ms Hartstein submits that Particular 19, in relation to Mr Robinson's health, is "in a somewhat different class of particulars" in that it refers to a matter "possibly outside his control".
139. Ms Hartstein submits that "there is no evidence on which the Authority could find that Mr Robinson now has the requisite honesty, knowledge and ability or that he will have those essential characteristics in the future" and argues that there is "more than sufficient evidence" to satisfy the Authority that Mr Dalley Robinson was not and is not a fit and proper person to be appointed to, or to hold office in, the position of secretary or member of the governing body of the Club, and all other registered clubs in New South Wales for a period of three years.

Further Procedural Communication from Mr Robinson to the Complainant dated 21 May 2015

140. On 21 May 2015, Ms Farmer emailed Ms Rizzo, arguing that the submissions served by Counsel for the Complainant on 15 May 2015 "do not address the insufficiencies identified in our letter of 20 March 2015" as the Complainant has "still not properly particularised the case being made against our client". Ms Farmer states that the Complainant "continues to rely" on the Previous Complaint, which she submits "is not evidence" against Mr Robinson in the present matter. Ms Farmer also advises that Mr Robinson is continuing to prepare his material as best he can in light of the "limited guidance" provided by the Complainant's further particulars and submissions.

Statement of Mr Dalley Robinson dated 29 May 2015

141. On 29 May 2015, Ms Farmer emailed a letter to Ms Rizzo and copying the Authority. This letter referred to the evidence provided by Mr Robinson in response to the Complaint and advised that Mr Robinson "also wishes to file submissions prior to any hearing of this matter by the Authority".
142. Ms Farmer's letter attached an unsworn statement of Mr Dalley Thomas Robinson dated 29 May 2015 (Robinson Statement).
143. The Robinson Statement is 20 pages long and is accompanied by separate documents or annexures marked "A" through "PP". The Robinson Statement also refers to an exhibit marked "DTR1".
144. Without purporting to reproduce this material, the attachments to the Robinson Statement are identified below:

Annexure A: Minutes of a meeting of the board of directors of the Club dated 13 February 1992

Annexure B: Deed of agreement as to Mr Robinson's employment by the Club dated 30 June 1992

Annexure C: Minutes of a meeting of the board of directors of the Club dated 28 March 1994

Annexure D: Minutes of a meeting of the board of directors of the Club dated 19 December 1994

Annexure E: Copy of the first two pages of the "*Marrickville RSL Journal*" for the September 1995 quarter, referring to the Club's net profit for the financial year ending 30 June 1995

Annexure F: Affidavit of Mr Robinson as a respondent in the Licensing Court of New South Wales in an action brought against him by the (then) Director of Liquor and Gaming dated 19 October 1995

Annexure G: Schedule of the Club's "net profits before tax" from 1973 to 1995

Annexure H: Club annual report for the year ended 30 June 1995

Annexure I: Copy of the Club's balance sheet as at 31 October 1995

Annexure J: Table recording the Club's "profit before tax" for the financial years ending 1996 to 2007 inclusive

Annexure K: Profit and loss summaries for the Club for each year from 30 June 1996 to 30 June 2007

Annexure L: Deed of agreement as to employment between Mr Robinson and the Club dated 27 November 2000

Annexure M: Minutes of meetings of the Club board of directors dated 22 July 2005 and 31 August 2005

Annexure N: Minutes of a meeting of the Club board of directors dated 30 July 2007

Annexure O: Legal advice from *HWL Ebsworth Lawyers* to Mr Robinson regarding the Club's consideration of how it can restructure its services and improve its financial viability, dated 24 August 2007

Annexure P: Minutes of a meeting of the board of directors of the Club dated 29 August 2007

Annexure Q: Minutes of a special meeting of the Club board of directors dated 10 September 2007

Annexure R: Minutes of a meeting of the Club board of directors dated 27 September 2007

Annexure S: Minutes of a special meeting of the Club board of directors dated 4 October 2007

- Annexure T:** Minutes of the adjourned Annual General Meeting of the Club dated 26 November 2007
- Annexure U:** Document entitled "Calls by Dalley Robinson to Ken Edwards, Senior Compliance Officer, Office of Liquor, Gaming and Racing, Financial Years 2008-2012"
- Annexure V:** Minutes of a meeting of the Club board of directors dated 27 February 2008
- Annexure W:** Minutes of a meeting of the Club board of directors dated 28 March 2008
- Annexure X:** Minutes of a meeting of the Club board of directors dated 25 February 2009
- Annexure Y:** Minutes of a meeting of the Club board of directors dated 9 March 2009
- Annexure Z:** Minutes of a meeting of the Club board of directors dated 27 April 2009
- Annexure AA:** Letter from Mr Ken Hogan, President of the Earlwood Ex-Servicemen's Club Limited to Mr Robinson dated 3 February 2010
- Annexure BB:** Letter from Mr Robinson on behalf of the Club to Mr Michael McGrath, President of the Belmore Returned Services and Community Club Limited dated 24 November 2011 and a letter from Mr McGrath to Mr Robinson dated 14 December 2011
- Annexure CC:** Letter from Mr Robinson on behalf of the Club to Mr G J Parker of *Parker Insolvency* (on behalf of the Arncliffe Scots Sports and Social Club Limited) dated 16 December 2011; a letter from Mr G J Parker to Mr Robinson dated 20 December 2011; a letter from Mr Robinson on behalf of the Club to Mr G J Parker dated 22 December 2011; response from Mr G J Parker dated 23 December 2011; further letters from Mr Robinson on behalf of the Club to Mr G J Parker dated 5 January 2012 and 6 February 2012; a response from Mr G J Parker dated 9 February 2012; and a short letter addressed to "To whom it may concern" from Mr Paul Singles of the Arncliffe Scots Sports and Social Club Limited dated 24 April 2013;
- Annexure DD:** Newspaper advertisement taken out by the Club for expressions of interest from potential amalgamation partners, dated 14 March 2012
- Annexure EE:** Letter from Mr Robinson on behalf of the Club to Mr Grant Amer, Manager of the Kogarah RSL Club dated 2 May 2012; letter in response from Mr Amer dated 15 May 2012 and a letter addressed to "To whom it may concern" from Mr Amer dated 26 April 2013
- Annexure FF:** Fax from Mr Geoff Knight of The Souths Junior Rugby League Club to Mr Robinson enclosing a memorandum of understanding between the Club and The Juniors dated 22 June 2012
- Annexure GG:** Document entitled "Randwick Rugby Club Limited Amalgamation Due Diligence Review for Marrickville RSL Club Limited" dated August 2012
- Annexure HH:** Letter from Mr Robinson on behalf of the Club to Mr Lindsay Sadgrove, President of the Yarra Bay 16ft Skiff Sailing Club dated 14 September 2012 and response from Mr Barry Wallace dated 29 October 2012
- Annexure II:** Newspaper advertisement taken out by the Club for expressions of interest from potential amalgamation partners, dated 29 September 2012
- Annexure JJ:** Document entitled "Revesby Heights Ex-Servicemen's Memorial Club Limited Amalgamation Due Diligence Review For Marrickville RSL Club Limited" dated 20 December 2012
- Annexure KK:** Email from Ms Jo Cahill, Director of RT Hospitality Solutions on behalf of the Coogee Bowling Club to Mr Peter Bowden dated 19 July 2013
- Annexure LL:** Legal advice from *HWL Ebsworth Lawyers* to the Club dated 7 June 2008 regarding the Abadeen proposal
- Annexure MM:** Further legal advice from *HWL Ebsworth Lawyers* to the Club dated 7 July 2008 regarding the Abadeen proposal
- Annexure NN:** Document entitled "Draft Settlement Sheet" for the settlement date of the sale to Abadeen (21 July 2011)

Annexure OO: Minutes of a Club Board meeting dated 2 April 2013

Annexure PP: Character reference letter addressed to "To an interested person" from Mr Henry Morris JP, current President of ClubsNSW (Eastern Metropolitan Zone) dated 26 April 2013

Exhibit "DTR1" to Mr Robinson's statement dated 29 May 2015: Bundle of minutes of Club Board meetings and general meetings from 30 January 2008 to 30 January 2013 inclusive.

145. In the Robinson Statement, Mr Robinson states that he was appointed as chief executive officer of the Club on 13 February 1992 under a two year contract for a salary of **\$65,000** per annum. Mr Robinson refers to a minute of the Club Board meeting held on this date, attached at Annexure A to the Robinson Statement.
146. The Authority notes that this Board meeting minute noted that, while the annual salary under the (then) New South Wales industrial award for club managers was \$36,300, the Board was aware that some club secretary/managers were receiving "up to" \$100,000 per annum at that time.
147. Mr Robinson states that his salary was then increased to **\$100,000** per annum at a Club Board meeting on 28 March 1994. Mr Robinson attaches a copy of the minutes for this meeting at Annexure C to the Robinson Statement, which states:

...the Board were very happy with the manner in which things were progressing due to efforts by the Chief Executive Officer...and moved that the increase of \$35,000 to the Chief Executive Officer's base salary to take effect 1 April be approved.
148. Mr Robinson states that his salary was then increased to **\$208,000** per annum at a Club Board meeting on 19 December 1994. He states that this occurred after "a new record for profitability" had been set by the Club for that year. Mr Robinson attaches a copy of the minutes of this meeting at Annexure D to the Robinson Statement, which indicate that under a proposed new enterprise bargaining agreement, tendered by Mr Robinson for the period to 31 December 1999, Mr Robinson's salary would increase to **\$4,000** per week. This motion was carried.
149. Mr Robinson states that from when he first assumed his position as secretary he "immediately took steps to hire more efficient, skilled staff" and developed a "zero tolerance policy" toward "those found abusing their position".
150. Mr Robinson states that he "invented the games *Monkey Madness* and *The Cavalcade of Cash*" which were "massively popular" at the Club, and registered the intellectual property in those games which were then licensed exclusively to the Club.
151. Mr Robinson then states that the Club Board presented him with a Deed of Agreement as to Employment on 27 November 2000 which provided for a ten (10) year engagement and a salary of **\$338,000** per annum, which he accepted.
152. Mr Robinson states that at its meeting on 31 August 2005, the Club Board approved a further extension of his employment contract to 31 December 2014. Mr Robinson states that during this meeting the Board noted that the extension was "in the long term interests of the Club" and attaches minutes of the relevant Club Board meetings dated 22 July 2005 and 31 August 2005 at Annexure M to the Robinson Statement.
153. Mr Robinson states that he knew that the Board had "high expectations" of him and that there was "considerable responsibility" resting on his shoulders.

154. Mr Robinson states that in about August 2007 he sought legal advice on behalf of the Club from HWL Ebsworth Lawyers regarding those "considerations" to which the Club should have regard should it wish to cease trading and sell or develop its premises. Mr Robinson states that this request for legal advice followed a "drop in income" which the Club "could not ignore".
155. Mr Robinson then outlines the actions which he says that he took in causing the Club to cease trading during 2007. These matters are outlined from paragraph 62 of his statement. They include Mr Robinson's recollection of having numerous telephone conversations with OLGR Senior Compliance Officer Mr Ken Edwards and having meetings of the Club Board during September and October 2007. Mr Robinson notes the Club's adjourned Annual General Meeting in November 2007 which indicated that the Club's members "approved the Club ceasing to trade and disposing, selling or leasing the Club property". Attached at Annexures Q, R, S and T to the Robinson Statement are the minutes of the above mentioned meetings.
156. Mr Robinson states that toward the end of 2007 there were "a number of false media reports" about him including "attacks on my character and credibility" which "took its toll" on his health, causing him to take medical leave in about March 2008. [The Authority notes that Mr Robinson does not provide any evidence of these media reports, nor does he describe what these reports were about in any detail.]
157. Mr Robinson states that his insurer, arranged through his superannuation fund, paid 90 per cent of his salary during this time off work, while the Club paid the other 10 per cent of his salary.
158. Commencing at page 10 of the Robinson Statement is a table that summarises Mr Robinson's account of those "approaches made by the Club to potential amalgamation partners" during the period between **June 2008** and **July 2013**.
159. In summary, those approaches to third party clubs and Mr Robinson's account of the outcome of any communication or expression of interest (EOI) put to those clubs are as follows:
- a) February 2008: Marrickville Bowling and Recreation Club (MBRC) – EOI not accepted by MBRC
 - b) April 2009: Brighton-le-Sands Amateur Fishermen's Club, in liquidation – determined by Club not to be financially viable
 - c) January 2010: Earlwood Ex-Servicemen's Club (EEC) – EEC declined EOI
 - d) August 2011: Greek Macedonian Club – deemed "unsuitable" by Club
 - e) November 2011: Marrickville Hardcourt Tennis Club (MHTC) – no response from MHTC to Club's offer
 - f) November 2011: Belmore Returned Services and Community Club (BRSC) – BRSC declined EOI.
 - g) December 2011: Arncliffe Scots Sports and Social Club (ASSSC) – ASSSC declined Club's offer
 - h) 14 March 2012: Club's EOI advertised in *Sydney Daily Telegraph*
 - i) May 2012: Kogarah RSL Club (KRSL) – KRSL declined Club's offer
 - j) June 2012 and July 2013: Souths Junior Rugby League Club (SJRLC) – memorandum of understanding declined by Club
 - k) August 2012: Randwick Rugby Club (RRC) – the Club did not proceed after due diligence
 - l) September 2012 to May 2013: Yarra Bay Sailing Club (YBSC) – YBSC declined Club's offer
 - m) 29 September 2012: Further EOI advertised in *Sydney Daily Telegraph*

- n) December 2012: Revesby Heights Ex-Servicemen's Club – the Club did not proceed after due diligence
 - o) June 2013: Coogee Bowling Club – the Club did not proceed after due diligence.
 - p) July 2013: Hurstville RSL Club – this matter was ongoing at the time of Mr Robinson's resignation in May 2013.
160. Mr Robinson states that the "overwhelming majority" of the clubs that were approached by the Club Board during this period were either "insolvent" or "on the brink of insolvency". The Club Board had proposed in each case to "pay all debts" in the event of an amalgamation with those clubs.
 161. Mr Robinson states that the "main stumbling block" for the Club was that each other club approached insisted that they would be the "acquiring" club and that the Marrickville RSL would "have no say in the management of the amalgamated Club".
 162. Mr Robinson states that the Club Board took the view that it was "in the interests of the Club's members" that the Club's cash assets be "protected".
 163. Mr Robinson states that there was "never any dissent from any Board member" in relation to his negotiations on behalf of the Club with potential amalgamation partners.
 164. Mr Robinson states that his employment contract allowed for the use of one motor vehicle and that in about 2012, when the Club premises was being demolished, he took a second car to his home "so that it was parked securely". Mr Robinson states that he did not use this car as his "day to day vehicle".
 165. Mr Robinson states that on 8 May 2013 he entered into a Deed of Agreement as to Termination of Employment with the Club. This occurred after he was diagnosed with "major depression" and prescribed antidepressant medication and psychotherapy.
 166. Mr Robinson then states that he does not consider that his ill health made him unfit to "carry out functions as the CEO of the Club generally".
 167. Mr Robinson states that the "stress of these investigations" and the "trashing of my reputation" is of a "fundamentally different character" from the ordinary stresses of managing the Club.
 168. The Robinson Statement concludes with the statement that, during his "more than 21 years" of service as secretary and manager of the Club, Mr Robinson had "no licensing convictions" recorded against him; he has "no history of adverse regulatory incidents"; he has "no criminal convictions"; he has "not been issued with any Penalty Notices in connection with the operation of [the Club]" and he has at all times "held the requisite qualifications in relation to the Responsible Service of Alcohol and Responsible Conduct of Gambling".

Mr Robinson's Submissions on the Merits of the Complaint dated 2 July 2015

169. The covering email from Ms Farmer dated 2 July 2015 sent to the Complainant and the Authority states that Mr Robinson "believes that the process undertaken by the Office [the Authority notes that this is an apparent reference to OLGR] in respect of this complaint has been fundamentally unfair" as Mr Robinson has not been provided with "proper particulars" of his conduct alleged to mean that he was not a fit and proper person to hold his position as secretary of the Club.

170. Ms Farmer states that it had been agreed between the Crown Solicitor's Office and Mr Robinson that the Complainant's submissions would deal with these "deficiencies", but they in fact did not.
171. Ms Farmer states that Mr Robinson's submissions are provided "under protest" on account of procedural unfairness and that they are "reserving any right of our client to challenge the processes of the Office".
172. Enclosed with Ms Farmer's email are submissions from Mr Robinson's barrister, Mr Mark Seymour dated 2 July 2015.
173. Mr Seymour argues that the Authority should decide to take no action against Mr Robinson by reason that the Complaint has "both procedural and substantive defects".
174. Mr Seymour submits that Mr Robinson is not obliged to give evidence or to put a positive case as to why disciplinary action should not be taken against him as the onus is on OLGR to establish its case.
175. Briefly, the key submissions made by Mr Seymour on behalf of Mr Robinson in relation to the Complaint may be summarised as follows:
- a) Admissions made by the Club "do not and cannot bind Mr Robinson" in his response to the Complaint
 - b) The orders sought by OLGR in this Complaint against Mr Robinson "lack utility", as on 6 February 2015 Mr Robinson made an open offer to give an undertaking not to stand for election, or be appointed to, or hold office in, the position of secretary in any registered club, including the Club; however this offer was not accepted by the Crown Solicitor's Office
 - c) The Complaint is "confusing and unfair" on the basis that the Complaint is framed in the present tense, but the Particulars refer to past events
 - d) The Complaint "makes no effort" to address the requirements of section 57J(2)(a) of the Act and provides no particulars as to "the standards Mr Robinson's conduct is being judged against"
 - e) The Complainant "comprehensively" failed to provide full and clear details of the "factual basis" that would support its allegations against Mr Robinson
 - f) Evidence led against the Club "is not relevant" to the Complaint against Mr Robinson, "who makes no admissions"
 - g) The following submissions made on behalf of Mr Robinson are made "in protest" as Mr Robinson should not be required to participate in a process that "exposes him" to a civil penalty until a "proper case" has been brought against him.
176. Mr Seymour then sets out a chronology of events dating from 24 August 2007 when the Club received advice from HWL Ebsworth Lawyers that it could lawfully sell its premises at Marrickville, to 30 January 2013 when Mr Robinson made a report to the Club Board on the "progress of discussions" in relation to proposed amalgamations with the Club.
177. Mr Seymour submits that the following periods of time are relevant to understand the role of Mr Robinson within the Club:
- a) Events leading up to the proposal to sell the Club premises
 - b) Events around the decision to sell and circumstances immediately following the decision but prior to Mr Robinson taking sick leave
 - c) The period of Mr Robinson's leave
 - d) The period following Mr Robinson's return to work.

178. Mr Seymour notes that Mr Robinson was only secretary of the Club during the periods noted at a), b) and d) above and therefore any analysis of the Club's conduct by reference to Mr Robinson's management must be limited to these periods.
179. Mr Seymour submits that it must be taken into account that Mr Robinson was required to manage the "*consequences of a series of decisions*" made by the *Board* during Mr Robinson's leave.
180. Mr Seymour argues that Mr Robinson *is* a fit and proper person to act as a secretary of a club and always has been, though he has no current desire to act as such, whereas it was the *Club* which substantially failed to find new premises for its operations.
181. Mr Seymour submits that the public interest has been served by the Authority's Previous Decision and the imposition of an administrator to the Club, as "people aware of the [Previous] Decision will be deterred from carrying out similar action in future".
182. In relation to "Ground 2" of the Complaint, being the "failure to lodge a Cease to Trade Notice and approval to remove the licence" [the Authority notes that this is an apparent reference to Particular 4 of the Complaint], Mr Seymour submits that Mr Robinson was "not obliged" by either section 59 or section 93 of the *Liquor Act 2007* to notify the Authority in writing that the premises had ceased to trade or to apply for approval to remove the licence to other premises.
183. However, Mr Seymour states that Mr Robinson accepts that he "ought to have identified the particular obligation under section 93 of the *Liquor Act* and ensured that the licensee would not breach that provision".
184. Mr Seymour states that Mr Robinson "did draw the attention of the Board" to their obligations under the legislation during "the deliberations on the closure", but after this he was "not involved in the management of the Club for a substantial period" after the initial closure of the Club on 31 December 2007.
185. In relation to "Ground 3", being the "failure to have premises or to secure temporary or alternative premises" [the Authority notes that this is an apparent reference to Particulars 2, 3, 5, 6, 9, 10, 11 and 12 of the Complaint], Mr Seymour states that there was "nothing unfit or improper" in Mr Robinson's conduct in this respect by reason that he:
- a) "commissioned advice for the Board from lawyers, accountants, valuers and the Club auditor"
 - b) "canvassed options for the Board to consider"
 - c) "brought the resolution of the issues to a quick determination by the Board".
186. Mr Seymour submits that the Club's "unreasonable delays" in making decisions about acquiring alternative premises should be imputed to the *Board* and that "Mr Robinson could not act contrary to the express wishes of the Board".
187. Mr Seymour submits that a finding that Mr Robinson fell short of the standards expected of secretaries, by reason of the finding that the *Club* fell short of the standards expected of registered clubs in securing alternative premises, would be "to overturn the structure of corporate decision-making".
188. In relation to what Mr Seymour describes as "Ground 4" of the Complaint in respect of "the negotiations" [the Authority notes this is an apparent reference to Particulars 7 and 8 of the Complaint], Mr Seymour submits that it is "unclear" that Mr Robinson's negotiations with other clubs were deficient.

189. In relation to what Mr Seymour describes as "Ground 5" of the Complaint in respect of "arresting losses incurred by payment of salary" [the Authority notes that this is an apparent reference to Particulars 13, 14, 16, 17 and 18 of the Complaint], Mr Seymour submits that "the allegation takes an extraordinarily narrow view of events".
190. Mr Seymour submits that in the period prior to 2009:
- a) it was "not foreseeable" that there would be "substantial delays" in executing the plan to acquire alternative premises
 - b) that in the intervening period Mr Robinson was on medical leave
 - c) that after his return from medical leave, "the evidence demonstrates that Mr Robinson was actively involved in the management of the Club".
191. Mr Seymour submits that Mr Robinson's activities are indicative of "a person dedicated to the social objectives of the Club" and that "the position of secretary is not intended to be honorary".
192. Mr Seymour contends that it is "common" in registered clubs throughout New South Wales for persons to hold the office of secretary despite a club having "a negative financial position" in a given year.
193. In relation to what Mr Seymour describes as "Ground 7" in respect of Mr Robinson's "fitness" [the Authority understands this to be a reference to Particular 19 of the Complaint], Mr Seymour submits that the Complainant "misstates the content and effect of Mr Robinson's medical evidence" and that it is "fundamentally unfair" for the Complainant to use that evidence against Mr Robinson "because the evidence does not support that conclusion".
194. Mr Seymour submits that the only opinion provided by the medical experts was that Mr Robinson "should not be subject to the stress and effects" of the Previous Complaint and that the Authority cannot make any finding on this aspect of the current Complaint.
195. Mr Seymour concludes with the submission that the Authority "should decide to take no action on the Complaint".

Second Statement of Further Particulars from the Complainant dated 20 July 2015

196. On 6 July 2015 the Authority's General Counsel sent an email to Ms Rizzo, copying Ms Farmer, inviting the Complainant to consider Mr Robinson's procedural objections with a view to producing any further information or material that had been sought by Mr Robinson in order to clarify the case against him.
197. The Complainant was invited to provide any further particulars or submissions or evidence that the Complainant wished to raise in reply by 20 July 2015.
198. On 20 July 2015, the Complainant provided a second statement of further particulars. Briefly, the Complainant makes the following submissions by reference to the following Particulars as they are enumerated in the initial Complaint Letter:

Particular 3

199. In response to Mr Robinson's request for further particulars of the allegation that Mr Robinson did not perform his functions and duties as secretary and chief executive officer during the period commencing on 31 December 2007 to 8 May 2013, the Complainant submits that, in summary:

- a) Mr Robinson failed to ensure that the Club provided the Authority with a Cease to Trade Notice until on or about 12 April 2012
- b) Mr Robinson delayed attempting to secure premises for the Club until the sale of the Club's premises was settled in full
- c) Mr Robinson failed to advertise seeking expressions of interest to amalgamate the Club until *after* the commencement of an OLGR investigation into the Club
- d) Mr Robinson failed to ensure that the Club had premises which were suitable to accommodate members from 31 December 2007 to 8 May 2013
- e) Mr Robinson failed to make alternative arrangements to accommodate members pending the purchase or other acquisition of new premises
- f) Mr Robinson did not monitor the Club's compliance with the *ClubsNSW Code of Practice and Best Practice Guidelines* by making decisions that were in the interests of the Club by obtaining value for money spent on the remuneration of himself and members of the Board
- g) Mr Robinson did not take action to limit the Club's liabilities when the Club was unable to trade and instead:
 - i. accepted a variation of his contractual obligations allowing him to work at his own discretion with no stipulated minimum hours
 - ii. accepted an employment contract which did not include performance indicators
 - iii. on or about 31 August 2005 accepted an extension of his contract knowing that the Club was experiencing significant financial losses
- h) Mr Robinson accepted a salary far in excess of what the Club could afford to pay
- i) Mr Robinson accepted the use of two motor vehicles when his contract provided for one
- j) Mr Robinson has been medically unfit to act as secretary since May 2012
- k) Mr Robinson was on sick leave from 27 March 2008 to 17 November 2009.

200. In response to Mr Robinson's request for further particulars of the knowledge, ability and honesty required by the industry and the relevant legislation, the Complainant submits that, in summary:

- a) The industry requires knowledge of "the legislation that regulates clubs" – in particular the Act, the *Liquor Act 2007* and the *Gaming Machines Act 2001*
- b) The industry requires knowledge of the best practice in the industry as set out in:
 - i. The *ClubsNSW Code of Practice and Best Practice Guidelines 2008* at paragraphs 5, 18-19, 22, 27-31 and 42-45
 - ii. The *ClubsNSW Best Practice Guidelines 2008 for Remuneration of Club Executives* at paragraphs 9-10
 - iii. The *ClubsNSW Code of Practice and Best Practice Guidelines 2011* at paragraphs 5, 18-19, 22, 27-31 and 42-45
 - iv. The *ClubsNSW Best Practice Guidelines 2011 for Remuneration of Club Executives* at paragraphs 9-10
- c) The industry requires the ability to put the above knowledge into practice
- d) The industry requires honesty to "the standard recognised by ordinary decent people" including truthfulness and good judgment for proper purposes.

201. In response to Mr Robinson's request for particulars of the alleged knowledge, ability and honesty exhibited by Mr Dalley Robinson for each year in the Period, the Complainant submits that, in summary:

- a) The Complainant relies upon "the entire complaint and attachments, in particular documents numbered 6, 7, 51, 74, 77 and all minutes of the Board and Club House Committee Meetings listed in the Index of Documents submitted with the Complaint". [The Authority notes that Complainant document "6" is the Antoine Statement. Complainant document "7" is a copy of the *Guide to Documents* submitted with the Previous Complaint. Complainant document "51" is a

document providing handwritten notes on an extract of the Club's bank accounts. Complainant document 74 provides documents showing the details of the payment of Club directors' honoraria for the year ended 30 June 2011. Complainant document "77" is the invitation to make submissions on the Complaint issued by the Authority to Mr Robinson on 1 September 2014.]

- b) The Complainant also relies upon the *Guide to Documents* and "the documents cross-referenced within that document"
- c) Mr Robinson has not done any formal training as a secretary (according to page 4 of the transcript of Mr Robinson's record of interview with OLGR investigators at Complainant document LA14 of the Brief of Evidence)
- d) At the time he was interviewed on 27 March 2012, Mr Robinson thought that his current salary of **\$396,000** per annum was a reasonable salary for his employment, yet by this time the Club had ceased to trade (according to page 7 of Mr Robinson's record of interview at Complainant document LA14 of the Brief of Evidence).

Particular 5

202. In response to Mr Robinson's request for particulars as to the period during which it is alleged Mr Robinson failed to comply with section 10(1)(f) of the Act, the Complainant submits that the relevant period began when the Club sold its premises at 359-367 Illawarra Road, Marrickville on 31 December 2007 and ceased to trade.

Particular 6

203. In response to Mr Robinson's request for particulars of the alleged attempts by Mr Robinson to secure alternate premises which were not carried out with reasonable diligence or skill, the Complainant submits that, in summary:
- a) The Complainant relies upon "the entirety of the Complaint" and paragraphs 89 to 94 of the Authority's Previous Decision
 - b) The Complainant relies upon the *Guide to Documents* provided with the Complaint
 - c) The Complainant relies upon Complainant documents numbered LA4(33) and LA4(35) of the Brief of Evidence with regard to the attempt to amalgamate with the Arncliffe Scots Sports and Social Club
 - d) The Complainant relies upon Complainant document LA4(34) of the Brief of Evidence with regard to the attempt to amalgamate with the Belmore Returned Services and Community Club
 - e) The Complainant relies upon "Peter Bowden's evidence", with regard to the allegation that the Club explored amalgamation with 23 other registered clubs. [The Authority notes that this is an apparent reference to the transcript of the record of interview between OLGR investigators and Mr Peter Bowden provided with the Brief of Evidence.]
204. In response to Mr Robinson's request for particulars of "each occasion" to which Particular 6 relates, the Complainant submits that, in summary:
- a) This allegation refers to ongoing conduct from 31 December 2007 until the date of Mr Robinson's retirement. For detailed particulars, the Complainant refers to paragraphs 62 to 97 of the Authority's Previous Decision and the material cross-referenced in the *Guide to Documents* enclosed with the Complaint and located in the Brief of Evidence.
 - b) Mr Robinson admitted that he thought that "they [the Club] didn't have the money to really do any in depth amalgamation until 21 July 2011" (page 4 of his record of interview with OLGR investigators at Complainant document LA14 of the Brief of Evidence).

205. In response to Mr Robinson's request for particulars of the oral evidence relied upon by the Complainant in support of Particular 6, the Complainant submits that it relies upon the Transfield Statement and the Antoine Statement.
206. The Complainant submits that it also relies upon the following records of interview between OLGR investigators and:
- a) Mr Robinson dated 27 March 2012
 - b) Club director Mr Leonard Rodgers dated 29 February 2012
 - c) Club director Mr Peter Bowden dated 29 February 2012
 - d) Club director Mr Neville Peters dated 29 February 2012
 - e) Club director Mr Wayne Olsen dated 29 February 2012
 - f) Club director Mr Brian Webster on 28 February 2012
 - g) Club director Mr John Wales on 28 February 2012
 - h) Club director Mr Kenneth Fawles dated 28 February 2012
 - i) Club director Mr David Holmes dated 28 February 2012.
207. [The Authority notes that the Complainant does not specify which pages of those interviews provide the relevant evidence.]

Particular 7

208. In response to Mr Robinson's request for particulars of the "negotiations undertaken" by Mr Robinson and the allegation that the negotiations "failed" because of a requirement that any alternate arrangement must secure the current positions of the Board and Mr Robinson, the Complainant submits that it relies upon paragraph 82 of the Authority's Previous Decision and the records of interview referred to therein, and paragraph 93 of the Previous Decision. The Complainant also relies on the interview between OLGR investigators and Mr Robinson on 27 March 2012, and correspondence in relation to the proposed amalgamations with the Club and the Arncliffe Scots Sports and Social Club (Complainant documents LA4(33) and LA4(35) of the Brief of Evidence) and the Belmore Returned Services and Community Club (Complainant document LA4(34) of the Brief of Evidence).

Particular 8

209. In response to Mr Robinson's request for particulars of the allegations contained in this Particular, the Complainant submits that it relies upon "the entire complaint", paragraphs 82 and 95 to 96 of the Authority's Previous Decision and Complainant document LA4(33) of the Brief of Evidence, being correspondence in relation to the proposed amalgamation with the Club and the Arncliffe Scots Sports and Social Club; Complainant document LA4(34) of the Brief of Evidence, being correspondence in relation to the proposed amalgamation with the Club and the Belmore Returned Services and Community Club; and Complainant document LA4(35) of the Brief of Evidence, being the minutes of the Club Board meeting dated 30 January 2012 and further correspondence in relation to the proposed amalgamation with the Club and the Arncliffe Scots Sports and Social Club.
210. The Complainant also submits that Mr Robinson admitted that he did not pursue an amalgamation before 21 July 2011 (and refers to page 4 of Mr Robinson's interview with OLGR investigators dated 27 March 2012 at Complainant document LA14 of the Brief of Evidence).

Particular 10

211. In response to Mr Robinson's request for particulars of the allegation that Mr Robinson "failed to ensure that the Club had premises which were suitable to accommodate members from 31 December 2007 until his separation from the Club on 8 May 2013", the Complainant submits that it relies upon paragraphs 89 to 94 of the Authority's Previous Decision; the Transfield Statement; the Antoine Statement; and the OLGR interviews with Club directors Mr Robinson dated 27 March 2012, Mr Peter Bowden dated 29 February 2012, Mr David Holmes dated 28 February 2012, and Mr Kenneth Fawles dated 28 February 2012.
212. [The Authority notes that the Complainant does not specify particular sections of these documents upon which it relies.]

Particular 11

213. In response to Mr Robinson's request for particulars of what is meant by "common practice in the industry" and the source of such alleged common practice, the Complainant submits, in summary, that:
- a) The Complainant relies upon the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and the "legislative provisions set out in the Complaint"
 - b) The Complainant "believes" that it is "best practice" for clubs to "enter into an arrangement with another local club to provide temporary accommodation for members until such time as alternative premises become available"
 - c) The Complainant submits that this practice has been "adopted by clubs in NSW" in recent years – for example, the South Sydney Leagues Club which in recent years "entered into an arrangement where its members could use the premises of the South Sydney Graphic Arts Club at Mascot for a period of time pending completion of renovations at its premises".

Particular 12

214. In response to Mr Robinson's request for particulars of the terms of the liquor licence with which it is alleged Mr Robinson did not comply, the Complainant submits that it relies upon paragraphs 66 to 69 of the Authority's Previous Decision; the Antoine Statement; the application for Summary Liquor Licence (Complainant document LA1); the email from OLGR licensing officer Peter Hart to OLGR Inspector Louis Antoine dated 12 April 2012 (Complainant document LA15) and the OLGR interview of Mr Robinson dated 27 March 2012 (Complainant document LA14).

Particular 13

215. In response to Mr Robinson's request for particulars of the "corrective action" Mr Robinson allegedly failed to take, the Complainant submits that it here "refers to the entire complaint", in particular the documents set out in the *Guide to Documents* that are cross-referenced in relation to "Ground 2, particulars (g), (h), (i), (j), (o), (p), (q), (r), (s) and (v)".
216. Further, the Complainant submits that Mr Robinson did not find alternative premises and that Mr Robinson did not reduce his salary to "one commensurate with the financial position of the Club" (page 7 of the transcript of the record of interview between OLGR investigators and Mr Robinson dated 27 March 2012 at Complainant document LA14 of the Brief of Evidence).

217. The Complainant also cross-references to the allegations made in Particular 14 "where the financial losses are set out" in support of this Particular.

Particular 15

218. In response to Mr Robinson's question as to the basis upon which the Complainant submits that the *ClubsNSW Code of Practice and Best Practice Guidelines 2011* represent documents "with which Mr Robinson was required to comply", the Complainant submits, in summary, that:
- a) This is an "inappropriate request for particulars" and is a "matter for submissions"
 - b) *The ClubsNSW Code of Practice and Best Practice Guidelines* represent the industry standard of conduct
 - c) Mr Robinson had to discharge his duties as secretary of the Club with the degree of care and diligence required of a reasonable person acting as an officer of a corporation pursuant to section 180 of the *Corporations Act*.
219. In response to Mr Robinson's question as to the period in which the Complainant submits that Mr Robinson was required to comply with the *Code*, the Complainant submits that Mr Robinson was required to comply "for the entirety of the time that Mr Robinson was the Club's secretary".
220. In response to Mr Robinson's question as to the period in which it is alleged that Mr Robinson failed to comply with the *Code*, the Complainant alleges that Mr Robinson failed to comply "from 31 December 2007 to 8 May 2013".
221. The Complainant further submits that Mr Robinson failed to comply in the year ending 30 June 2006 when he took an annual salary of **\$628,971** and accepted an extension of his employment contract.

Particular 16

222. In response to Mr Robinson's request for further particulars as to the Complainant's view that Club "members were clearly not getting value for money spent on the remuneration of Board members and the secretary", the Complainant submits, in summary, that:
- a) The amount of remuneration paid to Mr Robinson in the financial years prior to the Club's vacating its premises was "extremely high" and "a source of the losses which necessitated the sale of the premises"
 - b) Mr Robinson accepted the offer to extend the term of his contract "not because the Club required such an extension, but because he was going through a hard time" and "he personally needed the security of the extension" (according to page 10 of the transcript of Mr Robinson's record of interview with OLGR investigators at Complainant Document LA14 of the Brief of Evidence)
 - c) The Complainant also relies upon the Antoine Statement at paragraph 31 in relation to this matter.
223. In response to Mr Robinson's request for further particulars as to the relevant "standard of diligent and effective action" and any "criteria required by law to determine such standard", the Complainant refers to "pages 2 and 3 of the Complaint in this regard".
224. In response to Mr Robinson's request for further particulars as to "the law that requires performance indicators to be included in employment contracts", the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and submits that "it is not alleged that there is a law" which requires the use

of performance indicators in employment contracts, but rather that "it is the best practice of the industry" to do so.

225. In response to Mr Robinson's request for further particulars as to the alleged acceptance by Mr Robinson of the extension of his contract on or about 31 August 2005, the Complainant submits that it relies upon the Antoine Statement and the minutes of the Club Board meeting held on 22 July 2005. The Complainant further submits that Mr Robinson admitted that his contract was extended on 31 August 2005 and relies upon pages 7 to 14 of the transcript of the interview between Mr Robinson and OLGR investigators on 27 March 2012 (Complainant document LA14).

Particular 17

226. In response to Mr Robinson's request for further particulars as to the "sort of effective strategic goals and business plans" which Mr Robinson allegedly should have put in place, the Complainant refers to the *ClubsNSW Code of Practice and Best Practice Guidelines* (2005, 2008 and 2011) and submits that Mr Robinson should have put in place "genuine amalgamations, reduction of club spending particularly on salaries and honoraria, and finding alternative accommodation".

Particular 18

227. In response to Mr Robinson's request for particulars of the alleged failure by Mr Robinson to manage the Club's property fairly, the Complainant refers to paragraphs 62 to 81 of the Authority's Previous Decision and "the entirety of the Brief of Evidence".
228. The Complainant also submits in response to this request that Mr Robinson paid himself his salary "despite the parlous financial situation of the Club" and failed to acquire premises for the Club which "caused the Club's assets to be dissipated" and this was "unfair to the members".
229. In response to Mr Robinson's request for further particulars of the required "standard of fairness", the Complainant submits that "the standard of fairness required is that of ordinary decent people".
230. In response to Mr Robinson's request for further particulars of the alleged failure by Mr Robinson to "manage the Club's property efficiently", the Complainant refers to paragraphs 62 to 81 of the Authority's Previous Decision and submits that the Club's property "was not managed efficiently by the incurring of huge losses not mitigated by any reduction in the salary paid to himself or acquisition of new premises" and that Mr Robinson could have "preserved the Club's property" by advising the Board to place the Club into voluntary administration.
231. In response to Mr Robinson's request for further particulars of the alleged "lack of integrity" exhibited by Mr Robinson, the Complainant submits that "this is a matter for submissions". The Complainant further submits that Mr Robinson admitted at page 4 of his record of interview with OLGR investigators dated 27 March 2012 that he accepted the extension of his contract because he himself needed "security and stability", and that Mr Robinson admitted at page 13 of that same interview that he "spoke to people about needing the contract and they offered it to him". The Complainant submits that the standard of integrity in this respect is "that of ordinary decent people".
232. In response to Mr Robinson's request for further particulars of the allegation that the salary accepted by Mr Robinson was "far in excess of what the Club could afford to

pay", the Complainant refers to paragraphs 95 and 96 of the Authority's Previous Decision and submits that:

...from 2005 the Club was incurring huge losses each year. From December 2007 the Club had no premises from which to trade to recoup any part of those losses.

233. In response to Mr Robinson's request for particulars of the "circumstances" in which it is alleged that Mr Robinson "could have found alternate premises for the Club which would have allowed the Club to recommence trading and thus earning funds from which it could pay his salary", the Complainant refers to paragraphs 89 to 93 of the Previous Decision and the Antoine Statement (Complainant document 3 of the Brief of Evidence).

234. The Complainant also submits that:

Had Mr Robinson not required the "amalgamating" clubs to accept him as secretary and the Board or most of it as the board of the amalgamated entity, it is likely he could have found alternate premises on a genuine amalgamation basis rather than as a takeover. In addition or alternatively, the Club could have rented premises that would have provided appropriate accommodation for the Club pending the finding of an amalgamation partner.

235. In response to Mr Robinson's request for further particulars of the allegation that Mr Robinson "accepted the use of two motor vehicles", the Complainant submits that it relies upon the Transfield Statement; the record of interview between OLGR and Mr Robinson dated 27 March 2012 (Complainant document LA14); and clause 10 of the copy of the Deed of Agreement as to Employment between the Club and Mr Robinson dated 27 November 2000 (Complainant document LA16).

236. In response to this allegation regarding the motor vehicles, the Complainant also relies upon the following interviews between OLGR investigators and:

- a) Club director Mr Leonard Rodgers dated 29 February 2012
- b) Club director Mr Peter Bowden dated 29 February 2012
- c) Club director Mr Neville Peters dated 29 February 2012
- d) Club director Mr Wayne Olsen dated 29 February 2012
- e) Club director Mr John Wales dated 28 February 2012
- f) Club director Mr Kenneth Fawles dated 28 February 2012.

237. [The Authority notes that the Complainant does not specify which pages of those interviews provide the relevant evidence.]

238. Further, the Complainant refers to pages 22 and 23 of the transcript of Mr Robinson's record of interview with OLGR investigators, where Mr Robinson states that he is "minding the car".

Particular 19

239. In response to Mr Robinson's request for further particulars of this allegation including any evidence that is relied upon, the Complainant relies upon the medical reports attached to the Complaint and refers specifically to the report of Dr Jagdeep Sachdev dated 30 August 2013 at paragraphs 5, 8, 9, 10, 11 and 12.

Submission by Ms Victoria Hartstein, Counsel for the Complainant dated 20 July 2015

240. Ms Hartstein submits that it was "necessary" to file this new Complaint in relation to the Club by reason of the "inability through mental illness" of Mr Robinson to "assist the Club" to answer the Previous Complaint.

241. Ms Hartstein submits that the Complainant is entitled to rely upon the decision of the Authority in relation to the Previous Complaint in support of the Complainant's case against Mr Robinson in this matter, and that it is a matter for Mr Robinson to "attempt to persuade the Authority that its previous decision does not apply to him".
242. In response to Mr Robinson's submission that the orders sought by the Complainant in this matter now "lack utility", Ms Hartstein submits that the purpose of disciplinary proceedings is "not merely to provide a specific deterrence" to Mr Robinson, but that the "protection of the public" is the "prime object" of the disciplinary provisions of the *Registered Clubs Act*.
243. Ms Hartstein submits that there is a public interest in "denouncing" Mr Robinson's conduct as "unacceptable".
244. In response to Mr Robinson's submission that the Complaint is "confusing, misleading and unfair", Ms Hartstein submits that the Complaint is framed on the basis of the language of the Act and that the question as to whether the secretary of a club is fit and proper is dependent on whether they are *currently* fit and proper. Ms Hartstein submits that the Complaint is therefore "properly framed in the present tense".
245. In response to Mr Robinson's submission that the Complainant has not provided particulars as to the standards of conduct that Mr Robinson's conduct is being judged against, Ms Hartstein submits that the Complainant relies on the *ClubsNSW Guidelines* as "setting general standards" and not on any specific provision of the legislation or the *Guidelines*.
246. Ms Hartstein submits that the "factual basis of each Particular" that is relied upon by the Complainant is "obvious from the Complaint itself, the evidence filed and cross-referenced, the particulars given, the submissions made by the Complainant and the previous decision of the Authority on many of the same issues".
247. Ms Hartstein submits that the Complainant is entitled to accept the submissions made to the Authority by Mr Robinson on 25 November 2013 that his ill health has "prevented him and continues to prevent him" from engaging in disciplinary proceedings, notwithstanding that Mr Robinson now claims that it is "unfair" for the Complainant to rely on these submissions.
248. In relation to the Robinson Statement dated 29 May 2015, Ms Hartstein submits that this new statement "discloses no evidence that Mr Robinson has any relevant formal education or training for the position of secretary of a registered club".
249. Ms Hartstein refers to page 14 of the OLGR interview with Mr Robinson dated 27 March 2012 and submits that "when times are good, Mr Robinson is happy to link his salary to the profitability of the Club and yet when times are bad, Mr Robinson holds the Club to its contract with him". Ms Hartstein submits that the version of events set out by Mr Robinson is "at odds with the version given in the record of interview and is disingenuous".
250. Ms Hartstein submits that Mr Robinson now "admits" in the Robinson Statement that it was on *his* suggestion that his contract was extended by the Club (page 13 of the OLGR interview with Mr Robinson dated 27 March 2012) and that the Board considered that the Club should be amalgamated with another registered club so that the Club could "retain some control over its assets for a period of time by retaining control over the management of the amalgamated club" (paragraph 98 of the Robinson Statement).

Further procedural communications between the parties during July and August 2015

251. On 23 July 2015, Ms Farmer emailed the Authority, copying Ms Rizzo, arguing that the Complainant in its submissions dated 20 July 2015 has not "assisted to dispel the inherent unfairness that has undermined this complaint" and should not be allowed to "split its case" by "waiting to see" what Mr Robinson submitted and then "responding with fresh particulars and submissions on matters that should have been addressed in chief".
252. Ms Farmer submits that the purpose of the Act is to "protect the public" and that this purpose is "satisfied" by Mr Robinson's commitment not to be appointed to "any position under the Act".
253. Ms Farmer also submits that the Authority should "take no further action" in relation to the Complaint as the "procedures adopted" have been "crucially unfair" and there is "no purpose to be further served".
254. Later on 23 July 2015, the Authority's General Counsel emailed Ms Rizzo, copying Ms Farmer, advising that Mr Robinson appeared to have indicated that he would not be making any further submissions and that, if the Complainant wished to make a final written response to the procedural issues raised in Ms Farmer's brief letter of 23 July 2015, then it may do so within 7 days. The parties were also advised that, in the absence of any indication that Mr Robinson wished to attend a conference, the matter would be considered on the papers.
255. On 24 July 2015, Ms Farmer emailed the Authority, copying Ms Rizzo, apologising for the "apparent confusion" caused by her earlier letter and stating that, while Mr Robinson will not be making any further submissions, he *does* wish to participate in a conference. Ms Farmer states that she, Mr Robinson and Counsel Mark Seymour would be present at that conference and lists several available dates.
256. On 28 July 2015, Ms Rizzo emailed the Authority, copying Ms Farmer, stating that the Complainant "does not agree" with Ms Farmer's assertion in her letter of 23 July 2015 that this Complaint has been undermined by "inherent unfairness".
257. The Complainant submits that Mr Robinson has "at all times been treated with the utmost consideration" which included "having the relevant parts of the original Complaint severed to enable him to respond at a time when he was able".
258. The Complainant submits that the further particulars now provided by the Complainant "merely set out additional detail" and that Mr Robinson and his solicitors have "always had access" to a "guide which cross-references the particulars of the Complaint with the supporting evidence".
259. [The Authority notes that this is apparently a reference to the *Guide to Documents* which forms part of the initial Brief of Evidence that was submitted to the Authority for the purposes of the Previous Complaint.]

Procedural Direction by the Authority on 27 August 2015

260. On 27 August 2015, the Authority's General Counsel emailed Ms Rizzo and Ms Farmer, advising that the Authority had given preliminary consideration to this matter at its meeting on 26 August 2015 and that it did not accept Mr Robinson's submission that the Complaint has been conducted in a "procedurally unfair manner".

261. Mr Robinson was requested to file any final submissions by no later than 4:00pm on 10 September 2015, and the Complainant was requested to file any final submissions in reply by 4:00pm on 17 September 2015.
262. The parties were also advised that, if these final submissions were received by the date and time requested, a conference would be convened in Sydney on 7 October 2015 for the purposes of considering any issues arising from the Complaint.

Final Submission from Counsel for Mr Robinson dated 9 September 2015

263. Briefly, the key points of Mr Robinson's final written submissions may be summarised as follows:
- a) The Complainant's submissions in reply "still fail to identify" any "specific act or omission" of Mr Robinson that can ground the Complaint and continue to make "unspecified allegations" of unfitness or impropriety without engaging with any of Mr Robinson's submissions regarding the administrative structure of decision making under the Act
 - b) The Complainant has failed to present any evidence to enable any finding that Mr Robinson's conduct fell short of the standards of conduct generally expected of secretaries of registered clubs
 - c) The Complaint is "fundamentally misconceived" in that the allegations the subject of the Complaint can only be directed at the *Club* – that is, it was the *Club* as a body that failed to find alternative premises and failed to re-determine Mr Robinson's remuneration.
 - d) It is "undeniable" that the Club fell short of the obligations owed to its members. However, *Mr Robinson* did not fall short of any obligation to the Club Board in that he provided the Board with "options and information" and ensured that decisions were made, recorded and ratified by the membership.
 - e) If the decisions and activities of the Club Board are later seen by the Authority to have been "wrong", that is a problem for the administration of the Club and, in this case, has been "appropriately denounced" by the Authority's Previous Decision. This sends an "appropriate" message to the community regarding the obligations of registered clubs to provide premises for their members.
 - f) No further community "benefit" can be achieved by now denouncing the conduct of Mr Robinson in "guiding" the Club, during a period of extremely unusual activity, premised as it is upon the Complainant's submissions which Mr Robinson argues "reverse the law with respect to corporate responsibility and decision making".
 - g) Mr Robinson continues to assert that the procedures adopted for the resolution of this Complaint have been "unfair". Allowing the Complainant to "split the case and reply to submissions by advancing new (and novel) ways of attributing responsibility for Club decisions to the Club's secretary" has put Mr Robinson at an "unfair advantage". Mr Robinson submits that the Complainant has made only "vague" allegations and then seeks that the Authority draw adverse inferences against Mr Robinson "for being unsure how to respond to them".
 - h) The Complaint should now be "dismissed". The Authority should decide to take no disciplinary action in relation to the Complaint.

Final Advice from the Complainant dated 15 September 2015

264. In this brief email, Ms Rizzo advised the Authority and Ms Farmer that "the Complainant does not propose to file any further written submissions but wishes to reserve his rights to make oral submissions at the conference, as may be required".

CONFERENCE ON 7 OCTOBER 2015

265. Following the completion of written submissions, a conference was convened by the Authority on 7 October 2015 (Conference) for the purpose of clarifying any issues arising from the written material before the Authority. The Conference was recorded and transcribed.
266. At the Conference, the Complainant was represented by Ms Victoria Hartstein, barrister, instructed by Ms Marina Rizzo from the New South Wales Crown Solicitor's Office and accompanied by OLGR Inspector Mr Michael Hanley.
267. Mr Robinson attended the Conference and was represented by Mr Mark Seymour, barrister, instructed by Ms Amanda Farmer, solicitor from Lawyers Chambers on Riley.
268. The Club's administrator, Mr John Vouris, was also invited to the Conference but elected not to attend.
269. On 2 October 2015, Ms Rizzo, Ms Farmer and Mr Vouris were provided with an electronic indexed master file of all the material before the Authority, comprising the Complaint, Brief of Evidence and all submissions (Master PDF). This material was before the Members during the Conference for common reference.

Oral submissions on behalf of the Complainant

270. Briefly, the oral submissions made by Ms Hartstein on behalf of the Complainant may be summarised as follows:
- a) The Complainant recommends that Mr Robinson be disqualified from holding a regulated position within the registered clubs industry for a period of three years because "there needs to be both specific and general deterrence" to convey to the whole of the clubs industry that the Authority "disapproves" of the "unacceptable" conduct of Mr Robinson
 - b) The Complainant submits that, in circumstances where Mr Robinson has previously described the Club Board as "not the sharpest tools in the shed", he owed "so much greater a duty" than to merely "guide [the Board] in the right direction" and to see that decisions were made and recorded
 - c) This Complaint is concerned with Mr Robinson's "failure" to guide the Club Board in accordance with the legislation and in accordance with "best practice". Mr Robinson ought to be disqualified from the clubs industry immediately because he "shows no understanding" of his obligations in respect of compliance with the legislation and the *ClubsNSW Best Practice Guidelines*
 - d) Mr Robinson has not provided any medical evidence to show that he has now recovered from his previously diagnosed illness and that he now has the capacity to act "in a proper way" as the secretary of a registered club
 - e) Mr Robinson has provided no evidence that, subsequent to the events referred to in the Complaint, he has undertaken any course of study to learn "what he needs to know" to be the secretary of a registered club.

Oral Submissions on behalf of Mr Robinson

271. Briefly, the oral submissions made by Mr Seymour on behalf of Mr Robinson may be summarised as follows:
- a) There is "no utility" in making a banning order that achieves "exactly what Mr Robinson has said he is going to devote his life to", which is retirement
 - b) Mr Robinson "has no desire" to be a secretary; therefore there is "absolutely no public interest" in having an order of the State made that bans him from that office

- c) Section 57H(2)(g) of the Act is drafted in the "future tense" – therefore, there is "very clearly a statutory need" to engage with an assessment of what a respondent to a disciplinary complaint will do *in the future*
- d) Mr Seymour submits that there is "no risk" of Mr Robinson returning to a regulated position within the clubs industry and he therefore questions whether there is "any need for an order to prevent what is not going to occur"
- e) The test for whether or not a person is a fit and proper person is concerned with "malfeasance, maladministration or otherwise conduct that reflects adversely upon the management of the club", per Simpson J in *Labbozzetta v Director of Liquor and Gaming* [1999] NSWSC 96 at paragraph 52. Merely "poor" administration or having an opinion that things should have been done differently is "not enough to satisfy" what Justice Simpson called the "triviality concern of the Act"
- f) Mr Seymour acknowledges that there was "poor administration" on the part of the Club, which has been recognised in the Authority's Previous Decision
- g) However, the contract for the sale of the Club premises was entered into while Mr Robinson was on sick leave. Upon his return, Mr Robinson "immediately takes steps" to ensure that the development application was approved and that the Club premises were sold
- h) Mr Robinson, along with other Board members, then embarked upon a course of "starting to investigate the possibility of amalgamations with other [registered] clubs"
- i) The Complainant's understanding that the Club "had desired a takeover of these other clubs and was set on such a course that it was designing these things to fail" is, in Mr Seymour's submission, "simply not true"
- j) Mr Seymour submits that there were "various reasons" why these other potential amalgamation partners would not participate in amalgamation with the Club, for example, due to the Club "receiving bad publicity"
- k) Mr Seymour points to evidence in support of the proposed amalgamation attempts with the Arncliffe Scots Sports and Social Club and Kogarah RSL Club and submits that in those instances it was "intended" that the "merged club" would retain the role of secretary and that this was "totally contradictory" to the Complainant's assertion that the Club had a "hard-headed approach [to these proposed amalgamations] led primarily by Mr Robinson"
- l) Mr Seymour submits that, while the Club Board was "slightly confused" about the "unacceptable" delays faced by the Club in relation to the proposed amalgamations, Mr Robinson and the Board were all "acting in good faith that a solution was just around the corner" because Mr Robinson was "providing options" to the Board. Mr Seymour submits that the documents in the Complaint "do not lead to those conclusions that would be required of maladministration or malfeasance"
- m) Mr Seymour submits that the Complainant's allegation that Mr Robinson had "somehow managed to contrive a renegotiation of his contract unilaterally" in order to ensure that he would have "greater job security" is "just false" and "completely unproven"
- n) Mr Seymour states that, in Mr Robinson's record of interview, OLGR investigator Mr Transfield believes that there was a subcommittee meeting at which the subcommittee had decided to put a contract extension to Mr Robinson. This contract extension was offered to Mr Robinson *before* a full Board meeting occurred, which would be a breach of the legislation
- o) Mr Seymour submits in response to this concern raised by Mr Transfield that such a breach of the legislation would only ever have been a "technical breach" and that "leading questions from an investigator do not make evidence"
- p) Mr Seymour submits that it is "really rather an extraordinary ground" to allege that a secretary somehow has engaged in maladministration because he enters into

- an employment contract that has been *offered* to him by the Club. If that were the case, it would have a "chilling effect throughout the industry"
- q) It is "difficult" to see how a club secretary should "manage" a board. Mr Seymour submits that the *board* is the decision making body of a registered club. The secretary puts to the board a series of recommendations and the board adopts a course of action. Mr Seymour submits that in this matter, the Complainant "flips that order and says it was Mr Robinson's duty, not the Board's" and that the *Guidelines* relied upon by the Complainant "do not even support that position"
 - r) Mr Seymour submits that on 23 June 2008 the Board resolved, under the then management of Mr Michael Segreto, that the Club would buy new premises and not enter into a lease under any circumstances
 - s) Mr Seymour notes that Mr Robinson was on medical leave, therefore "nowhere near the management of the Club at the time" – but was nevertheless, on his return, bound by those strategies and plans that the Board had put in place. Mr Seymour submits that "it is just impossible to see what Mr Robinson ought or should have done that he fell so far short of that it amounts to maladministration or malfeasance".
 - t) Mr Seymour submits that the proposition that there were delays in settling the contract for the sale of the Club premises, at the hands of Mr Robinson, "is just wrong" and that Mr Robinson's return in 2009 was the catalyst "that sees the contract be settled"
 - u) Mr Seymour submits that the allegation that Mr Robinson failed to take corrective action to improve the financial situation of the Club is "false". Mr Seymour submits that Mr Robinson was on leave between March 2008 and November 2009, but that upon his return, there was a "substantial fall in the losses" of the Club and that in 2012 there was a profit because of the sale of Club equipment
 - v) Mr Seymour submits that the Club was "still operating in terms of its charitable objectives" and it was still making "substantial donations to local community and sporting operations" when Mr Robinson returned
 - w) Mr Seymour submits that the Club did not have premises and it was not trading so it could not recoup some of those expenditures, but the significant losses in those years are "understandable" and, upon Mr Robinson's return, they are "turned around"
 - x) On the question of whether there was maladministration or malfeasance on the part of Mr Robinson, Mr Seymour submits that on the evidence there "just cannot be the level of material that would base a proper and lawful decision of the Authority"
 - y) In relation to Particular 19 of the Complaint, Mr Seymour submits that this is "one of the more outrageous" positions from the Complainant. Mr Seymour submits that the medical reports submitted to the Authority clearly state that Mr Robinson's condition was "temporary" and that it was "the stress of the investigation and the probability of the banning order" that led to Mr Robinson needing some time for treatment. There is "no onus" on Mr Robinson to produce medical evidence and for the Complainant to say so is to "flip the onus and to create legal error that the Authority should not enter into"
 - z) In conclusion, Mr Seymour submits that there is "no way" that the Authority should make a finding on any of the Particulars that there was maladministration or malfeasance; rather, these alleged failings on the part of Mr Robinson are "business judgments which, with hindsight, probably could have been made differently"
 - aa) Mr Seymour submits that, if the Authority was to form a view that wherever the board of a registered club goes wrong, the management must, it follows, also go wrong or be in the wrong – then that would send a "very chilling effect into the industry" as all secretaries would be worried that if the board makes a bad

- decision, the individual secretaries are somehow responsible and "no one will undertake" the position of secretary
- bb) Mr Seymour argues that those are "very relevant" considerations of the public interest and that just ties back in to Mr Robinson's primary and preliminary point – that there is "no public interest" in disqualifying Mr Robinson from the registered clubs industry.
272. Following Mr Seymour's oral submissions, the Chairperson of the Authority noted that Mr Seymour had not responded to an issue raised by Ms Hartstein, being Mr Robinson's statement that the Club Board members were "not the brightest or sharpest tools in the shed" and therefore Mr Robinson's acknowledgement, by implication, of a higher level of responsibility with regard to advising them as secretary.
273. In response, Mr Seymour submitted that this issue was "problematic" because it depends on the perceptions of an individual secretary at any particular time.
274. Mr Seymour submitted that Mr Robinson had made this "off the cuff remark" to OLGR in the context of a "forced interview" with OLGR officers where he was trying to assist with the investigation into the *Club's* poor administration. Mr Seymour submits that Mr Robinson did not know at that time that action might be taken against him personally.
275. Mr Seymour submitted that this comment should not be used against Mr Robinson to suggest that his duties were "therefore of a much higher order" and reiterated his earlier submission that one cannot "flip the structure of decision making within corporate structures". Such structures are in place to "spread risk out amongst board members" so that no one individual person necessarily has responsibility for these enterprises.

Oral response on behalf of the Complainant

276. In reply to Mr Seymour's oral submissions, Ms Hartstein referred to the following passage of Mr Robinson's interview with OLGR investigator Mr Transfield dated 27 March 2012 in support of the Complainant's contention that Mr Robinson had obtained the extension to his contract for "his own personal security":

TRANSFIELD: *Do you remember any discussions you had at that time in relation to the contract?*

ROBINSON: *Well, that was what, seven years ago or something.*

TRANSFIELD: *Yeah. Okay. Fair enough. Now - - -*

ROBINSON: *At that stage of my life when that happened, I had just gone through a messy divorce. My son had just murdered the mother of his two children with the same name as me. It wasn't good.*

TRANSFIELD: *Yeah.*

ROBINSON: *Again no matter what happened, I was going into a custody battle with the children of the murdered woman. Okay. And – and I was also trying to work on to get lawyers for my son to try and help him. Obviously, in the fact that he was guilty, he's still my son, and he got a look in the eyes in a – a very confused state of mind at that time. And I was looking for some security and some – I just didn't know what was going to happen in my life, I needed some stability and security so of course I would have spoken to people. These things don't happen to heaps of people. They don't come out of the ground like a mushroom. And there was nothing untoward.*

277. In response to Mr Seymour's submission that a finding of fitness and propriety must be made with regard to what is to be in the *future*, Ms Hartstein submits that "that is not the case". Ms Hartstein submits that any agency determining a disciplinary matter "must be

satisfied in the present that someone is a fit and proper person *now*" and that the "best guide to that is what has happened in the past".

Further discussion at the Conference

278. The Authority's General Counsel then referred to the table in OLGR Inspector Antoine's statement setting out Mr Robinson's salary for the period from 2005 to 2011 and questioned Mr Seymour as to the basis on which Mr Robinson's salary package was calculated and why Mr Robinson's salary fluctuated to the extent that it did during that period.
279. Mr Seymour submitted that, with the exception of 2005-2006 and 2008-2009 when Mr Robinson was on medical leave, there was a "natural growth progression" in Mr Robinson's salary package for 2007, 2009 and 2010 and that Mr Robinson's salary package was set by his 2000 employment contract which was extended in 2005.
280. In response to a question from General Counsel as to whether Mr Robinson's salary package increased to **\$628,000** in 2005 as a result of natural accumulation of the agreed salary in line with the consumer price index (CPI), Mr Robinson stated that this figure also included some long service leave entitlements and that his basic salary for the five year period from 2000 to 2005 was around **\$460,000** or **\$470,000**.
281. Mr Seymour then clarified that, pursuant to his 2000 employment agreement with the Club, Mr Robinson's salary commenced at **\$338,000** per annum and there was an annual adjustment for the CPI. Mr Seymour submits that the 2000 employment agreement was in force until 2009 and the 2005 agreement extended this until 2014.
282. The Authority's General Counsel then enquired as to whether it is Mr Robinson's position that any question as to the appropriateness or prudence of Mr Robinson's salary package was, if anything, a matter that goes to the responsibility of the Club's *board*, not the individual to whom the deal is offered.
283. Mr Seymour submitted that this "is clear from the Guidelines", specifically clause 6 of the 2011 *ClubsNSW Guidelines*, which states that *boards of directors* are ultimately responsible for determining the remuneration for club executives and monitoring and reviewing performance.
284. The Authority's General Counsel asked Mr Seymour whether there are any circumstances in which the secretary of a registered club should question whether he should continue to accept his salary and benefits – for example, once a club had ceased to trade and the club had no further potential to derive revenue – and whether this has ever become an "obligation", bearing in mind that registered clubs are supposed to be not-for-profit, community based organisations.
285. In response, Mr Seymour stated that "of course there are" examples where this would be the case, but this Club was an organisation that "was ceasing to trade, everyone assumed, temporarily" and that "at 2005 no one saw any of this coming".
286. Mr Seymour further submitted that Mr Robinson "was one of the best [secretaries] in New South Wales" and that the Club "needed to offer something that was enticing him to stay". Mr Seymour submitted that Mr Robinson had "turned the Club from an incredibly unsuccessful enterprise into an incredibly successful enterprise" and that it was "natural that the Board would have a lot of confidence in him".

287. The Authority's General Counsel noted that by 2007 the Club's financial position was deteriorating but Mr Robinson was still receiving a salary of \$526,000. General Counsel questioned Mr Seymour again as to whether it is Mr Robinson's position that, if there is any criticism of that, it lies *only* with the Board and not the Club's employee who accepted, and continued to accept, that remuneration package.
288. Mr Seymour submitted in response that registered clubs are "not for profit, they are not expected to make super bucks" and that they are "expected to operate largely on a loss" – however, this does not mean that the "remuneration should have any sort of cap" as there is "nothing in the Guidelines about that".
289. Mr Seymour further submitted that executive remuneration is "a question of business judgment and business judgment lies primarily with the board" and that, when there are questions of degree, one needs "really solid proof" to form a view that Mr Robinson's conduct amounted to *maladministration* as opposed to a case of bad decisions being made by the Club's board. Mr Seymour also noted that the Authority had made no finding to that effect in relation to the Previous Complaint.
290. The Authority's General Counsel provided the parties with an article from *The Age* entitled "*Elite earners on even money in terms of National Wage*" (Anna Whitelaw, 28 July 2014) which reported research conducted by Melbourne University indicating that during 2014 a person earning an annual salary of \$211,000, before tax, was in the top 1 per cent of all income earners in the country. This article also reported that, *within* the top 1 per cent of all Australian income earners, the average income before tax was \$400,000.00.
291. General Counsel observed, on the basis of this national income data, that Mr Robinson's income was well into the top 1 per cent of income earners and above the average within the top 1 per cent. Mr Robinson was earning \$208,000.00 per annum in 1994, 20 years ago.
292. Mr Seymour submitted in response to this observation that Mr Robinson was "running a multimillion dollar enterprise" and that managing the Club was a "complex operation" which "involves a high degree of skill and labour".
293. Mr Seymour further submitted that "one does not necessarily learn these things by doing a course"; rather, that an individual "gets the very best that one can learn through experience in these sorts of matters".
294. On the issue of the Club's non-compliance with section 10(1)(f) by failing to maintain premises, Mr Seymour submitted that it was "appropriate" for the Authority to make a finding against the *Board* with regard to its breach of section 10(1)(f) of the Act as established in respect of the Previous Complaint because the *Board* "failed its membership and it breached the Act and those were clear decisions on the resolutions that were being made by the Board".
295. The Authority's General Counsel enquired as to whether Mr Robinson was aware that the Club was in breach of section 10(1)(f) of the Act. In response, Mr Seymour submitted that this proposition was "slightly problematic" because the sale of the Club premises in itself is not a breach of the Act; that Mr Robinson was on medical leave at the time that the contract for sale of the Club premises was entered into and there were extensive delays in completing the sale of the Club premises by reason that Abadeen was "recalcitrant" about settling the contract. [The Authority notes that Abadeen Group Pty Limited (Abadeen) was the corporate purchaser of the Club's property.]

296. When questioned by the General Counsel as to whether, if a club board is placing a club in breach of section 10(1)(f) of the Act, a secretary faces a choice between whether he will participate in that contravention of the Act or resign, Mr Seymour responded that a secretary could work to pull the club out of its breach, "which is what Mr Robinson was doing" – albeit that it "wasn't working". Mr Seymour submitted further that these were decisions of the Board and that the board is "the controlling mind of these enterprises".
297. In response to a further question from the Authority's General Counsel as to whether there is evidence that Mr Robinson was telling the Board "fairly and squarely" that the Club was in breach of the Act, Mr Seymour submitted that "there could have certainly been a heightened degree of bringing that to the attention of the Board". Mr Seymour submitted further that "certainly Mr Robinson had said at the initial meeting where there is the decision to sell the premises, he brought section 10 in front of the board, he got legal advice and said the sale of the premises is not itself a breach, but you do have to find new premises, so he had brought that to the attention of the board".
298. Mr Seymour submitted further that there were "constant reports" made to OLGR since the Club ceased trading on 31 December 2007, and in particular there are records of ministerial submissions from OLGR stating that OLGR regarded the Club's lack of premises was a "technical breach, but it's not in the interests of the members to do anything about it" because there was an "expectation that it will be overcome".
299. Mr Seymour noted that, since that time, the Previous Complaint was brought by OLGR against the Board and "appropriate findings have been made against the Board".
300. Authority Member Mr Ken Brown then referred Mr Seymour to correspondence before the Authority in relation to a proposed amalgamation between the Club and the Kogarah RSL Club. He noted that this document clearly identified that the Club was to be "the senior partner" if an amalgamation was to take place between those two clubs.
301. Mr Seymour submitted in response that the proposed amalgamation involved "questions of business judgment" and that it is "hard to take from that this point that what's involved here is not just poor judgment, but actually something malevolent, that there's some maladministration or malfeasance involved".
302. Mr Seymour submitted that the Board and Mr Robinson adopted the attitude that, if the Club was "going to walk into the door of one of these failing clubs and pay all their debts, then [the Club] should have a say over how it's managed".
303. Mr Seymour conceded that in hindsight this attitude is "certainly what caused a lot of the delays and a lot of the findings by the Authority in its earlier decision [are] reflective of the fact that that was a bad decision to take by the Board".
304. Mr Seymour argued that, to the extent that the Board had set that strategy in June 2008, Mr Robinson, as the secretary, "has to comply with it".
305. Mr Seymour pointed to paragraph 15 of the *ClubsNSW Best Practice Guidelines*, noting that they refer to the *board* of a registered club as being responsible for ensuring that a club is "pursuing an appropriate strategy in line with its aims and purpose".
306. The Authority's Chairperson then referred to Mr Seymour's earlier submission that the Authority had made no finding in the Previous Decision of maladministration in relation to the Board members. He commented that Mr Robinson cannot place weight now on the fact that no finding was made at that stage when there were no allegations of

maladministration in relation to Board members before the Authority in the Previous Complaint. Mr Seymour clarified that this earlier submission had been made in the context of Mr Robinson's salary only.

307. The Authority's Chairperson noted that the Club's profit and loss figure for 2011 as set out in Particular 14 of the Complaint appears twice in the document and the figure is slightly different on each occasion and sought clarification as to which was the correct figure.
308. [The Authority notes that, subsequent to the Conference, Ms Rizzo clarified to the Authority and to Mr Robinson's lawyers that the correct figure for the Club's financial year ending 30 June 2011 is a loss of **\$579,599.00**. The figure of \$568,757, which also appears in Particular 14 of the Complaint, reflects the Club's losses up to *31 December 2011* (the first six months of the next financial year) and was "inadvertently included" in the Complaint.]
309. The Authority's Chairperson then referred to Mr Seymour's submission to the effect that, when Mr Robinson returned from his previous period of medical leave (during 2008-2009), there was a sudden turnaround of the Club's financial position. The Chairperson noted that the Club had *ceased trading* on 31 December 2007 so a large part of the reduced loss recorded during 2008 by comparison to the previous year may be attributed to this change in circumstances – yet Mr Robinson was still actually working at the Club for nine of the 12 months of the year ending 30 June 2008.
310. The Chairperson noted that during 2010, 2011, 2012 and 2013 the Club was *not trading*, so the losses recorded by the Club were not being contributed to by any *trading losses*. The Chairperson observed that a "great proportion of the loss" incurred by the Club during those years is attributable to the payment of salaries, with a small amount attributable to the payment of office rent and "around about \$10,000 to \$20,000 a year" attributable to donations from the Club to community organisations.
311. The Chairperson suggested that the submitted "turnaround" in the Club's financial position following Mr Robinson's return to work in 2009 is "not quite as dramatic" as implied by Mr Seymour, given that there was *no trading taking place* during that period, and the Club was also receiving interest income on the instalment payments made by Abadeen on the contract to purchase the Club's property during those years.
312. Mr Seymour submitted in response that there are "certainly losses at the time which the Authority has found contributed to the sense that the members would have a legitimate sense of grievance that there were still operations, the payment of salary being the primary one, without premises".
313. Mr Seymour further submitted that "the facts don't necessarily show very much beyond what you can draw from them in terms of inferences" and that the onus is on the *Complainant* to show that there is something in the material that shows that there is a reason to make the disqualification order that is being sought.
314. Mr Seymour submitted that Mr Robinson does not have to put forward all the reasons why an order should not be made against him as this would be "inconsistent with his privilege against self-incrimination". In response to the Authority Chairperson's observation that this is not a criminal jurisdiction, Mr Seymour submitted that "it doesn't matter" and that "the privilege against self-incrimination absolutely covers a proceeding such as this. He [Mr Robinson] faces a banning order."

315. In relation to Mr Robinson's ongoing role at the Club, Mr Seymour submitted that "there was certainly work being generated and he [Mr Robinson] was being appropriately paid for that". Mr Seymour also submitted that this was not a case where Mr Robinson was "putting his own interests well ahead of the duties that he owes". Mr Seymour submitted that Mr Robinson was in fact "working virtually seven days a week" and the Club Board members were "grateful" for the work that he was performing and "thought he was value for money".
316. The Authority's Chief Executive noted that the Complainant's view is that there was a problem with the way the *Board* had conducted itself in respect of its satisfaction with its secretary. However, the Chief Executive put it to Mr Seymour that Mr Robinson's position is that "... (a) he was performing adequately as assessed by the Board and who are we to go back in hindsight to review that decision, and (b) at best there's a moral question and that's not really a question for the Authority to ask and answer".
317. In response, Mr Seymour noted that the Club was operating at a loss, and that Mr Robinson was drawing a salary. However, "those two facts alone... cannot possibly form a sound basis for a finding that the secretary was involved in some form of maladministration".
318. Mr Seymour submitted that a club secretary "does not, except in an indirect way, owe duties to the membership". The *board* owes "direct and statutory" duties to the club's membership and the *secretary* owes duties to the *board*, therefore indirectly to the membership – but "to simply find the secretary is responsible because the board is responsible creates a nonsense of that division of those two goals".
319. The Authority's Chairperson noted that the Club recorded a loss of **\$578,000** in 2011; however Mr Robinson's salary was **\$482,000** that year. The Chairperson questioned Mr Seymour as to whether the secretary of a registered club, as principal adviser to the board, has an obligation to provide a recommendation to the board that it forgo some of the secretary's pay or contractual entitlements in those circumstances.
320. Mr Seymour submitted in response that, if this observation is true, there is "certainly no widely established practice of doing that" and that there is nothing in the *Guidelines* that would suggest that that is what "reasonable" secretaries would do. Mr Seymour argued that that is "not a reasonable practice within any commercial enterprise".
321. In reply, Ms Hartstein argued that this submission of itself shows that Mr Robinson "lacks integrity". Ms Hartstein referred to page 7 of Mr Robinson's interview with OLGR investigators dated 27 March 2012, where Mr Robinson was asked, "Given that the Club has ceased to trade, do you think that's a reasonable salary for your employment?", to which Mr Robinson responded, "Yeah, I do".
322. Ms Hartstein then referred to the following passage at pages 15 to 16 of the transcript of Mr Robinson's interview with OLGR Inspector Transfield dated 27 March 2012:

TRANSFIELD: *What I'm going to do is just read out the figures from 2005 of the key management expenses. 2005 it was \$639,376, in 2006 it was \$887,342, in 2007 it was \$799,268, in 2008 it was \$561,544, in 2009 it was \$531,550, in 2010 it was \$664,493 and in 2011 it was \$687,471. Now, given that the Club has ceased to trade since – correct me if I'm wrong – it was 31 December... 2007.*

ROBINSON: *2007.*

TRANSFIELD: *...2007. You see nothing wrong with those figures, that they're similar to figures that when the Club traded you were getting the same figures for the key management.*

ROBINSON: *Well, why should I see something wrong with it? What does that mean?*

TRANSFIELD: *What I'm asking you is...*

ROBINSON: Do you see something illegal or what are you getting at?
 TRANSFIELD: I'm not saying anything is – what I'm saying is would you expect that the expenses of the Club to drop after the Club ceased to trade?
 ROBINSON: Well, I suppose the expenses did drop since the Club ceased to trade. Well, what are you talking about, just managerial – managerial expenses?
 TRANSFIELD: Yes.
 ROBINSON: Well, if the contract continued, well...
 TRANSFIELD: So that was your contract continued?
 ROBINSON: Yeah.

323. Ms Hartstein submitted that the whole of this exchange "shows a disingenuous approach" by Mr Robinson to his contract with the Club – in that, if the contract continued, then Mr Robinson was going to keep taking his salary, despite the fact that the Club had ceased to trade and the losses of the Club had apparently not diminished. Ms Hartstein relies upon the entirety of the above passage in support of her contention that there has been a "lack of integrity" demonstrated by Mr Robinson.
324. Mr Seymour then referred to clause 6 of the 2008 *ClubsNSW Best Practice Guidelines* in relation to "The Role of the Board of Directors" and submitted that it is not a function of the *secretary* to *volunteer* contractual entitlements; it is the function of the *board* to "establish performance measures and then ensure the secretary is meeting them".
325. Mr Seymour also referred to clause 8 of the 2008 *ClubsNSW Best Practice Guidelines* in relation to "Executive Remuneration Committee" and submitted that it is the function of the *board* to periodically, or at least annually, review the performance of the CEO/secretary manager for remuneration purposes.
326. Mr Seymour argued that the only evidence before the Authority, in terms of industry practice, is that the *boards* set the standards and then do the reviews; there is "no evidence" that the secretary volunteers to do this.
327. Authority Member Mr Ken Brown accepted that the *Guidelines* set out the responsibilities of the board of directors in relation to executive remuneration, but questioned how Mr Robinson, as a "professional secretary manager" who was "held in the highest regard", did not have the level of responsibility to recommend to the Board of directors that key performance indicators and a review process be implemented in relation to his own performance as secretary.
328. Mr Seymour submitted in response that "there ought to be a standard" that is to be met in respect of what a professional would do in those circumstances, but that "we have no idea what that standard is". He submitted that it is "difficult to measure" Mr Robinson's performance against a standard when the nature of that standard is not known.
329. Mr Seymour further submitted that, in relation to the negotiations in 2005 for the extension of Mr Robinson's employment contract, "three or four" of the former Club directors who were interviewed by OLGR during the course of the Previous Complaint "had absolutely no idea what Mr Robinson was on and simply took no interest".
330. Mr Seymour submits that the inference to be drawn from this is that they "wouldn't have known and they wouldn't have cared" – and the "three or four" former directors "that did know and did care all identified in their interviews that they thought they were getting value for money".
331. Mr Seymour submitted that, in the "absence of some solid evidence" before the Authority as to the *standard* against which Mr Robinson's performance should be

measured, it is "not a proper basis" to make a finding that Mr Robinson is not a fit and proper person.

332. The Authority's General Counsel then questioned Mr Seymour as to whether, as a matter of a secretary's skill, it was incumbent upon Mr Robinson to make clear to the Board that it should change its policy about not renting premises or risk exposure to disciplinary action with respect to the contravention of section 10(1)(f) of the Act.
333. In response, Mr Seymour referred to the minutes of the Club Board meeting of 29 August 2011, which disclose that Mr Robinson advised the Board at that meeting that the Club "must acquire premises to comply with section 10 of the Act".
334. However, Mr Seymour conceded that "...in retrospect...a lot more ought to have been done to bring this home to the Board, but the Board was in a position where each and every one of them thought a solution was just around the corner and it reached a stage where that...level of delay became unprofessional and that's the subject of the [Previous Decision]".
335. In response to a question from the Authority's General Counsel as to whether Mr Robinson's position is that he did not share any responsibility for that contravention of section 10(1)(f) when it did reach the stage where the level of delay became unprofessional, Mr Seymour submitted that "there has to be something in the actual conduct that one can point to" and compare with a standard of how a "fit and proper secretary" would have acted, and therefore determine "how far short he fell of that standard".
336. Mr Seymour further submitted that the Complainant's responses to requests for particulars of the relevant standard against which Mr Robinson's performance should be measured refers to the *ClubsNSW Guidelines*. However the *Guidelines* "continually reinforce that these are the responsibilities of the Board".
337. The Authority's General Counsel commented that "the standard is the Act" and questioned as to whether Mr Robinson's position is that he did not share in responsibility for the contravention of section 10(1)(f) when it eventually became untenable.
338. In response, Mr Seymour submitted that "one would have to point to some conduct" and that "it can't be automatic, otherwise the secretary's responsible for every failure by the board to comply with its statutory obligations, so no one will hold the position of secretary ever again".
339. In reply to Mr Seymour's submission that there is insufficient evidence of Mr Robinson's conduct to attribute responsibility for the contravention of section 10(1)(f) to Mr Robinson, Ms Hartstein submitted that section 180 of the *Corporations Act 2001* also applies and that Mr Robinson needs to use "business judgment" to make "appropriate decisions" that are in the best interests of the Club.
340. Ms Hartstein argued that "all of the matters which have been particularised from the immediate breach of section 10(1)(f) onwards are all matters that [Mr Robinson] is responsible for, as well as the Board".
341. In reply to Mr Seymour's submission that Mr Robinson advised the Board at its meeting on 29 August 2011 that the Club needed to acquire premises, Ms Hartstein noted that three and a half years have passed since that time.

342. Ms Hartstein submitted that Mr Robinson "can pay lip service" to advising the Board that the Club needs to get premises, but that it does not change what he was doing, which is "trying to organise a takeover of other clubs rather than actually obtain premises". Ms Hartstein further submitted that Mr Robinson "...doesn't obtain temporary premises, he doesn't hire a hall...all he has is a little office where some of the functions of the Club can be carried out, but he doesn't provide any facilities for the members. He might say to the board, we need to acquire premises, but they are relying on him, they are paying him to work 40 hours a week or seven days a week, as he says he does, and yet he doesn't actually produce any premises for them either by way of amalgamating with another club or on a temporary basis".
343. The Authority's General Counsel questioned Ms Hartstein as to the Complainant's response to Mr Seymour's earlier submission that the Board had adopted a position that it did not want to rent Club premises, and whether Mr Robinson was bound by that position.
344. Ms Hartstein noted that Mr Robinson had previously described the Board as "not the sharpest tools in the shed" and submitted that "this is a board comprised almost entirely of people who follow him. They do what he tells them to. No doubt very well-meaning people, but they're not people with business acumen. They are relying on him, they follow him and all their statements show that they think he's fabulous and he's guiding them and they're following".
345. Ms Hartstein then referred to clause 19 of the 2008 *ClubsNSW Club Code of Practice* in relation to "Legal Obligations", which states that:
- In particular, we will ensure that our directors, management and staff are informed about the primary instruments regulating clubs, particularly the Registered Clubs Act and Regulations, the Gaming Machines Act and the Liquor Act.*
346. [The Authority notes that clause 19 of the *Code of Practice* is apparently directed to all executive staff of a registered club that is a member of ClubsNSW.]
347. Ms Hartstein submitted that Mr Robinson "cannot hide behind the fact that there is a board in this club" and that it is "totally insufficient" to say to the Board members, at a meeting in August 2011, that "we really need premises".
348. The Authority's Chairperson then noted that Mr Robinson's advice to the Board to obtain premises, as recorded in the minutes for the Club Board meeting of 29 August 2011, is repeated in the exact same terms in the minutes for the September, October, November and December 2011 Board meetings. However in the minutes for the January 2012 meeting, the only consideration recorded is amalgamation with other clubs – there is no reference to the need for premises. The Chairperson enquired whether Mr Robinson, as secretary, or the Board collectively, considered the location of premises that could be used on a temporary basis.
349. In response, Mr Seymour submitted that the Authority's finding in respect of the Previous Complaint was that "it wasn't good enough to simply wait and see a solution presenting itself with amalgamations, particularly because there had been a course of conduct that was showing itself to be unsuccessful" and that "someone ought to have come up with a different strategy".
350. Mr Seymour submitted further that, in terms of the material presented with the Complaint, obtaining club premises is "the function and responsibility of the Board".

Mr Seymour submitted that Mr Robinson "was putting up alternatives for their consideration", but those decisions were ultimately being made by the Board.

351. Mr Seymour again submitted that the Board had adopted an early position that the Club would not lease premises, which Mr Robinson "seemed to inherit" when he returned to work. Mr Seymour questioned whether, if the responsibility for employing a different strategy lies with the secretary, there was "such a falling short of that standard that this amounted to maladministration", or whether, as the *Guidelines* indicate, such responsibility lies with the board.
352. Mr Seymour also questioned what more is to be achieved by making a finding that the secretary shares responsibility for that failing and that he should be disqualified for three years.
353. The Chairperson noted that the Authority does not have an enforceable undertaking power and questioned Mr Seymour as to what is the legal basis upon which Mr Robinson's offer to undertake not to participate in the industry could be ensured in implementation.
354. Mr Seymour submitted in response that there is a spectrum of outcomes that can be achieved – for example, the Authority may decline to continue the investigation and a fresh complaint could be raised if at any point in the future Mr Robinson seeks to resume a regulated role within the registered clubs industry.
355. Alternatively, in the nature of a "remand type structure", the Authority could publish a decision noting that the investigation is "suspended" for a period of time to ensure that Mr Robinson's undertaking has proved true and the Complaint could be dismissed on that basis after that specified period of time had elapsed.
356. In response to a question from the Authority's Chief Executive as to how the second potential outcome proposed by Mr Seymour is consistent with the *Gaming and Liquor Administration Act* which requires the Authority to act with informality and speediness in terms of its decision making, Mr Seymour conceded that "that's not a structure I would suggest it be done".
357. Mr Seymour submitted that the Authority should take "no further step" as Mr Robinson has indicated in "clear and utmost terms" that he *will not stand* in a relevant role and is now retired. There is "no risk" and the Authority does not need to take this investigation any further. Mr Seymour submitted that this course of action is "entirely consistent with the speedy resolution of these matters".
358. The Authority's Chairperson noted that, as far as an individual is concerned, the only power that the Authority has under the Act is to remove a person from office – which is not applicable in this case – or to disqualify a person, unlike the *Liquor Act* where the Authority has powers to impose substantial fines or reprimand individuals.
359. Mr Seymour submitted that this is "not a jurisdiction which encourages negative findings for the sake of negative findings" and that the Authority's jurisdiction "has been slightly confined to be looking at maladministration" where a person does need to be removed from office so that they are not a risk any further.
360. By contrast, Mr Seymour referred to the *Labbozzetta* case and submitted that the case that was the subject of those proceedings involved "systemic fraud", which is the level at which the individual concerned was disqualified from the registered clubs industry.

361. In conclusion, Ms Hartstein submitted that there is a public interest in the disqualification of a secretary or former secretary of a club and that it serves "both specific and general deterrence purposes".

Role of the Authority in a Complaint under Part 6A of the *Registered Clubs Act 1976*

362. Whatever public policy concerns may arise from the commercial judgment of the Club board and secretary that forms the background to this matter, the Authority is largely in the hands of a complainant when considering a complaint made under Part 6A of the Act.
363. The Authority is not an "ombudsman" with a roving brief to explore all issues of alleged maladministration that may arise in relation to the conduct of a registered club.
364. A disciplinary complaint may only be framed on the basis of those grounds that are available under Part 6A of the Act (or alternatively the grounds available under Part 9 of the *Liquor Act 2007*).
365. The Authority does not have a broad discretion to second guess the merits of a registered club's commercial decision making or the quality of its management. Its role is to determine whether the grounds specified in a complaint are established and, if so, what disciplinary action should be taken.
366. While the Authority has certain inquisitorial powers and scope to obtain evidence or other material of its own motion, the Authority's findings on a disciplinary complaint will be shaped by the grounds available under the Act and specified by the complaint in question and the evidence, material and submissions before the Authority in relation to those grounds.
367. The statutory grounds of complaint that are potentially available to agitate under Part 6A of the Act focus upon contraventions of the Act or Regulation, or contraventions of licence conditions and the fitness and propriety of persons who occupy or formerly occupied certain regulated roles – that is, club secretaries and members of governing bodies.
368. The Authority must take care when fact finding in the context of a disciplinary complaint. Disciplinary complaints are civil matters, and findings are made to the civil standard of proof.
369. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

FINDINGS ON THE GROUND OF COMPLAINT

370. Each Particular alleged by the Complainant in support of the single Ground of Complaint is reproduced, for ease of reference, in italics below. The Authority's findings on each Particular are set out below in plain text.

Ground of Complaint

371. To recap, the sole Ground of Complaint states:

That the former secretary of the Marrickville RSL Club Limited ("the Club"), Dalley Robinson, is not a fit and proper person to act as such within the meaning of s.57F(3)(g) of the Act.

Fitness and Propriety at General Law

372. It is well established at common law that to be "fit and proper" for the purposes of licensing, a person must have a requisite knowledge of the Act (or Acts) under which he or she 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.

373. In *Hughes & Vale Pty Limited v NSW (No 2)* (1955) 93 CLR 127, the High Court of Australia held that:

"Fit" (or "idoneus") with respect to an office is said to involve three things, honesty knowledge and ability: "honesty to execute it truly, without malice, affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it.

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

The expression 'fit and proper person' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of 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.

PARTICULAR 1

375. Particular 1 alleges as follows:

Dalley Robinson was the secretary of the Club from 13 March 1992 (except for the period between 27 March 2008 and 17 November 2009 when he was on sick leave) until 8 May 2013.

Authority Findings on Particular 1

376. The Authority is satisfied, on the basis of the OLGR Chronology (Complainant document 2), that Mr Robinson commenced as Club secretary on 13 March 1992. Mr Robinson's commencement of service is not disputed by Mr Robinson and the Complainant sourced this information from the AViiON database (maintained by the former Liquor Administration Board and which continues to be maintained by the Authority for archival purposes).

377. The Authority is satisfied, on the basis of the OLGR Chronology (which is not disputed by Mr Robinson in this respect), that Mr Robinson was not acting as the Club's secretary between March 2008 and November 2009 and that during such time he was on sick leave.

378. This finding is supported by paragraph 78 of the Robinson Statement, where Mr Robinson states that he was away from the Club on sick leave between "18 March 2008 and November 2009".
379. The Authority is satisfied, on the basis of paragraph 169 of the Robinson Statement and the minutes for the Club Board meeting dated 2 April 2013 (Annexure OO to the Robinson Statement), that Mr Robinson ceased employment with the Club on 8 May 2013, on which date he entered into a Deed of Agreement as to Termination of Employment.

PARTICULAR 2

380. Particular 2 alleges as follows:

The Club sold its premises at 359-367 Illawarra Road Marrickville NSW and ceased to trade on 31 December 2007.

Authority Findings on Particular 2

381. The Authority is satisfied, on the basis of the OLGR Chronology (Complainant document 2), which is in turn sourced by a review of records maintained by the Authority on the *OneGov* system (formerly known as the Government Licensing System or "GLS"), that the Club ceased to trade from 31 December 2007.
382. The Authority also makes this finding that the Club closed its doors on 31 December 2007 on the basis of Mr Robinson's statement at page 4 of his record of interview with OLGR dated 27 March 2012 (Complainant document LA14) and paragraph 73 of the Robinson Statement.
383. The Authority is satisfied, on the basis of the OLGR Chronology and the minutes for the Club's adjourned Annual General Meeting on 27 November 2007 (Annexure T to the Robinson Statement), that at that meeting, the Club's members approved a resolution to "dispose, sell or lease" the Club property pursuant to section 41J of the Act.
384. The Authority is satisfied, on the basis of paragraph 114 of the Robinson Statement and the minutes for the Club Board meeting on 29 September 2008 (part of Exhibit DTR1 to the Robinson Statement), that on 8 September 2008 the Club entered into a "put and call option deed" and a development agreement with Abadeen Group Pty Limited to sell the land and property comprising the Club's former premises at 359-367 Illawarra Road, Marrickville.

PARTICULAR 3

385. Particular 3 alleges as follows:

From 31 December 2007 to May 2013 Dalley Robinson failed to perform his functions and duties as Secretary and Chief Executive Officer of the Club and as an officer of a company limited by guarantee, with the degree of knowledge, ability and honesty required and to the standard required in the industry and by relevant legislation.

Authority Findings on Particular 3

386. The Authority notes that in addition to its various oral and written submissions, the Complainant relies upon the following evidence or material in support of Particular 3:
- a) The entirety of the Complaint, including the attachments to the Complaint
 - b) The entirety of the Authority's Previous Decision

- c) The legislative provisions set out in the Complaint including the Act, the *Liquor Act*, the *Corporations Act* and the *Gaming Machines Act*
- d) All minutes of the Board and Club House Committee Meetings listed in the Index of Documents to the Complaint
- e) *Guide to Documents* and all documents cross-referenced therein
- f) The *ClubsNSW Code of Practice and Best Practice Guidelines 2008* at paragraphs 5, 18-19, 22, 27-31 and 42-45
- g) The *ClubsNSW Best Practice Guidelines 2008 for the Remuneration of Club Executives* at paragraphs 9-10
- h) The *ClubsNSW Code of Practice and Best Practice Guidelines 2011* at paragraphs 5, 18-19, 22, 27-31 and 42-45
- i) The *ClubsNSW Best Practice Guidelines 2011 for the Remuneration of Club Executives* at paragraphs 9-10
- j) Complainant document number LA14, being an interview between OLGR and Mr Robinson dated 27 March 2012, particularly pages 4 and 7.

387. As Particular 3 essentially calls for a conclusion to be drawn by the Authority on the basis of those more specific allegations contained within Particulars 4 to 19, the Authority's finding on this Particular is discussed below, after its findings on those other Particulars.

PARTICULAR 4

388. Particular 4 alleges as follows:

Mr Robinson failed to ensure that the Club complied with the Liquor Act 2007 by:

- a. *Failing to provide to the Authority a Cease to Trade Notice in respect of its former premises until on or about 12 April 2012, contrary to section 93 of that Act; and*
- b. *Failing to apply to the Authority for approval to remove the licence to premises other than those specified in the licence, contrary to section 59 of that Act.*

Authority Findings on Particular 4

389. Section 93 of the *Liquor Act 2007* states:

93 Cessation of trade

(1) *If licensed premises cease trading during any continuous period of more than 6 weeks, the licensee must notify the Authority in writing that the premises have ceased to trade. Maximum penalty: 50 penalty units.*

(2) *This section does not apply in relation to limited licences.*

390. The Authority is satisfied that Particular 4 is established on the basis of the OLGR Chronology, which identifies the source of this information as the GLS (now *OneGov*) database.

391. The Complainant further relies upon the finding made by the Authority at paragraph 66 of the Previous Decision, which found (following examination of its licensing records, including the *OneGov* database) that, although the Club had ceased to trade on 31 December 2007, no Cease to Trade Notice had been filed with the Authority until 12 April 2012.

392. The Authority is satisfied, for the purposes of this decision, that section 93 of the *Liquor Act 2007* commenced effect on 1 July 2008, and the Club contravened this section once six weeks had elapsed after that date without a notice being filed.

393. However, the Authority notes that Mr Robinson was on medical leave as at 1 July 2008, when section 93 of the *Liquor Act* commenced effect.

394. The Club's contravention was ongoing and continued until 12 April 2012 when the Club's then law firm, Murphy's Lawyers (of whom Ms Amanda Farmer represented both the Club and Mr Robinson) filed the required notice.

395. The Authority is further satisfied that no Cease to Trade Notice was filed by the Club with the Authority, contrary to section 93 of the Act on the basis of page 3 of the OLGR interview with Mr Robinson dated 27 March 2012, where the following exchange occurred between OLGR Inspector Thomas Transfield and Mr Robinson:

TRANSFIELD: *Okay. The first thing I would like to clear up is – number one is at no stage has the Marrickville RSL lodged a Cease to Trade Application with the Authority. Were you aware that the Club was required to lodge a Cease to Trade?*

ROBINSON: *I wasn't aware at the start but I've – we've just done that now, I've got my lawyer working on it now.*

396. It is clear enough that Mr Robinson was not even aware of this statutory requirement until it was pointed out to him by OLGR inspectors. The Authority is satisfied that Mr Robinson was not aware of the requirement by the Club to file a Cease to Trade Notice. This adversely reflects upon his knowledge and ability as a Club secretary, although the Club's failure to comply with section 93 first arose at a time when Mr Robinson was on leave and is, in the Authority's view, primarily a failing on the part of the Board and the then secretary to ensure compliance with the *Liquor Act*.

397. The Authority is satisfied that Particular 4 is established, and it is an ongoing operational compliance failure with respect to which Mr Robinson was not aware and should have actioned upon his return from leave. Mr Robinson's failure to demonstrate knowledge and ability as a club secretary became apparent when he returned from sick leave and failed to check or appraise whether the Club had executed its regulatory responsibilities under the new *Liquor Act*.

398. However, less weight is given to this matter as an adverse incident of Mr Robinson's personal fitness and propriety as the compliance failure was primarily attributable to a lack of knowledge and ability demonstrated by the board and its secretary during August 2008, when the Club first contravened section 93 of the *Liquor Act*.

399. The Authority does not hold Mr Robinson responsible for any failure to apply to remove the licence to other premises pursuant to section 59 of the *Liquor Act*. Removal of the licence would be required if the Club was planning to exercise that licence – that is, provide liquor and gaming services pursuant to the club licence at some other premises.

400. While the Authority is satisfied that the Club and Mr Robinson failed to procure premises from which it could recommence the exercise of the club licence and provide accommodation to its members and guests once it became practically able to do so, it does not follow that the Club or Mr Robinson failed to remove the licence.

401. The Authority is satisfied that Particular 4(a) is established. However, Particular 4(b) is not established.

PARTICULAR 5

402. Particular 5 alleges as follows:

Mr Robinson failed to ensure that the Club complied with the provisions of section 10(1)(f) of the Clubs Act by having premises of which it was the bona fide occupier of the Club and which were provided and maintained from the funds of the Club.

Authority Findings on Particular 5

403. Subsections 10(1)(a) through (n) of the Act prescribe a number of statutory requirements that must be observed by all registered clubs in New South Wales.

404. Relevantly, section 10(1)(f) states:

The club shall have premises of which it is the bona fide occupier for the purposes of the club and which are provided and maintained from the funds of the club.

405. The Authority is satisfied, and it is not disputed by the Club or Mr Robinson in this Complaint, that the Club did not have appropriate premises that would meet the requirements of section 10(1)(f) and that provided accommodation to the Club's members and guests.

406. The Complainant refers to the Authority's Previous Decision and the Authority reiterates its findings in paragraphs 62, 63 and 67 of the Previous Decision.

407. Relevantly to this Complaint, the Authority is satisfied that the Club has been without appropriate premises from the date that the Club closed its doors on 31 December 2007 to the date of cessation of Mr Robinson's employment contract on 8 May 2013.

408. Particular 5 of this Complaint contends that Mr Robinson "failed to ensure" that the Club complied with section 10(1)(f) of the Act.

409. In summary, Mr Robinson submits in the first instance that it is the *Club's* duty to ensure compliance with section 10(1)(f) of the Act and that he presented the Board with advice and options as to how the Club may acquire further premises and worked on numerous potential amalgamations with third parties while he was the Club's secretary.

410. While accepting that compliance with section 10(1)(f) is ultimately the responsibility of the Club as a whole, and the acquisition of new premises is ultimately a decision that must be approved by the board, the Authority is satisfied that the governing body and the secretary share the practical burden of ensuring the Club's compliance with section 10(1) of the Act generally so that the Club operates as a *bona fide* registered club.

411. The Authority is satisfied, for the reasons and evidence discussed below in respect of Particular 6, that in the circumstances of *this* Club, the Board members were relatively amateur and limited in their skill set. They relied heavily upon the advice and work performed by the Club's secretary and chief executive officer with regard to ensuring the Club's statutory compliance.

412. The extent to which Mr Robinson demonstrated the level of knowledge and skill that would be expected of a professional club secretary is discussed in the Authority's findings on Particular 6 below. Nevertheless, the Authority is satisfied that the Club and its secretary Mr Robinson jointly failed to ensure that the Club complied with section 10(1)(f) of the Act.

413. Allowing for some reasonable period of time to elapse due to the delayed receipt of the purchase price from the purchaser of the Club property, the Club's wilful failure to ensure compliance with the Act began to crystallise from the point at which the Club was in a practical position to restore compliance with section 10(1)(f) – that is, when the first instalment on the purchase of the Club's land was paid around 27 October 2010. Mr Robinson had returned from his sick leave almost a full year before this.
414. The Club's failure of compliance was clear around 21 July 2011 when the Club had received the entire purchase price yet accorded insufficient priority to restoring compliance with section 10(1)(f) of the Act, preferring instead to pursue its ideal outcome of an amalgamation with another club that also ensured that Mr Robinson and/or all of the directors maintained their roles at the resulting entity.
415. Particular 5 is established.

PARTICULAR 6

416. Particular 6 alleges as follows:

Attempts by Mr Robinson to secure alternate premises following the closure of the premises owned by the Club on 31 December 2007, were not carried out with reasonable diligence or skill. Attempts to secure alternate premises were delayed by Mr Robinson until such time that the sale of the Club's premises were settled in full, being 21 July 2011. Certainly from after the first instalment of the purchase price was received by the Club in early 2009 the Club was in a position to obtain premises had the secretary fulfilled his obligations to ensure the Club complied with the Act.

Authority Findings on Particular 6

417. The Authority is satisfied, as alleged by Particular 6, that attempts by Mr Robinson to secure alternate premises following the closure of the Club premises on 31 December 2007, were not carried out with reasonable diligence or skill.
418. As noted above, subsections 10(1)(a) through (n) of the Act prescribe a number of statutory requirements that must be observed by all registered clubs in New South Wales. Section 10(1)(f) requires the club to have premises for the *purposes of the club* and which are provided and maintained from the funds of the club.
419. The Authority is satisfied that attempts to secure alternate premises did not commence until such time that the sale of the Club's premises was settled in full, which occurred on 21 July 2011.
420. The Authority notes that at page 4 of the OLGR interview with Mr Robinson dated 27 March 2012, the following exchange occurs (apparently by reference to the Club's advertisement in the Sydney *Daily Telegraph* dated 14 March 2012 that is Annexure DD to the Robinson Statement):
- TRANSFIELD: I also notice quite recently in a – I think it was one of the Sydney papers there was an expression of interest to amalgamate, an advertisement. Is that the first time that the club has made an advertisement to – sorry, expressions of interest?*
- ROBINSON: It is.*
421. Whether this delay in securing alternate premises was a product of the conduct of Mr Robinson, the Board, or both, is in dispute.
422. Mr Robinson's position, as emphasised in the written and oral submissions from Mr Seymour, is that it is the *Club's* duty to ensure compliance with section 10(1)(f) of the Act and that it is open to the Authority to make an adverse finding against the Club

in respect of its non-compliance with this section of the Act. While Mr Robinson was the Club's secretary, his role was to advise the Club board and execute the Board's decisions, but it is the board of a registered club that makes the decisions, not its secretary.

423. The Complainant relies upon the Previous Decision in support of this Particular. The Authority is satisfied, as noted in the Previous Decision (from paragraphs 80 to 84), that, for much of the period during which the Club was not in compliance with section 10(1)(f) of the Act, this was the product of conscious decisions made by the Club board, who were responsible for this non-compliance.
424. The Authority is satisfied, for the purposes of this decision and as found in the Previous Decision, that, after the first instalment of the purchase price for the Club property was paid by the purchaser, Abadeen, in October 2010, the Club was in a position to obtain alternative premises had the Board decided to do so.
425. Instead, the Club acted as though section 10(1)(f) of the Act was a discretionary rather than a mandatory requirement that all registered clubs must observe. The Club did not act with reasonable diligence or skill with regard to its obligation to comply with section 10(1)(f) in that its persistent focus was the acquisition or takeover of another club in a manner that was highly favourable to the Club's board and secretary. The Club did not adequately consider alternatives and did not arrange for appropriate alternative facilities to accommodate the Club's members for the purposes of the Club.
426. The Authority made that finding in the Previous Decision on the basis of the records of interview between OLGR investigators and former Club directors Mr John Wales, Mr Kenneth Fawles, Mr David Holmes and Mr Brian Webster dated 28 February 2012; and the OLGR interviews with former Club directors Mr Wayne Olsen and Mr Neville Peters dated 29 February 2012.
427. The Authority notes that, in his interview with OLGR dated 29 February 2012, former Club director Mr Peter Bowden contended that the Club remained open to negotiation in its approach to amalgamation with other clubs, but the Authority was satisfied, and remains satisfied for the purposes of this decision, that the bulk of evidence from the other directors supports the Authority's finding in this regard.
428. With respect to this Complaint, the Authority reiterates those findings on the basis of the evidence previously identified with regard to the Club's conscious decision to delay the acquisition of alternative accommodation. The Authority is satisfied that the Club was focussed on securing equivalent roles for its Board members and its secretary and that this posed a real barrier to the Club attracting or achieving a successful amalgamation, once the Club began contemplating amalgamation as a means of securing premises.
429. The Authority has considered Mr Robinson's contention that the "main stumbling block" for the Club was that each other club approached insisted that they would be the "acquiring" club and that the Marrickville RSL would "have no say in the management of the amalgamated club".
430. The Authority does not accept this characterisation of events. The Authority is satisfied that the Club's desire to ensure that its own secretary (Mr Robinson) and all its directors maintained positions on the board of any amalgamated club likely reduced the attractiveness of the Club as a potential amalgamation partner and was a considerable stumbling block to a successful amalgamation.

431. The Authority accepts Mr Robinson's contention that some potential amalgamation partners proved unviable after due diligence was conducted by the Club. Nevertheless, the Authority considers it more likely than not that the Club's bargaining position on the terms of amalgamation made the Club considerably less attractive to potential third parties that may have been able to offer the Club much needed premises and thus restore the Club to compliance with the Act.
432. Notwithstanding that the Authority accepts that there is evidence of two instances where the Club had communicated to a potential amalgamation partner that it would be open to considering the third party retaining its general manager following the amalgamation (Annexure CC of the Robinson Statement in relation to the Arncliffe Scots Sports and Social Club and Annexure EE of the Robinson Statement in relation to the Kogarah RSL Club), the bulk of the evidence from the Club directors satisfies the Authority that the Club wanted to secure roles for all its directors and its secretary. That was its preferred outcome.
433. The Authority notes that it was not required in the Previous Complaint to make findings with regard to Mr Robinson's fitness, as it is alleged in this Complaint.
434. In Particular 6 of this Complaint, it is alleged that attempts to secure alternate premises were delayed by *Mr Robinson* until such time as the sale of the Club's premises was settled in full.
435. The Authority is satisfied, on the material before it, that the Club's delay in attempting to secure alternate premises was principally as a result of the actions and decisions made by the *Board*.
436. However, the Authority is also satisfied that this Board (described by Mr Robinson as "not the sharpest tools in the shed") was not at all sophisticated or skilled and in practice relied upon advice from its chief executive, Mr Robinson, to a considerable degree. Indeed Mr Robinson, as principal adviser to the Board, had a duty to advise the Board in the strongest possible terms of its obligation to secure premises, either permanently or temporarily, as required by the Act. He had a duty to put proposals to the Board to that effect, including for temporary premises while amalgamation partners were being sought.
437. The Authority is satisfied, on the evidence before it (noting the considerable amount of material provided by the Complainant from Club Board meetings and other communication) that Mr Robinson was not diligent in advising and indeed pressing the Board to restore the Club's compliance with section 10(1)(f) of the Act and in proposing ways by which the Board could do so.
438. The Authority notes the observation made by the Authority's Chairperson at the Conference convened in Sydney on 7 October 2015, that Mr Robinson's advice to the Board to obtain premises, as noted in the minutes of the Club Board meeting of 29 August 2011, is repeated in the same or substantially similar terms in the minutes for the Club Board meetings held in September, October, November and December 2011 in that "Mr Robinson advised that the Club is now actively engaged in trying to find new premises".
439. However the Authority notes that, in the minutes for the Club Board meeting held on 30 January 2012, the only consideration recorded is amalgamation with other clubs – there is no reference to the need to acquire new premises.

440. While there is some evidence that Mr Robinson raised the issue of further accommodation and that this was noted at several Board meetings, having considered the Board minutes provided by Mr Robinson that followed Mr Robinson's return from his period of sick leave in 2009, the Authority is not satisfied that Mr Robinson took adequate steps to place the Club's non-compliance with section 10(1)(f) of the Act as a continuing compliance concern that needed to be addressed by the Board by making, for example, interim arrangements to accommodate the Club's members – whether by leasing premises or otherwise, for example, by arranging temporary membership for Club members with another club in the vicinity.
441. Accepting Mr Robinson's contention that in June 2008, when Mr Robinson was on sick leave, the Club Board had resolved to purchase (and not lease) further premises, it nevertheless became incumbent upon Mr Robinson as a professional Club secretary and chief executive officer to counsel the Board that it was now entering into a prolonged period of non-compliance with the Act and that remedying this state of affairs was a regulatory priority for the Club. This duty was certainly enlivened when Mr Robinson returned from sick leave in November 2009 and even more so when the purchaser of the Club premises made its first substantial payment in October 2010. By October 2010 the Club had been without premises for almost three years.
442. The Authority does not accept the submission from Mr Robinson that complications with respect to the purchase of a significant parcel of land by a property developer were unforeseeable. Nor are complications or delays in obtaining development consent.
443. Nevertheless, the Authority is satisfied that it became incumbent upon Mr Robinson, after his return from sick leave and once the Club had received the first instalment payment on the purchase of the Club's former premises, to actively and skilfully pursue some form of temporary accommodation for the Club's members and guests.
444. Apart from the initial round of legal advice on the Club's options from HWL Ebsworth Lawyers during 2007 prior to the Club closing its doors, there is little evidence to suggest that Mr Robinson obtained, for example, any further legal or other expert advice in order to persuade the Board that its previously resolved disposition against leasing premises (resolved in June 2008) was becoming untenable and placing the Club in prolonged breach of the Act.
445. The Authority is satisfied, on the basis of:
- a) pages 16 to 18 of the transcript of the OLGR interview with Club director Mr John Wales dated 28 February 2012
 - b) pages 22 to 25 of the OLGR interview with Club director Mr Kenneth Fawles dated 28 February 2012
 - c) pages 20 to 23 of the OLGR interview with Club director Mr David Holmes dated 28 February 2012
 - d) pages 10 to 12 of the OLGR interview with Club director Mr Brian Webster dated 28 February 2012
 - e) pages 16 to 20 of the OLGR interview with Club director Mr Wayne Olsen dated 29 February 2012
 - f) pages 8 and 9 of the OLGR interview with Club director Mr Neville Peters dated 29 February 2012
 - g) pages 20 and 21 of the OLGR interview with Club director Mr Leonard Rodgers dated 29 February 2012
 - h) pages 16 to 19 of the OLGR interview with Mr Robinson dated 27 March 2012, ...that the Club had approached several registered clubs in New South Wales during 2011 and 2012 with proposals to amalgamate, subject to a requirement that the

amalgamated entity must secure the current positions of the Club Board and Mr Robinson.

446. These records of interview disclose that *some* of the registered clubs inspected and/or approached by the Club with proposals to amalgamate include the:
- a) Arncliffe Scots Sports and Social Club
 - b) Belmore Returned Services and Community Club
 - c) Botany RSL Club; Mascot RSL Club
 - d) Brighton-le-Sands Amateur Fishermen's Club
 - e) Earlwood Ex-Servicemen's Club
 - f) Greek Macedonian Club
 - g) Yarra Bay Sailing Club
 - h) South Sydney Leagues Club
 - i) Marrickville Hardcourt Tennis Club
 - j) Souths Junior Rugby League Club.
447. The Authority is further satisfied, on the basis of the table commencing at page 10 of the Robinson Statement, that during the period between June 2008 and July 2013 expressions of interest (EOI) were communicated to numerous third party clubs and the outcomes were as follows:
- a) February 2008: Marrickville Bowling and Recreation Club (MBRC) – EOI not accepted by MBRC
 - b) April 2009: Brighton-le-Sands Amateur Fishermen's Club, in liquidation – determined by Club not to be financially viable
 - c) January 2010: Earlwood Ex-Servicemen's Club (EEC) – EEC declined EOI
 - d) August 2011: Greek Macedonian Club – deemed "unsuitable" by Club
 - e) November 2011: Marrickville Hardcourt Tennis Club (MHT) – no response from MHT to Club's offer
 - f) November 2011: Belmore Returned Services and Community Club (BRSC) – BRSC declined EOI
 - g) December 2011: Arncliffe Scots Sports and Social Club (ASSSC) – ASSSC declined Club's offer
 - h) 14 March 2012: Club's EOI advertised in *Sydney Daily Telegraph*
 - i) May 2012: Kogarah RSL Club (KRSL) – KRSL declined Club's offer
 - j) June 2012 and July 2013: Souths Junior Rugby League Club – memorandum of understanding declined by Club
 - k) August 2012: Randwick Rugby Club – the Club did not proceed after due diligence.
 - l) September 2012 to May 2013: Yarra Bay Sailing Club (YBSC) – YBSC declined Club's offer
 - m) 29 September 2012: Further EOI advertised in *Sydney Daily Telegraph*
 - n) December 2012: Revesby Heights Ex-Servicemen's Club – the Club did not proceed after due diligence
 - o) June 2013: Coogee Bowling Club – the Club did not proceed after due diligence
 - p) July 2013: Hurstville RSL Club – this matter was ongoing at the time of Mr Robinson's resignation.
448. The Authority has reviewed the evidence provided in support of Mr Robinson's account of the Club's approaches to amalgamate with other registered clubs (being minutes for Board meetings during February and April 2009 and Annexures AA through KK to the Robinson Statement).
449. The Authority is satisfied that the Club's proposals to amalgamate with other registered clubs were generally subject to a requirement that the amalgamated entity must secure the current positions of the Club Board and Mr Robinson.

450. The Authority is further satisfied, on the basis of the OLGR Chronology (Complainant document 2) which summarises events on the basis of certain specified OLGR file records and noting the minutes for the Club Board meeting held on 29 August 2011 (Complainant document LA4(19)), that Mr Robinson and Club director Mr Peter Bowden met with OLGR officers to clarify the Club's obligations with regard to securing new Club premises on 22 August 2011.
451. The Authority accepts, on the basis of the OLGR Chronology, that Mr Robinson advised OLGR to the following effect:
- *The Club was cashed up in excess of \$10 million to seek new accommodation.*
 - *The Club had 1,842 paid up members.*
 - *The Club did not wish to amalgamate if the outcome resulted in the Club being taken over.*
 - *The Club would only contemplate an amalgamation if the Board remained in place. In effect, the Club would take over another club if the opportunity presented.*
 - *He [Mr Robinson] would have a meeting with the owners of the defunct Greek Macedonian Club.*
 - *He [Mr Robinson] is further investigating a site in Arncliffe where the Rocksia Hotel previously operated that could be turned into a boutique club.*
 - *He [Mr Robinson] has his sights on Yarra Bay Sailing Club as a possible relocation and take over on the basis that he understood it to be having trading problems.*
452. It is not apparent from the material before the Authority that Mr Robinson was *actively* counselling the Board that its preferred outcome (of an amalgamation that ensured that all the Club directors and its secretary retained their roles) was hampering the Club's prospects of successfully amalgamating. This advice was not being provided in circumstances where the Club very much needed another club's premises to restore the Club's compliance with the Act, regardless of the Club's relatively favourable financial position arising from the sale of its property.
453. Notwithstanding that the Club's desire to procure an amalgamation on its preferred terms was proving fruitless, the evidence does not record Mr Robinson providing or procuring advice to the Club Board to the effect that restoring compliance with section 10(1)(f) of the Act was a priority.
454. The Authority is satisfied that the Club was approaching the prospect of third party amalgamation as though it had the "upper hand" from a financial perspective, whereas from a regulatory perspective it was clearly vulnerable.
455. The Authority is satisfied that it became incumbent upon Mr Robinson to provide alternatives to the Club Board in order to restore compliance especially after, in a practical sense, the Club was in a financial position to procure such temporary premises. Notwithstanding the delay in the settlement of the purchase of the Club's land, the Club was in a practical position to seek alternative premises once the first instalment of the purchase price was paid in October 2010.
456. The Authority is satisfied that Particular 6 is established.

PARTICULAR 7

457. Particular 7 alleges as follows:

Negotiations undertaken by Mr Robinson to amalgamate the Club with the Belmore Return Services Community Club Limited (November 2011), the Marrickville Hardcourt Tennis Club (November 2011) and the Arncliffe Scots Sports and Social Club (December 2011) failed due to a requirement that any alternate arrangement must secure the current positions of the Board and Mr Robinson.

Authority Findings on Particular 7

458. The Authority is satisfied, on the basis of Complainant document LA4(33), being the correspondence between the Club and Mr G J Parker of *Parker Insolvency* on behalf of the Arncliffe Scots Sports and Social Club (in liquidation) during December 2011 and January and February 2012 in relation to a proposed amalgamation between the two clubs, that the Club had proposed amalgamation with the Arncliffe Scots Club on the basis that the Club will be the "parent club".
459. The Club's "snapshot" of its intentions, as set out in the initial letter from Mr Robinson to Mr Parker dated 16 December 2011, states, *inter alia*, that the Club will pay all of the Arncliffe Scots Club's debts, continue to fund the Scots Club's day to day activities, and at point 15, that "All Scots Club's staff will be treated with the utmost respect".
460. The Authority is satisfied that the Club's proposal was not accepted by the Arncliffe Scots Club, which made the counter proposal that *Arncliffe Scots* be the "acquiring club".
461. There is no express requirement among this communication that all Club directors and the secretary must retain their current position, although it is clear that the Club proposes to be the "parent club" which reflects the negotiating position that Club directors have disclosed to OLGR.
462. The Authority is satisfied, on the basis of Complainant document LA4(34), being the correspondence between the Club and Mr Michael McGrath on behalf of the Belmore Returned Services and Community Club during November and December 2011, that the Club's proposal to amalgamate, in substantially the same terms as those offered to the Arncliffe Scots Sports and Social Club, was unsuccessful.
463. The Club's "snapshot" of its intentions, as set out in the initial letter from Mr Robinson to Mr McGrath dated 14 November 2011, states, *inter alia*, that the name "Belmore RSL" will not disappear from the identity of the amalgamated club, the Club will commit to retaining Belmore RSL Club's core assets for a period of at least four years, and at point 7, that "All Belmore RSL staff will be treated with the utmost respect".
464. The Authority notes Mr McGrath's letter to the Club dated 14 December 2011 advised that "we appreciate your interest and thank you for your submission but unfortunately your Club has been unsuccessful".
465. While there is no statement evident among this communication that all directors and the secretary must retain their current positions, it is clear that the Club proposed to be the "acquiring club".
466. The Authority is satisfied, on the basis of the table provided in the Robinson Statement summarising the Club's attempts to amalgamate with other registered clubs during 2011 and 2012, that the Club "had no interest" in an amalgamation with the Marrickville Hardcourt Tennis Club after inspecting that club's premises during an informal meeting with that club's groundskeeper in November 2011.
467. The Authority notes that neither the Complainant nor Mr Robinson has provided any detailed documentary evidence of communications on the proposed amalgamation with the Marrickville Hardcourt Tennis Club.
468. The Authority notes that the Complainant also relies upon the records of interview referred to in paragraph 82 of the Previous Decision in support of this Particular.

469. As noted with regard to Particular 6, the Authority has reviewed the transcripts of all of these records of interview and is satisfied, on the basis of:
- a) pages 16 to 18 of the transcript of the OLGR interview with Club director Mr John Wales dated 28 February 2012
 - b) pages 22 to 25 of the OLGR interview with Club director Mr Kenneth Fawles dated 28 February 2012
 - c) pages 20 to 23 of the OLGR interview with Club director Mr David Holmes dated 28 February 2012
 - d) pages 10 to 12 of the OLGR interview with Club director Mr Brian Webster dated 28 February 2012
 - e) pages 16 to 20 of the OLGR interview with Club director Mr Wayne Olsen dated 29 February 2012
 - f) pages 8 and 9 of the OLGR interview with Club director Mr Neville Peters dated 29 February 2012
 - g) pages 20 and 21 of the OLGR interview with Club director Mr Leonard Rodgers dated 29 February 2012
 - h) pages 16 to 19 of the OLGR interview with Mr Robinson dated 27 March 2012, that the Club had approached several registered clubs in New South Wales during 2011 and 2012 with proposals to amalgamate, on the basis that the Club would be the "acquiring club" and the Club's secretary and its Board of directors would be installed on the board of any amalgamated entity.
470. The Authority has reviewed the evidence provided in support of Mr Robinson's account of the Club's various approaches to amalgamate with other registered clubs (being minutes for Board meetings during February and April 2009 and Annexures AA through KK to the Robinson Statement) and is satisfied that the Club's proposals to amalgamate with other registered clubs were coloured by a general desire on the part of the Board that any resulting amalgamated entity secure the roles of all members of the Club's board and Mr Robinson.
471. The Authority is further satisfied, on the basis of the OLGR Chronology (Complainant document 2) and the minutes for the Club Board meeting held on 29 August 2011 (Complainant document LA4(19)), that Mr Robinson and Club director Mr Peter Bowden met with OLGR officers to clarify the Club's obligations with regard to securing new Club premises on 22 August 2011.
472. As noted with respect to Particular 6, the Authority is satisfied, on the basis of the OLGR Chronology (being a summary of events prepared on the basis of OLGR file records), that Mr Robinson advised OLGR of the following:
- *The Club was cashed up in excess of \$10 million to seek new accommodation.*
 - *The Club had 1,842 paid up members.*
 - *The Club did not wish to amalgamate if the outcome resulted in the Club being taken over.*
 - *The Club would only contemplate an amalgamation if the Board remained in place. In effect, the Club would take over another club if the opportunity presented.*
 - *He [Mr Robinson] would have a meeting with the owners of the defunct Greek Macedonian Club.*
 - *He [Mr Robinson] is further investigating a site in Arncliffe where the Rocksia Hotel previously operated that could be turned into a boutique club.*
 - *He [Mr Robinson] has his sights on Yarra Bay Sailing Club as a possible relocation and take over on the basis that he understood it to be having trading problems.*
473. However, noting that Particular 7 is *only* concerned with the Club's approaches to Belmore Returned Services and Community Club, Marrickville Hardcourt Tennis Club and the Arncliffe Scots Sports and Social Club, in the absence of evidence of express communications made by the Club to those three clubs to the effect claimed by the Complainant, the Authority is *not* satisfied that *those* three proposed amalgamations

failed by reason of the Club's requirement that all directors and Mr Robinson secure their roles with the resulting club.

474. The Authority is satisfied, on the basis of the OLGR interviews with the Club directors noted above, that the Club approached these three clubs on the basis that the Club would be the "acquiring club" in the transaction and this was a significant factor militating against the Club's prospects of a successful negotiation.
475. Nevertheless, Particular 7, in the terms in which it has been framed, is *not* established on the evidence before the Authority.

PARTICULAR 8

476. Particular 8 alleges as follows:

Mr Robinson did not act with diligence, skill or integrity in pursuing "an amalgamation" which focussed on the acquisition or taking over of another club in a manner highly favourable to himself and to the members of the Club's Board.

Authority Findings on Particular 8

477. The Authority repeats its findings in respect of Particular 6 of this Complaint. The Authority is satisfied that Mr Robinson pursued an amalgamation that focussed on the acquisition of another Club in a manner that would, if successful, be on very favourable terms to himself and the Board.
478. The Authority is satisfied that Mr Robinson's failure to counsel the Board to take a more flexible approach than the "hard ball" negotiating position adopted by the Club and his failure to present and pursue alternative means of obtaining premises other than by means of an amalgamation, demonstrated an absence of diligence and skill on the part of a club secretary of a club of this scale in circumstances where the Club was in breach of section 10(1)(f) of the Act and in a position to remedy that breach.
479. The Authority does not find that pursuing the Board's preferred outcome (of the directors and Mr Robinson retaining their roles) necessarily exhibits an absence of integrity.
480. Mr Robinson clearly stood to benefit should the Club achieve an amalgamation on the Board's desired terms, but that was an objective of the Board that it had expressed to OLGR since August 2011.
481. It is difficult in those circumstances to attribute a lack of integrity to Mr Robinson when pursuing an objective of the Board. The preferable analysis, on the material before the Authority, is that Mr Robinson did not demonstrate a level of knowledge and skill that the Authority would expect a very highly paid chief executive of a medium scale club to exercise, in circumstances where the pursuit of the Board's goals was proving counterproductive to the Club restoring compliance with the Act, which should have been a priority for the governing body and Mr Robinson.
482. Despite Mr Robinson's previous communication with the compliance regulator, OLGR, and notwithstanding some degree of vacillation apparent from OLGR's internal communications (OLGR labouring under the mistaken belief that the Authority was unlikely to take disciplinary action), the Club was on notice, from 1 February 2012, once Mr Antoine wrote to the Club's solicitors, that an investigation had now commenced into the Club's compliance with the Act.

483. That alone should have signalled that OLGR had changed its previous more sanguine regulatory approach and rung sufficient alarm bells for Mr Robinson to advise the Club to promptly remedy its non-compliance and secure appropriate premises. That did not occur.
484. In conclusion, Particular 8 is established with respect to the allegation that Mr Robinson did not act with diligence and skill with respect to pursuit of an amalgamation on behalf of the Club. However, Particular 8 is not established in respect of Mr Robinson's alleged lack of integrity in this regard as there is insufficient evidence to establish a lack of integrity.

PARTICULAR 9

485. Particular 9 alleges as follows:

Advertisements seeking expressions of interest to amalgamate the Club only were placed after the commencement of the investigation into the Club by the Office of Liquor, Gaming and Racing Compliance Branch.

Authority Findings on Particular 9

486. The Authority is satisfied, on the basis of the table commencing at page 10 of the Robinson Statement that the Club first placed an advertisement seeking expressions of interest in amalgamation with the Club on 14 March 2012, when an advertisement was placed in the Sydney *Daily Telegraph*. A copy of that advertisement is at Annexure DD to the Robinson Statement.
487. The Authority is satisfied, on the basis of the letter from OLGR Inspector Mr Louis Antoine to Ms Amanda Farmer, solicitor dated 1 February 2012 (Complainant document LA2), that on this date OLGR notified the Club of the commencement of its investigation into the Club "to establish whether the Club is complying with the liquor and gaming legislation having regard that it ceased operating since 2008". This letter advised the Club that OLGR officers will attend the Club's office on Friday 17 February 2012. The letter sought production by the Club of several categories of documents for examination.
488. The Authority is satisfied that the Club's advertisement of 14 March 2012 was not placed until *after* the Club had received notice of the commencement of an investigation by OLGR and after OLGR officers attended the Club premises on 17 February 2012.
489. Particular 9 is established.

PARTICULAR 10

490. Particular 10 alleges as follows:

Mr Robinson failed to ensure the Club had premises which were suitable to accommodate members from 31 December 2007 until his separation from the Club on 8 May 2013.

Authority Findings on Particular 10

491. The Authority is satisfied that the Club did not have suitable premises to accommodate its members from 31 December 2007 until Mr Robinson separated from employment with the Club on 8 May 2013. This is not contested by the Club and is not contested by Mr Robinson.

492. The Authority notes that Mr Robinson accepts that the absence of such premises supports a finding against the Club for its non-compliance with section 10(1)(f) of the Act, but contests whether it was Mr Robinson's responsibility to ensure that the Club had such premises during this period. Mr Robinson's position is that he was advising the Board and giving the Board options with a view to obtaining new premises, but it is ultimately the Board's responsibility to take such action.
493. The Authority notes that the requirement imposed by section 10(1)(f) of the Act is that the *club* shall have premises of which it is the *bona fide* occupier for the purposes of the club and which are provided and maintained from the funds of the club.
494. The question is whether the Club's failure to maintain such premises and comply with the Act in this respect is a matter that is also attributable to the responsibility of the Club's secretary, rather than its governing body alone.
495. The Authority accepts Mr Robinson's submission that it is ultimately the governing body that makes the major decisions on behalf of the club. This is subject to scope for the board to delegate certain functions to club staff provided that such functions are not specified by the Act to require action by the board itself.
496. However, in practice a club's board acts on the advice of its secretary (the club's chief executive officer and highest ranking employee) in addition to other executive staff. As previously stated, Mr Robinson, as secretary and so principal adviser to the Board, had a duty to advise the Board in the strongest possible terms of its obligation to secure premises, either permanently or temporarily, as required by the Act. He had a duty to put proposals to the Board to that effect, including for temporary premises while amalgamation partners were being sought.
497. The Authority is satisfied that the Board of this Club was unsophisticated and heavily reliant upon the advice and proposals put to it by the Club's staff and in particular its secretary. Mr Robinson was aware of this, as evidenced by his comment at page 28 of his record of interview with OLGR inspectors on 27 March 2012 that the Board and other Club staff members were "not the sharpest tools in the shed".
498. The Authority is satisfied that the Board included members who were willing amateurs who relied heavily upon Mr Robinson's advice and guidance. The Authority notes the submission made by Mr Seymour at the Conference in relation to the question of Mr Robinson's salary and the 2005 negotiations on the extension of Mr Robinson's employment contract, that:
- ...if we look at the records of interview with the board, when it comes to the negotiation in 2005, firstly there's three or four members that had absolutely no idea what Mr Robinson's on and simply took no interest. So if one says to them, I need performance indicators and my contract should be reviewed, the inference is they wouldn't have known and they wouldn't have cared. The three or four that did know and did care all identified in their interviews they thought they were getting value for money.*
499. The Authority is satisfied that Mr Robinson and Club director Mr Peter Bowden met with OLGR officers to clarify the Club's obligations with regard to securing new Club premises on 22 August 2011, as evidenced in the minutes for the Club Board meeting held on 29 August 2011 (Complainant document LA4(19)).
500. The Authority is satisfied that by August 2011 the Club was in a commanding position to lease temporary premises when the Club confirmed that it now had \$10 million in the bank, but it communicated its intention to find a third party club that would accept its desired terms for an amalgamation.

501. Notwithstanding the considerable amount of material from Club Board meetings and other communications that is now before the Authority, there is an absence of evidence or material from 2011 onwards demonstrating alternative advice and options being presented by Mr Robinson to the Board, notwithstanding that the Board clearly had the means to consider alternatives to an amalgamation with a third party club as of August 2011.
502. The Authority is satisfied that there is an absence of evidence from the Club's records before the Authority that demonstrates Mr Robinson counselling the Board or obtaining independent evidence to present to the Board as to alternatives for restoring the Club to a position of compliance – that is, other than evidence of Mr Robinson pursuing the Board's stated desire to amalgamate on its preferred terms.
503. Despite the list of potential amalgamation options explored by the Board and as detailed in the table provided in the Robinson Statement, there is little evidence of advice in the Robinson Statement or from the material acquired from the Club's records by the Complainant of Mr Robinson pressing the Board that compliance with section 10(1)(f) of the Act was a priority.
504. There is no evidence of Mr Robinson presenting meaningful alternatives for obtaining accommodation, on a temporary or interim basis either. There is little evidence of Mr Robinson counselling the Board to seek amalgamation on terms other than on the basis of the ideal outcome desired by the Board.
505. The Authority is satisfied that Mr Robinson did not demonstrate the degree of skill and ability that the Authority would expect of a competent club secretary, who should be expected to prioritise compliance with the Act.
506. Generally speaking, if the board of a registered club is drifting down a path of prolonged non-compliance with licensing legislation, a secretary with the knowledge and ability to manage a club *within the confines of the legislation* should at the least be sounding the alarm to the board, warning them to change course, and/or procuring independent professional advice if that would assist to persuade the board of the error of its ways.
507. If a secretary is presenting a registered club board with meaningful options that are likely to restore legal compliance, yet the board refuses to countenance such alternatives, or if the board has become so "entrapped" (in the social psychology parlance) in its desired course of action, then a secretary always has the option of resigning his or her position rather than becoming exposed to disciplinary action.
508. Mr Robinson was not compelled to work in a regulated role in the clubs industry. If he was actually faced with a recalcitrant board that would not authorise a timely return to compliance, then it was always open to him to resign his position as secretary rather than share responsibility for the Club's non-compliance.
509. As the Club's chief executive officer, with considerable day to day control over this Club's affairs and a professional duty to provide prudent and frank advice to the Board, the secretary will share responsibility for the Club's non-compliance with the legislation if he is on notice of an issue and does not demonstrate sufficient knowledge and ability to remedy such non-compliance.
510. In this case, the Authority is not satisfied that Mr Robinson was actively advising the Board of the error of its ways. There is insufficient evidence, notwithstanding the extensive records obtained by OLGR from Club Board meetings; nor is there sufficient evidence apparent from the Robinson Statement, that Mr Robinson was pressing the

Club to correct its course and restore compliance with section 10(1)(f) of the Act as a priority.

- 511. There is little, if any, evidence of Mr Robinson providing real alternatives to secure, for example, temporary accommodation for the Club's members that would have resolved the non-compliance while the Club pursued a long term solution.
- 512. The Authority considers it more likely than not, given the absence of any such advice apparent from the Club's records or the Robinson Statement, that Mr Robinson too favoured the outcome preferred by the Board – that amalgamation be sought with a third party on the basis that all of the Club's directors, and Mr Robinson, retained roles on the resulting body.
- 513. That goal proved more and more unrealistic, as attempted amalgamations repeatedly failed, over a prolonged period of time. The Authority is satisfied that the Club's unreasonable negotiating position was a real factor diminishing the Club's prospects of attracting amalgamation offers, notwithstanding that there may have also been other factors at play, such as the suitability of a third party's premises or the viability of the merged club, when potential amalgamations broke down.
- 514. The Authority accepts that the Club was focussed on securing "its assets" in the context of any amalgamation (that is, the purchase price obtained from the sale of its property) but by playing hardball with amalgamation partners the Club failed to recognise that, in spite of its favourable cash position, it was without premises and reliant upon a successful amalgamation to restore compliance if it did not pursue other options.
- 515. Aside from the Club's problematic negotiating position, the Authority is satisfied that the Club had the practical means to procure temporary premises from as early as October 2010 when the first instalment of the purchase price for the Club's former premises was received from Abadeen Group Pty Limited.
- 516. The Club was in a commanding position to acquire temporary premises as of August 2011, once the \$7.25 million it received from the full purchase price, plus \$300,000 in compensation from the purchaser for its delay, was in the Club's bank account. Yet the Club did not take such alternative action and Mr Robinson shares responsibility with the Board for the Club's failure to obtain premises during the relevant period.
- 517. Particular 10 is established.

PARTICULAR 11

- 518. Particular 11 alleges as follows:

Mr Robinson did not make alternate arrangements to accommodate the Club's members pending the purchase of new premises by entering into an agreement with another local club for the provision of temporary honorary membership, as is common practice in the industry.

Authority Findings on Particular 11

- 519. The Authority is satisfied, as contended by the Complainant, that the practice of entering into an agreement with another local club for the provision of temporary honorary membership has been adopted by clubs in New South Wales in recent years – for example, the South Sydney Leagues Club which in recent years "entered into an arrangement where its members could use the premises of the South Sydney Graphic Arts Club at Mascot for a period of time pending completion of renovations at its premises".

520. The Authority notes that, while this Particular has not been denied by Mr Robinson in his evidence or submissions, Mr Robinson argues that there was "nothing unfit or improper" with regard to Mr Robinson's conduct in this respect by reason that he commissioned advice for the Board from lawyers, accountants, valuers and the Club auditor; canvassed options for the Board to consider; and brought the resolution of the issues to a quick determination by the Board.
521. The Authority also notes Mr Robinson's submission that the Club's "unreasonable delays" in making decisions about acquiring alternative premises should be imputed to the Board and that "Mr Robinson could not act contrary to the express wishes of the Board".
522. Mr Robinson also submits that a finding that Mr Robinson fell short of the standards expected of secretaries, by reason of the finding that the *Club* fell short of the standards expected of registered clubs in securing alternative premises, would be "to overturn the structure of corporate decision-making". The issue here, however is not decision making but seeking and presenting options to the Board and advising the Board. This is where Mr Robinson failed in his duty as secretary.
523. The Authority is satisfied, on the basis of paragraphs 89 to 92 of the Previous Decision; page 22 of Mr Robinson's interview with OLGR investigators dated 27 March 2012; and the Authority's findings on Particular 10 above, that this Particular is factually established.
524. Mr Robinson procured some advice from HWL Ebsworth Lawyers during 2007 as to the Club's options prior to it making the decision to close its doors. It is not apparent from the material before the Authority, including the Robinson Statement and the records of the Club's Board meetings following closure of its doors in December 2007, that Mr Robinson, as the Club's chief executive officer and highest ranking employee, actively advised the Board or otherwise pursued alternate arrangements to accommodate the Club's members by way of an agreement with another local club for the provision of temporary honorary membership.
525. Particular 11 is established.

PARTICULAR 12

526. Particular 12 alleges as follows:

Mr Robinson failed to ensure that the Club complied with the terms of its Liquor Licence by failing to provide suitable accommodation for members of the Club.

Authority Findings on Particular 12

527. The Authority is satisfied, for the purposes of this decision, and as found by the Authority at paragraph 66 of the Previous Decision, (following examination of its licensing records, including the *OneGov* database) that, although the Club had ceased to trade on 31 December 2007, no Cease to Trade Notice had been filed with the Authority until 12 April 2012.
528. As noted in paragraph 69 of the Previous Decision, upon which the Complainant relies, the lack of *bona fide* premises for the purposes of the Club not only amounted to non-compliance with section 10(1)(f) of the Act, but represents a breach of a condition of the Club's licence to provide suitable accommodation for members of the Club, through the operation of section 11(3) of the *Liquor Act*.

529. The Authority notes that, while this Particular has not been denied by Mr Robinson in his evidence or submissions, Mr Robinson argues that there was "nothing unfit or improper" with regard to Mr Robinson's conduct in respect of the Club's failure to procure alternative premises by reason that he commissioned advice for the Board from lawyers, accountants, valuers and the Club auditor; canvassed options for the Board to consider; and brought the resolution of the issues to a quick determination by the Board.
530. The Authority also notes Mr Robinson's submission that the Club's "unreasonable delays" in making decisions about acquiring alternative premises should be imputed to the Board and that "Mr Robinson could not act contrary to the express wishes of the Board". Mr Robinson also submits that a finding that Mr Robinson fell short of the standards expected of secretaries, by reason of the finding that the *Club* fell short of the standards expected of registered clubs in securing alternative premises, would be "to overturn the structure of corporate decision-making".
531. However, the Authority does not accept Mr Robinson's submissions in this regard. Mr Robinson, as the Club's chief executive officer and highest ranking employee, has ultimate operational responsibility for ensuring the Club's compliance with the conditions of its licence. Mr Robinson should have knowledge of the legislation to which the operation of the Club is subject, particularly licensing legislation, and manage the Club accordingly.
532. The Authority is not satisfied that there is sufficient evidence to demonstrate that Mr Robinson took reasonable measures to ensure compliance with the terms of its liquor licence by providing suitable accommodation for the members of the Club.
533. The Authority has considered the evidence provided by Mr Robinson and the extensive evidence of the resolutions taken by the Board apparent from Board meetings and communication between the Club and third parties.
534. The Authority is not satisfied that there is sufficient evidence to demonstrate that Mr Robinson took reasonable and effective action to ensure awareness of and compliance with the legislative requirements of section 10(1)(f) of the Act and sections 19(1)(a) and 11(3) of the *Liquor Act 2007*.
535. The Authority is satisfied, on the basis of the Antoine Statement; the application for Summary Liquor Licence (Complainant document LA1); the email from OLGR licensing officer Peter Hart to OLGR Inspector Louis Antoine dated 12 April 2012 (Complainant document LA15); and the OLGR interview of Mr Robinson dated 27 March 2012 (Complainant document LA14), that Mr Robinson failed to ensure that the Club complied with the terms of its liquor licence by failing to provide suitable accommodation for members of the Club.
536. The Complainant alleges that Mr Robinson has not conducted any formal training with respect to the requirements of licensing legislation, and Mr Robinson does not deny that allegation nor provide evidence to rebut that allegation. Instead he relies on his industry experience as sufficient to found his fitness to hold the position of secretary. Mr Seymour went so far as to submit that Mr Robinson was one of the best club secretaries in New South Wales but no evidence has been provided to support that adventurous assertion and the Authority does not accept that contention.
537. While Mr Robinson, as the Club's chief executive officer and highest ranking employee, has ultimate operational responsibility for ensuring the Club's compliance with the

conditions of its licence, the Authority is satisfied that Mr Robinson and the Board share responsibility for this non-compliance.

538. Particular 12 is established.

PARTICULAR 13

539. Particular 13 alleges as follows:

Mr Robinson did not take corrective action to rectify or halt the significant financial losses suffered by the Club following its closure on 31 December 2007.

Authority Findings on Particular 13

540. The Authority is satisfied that the Club continued to incur significant financial losses after the Club closed its doors on 31 December 2007. The quantum of the annual financial losses or profits recorded by the Club is specified by the Complainant in Particular 14.

541. Relevantly to Particular 13 (noting the 2008 financial year concerned six months of losses that occurred after the closure of the Club's former premises), the Authority is satisfied that those losses or profits are as follows:

<i>Financial year ended 30 June 2008</i>	<i>\$2,280,256.00</i>
<i>Financial year ended 30 June 2009</i>	<i>\$1,074,155.00</i>
<i>Financial year ended 30 June 2010</i>	<i>\$364,734.00</i>
<i>Financial year ended 30 June 2011</i>	<i>\$578,599.00</i>
<i>Financial year ended 30 June 2012</i>	<i>\$1,271,894 – Profit due to sale of equipment of \$2,442,590.00</i>
<i>Financial year ended 30 June 2013</i>	<i>\$1,587,973.00</i>

542. Paragraph 12 of the Antoine Statement, prepared on the basis of the Club's returns filed with ASIC, provides a further basis for those figures complete to the end of 2011. While the Antoine Statement pre-dates the 2012 and 2013 annual returns, the fact that the Club incurred those alleged losses or profits is not contested by the Club or Mr Robinson for any of the relevant years.

543. The Authority is satisfied that, once the Club had closed its doors and in the absence of any premises from which it may derive revenue from the provision of liquor, gaming or other hospitality services, the Club continued to incur significant financial losses and these were mainly a consequence of the salary that was paid to Mr Robinson and, to a lesser extent, honoraria paid to directors until the cessation of Mr Robinson's employment contract following his resignation in May 2013 (which resulted in a separation pay-out of over \$800,000.00 plus the transfer of ownership of two Club cars to Mr Robinson).

544. The Authority is satisfied, on the basis of the Antoine Statement, that Mr Robinson's salary, in the years that followed closure of the Club's former premises, was as follows:

- a) 2007-08 (only six months of which post-dated closure of the Club) – **\$297,308.00**
- b) 2008-09 (during which Mr Robinson was on sick leave from March 2008 until June 2009) – **\$94,945**
- c) 2009-10 (during which Mr Robinson was on sick leave from July until November 2009) – **\$304,428**
- d) 2010-11 – **\$482,364.**

545. Mr Robinson gave evidence that, while on sick leave in 2008-09, his insurer paid 90 per cent of his salary and the Club the remaining 10 per cent (per the Robinson Statement dated 29 May 2015).
546. The Authority is satisfied, on the basis of the Antoine Statement, that honoraria continued to be paid to the Club's directors following closure of the Club's former premises (noting that some directors did not continue to receive honoraria following the Club's closure), totalling as follows:
- a) 2007-2008 (only six months of which post-dated closure of the Club) – **\$93,378**
 - b) 2008-2009 – **\$22,469**
 - c) 2009-2010 – **\$44,093**
 - d) 2010-2011 – **\$47,763.**
547. The Authority is satisfied, on the basis of the Antoine Statement that another significant category of costs to the Club following closure of its former premises arose from payment of rent on an office space in Marrickville. The Authority is satisfied, on the basis of the Club's Financial Statements for the year ended 30 June 2011 (Complainant document LA05), that the annual rent paid on the office premises at 1/269 Marrickville Road, Marrickville was approximately \$12,000.
548. Mr Seymour submitted to the Authority that the Club continued to provide support to community groups following the closure of its former premises. The Authority is satisfied that such support occurred, but was quite modest.
549. As found in paragraph 53 of the Authority's Previous Decision, the statement of Club director Peter Bowden dated 26 November 2013 discloses that the Club's financial support to the community after closing its doors included the following:
- a) 29 September 2009 – donation to Yarra Bay Sailing Club: **\$9,640**
 - b) 30 December 2009 – donation to Yarra Bay Sailing Club: **\$5,000**
 - c) 31 March 2010 – loan to Yarra Bay Sailing Club: **\$40,000**
 - d) 25 October 2010 – donation to Ms Tara Coleman: **\$1,000**
 - e) 28 February 2010 – donation to Ms Tara Coleman: **\$650**
 - f) 29 August 2011 – donation to Ms Tara Coleman: **\$2,500**
 - g) 28 September 2011 – fundraising dinner for South Sydney Juniors: **\$500**
 - h) 28 March 2012 – donation to Ms Tara Coleman: **\$1,750**
 - i) 30 July 2012 – donation to Ms Tara Coleman: **\$2,500**
 - j) 18 December 2012 – donation to South Sydney Juniors: **\$500**
 - k) 18 January 2012 – payment to New South Wales Rugby League: **\$2,000.**
550. The Authority is satisfied that the Club continued to earn income in the form of interest on the purchase price of the sale of the Club's property as and when those payment instalments were held in the Club's bank account. The amount of interest derived is recorded in the Club's Financial Statements (Complainant document LA05) during the years ended 30 June 2011 and 30 June 2010 as \$476,890 and \$155,916 respectively.
551. Noting that most of the financial losses incurred by the Club following the closure of its doors flowed from Mr Robinson continuing to receive his full salary, with some substantial contribution to losses flowing from directors' honoraria and office rent notwithstanding that the Club was no longer trading, an issue arises as to whether it was incumbent upon Mr Robinson, in the exercise of due care and skill as the Club's secretary, to provide the Board with meaningful options by which those losses could be reduced during this period while the Club was effectively dormant.

552. The Authority is satisfied that Mr Robinson was performing some functions following closure of the Club's premises. These mainly involved pursuit of the Club's repeated and fruitless attempts to amalgamate on the ideal terms desired by the Club Board.
553. Mr Seymour asserts in his submissions at the Conference that Mr Robinson was working seven days a week to this end and that the Club considered that it was receiving "value for money" for these services. Mr Seymour submits, in the alternative, that the Complainant has not demonstrated how it follows that Mr Robinson continuing to accept his full time salary in those circumstances necessarily amounts to maladministration for the purposes of a disciplinary complaint.
554. Notwithstanding the submission that Mr Robinson was working seven days per week, the Authority is not satisfied, on the balance of probabilities that the evidence has demonstrated that Mr Robinson was actually performing a full time working load following closure of the Club's premises. The Authority considers it more likely that Mr Robinson was working part time.
555. Disregarding the period of time during which Mr Robinson was on sick leave between March 2008 and November 2009, the Authority is not satisfied on the evidence before it that Mr Robinson was actually working around 40 hours per week, noting that Mr Robinson was released from any such contractual obligation to do so in February 2008 when his contract of employment was varied by the Club (as evidenced in the minutes for the Club Board meeting held on 27 February 2008, which is provided at Complainant Document 5 of the Brief of Evidence).
556. The evidence provided by Mr Robinson satisfies the Authority that he was working on the Club's various abortive attempts to amalgamate on its preferred terms. Mr Robinson was also occasionally liaising with OLGR. No doubt he became active once OLGR commenced an investigation in February 2012 and it became apparent during early submissions to the Authority that Mr Robinson was involved with the Club's initial response to the Previous Complaint, prior to Mr Robinson developing symptoms diagnosed by Dr Sachdev as a major depressive episode, followed by his resignation as Club secretary in May 2013.
557. The Authority accepts that Mr Robinson may have performed those functions across any of the seven days of the week but is not satisfied, in the absence of positive evidence to the contrary, that Mr Robinson was actually maintaining a full time working load from December 2007 when the Club closed its doors, to May 2013 when he resigned.
558. Noting the summary of the 2014 research from Melbourne University reported in *The Age* regarding the nation's elite income earners, the Authority is satisfied that Mr Robinson was receiving, from 1994, a salary that was objectively very high, placing him comfortably within the top 1 per cent of all income earners nationwide.
559. The Club was a medium scale community enterprise. The Authority's gaming machine records indicate that the Club was not a small operation, but it was not at the top end of the industry either.
560. Mr Robinson's salary had been offered to him by the Board and dramatically increased between 1992 and 1994. The latest contract, offered by the Club in 2000, allowed for a natural accumulation of the agreed salary in line with the consumer price index.
561. Mr Robinson's remuneration became particularly extravagant in 2005, when his contract was renegotiated, five years before its expiry, to extend for a term of 10 years.

In February 2008, the Club and Mr Robinson agreed to substantially liberalise his contract of employment to no longer require Mr Robinson to work a minimum of 40 hours per week, while the salary position remained unchanged. Mr Robinson's remuneration remained particularly generous, notwithstanding that this variation to his employment contract had occurred in the context of a Club whose financial position was declining year after year and returning substantial losses.

562. The Club's own Board minutes for the meeting held on 13 February 1992, as noted in Annexure A to the Robinson Statement, record that, when the Board first hired Mr Robinson, the \$65,000 starting salary was well over the relevant award. The Board then noted that salaries for chief executives of clubs of comparable scale then reached "up to \$100,000 plus". The minute states:

Award \$36,300 but most Clubs our size pay well over...up to \$100,000 plus. Mr D. Robinson is asking for \$65,000 plus extras already in place. Considered a reasonable demand by Mr Loftus.

563. It follows that by 1994, when the Club increased Mr Robinson's salary to \$208,000.00 per annum, he was being paid well above what the Board had (in 1992) understood to be the *upper level* of salaries paid by clubs of a comparable scale.
564. The issue is whether, in the usual circumstances of the Club being dormant for several years, it became incumbent upon Mr Robinson, as the Club's chief executive officer, to propose some prudent cost reduction measures to the Board in order to reduce the primary sources of outgoings incurred by the Club after it had closed its doors and became unable to derive any trading revenue.
565. Mr Robinson could have, for example, proposed to the Board that he receive a varied remuneration package that reflected a part time work load now that the Club was no longer actively trading. He could have proposed a reduction or suspension in the payment of honoraria to the Club Board while the Club was dormant. He could have proposed a cessation of rental payments being made on the Club's office premises, which were inadequate for the purposes of section 10(1)(f) of the Act, yet presented a not inconsiderable annual impost upon the Club's resources. There is no evidence of any substantial cost reduction measures being proposed by Mr Robinson on the material before the Authority, including the Club's Board minutes and Mr Robinson's statement dated 29 May 2015.
566. The alternative view is that there was nothing improper or negligent about a chief executive continuing to enjoy his agreed contractual right to a very high salary, with no minimum working hours, in the context of a Club that has ceased trading, by reason that these arrangements had been offered to him by the Board. That is, if there was any lack of prudence or negligence apparent from the Club's contractual exposure to high salary costs beyond December 2007, this reflects adversely upon the degree of care exercised by the Club board when entering into those arrangements, not its employee Mr Robinson.
567. The Authority has considered the submissions made by Mr Robinson through Mr Seymour that any guidance as provided by *ClubsNSW Guidelines* is directed to a club and its directors, not the secretary. The Authority further notes Mr Seymour's submissions that the Complainant has put on little evidence, from industry sources or otherwise, illustrating what the standard of conduct with respect to club secretary salaries should be and hence how Mr Robinson's conduct fell so short of that standard to warrant an adverse finding as to his honesty, knowledge and ability.

568. While the Authority may well have benefitted, as submitted by Mr Seymour, from having some expert advice as to industry practice and expectations of the standards of remuneration and contractual obligations of a club secretary, the circumstances of this Club were highly unusual.
569. In this case, a registered club had closed its doors and ceased trading operations, yet remained contractually exposed to incur substantial ongoing salary costs under Mr Robinson's objectively liberal and long term employment contract, which was framed without any apparent regard to performance indicators or any capacity for salary review. The Club persisted from December 2007 to May 2013 (until Mr Robinson's resignation) after closing its doors with no means of deriving revenue other than interest on the sale of its former property.
570. However, while the Club's ongoing exposure to Mr Robinson's salary costs and entitlements warrants criticism as to the degree of knowledge and ability demonstrated by the *Board*, these are matters of commercial judgment by the Club that are insufficient to warrant an adverse finding against Mr Robinson by reason that *he* failed to control the Club's costs in a manner that would be inconsistent with his own contractual rights.
571. In conclusion, the Authority is not satisfied, having considered the evidence and submissions from the Complainant and Mr Robinson, that Mr Robinson undertook significant corrective action to reduce the Club's costs after the Club closed its doors on 31 December 2007.
572. The Authority is satisfied that the contribution made to the Club's overall losses by Mr Robinson's salary and entitlements following the closure of the former Club premises was primarily attributable to a failure by the Board to more prudently negotiate its contractual exposure to Mr Robinson. The prolonged ten year term of Mr Robinson's contract of employment and the very high agreed salary were matters to which the Club was already contractually committed by the time the Club closed its doors.
573. While Mr Robinson was entitled to take the salary package offered to him by the Club, there were other sources of costs incurred by the Club during this period post 31 December 2007.
574. The Authority is satisfied, on the evidence and material before it, that Mr Robinson failed to advise the Board or otherwise take steps to implement a more sustainable approach to the Club's operations in circumstances where the Club's licence was dormant. Mr Robinson also failed to secure premises from which the Club could derive revenue and he failed to take action, including advising the Board on reducing the Club's overall costs.
575. The Authority is satisfied that Particular 13 is established and this reflects adversely upon Mr Robinson's demonstration of ability as a club secretary to control costs in circumstances where the Club was rendered unable to derive revenue.
576. Particular 13 is established.

PARTICULAR 14

577. Particular 14 alleges as follows:

Between 1 July 2007 and 31 December 2011 the [Club] sustained the financial losses as shown below:-

<i>Financial year ended 30 June 2007</i>	<i>\$1,346,817.00</i>
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<i>Financial year ended 30 June 2008</i>	<i>\$2,280,256.00</i>
<i>Financial year ended 30 June 2009</i>	<i>\$1,074,155.00</i>
<i>Financial year ended 30 June 2010</i>	<i>\$364,734.00</i>
<i>Financial year ended 30 June 2011</i>	<i>\$578,599.00</i>
<i>Financial year ended 30 June 2012</i>	<i>\$1,271,894 – Profit due to sale of equipment of</i>
	<i>\$2,442,590.00</i>
<i>Financial year ended 30 June 2013</i>	<i>\$1,587,973.00</i>

Authority Findings on Particular 14

578. The Authority is satisfied that the specified losses (or, in the case of the year ending 30 June 2012, a profit or surplus arising from asset sales) were as incurred by the Club during the relevant period. These figures are not contested by the Club or Mr Robinson and the evidence or material upon which this finding is made is set out under Particular 13, above.

PARTICULAR 15

579. Particular 15 alleges as follows:

Pursuant to the Club Code of Practice and Best Practice Guidelines 2011, Model Board Charter (Appendix 2) a Secretary Manager's responsibilities are outlined as including: "Monitoring compliance with the Club Constitution and this Charter".

Authority Findings on Particular 15

580. The Authority is satisfied, on the basis of the copy of the *ClubsNSW Code of Practice and Best Practice Guidelines 2011*, Model Board Charter, provided by the Complainant with the Brief of Evidence, that the role of a club secretary manager is described as follows:

The Secretary Manager is responsible for the day to day management of the [club] in an efficient and effective manner. The Secretary Manager is to have a formal employment agreement describing his or her term of office, duties, rights and responsibilities and entitlements on termination.

The role of the Secretary Manager includes but is not limited to:

- *Organising Board Meetings, Agendas, Board Papers etc*
- *Monitoring Compliance with the Club Constitution and its Charter*
- *Advising the Board on Compliance with Meeting Procedure (in line with paragraph 9 of the Guideline for Board Operation) and*
- *Preparing minutes of board meetings, arranging approval of minutes and entering into minute book within one month of the meeting.*

581. The Authority is satisfied that Particular 15 is established.

PARTICULAR 16

582. Particular 16 alleges as follows:

Mr Robinson did not monitor compliance with the Club Code of Practice and Best Practice Guidelines 2011 (and its predecessor, 2008 edition) on the following matters:

- a. *The requirement in cl.22(a) in Part B concerning Conduct of Directors, Management and Staff that such persons make decisions that are consistent with these aims/purpose and the interest of members and the requirement in cl.22(h) obtaining value for Club money spent. The Club was losing money whilst it lacked premises because its only income was the interest received on funds it had in the bank. Members were clearly not getting value for the money spent on the remuneration of Board members and the Secretary.*
- b. *Mr Robinson did not take diligent or effective action with respect to monitoring compliance with the Guidelines concerning Remuneration of Club Executives which requires at cl. 9 that the business and financial circumstances of the Club be a critical consideration when determining*

remuneration. Mr Robinson did not take action to limit the Club's liabilities associated with remuneration during a time when the Club was unable to trade. In particular:

- i. Mr Robinson accepted a variation of his contractual obligations allowing him to work at his own discretion with no stipulated minimum hours of work notwithstanding the very generous remuneration package;
- ii. Mr Robinson accepted an employment contract which did not include performance indicators, as required by the Guidelines; and
- iii. On or about 31 August 2005 Mr Robinson accepted an extension of his contract from 1 January 2010 until 31 December 2014 knowing that the Club was experiencing significant financial losses (for financial year ended 30 June 2005 loss was \$686,866.00).

Authority Findings on Particular 16

583. Clauses 22(a) and 22(h) in Part B of the *ClubsNSW Code of Practice and Best Practice Guidelines* (2011) provided with the Complainant's Brief of Evidence state:

We will pursue the aims and purpose of Our Club by:

- (a) *Making decisions that are consistent with these aims/purpose and the interests of members;*
- ...
- (h) *Obtaining value for Club money spent.*

[The Authority notes that the defined term "We" refers to ClubsNSW Members.]

584. Clause 9 of the *ClubsNSW Guidelines on Remuneration of Club Executives* (2011) states:

Generally, there are five key factors in determining remuneration:

- (a) *A consideration of the form of employment regulation;*
- (b) *The work value of the position;*
- (c) *The market rate of pay for a position of similar work value;*
- (d) *The performance of the person occupying the position; and*
- (e) *The capacity of the Club to pay, its business circumstances, and its dependence upon the person being employed.*

[The Authority notes that the defined term "Club" refers to ClubsNSW Members.]

585. With respect to the *ClubsNSW Guidelines* and Mr Robinson's obligation to be aware of such guidelines, Mr Seymour submits that the *ClubsNSW Guidelines* referred to by the Complainant "continually reinforce" that it is the *board* of a registered club, and not its *secretary*, that is responsible for ensuring compliance with the *ClubsNSW Code of Practice and Best Practice Guidelines*.
586. Mr Robinson has not provided evidence that he has undertaken any relevant industry training with regard to club management or regulatory matters of this kind. Mr Robinson does not assert that he did monitor compliance with these industry guidelines but rather submits, through Mr Seymour, that he was "one of the best [club secretaries] in New South Wales" and that the Club Board was "grateful for the work that he was performing, they all thought he was value for money". The Authority notes that the submission that Mr Robinson was one of the best secretaries in New South Wales is not supported by evidence capable of supporting that ambitious claim.
587. The Authority notes that Mr Robinson has provided certain evidence in the Robinson Statement as to the Club's previous financial performance. The trading position of the Club at relevant times is outlined –
- 1994** (the year in which Mr Robinson's salary dramatically increased to \$208,000.00) – Mr Robinson states that the salary increase came "after a new record for profitability had been set for the Club that year"

- 2000** (the year in which Mr Robinson's last current contract was agreed with the Club) – Mr Robinson states that in the early 2000s, the Club was "becoming less and less profitable"
- 2005** (the year in which Mr Robinson's employment contract was extended to 2014) – Mr Robinson states that "there was a lot of hard work to do if the Club was going to get through a very difficult period"
- 2008** (the year in which the requirement that Mr Robinson work a 40 hour week was removed from his contract) – Mr Robinson states that "by 2007, it was clear that the drop in income was a problem the Club couldn't ignore".
588. While non-compliance with industry guidelines does not, of itself, give rise to an independent basis for disciplinary action, a lack of knowledge of such guidelines and a lack of demonstrated observance of industry practice may support an inference that a club secretary does not possess the degree of knowledge and skill that is to be expected of a secretary manager of a moderately large club of some complexity in its operations. This is particularly the case when a secretary has not engaged in industry training.
589. It is alleged that Mr Robinson did not monitor compliance with these industry guidelines. Had he done so, he could have stated as much in his evidence. The Authority is satisfied that Mr Robinson was more likely than not unaware of the requirement in clause 22(a) of the *ClubsNSW Code of Practice and Best Practice Guidelines* (2011) regarding the need for club directors, management and staff to make decisions consistent with the purposes of the guidelines and particularly the requirement in clause 22(h) to obtain value for club money spent.
590. The Authority notes that the *ClubsNSW Guidelines* require that the business and financial circumstances of the club are a "critical consideration" when determining remuneration.
591. Given the absence of any evidence in the Board minutes to this effect, and noting that the Club does not defend the Complaint, the Authority is satisfied that the Club *Board* did not have sufficient regard to the financial circumstances of the Club when agreeing the very high remuneration package provided for in Mr Robinson's 2000 employment contract.
592. The absence of regard by the Board to the Club's financial position or value for money when assuming contractual exposure became particularly apparent when, in February 2008, the Board agreed to vary Mr Robinson's contract to remove the requirement that he work a minimum of 40 hours per week while making no adjustments to his salary, such as pro-rating.
593. There is no evidence among the records of Board meetings before the Authority of the Board having obtained legal advice or expert industry advice in 2000, 2005 or 2008, when agreeing to Mr Robinson's contract or the major changes to the term or requirements with regard to working hours specified by that contract. There is no evidence that Mr Robinson advised the Board to get its own advice either.
594. The contract in evidence before the Authority dated 27 November 2000 (Complainant document LA4(2) of the Brief of Evidence) itself provides little by way of performance indicators or performance review. The document bears certain indications (such as a reference to the secretary's expenses in respect of "Australia Telecom", despite that corporation having become "Telstra" in 1993) that this contract was well out of date and had not been the subject of any serious review or analysis.

595. The question arises as to whether the apparent lack of knowledge and skill involved with the Club's substantial contractual exposure to Mr Robinson which bore little regard to the Club's declining financial position during the 2000s is a matter that also reflects upon Mr Robinson's personal honesty, knowledge or ability.
596. The Authority considers that it is not Mr Robinson's role to advise the Board on the initial terms of his employment or subsequent variations of that agreement. Nevertheless, it becomes incumbent upon an established professional secretary of a registered club to at least recommend that the board obtain its own legal or other expert advice with respect to the terms upon which a club engages its secretary or any other key employment contract – especially in view of the level of income on offer to Mr Robinson that is objectively very high by any standard, placing Mr Robinson among the nation's elite income earners.
597. However, the Complainant has not alleged that Mr Robinson failed to demonstrate knowledge and ability by reason of his failure to ensure the Board obtained independent professional advice on his employment contract. The Complainant was pressed repeatedly by Mr Robinson's legal representatives to specify how Mr Robinson's conduct with regard to his employment fell short of accepted industry standards. The apparent absence of the Board obtaining any expert advice was not specified.
598. There is no evidence in the extensive records of Board meeting material before the Authority indicating that the Board obtained its own advice on the 2000, 2005 and 2008 contractual negotiations with Mr Robinson. This is a matter of concern to the Authority especially when, in this case, the Board was relatively unsophisticated with little by way of professional expertise and in practice heavily reliant upon its secretary, Mr Robinson.
599. The Authority is satisfied that Mr Robinson did not act in a manner that demonstrates monitoring of industry guidelines in respect of the allegations in Particular 16(a). The Club was losing money and while dormant was in a position whereby it could only derive revenue by way of interest in its bank account. At a certain point after closing its doors, this became attributable to the Board and Mr Robinson demonstrating a lack of knowledge and ability with regard to the need for the Club to maintain premises capable of accommodating members and guests to pursue the purposes of the Club. It was a direct consequence of the Club's prolonged period of dormancy.
600. However, the allegation in Particular 16(b) as to a lack of diligence by Mr Robinson with regard to observance of industry guidelines arising from the extraordinarily generous terms of Mr Robinson's employment contract is primarily a failing of knowledge and ability attributable to the *Board* itself. It is the board who hired Mr Robinson, who was the Club's secretary, chief executive and employee.
601. For the purposes of a disciplinary complaint, Mr Robinson's role in procuring those increasingly favourable terms has not been specified nor substantiated to an extent that would fairly identify *how* he failed to demonstrate honesty, knowledge or ability by *accepting* the contractual arrangements that were offered to him.
602. Particular 16(a) is established. Particular 16(b) is not established.

PARTICULAR 17

603. Particular 17 alleges as follows:

Mr Robinson failed to put any effective strategic goals or business plans in place for the Club. In this and other respects detailed above he failed to comply with clause 8 of the Guidelines for Board Operation which states:

"The Club manager is responsible to the Board for the overall management and performance of the Club in accordance with the strategy, plans and policies approved by the Board to achieve the agreed results."

604. The *ClubsNSW Guidelines for Board Operation* (July 2011) provided by the Complainant in the Brief of Evidence, relevantly states in the definitions section that:

"business plan" means any plan for the future administration of the Club (including strategic and operational plans) developed by senior management and approved by the board.

605. Clause 8 of the *Guidelines for Board Operation* states:

Role of the Club Manager

The Club manager is responsible to the Board for the overall performance and management of the Club in accordance with the strategies, plans and policies approved by the Board to achieve the agreed results.

For more information on executive appointments, remuneration and evaluation refer to the Guideline for Remuneration of Club Executives.

606. The Authority is satisfied, on the basis of the material provided by the Complainant, including in particular monthly Board meeting minutes; and having considered the evidence and submissions from Mr Robinson, that there is an absence of evidence of any formal strategic planning or business planning documents in place for the Club – particularly following closure of the Club in December 2007.

607. Broadly speaking, the Club could be said to have had a "plan" to complete the sale of its land, a process which commenced in 2007 following Mr Robinson procuring advice from *HWL Ebsworth Lawyers* on the Club's options.

608. Later, in around February 2008, the Club commenced *informally* seeking amalgamation partners, but did not actually advertise for expressions of interest until 14 March 2012, when an advertisement was placed in the *Sydney Daily Telegraph*.

609. Mr Robinson was acting on behalf of the Club in the general pursuit of the Club's efforts to complete the sale and pursue an amalgamation, but there is little evidence of formal strategic or business planning beyond that, a process that might potentially have prompted the Board to change direction, or a resolution to seek further expert advice on alternatives to the Board's desire to secure new premises by way of an amalgamation that saw the representation of all of the Club's Board members and secretary retained in the new entity.

610. Mr Robinson failed to initiate or propose such business plans, which on the basis of the *ClubsNSW Guidelines*, are accepted by the Authority to be an appropriate industry practice. This absence of planning is one factor, albeit not decisive in itself, that indicates that the Club was not being managed with the degree of skill and diligence that is accepted in the industry according to the industry's peak body.

611. Non-compliance with *ClubsNSW* guidelines does not of itself provide a legislative basis for disciplinary action, but an absence of demonstrated regard to industry practice supports an adverse inference as to the degree of skill and knowledge demonstrated by

this Club's secretary, in circumstances where the Club was otherwise in a state of prolonged non-compliance with section 10(1)(f) of the Act. A lack of formal business planning is a further factor that contributed to the Club failing to prioritise regulatory compliance.

612. Alternatively, had Mr Robinson executed such planning, with due attention paid to the Club's regulatory obligations, it may have supported an inference that the Club's drift into non-compliance was not for want of the secretary's lack of knowledge and skill when advising the Board.

613. Particular 17 is established.

PARTICULAR 18

614. Particular 18 alleges as follows:

The Club Code of Practice states at Clause 5:

"Club Directors, managers and staff are custodians of members' property and have an obligation to ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity."

- a. *Mr Robinson failed to manage the Club's property in a manner which was fair to members and efficient, and;*
- b. *Mr Robinson's conduct concerning his remuneration lacked integrity in that (i) he accepted a salary which was far in excess of what the Club could afford to pay; (ii) he continued to accept a salary after the Club ceased to trade in circumstances where he could have found alternate premises for the Club which would have allowed the Club to recommence trading and thus earning funds from which it could pay his salary; (iii) he accepted the use of 2 motor vehicles when his contract provided for one.*

Authority Findings on Particular 18

615. Clause 5 of the *ClubsNSW Code of Practice* (2011) states:

Club Directors, managers and staff are custodians of members' property and have an obligation to ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity.

616. In response to this Particular, Mr Robinson submits orally through Mr Seymour that "the allegation takes an extraordinarily narrow view of events". Mr Robinson submits that his activities are indicative of "a person dedicated to the social objectives of the Club" and that "the position of secretary is not intended to be honorary". Furthermore, Mr Robinson contends that it is "common" in registered clubs throughout New South Wales for persons to hold the office of secretary despite a club having "a negative financial position" in a given year.

617. At the Conference, Mr Seymour noted that the Club was operating at a loss, and that Mr Robinson was drawing a salary. He submitted, however, that "those two facts alone...cannot possibly form a sound basis for a finding that the secretary was involved in some form of maladministration".

618. Mr Seymour submitted that a club secretary "does not, except in an indirect way, owe duties to the membership". The *board* owes "direct and statutory" duties to the club's membership and the *secretary* owes duties to the *board*, therefore indirectly to the membership – but "to simply find the secretary is responsible because the board is responsible creates a nonsense of that division of those two goals".

619. Also at the Conference, the Authority's Chairperson noted that the Club recorded a loss of **\$578,000** in 2011; however Mr Robinson's salary was **\$482,000** that year. The Chairperson questioned Mr Seymour as to whether the secretary of a registered club, as principal adviser to the board, has an obligation to provide a recommendation to the board that it forgo some of the secretary's pay or contractual entitlements in those circumstances.
620. Mr Seymour submitted in response that, if this observation is true, there is "certainly no widely established practice of doing that" and that there is nothing in the *Guidelines* that would suggest that that is what "reasonable" secretaries would do. Mr Seymour argued that that is "not a reasonable practice within any commercial enterprise".
621. The Authority accepts the general proposition that a club's secretary is accountable to the Board and the secretary is obliged to implement the resolutions and decisions made by the board. A club secretary cannot displace the club's decision making, but as chief executive and a senior officer of the board, the secretary is required to act in the best interests of the club and to advise the board accordingly, demonstrating the degree of honesty, skill and ability that would reasonably be expected of a club of this relative scale and sophistication.
622. The Authority is satisfied that Particular 18(a) is established, to the extent that having considered the evidence and material before it the Authority is not satisfied that Mr Robinson managed the Club's property in a manner which was fair to members and efficient. Notwithstanding the extent of Board minutes and records before the Authority, there is little discussion recorded at the board level as to reducing the Club's expenditure after it closed its doors in December 2007.
623. The Authority is not satisfied that Particular 18(b) is established. The Authority is not satisfied, on the material before it, that Mr Robinson lacked "integrity" by continuing to rely upon his contractual entitlements after the Club had ceased to trade.
624. The Club's ongoing exposure to Mr Robinson's salary and entitlements reflects a lack of diligence by the Board when offering those terms to Mr Robinson, but there is insufficient material before the Authority to support a finding that this conduct establishes a lack of integrity for the purposes of a disciplinary complaint.
625. The Authority has found that the Club could have found alternative premises once it had the means to do so but did not, and that this prolonged non-compliance with the Act reflects adversely upon the degree of knowledge and ability demonstrated by Mr Robinson in this regard.

PARTICULAR 19

626. Particular 19 alleges as follows:

Mr Robinson has been medically unfit to act as a secretary of a registered club since May 2012.

- a. *Mr Robinson has been suffering depression since May 2012.*
- b. *Mr Robinson's depression has affected his ability to think clearly and objectively.*
- c. *Mr Robinson's concentration is poor, his thinking is negative, his judgment is impaired and his energy levels are low.*
- d. *Mr Robinson's depression is proving difficult to treat.*
- e. *The condition of depression makes a person more likely to commit errors.*

Authority Findings on Particular 19

627. The Authority is not satisfied that this Particular is established. While there was previously evidence to the effect that Mr Robinson's last episode of depression (during 2013) meant that it was arguably unfair to make him respond to disciplinary action at that time, there is no medical evidence indicating that Mr Robinson is currently experiencing the symptoms that Dr Sachdev noted from 2008-2009 and 2013.
628. Generally speaking, it is possible that an officer of a registered club exercising a regulated function may be rendered unfit by some physical or psychiatric medical condition to serve as a director or secretary, as the case may be.
629. At the time that this Complaint was filed, there was cause for concern as to Mr Robinson's medical fitness arising from the medical evidence he relied upon in response to the Previous Complaint.
630. However, in order to reach a conclusion of medical unfitness, the Authority would require expert evidence, current at the time of determining a complaint, satisfying the Authority that the relevant impairment was reasonably permanent and likely to persist for the foreseeable future and not just a temporary setback. Without setting any fixed period of time, evidence to the effect that the person is unable, due to their formally diagnosed medical condition, to execute the demands of a regulated role for around two years may suffice.
631. The Authority is not satisfied that Particular 19 has been established on the evidence and material before it.

CONCLUSION ON FITNESS AND PROPRIETY

632. Having considered cumulatively the findings on Particulars 4 through 19, the Authority is satisfied that Mr Robinson failed to perform his functions and duties as secretary and chief executive officer of the Club and as an officer of a company limited by guarantee, with the degree of knowledge and ability required and to the standard required in the industry and by relevant legislation.
633. There is insufficient evidence or material before the Authority to support an adverse finding as to Mr Robinson's integrity or honesty and the Authority makes no finding in this regard.
634. Particular 3 is established.
635. On the evidence and material before it, the Authority is satisfied that the Club's former secretary, Mr Dalley Robinson, is not a fit and proper person to act as such. This conclusion has been reached having regard to the Authority's findings on Particulars 5, 6, 10 and 12 regarding the Club's non-compliance with section 10(1)(f) of the Act. Section 10(1)(f) goes to the heart of what it means to maintain a *bona fide* registered club.
636. Mr Robinson's failure to take steps to control the Club's costs while it was no longer in a position to derive any trading revenue is a further factor in the adverse assessment of Mr Robinson's fitness, but a matter that is given less weight than his role in the Club's prolonged non-compliance with section 10(1)(f) while secretary. The Club's failure to file a Cease to Trade Notice provides a further, albeit minor, adverse finding as to Mr Robinson's knowledge and ability.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

637. On 5 November 2015, the Authority provided a detailed letter to the parties advising its findings on the Ground of Complaint and inviting final submissions on the question of what, if any, disciplinary action should be taken against the Club and Mr Robinson on the basis of those findings. The Club and Mr Robinson were requested to provide any final written submissions by 12 November 2015.

Final Submission from the Complainant dated 10 November 2015

638. On 10 November 2015, Ms Rizzo made a brief email submission on behalf of the Complainant that in light of the findings made in the Authority's decision letter of 5 November 2015, the Authority ought to impose the disciplinary action recommended in the Complaint and pressed in the Complainant's submissions, being:

A declaration that Dalley Robinson under s. 57H(2)(g) of the Registered Clubs Act 1976 is ineligible to stand for election, be appointed to, or hold office in, the position of secretary or member of a the governing body: of the Club; and all other registered clubs for a period of 3 years.

Final Submission from Mr Robinson dated 12 November 2015

639. On 12 November 2015, Ms Amanda Farmer of the law firm *Lawyers Chambers on Riley* provided a brief email submission on behalf of Mr Robinson to the Authority. The full text of that email states:

In response to your email of 5 November 2015 and the issue of what, if any, disciplinary action should be taken in light of the findings made, we confirm that Mr Robinson relies his [sic] earlier submissions made in relation to that issue.

In addition, we note paragraph 639 of the Decision invites "the Club's Administrator" to "also make submissions on the question of costs sought by the Complainant..."

We do not know if the Authority is considering imposing an obligation on Mr Robinson to meet any part of the Complainant's costs. If so, we take this opportunity to note that, as far as we are aware, the Complainant has not sought costs in these proceedings. In our submission, it is not open to the Authority to place any obligation on Mr Robinson to meet any part of the Complainant's costs associated with this complaint. If it does so require Mr Robinson to pay costs, Mr Robinson's reliance on the absence of a costs application will have been to his detriment.

640. The Authority's General Counsel advised the parties, via return email dated 12 November 2015, that the Authority is only considering the question of whether the *Club* in administration should pay OLGR's costs on the investigation, not Mr Robinson.

Submission from the Club's Administrator dated 12 November 2015

641. Also on 12 November 2015, Mr John Vouris of *PKF Australia* provided a very brief email submission to the Authority, stating that he had already paid OLGR's costs out of the company's funds.

FINAL DECISION ON DISCIPLINARY ACTION

642. The Authority gave further consideration to this matter at its meeting on 25 November 2015, with the benefit of the final round of submissions from the parties.
643. 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.*

644. 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 of the judgment):

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.

645. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of a respondent 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).
646. 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*.
647. At paragraph 83 of the judgment in *Lambert*, Basten JA observed that the "punitive effects" of taking action 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.

648. At paragraph 85 of the judgment in Lambert, Basten JA further 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.

Mr Robinson

649. The Authority notes that Mr Robinson's final submission on disciplinary action refers to his previous submissions made during the course of this Complaint. To recap, Mr Robinson submits that disciplinary action against him is neither warranted nor appropriate by reason that:

- a) He is 70 years old, has "no current desire" to act in a regulated position within the registered clubs industry and is prepared to sign an undertaking to that effect.
- b) There was "nothing unfit or improper" in his conduct in relation to the Club's non-compliance with the statutory requirements of the licensing legislation.
- c) The *Club* fell short in its obligations to the Club's members. However, Mr Robinson did not fall short in his obligations to the Club's members because he provided "options and information" to the Club Board.
- d) Mr Robinson could not act contrary to the express wishes of the Board, therefore the responsibility for the Club's failure to secure alternative premises and the Club's non-compliance with the requirements of licensing legislation generally should be imputed to the Club Board.
- e) No utility and no further community benefit can be derived in now denouncing Mr Robinson's conduct and/or taking further disciplinary action against him.
- f) The Complainant's reliance on medical evidence that was before the Authority in relation to the Previous Complaint is "fundamentally unfair" and "does not support the conclusion" that Mr Robinson is not a fit and proper person.

650. The Authority further notes the statements made by Mr Robinson in the Robinson Statement dated 29 May 2015 that:

- a) He has had no licensing convictions recorded against him;
- b) He has no history of adverse regulatory incidents;
- c) He has no criminal convictions;
- d) He has not been issued with any Penalty Notices in connection with the operation of the Club; and
- e) He has at all times held the requisite qualifications in relation to the Responsible Service of Alcohol and Responsible Conduct of Gambling.

651. The Authority accepts that Mr Robinson has "no current desire" to resume a regulated role in the New South Wales registered clubs industry at this time, and that he was willing to make an undertaking to that effect, which was not accepted by the Complainant as a basis for withdrawing this Complaint, requiring the Authority to determine the matter and consider the question of disciplinary action.

652. However, the Authority does not consider that Mr Robinson's age or medical conditions are factors that necessarily preclude him from seeking a regulated role again in the future, should he change his mind. The material before the Authority and Mr Robinson's own submissions satisfy the Authority that, prior to the Previous Complaint being made by OLGR, Mr Robinson was planning to continue as this Club's Secretary. He was working with the Club's board to seek an amalgamation on terms that would include him retaining his full time role.

653. Mr Robinson has extensive experience in the clubs industry and according to his Counsel in submissions to this Authority Mr Robinson considers himself to be one of the best Club secretaries in the State. The Authority does not consider that the medical

evidence before the Authority precludes his return to work and notes that Mr Robinson previously returned to his role as Secretary after a period of illness.

654. In these circumstances the Authority cannot rule out that Mr Robinson may change his mind and seek involvement in the industry again. It is not at all uncommon for persons aged in their 70s to seek appointment to boards, for example.
655. The Authority notes that the purpose of disciplinary action is *protective*, not *penal*. Whether or not Mr Robinson ever seeks appointment in a regulated capacity in the registered clubs industry in this State again, a period of disqualification will remove any scope for this and, more importantly, send a clear and appropriate message of the likely consequences to both the individual concerned and to others in a similar position within the industry who may contemplate engaging in the type of conduct that is the subject of this Complaint.
656. There is little in Mr Robinson's written or oral submissions whereby Mr Robinson acknowledges much by way of personal professional responsibility for the Club's protracted period of non-compliance with the *Registered Clubs Act*. He has conceded that the *Club* did not comply with section 10(1)(f) of the Act, but seeks to primarily attribute responsibility to the *Board*.
657. Mr Robinson's submissions also emphasise the stress and adverse personal impact that the making of this Complaint and the Previous Complaint have had upon him. The Authority accepts that participation in a disciplinary complaint is a stressful matter, but Mr Robinson's submissions do not have the flavour of a person who has actually learned from this experience as to his responsibilities as a club secretary and chief executive officer toward matters of statutory compliance with licensing legislation.
658. Further, Mr Robinson has provided no evidence or submissions that he has undertaken any professional education, qualifications or training in respect of the registered clubs industry, but rather relies upon his extensive experience within the industry – has proven insufficient to ensure the Club's legislative compliance in this case.
659. In light of the Club's prolonged non-compliance with the requirements of licensing legislation and Mr Robinson's apparent unwillingness to accept significant responsibility for that non-compliance, the Authority is satisfied that it is appropriate, for the protection of the public and the industry, to disqualify Mr Robinson from participation in the industry as a member of a governing body or a secretary of a registered club for the maximum period available under the Act.
660. 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 Authority is satisfied, given the Club's substantial non-compliance found in this matter for which Mr Robinson shares responsibility, that a disqualification for three years is an appropriate period for the protection of the community and the industry.

The Club

661. The Authority accepts that the costs incurred by OLGR on the investigation preceding the Complaint have been paid by the Club, as advised by the Club's administrator, Mr Vouris and not disputed by the Complainant.

662. The Complainant has not sought and the Authority has not decided to impose any additional penalties on the Club as a consequence of this Complaint. The Authority is not satisfied that it is in the public interest or serves a protective purpose for the assets of the Club to be further dissipated by the imposition of financial penalties.

ORDERS

663. The Authority declares, under section 57H(2)(g) of the Act, that Mr Dalley Thomas Robinson 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.

REVIEW RIGHTS

664. 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.
665. Please visit the NCAT website at 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



Micheil Brodie
Chief Executive

12 JAN 2016