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Dear Sirs

**Draft Decision: Complaint in relation to Parramatta Leagues Club Limited
under Part 6A of the *Registered Clubs Act 1976***

INTRODUCTION

1. I refer to a letter of complaint (**Complaint Letter**) provided to the Independent Liquor and Gaming Authority (**Authority**) on 22 September 2014 (**Complaint**) by Mr Anthony Keon, Director of Compliance and Enforcement, Office of Liquor, Gaming and Racing (**OLGR**) in his capacity as delegate of the then Secretary (**Secretary**) of NSW Trade and Investment (**Complainant**).
2. The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (**Act**) in relation to the registered club known as Parramatta Leagues Club Limited, located at 13-15 O'Connell Street, Parramatta (**Club**). The Club holds a club licence number LIQC300229459 pursuant to Part 3, Division 3 of the *Liquor Act 2007*.
3. The Club has been in operation since 1959 and on 23 December 2005, amalgamated with the Viking Sports Club Ltd. The Club maintains its main premises at Parramatta and the former Viking Club premises at 35 Quarry Road, Dundas Valley.
4. The Complainant has provided an extract of the Club's liquor licence from the former Government Licensing Service database now known as "OneGov". It discloses that as of 23 July 2014 (the last date of any significant change on the licence prior to the making of the Complaint), the Club held an unrestricted licence enabling it to potentially sell or supply liquor for consumption on the Club premises, 24 hours a day.

[The Authority notes that the Club's liquor licence pre-dates the operation of the mandatory six hour daily closure period for licensed premises that is now provided by section 11A of the *Liquor Act 2007*.]

5. As a consequence of recent amendments to the Liquor Act that commenced effect in February 2014, the Club is also licensed to sell or supply liquor, for consumption off the Club premises, from 5:00am to 10:00pm on Monday through Saturday and from 10:00am to 10:00pm on a Sunday.
6. The licence record indicates that the Club has the benefit of a "non-restricted area authorisation" under section 22 of the Act enabling minors to access certain areas of the Club premises in the company of a responsible adult and a "club functions authorisation" enabling the Club to conduct functions on the Club premises for non-members under section 23 of that Act.
7. The licence record indicates that the Club has a Gaming Machine Threshold (the maximum number of machines that may be kept on the Club premises) of 494 and that the Club actually holds 494 gaming machine entitlements – that is, the entitlements held by the Club enable it to operate gaming machines to the maximum of its threshold. The mandatory gaming machine shutdown period fixed in relation to the Club premises for the purposes of the *Gaming Machines Act 2001* is from 6:00am to 9:00am, each day of the week.
8. Notwithstanding its extensive licensed hours, the Club's website (at the time of this letter) indicates that the *actual* trading hours exercised by the Club in respect of its Parramatta premises are from 9:00am to 6:00am every day.

SCOPE OF COMPLAINT AND SUBMISSIONS

9. There are 16 grounds of Complaint (**Grounds**), all of which may potentially be relied upon in a disciplinary complaint in relation to a registered club, as provided by section 57F(3) of the Act.
10. While the Act requires that a Part 6A complaint be made "in relation to" a club, of the 16 Grounds that are agitated in this Complaint Letter, Grounds 1 to 11 involve alleged failings on the part of the Club, while Grounds 12, 13, 14, 15 and 16 allege that four former directors and one former club secretary are not fit and proper persons to hold a position as a member of the governing body or as the secretary of any registered club in New South Wales.
11. Ground 12 concerns the fitness and propriety of a former member of the governing body, Mr Roy Spagnolo, who was the Club's chairman from May 2009 to May 2013.
12. Ground 13 concerns the fitness and propriety of a former member of the governing body, Mr Mario Libertini, who was a director of the Club from May 2009 to May 2013, and again from September 2013 to May 2014.
13. Ground 14 concerns the fitness and propriety of a former member of the governing body, Mr Eric Grothe Snr, who was a director of the Club from April 2012 to May 2013.
14. Ground 15 concerns the fitness and propriety of a former member of the governing body, Mr Saidley (Sid) Kelly, who was a director of the Club from May 2009 to May 2013.
15. Ground 16 concerns the fitness and propriety of a former member of the governing body, Mr Robert Bentley, who was the Club's secretary (and chief executive officer) from May 2010 to July 2013.
16. The initial Complaint Letter is 33 pages long and within each Ground are specified numerous Particulars, mostly allegations as to questions of fact that are submitted by the Complainant to establish the Ground in question.

17. An amended version of the Complaint Letter, filed on 9 June 2015 after a conference convened by the Authority, no longer presses Ground 5 of the Complaint. Unless specified to the contrary, all following references to the "Complaint Letter" mean the Complaint Letter as amended on 9 June 2015.
18. The Complaint Letter is accompanied by a brief of evidence comprising several hundred pages of submissions, evidence, and other material upon which the Complainant relies (**Brief of Evidence**).
19. The Brief of Evidence comprises around **6,100** pages of material. It was prepared by OLGR staff and includes, *inter alia*, statements of evidence prepared by three OLGR Inspectors during 2014; records of interview between OLGR Inspectors and members of the Club's governing body; various correspondence between OLGR, the Club and members of the Club's governing body; copies of internal Club reports; copies of reports to the Club from various external advisors; material produced to OLGR in response to Notices to Produce issued by OLGR under the gaming and liquor legislation; minutes of Club Board meetings; reports to Club committees; various Club internal guidelines and handbooks; various Club financial reports; Club Annual Reports; minutes of Club Annual General Meetings; Club Registers (including registers of directors' interests); various documents regarding the procurement of goods or services by the Club; documents regarding the engagement of Club Executives; various Club books and transaction records; correspondence between the Club and certain members of the governing body; correspondence between certain members of the governing body and other miscellaneous documents gathered by OLGR during the course of its investigation that preceded the making of this Complaint.

PROGRESS OF THE COMPLAINT

20. The Club is represented by Mr John Ralston of the law firm Pigott Stinson Lawyers, who are instructed by the current governing body of the Club.
21. The former office holders of the Club who are the subject of Grounds 12 to 16 (Messrs Roy Spagnolo, Mario Libertini, Eric Grothe Snr, Saidley Kelly and Robert Bentley) are represented by Mr Tony Schwartz of the law firm Back Schwartz Vaughan. They are referred to collectively in this decision as the "**Ex-Officers**".
22. In the latter part of the process of this Complaint, the Complainant was represented by Mr Brett Hearnden of the law firm Hunt and Hunt Lawyers.
23. On 31 October 2014, the Authority issued a Show Cause Notice to the Club and invitations to the Ex-Officers to make written submissions. A timetable was fixed with a view to the Authority receiving all submissions addressing the merits of the matter before it by 9 January 2015.
24. Substantial procedural delays then ensued.
25. First, several weeks were lost while Back Schwartz Vaughan clarified the extent of directors' insurance coverage available to the Ex-Officers (and hence their ability to pay for legal representation).
26. The Authority granted two requests made by Mr Schwartz on behalf of the Ex-Officers for more time to prepare their case. These requests were acceded to by the Authority in order to ensure procedural fairness and principally by reason of the unusually large volume of material filed by the Complainant in the Brief of Evidence (although the Ex-Officers would later claim that *not enough* material had been provided by the

Complainant – with many thousands of pages of additional material sought for production by the Ex-Officers).

27. Further delays were then encountered on the part of the Complainant, who required until 27 March 2015 to voluntarily produce material requested by the Ex-Officers in their requests for particulars and the production of further material.
28. Additional delays were encountered on the part of the Club itself, when producing a great deal of further material that had been requested by the Ex-Officers on 23 April 2015. This material comprises primarily minutes and reports of Club Executive Meetings that span the entire period of the Complaint. After it was not produced pursuant to informal requests from the Ex-Officers, the Authority issued a Notice to Produce dated 30 April 2015, returnable by 4 May 2015.

[The Authority determined to issue the Notice to Produce as it was concerned about ongoing delays and it notes the Club had written that day expressing its concerns with the length of time this matter was taking to finalise.]

29. The Club was then unable to comply with the Authority's deadline, citing the great volume of material sought by the Ex-Officers and (somewhat less persuasively) the fact that the Club was now in the midst of conducting another election and resources were not available to comply with the Notice to Produce. The Club commenced production of the material sought under this Notice to Produce on 15 May 2015.
30. The Authority did not accede to a request by the Ex-Officers to further extend the period to complete their submissions until August 2015. The Ex-Officers had sought this prolonged extension in order to accommodate Mr Spagnolo's planned overseas travel and the proposed engagement of an expert who was within the (already extended) timetable fixed by the Authority. The Authority was satisfied that the Ex-Officers had been granted an extensive opportunity to prepare their response, and further extensions of time were not justified.
31. As a result of these procedural developments, the Authority now has before it some **33,758** pages of material – much of it material produced by the Club, at the request of the Ex-Officers, pursuant to a Notice to Produce issued by the Authority after the Club did not produce that material voluntarily.
32. The Club filed its primary submissions responding to those Grounds 1 to 11 that are directed to compliance failings on the part of the Club itself, on 4 February 2015.
33. The Ex-Officers filed their primary written submissions on 29 May 2015, outside of the amended timetable fixed by the Authority but within 14 days from the production by the Club of the material sought under a Notice to Produce.
34. Following the completion of written submissions, the Authority promptly convened a conference with the parties on 4 June 2015 (**Conference**). The Club was represented by Mr John Ralston of Pigott Stinson Lawyers, while the Ex-Officers were represented by Mr Terrence Lynch SC instructed by Mr Tony Schwartz of Back Schwartz Vaughan. The Complainant was represented by Mr Brett Hearnden of Hunt and Hunt Lawyers, who was accompanied by OLGR staff responsible for the Complaint.
35. The Conference was transcribed. The oral submissions made at the Conference and some further summary submissions made by the parties on 6 and 9 June 2015 were considered by the Authority at its next available ordinary monthly meeting on 24 June 2015.

36. This letter does not purport to repeat all of the material now before the Authority, but sets out the Grounds and Particulars of the Complaint and the key contentions of fact or legal submissions made by the Club and the Ex-Officers in response to the Grounds of Complaint. This letter sets out the Authority's findings on those Grounds and the evidence or material upon which those findings are based.
37. At the conclusion of this letter, the Authority provides the parties with an indication as to what disciplinary action the Authority is *minded* to take in light of those findings, *subject to* the parties having a short opportunity to make final written submissions confined to the question of what, if any, disciplinary action the Authority should take.
38. The Authority will consider those final submissions, provided that they are made by the time specified, before finalising its decision on the Complaint.

CONTEXT

39. By way of background, and as outlined in the submissions from Mr Schwartz on behalf of the Ex-Officers dated 29 May 2015, the Club is a substantial community based enterprise. Audited accounts from PricewaterhouseCoopers (**PwC**) dated 31 December 2012 disclose that during 2011/2012, the total income for the Parramatta Leagues Club group of entities was around \$68.51 million, recording a "profit before income tax" or (more appropriately in respect of not-for-profit organisations) a surplus of \$5.361 million.
40. Its current operations include two wholly owned subsidiaries – the Parramatta "Eels" National Rugby League Club Ltd (**PNRL Club**) and Parramatta Power Soccer Club Ltd.
41. The Ex-Officers submit, and the Authority accepts, that support for and engagement with the PNRL Club is a major focus of the registered Club's operations.
42. The Ex-Officers submit, and the Authority accepts, that the Club routinely supports the PNRL Club financially. At the end of 2008 (as disclosed in the Club's 2009 Annual Report), the PNRL Club was entitled to "receivables" from the Club in the sum of \$21,464,364 – of which around 97 per cent was assessed as "doubtful debt". In 2013 (as disclosed in the Club's 2013 Annual Report) there was a loan from the Club to the PNRL Club of \$3,388,899 – all of which was assessed as "doubtful debt".
43. The Authority is satisfied, on the basis of a statement by the Ex-Officer Mr Tony Cinque (particularly paragraph 97 of his written answers to an interview with OLGR at Exhibit 25 of the Complaint Material), that there was considerable tension between rival groups seeking control of the Club, including between the Ex-Officers and those members of the governing body who have replaced them. The Authority is satisfied that the Ex-Officers obtained control of the Club in 2009 in closely contested circumstances, as did the Board that replaced it in May 2013. There appears to be three rival groups active in the Club and still competing for control – the group that controlled the Board up to 2009, the Ex-Officers elected in 2009 and the group that took control of the Board in 2013 and retained control in May 2015.
44. While Mr Cinque's statements are from his personal perspective, they include sworn witness statements in relation to workers' compensation proceedings. The Authority is satisfied, on the basis of Complainant Exhibit 25, that following election of the new Board in May 2013, the new directors conducted a series of their own investigations into the Club Board that they had replaced (including the Ex-Officers). These investigations were conducted with some intensity, even to the point where the new directors became involved in operational matters. Certain "purges" of senior executive staff who were associated with the former Board ensued.

45. The Ex-Officers make the broad contention that the new Board members were "not gracious winners". The Authority considers it likely that, in this closely contested environment, antipathy among rival groups seeking control of the Club ran both ways. Nevertheless, the Authority considers it relevant to acknowledge the context from which the OLGR investigation into the Club's affairs arose.
46. While the Complainant has an obligation to consider any complaints or information received by OLGR regarding the management of registered clubs and a discretion to press any statutory grounds of complaint that he considers to be in the public interest to pursue, the Authority is satisfied that the factional contest within the Club has likely coloured the extent to which any shortcomings at the Board level have been perceived, both within the Club and within that part of the community that the Club serves.
47. As will be discussed below, the Complaint has established certain instances of failure by the Club to comply with the Act during the time in which the Ex-Officers served the Club. Some of those failings reflect on the degree of personal skill or knowledge that should be reasonably expected of a director of an enterprise of this scale, but most of these shortcomings are of a procedural rather than substantive nature. There is little evidence of dishonesty, bad faith or an intention on the part of the Ex-Officers to improperly benefit from their elected or appointed positions.
48. The Authority's findings provide cause to question the level of knowledge and ability that has been demonstrated by the Ex-Officers during the relevant period. The Club and its membership may consider the wisdom of electing directors for sentimental reasons, rather than a demonstrated capacity to run an enterprise of this scale.
49. The Authority observes, on the basis of its experience with disciplinary complaints involving registered clubs, that knowledge, skill and diligence at Board level is an issue that confronts the industry generally, not simply this Club.
50. One aspect of this Complaint that raises potentially serious regulatory concerns is contained in Ground 12 with respect to former Chairman Roy Spagnolo and within Ground 16 with respect to former Secretary Robert Bentley.
51. It is alleged that these men were either involved in, or acquiesced with regard to, the variation of Club membership records in a manner that may have enabled persons to vote at the 2013 Annual General Meeting when not otherwise entitled to do so. This is essentially an allegation of "stacking" the Club's membership for electoral advantage. The Authority considers this a very serious allegation, the most serious of the matters raised in the Complaint.
52. While the Complainant may have had reasonable suspicion, on the information that he had received, to consider this allegation, the Complainant has not provided sufficient evidence or other material to satisfy the Authority that these allegations are established. The evidentiary deficiencies are set out in detail later in this decision in the context of consideration of Grounds 12 and 16.
53. The evidentiary deficiencies in relation to this part of the Complaint may be a consequence of the very broad range of matters that the Complainant has elected to pursue, the finite investigative resources available to OLGR, or both – but the allegations have not been proven to the civil standard, on the material before the Authority.
54. Some care should be taken when fact finding in the context of a disciplinary complaint and that, in accordance with the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336, "the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a

given description, or the gravity of the consequences flowing from a particular finding" are relevant to deciding whether a matter is proved on the balance of probabilities.

GROUND OF COMPLAINT AND FINDINGS

55. Each Ground of Complaint and the Particulars alleged by the Complainant in support of each Ground, are set out in italics below. A summary of the position taken by the Club and by the Ex-Officers and the Authority's findings follow in plain text beneath each Ground.
56. Unless specified to the contrary, the Grounds agitated by the Complainant are as set out in the Complainant's amended position statement dated 9 June 2015 that was submitted to the Authority shortly after the Conference on 4 June 2015.
57. The Club's position in response to the Complaint is primarily set out in written submissions from Pigott Stinson Lawyers dated 4 February 2015 but supplemented in a short email dated 6 June 2015 that was submitted to the Authority after the Conference. The Club did not elect to make submissions in response to Grounds 12 to 16 which concern the fitness and propriety of the individual Ex-Officers.
58. The Ex-Officers' submission is primarily set out in the written submissions from Back Schwartz Vaughan dated 29 May 2015 and in two post-Conference submissions dated 9 and 10 June 2015.
59. The Authority also has before it a transcript of the Conference convened in Sydney on 4 June 2015 where the parties made oral submissions largely in alignment with their written submissions.
60. In some cases, the Club noted during the Conference that, while it had conceded certain Grounds of Complaint in its written submissions of 4 February 2015, the Club was open to the Authority making a contrary finding if not satisfied that the Ground had actually been established on the evidence or material before it.

GROUND 1

61. Ground 1 alleges as follows:

Section 57F(3)(a) – the Club failed to meet the requirements of section 10(1) of the Act.

62. Particular 1.1 of Ground 1 alleges as follows:

Between November 2011 and January 2013 the Club failed to meet the requirements of section 10(1)(i) of the Act when it permitted Mr Spagnolo to derive a profit, benefit and/or advantage from the Club which was not offered equally to every full member of the Club.

63. Particular 1.2 of Ground 1 alleges as follows:

The Club paid an expense claim, without approval by the Governing Body, or by members at a general meeting, or as was otherwise permitted by section 10(6) of the Act;

- (a) *in or about December 2011 Mr Spagnolo hosted a Christmas Party at his private residence for the Parramatta National Rugby League Club Ltd (the **PNRL Club**);*

- (b) *the Board minutes of 20 December 2011 record that the Deputy Chairman, Mr Kelly, "thanked and congratulated the Chairman for hosting the PNRL Xmas Party";*
- (c) *prior to 10 February 2012 a summary of costs was submitted for the reimbursement of the 2011 Christmas Party costs hosted at the Chairman's house;*
- (d) *on 13 February 2012 the Club paid the expense claim of Mr Spagnolo for expenses incurred for the Christmas Party 2011 in the amount of \$2,860.64;*
- (e) *the EFT requisition was approved by Mr Tony Cinque, the Club's CFO; and*
- (f) *a handwritten endorsement on the schedule of expenses from Mr Cinque records the reimbursement of expenses to Mr Spagnolo was "agreed by the Board of Directors",*

in circumstances where:

- (1) *there is no Board minute approval for the function;*
- (2) *there is no Board minute approval for the reimbursement of this expense claim; and*
- (3) *there was no resolution passed by members of the Club for the reimbursement of this expense at the 2011 Annual General Meeting.*

64. Particular 1.3 of Ground 1 alleges as follows:

The Club paid an expense claim, without approval by the governing body, or by members at a general meeting, or as was otherwise permitted by section 10(6) of the Act;

- (a) *in or about December 2012 Mr Spagnolo hosted a Christmas Party for PNRL;*
- (b) *on 24 December 2012 Mr Spagnolo sent an email to Mr Cinque providing a summary of costs incurred for the 2012 Christmas party and requesting reimbursement be deposited to his bank account;*
- (c) *on 7 January 2013 the Club paid the expense claim of Mr Spagnolo for expenses incurred for the Christmas Party 2012 in the amount of \$3,337.80; and*
- (d) *the EFT requisition was approved by Mr Tony Cinque, the Club's CFO,*

in circumstances where:

- (1) *there is no Board minute approval for the function;*
- (2) *there is no Board minute approval for the reimbursement of this expense claim; and*
- (3) *there was no resolution passed by members for the reimbursement of this expense at the 2012 Annual General Meeting.*

65. Particular 1.4 of Ground 1 notes that the evidence in support of this Ground is detailed in Schedule 1 to the Complaint Letter.

Club Response to Ground 1

66. The Club admits in its submission dated 4 February 2015 that there was no Board resolution approving the payment of the expense claims referred to in Ground 1 of the Complaint.
67. The Club submits, however, that new procedures have now been implemented by the Club to ensure that all expenditure incurred by Club directors is brought before the Board and not paid or reimbursed until the Board is satisfied that the purpose of the expenditure is in the course of carrying out duties in relation to the Club and that the amount of the expense was reasonable.
68. The Club submits that these new procedures are separate from, and additional to, the ability of the members of the Club to approve (by resolution) Club directors' expenses at each annual general meeting (**AGM**).

Ex-Officers' Response to Ground 1

69. The Ex-Officers contend in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of Ground 1.
70. The Ex-Officers submit that Ground 1 of the Complaint concerns "process" and not "substantive impropriety" and that regardless of whether there was a formal resolution, the Board *did in fact authorise* reimbursement of the expenses that are the subject of this Ground.
71. The Ex-Officers note that at the 2010 and 2011 AGMs, the members expressly approved reimbursement of "...all ... reasonable out of pocket expenses including ... entertainment ... subject to a resolution of the Board..."
72. The Ex-Officers further submit, with respect to the claims the subject of Particulars 1.2 and 1.3 of Ground 1 of the Complaint, that these expenses were included in the February 2012 and December 2012 *List of Expenditures* and were ratified by Board resolutions passed in March 2012 and January 2013, Resolution Numbers 2012-32 and 2013-3.

Authority Findings on Ground 1

73. Section 10(1)(i) of the Act states as follows:

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

74. Relevantly, section 10(6) of the Act provides a number of exceptions to this rule:

A club does not fail to meet the requirement specified in subsection (1)(i) or (1)(j) by reason only that a member of the club derives or is entitled to derive any profit, benefit or advantage from the club that is not offered equally to every full member of the club if:

- (a) *the member derives or is entitled to derive the profit, benefit or advantage, not being a profit, benefit or advantage referred to in paragraph (b), pursuant to a contract (including a contract of employment) or agreement with the club and the deriving of or entitlement to the profit, benefit or advantage is, in the opinion of the Authority, reasonable in the circumstances of the case, or*
- (b) *the profit, benefit or advantage consists only of a sum of money paid to the member in respect of his or her services as a member of the governing body or of any committee of the club and that payment has been approved by a resolution passed at a general meeting on which the*

- persons entitled to vote are the same as the persons entitled to vote at the annual election of the governing body of the club, or*
- (c) *the profit, benefit or advantage consists only of hospitality in the nature of reasonable food or refreshment offered by the holder of a dealer's licence or adviser's licence (within the meaning of the Gaming Machines Act 2001) in the normal course of a sale of an approved gaming machine on the licensee's premises, or at a display of an approved gaming machine that is held anywhere in the State for the purpose of directly promoting the products or services of the licensee, or*
- (d) *the profit, benefit or advantage consists only of the payment of out-of-pocket expenses that are of a kind authorised by a current resolution of the governing body and are reasonably incurred by a member of the club, or by the secretary or any other employee, in the course of carrying out his or her duties in relation to the club."*
75. The Authority is satisfied, as alleged by Particular 1.1 of the Complaint, that the Club did fail to comply with section 10(1)(i) of the Act when it permitted Mr Spagnolo to derive a benefit or advantage from the Club that was not offered equally to every full member of the Club, in relation to the partial reimbursement of Mr Spagnolo for his costs of hosting a Christmas Party for the PNRL Club at his private residence during December 2011 and December 2012.
76. Particular 1.2 concerns the reimbursement by the Club of Mr Spagnolo in relation to the December 2011 Christmas Party. The Authority is satisfied that Particular 1.2 is established on the following bases:
77. Particular 1.2(a) is established on the basis of a Club cheque requisition in the sum of \$2,860.64 in favour of Mr Spagnolo, which forms part of Complainant Exhibit R67. The hosting and reimbursement for the 2011 Christmas Party is also acknowledged by Mr Spagnolo at pages 65 to 67 of the OLGR Interview with Roy Spagnolo dated 28 May 2014.
78. Particular 1.2(b) is established on the basis of the minutes of the Club Board meeting of 20 December 2011, which also forms part of Complainant Exhibit R67.
79. Particular 1.2(c) is established on the basis of documentation regarding the cost of the 2011 Christmas Party that forms part of Complainant Exhibit R67, and is also dealt with in pages 65 to 67 of the OLGR Interview with Roy Spagnolo dated 28 May 2014.
80. Particular 1.2(d) is established on the basis of a Club cheque requisition in the sum of \$2,860.64 in favour of Mr Spagnolo which forms part of Complainant Exhibit R67, and pages 65 to 67 of the OLGR Interview with Roy Spagnolo dated 28 May 2014.
81. Particular 1.2(e) is established on the basis of a Club cheque requisition in the sum of \$2,860.64 in favour of Mr Spagnolo, which forms part of Complainant Exhibit R67.
82. Particular 1.2(f) is established on the basis of the handwritten endorsement by the Club's then Financial Controller Mr Tony Cinque of a document entitled *Parramatta Christmas Party 2011* dated 10 February 2012, which provides heads of expenses incurred in relation to the Party. This forms part of Complainant Exhibit R67. Mr Cinque notes the Board's agreement to reimburse Roy Spagnolo for the sum of \$2,860.64 on this document.
83. However, the Authority is satisfied, as alleged by Particular 1.2(f)(1), that there is no formal Board minute approval recorded for the reimbursement of Mr Spagnolo for the conduct of this function. This finding is made on the basis of the Club Board meeting minutes for 29 November 2011 (Complainant Exhibit K13); the Club Board meeting minutes for 31 January 2012 (Complainant Exhibit K15); the Club Board meeting minutes for 28 February 2012 (Complainant Exhibit K16); pages 8 and 26 to 37 of the report from

Russell Corporate Advisory dated 18 July 2013 (Complainant Exhibit 4); and pages 16 to 27, 57 to 58 and 94 to 95 of the report from Integrity Risk Solutions dated 12 May 2013 (Complainant Exhibit 5).

84. The Authority is satisfied, as alleged by Particular 1.2(f)(2), that there is no formal Board minute recording approval of the reimbursement of Mr Spagnolo's expenses. This finding is made on the basis of the Club Board meeting minutes for 29 November 2011 (Complainant Exhibit K13); the Club Board meeting minutes for 31 January 2012 (Complainant Exhibit K15) and the Club Board meeting minutes for 28 February 2012 (Complainant Exhibit K16).
85. The Authority is further satisfied, as alleged by Particular 1.2(f)(3), that there was no resolution passed by members of the Club for the reimbursement of this expense at the Club's 2011 AGM. This finding is made on the basis of the minutes of the Club's Annual General Meeting held on 22 May 2011 (Complainant Exhibit K24).
86. The Authority is satisfied, as alleged by Particular 1.3, that the Club did not comply with section 10(1)(i) of the Act in that it paid an expense claim, without approval by the governing body, or approval by the members at a general meeting, or as otherwise permitted by the exceptions provided to section 10(1)(i) by section 10(6) of the Act.
87. The Authority notes that the reimbursement could have been, but was not, validly approved by a general meeting or by the Board pursuant to its authorisation by the Annual General Meeting to approve reimbursement of "*all...reasonable out of pocket expenses including... entertainment*".
88. Particular 1.3 concerns the reimbursement of Mr Spagnolo in relation to the December 2012 Christmas Party.
89. The Authority is satisfied that Particular 1.3 is established on the following bases:
90. Particular 1.3(a) is established on the basis of an email from Roy Spagnolo to Tony Cinque regarding the 2012 Christmas Party dated 24 December 2012 (Complainant Exhibit R70). The hosting and reimbursement of the 2012 Christmas Party is also acknowledged by Mr Spagnolo at pages 65 to 67 of the OLGR Interview with Roy Spagnolo dated 28 May 2014.
91. Particular 1.3(b) is established on the basis of the email from Mr Spagnolo to Mr Cinque dated 24 December 2012 (Complainant Exhibit R70).
92. Particular 1.3(c) is established on the basis of the email from Mr Spagnolo to Mr Cinque dated 24 December 2012 (Complainant Exhibit R70) and a Club electronic funds transfer requisition for Roy Spagnolo dated 7 January 2013 in the amount of \$3,337.80 (Complainant Exhibit R69).
93. Particular 1.3(d) is established on the basis of the endorsement by Tony Cinque of the Club electronic funds transfer requisition for Roy Spagnolo dated 7 January 2013 in the amount of \$3,337.80 (Complainant Exhibit R69).
94. Particular 1.3(d)(1) is established in that there is no Board minute for the approval of the 2012 Christmas Party. This finding is made on the basis of the Club Board meeting minutes for 27 November 2012 (Complainant Exhibit K19); the Club Board meeting minutes for 18 December 2012 (Complainant Exhibit K20); the Club Audit and Compliance Report for 18 December 2012 (Complainant Exhibit K20); pages 16 to 27 of the Russell Corporate Advisory Report dated 5 July 2013 (Complainant Exhibit 4) and

pages 57 to 58 and 95 to 96 of the report from Integrity Risk Solutions dated 12 May 2013 (Complainant Exhibit 5).

95. Particular 1.3(d)(2) is established in that there is no Board minute for the approval of the reimbursement of this expense claim evident in relation to the 2012 Christmas Party. This finding is made on the basis of the Club Board meeting minutes for 27 November 2012 (Complainant Exhibit K19); the Club Board meeting minutes for 18 December 2012 (Complainant Exhibit K20) and the Club Audit and Compliance Report for 18 December 2012 (Complainant Exhibit K20).
96. The Authority is satisfied that Particular 1.3(d)(3) is established in that there is no resolution evident that was passed by members for the reimbursement of this expense at the 2012 AGM. This finding is based upon the minutes of the Club's 2012 AGM (Complainant Exhibit R28).
97. The Authority is satisfied that the reimbursement could have been, but was not, validly approved by a general meeting or by the Board pursuant to its authorisation by the Annual General Meeting to approve reimbursement of "*all...reasonable out of pocket expenses including... entertainment*".
98. Nevertheless, the Authority is satisfied that the reimbursement of Mr Spagnolo's expenses in hosting the 2011 and 2012 Christmas Parties for the PNRL Club was, in fact, known to and *informally* approved by the Board, but the process for making and recording this approval was flawed.
99. The Board did not make and record explicit resolutions for the approval of these expenses.
100. The Authority notes the Club's advice in its submission dated 4 February 2015 as to the procedure now adopted by the Board, but observes that this too is not adequate. Aggregating the expenses incurred by the Board members on a monthly basis and their approval by the Board on an aggregated basis is insufficient.
101. What the Club needs to do is to report to the Board with documentation that identifies and itemises each expense amount incurred, the nature of the expense and the regulated officer or employee who incurred that expense so that the Board may provide and record the formal approval of each individual expense on an informed basis.
102. The Authority does not accept the argument that ratification of a Club's reimbursement of an expense paid to a regulated officer or employee is acceptable. The Act requires approval, not ratification. This means *approval prior to reimbursement*. This need not involve approval prior to the expense actually being incurred, but Board approval should be given and recorded before reimbursement by the Club is paid.
103. With respect to the 2011 and 2012 Christmas Parties, Board approval has not been recorded as a formal resolution, but there is no evidence of bad faith or any intent to defraud apparent from the facts evidenced in relation to Ground 1.
104. The Authority is satisfied that the expenditure of Club funds for the two Christmas Parties held in 2011 and 2012 was actually discussed at Board level with partial reimbursement of Mr Spagnolo instigated and informally agreed by the Board. The Club has failed to comply with the Act but the Authority agrees with the Ex-Officers' submissions that this is a matter of process, not substance.
105. The Authority is satisfied, on the basis of the above findings, that Ground 1 of the Complaint is established. The Authority is satisfied that the Club contravened the Act in

the manner in which it handled the approval of Mr Spagnolo's expenses for the 2011 and 2012 Christmas Parties.

106. There is no evidence as to a lack of *bona fides* surrounding these two transactions, which is not an answer to the alleged contravention of the Act, but a factor that is relevant to the question of what, if any disciplinary action should flow from the Club's compliance failure in respect of Ground 1.

GROUND 2

107. Ground 2 alleges as follows:

Section 57F(3(a) – the Club failed to meet the requirements of section 10(1) of the Act.

108. Particular 2.1 of Ground 2 alleges as follows:

On or about 26 May 2013 the Club failed to meet the requirements of s.10(1)(k) of the Act when it paid a bonus that was calculated indirectly by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club.

109. Particular 2.2 of Ground 2 alleges as follows:

The Club paid a bonus to Mr Bentley which was calculated by reference to receipts of the Club for liquor supplied and the operation of approved gaming machines;

- (a) *on or about 22 October 2012 the Club entered into a Deed of Employment with Mr Bentley that authorised the payment of an annual performance bonus on the following terms:*
- (1) *a bonus calculated to be the greater of \$50,000.00 or 1 per cent of the profit of the Club before grants as determined by reference to the audited accounts and payable within 21 days of the publication of those accounts; and*
 - (2) *a further bonus as determined by the Board by exercise of its discretion, provided any such discretionary bonus not exceed 10 per cent of the total Remuneration Package for the previous 12 months (before tax),*
- (b) *the Club's profits included and were principally derived from:*
- (1) *receipts from the sale of liquor; and*
 - (2) *the operation of gaming machines*
- (c) *on 13 February 2013, Mr Spagnolo, the Club's Chairman, directed the Club's payroll officer by letter to pay Mr Bentley a bonus of \$92,998.00, the amount being 1 per cent of the Club's total profit of \$9,299,842.00;*
- (d) *on 26 May 2013 the Club paid Mr Bentley the bonus of \$92,998.00, in circumstances where:*
- (1) *the bonus was paid prior to the publishing of Audited Accounts;*
 - (2) *the bonus had been calculated based on an incorrect figure; and*

- (3) *the profit had been principally derived from receipts of the Club for liquor sold and the operation of gaming machines.*

110. Particular 2.3 of Ground 2 notes that the evidence in support of this Ground is detailed in Schedule 2 to the Complaint Letter.

Club Response to Ground 2

111. The Club denies Particular 2.2 of the Complaint and contends that any bonus paid out to a top executive of the Club does not necessarily involve a calculation that is made "by reference to" the Club's receipts from liquor sales and/or the operation of gaming machines.
112. The Club does not dispute that the terms of Mr Bentley's contract are as specified in Particular 2.2(a) of the Complaint.
113. The Club further submits that the quantum of bonus that was actually paid by the Club to Mr Bentley by the former Board was "sufficiently large as to be bordering on uncommercial".
114. The Club also concedes, without elaboration, that the calculation of Mr Bentley's bonus was "grossly incorrect" and that it overstates the amount that was "properly payable" under the formula that is specified in Mr Bentley's contract.
115. However, the Club submits that use of the phrase "directly or indirectly" in section 10(1)(k) of the Act qualifies the *receipt* and not the *calculation* of a bonus that may be paid in respect of the subject matters that are specified in section 10(1)(k)(i) (liquor sales or receipts) or 10(1)(k)(ii) of the Act (the operation of gaming machines).
116. The Club submits that the Club's "profit" or "surplus" is derived from income of many components – including the sale of non-alcoholic beverages such as Coca-Cola, coffee and tea, subscriptions from members, revenue from the conduct of functions and other commercial activities, receipts from Keno, income from liquor sales, income from gaming machines and "other non-specific forms of income".
117. The Club submits, in the alternative, that the *profit* of the Club for any particular year might not be achieved through increasing receipts from liquor sales or gaming revenue, but also from decreasing the Club's costs – such as paying off loans, reducing unnecessary expenditure or selling off non-performing assets and increasing other sources of income.

Ex-Officers' Response to Ground 2

118. The Ex-Officers adopt paragraphs 1 to 18 of the Club's submission dated 4 February 2015 in relation to Ground 2 of the Complaint. That is, the Club endorses the position taken by the Club on the interpretation of the prohibition in section 10(1)(k) of the Act.
119. The Ex-Officers refer to the statutory declaration made by the Club's lawyer, Mr Brian Belling dated 28 May 2015 which describes some of the process by which the bonus provision was included in Mr Bentley's contract and confirms that Mr Belling advised the Club on this contract. Mr Belling expresses his opinion that the bonus provision does not contravene section 10(1)(k) of the Act.
120. The Ex-Officers do not endorse the Club's submission that the quantum of Mr Bentley's bonus was incorrectly calculated or that it was "bordering on the uncommercial".

Authority Findings on Ground 2

121. Section 10(1)(k) of the Act states as follows:

The secretary or manager, or any employee, or a member of the governing body or of any committee, of the club is not entitled to receive, either directly or indirectly, any payment calculated by reference to:

- (i) the quantity of liquor purchased, supplied, sold or disposed of by the club or the receipts of the club for any liquor supplied or disposed of by the club, or*
- (ii) the keeping or operation of approved gaming machines in the club."*

122. The Authority is satisfied, as alleged by Particular 2.2(a), that on or about 22 October 2012 the Club did enter into a Deed of Employment with Mr Bentley on the terms alleged. This finding is made on the basis of the copy of the agreement dated 22 October 2012 (Complainant Exhibit R8) and is not contested by the Club or the Ex-Officers.
123. The Authority is satisfied, on the basis of the Russell Corporate Advisory report dated 5 July 2013, that during 2012 (Complainant Exhibit 4 – particularly the Overview of Financial Position and Trading Results), "total revenue" for the *Club* (as distinct from "total income") was \$54,269,880.00, of which "gaming machine revenue" accounted for \$47,719,177.00, or 88 per cent.
124. The Authority notes that the Complainant relies on the transcript of OLGR interviews with Mr Eric Grothe Snr dated 9 April 2014 (Complainant Exhibit 13); the OLGR interview with Mr Mario Libertini dated 22 April 2014 (Complainant Exhibit 14); the OLGR interview with Mr Saidley Kelly dated 29 April 2014 (Complainant Exhibit 16) and the OLGR interview with Mr Roy Spagnolo dated 28 May 2014 (Complainant Exhibit 18).
125. In those interviews, the proposition that gaming revenue comprised a large component of the Club's total income, being 88 per cent as stated in the Russell Report dated 5 July 2013, was put to, and accepted by, those Ex-Officers.
126. The Authority is satisfied that Particular 2.2(b) is established, in that the Club's profits included and were principally derived from the operation of gaming machines on the Club premises.
127. The Russell Corporate Advisory analysis of 5 July 2013 demonstrates the overwhelming role that the operation of gaming machines played in this Club's profitability during 2012, notwithstanding that the Club also derived income from those other sources that are identified in the Club's submissions (non-liquor beverage sales, food, membership fees and the like).
128. The Authority is satisfied, on the basis of a letter dated 13 May 2013 from Mr Roy Spagnolo to Club employee Ms Rita Di Pizio (Complainant Exhibit R12), that the Club actually paid Mr Bentley a bonus of \$92,998.00 and this was purportedly calculated by Mr Spagnolo on the basis of this figure representing 1 per cent of the Club's "profits before PLC grants" which was stated by Mr Spagnolo in his letter to be **\$9,299,842.00**.
129. In his letter to Ms Di Pizio, Mr Spagnolo states that Mr Bentley's employment contract entitles him to a bonus, being "the greater of \$50,000 or 1 per cent of PLC's profits before grants to the Football Clubs". Mr Spagnolo adds that "the payment is subject to publication of audited accounts which disclose the profit before grants" and "the relevant profit figure before PLC grants is \$9,299,842.00 and 1 per cent is equal to \$92,998.00". He adds "please make arrangements directly with Mr Bentley to discuss payment of his bonus".

130. Mr Spagnolo made the following statements in his statutory declaration dated 4 June 2015 explaining how he reached the figure of \$92,998.00 for Mr Bentley's bonus:

"The calculation of the amount which represented Mr Bentley's bonus was tied to his efforts in producing positive results for the Clubs within the Group that were within his control and under his supervision. It was my understanding because the information that was provided to me by the Club's Accountant, Mr Vashan Mariquanel ("Mr Mariquanel") that in the calendar year 2012, the Leagues Club made a profit of \$10,415,241 from which was deducted the CDSE [Community Development and Support Expenditure, now known as ClubGRANTS scheme] contribution of \$1,115,399 which left the balance of \$9,299,842 of which 1 per cent is \$92,000[sic, \$92,998]. Grants were made from the Club's profit to various charitable organisations through the CDE[sic, CDSE] program to the Parramatta District Rugby League Club and the Parramatta National Rugby League Club. This amount was approximately \$4M. The abovementioned financial information was provided by Ms Holmes [the Club's then financial controller] who then made arrangements for the payment to be made to Mr Bentley.

I am certain that the Board members were always of the view that the bonus was based on the Club's results and not the Group's results as that would have been grossly unfair to Mr Bentley. He was not responsible for the performance of the Football Club as it had its own CEO, namely Mr Edwards, who had responsibility for that organisation. Mr Bentley's bonus was unaffected by the performance of the Football Club."

131. Two issues arise from Mr Spagnolo's statutory declaration.
132. First, it appears that when Mr Spagnolo instructed staff to pay Mr Bentley's bonus, he was deriving that entitlement based upon the Club's Management Accounts, not the published Audited Accounts as required by Mr Bentley's contract.
133. Second, Mr Spagnolo appears to have calculated Mr Bentley's bonus on the basis of the wrong figure. The Russell Corporate Advisory report dated 5 July 2013 extracts the Club Management Accounts for 2012, indicating that the net profit for the Club (not the Group) was \$5,054,289.00 and that the "published audited accounts" also reveal that figure.
134. The Authority notes that the PwC Audited Accounts for 2011/2012 contained in a Report to the Club's Audit and Finance Committee dated 31 December 2012 (Complainant Exhibit R13) indicate that the audited consolidated income for the Parramatta Leagues Club Group of entities for financial year 2012 was \$68,511,000.00, with a Group profit before income tax of \$5,361,000.00.
135. Accepting Mr Spagnolo's proposition that it would be unfair to assess Mr Bentley's bonus against the profits of the Group, rather than the Club alone, the Authority notes that a further report prepared by Russell Corporate Advisory dated 26 July 2013 observes that the figure of \$5,045,289.00 quoted by Mr Spagnolo represents the Club's net profit. Adding back the grants made by the Club of \$860,000 during 2012, this results in a figure for the Club's net profit before grants of \$5,914,289.00.
136. According to Mr Russell's analysis, the bonus to which Mr Bentley was actually entitled, if based upon the formula prescribed in his contract with the Club, should have been 1 per cent of \$5,914,289.00 or \$59,142.89 – yet the bonus that was actually paid out to Mr Bentley by the Club was about \$33,855.11 *in excess of* his contractual entitlement.
137. The Authority is satisfied, on the basis of the independent expert advice from Russell Corporate Advisory, that Mr Spagnolo assessed Mr Bentley's bonus on an incorrect basis and that this error cost the members of the Club \$33,855.11.

138. The Authority is further satisfied, on the basis of the Club Board meeting minutes for 26 March 2013 (Complainant Exhibit K23) that the PwC Audited Accounts were considered and adopted by the Board at its meeting on 26 March 2013.
139. The Authority is satisfied that the requirement of "publishing" the audited accounts is fulfilled when those audited accounts are finalised and communicated by the auditor to the Club Board or the Audit and Compliance sub-Committee.
140. The Authority does not consider that "publication" for the purposes of Mr Bentley's contractual bonus entitlement, required publication to the general public in the form of an Annual Report or other such public communication.
141. Noting that the pay advice record of Mr Robert Bentley for the period 17 February 2013 to 26 May 2013 confirms that Mr Bentley was actually paid the bonus on 26 May 2013 (Complainant Exhibit R11) the Authority is *not* satisfied, as alleged by Particular 2.2(d)(1), that the payment occurred *prior to* the "publishing" of the Club's Audited Accounts.
142. The Authority is satisfied, as alleged by Particular 2.2(d)(2), that the bonus had been calculated on the basis of an incorrect figure.
143. The Authority is satisfied, as alleged by Particular 2.2(d)(3), that both the Club's total income, particularly the Overview of Financial Position and Trading Results, and its profit achieved during 2012 had been principally, if not overwhelmingly derived from the operation of gaming machines on the Premises.
144. The Authority is satisfied that the Club's directors were aware of the importance of the Club's gaming machine operations to the Club's overall income, as indicated by statements made by Ex-Officers including pages 7 to 8 of the OLGR interview with Mr Eric Grothe Snr (Complainant Exhibit 13); page 6 of the OLGR interview with Mr Mario Libertini (Complainant Exhibit 14); page 8 of the OLGR interview with Mr Saidley Kelly (Complainant Exhibit 16) and pages 15 to 16 of the OLGR interview with Mr Roy Spagnolo dated 28 May 2014 (Complainant Exhibit 18).
145. Section 10(1)(k)(ii) of the Act requires that a secretary, manager, any employee or any member of a governing body not be *entitled* to receive *any* payment that is calculated "by reference to" the keeping or operation of approved gaming machines in the Club.
146. The Authority has carefully considered the scope of this requirement. It notes that this subsection was inserted into the Act as part of the package of reforms introduced by the enactment of the *Gaming Machines Act 2001*. It formed part of a range of harm minimisation measures introduced by that Act to the liquor and gaming legislation.
147. As noted in the Minister's Second Reading Speech (Hansard page 19282, 30 November 2001):

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

...

As I said in my opening remarks, the bill is comprehensive and extensive, and is in keeping with the public interest in having very clear and detailed controls over gaming machine operations in clubs and hotels. While much of the new bill represents a direct lift of existing controls from the Liquor and Registered Clubs Act, there are also significant new measures in keeping with the Government's gaming reform package, as announced

on 26 July. The bulk of the new measures can be found in parts 2 and 3, and divisions 1, 2 and 3 of part 4 of the bill. Finally, as honourable members would be aware, there is a national requirement to review legislation that restricts competition. The guiding principle of the National Competition Policy is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and that the objectives of the legislation can be achieved only by restricting competition.

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

148. The particular question arising in this case is whether the Club's agreement to a provision in Mr Bentley's contract, which created an entitlement to a bonus based upon a percentage of Club profits, contravenes the statutory requirement that no club secretary receive an entitlement to any payment "calculated by reference to" the mere keeping or operation of gaming machines on the Club's premises.
149. The Authority has wrestled with this issue in the absence of any superior Court authority interpreting this statutory provision.
150. The Authority is satisfied that the statutory purpose of section 10(1)(k) is harm minimisation with respect to the operation of gaming machines on club premises. The mischief to which the provision is directed is a registered club giving its staff or officers a financial incentive to maximise either that club's liquor sales or its gaming machine operations. The provision prohibits that.
151. The Club has argued, with some force, that a staff bonus entitlement that is based upon a club's overall sales may well contravene section 10(1)(k) but that a provision based upon a club's profit or surplus is contingent upon other factors that may influence whether or not a profit is actually achieved.
152. Similar arguments were made at the Conference, where it was submitted that a club's profitability may be determined by, for example, the extent to which a club controls its costs, not simply the extent of its revenue in a given year.
153. The Authority observes that section 10(1)(k)(ii) does not require that any entitlement to a payment be calculated by way of a specific or express reference to gaming machine revenue.
154. Notably, unlike the restriction in section 10(1)(k)(i) with regard to liquor, the requirement with regard to gaming machine operations is not specified to apply by reference to "sales" or "receipts". It is simply made by reference to the keeping or operation of gaming machines at the club.
155. The Authority considers that the wording of section 10(1)(k)(ii) provides a textual indication that this provision has a broader operation than the requirement in section 10(1)(k)(i).

156. In the Authority's view, in circumstances where any profit of a club is, at the time a contractual bonus mechanism is agreed, overwhelmingly likely to be derived from the keeping or operation of gaming machines at that club, then by necessary implication a bonus based upon that club's profits is an entitlement to a payment that is made by reference to that club's gaming machine operations, contrary to section 10(1)(k)(ii).
157. The Authority is satisfied, on the basis of the above findings, that Ground 2 of the Complaint is established, in that Mr Bentley's entitlement to a bonus payment based on Club profits was a payment that was, by necessary implication from the facts and circumstances prevailing at this Club when the contract was agreed, a payment that would be made by reference to the Club's extensive gaming machine operations.
158. However, as noted below, the Authority accepts that this provision was included in Mr Bentley's contract on the basis of legal advice to the Club. The Authority also accepts the Club's submissions made during the Conference that profit based clauses like this have been used elsewhere in the industry. In those circumstances, and noting the absence of superior Court authority interpreting the scope and application of section 10(1)(k)(ii) of the Act, the Authority does not consider that an adverse finding should be made against any of the Ex-Officers by reason of the inclusion of this clause in Mr Bentley's agreement.
159. If the Authority is wrong in its interpretation of section 10(1)(k) of the Act, the Authority is otherwise satisfied that Ground 2 is established by reason that the Club did not correctly calculate Mr Bentley's bonus in accordance with the provisions specified in Mr Bentley's contract.

GROUND 3

160. Ground 3 alleges as follows:

Section 57F(3)(a) – the Club failed to meet the requirements of section 10(1) of the Act.

161. Particular 3.1 of Ground 3 alleges as follows:

Between June 2010 and April 2013 the Club failed to meet the requirements of section 10(1)(m) of the Act when it entered into contracts for the remuneration by the Club of its "top executives", as defined in clause 14 of the Registered Clubs Regulation 2009 ("the Regulation"), without the proposed contracts being first approved by the Club's governing body as required by section 41M of the Act.

162. Particular 3.2 of Ground 3 alleges as follows:

The Club failed to ensure proposed contracts for the remuneration of Mr Bentley were first approved by the governing body:

- (a) *at all relevant times Mr Bentley was a "top executive" for the purposes of section 41M;*
- (b) *on or about 1 June 2010 the Club entered into an Employment Agreement with Mr Bentley in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into this contract for remuneration; and*

- (2) *Mr Bentley accepted an offer of employment and executed a written contract on 1 June 2010 for a salary of \$230,000.00 per annum and other benefits,*
- (c) *on or about 25 August 2010 the Club entered into another Employment Agreement with Mr Bentley, backdated to commence on 26 May 2010, in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into this contract for remuneration; and*
 - (2) *Mr Bentley accepted an offer of employment and executed a written contract on 25 August 2010 for a salary of \$230,000.00 per annum and other benefits,*
- (d) *on or about 22 October 2012 the Club entered into a further Employment Agreement with Mr Bentley in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into this contract for remuneration;*
 - (2) *Mr Bentley accepted an offer of employment and executed a written contract on 22 October 2012 for a salary of \$400,000.00 per annum, a bonus of 1 per cent (as detailed at 2.2(a) above) and other benefits; and*
 - (3) *Mr Bentley advised the Club payroll officer on 7 November 2012 of his increase in salary in terms "the Chairman has approved an increase to my remuneration package".*

163. Particular 3.3 of Ground 3 alleges as follows:

The Club failed to ensure proposed contracts for the remuneration of Mr Tony Cinque were first approved by the governing body:

- (a) *at all relevant times Mr Cinque was a "top executive" for the purposes of section 41M;*
- (b) *on or about 24 June 2011 the Club entered into an Employment Agreement with Mr Cinque in relation to the position of Chief Financial Officer in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into the contract for remuneration;*
 - (2) *Mr Cinque accepted an offer of employment and executed a written contract on 24 June 2011 for a salary of \$150,000.00 per annum and other benefits;*
 - (3) *the Board was informed that Mr Cinque commenced on 4 July 2011 in the Board meeting held on 26 July 2011,*
- (c) *on or about 16 April 2012 the Club entered into another Employment Agreement with Mr Cinque in relation to the position General Manager Operations in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into the contract for remuneration;*
 - (2) *in the Board Meeting held on 27 March 2012 the Board noted that in relation to the advertised 2IC position "[t]he CEO advised that no remuneration details had yet been discussed";*

- (3) *Mr Cinque accepted an offer of employment as General Manager Operations and executed a written contract on 16 April 2012 for a salary of \$190,000.00 per annum and other benefits; and*
- (4) *the Board was informed that Mr Cinque had commenced in this role on 16 April 2012 in the Board meeting held on 24 April 2012.*

164. Particular 3.4 of Ground 3 alleges as follows:

The Club failed to ensure proposed contracts for the remuneration of Mr Stephen McGee were first approved by the governing body:

- (a) *at all relevant times Mr McGee was a "top executive" for the purposes of section 41M;*
- (b) *on or about 21 January 2011 the Club entered into an Employment Agreement in relation to the position of Group Marketing Manager with Mr McGee in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into the contract for remuneration;*
 - (2) *Mr McGee accepted an offer of employment and executed a written contract on 21 January 2011 for a salary of \$150,000.00 per annum and other benefits; and*
 - (3) *the Board was informed that Mr McGee would commence on 7 February 2011 in the Board meeting held on 25 January 2011.*

165. Particular 3.5 of Ground 3 alleges as follows:

The Club failed to ensure proposed contracts for the remuneration of Ms Jodie Blues (nee Eisenhuth), Group Gaming Manager, were first approved by the governing body:

- (a) *at all relevant times Ms Blues was a "top executive" for the purposes of section 41M;*
- (b) *on or about 22 July 2011 the Club entered into an Employment Agreement with Ms Blues in circumstances where:*
 - (1) *there is no Board minute approval for the Club to enter into the contract for remuneration;*
 - (2) *Ms Blues accepted an offer of employment and executed a written contract on 22 July 2011 for a salary of \$150,000.00 per annum and other benefits; and*
 - (3) *the Board was informed that Ms Blues had accepted the Club's offer of employment and would commence on 25 August 2011 in the Board meeting held on 26 July 2011.*

166. Particular 3.6 of Ground 3 notes that the evidence in support of this Ground is detailed in Schedule 3 to the Complaint Letter.

Club Response to Ground 3

167. The Club admits the Particulars alleged in relation to Ground 3 of the Complaint.

168. However, the Club submits that the documentary evidence provided by the Complainant in support of its case on this Ground is "weak or non-existent" and does not satisfy the statutory obligations set out in sections 10(1)(m) and 41M of the Act.
169. The Club states that recently steps have been taken by the Club to ensure that all "top executive" contracts are brought to the Board for its consideration and formal approval.

Ex-Officers' Response to Ground 3

170. The Ex-Officers contend in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of Ground 3.
171. The Ex-Officers submit that the *remuneration arrangements* in each of the contracts of employment for these top executives were actually approved by the Board prior to being offered to and accepted by the Club.
172. The Ex-Officers contend that the Club's usual practice for the engagement of "top executives" other than Mr Bentley, was that:

...if a position was to be filled the Board would discuss what was required etc. and settle the remuneration range to be offered.

173. The Ex-Officers submit that these steps satisfy the prior "approval" requirement in section 41M of the Act in that this practice avoids the harm to which the provision is directed whereby "top executive" remuneration is contracted for in secret between a chairman and a faction of a Board without disclosure to the full Board.

Authority Findings on Ground 3

174. Section 10(1)(m) of the Act states as follows:

The club must comply with any requirements imposed on the club by Part 4A.

175. Section 41M of the Act states as follows:

A registered club must not enter into a contract for the remuneration by the club of a top executive of the club unless the proposed contract has first been approved by the governing body of the club.

176. The Authority is satisfied, as alleged by Particular 3.1, that between June 2010 and April 2013, the Club failed to meet the requirements of section 10(1)(m) of the Act when it entered into contracts for the remuneration by the Club of its "top executives", as defined in clause 14 of the *Registered Clubs Regulation 2009*, without the proposed contracts being first approved by the Club's governing body as required by section 41M of the Act.
177. The Authority is satisfied, as alleged by Particular 3.2(a), that at all relevant times Mr Bentley was a "top executive" for the purposes of section 41M of the Act. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 that had been issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
178. The Authority is satisfied, as alleged by Particular 3.2(b)(1), that on or about 1 June 2010, the Club entered into an Employment Agreement with Mr Bentley in circumstances where there is no Board minute approval for the Club to enter into this contract for remuneration. This finding is made on the basis of the Club Board meeting

minutes for 25 May 2010 (Complainant Exhibit 34) and the Club Board meeting minutes for 29 June 2010 (Complainant Exhibit 35).

179. The Authority is satisfied, as alleged by Particular 3.2(b)(2), that the Club entered into an Employment Agreement with Mr Bentley in circumstances where Mr Bentley accepted an offer of employment and executed a written contract on 1 June 2010 for a salary of \$230,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement dated 1 June 2010 between the Club and Mr Robert Bentley (Complainant Exhibit R1).
180. The Authority is satisfied, as alleged by Particular 3.2(c)(1), that on or about 25 August 2010 the Club entered into another Employment Agreement with Mr Bentley, backdated to commence on 26 May 2010, in circumstances where there is no Board minute approval for the Club to enter into this contract for remuneration. This finding is made on the basis of the Club Board meeting minutes for 27 July 2010 (Complainant Exhibit K4) and the Club Board meeting minutes for 31 August 2010 (Complainant Exhibit K5).
181. The Authority is satisfied, as alleged by Particular 3.2(c)(2), that the Club entered into this second Employment Agreement with Mr Bentley in circumstances where Mr Bentley accepted an offer of employment and executed a written contract on 25 August 2010 for a salary of \$230,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement dated 25 August 2010 between the Club and Mr Robert Bentley (Complainant Exhibit R2).
182. The Authority is satisfied, as alleged by Particular 3.2(d)(1), that on or about 22 October 2012, the Club entered into a further Employment Agreement with Mr Bentley in circumstances where there is no Board minute approval for the Club to enter into this contract for remuneration. This finding is made on the basis of the Club Board meeting minutes for 25 September 2012 (Complainant Exhibit 55); the Club Board meeting minutes for 30 October 2012 (Complainant Exhibit 56) and page 5 of the OLGR interview with Mr Eric Grothe Snr (Complainant Exhibit 13).
183. The Authority is satisfied, as alleged by Particular 3.2(d)(2), that the Club entered into this further Employment Agreement with Mr Bentley in circumstances where Mr Bentley accepted an offer of employment and executed a written contract on 22 October 2012 for a salary of \$400,000.00 per annum, a bonus of 1 per cent (as detailed at Particular 2.2(a) above) and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Robert Bentley dated 22 October 2012 (Complainant Exhibit R8).
184. The Authority is satisfied, as alleged by Particular 3.2(d)(3), that the Club entered into this further Employment Agreement with Mr Bentley in circumstances where Mr Bentley advised the Club payroll officer on 7 November 2012 of his increase in salary in the terms: "*the Chairman has approved an increase to my remuneration package*". This finding is made on the basis of an email from Mr Robert Bentley to Ms Rita Di Pizio dated 7 November 2012 (Complainant Exhibit R9).
185. The Authority is satisfied, as alleged by Particular 3.3(a), that at all relevant times Mr Tony Cinque was a "*top executive*" for the purposes of section 41M of the Act. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).

186. The Authority is satisfied, as alleged by Particular 3.3(b)(1), that on or about 24 June 2011 the Club entered into an Employment Agreement with Mr Cinque in relation to the position of Chief Financial Officer in circumstances where there is no Board minute approval for the Club to enter into the contract for remuneration. This finding is made on the basis of the Employment Agreement between the Club and Mr Tony Cinque dated 24 June 2011 (Complainant Exhibit R37).
187. The Authority is satisfied, as alleged by Particular 3.3(b)(2), that Mr Cinque accepted an offer of employment and executed a written contract on 24 June 2011 for a salary of \$150,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Tony Cinque dated 24 June 2011 (Complainant Exhibit R37).
188. The Authority is satisfied, as alleged by Particular 3.3(b)(3), that the Board was informed that Mr Cinque commenced in this role on 4 July 2011 in the Board meeting held on 26 July 2011. This finding is made on the basis of the extract of the minutes of the Club Board meeting of 26 July 2011 (Complainant Exhibit R38).
189. The Authority is satisfied, as alleged by Particular 3.3(c)(1), that on or about 16 April 2012 the Club entered into another Employment Agreement with Mr Cinque in relation to the position "General Manager Operations" in circumstances where there is no Board minute approval for the Club to enter into the contract for remuneration. This finding is made on the basis of the extract of the minutes of the Club Board meeting of 24 April 2012 (Complainant Exhibit R44); the extract of the minutes of the Club Board meeting of 27 March 2012 (Complainant Exhibit R46); and pages 36 to 37 of the OLGR interview with Mr Saidley Kelly (Complainant Exhibit 16).
190. The Authority is satisfied, as alleged by Particular 3.3(c)(2), that in the Board Meeting held on 27 March 2012 the Board noted that in relation to the advertised "2IC" position "[t]he CEO advised that no remuneration details had yet been discussed". This finding is made on the basis of the extract of the minutes of the Club Board meeting of 27 March 2012 (Complainant Exhibit R46).
191. The Authority is satisfied, as alleged by Particular 3.3(c)(3), that Mr Cinque accepted an offer of employment as General Manager Operations and executed a written contract on 16 April 2012 for a salary of \$190,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Cinque dated 16 April 2012 (Complainant Exhibit R43).
192. The Authority is satisfied, as alleged by Particular 3.3(c)(4), that the Board was informed that Mr Cinque had commenced in this role on 16 April 2012 in the Board meeting held on 24 April 2012. This finding is made on the basis of the extract of the minutes of the Club Board meeting of 24 April 2012 (Complainant Exhibit R44).
193. The Authority is satisfied that the Club failed to ensure proposed contracts for the remuneration of Mr Stephen McGee were first approved by the governing body.
194. The Authority is satisfied, as alleged by Particular 3.4(a), that at all relevant times Mr Stephen McGee was a "top executive" for the purposes of section 41M. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
195. The Authority is satisfied, as alleged by Particular 3.4(b)(1), that on or about 21 January 2011 the Club entered into an Employment Agreement in relation to the

position of Group Marketing Manager with Mr McGee in circumstances where there is no Board minute approval for the Club to enter into the contract for remuneration. This finding is made on the basis of the minutes of the Club Board meeting of 1 December 2010 (Complainant Exhibit K9) and the minutes of the Club Board meeting of 13 December 2010 (Complainant Exhibit 59).

196. The Authority is satisfied, as alleged by Particular 3.4(b)(2), that Mr McGee accepted an offer of employment and executed a written contract on 21 January 2011 for a salary of \$150,000.00 per annum and other benefits. This finding is made on the basis of the employment agreement between the Club and Mr Steve McGee dated 21 January 2011 (Complainant Exhibit R51).
197. The Authority is satisfied, as alleged by Particular 3.4(b)(3), that the Board was informed that Mr McGee would commence on 7 February 2011 in the Board meeting held on 25 January 2011. This finding is made on the basis of the extract of the minutes of the Club Board meeting of 25 January 2011 (Complainant Exhibit R51A).
198. The Authority is satisfied, as alleged by Particular 3.5(a), that at all relevant times Ms Jodie Blues, Gaming Manager, was a "*top executive*" for the purposes of section 41M. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
199. The Authority is satisfied, as alleged by Particular 3.5(b)(1), that on or about 22 July 2011 the Club entered into an Employment Agreement with Ms Blues in circumstances where there is no Board minute approval for the Club to enter into the contract for remuneration. This finding is made on the basis of the minutes of the Club Board meeting of 31 May 2011 (Complainant Exhibit K11); the minutes of the Club Board meeting of 28 June 2011 (Complainant Exhibit K12) and pages 57 to 58 of the OLGR interview with Mr Roy Spagnolo dated 28 May 2014 (Complaint Exhibit 18).
200. The Authority is satisfied, as alleged by Particular 3.5(b)(2), that Ms Blues accepted an offer of employment and executed a written contract on 22 July 2011 for a salary of \$150,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement dated 22 July 2011 between the Club and Ms Jodie Eisenhuth (Complainant Exhibit R56).
201. The Authority is satisfied, as alleged by Particular 3.5(b)(3), that the Board was informed that Ms Blues had accepted the Club's offer of employment and would commence on 25 August 2011 in the Board meeting held on 26 July 2011. This finding is made on the basis of an extract of the minutes of the Club Board meeting of 26 July 2011 (Complainant Exhibit R38).
202. The Authority is satisfied, on the basis of the above findings, that Ground 3 is established.
203. The Authority notes that the Club admits Ground 3 of the Complaint.
204. The Authority considers that the purpose of this requirement is to ensure that the governing body is on notice of the terms of a Club's contracts with its top executives, not simply their remuneration packages. The Ex-Officers have emphasised that the Board was on notice of proposed remuneration before the relevant contracts were entered into but section 41M is not simply concerned with executive staff remuneration - it is concerned with *contracts* for remuneration.

GROUND 4

205. Ground 4 alleges as follows:

Section 57F(3)(a) – The Club failed to meet the requirements of section 10(1) of the Act.

206. Particular 4.1 of Ground 4 alleges as follows:

Between February 2010 and April 2013 the Club failed to meet the requirements of section 10(1)(m) when it failed to give written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act, as required by section 41U of the Act.

207. Particular 4.2 of Ground 4 alleges as follows:

Mr Bentley:

- (a) *the Club failed to provide Mr Bentley with written notice that he was a "top executive" in circumstances where:*
 - (1) *between about 1 February 2010 and 30 May 2010 Mr Bentley was employed in the position of Human Resources Manager;*
 - (2) *upon entering his employment agreement Mr Bentley was a "top executive" for the purposes of section 41U; and*
 - (3) *during this period of his employment the Club did not provide Mr Bentley with written notice that he was a "top executive",*
- (b) *the Club failed to provide Mr Bentley with written notice that he was a "top executive" as soon as practicable in circumstances where*
 - (1) *on or about 1 June 2010 the Club entered into an employment agreement with Mr Bentley in the position of Chief Executive Officer;*
 - (2) *Mr Bentley accepted an offer of employment and executed a written contract on 1 June 2010 for a salary of \$230,000.00 per annum and other benefits;*
 - (3) *upon entering the agreement Mr Bentley was a "top executive" for the purposes of section 41U; and*
 - (4) *on 20 December 2010 Mr Bentley was informed he was a "top executive" and he executed a "Form of Consent" to act as a "top executive".*

208. Particular 4.3 of Ground 4 alleges as follows:

The Club failed to provide Mr Cinque with written notice that he was a "top executive" as soon as practicable in circumstances where:

- (a) *on or about 24 June 2011 the Club entered into an Employment Agreement with Mr Cinque;*
- (b) *Mr Cinque accepted an offer of employment and executed a written contract on 24 June 2011 for a salary of \$150,000.00 per annum and other benefits;*

- (c) upon entering the agreement Mr Cinque was a "top executive" for the purposes of section 41U;
- (d) on or about 5 August 2011 Mr Gary Ratnarajah, Club Financial Accountant, informed Mr Cinque in writing that he was a "top executive"; and
- (e) on 6 August 2011 Mr Cinque executed a "Form of Consent" to act as a "top executive".

209. Particular 4.4 of Ground 4 alleges as follows:

The Club failed to provide Mr McGee with written notice that he was a "top executive" in circumstances where:

- (a) on or about 21 January 2011 the Club entered into an Employment Agreement with Mr McGee in relation to the position of Group Marketing Manager;
- (b) Mr McGee accepted an offer of employment and executed a written contract on 21 January 2011 for a salary of \$150,000.00 per annum and other benefits;
- (c) upon entering the agreement Mr McGee was a "top executive" for the purposes of section 41U;
- (d) the Club received a letter dated 25 February 2011 from Mr Ratnarajah, the Club's Financial Accountant, which advised that the new Group Marketing Manager was a "top executive";
- (e) the Club did not provide Mr McGee with written notice that he was a "top executive";
- (f) the Club did not receive consent from Mr McGee to act as a "top executive"; and
- (g) Mr McGee is not recorded in the "Top Executive Salaries" in the 2012 Information to Members Register.

210. Particular 4.5 of Ground alleges as follows:

The Club failed to provide Ms Blues with written notice that she was a "top executive" in circumstances where:

- (a) on or about 22 July 2011 the Club entered into an Employment Agreement with Ms Blues;
- (b) Ms Blues accepted an offer of employment and executed a written contract on 22 July 2011 for a salary of \$150,000.00 per annum and other benefits;
- (c) upon entering the agreement Ms Blues was a "top executive" for the purposes of section 41U;
- (d) the Club did not provide Ms Blues with written notice that she was a "top executive";
- (e) the Club did not receive consent from Ms Blues to act as a "top executive"; and
- (f) Ms Blues is not recorded in the "Top Executive Salaries" in the 2012 Information to Members Register.

211. Particular 4.6 of Ground 4 alleges as follows:

The Club failed to provide Mr John Chidiac with written notice that he was a "top executive" in circumstances where:

- (a) on or about 1 July 2010 the Club entered into an Employment Agreement with Mr Chidiac;*
- (b) Mr Chidiac accepted an offer of employment and executed a written contract on 1 July 2010 for a salary of \$125,000.00 per annum and other benefits;*
- (c) upon entering the agreement Mr Chidiac was a "top executive" for the purposes of section 41U;*
- (d) the Club did not provide Mr Chidiac with written notice that he was a "top executive";*
- (e) the Club did not receive consent from Mr Chidiac to act as a "top executive"; and*
- (f) the Club received a letter dated 25 February 2011 from Mr Ratnarajah, the Club's Financial Accountant, which advised that Mr Chidiac had been a "top executive" as at 31 December 2010 however as of February 2011 arising from the appointment of the new Group Marketing Manager, Mr Chidiac was no longer a "top executive" with the Club.*

212. Particular 4.7 of Ground 4 notes that the evidence in support of this Ground is detailed in Schedule 4 to the Complaint Letter.

Club Response to Ground 4

213. The Club admits the Particulars in support of Ground 4 of the Complaint.

214. However, the Club contends in its submission dated 4 February 2015 that there was "recognition in part" by the Club of its obligation to provide top executives with written notice that they are top executives, albeit that there has been "a failure operationally" to deal with these obligations in a "systematic and timely manner".

215. The Club contends that the Ex-Officers who were interviewed by OLGR Inspectors "seemed to be unaware" of this requirement and that they assumed that it was the responsibility of the administration of the Club to ensure that these notices were given and the appropriate records kept.

216. Notwithstanding that the Club had an Audit and Compliance Committee and a Compliance Officer, the Club is "unable to explain" why these omissions and delays occurred.

217. The Club submits that it has now implemented procedures and operations to ensure that each top executive is given written notice "promptly" after becoming a top executive informing them that they are a top executive, and that the appropriate register is maintained.

Ex-Officers' Response to Ground 4

218. The Ex-Officers contend in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of this Ground "at least in part".

219. The Ex-Officers submit that *late* notification in respect of Mr Bentley and Mr Cinque indicates that the Club was "endeavouring" to comply with relevant requirements. The Ex-Officers argue that even if notice was not given as soon as practicable, this is "not a basis for finding any of the Ex-Officers not fit and proper" and that there is "no basis" for attributing any operational failure on the part of the Club to give notice as soon as practicable to any of the Ex-Officers.

Authority Findings on Ground 4

220. Section 10(1)(m) of the Act states as follows:

The club must comply with any requirements imposed on the club by Part 4A.

221. Section 41U of the Act states as follows:

41U Notification to top executives and defence

- (1) *When a person becomes a top executive of a registered club, the registered club must, as soon as practicable, give written notice to the person informing the person that he or she is a top executive and has responsibilities under this Part.*
- (2) *It is a defence to a prosecution for an offence against section 41D or 41E(1) in respect of a person who is a top executive of a registered club if the person establishes that at the time the offence was committed:*
 - (a) *the person had not received a notice under subsection (1) from the club, and*
 - (b) *the person could not reasonably have been expected to know that he or she was a top executive of the club without having received such a notice.*

222. The Authority is satisfied, as alleged by Particular 4.1, that between February 2010 and April 2013, the Club failed to meet the requirements of section 10(1)(m) when it failed to give written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act, as required by section 41U of the Act.

223. The Authority is satisfied, as alleged by Particular 4.2(a)(1), that the Club failed to provide Mr Bentley with written notice that he was a "top executive" in circumstances where, between about 1 February 2010 and 30 May 2010, Mr Bentley was employed in the position of Human Resources Manager. This finding is made on the basis of the Employment Agreement between the Club and Mr Robert Bentley for the position of Human Resources Manager commencing 1 February 2010 (Complainant Exhibit K30) and the Employment Agreement between the Club and Mr Robert Bentley dated 1 June 2010 (Complainant Exhibit R1).

224. The Authority is satisfied, as alleged by Particular 4.2(a)(2), that upon entering this employment agreement Mr Bentley was a "top executive" for the purposes of section 41U. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).

225. The Authority is satisfied, as alleged by Particular 4.2(a)(3), that during this period of his employment the Club did not provide Mr Bentley with written notice that he was a "top executive".

226. The Authority is satisfied, as alleged by Particular 4.2(b)(1), that the Club failed to provide Mr Bentley with written notice that he was a "top executive" as soon as practicable in circumstances where on or about 1 June 2010, the Club entered into an employment agreement with Mr Bentley in the position of Chief Executive Officer. This finding is made

on the basis of the Employment Agreement between the Club and Mr Robert Bentley dated 1 June 2010 (Complainant Exhibit R1).

227. The Authority is satisfied, as alleged by Particular 4.2(b)(2), that Mr Bentley accepted an offer of employment and executed a written contract on 1 June 2010 for a salary of \$230,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Robert Bentley dated 1 June 2010 (Complainant Exhibit R1).
228. The Authority is satisfied, as alleged by Particular 4.2(b)(3), that upon entering the agreement Mr Bentley was a "*top executive*" for the purposes of section 41U. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
229. The Authority is satisfied, as alleged by Particular 4.2(b)(4), that on 20 December 2010 Mr Bentley was informed he was a "*top executive*" and he executed a "*Form of Consent*" to act as a "*top executive*". This finding is made on the basis of the form of consent as a Top Executive signed by Mr Bentley on 20 December 2010 (Complainant Exhibit E3).
230. The Authority is satisfied, as alleged by Particular 4.3(a), that the Club failed to provide Mr Cinque with written notice that he was a "*top executive*" as soon as practicable in circumstances where on or about 24 June 2011, the Club entered into an Employment Agreement with Mr Cinque. This finding is made on the basis of the Employment Agreement between the Club and Mr Tony Cinque dated 24 June 2011 (Complainant Exhibit R37).
231. The Authority is satisfied, as alleged by Particular 4.3(b), that Mr Cinque accepted an offer of employment and executed a written contract on 24 June 2011 for a salary of \$150,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Tony Cinque dated 24 June 2011 (Complainant Exhibit R37).
232. The Authority is satisfied, as alleged by Particular 4.3(c), that upon entering the agreement Mr Cinque was a "*top executive*" for the purposes of section 41U. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
233. The Authority is satisfied, as alleged by Particular 4.3(d), that on or about 5 August 2011 Mr Gary Ratnarajah, Club Financial Accountant, informed Mr Cinque in writing that he was a "*top executive*". This finding is made on the basis of a letter from Mr Ratnarajah to Mr Cinque dated 5 August 2011 notifying Mr Cinque that he was a top executive of the Club and informing him of his obligations under Part 4A of the Act (Complainant Exhibit E5).
234. The Authority is satisfied, as alleged by Particular 4.3(e), that on 6 August 2011 Mr Cinque executed a "*Form of Consent*" to act as a "*top executive*". This finding is made on the basis of a "Consent to act as a Top Executive" form signed by Mr Tony Cinque and dated 6 August 2011 (Complainant Exhibit R39).
235. The Authority is satisfied, as alleged by Particular 4.4(a), that the Club failed to provide Mr McGee with written notice that he was a "*top executive*" in circumstances where, on or about 21 January 2011, the Club entered into an Employment Agreement with Mr McGee

in relation to the position of Group Marketing Manager. This finding is made on the basis of the employment agreement between the Club and Mr Steve McGee dated 21 January 2011 (Complainant Exhibit R51).

236. The Authority is satisfied, as alleged by Particular 4.4(b), that Mr McGee accepted an offer of employment and executed a written contract on 21 January 2011 for a salary of \$150,000.00 per annum and other benefits.
237. The Authority is satisfied, as alleged by Particular 4.4(c), that upon entering the agreement Mr McGee was a "*top executive*" for the purposes of section 41U. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
238. The Authority is satisfied, as alleged by Particular 4.4(d), that the Club received a letter dated 25 February 2011 from Mr Ratnarajah, the Club's Financial Accountant, which advised that the new Group Marketing Manager was a "*top executive*".
239. The Authority is satisfied, as alleged by Particular 4.4(e), that the Club did not provide Mr McGee with written notice that he was a "*top executive*".
240. The Authority is satisfied, as alleged by Particular 4.4(f), that the Club did not receive consent from Mr McGee to act as a "*top executive*".
241. The Authority is satisfied, as alleged by Particular 4.4(g), that Mr McGee is not recorded in the "*Top Executive Salaries*" in the 2012 *Information to Members Register*. This finding is made on the basis of the 2012 *Register of Disclosure of Interests in Contracts* (Complainant Exhibit R47).
242. The Authority is satisfied, as alleged by Particular 4.5(a), that the Club failed to provide Ms Blues with written notice that she was a "*top executive*" in circumstances where, on or about 22 July 2011, the Club entered into an Employment Agreement with Ms Blues. This finding is made on the basis of the Employment Agreement between the Club and Ms Jodie Eisenhuth dated 22 July 2011 (Complainant Exhibit R56).
243. The Authority is satisfied, as alleged by Particular 4.5(b), that Ms Blues accepted an offer of employment and executed a written contract on 22 July 2011 for a salary of \$150,000.00 per annum and other benefits.
244. The Authority is satisfied, as alleged by Particular 4.5(c), that upon entering the agreement Ms Blues was a "*top executive*" for the purposes of section 41U. This finding is made on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1).
245. The Authority is satisfied, as alleged by Particular 4.5(d), that the Club did not provide Ms Blues with written notice that she was a "*top executive*".
246. The Authority is satisfied, as alleged by Particular 4.5(e), that the Club did not receive consent from Ms Blues to act as a "*top executive*".
247. The Authority is satisfied, as alleged by Particular 4.5(f), that Ms Blues is not recorded in the "*Top Executive Salaries*" in the 2012 *Information to Members Register*.

248. The Authority is satisfied, as alleged by Particular 4.6(a), that the Club failed to provide Mr John Chidiac with written notice that he was a "*top executive*" in circumstances where, on or about 1 July 2010, the Club entered into an Employment Agreement with Mr Chidiac. This finding is made on the basis of the Employment Agreement between the Club and Mr Chidiac dated 1 July 2010 (Complainant Exhibit R62).
249. The Authority is satisfied, as alleged by Particular 4.6(b), that Mr Chidiac accepted an offer of employment and executed a written contract on 1 July 2010 for a salary of \$125,000.00 per annum and other benefits. This finding is made on the basis of the Employment Agreement between the Club and Mr Chidiac dated 1 July 2010 (Complainant Exhibit R62).
250. The Authority is satisfied, as alleged by Particular 4.6(c), that upon entering the agreement, Mr Chidiac was a "*top executive*" for the purposes of section 41U.
251. The Authority is satisfied, as alleged by Particular 4.6(d), that the Club did not provide Mr Chidiac with written notice that he was a "*top executive*".
252. The Authority is satisfied, as alleged by Particular 4.6(e), that the Club did not receive consent from Mr Chidiac to act as a "*top executive*".
253. The Authority is satisfied, as alleged by Particular 4.6(f), that the Club received a letter dated 25 February 2011 from Mr Ratnarajah, the Club's Financial Accountant, which advised that Mr Chidiac had been a "*top executive*" as at 31 December 2010 - however as of February 2011, arising from the appointment of the new Group Marketing Manager, Mr Chidiac was no longer a "*top executive*" with the Club. This finding is made on the basis of a letter from the Club's Financial Accountant dated 25 February 2015, listing the Club's Top Executives (Complainant Exhibit E4).
254. The Authority is satisfied, on the basis of the above findings, that Ground 4 is established. The Authority accepts the Club's submission that this is an operational compliance failure on the part of the Club, but (as will be discussed in relation to the fitness and propriety claims against the Ex-Officers) not a failing on the part of the then members of the Governing Body.
255. The Club's failure to notify top executives is an operational compliance failure that provides some cause for an adverse finding as to the knowledge and ability of the former secretary Mr Bentley, once he had commenced his role as Club Secretary.

GROUND 5

256. Ground 5 of the initial Complaint is no longer pressed by the Complainant.

GROUND 6

257. Ground 6 alleges as follows:

Section 57F(3)(a) – The Club failed to meet the requirements of section 10(1) of the Act.

258. Particular 6.1 of Ground 6 alleges as follows:

Between approximately May 2011 and May 2013 the Club failed to meet the requirements of section 10(1)(m) when it entered into a contract with a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, without the proposed

contract being first approved by the governing body of the Club under Part 4A of the Act, as required by section 41K of the Act.

259. Particular 6.2 of Ground 6 alleges as follows:

The Club failed to ensure it did not enter a commercial arrangement with Mr Grothe Snr, a member of the governing body of the Club, without the proposed contract being approved by the governing body of the Club:

- (a) in or around 2010 the Club entered into a commercial arrangement with Mr Grothe Snr whereby he supplied meat products as the proprietor of "Grothe Meat and Raffle Trays" or "Freshy's",*
- (b) the Club continued to enter into commercial arrangements with Mr Grothe Snr following his election to the governing body of the Club on 24 April 2012 in circumstances where:*
 - (1) there is no board minute approval for the Club to enter a commercial arrangement; and*
 - (2) there is no board minute approval of any proposed commercial arrangement,*
- (c) Mr Grothe Snr continued to supply product to the Club when he ceased to be a member of the governing body on 29 May 2013.*

260. Particular 6.3 of Ground 6 alleges as follows:

The Club failed to ensure it did not enter a contract with "La Piazza Sydney Pty Ltd" ("La Piazza"), a company in which Mr Libertini had a pecuniary interest, without the proposed contract being approved by the governing body of the Club:

- (a) at all relevant times Mr Libertini was a director, secretary and shareholder of La Piazza, being a restaurant;*
- (b) Mr Libertini was elected to the governing body of the Club on 5 May 2009;*
- (c) on 27 April 2011 the governing body requested the CEO to investigate and obtain the costs of the pizza dough from suppliers, including La Piazza and determine the best price and value for money; and*
- (d) on or about May 2011 the Club entered into a commercial arrangement with La Piazza to supply product in circumstances where:*
 - (1) there is no board minute approval for the Club to enter a contract; and*
 - (2) there is no board minute approval of any proposed contract.*

261. Particular 6.4 of Ground 6 notes that the evidence in support of this Ground is detailed in Schedule 6 to the Complaint Letter.

Club Response to Ground 6

262. The Club admits the Particulars in support of Ground 6 of the Complaint.

263. The Club concedes in its submission dated 4 February 2015 that there is "no evidence" that the Board approved the relevant contracts in respect of Mr Grothe Snr supplying

meat products or Mr Libertini supplying pizza dough to the Club through their respective businesses.

264. The Club submits that it is "unable to explain" how it is that neither the Club directors nor the senior management at the relevant times were "unaware" of the requirements in Part 4A and specifically their requirements arising under section 41K of the Act.
265. The Club submits that the current Board and management have taken the following steps to ensure that any contract in which a top executive or a Club director has an interest is brought before the Board for approval before the contract is entered into:
- (a) At each Board meeting, directors are asked to declare any matters in which they have a material personal interest.
 - (b) Contracts are reviewed and if there is any suspicion that a director or top executive may have a pecuniary interest, enquiries will be made.

Ex-Officers' Response to Ground 6

266. The Ex-Officers contend in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of this Ground. The Ex-Officers deny Ground 6.
267. The Ex-Officers submit that a "notable feature" of this Ground of the Complaint as agitated is that the Complaint does not allege that the Club's arrangements with Messrs Grothe Snr and Libertini were "not of arm's length terms [n]or otherwise commercially disadvantageous to the Club".
268. With regard to Particular 6.2(b) in relation to the arrangement between the Club and Mr Grothe Snr, the Ex-Officers submit that Mr Grothe Snr was not a Director of the Club when the contract for supply of meat products to the Club was first "entered into".
269. With regard to Particular 6.3 in relation to the arrangement between the Club and Mr Libertini, the Ex-Officers submit that Mr Libertini did in fact disclose his interest at the Board meeting on 27 April 2011. The Board then resolved at that meeting to authorise Mr Bentley to assess price and quality, following which Mr Libertini's company was engaged. The Ex-Officers submit that express approval was given by the Board in this instance and this is evidenced by Club Resolution 2011-079.

Post-Conference Submissions on Particular 6.3

270. With regard to Particular 6.3, the Complainant provided to the Authority a short post-Conference supplementary submission dated 9 June 2015, referring to the case of *Australian Securities and Investments Commission v Healey* (2011) 278 ALR 618, particularly paragraphs 18 to 22 and 239 to 240 on the issue of whether the Board was able to delegate its statutory obligations to a sub-committee.

271. Those paragraphs state as follows:

18. *A board should be established which enjoys the varied wisdom, experience and expertise of persons drawn from different commercial backgrounds. Even so, a director, whatever his or her background, has a duty greater than that of simply representing a particular field of experience or expertise. A director is not relieved of the duty to pay attention to the company's affairs which might reasonably be expected to attract inquiry, even outside the area of the director's expertise.*

19. *The words of Pollock J in the case of Francis v United Jersey Bank (1981) 432 A 2d 814, quoted with approval by Clarke and Sheller JJA in Daniels v Anderson (1995) 37 NSWLR 438, make it clear that more than a mere 'going through the paces' is required for directors. As Pollock J noted, a director is not an ornament, but an essential component of corporate governance.*
20. *Nothing I decide in this case should indicate that directors are required to have infinite knowledge or ability. Directors are entitled to delegate to others the preparation of books and accounts and the carrying on of the day-to-day affairs of the company. What each director is expected to do is to take a diligent and intelligent interest in the information available to him or her, to understand that information, and apply an enquiring mind to the responsibilities placed upon him or her. Such a responsibility arises in this proceeding in adopting and approving the financial statements. Because of their nature and importance, the directors must understand and focus upon the content of financial statements, and if necessary, make further enquiries if matters revealed in these financial statements call for such enquiries.*
21. *No less is required by the objective duty of skill, competence and diligence in the understanding of the financial statements that are to be disclosed to the public as adopted and approved by the directors.*
22. *No one suggests that a director should not personally read and consider the financial statements before that director approves or adopts such financial statements. A reading of the financial statements by the directors is not merely undertaken for the purposes of correcting typographical or grammatical errors or even immaterial errors of arithmetic. The reading of financial statements by a director is for a higher and more important purpose: to ensure, as far as possible and reasonable, that the information included therein is accurate. The scrutiny by the directors of the financial statements involves understanding their content. The director should then bring the information known or available to him or her in the normal discharge of the director's responsibilities to the task of focussing upon the financial statements. These are the minimal steps a person in the position of any director would and should take before participating in the approval or adoption of the financial statements and their own directors' reports.*
...
239. *In their written submissions the non-executive directors then submitted as follows:*

"The critical question the Court needs to determine is whether in the circumstances the obligation under s 344 to take all reasonable steps to secure compliance required the non-executive directors to personally scrutinise each line in the accounts looking for accounting errors or apparent inaccuracies and, even if so, whether it was negligent for them to have failed to detect the relevant errors where both management and PwC had previously missed them.

Even if the first limb of s 344 is engaged (if the Act imposes an obligation on a director rather than on the company), directors may still rely on others to assist them in fulfilling a requirement imposed upon them by the Act. In that case, the question for the court remains one of process — was the process such that a director took reasonable steps to secure compliance with the outcome prescribed by statute by relying on others. For example, the Act imposes an obligation on directors in s 306, which requires the directors of a disclosing entity to prepare a directors' report for the half year. The first limb of s 344 is thereby engaged, but the consequence is not that directors must personally undertake each and every necessary step. On the contrary, directors may still ensure that an obligation

imposed on them is discharged by delegating to others various tasks. Taking the example of preparation of the directors' report under s 306, the directors may delegate the drafting to members of the management team. In that case, the directors may still have taken "reasonable steps to comply with" s 306 for the purposes of the first limb of s 344. To deny directors the capacity reasonably to delegate tasks to management would be to strip out from s 344 the words "take all reasonable steps to comply with" so that it would read "fail to comply with ... Part 2M.2 or Part 2M.3". Such a reading is contrary to the express terms of s 344 and, if adopted, would render those provisions of Parts 2M.2 and 2M.3 (which require steps to be taken by directors) in effect strict liability offences."

240. *In relation to this submission I make the following observations:*

- (a) *ASIC does not allege that the non-executive directors need to personally scrutinise each line of the financial statements as suggested. What is pleaded and contended for by ASIC is that having a sufficient knowledge of conventional accounting practice to enable a director to carry out his or her responsibility, each director had to read and understand the financial statements, and then giving consideration to those financial statements with each director's accumulated knowledge, draw the error or apparent error to the attention of executive management or the other directors. It is then said, that in failing to draw the attention of the error or apparent error to the executive management or the other directors, the directors, and each of them failed to take all reasonable steps to secure compliance by Centro.*
- (b) *I accept that directors may rely on others to assist them in fulfilling a requirement even where it is one directly imposed upon them by the Act. To a degree, the directors can rely upon the processes they have put in place. However, this is not exclusively the situation in the case of financial accounts, as I have endeavoured to explain. Of course, the drafting of a financial statement will be the domain of management. Nevertheless, the whole purpose of the directors' involvement in the adoption and approval of the accounts is to have the directors involved in the process at a level and responsibility commensurate with their role. In other words a reasonable step would be to delegate various tasks to others, but this does not discharge the entire obligation upon the directors. A further step is required, so it can be said that all reasonable steps have been taken by the directors. To complete the process, this step, as I have said repeatedly in answer to the contentions of the directors, involves the directors and each of them taking upon themselves the responsibility of reading and understanding the financial statements in the way I have described.*

272. In response to this submission from the Complainant, the Ex-Officers contend in their post-Conference submission dated 10 June 2015 that section 41K of the Act precluded the Board delegating approval of "proposed contracts" to any other organ or officer of the Club, but once so approved did not preclude some other organ or officer of the Club from entering into the proposed contract approved by the Board. The Ex-Officers submit that nothing in *ASIC v Healey* indicates otherwise: "*Directors are entitled to delegate to others...the carrying on of the day to day affairs of the company*" – *Australian Securities and Investments Commission v Healey* (2011) 278 ALR 618 at paragraph 20.

Authority Findings on Ground 6

273. Section 10(1)(m) of the Act states as follows:

The club must comply with any requirements imposed on the club by Part 4A.

274. Section 41K of the Act states as follows:

41K Contracts in which member of governing body or top executive has interest

- (1) A registered club must not enter into a contract with a member of the governing body of the club or a top executive, or with a company or other body in which such a member or top executive has a pecuniary interest, unless the proposed contract is first approved by the governing body of the club.*
- (2) Subsection (1) does not apply to a pecuniary interest if there are guidelines prescribed by the regulations and in force under section 41ZC at the time the relevant contract is entered into that include provisions to the effect that pecuniary interests of the type concerned are not pecuniary interests to which that subsection applies.*
- (3) Before entering into a contract, a registered club must make all reasonable inquiries to ensure that the provisions of subsection (1) are not contravened.*
- (4) When making any such inquiries as to whether a party to the proposed contract is or is not a person, company or body referred to in subsection (1), a registered club is entitled to rely on a statutory declaration from the party to the proposed contract (or, in the case of a company or other body that is a party to the proposed contract, from the chief executive officer of the company or body) that the party is or is not such a person, company or body.*
- (5) This section is subject to sections 41L, 41M and 41N.*

275. The Authority is satisfied, as alleged by Particular 6.1, that between approximately May 2011 and May 2013, the Club failed to meet the requirements of section 10(1)(m) when it entered into a contract with a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, without the proposed contract being first approved by the governing body of the Club under Part 4A of the Act, as required by section 41K of the Act.

276. The Authority is satisfied, as alleged by Particular 6.2(a), that in or around 2010 the Club entered into an informal commercial arrangement with Mr Grothe Snr whereby he supplied meat products to the Club for use as raffle trays and the like. The Authority is satisfied that Mr Grothe Snr was at relevant times the proprietor of "Grothe's Meat and Raffle Trays" or "Freshy's". These findings are made on the basis of a total of 120 invoices from "Freshy's/Grothe's Meat & Raffle Trays" issued to the Club and a spreadsheet summarising this data (Complainant Exhibit K31). However, the Ex Officers submit and the Authority accepts that Mr Grothe Snr was not a member of the governing body of the Club at the time the arrangement commenced.

277. The Authority is satisfied that the Club continued with the commercial arrangement with Mr Grothe Snr following his election to the governing body of the Club on 24 April 2012. This finding is made on the basis of a total of 120 invoices from "Freshy's/Grothe's Meat & Raffle Trays" issued to the Club and a spreadsheet summarising this data (Complainant Exhibit K31). However, for the reason stated below, the Authority is not satisfied, as alleged by Particular 6.2(b), that the Club continued to "enter into" commercial arrangements with Mr Grothe Snr during his term as a member of the governing body of the Club.

278. The Authority is satisfied, as alleged by Particular 6.2(b)(1), that this occurred in circumstances where there is no Board minute approval for the Club to enter a commercial arrangement with Mr Grothe Snr. This finding is made on the basis of ASIC records for the Club (Complainant Exhibit 2); pages 17 to 18 of the OLGR interview with Mr Eric Grothe Snr (Complainant Exhibit 13); Club Board meeting minutes for 24 April 2012 (Complainant Exhibit 52); Club Board meeting minutes for 31 July 2012 (Complainant Exhibit 53); Club Board meeting minutes for 28 August 2012 (Complainant Exhibit 54); Club Board meeting minutes for 25 September 2012 (Complainant Exhibit 55); Club Board meeting minutes for 30 October 2012 (Complainant Exhibit 56); Club Board meeting minutes for 29 April 2013 (Complainant Exhibit 57); Club Board meeting minutes for 28 May 2013 (Complainant Exhibit 58); Club Board meeting minutes for

29 May 2012 (Complainant Exhibit K17); Club Board meeting minutes for 26 June 2012 (Complainant Exhibit K18); Club Board meeting minutes for 27 November 2012 (Complainant Exhibit K19); Club Board meeting minutes for 29 January 2013 (Complainant Exhibit K21); Club Board meeting minutes for 5 March 2013 (Complainant Exhibit K22) and the Club Board meeting minutes for 26 March 2013 (Complainant Exhibit K23).

279. The Authority is satisfied, as alleged by Particular 6.2(b)(2), that this occurred in circumstances where there is no Board minute approval of any proposed commercial arrangement with Mr Grothe Snr.
280. The Authority is also satisfied, as alleged by Particular 6.2(c), that Mr Grothe Snr continued to supply product to the Club when he ceased to be a member of the governing body on 29 May 2013. This finding is made on the basis of ASIC records for the Club (Complainant Exhibit 2); Club Board meeting minutes for 27 April 2010 (Complainant Exhibit K3) and the copies of 120 invoices from "*Freshy's/Grothe's Meat & Raffle Trays*" issued to the Club and a spreadsheet summarising this data (Complainant Exhibit K31).
281. However, in the absence of any details of a formal written contract for the provision of these services, the Authority prefers the submission made by the Ex-Officers that Mr Grothe Snr commenced supplying these meat trays to the Club at a time when he was an ordinary member. That is, the commercial arrangement to provide meat trays commenced, or was "entered into", at a time that preceded Mr Grothe Snr's election to the Board. By reason that Mr Grothe Snr was an ordinary member when the arrangement commenced, his arrangement with the Club was not regulated by section 41K of the Act at the time that this arrangement commenced or was entered into.
282. Once Mr Grothe Snr was elected to the Board, he became obliged, as a director, to disclose his interest in this arrangement to the Club. There is no evidence that Mr Grothe Snr made this formal disclosure, nor is it recorded in the minutes of Board meetings. Nevertheless, there is no suggestion that the Board was not actually aware of his interest in supplying meat trays to the Club, which had been established before his election as a director.
283. From the Authority's perspective, once he became a director, there arose an obligation upon the part of the Club to formalise its informal and variable arrangement for the supply of goods from a business owned by one of the Club's directors - but there is no basis for suggesting that Mr Grothe Snr hid this arrangement from the Board or that he benefited from his role on the Board - he was already supplying meat trays to the Club and the Board was actually aware of it.
284. The Ex-Officers further submit that it is not alleged by the Complainant that the terms upon which Mr Grothe Snr actually supplied these meat trays to the Club were "not of arm's length terms [n]or otherwise commercially disadvantageous to the Club". The Authority accepts that submission.
285. The Complaint in relation to Mr Libertini is more straightforward. The Authority is satisfied that the Club failed to ensure it did not enter a contract with "*La Piazza Sydney Pty Ltd*" (**La Piazza**), a company in which Mr Libertini had a pecuniary interest, without the proposed contract being approved by the governing body of the Club.
286. The Authority is satisfied, as alleged by Particular 6.3(a), that at all relevant times Mr Libertini was a director, secretary and shareholder of La Piazza, being a restaurant. This finding is made on the basis of the ASIC Company Extract for La Piazza Sydney Pty

Ltd and the ASIC Person Extract for Mario Libertini dated 4 September 2014 (Complainant Exhibit K32).

287. The Authority is satisfied, as alleged by Particular 6.3(b), that Mr Libertini was elected to the governing body of the Club on 5 May 2009. This finding is made on the basis of the ASIC records for the Club (Complainant Exhibit 2).
288. The Authority is satisfied, as alleged by Particular 6.3(c), that on 27 April 2011 the governing body requested the Club CEO to investigate and obtain the costs of the pizza dough from suppliers, including La Piazza and determine the best price and value for money. This finding is made on the basis of the Club Board meeting minutes for 27 April 2011 (Complainant Exhibit K10).
289. The Authority is satisfied, as alleged by Particular 6.3(d)(1), that on or about May 2011 the Club entered into a commercial arrangement with La Piazza to supply product in circumstances where there is no Board minute approval for the Club to enter a contract. This finding is made on the basis of pages 84 to 85 of the Compliance Review of the Club prepared by Russell Corporate Advisory dated 5 July 2013 (Complainant Exhibit 4). It is further evidenced by the minutes of the Club Board meetings for January through December in both 2011 and 2012.
290. The Authority is satisfied that Particular 6.3 establishes a breach by the Club in relation to the supply of goods by Mr Libertini's company. Mr Libertini disclosed his interest to the Club and the Board delegated to Mr Bentley the negotiation of terms. However, the Act requires the Board itself to approve a contract with an entity associated with a member of the governing body. This did not occur. The Authority does not accept the Ex-Officers' argument that the Board may rely upon a corporation's general power to delegate a function when the Act specifically requires the Board itself to approve a regulated contract.
291. The Authority is satisfied, on the basis of the above findings, that Ground 6 of the Complaint has been established, but *only* in respect of the Particulars concerning Mr Libertini.

GROUND 7

292. Ground 7 alleges as follows:

Section 57F(3)(b) – The Club failed to ensure the supply of liquor on the premises of the Club remained under the control of the governing body.

293. Particular 7.1 of Ground 7 alleges as follows:

Between approximately 2010 and 2013 the Club failed to ensure the supply of liquor on the premises of the Club remained under the Club's control.

294. Particular 7.2 of Ground 7 alleges as follows:

The "Tingha Palace":

- (a) *a restaurant known as the "Tingha Palace" was operated within the premises of the Club;*
- (b) *between November 2010 and March 2011 the Club's financial accountant brought to the attention of members of the governing body that:*

- (1) *the Club is potentially breaching section 92 of the Liquor Act;*
 - (2) *the Club should not allow staff employed by the "Tingha Palace" to sell/supply alcohol in the Club; and*
 - (3) *the Club should provide its own staff to sell/supply alcohol in the Club,*
- (c) *In a meeting of the Audit & Compliance Committee on 24 May 2011, the Chairman of the Committee and the Club's Chief Executive Officer noted in relation to the above advice that the Club would "continue with the existing arrangement";*
- (d) *On or about 10 June 2011 a licence agreement to operate a restaurant known as the "Tingha Palace" was entered by "Hutchison and Partners Pty Ltd" ("Hutchinson") and the Club;*
- (e) *The agreement to operate the "Tingha Palace" specified:*
- (1) *the Club would exclusively supply and sell all alcoholic and non-alcoholic drinks in the "Tingha Palace";*
 - (2) *Hutchison would not sell any alcoholic drinks in the "Tingha Palace";*
 - (3) *Hutchison would collect revenue from patrons for the sale of alcoholic drinks "as agent for the Club" and pay the club the gross amount of proceeds; and*
 - (4) *Hutchison would issue the Club with an invoice equivalent to 45 per cent of the proceeds for "service fees" which covered the costs incurred by the Hutchison in assisting the Club in providing alcoholic drinks in the "Tingha Palace".*
- (f) *Notwithstanding the agreement:*
- (1) *staff employed by Hutchison exclusively supplied and served liquor to patrons in the "Tingha Palace", not employees of the Club;*
 - (2) *a duty manager employed by the Club attended the "Tingha Palace" a few times per day to review the amount of liquor sold and the money;*
 - (3) *in early 2014 the Club had their own staff supply and serve liquor in the "Tingha Palace" for a three or four week period; and*
 - (4) *the Club staff members have since been removed from the "Tingha Palace" and employees of Hutchison supply the liquor.*

295. Particular 7.3 of Ground 7 alleges as follows:

The "Legends Lounge":

- (a) *notwithstanding the advice received at paragraph 7.2(b) above, on or about 12 December 2011 the Club entered into a Catering Licence Agreement with CTC Nova Pty Ltd ("CTC") to occupy an area of the Club to be known as "Legends Lounge",*
- (b) *it was a condition of the agreement that:*
 - (1) *CTC shall be entitled to all revenue from its provision of Catering Services;*

- (2) *CTC shall receive, at least quarterly in arrears a monthly bonus to be calculated as (40%) of the Gross Revenue from the Bar Operations, as agent for the Club, which shall be paid by CTC to the Club monthly; and*
- (3) *CTC to ensure that all relevant employees have undertaken an accredited program in respect of the Responsible Service of Alcohol provisions,*
- (c) *CTC covenanted in the agreement to provide "all labour" necessary for the proper and efficient operation of the business supplying café meals and beverage sales.*

296. Particular 7.4 of Ground 7 notes that the evidence in support of this Ground is detailed in Schedule 7 to the Complaint Letter.

Club Response to Ground 7

297. In response to Particular 7.1, the Club contends in its submission dated 4 February 2015 that the Club was in fact able to exercise control over patrons in the *Tingha Palace* and the *Legends Lounge* as those areas are all part of the licensed premises of the Club. The Club submits that the liquor supplied in those premises was Club property and audited by the Club each month.
298. In response to Particular 7.2(f), the Club contends that the Club owns and controls the premises of the *Tingha Palace* and supplies all of the liquor sold on that premises, as evidenced by the statements made in a record of interview between OLGR Inspectors and Mr Peter Siu on behalf of Hutchison & Partners Pty Limited.
299. The Club further contends, in response to Particular 7.2(f), that employees of the caterers are *agents* of the Club and therefore the Club controls them. The Club submits that the fact that this agency relationship is not in writing is "immaterial".
300. The Club notes that the agency relationship was considered in *Links v McCloskey* [1938] 38 SR (NSW) 506 and quotes the following passage:
- "...who is the seller, is to be determined by asserting not, who as the result of a transaction incurred contractual liability and acquired contractual rights as vendor, but who performed the act of selling. It is the person who performs the act of selling who needs a licence, unless in selling he is acting as a mere ministerial employee of some other person who controls them in performing the service of selling, in which case it is the person who controls these acts of selling that needs the licence." [emphasis added]*
301. The Club submits that the practice of having catering staff sell liquor on the premises has, at the instigation of the Club, been discontinued but has restarted "from time to time".
302. The Club submits that the arrangement between the Club and the respective caterers and their employees with *Tingha Palace* "has not been a contractual arrangement" in that there have been no legal or other consequences as between the Club and the respective caterers and their employees as a result of this discontinuance and restarting. The Club contends that this is "compelling evidence" that the sale of liquor pursuant to this practice is "very much under the control of the governing body of the Club".
303. The Club contends that this issue has "industry wide implications" because similar practices occur in "numerous" other clubs. However, the Club is aware that OLGR views this practice to be contrary to the legislation and the Club has therefore discontinued the practice (pending determination of the Complaint by the Authority) such that liquor is presently sold only by Club employees in the *Tingha Palace* and the *Legends Lounge*.

Ex-Officers' Response to Ground 7

304. The Ex-Officers adopt paragraphs 1 to 40 of the Club's submission dated 4 February 2015 in relation to Ground 7 of the Complaint.

Authority Findings on Ground 7

305. The Authority is satisfied that Particulars 7.2 and 7.3 are established, on the basis of the evidence or material relied upon by the Complainant. The Authority is satisfied as to the following allegations:
306. Particular 7.2(a) is established on the basis of the Catering Licence Agreement dated 17 June 2011 (Complainant Exhibit R29).
307. Particular 7.2(b) is established on the basis of the internal Club memorandum by Mr Gary Ratnarajah entitled *Parramatta Leagues Club Ltd – Licensee Control – section 92 Liquor Act 2007* dated 24 February 2011 (Complainant Exhibit R30).
308. Particular 7.3(c) is established on the basis of the minutes of the Club Audit and Compliance Committee Meeting dated 24 May 2011 (Complainant Exhibit R31).
309. Particular 7.2(d) is established on the basis of the Catering Licence Agreement dated 17 June 2011 (Complainant Exhibit R29).
310. Particulars 7.2(e)(1), (2), (3) and (4) are established on the basis of the Catering Licence Agreement dated 17 June 2011 (Complainant Exhibit R29).
311. Particular 7.2(f)(1) is established on the basis of pages 5 and 9 of the OLGR interview with Mr Peter Siu dated 18 April 2014 (Complainant Exhibit 12); page 19 of the OLGR interview with Mr Mario Libertini dated 22 April 2014 (Complainant Exhibit 14); page 28 of the OLGR interview with Mr Saidley Kelly dated 29 April 2014 (Complainant Exhibit 16) and page 44 of the OLGR interview with Mr Roy Spagnolo dated 18 December 2013 (Complainant Exhibit 7).
312. Particular 7.2(f)(2) is established on the basis of page 12 of the OLGR interview with Peter Siu dated 18 April 2014 (Complainant Exhibit 12).
313. Particular 7.2(f)(3) is established on the basis of page 10 of the OLGR interview with Peter Siu dated 18 April 2014 (Complainant Exhibit 12) and page 17 of the OLGR interview with Mario Libertini dated 22 April 2014 (Complainant Exhibit 14).
314. Particular 7.2(f)(4) is established on the basis of page 10 of the OLGR interview with Peter Siu dated 18 April 2014 (Complainant Exhibit 12).
315. Particular 7.3(a) is established on the basis of Complainant Exhibit R36 – Catering Licence Agreement regarding CTC Nova Pty Ltd dated 12 December 2011, particularly page 1 of that agreement.
316. Particular 7.3(b) is established on the basis of Complainant Exhibit R36 – Catering Licence Agreement regarding CTC Nova Pty Ltd dated 12 December 2011, particularly pages 4 and 8 of that agreement.
317. Particular 7.3(c) is established on the basis of Complainant Exhibit R36 – Catering Licence Agreement regarding CTC Nova Pty Ltd dated 12 December 2011, particularly pages 7 and 13 of that agreement.

318. The Authority is satisfied, on the basis of the above findings, that the Club did not in fact exercise adequate control over the employees of these two independent contractor catering companies with respect to the supply of liquor in the relevant areas of the Club premises. The Authority does not accept the Club's submissions that the employees of these third parties were agents of the Club, nor is it satisfied that during the relevant period the supply of liquor on the Club premises was in fact adequately supervised by the Club or its employees in those areas of the Club. Ground 7 is established.

GROUND 8

319. Ground 8 alleges as follows:

Section 57F(3)(d) – The Club has contravened a provision of the Act.

320. Particular 8.1 of Ground 8 alleges as follows:

Between approximately 2010 and 2013 the Club failed to record information required to be recorded by clause 18 of the Regulation.

321. Particular 8.2 of Ground 8 alleges as follows:

The Club failed to record a disclosure by a member of the governing body who had a material personal interest in a matter related to the affairs of the Club in a Register approved by the Director-General (Secretary, NSW Trade & Investment):

(a) *Peter Kelly Flooring NSW Pty Limited:*

- (1) *between 5 May 2009 and 29 July 2013 Mr Kelly was a member of the governing body of the Club;*
- (2) *at all relevant times Mr Kelly was a director and shareholder of a company "Peter Kelly Flooring Pty Limited";*
- (3) *in 2010 the Club engaged Mr Kelly's company to provide flooring services and incurred an expense of \$7,132.00;*
- (4) *there is no record of any disclosure recorded in the 2010 "Information to Members Register";*
- (5) *in 2011 the Club engaged Mr Kelly's company to provide flooring services and incurred an expense of \$40,260.00;*
- (6) *on 30 August 2011 Mr Kelly declared an interest to the members of the governing body in his company "Peter Kelly Flooring"; and*
- (7) *the Club has failed to maintain an "Information to Members Register" for 2011 recording this disclosure,*

(b) *La Piazza Restaurant:*

- (1) *between 5 May 2009 and 13 May 2013 Mr Libertini was a member of the governing body of the Club;*
- (2) *at all relevant times Mr Libertini was a director, secretary and shareholder of "La Piazza Sydney Pty Ltd" ("La Piazza");*

- (3) *on 27 April 2011 Mr Libertini declared an interest to the members of the governing body in his business La Piazza;*
 - (4) *in 2011 the Club purchased restaurant ingredients from La Piazza for \$28,009.00;*
 - (5) *the Club has failed to maintain an "Information to Members Register" for 2011 recording this disclosure;*
 - (6) *in 2012 the Club purchased restaurant ingredients from "La Piazza Restaurant" for \$39,491.00; and*
 - (7) *there is no record of the disclosure by Mr Libertini recorded in the 2012 "Information to Members Register",*
- (c) *regarding Mr Grothe Snr's Interest:*
- (1) *the Club entered into commercial arrangements with Mr Grothe Snr whereby he supplied meat products from 2010 as the proprietor of "Grothe Meat and Raffle Trays" or "Freshy's";*
 - (2) *the Club continued to enter into commercial arrangements with Mr Grothe Snr following his election to the governing body of the Club on 24 April 2012;*
 - (3) *in 2012 the Club purchased meat products from Mr Grothe Snr's businesses in the amount of \$37,683.00;*
 - (4) *there is no record of a disclosure recorded in the 2012 "Information to Members Register";*
 - (5) *between approximately January 2013 and 26 May 2013 the Club purchased meat products from Mr Grothe Snr's businesses in the amount of \$18,575.00;*
 - (6) *on 28 March 2013 Mr Grothe Snr signed a Declaration of interest; and*
 - (7) *the Club failed to maintain an "Information to Members Register" for 2013 recording this disclosure.*

322. Particular 8.3 of Ground 8 alleges as follows:

The Club failed to record the number of the "top executives" of the Club whose total remuneration for the reporting period fell within each successive \$10,000.00 band commencing at \$100,000.00 in a register approved by the Director-General;

- (a) *at a time during the period 1 January 2011 and 31 December 2011 each of the following people were from time to time a "top executive" of the Club:*
- (1) *Robert Bentley;*
 - (2) *Robert Matzen;*
 - (3) *Daniel Ram;*
 - (4) *John Chidiac;*
 - (5) *Luke Walker;*
 - (6) *Stephen McGee;*
 - (7) *Tony Cinque; and*
 - (8) *Jodie Blues,*

whereby the Club failed to maintain an "Information to Members Register" specifying the number of "top executives" whose total remuneration for 2011 fell within each successive \$10,000.00 band commencing at \$100,000.00,

- (b) *at a time during the period 1 January 2012 and 31 December 2012 each of the following people were from time to time a "top executive" of the Club:*
- (1) *Robert Bentley;*
 - (2) *Robert Matzen;*
 - (3) *Shane Richards;*
 - (4) *Stephen McGee;*
 - (5) *Tony Cinque; and*
 - (6) *Jodie Blues,*
- whereby there is no record contained within the "Information to Members Register" specifying the number of "top executives" whose total remuneration for 2012 fell within each successive \$10,000.00 band commencing at \$100,000.00.*

323. Particular 8.4 of Ground 8 alleges as follows:

The Club failed to record the details of any contract for remuneration approved during the reporting period for a "top executive";

- (a) *at all relevant times Mr Bentley was a "top executive" for the purposes of section 41M:*
- (1) *repeat particulars above at paragraph 3.2(b). If it is found that Mr Bentley's contract was approved by the Board, then there is no record of the details of the contract for remuneration recorded in the "Information to Members Register" for 2010;*
 - (2) *repeat particulars above at paragraph 3.2(c). If it is found that Mr Bentley's contract was approved by the Board then the recording of the details of this contract has not been correctly stated in the 2010 "Information to Members Register"; and*
 - (3) *repeat particulars above at paragraph 3.2(d). If it is found that Mr Bentley's contract was approved by the Board then the recording of the details of this contract has not been correctly stated in the 2012 "Information to Members Register",*
- (b) *at all relevant times Mr Cinque was a "top executive" for the purposes of section 41M:*
- (1) *repeat particulars above at paragraph 3.3(b). If it is found the Mr Cinque's contract was approved by the Board, then the Club failed to record the details of the contract for remuneration in an "Information to Members Register" for 2011; and*
 - (2) *repeat particulars above at paragraph 3.3(c). If it is found Mr Cinque's contract was approved by the Board then the recording of the details of this contract has not been correctly stated in the 2012 "Information to Members Register",*
- (c) *at all relevant times Mr McGee was a "top executive" for the purposes of section 41M:*
- (1) *Repeat particulars above at paragraph 3.4. If it is found Mr McGee's contract was approved by the Board, then there is no record of the details of the*

contract for remuneration recorded in the 2012 "Information to Members Register",

(d) *at all relevant times Ms Blues was a "top executive" for the purposes of section 41M:*

(1) *repeat particulars above at paragraph 3.5. If it is found Ms Blue's contract was approved by the Board, then there is no record of the details of the contract for remuneration recorded in the 2012 "Information to Members Register".*

324. Particular 8.5 of Ground 8 notes that the evidence in support of this Ground is detailed in Schedule 8 to the Complaint Letter, and where Particulars are repeated, Schedule 3 to the Complaint Letter.

Club Response to Ground 8

325. The Club admits the Particulars of Ground 8 of the Complaint. The Club is "unable to explain" why the declarations the subject of Particular 8.2 were not recorded in the register that is required to be kept for such matters. The Club is also "unable to explain" why it failed to record in the register the number of top executives whose remuneration fell within successive bands in excess of \$100,000.00, as alleged by Particular 8.3 of the Complaint.

326. The Club states that it has implemented procedures and "taken steps" to ensure that declarations of material personal interests by directors are made and, if made, are promptly recorded in the relevant register; and that all information relating to top executives is also recorded in the register.

327. However, the Club argues in its submission dated 4 February 2015 that the maintenance of these registers is "principally a matter for the secretary" and refers to the report from Russell Corporate Advisory dated 26 July 2013 advising that "*Mr Bentley as Secretary is ultimately responsible for the content of the Registers.*"

Ex-Officers' Response to Ground 8

328. The Ex-Officers argue in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of this Ground, "at least in part".

329. The Ex-Officers submit that the Board "acts collectively" and not as an individual, and that, if complaints are made against the failure by the Board to ensure compliance of the Club with legislation, such complaint should be made against *all* directors, not only the directors who are the subject of this Complaint.

330. The Ex-Officers note that Grounds 1 through 11 of the Complaint allege a failure of Compliance on the part of the Club.

331. The Ex-Officers submit that the Club employed compliance and audit officers throughout the relevant period of the Complaint, being:

- (a) Mr Willems until mid-2010;
- (b) Mr Ratnarajah until mid-2011;
- (c) Mr Tuffey (interim);
- (d) Ms Neal from Nov 2011 onward.

332. The Ex-Officers submit that the Club is a large organisation and it is "impossible" for the Club's Directors or Secretary to personally supervise or undertake management. The Ex-Officers submit that the issue is whether the Directors and the CEO of the Club

"endeavoured to operate systems of control" in respect of those matters that are referred to in Ground 8.

333. The Ex-Officers submit that the purpose of clause 18 of the *Registered Clubs Regulation 2009* is to ensure that the members of registered clubs have a means of becoming aware of any dealings by directors or senior executives.
334. Specifically with regard to Particular 8.2 of the Complaint, the Ex-Officers concede that Mr Saidley Kelly's disclosure was not recorded in the 2010 *Information to Members Register*.
335. However, the Ex-Officers submit that the Club's compliance system detected this non-disclosure and the disclosure was reported in the 2011 Annual Report.
336. The Ex-Officers submit that the Club and/or its Directors did "not seek to withhold" information that is required to be disclosed by clause 18 of the Regulation.
337. In response to Particular 8.2(a)(7), which concerns the alleged non-compliance *vis a vis* the 2011 and 2012 *Information to Members Register*, the Ex-Officers submit (by reference to a statement made by Robert Bentley) that there is evidence "that this [document] was produced" but nevertheless contend that the Complainant "has not adduced" a copy of this document.
338. The Ex-Officers argue that the Complainant has provided no evidence from the Club's compliance officer, Ms Neal, in relation to this matter. The Ex-Officers argue that in those circumstances it "cannot be inferred" that "there were the omissions as alleged".
339. The Ex-Officers contend that the allegation in Particular 8.3 is "wrong". They submit that there can be no more than five (5) top executives per section 41B of the Act and clause 14 of the Regulation.
340. The Ex-Officers further submit that the Club has reported the five top executives who, at the end of the reporting year, had remuneration greater than \$100,000.00 in the 2010 *Information to Members Register*.
341. In response to Particular 8.4 of the Complaint, the Ex-Officers concede that the 2010 *Information to Members Register* did not disclose approval of Mr Bentley's contract. However, they submit that this information is disclosed in the Club's worksheet for the preparation of this register.
342. As for the alleged non-compliance *vis a vis* the 2011 and 2012 *Information to Members Register* in respect of this Particular, the Ex-Officers repeat their submission by reference to Mr Bentley's statement that there is "evidence that this [document] was produced", but the Complainant has not adduced a copy of it.
343. The Ex-Officers argue that the Complainant has not provided any evidence from the Club's compliance officer, Ms Neal. In those circumstances, the Ex-Officers submit that it "cannot be inferred" that "there were the omissions as alleged".

Authority Findings on Ground 8

344. Clause 18 of the Regulation states:

18 *Reporting – provision of information to members*
(1) *A registered club must:*

- (a) record the information specified in subclause (2) and keep it in a form approved by the Director-General, and
- (b) make the information available to the members of the club within 4 months after the end of the reporting period to which the information relates, and
- (c) indicate, by displaying a notice in the form approved by the Director-General on the club's premises and on the club's website (if any), how the members of the club can access the information, and
- (d) provide a copy of the information to any member of the club or the Director-General on the request (in writing) of the member or the Director-General.

Maximum penalty: 50 penalty units.

- (2) The information to be recorded is as follows:
 - (a) any disclosure, declaration or return received by the club under Division 2 of Part 4A of the Act during the reporting period,
 - (b) the number of top executives of the club (if any) whose total remuneration for the reporting period (comprising salary, allowances and other benefits) falls within each successive \$10,000 band commencing at \$100,000,
 - (c) details (including the main purpose) of any overseas travel during the reporting period by a member of the governing body of the club or an employee of the club in the person's capacity as a member of the governing body or employee, including the costs wholly or partly met by the club for the member of the governing body, employee and any other person connected with any such travel,
 - (d) details of any loan made during the reporting period to an employee of the club if the amount of the loan (together with the amount of any other loan to the employee by the club that has not been repaid) is more than \$1,000, including the amount of the loan and the interest rate, if any,
 - (e) details of any contract for remuneration approved during the reporting period under section 41M of the Act,
 - (f) the name of any employee of the club who the registered club is aware is a close relative of a member of the governing body of the club or of a top executive of the club and the amount of the remuneration package paid to the employee,
 - (g) details of any amount equal to or more than \$30,000 paid by the club during the reporting period to a particular consultant, including the name of the consultant and the nature of the services provided by the consultant,
 - (h) the total amount paid by the club during the reporting period to consultants (other than amounts required to be included under paragraph (g)),
 - (i) details of any settlement made during the reporting period with a member of the governing body of the club or an employee of the club as a result of a legal dispute and the amount of any associated legal fees incurred by the member or employee that were or are to be paid by the club, unless the disclosure of such information would be in breach of any confidentiality provision agreed to by the club,
 - (j) details of any legal fees (not referred to in paragraph (i)) paid by the club on behalf of a member of the governing body of the club or an employee of the club,
 - (k) the total amount of the profits (within the meaning of the Gaming Machine Tax Act 2001) from the operation of approved gaming machines in the club during the gaming machine tax period relating to the reporting period,
 - (l) the amount applied by the club during the gaming machine tax period to community development and support under Part 4 of the Gaming Machine Tax Act 2001.
- (3) For the purposes of subclause (2)(f), a registered club is to make all reasonable inquiries to ascertain the name of any employee of the club who is a close relative of a member of the governing body of the club or of a top executive of the club.
- (4) A reference in subclause (2)(f) or (3) to an employee of a registered club does not include a reference to an employee who:
 - (a) holds a position that is subject to an industrial award under a law of the State or the Commonwealth, and
 - (b) receives a remuneration package for that position of a value not exceeding the rate of pay applicable to the position that is provided for in the award.
- (5) In this clause:
 - gaming machine tax period** means the period of 12 months beginning on 1 September in the financial year concerned and ending on 31 August in the following year.
 - reporting period** means the relevant financial year of the registered club in relation to which the information is provided.

345. The Authority is satisfied that Particular 8.2(a)(1) is established on the basis of the ASIC extract for Parramatta Leagues Club Ltd dated 6 January 2014 recording Mr Saidley Kelly as a director (Complainant Exhibit 2) and the ASIC extract for Peter Kelly Flooring Pty Ltd dated 4 September 2014 (Complainant Exhibit K34).
346. The Authority is satisfied that Particular 8.2(a)(2) is established on the basis of the Notes to the Club Consolidated Financial Statements dated 31 December 2011 (Complainant Exhibit R73).
347. The Authority is satisfied that Particular 8.2(a)(3) is established on the basis of the Notes to the Club Consolidated Financial Statements dated 31 December 2011 (Complainant Exhibit R73).
348. The Authority is satisfied that Particular 8.2(a)(4) is established on the basis of the document entitled *Important Information for Club Members* dated 31 December 2010 (Complainant Exhibit R71).
349. The Authority is satisfied that Particular 8.2(a)(5) is established on the basis of the Notes to the Club Consolidated Financial Statements dated 31 December 2011 (Complainant Exhibit R73).
350. The Authority is satisfied that Particular 8.2(a)(6) is established on the basis of the Club Board meeting minutes for 30 August 2011 (Complainant Exhibit E7).
351. The Authority is satisfied that Particular 8.2(a)(7) is established on the basis of pages 74 and 89 of the Russell Corporate Advisory Report dated 5 July 2013 (which forms part of Complainant Exhibit 4) and pages 6 and 39 of the Russell Corporate Advisory Report dated 5 August 2013 (which also forms part of Complainant Exhibit 4).
352. The Authority is satisfied that Particular 8.2(b)(1) is established on the basis of the ASIC extract for the Club dated 6 January 2014 (Complainant Exhibit 2).
353. The Authority is satisfied that Particular 8.2(b)(2) is established on the basis of the ASIC extract for La Piazza Sydney Pty Ltd dated 4 September 2014 (Complainant Exhibit K32).
354. The Authority is satisfied that Particular 8.2(b)(3) is established on the basis of the Club Board meeting minutes for 27 April 2011 (Complainant Exhibit R27).
355. The Authority is satisfied that Particular 8.2(b)(4) is established on the basis of the notes to the Club Consolidated Financial Statements dated 31 December 2011 (Complaint Exhibit R73).
356. The Authority is satisfied that Particular 8.2(b)(5) is established on the basis of pages 74 and 89 of the Russell Corporate Advisory Report dated 5 July 2013 (which forms part of Complainant Exhibit 4) and pages 6 and 39 of the Russell Corporate Advisory Report dated 5 August 2013 (which also forms part of Complainant Exhibit 4).
357. The Authority is satisfied that Particular 8.2(b)(6) is established on the basis of the extract of the 2012 Club Annual Report (Complainant Exhibit R75).
358. The Authority is satisfied that Particular 8.2(b)(7) is established on the basis of the Club *Register of Disclosure of Interests* for 2012 (Complainant Exhibit R74).
359. The Authority is satisfied that Particular 8.2(c)(1) is established on the basis of a list of 120 invoices from "*Freshy's*" or "*Grothe's Meat & Raffle Trays*" issued to the Club in

2011, 2012 and 2013 and a spreadsheet summarising that data (Complainant Exhibit K31).

360. However, the Authority is *not* satisfied that Particular 8.2(c)(2) is established. While the Authority accepts that Mr Grothe Snr in fact supplied meat products to the Club over the period in question, there is little clarity in the material before the Authority as to the nature and scope of the contractual relationship between the Club and Mr Grothe Snr. On the limited material before it, on balance the Authority prefers the Ex-Officers' submission that the commercial arrangement with Mr Grothe Snr was "entered into" prior to his election to the governing body, while he was an ordinary member. The Complainant has not established to the Authority's satisfaction that the Club then "continued to enter" into that relationship and was for that reason non-compliant with its statutory disclosure obligations.
361. The Authority is satisfied that Particular 8.2(c)(3) is established on the basis of the extract of the 2012 Club Annual Report (Complainant Exhibit R75).
362. The Authority is satisfied that Particular 8.2(c)(4) is established on the basis of the Club *Register of Disclosure of Interests* for 2012 (Complainant Exhibit R74).
363. The Authority is satisfied that Particular 8.2(c)(5) is established on the basis of the ASIC extract for Parramatta Leagues Club Ltd dated 6 January 2014 recording Mr Eric Grothe Snr as a director (Complainant Exhibit 2) and the a list of 120 invoices from "*Freshy's*" or "*Grothe's Meat & Raffle Trays*" issued to the Club in 2011, 2012 and 2013 and a spreadsheet summarising that data (Complainant Exhibit K31).
364. The Authority is satisfied that Particular 8.2(c)(6) is established on the basis of the Declaration of Interest by Eric Grothe Snr dated 28 March 2013 (Complainant Exhibit E6).
365. The Authority is satisfied that Particular 8.2(c)(7) is established on the basis of pages 74 and 89 of the Russell Corporate Advisory Report dated 5 July 2013 (which forms part of Complainant Exhibit 4) and pages 6 and 39 of the Russell Corporate Advisory Report dated 5 August 2013 (which also forms part of Complainant Exhibit 4).
366. The Authority is satisfied that Particular 8.3(a) is established on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 that had been issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1); pages 12, 74 and 89 of the Russell Corporate Advisory Report dated 5 July 2013 (which forms part of Complainant Exhibit 4) and pages 6 and 39 of the Russell Corporate Advisory Report dated 5 August 2013 (which also forms part of Complainant Exhibit 4).
367. The Authority is satisfied that Particular 8.3(b) is established on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 that had been issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1); a letter from the Club's Financial Accountant dated 25 February 2015, listing the Club's Top Executives (Complainant Exhibit E4); the 2012 *Register of Disclosure of Interests in Contracts* (Complainant Exhibit R47); page 12 of the Russell Corporate Advisory Report dated 5 July 2013 (Complainant Exhibit 4) and pages 76 to 78 of the report from Integrity Risk Solutions dated 12 May 2013 in relation to "OLGR Investigation C13/11699" (Complainant Exhibit 5).

368. The Authority is satisfied that Particular 8.4 is established on the basis of a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 that had been issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1); the Club records of Board approval of top executive remuneration extracted from the 2010 *Information to Members Register* (Complainant Exhibit R72); pages 74 and 87 to 88 of the Russell Corporate Advisory Report dated 5 July 2013 (which forms part of Complainant Exhibit 4); pages 6 and 39 of the Russell Corporate Advisory Report dated 5 August 2013 (which also forms part of Complainant Exhibit 4); the 2012 *Register of Disclosure of Interests in Contracts* (Complainant Exhibit R47) and pages 76 to 78 of the report from Integrity Risk Solutions dated 12 May 2013 in relation to "OLGR Investigation C13/11699" (Complainant Exhibit 5).
369. The Authority is satisfied that Ground 8 is established. The failure to record the relevant matters on the Club's register is admitted by the Club. Having considered the Ex-Officers' submissions as to some uncertainty surrounding the evidence, the Authority is nevertheless satisfied, on the balance of probabilities, that there was a failure on the part of the Club to record the relevant matters on the Club's *Information to Members Register* during 2011 and 2012. The Authority rejects the argument made by the Ex-Officers that the Complainant was required to call or obtain evidence from all potentially relevant Club employees in order to prove the allegations advanced in this Ground. The Club itself does not dispute the non-disclosure and the parties have had ample access to Club records to substantiate their position one way or the other. There is sufficient evidence or material before the Authority to find that those incidences of non-compliance found by the Authority on the Particulars for Ground 8 have been established.
370. The Authority accepts the Club submission that a failure in compliance with regard to this legislative provision is a failure with respect to an operational matter for which the Club's secretary, Mr Bentley, is ultimately responsible. It does not involve a function to be exercised by the Board and the Authority does not attribute the Authority's findings on this Ground to the former directors individually.

GROUND 9

371. Ground 9 alleges as follows:

Section 57F(3)(j) – Any other ground that the complainant considers appropriate for the taking of disciplinary action against the Club.

372. Particular 9.1 of Ground 9 alleges as follows:

Between January 2011 and December 2012 the Club failed to report to the Club's Board the information required by clause 17(2) of the Gaming Machines Regulation 2010.

373. Particular 9.2 of Ground 9 alleges as follows:

On 25 January 2011 the Gaming Department Report prepared on 13 January 2011 was received and accepted in the meeting of the Club's Board.

374. Particular 9.3 of Ground 9 alleges as follows:

On 22 February 2011 the Gaming Department Report prepared on 12 February 2011 was received and accepted in the meeting of the Club's Board.

375. Particular 9.4 of Ground 9 alleges as follows:

On 29 March 2011 the Gaming Management Report dated 21 March 2011 was received and accepted in the meeting of the Club's Board.

376. Particular 9.5 of Ground 9 alleges as follows:

On 27 April 2011 the Gaming Committee Report prepared for the Directors' Portfolio Briefing on 19 April 2011 was received and accepted in the meeting of the Club's Board.

377. Particular 9.6 of Ground 9 alleges as follows:

On 31 May 2011 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 24 May 2011 was received and accepted in the meeting of the Club's Board.

378. Particular 9.7 of Ground 9 alleges as follows:

On 28 June 2011 the Gaming Committee Report prepared for the Directors' Portfolio Briefing on 21 June 2011 was received and accepted in the meeting of the Club's Board.

379. Particular 9.8 of Ground 9 alleges as follows:

On 26 July 2011 the Gaming Committee Report prepared for the Directors' Portfolio Briefing on 19 July 2011 was received in the meeting of the Club's Board.

380. Particular 9.9 of Ground 9 alleges as follows:

On 30 August 2011 the Gaming Department Management Report dated 23 August 2011 was received and accepted in the meeting of the Club's Board.

381. Particular 9.10 of Ground 9 alleges as follows:

On 27 September 2011 the Gaming Committee Report prepared for the Directors' Portfolio Briefing on 20 September 2011 was received and accepted in the meeting of the Club's Board.

382. Particular 9.11 of Ground 9 alleges as follows:

On 25 October 2011 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 18 October 2011 was received and accepted in the meeting of the Club's Board.

383. Particular 9.12 of Ground 9 alleges as follows:

On 29 November 2011 the Gaming Committee Report prepared for the Directors' Portfolio Briefing on 22 November 2011 was received and accepted in the meeting of the Club's Board.

384. Particular 9.13 of Ground 9 alleges as follows:

On 20 December 2011 the Gaming Report prepared for the 20 December 2011 board meeting was accepted in the meeting of the Club's Board.

385. Particular 9.14 of Ground 9 alleges as follows:

On 31 January 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 24 January 2012 was accepted in the meeting of the Club's Board.

386. Particular 9.15 of Ground 9 alleges as follows:

On 28 February 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 21 February 2012 was accepted in the meeting of the Club's Board.

387. Particular 9.16 of Ground 9 alleges as follows:

On 27 March 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 20 March 2012 was accepted in the meeting of the Club's Board.

388. Particular 9.17 of Ground 9 alleges as follows:

On 24 April 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 17 April 2012 was tabled in the meeting of the Club's Board.

389. Particular 9.18 of Ground 9 alleges as follows:

On 29 May 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 22 May 2012 was received and accepted in the meeting of the Club's Board.

390. Particular 9.19 of Ground 9 alleges as follows:

On 26 June 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 19 June 2012 was received and accepted in the meeting of the Club's Board.

391. Particular 9.20 of Ground 9 alleges as follows:

On 31 July 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 24 July 2012 was received and accepted in the meeting of the Club's Board.

392. Particular 9.21 of Ground 9 alleges as follows:

On 28 August 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 21 August 2012 was received and accepted in the meeting of the Club's Board.

393. Particular 9.22 of Ground 9 alleges as follows:

On 25 September 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 18 September 2012 was received and accepted in the meeting of the Club's Board.

394. Particular 9.23 of Ground 9 alleges as follows:

On 30 October 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 23 October 2012 was received and accepted in the meeting of the Club's Board.

395. Particular 9.24 of Ground 9 alleges as follows:

On 27 November 2012 the Gaming Department Management Report prepared for the Directors' Portfolio Briefing on 20 November 2012 was received and accepted in the meeting of the Club's Board.

396. Particular 9.25 of Ground 9 alleges as follows:

On 18 December 2012 the Gaming Department Management Report prepared for the December 2012 board meeting was received and accepted in the meeting of the Club's Board.

397. Particular 9.26 of Ground 9 alleges as follows:

The reports referred to above in paragraphs 9.2 – 9.25 do not contain a cash flow analysis.

398. Particular 9.27 of Ground 9 notes that the evidence in support of this Ground is detailed in Schedule 9 to the Complaint Letter.

Club Response to Ground 9

399. The Club admits the Particulars in support of Ground 9 of the Complaint in its submission dated 4 February 2015. The Club is "unable to explain" why the cash flow analysis was not included with each of the gaming reports. However, the Club now "ensures" that the cash flow analysis is included with each gaming machine report.

Ex-Officers' Response to Ground 9

400. The Ex-Officers contend in their submission dated 9 June 2015 that the Club has incorrectly made admissions in respect of this Ground.

401. The Ex-Officers contend that the Club did not fail to comply with clause 17 of the *Gaming Machines Regulation 2010*. The Club maintained 550 gaming machines on its premises during the relevant period and the "Aristocrat 7000" software generated a 50 to 60 page report for cash flow analysis.

402. The Ex-Officers submit that the Complainant's case is that, because:

- (a) there is "no explicit reference" to the cash flow analysis report in the Club's Gaming Machine Reports for the period; and
- (b) the cash analysis report is not referred to in the Board minutes; and
- (c) Mr Spagnolo notes that there is no reference in the minutes to that cash analysis report; and
- (d) Mr Spagnolo said "I can't recall" in his record of interview with OLGR Inspectors, it should therefore be inferred that the required report was "not reported to the Board or Committee".

403. The Ex-Officers submit that the evidence in the statements of Messrs Cinque, Libertini, Kelly, and Spagnolo is that cash flow analysis documents in the approved form were bundled separately from the other reports, provided to each meeting of the *Gaming Committee* and thereafter at the next Board meeting. The Ex-Officers submit that this procedure "wholly complies with clause 17".

404. The Ex-Officers submit that the Club's Gaming Manager for the relevant period was:

- (a) Mr Walker until July 2011; and
- (b) Ms Blues from August 2011 onwards,

however, OLGR did not interview Mr Walker. Ms Blues was interviewed, but not asked about this issue when she was interviewed by OLGR Inspectors on 11 August 2014.

Authority Findings on Ground 9

405. Clause 17(2) of the *Gaming Machines Regulation 2010* states as follows:

- 17 *Clubs required to record certain information in relation to gaming machines*
- (2) *A registered club must, at monthly intervals, record the following information in respect of each approved gaming machine kept on the premises of the club:*
 - (a) *a cash flow analysis,*
 - (b) *a comparison of cancelled credit and jackpot wins meter readings with the corresponding entries in the club's payout sheets,*
 - (c) *a comparison of the money out meter reading (in the case of an approved gaming machine that issues gaming machine tickets by means of equipment subsidiary to the gaming machine), or the cancelled credits payments meter reading (in the case of an approved gaming machine that issues gaming machine tickets otherwise than by means of subsidiary equipment), with the total of:*
 - (i) *the value of the gaming machine tickets issued from the gaming machine, being gaming machine tickets that have been redeemed, and*
 - (ii) *the value of the unclaimed gaming machine tickets issued from the gaming machine.*

406. The Authority has considered the evidence relied upon by the Complainant (Complainant Exhibits K36 to K59 – being the Club Board meeting minutes and Gaming Reports for January to December 2011 and January to December 2012; Complainant Exhibit 13 – being the OLGR interview with Mr Eric Grothe Snr dated 9 April 2014; Complainant Exhibit 14 – being the OLGR interview with Mr Mario Libertini dated 22 April 2014 and Complainant Exhibit 18 – being the OLGR interview with Mr Roy Spagnolo dated 28 May 2014), in conjunction with the submissions of the Club and the Ex-Officers.

407. While it is troubling that Mr Spagnolo stated that he could not recall whether this significant report was presented to the Board as required by the *Gaming Machines Regulation 2010*, the Authority considers that there is positive evidence, in the form of four statements made by former officers of the Club, to the effect that they saw this report presented to the Board, with a copy tabled every meeting.

408. The Authority notes that two key staff involved with gaming machine compliance who could have been interviewed by OLGR were not interviewed or not questioned on this issue.

409. On the material before it, the Authority is not satisfied that the alleged non-compliance with clause 17(2) of the *Gaming Machines Regulation* has been established. The Authority finds that Ground 9 is *not* established.

GROUND 10

410. Ground 10 alleges as follows:

Section 57F(3)(d) – The Club has contravened a provision of the Act.

411. Particular 10.1 of Ground 10 alleges as follows:

During February, March and June 2012 the Club failed to ensure all functions were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act.

412. Particular 10.2 of Ground 10 alleges as follows:

The Club was granted a "Club functions authorisation" on 1 July 2008.

413. Particular 10.3 of Ground 10 alleges as follows:

During February 2012 the Club held the following functions:

- (a) "Ashleys Hens Night" on 4 February 2012;*
- (b) "Cash Poker" on 6, 13, 20 and 27 February 2012; and*
- (c) "Sydney Singles" on 25 February 2012,*

in circumstances where these functions did not fall within the "Club functions authorisation".

414. Particular 10.4 of Ground 10 alleges as follows:

During March 2012 the Club held the following functions:

- (a) "Cash Poker" on 5, 12, 19 and 26 March 2012; and*
- (b) "Hayley's Birthday Party" on 31 March 2012,*

in circumstances where these functions did not fall within the "Club functions authorisation".

415. Particular 10.5 of Ground 10 alleges as follows:

During June 2012 the Club held the following functions:

- (a) "Cash Poker" on 4, 11, 18 and 25 June 2012;*
- (b) "Sydney Singles" on 9 June 2012;*
- (c) "Husband's 40th Birthday" on 21 June 2012; and*
- (d) "21st Birthday Party" on 23 June 2012,*

in circumstances where these functions did not fall within the "Club functions authorisation".

416. Particular 10.6 of Ground 10 notes that the evidence in support of this Ground is detailed in Schedule 10 to the Complaint Letter.

Club Response to Ground 10

417. The Club admits the Particulars in support of Ground 10 of the Complaint in its submission dated 4 February 2015, *save for the allegation in Particular 10.1 that "in the circumstances...these functions did not fall within the club functions authorisation"*.
418. The Club contends that the description of the functions in the Club's *Functions Register* is "not sufficient evidence" to establish that each of the functions referred to in the Particulars of Ground 10 *did not* fall into any of the categories provided by section 23 of the Act; and in particular, there is no evidence as to who attended these functions and whether or not they were members or properly signed in as guests of members.
419. The Club states that it no longer uses the section 23 functions authorisation on the licence in respect of any function held in the Club.

Ex-Officers' Response to Ground 10

420. The Ex-Officers adopt paragraphs 1 to 8 of the Club's submission dated 4 February 2015 in respect of this Ground.
421. The Ex-Officers argue in their submission dated 9 June 2015 that the Club never actually exercised the functions authorisation during the relevant period. They submit that Ground 10 fails against the Club and also against the individual Ex-Officers.
422. Specifically in response to Particular 10.3(a) in relation to "*Ashleys Hens Night*" on 4 February 2012, the Ex-Officers argue that section 23 is "extensive in its reach". They argue that if a wedding is permitted, then it is "impossibly difficult" to see why a hen's night is not.
423. In response to Particular 10.3(b) in relation to "*Cash Poker*" on 6, 13, 20 and 27 February 2012, the Ex-Officers dispute the proposition that poker is not a "sporting" (as distinct from athletic) function.
424. In response to Particular 10.3(c) in relation to "*Sydney Singles*" on 25 February 2012, the Ex-Officers dispute the proposition that singles meetings are not "community" events.
425. In response to Particular 10.4(b) in relation to "*Hayley's Birthday Party*" on 31 March 2012, the Ex-Officers dispute the proposition that some family functions such as weddings should be permitted, while other family functions such as birthday events should not.

Authority Findings on Ground 10

426. Section 23 of the Act states as follows:

23 *Functions on club premises*

- (1) *The Authority may, on application by or on behalf of a registered club, grant an authorisation (a "club functions authorisation") to the club to permit persons:*
- (a) *who are not members of the club, or*
- (b) *who are under the age of 18 years,*
- to attend, in a specified part of the club premises, functions of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature. Any such function may include a wedding.*
- (2) *A club functions authorisation is to designate function areas (that is, each part of the club premises on which the functions concerned are permitted to be held) and access areas (that is, each part of the club premises through or by means of which persons attending those functions are to be permitted to obtain entry to or to depart from a function area).*

- (3) *A club functions authorisation is subject to the following conditions, but only to the extent that it authorises functions for minors on the club premises:*
- (a) *at least 7 days' notice must be given to the local police before any function is held,*
 - (b) *the notice must specify the name and nature of the function, the number of minors attending, the number of adult supervisors, details of the security arrangements and such other particulars as may be prescribed by the regulations,*
 - (c) *the secretary of the club and person conducting the function must comply with any directions given by the local police or the Authority with respect to the conduct of functions for minors,*
 - (d) *liquor must not be sold, supplied, disposed of or consumed in the area in which any function is held,*
 - (e) *gaming machines must not be located in the area in which any function is held and any area of the club in which gaming machines are located must not be accessible to any minor attending the function,*
 - (f) *such other conditions as may be prescribed by the regulations.*

Note: Section 23A also makes provision for the conditions to which a club functions authorisation is subject.

- (4) *A registered club and the secretary of the club are each guilty of an offence if:*
- (a) *any conditions of a club functions authorisation held by the club are contravened, or*
 - (b) *a function is held pursuant to the club functions authorisation otherwise than in accordance with the approval of the governing body of the club.*

Maximum penalty: 20 penalty units in the case of the registered club and 10 penalty units in the case of the secretary.

- (5) *It is a defence to a prosecution of a secretary of a club for an offence under subsection (4) if it is proved that:*
- (a) *the secretary had taken all reasonable precautions to avoid commission of the alleged offence, and*
 - (b) *at the time of the alleged offence the secretary did not know, and could not reasonably be expected to have known, that the alleged offence had been committed.*

427. The Authority is satisfied, as alleged by Particular 10.2, that the Club was granted a "Club functions authorisation" on 1 July 2008. This finding is made on the basis of the licence record for the Parramatta Leagues Club (LIQC300229459) dated 23 July 2014 (Complainant Exhibit 1).

428. The Authority is satisfied, as alleged by Particulars 10.3(a), (b) and (c), that during February 2012, the Club held the functions referred to as "Ashley's Hen's Night" on 4 February 2012; "Cash Poker" on 6, 13, 20 and 27 February 2012; and "Sydney Singles" on 25 February 2012. This finding is made on the basis of the Club Functions Register for the month of February 2012 (Complainant Exhibit E11).

429. The Authority is satisfied, as alleged by Particulars 10.4(a) and (b), that during March 2012, the Club held the functions referred to as "Cash Poker" on 5, 12, 19 and 26 March 2012; and "Hayley's Birthday Party" on 31 March 2012. This finding is made on the basis of the Club Functions Register for the month of March 2012 (Complainant Exhibit E12).

430. The Authority is satisfied, as alleged by Particulars 10.5(a), (b), (c) and (d), that during June 2012, the Club held the functions referred to as "Cash Poker" on 4, 11, 18 and 25 June 2012; "Sydney Singles" on 9 June 2012; "Husband's 40th Birthday" on 21 June 2012; and "21st Birthday Party" on 23 June 2012. This finding is made on the basis of the Club Functions Register for the month of June 2012 (Complainant Exhibit E13).

431. The Authority is satisfied that the functions specified in Particulars 10.3, 10.4 and 10.5 were held on the Club Premises, as alleged by the Complainant in respect of Ground 10.

However, in the absence of any evidence to the contrary, the Authority accepts the Club's submission that all the persons attending the Club premises for the relevant functions were either members of the Club or actually signed in as temporary members or guests of members, in accordance with the standard practice of the Club. As a consequence of this, the Club was not relying upon its functions authorisation when accommodating those patrons.

432. The Authority does not accept the submissions made by the Ex-Officers that the words of the functions authorisation are so broad as to encompass any of the functions that were at issue under Ground 10 – but as the Club was not, in fact, relying upon this authorisation, nothing turns upon which functions were or were not within the authorisation.

433. The Authority finds that Ground 10 is not established.

GROUND 11

434. Ground 11 alleges as follows:

Section 57F(3)(j) – Any other ground that the complainant considers appropriate for the taking of disciplinary action against the Club.

435. Particular 11.1 of Ground 11 alleges as follows:

On or around 10 June 2011 and 12 December 2011 the Club leased part of the licensed premises without the approval of the Independent Liquor and Gaming Authority ("the Authority") as required under section 92 of the Liquor Act 2007.

436. Particular 11.2 of Ground 11 alleges as follows:

The "Tingha Palace":

- (a) on or about 10 June 2011 the Club leased part of the licensed premises known as the "Tingha Palace" restaurant to "Hutchison and Partners Pty Ltd";*
- (b) particulars are repeated from 7.2 above; and*
- (c) there is no record of the Authority approving of the lease.*

437. Particular 11.3 of Ground 11 alleges as follows:

The "Legends Lounge":

- (a) on or about 12 December 2011 the Club leased part of the licensed premises known as the "Legends Lounge" to "CTC Nova Pty Ltd";*
- (b) particulars are repeated from 7.3 above; and*
- (c) there is no record of the Authority approving of the lease.*

438. Particular 11.4 of Ground 11 notes that the evidence in support of this Ground is detailed in Schedule 7 to the Complaint Letter.

Club Response to Ground 11

439. The Club denies Ground 11 in its submission dated 4 February 2015. The Club submits that the alleged leases, being the agreements in relation to the *Tingha Palace* and the *Legends Lounge*, are not leases.
440. Rather, these agreements gave the respective contractors "no more than a licence" to come on to the premises of the Club for the purposes of carrying out their contractual obligations to the Club.
441. The Club submits that a licence is not a lease and that the main factor in determining whether a lease or a licence exists in relation to premises or a parcel of land is "whether the commercial arrangement gives exclusive possession to a party who is not the owner of the premises or land": *Radaich v Smith* (1959) 101 CLR 209, [22].
442. The Club refers to the case of the *Polish Club Limited v Gnych* [2014] NSWCA 321 and submits that the agreements in respect of the *Tingha Palace* and the *Legends Lounge* did not give exclusive possession to the respective caterers of any part of the Club's licensed premises.
443. The Club contends that these agreements were therefore *not* leases under the general law and that neither agreement is in breach of section 92(1) of the *Liquor Act 2007*. The Club also submits that this issue is of "considerable industry wide relevance" because of the prevalence of these types of catering agreements in registered clubs.

Ex-Officers' Response to Ground 11

444. The Ex-Officers adopt paragraphs 1 to 25 of the Club's submission dated 4 February 2015 in relation to Ground 11 of the Complaint.

Authority Findings on Ground 11

445. Section 92 of the *Liquor Act 2007* states as follows:

- 92 *Control of business conducted on licensed premises*
- (1) *A licensee or a related corporation of the licensee must not:*
- (a) *if the licensee is an individual – allow any person to have the personal supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks except with the approval of the Authority, or*
 - (b) *lease or sublease the right to sell liquor on the licensed premises, or*
 - (c) *lease or sublease any part of the licensed premises on which liquor is ordinarily sold or supplied for consumption on the premises or on which approved gaming machines are ordinarily kept, used or operated, or*
 - (d) *lease or sublease any other part of the licensed premises except with the approval of the Authority.*
- Maximum penalty: 50 penalty units.*
- (2) *The owner of licensed premises must not:*
- (a) *lease or sublease any part of the premises on which liquor is ordinarily sold or supplied for consumption on the premises, or on which an approved gaming machine is ordinarily kept, used or operated, to any person other than the licensee or a related corporation of the licensee, or*
 - (b) *except with the approval of the Authority, lease or sublease any other part of the licensed premises to any person other than the licensee or a related corporation of the licensee.*
- Maximum penalty: 50 penalty units.*
- (3) *This section does not prevent a person who:*
- (a) *is the licensee of any premises that are situated in a shopping centre, and*
 - (b) *is the owner of each of the premises comprising the shopping centre,*

from leasing or subleasing, with the approval of the Authority, any part of the licensed premises on which liquor is sold or supplied for consumption on the premises.

- (4) *The person to whom any such part of the licensed premises is leased or subleased in accordance with section (3) is, for the purposes of this Act, taken to be an agent of the licensee.*

446. The Authority is satisfied, for the reasons submitted by the Club, that the contractual arrangements in respect of the *Tingha Palace* and the *Legends Lounge* involved the Club granting a *licence* to third party catering businesses to operate on the Club premises. This is apparent from the terms of the comprehensive written licence agreements agreed between the Club and the two third party businesses in question – Hutchison and Partners Pty Ltd and CTC Nova Pty Ltd. As there is no lease of Club premises, the question of whether the Club should have obtained Authority approval before subletting the licensed premises simply does not arise.

447. The Authority finds that Ground 11 is not established.

GROUND 12

448. Ground 12 alleges as follows:

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

449. Particular 12.1 of Ground 12 alleges as follows:

By reason of the conduct of Mr Spagnolo whilst a member of the governing body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.

450. Particular 12.2 of Ground 12 alleges as follows:

Mr Spagnolo was a member of the governing body of the Club between 5 May 2009 and 13 May 2013.

451. Particular 12.3 of Ground 12 alleges as follows:

Mr Spagnolo is not a "fit and proper" person as he failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence by reason of:

- (a) *the conduct outlined in paragraph 1 above in processing expense claims without authorisation of the governing body;*
- (b) *the conduct outlined in paragraph 2 above in authorising the payment made to Mr Bentley calculated by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club;*
- (c) *the failure outlined in paragraph 3 above to ensure the Club complied with section 41M of the Act by proposed contracts of "top executives" being first approved by the governing body;*
- (d) *the failure outlined in paragraph 4 above to ensure the Club complied with section 41U of the Act and gave written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act;*

- (e) *the failure outlined in paragraph 5 above to ensure the Club complied with section 41C of the Act and ensured members of the governing body who had material personal interests in matters that related to the affairs of the Club declared, as soon as practicable after the relevant facts came to the member's knowledge, the nature of the interest at a meeting of the governing body;*
- (f) *the failure outlined in paragraph 6 above to ensure the Club complied with section 41K of the Act to ensure any proposed contract between the Club and a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, was first approved by the governing body of the Club;*
- (g) *the failure outlined in paragraph 7 above to ensure the supply of liquor on the premises of the Club remained under the Club's control;*
- (h) *the failure outlined in paragraph 8 above to ensure the Club recorded information required to be recorded by clause 18 of the Regulation;*
- (i) *the failure outlined in paragraph 9 above to ensure the Club reported to the Club's Board the information required by clause 17(2) of the Gaming Machines Regulation 2010;*
- (j) *the failure outlined in paragraph 10 above to ensure all functions at the Club were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act;*
- (k) *the failure outlined in paragraph 11 above to ensure the Club gained approval from the Authority before it leased part of the licensed premises;*
- (l) *the failure to comply with ClubsNSW Guidelines:*
- (1) *Guideline for the Remuneration of Club Executives:*
 - (A) *failing to ensure remuneration of the CEO/Secretary was approved by the Board [section 6(b)]:*
 - i. *repeat particulars for paragraph 3.2;*
 - ii. *on 24 May 2011 the Expenditure Review Committee approved, and minuted, an increase in Mr Bentley's remuneration;*
 - iii. *on 31 May 2011 the Board acknowledged that an increase had been approved for Mr Bentley by the Expenditure Review Committee;*
 - iv. *on 31 May 2011 the Club increased Mr Bentley's remuneration in circumstances where the increase was not approved by the Board;*
 - v. *on or about 15 April 2012 the Club further increased Mr Bentley's remuneration in circumstances where there is no Board minute approval for the Club to increase the remuneration,*
 - (B) *failure to ensure a majority of the Board of Directors approve the remuneration of Club executives, not an Executive Remuneration Committee, as outlined in paragraphs 3 and 12.3(l)(1)(A) above [section 8];*
 - (C) *failure to ensure employment agreements of the CEO/Secretary and Club executives outlined in paragraph 3 above contained Key Performance Indicators ("KPIs") and performance reviews conducted periodically against these KPIs [section 6(d) and 10]; and*
 - (D) *failure to comply with legislative requirements that pertained to executive remuneration as outlined in paragraphs 3 and 4 above [section 6(e), 7],*

- (2) *Guideline for Board Operation:*
- (A) *failure to comply with any relevant legislative, industrial or administrative requirement, and to keep up to date with any changes, as particularised in paragraphs 1-11 above [section 3(b)];*
 - (B) *failure to maintain adequate documentation to support any decisions made [section 3(c)];*
 - (C) *failure to monitor the performance of the Club manager and approving senior management remuneration policies and practices, as outlined in paragraph 4 above [section 4(c)];*
 - (D) *failure to ensure appropriate compliance frameworks and controls were in place, as outlined in paragraphs 1-11 above [section 4(f)];*
 - (E) *failure to ensure the full Board remained ultimately responsible for the decisions delegated to its sub-committees [section 12];*
 - (F) *failure to ensure adequate controls were in place to oversee the powers delegated to management [section 14];*
 - (G) *failure to engage with management on strategic planning [section 15]; and*
 - (H) *failure to engage in a review of the Board Charter annually [section 16].*
- (3) *Guideline for the Procurement of Goods and Services:*
- (A) *failure to ensure Club directors who had a material personal interest in a Club procurement declared the nature of the interest at a meeting of the Board as soon as practicable, as outlined in paragraph 5 above [section 5];*
 - (B) *failure to ensure the Club obtained value for money when making procurement decisions, in circumstances where there was no tender process undertaken in relation to:*
 - i. *"Tingha Palace" outlined at paragraph 7.2 above;*
 - ii. *"Legends Lounge" outlined at paragraph 7.3 above;*
 - iii. *supply of ingredients by "La Piazza" outlined at paragraph 6.3 above; and*
 - iv. *supply of meat products by Mr Grothe Snr's businesses outlined at paragraph 5 above [section 4],*
- (m) *failure to comply with the Club Guidelines, Charters and Handbooks;*
- (1) *the failure to ensure expenses of the CEO were paid in accordance with the Directors And Executive Management Guide in relation to "the CEO Institute":*
 - (A) *on or about 5 March 2012 the Club received a tax invoice dated 1 March 2012 for the amount of \$4,125.00 for membership fees of Mr Bentley;*
 - (B) *on or about 7 March 2012 the Club paid the tax invoice in circumstances where it was paid otherwise than in accordance with the Club Directors And Executive Management Guide as:*
 - i. *it was not business related;*
 - ii. *Mr Bentley did not segregate himself from the approval process;*
 - iii. *there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and*
 - iv. *there is no Board minute approval.*
 - (C) *on or about 22 June 2012 the Club received a tax invoice dated 1 June 2012 for the amount of \$4,125.00 for membership fees of Mr Bentley;*
 - (D) *on or about 5 July 2012 the Club paid the tax invoice in circumstances where it was paid otherwise than in accordance with the Directors And Executive Management Guide as:*
 - i. *it was not business related;*
 - ii. *Mr Bentley did not segregate himself from the approval process;*
 - iii. *there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and*
 - iv. *there is no Board minute approval.*

- (E) *on or about 13 September 2012 the Club received a tax invoice dated 1 September 2012 for the amount of \$4,125.00 for membership fees of Mr Bentley;*
- (F) *on or about 24 September 2012 the Club paid the tax invoice in circumstances where it was paid otherwise than in accordance with the Club Directors And Executive Management Guide as:*
 - i. it was not business related;*
 - ii. Mr Bentley did not segregate himself from the approval process;*
 - iii. there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and*
 - iv. there is no Board minute approval.*
- (G) *on or about 12 December 2012 the Club received a tax invoice dated 1 December 2012 for the amount of \$4,125.00 for membership fees of Mr Bentley;*
- (H) *on or about 14 December 2012 the Club paid the tax invoice in circumstances where it was paid otherwise than in accordance with the Club Directors And Executive Management Guide as:*
 - i. it was not business related;*
 - ii. Mr Bentley did not segregate himself from the approval process;*
 - iii. there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and*
 - iv. there is no Board minute approval.*
- (2) *the failure to ensure expenses of Club CEO were paid in accordance with the Club Directors And Executive Management Guide in relation to private travel expense claims [page 9-11]:*
 - (A) *on or about 20 April 2012 the Club received an email from Mrs Cathie Bentley regarding private travel expenses for Mr and Mrs Bentley;*
 - (B) *on or about 20 April 2012 the Club paid this expense in circumstances where it was paid otherwise than in accordance with the Club Directors And Executive Management Guide as:*
 - i. the expense was not business related;*
 - ii. Directors and Executives travel entitlements do not include companions;*
 - iii. there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter;*
 - iv. the payment was authorised by Mr Cinque "as approved by Board"; and*
 - v. there is no Board minute recording this approval.*
- (3) *the failure to ensure expenses of Club CEO were paid in accordance with the Club Directors And Executive Management Guide in relation to interstate travel [page 9-11]:*
 - (A) *on or about 1 September 2011 the Club received an invoice from J.C Travel Professionals Pty Ltd regarding interstate travel expenses for Mr and Mrs Bentley;*
 - (B) *on or about 19 April 2012 the Club paid this expense in circumstances where it was paid otherwise than in accordance with the Club Directors & Executive Management Guide as:*
 - i. Directors and Executives travel entitlements do not include companions;*
 - ii. there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and*
 - iii. there is no Board minute recording this approval.*
 - (C) *on or about 13 September 2012 the Club received an invoice from The Journey Masters Pty Limited regarding interstate travel expenses for Mr and Mrs Bentley;*

- (D) on or about 2 November 2012 the Club paid this expense in circumstances where it was paid otherwise than in accordance with the Club Directors & Executive Management Guide as:
 - i. Directors and Executives travel entitlements do not include companions;
 - ii. there is no record of the Audit & Compliance Committee reviewing the invoice as per the Committee's charter; and
 - iii. there is no Board minute recording this approval.
- (4) the failure to comply with the strategic planning obligations in the Duties of Directors Handbook [page 3];
- (5) the failure to comply with performance monitoring obligations in the Duties of Directors Handbook [page 4];
- (6) the failure to ensure directors' and executive management's expenditure statements were authorised by the CEO before submission for, and approval by, the Board as required by the Directors & Executive Management Guide [page 5];
- (7) the failure to comply with corporate governance obligations, as outlined at paragraphs 5 and 6 above, required by the Directors & Executive Management Guide [page 6];
- (8) the failure to comply with the Directors & Executive Management Guide on Club representation at football matches played interstate and overseas [page 10];
- (9) the failure to comply with all applicable laws, regulations and standards required by the Board Committee Charter for the Expenditure Review Committee, as outlined by paragraphs 1-11 above [page 3],
- (n) the failure to ensure the Club did not pay unsupported or unauthorised bonuses:
 - (1) on or about 17 February 2013 the Club paid Mr Bentley a bonus of \$20,000.00 in circumstances where:
 - (A) payment was made otherwise than in accordance with the employment agreement; and
 - (B) there is no record of a review undertaken by the Audit & Compliance Committee in relation to the bonus; and
 - (C) no Board minute approval for payment of the bonus.
 - (2) repeat particulars for paragraph 2 above in relation to the bonus payment made to Mr Bentley on or around 26 May 2013,
 - (3) on or around 20 December 2012 the Club paid bonuses to:
 - (A) Mr Cinque in the sum of \$10,000.00;
 - (B) Mr McGee in the sum of \$10,000.00;
 - (C) Ms Blues in the sum of \$3,500.00; and
 - (D) Mr Chidiac in the sum of \$2,000.00,in circumstances where:
 - i. there is no record of a review undertaken by the Audit & Compliance Committee in relation to each bonus;
 - ii. the email from Mr Bentley to the payroll officer states the bonuses were "approved by the Chairman"; and
 - iii. there is no board minute approval for payment of the bonuses,
- (o) the failure to ensure payment was not made from the Club's funds to benefit Parramatta National Rugby League Club ("PNRL") staff and players:
 - (1) purchase of vehicle AR62ZD:
 - (A) on 19 November 2012 the Club purchased a motor vehicle from F F Moi Moi; and
 - (B) the EFT Requisition was approved by Mr Cinque and was "purchased by [the Club] for use by Jason Irvine", a PNRL employee,
 - (2) repeat particulars above at paragraph 1.2 in relation to the Christmas Party held in December 2011, in circumstances where:
 - (A) the Christmas Party was held for PNRL players,

- (3) *repeat particulars above at paragraph 1.3 in relation to the Christmas Party held in December 2012, in circumstances where:*
 - (A) *the Christmas Party was held from PNRL players.*
- (p) *the failure to comply with the recommendations of Club Auditors:*
 - (1) *in or about September 2011 PriceWaterhouseCoopers prepared an "Agreed upon procedures" report for Chief Executive Officer Bentley,*
 - (2) *between 31 May 2011 and 5 July 2013, the Club failed to address the weaknesses identified by the Club Auditors in the:*
 - (A) *control environment;*
 - (B) *segregation of duties and information technology controls;*
 - (C) *cash receipt procedures; and*
 - (D) *general record keeping,*
- (q) *the failure to ensure Employment Agreements entered into by the Club were executed in accordance with section 127 of the Corporations Act 2001:*
 - (1) *on or about 16 April 2012 the Club entered into an Employment Agreement with Mr Cinque in circumstances where:*
 - (A) *only one director of the Club executed the agreement,*
 - (2) *on or about 1 June 2010 the Club entered into an Employment Agreement with Mr Bentley in circumstances where:*
 - (A) *the agreement was not executed by a director or secretary of the Club,*
 - (3) *on or about 25 August 2010 the Club entered into an Employment Agreement with Mr Bentley in circumstances where:*
 - (A) *the agreement was not executed by a director or secretary of the Club,*
- (r) *the failure to comply with a decision of the governing body of the Club:*
 - (1) *on or about 27 September 2011 the governing body of the Club resolved that the former coffee shop known as "Tahoe" would be leased and any contract would require the terms:*
 - (A) *rent to be \$500.00 per week for the first 3 months; and*
 - (B) *rent would then increase to \$1,500.00 per week,*
 - (2) *the rent required equated to \$66,000.00 per annum,*
 - (3) *on or about 12 December 2011 the Club entered into a Catering Licence Agreement with "CTC Nova Pty Ltd" which included the term:*
 - (A) *rent would be \$31,850.00 + GST per annum,*
- (s) *his knowledge, involvement or acquiescence of:*
 - (1) *conduct to backdate Club memberships to enable:*
 - (A) *existing members of the Club; or*
 - (B) *new members of the Club,**... to vote for the governing body of the Club at an Annual General Meeting including his presence at about 5pm on a Thursday or Friday shortly before the 2013 Annual General Meeting when Ms Blues, the Group Gaming Manger, had been called to attend Mr Bentley's office and was required to telephone the supplier of the Membership software "Aristocrat" to obtain assistance on how membership details could be varied to change the date of the first registration of a member; and*
 - (2) *the subsequent:*
 - (A) *change of registration details for members;*
 - (B) *the addition of new members whose registration was backdated for which no payment was received or not received until 8 July 2013;*
 - (C) *using an access code called "front desk" which had been created by Mr Bentley; and*
 - (3) *conduct of which permitted persons to obtain membership to the Club:*
 - (A) *without payment of a membership fee; or*
 - (B) *without approval by the governing body.*

452. Particular 12.4 of Ground 12 notes that the evidence in support of this Ground is detailed in Schedule 12 to the Complaint Letter, and the corresponding Schedule for any repeated Particulars.

Club Response to Ground 12

453. The Club did not provide a response to Ground 12 of the Complaint.

Ex-Officers' Response to Ground 12

454. The Ex-Officers dispute Ground 12 of the Complaint in their submission dated 9 June 2015.

455. In response to Ground 12, the Ex-Officers submit that "best practice" is not the legal criterion of fitness and propriety. It is sufficient that a director is "adequate", not that he or she be "good", let alone the "best". The Ex-Officers contend that there is an "implicit acknowledgment" throughout the Complaint that "incompetence" is not relied upon by the Complainant by reason of his failure to allege or provide evidence of "widespread systemic or systematic failure in the operations of the Club".

456. In response to Particular 12.3(a) of the Complaint, the Ex-Officers refer to their submissions on Ground 1 above and submit that Mr Spagnolo's alleged misconduct involved two occasions over 14 months when the Club "irregularly reimbursed" his expenses, being:

(a) 13 February 2012 – \$2860.44, and

(b) 7 January 2013 – \$3337.80.

457. The Ex-Officers submit that Mr Spagnolo hosted a Christmas party for "many years" preceding his directorship and thereafter, attended by 100 to 200 people including directors, staff and PNRL Club players and sponsors. Assuming that there were irregularities as alleged, the Ex-Officers submit that this "could not support a finding of not fit and proper".

458. The Ex-Officers submit that this Ground is "concerned with process, not substance". The resolutions passed at the Club's 2010 and 2011 Annual General Meetings approved the reimbursement of "*reasonable out of pocket expenses for... entertainment...in the course of carrying out duties...subject to a resolution of the Board*".

459. The Ex-Officers argue that it is not alleged that these expenses were not reasonably incurred. The Board decided that Mr Spagnolo should be *partially* reimbursed; Mr Spagnolo did not initiate that decision.

460. The Ex-Officers note that the Complainant's evidence in relation to this Particular is that on 10 February 2012, Mr Cinque noted that the expense was "agreed by the Board of Directors". There had been a Board meeting on 9 February 2012. The Ex-Officers contend that whether or not there was a formal resolution, the Board had "approved it as a matter of fact".

461. The Ex-Officers submit that the "ordinary procedure" of the Club for the approval of expenses was as follows:

(a) A report of all expenses is presented to the Expenditure Review Committee in the form of a *List of Expenditures* for the previous month;

- (b) A list of expenditure approved was included in the Board Pack for the next Board meeting; and
 - (c) The Board then considered the Report and expenditures and "usually approved them".
462. The Ex-Officers submit that the expense in relation to the 2011 Christmas Party hosted by Mr Spagnolo was actually included in the Club's *List of Expenditures* for February 2012 and was actually ratified by a Board Resolution passed in March 2012.
463. The Ex-Officers submit that the expense in relation to the 2012 Christmas Party hosted by Mr Spagnolo was actually included in the December 2012 *List of Expenditures* and was actually ratified by a Board Resolution passed in January 2013.
464. The Ex-Officers contend that the "effect" of the above facts is that there was a Board resolution approving each expense and that there was no "unauthorised" payment of expenses to Mr Spagnolo. Accordingly, there is "no evidence" of any attempt to "evade" section 10(1)(i) of the Act.
465. In response to Particular 12.3(b) of the Complaint, the Ex-Officers adopt paragraphs 1 to 18 of the Club's submission dated 4 February 2015 in relation to Ground 2 of the Complaint.
466. The Ex-Officers submit that the Board proceeded on the basis of legal advice, referring to a statutory declaration dated 28 May 2015 made by the Club's lawyer, Mr Brian Belling. The Ex-Officers submit that this "affords no basis for concluding that those who made the decision are not fit and proper".
467. In response to Particular 12.3(c) of the Complaint, the Ex-Officers refer to their submissions in relation to Ground 3 and also submit that, with respect to the contracts for the remuneration of Mr Bentley, there are three alleged agreements at issue:
- (a) 1 June 2010;
 - (b) 25 August 2010; and
 - (c) 22 October 2010.
468. The Ex-Officers contend that the 1 June 2010 agreement was actually approved at the Board meeting of 1 June 2010.
469. The Ex-Officers submit that the allegation regarding Mr Bentley's agreement of 25 August 2010 is "misconceived" because the "remuneration proposal" in that agreement is actually dated 2 May 2010 and this was superseded by the proposal on 1 June 2010, which is annexed to the 1 June 2010 agreement.
470. As to Mr Bentley's agreement with the Club dated 22 October 2012, the Ex-Officers submit that the evidence of Messrs Spagnolo, Kelly, Libertini, Grothe Snr and Ms Wallace is that the "remuneration provisions" were approved by the Board prior to being offered to and accepted by Mr Bentley.
471. The Ex-Officers acknowledge that the practice for "top executives" other than Mr Bentley was different. They contend that "*if a position was to be filled the Board would discuss what was required etc. and settle the remuneration range to be offered*".

472. The Ex-Officers contend that the position would then be advertised, and subsequently an interview and appointment to the role would occur. The appointment would *then* be reported and noted by the Board.
473. The Ex-Officers argue that these procedures satisfy the "prior approval" requirement and that the process adopted by the Club in respect of this matter "clearly avoids the harm of top executive remuneration being agreed in secret with the Chairman and some faction of the Board".
474. In response to Particular 12.3(d) of the Complaint, the Ex-Officers refer to their submissions in response to Ground 4 and submit that "late notification" that was provided nevertheless indicates that the Club was "endeavouring to comply with relevant requirements".
475. They submit that even if required notice was not given "as soon as practicable", that is not a basis for finding any of the individual Ex-Officers are not fit and proper.

[The Authority notes that Particular 12.3(e) relates to Ground 5, which is no longer pressed by the Complainant.]

476. In response to Particular 12.3(f) of the Complaint, the Ex-Officers refer to their submissions in relation to Ground 6 and contend that Mr Libertini did in fact disclose his interest at the Board meeting on 27 April 2011. The Board then resolved at that meeting to authorise Mr Bentley to assess price and quality, following which Mr Libertini's company was engaged to supply pizza dough to the Club. The Ex-Officers submit that this process constitutes express approval by the Board.
477. In response to Particular 12.3(g) of the Complaint, the Ex-Officers adopt paragraphs 1 to 40 of the Club's submission dated 4 February 2015 in response to Ground 7.
478. In response to Particular 12.3(h) of the Complaint, the Ex-Officers refer to their submissions made in relation to Ground 8.
479. In response to Particular 12.3(i) of the Complaint, the Ex-Officers refer to their submissions made in relation to Ground 9.
480. In response to Particular 12.3(j) of the Complaint, the Ex-Officers refer to their submissions made in relation to Ground 10.
481. In response to Particular 12.3(k) of the Complaint, the Ex-Officers adopt paragraphs 1 to 25 of the Club's submission dated 4 February 2015 in relation to Ground 11.
482. In response to Particular 12.3(l) of the Complaint, the Ex-Officers contend that this Particular fails, as it contains an "illegitimate allegation" by the Complainant. The Ex-Officers submit that there can be no "failure to comply" unless there was an actual obligation to do so.
483. The Ex-Officers submit that ClubsNSW Guidelines "are not a prescription of conduct to be observed by a registered club or its directors or its chief executive". The Ex-Officers contend that there was no obligation under the Act or Regulation, and therefore no breach of a legal duty owed to the Club by the Ex-Officers.
484. The Ex-Officers further submit that "proof of a failure of form is not necessary proof of a failure of substance" and that neither the Board nor Mr Bentley was indifferent to the views of ClubsNSW. The Ex-Officers contend that ClubsNSW circulars and publications "were an agenda item at every Board meeting".

485. In response to Particular 12.3(m) of the Complaint, the Ex-Officers contend that the Complainant treats a "guide" as if it were a *prescriptive legal rule*, which the Board could not dispense with – however there is "no legal basis for that approach".
486. Specifically with regard to Particular 12.3(m)(A) of the Complaint, the Ex-Officers submit that there were in fact Board minute approvals and these expenses of Mr Bentley were actually authorised.
487. The Ex-Officers contend that the Complainant has not established that there was an "obligation" to comply with the Club's internal Guide. The Guide was an "exhortation" from the Club to itself, but "nothing more".
488. The Ex-Officers submit that the Complainant has made no allegation that the relevant systems at the Club were "non-existent or inherently deficient". The Ex-Officers contend that the Club was in fact a "rather well run club".
489. In response to Particular 12.3(n) of the Complaint, the Ex-Officers submit that the Complainant's allegations that the bonuses were paid otherwise than in accordance with an employment agreement is "surprising" as these bonuses are a "discretionary payment".
490. The Ex-Officers submit that the "only issue" is whether the relevant payments were made with or without authority from the Board. The Ex-Officers refer to the process for the making of these bonus payments that is described in Mr Bentley's statement.
491. The Ex-Officers contend that it is "very clear" from Mr Bentley's statement that for each year, the amount of bonuses paid was disclosed to and approved by the Board. The Ex-Officers contend that there is "no basis" for a conclusion that the payment of these bonuses was "unauthorised".
492. The Ex-Officers submit that the amounts of such bonuses paid to Club staff were "relatively modest" and that the approval and payment of these bonuses was "not objectively excessive".
493. In response to Particular 12.3(o)(1) of the Complaint, the Ex-Officers submit that the PNRL Club is a "major focus" of the Club.
494. The Ex-Officers contend that the legal basis for the Complainant's allegation that it was important to ensure that no benefit flowed to the staff of a Club subsidiary from Club funds "is not apparent".
495. The Ex-Officers submit that the Club has "routinely and extensively supported [the PNRL Club] financially", as evidenced by Annual Reports from 2009 and 2013 which disclose the PNRL Club's "doubtful debts" owed to the Club.
496. The Ex-Officers submit that there is "no evidence" to support the allegation that (PNRL Club rugby league player) Mr Fui Fui Moi Moi's vehicle was purchased "at an overvalue" by the Club or that its use by Mr Irvine (who was employed as a trainer at the PNRL Club at the relevant time) was contrary to his (Mr Irvine's) entitlements from the PNRL Club.
497. The Ex-Officers submit that the Complainant's case, being that the funds should not have been used to support the PNRL Club acquiring an asset for its own purposes, should not be accepted. There was no legal reason to "ensure" that this did not happen.
498. In response to Particular 12.3(o)(2) of the Complaint, the Ex-Officers submit that these allegations concerning the 2011 and 2012 Christmas Parties must fail by reason that the

failure to establish Ground 1 of the Complaint precludes the Complainant's reliance upon these matters under this sub-Ground regarding an Ex-Officer's individual fitness.

499. In response to Particular 12.3(p) of the Complaint, the Ex-Officers contend that the *Agreed upon Procedures Report* was commissioned by Mr Bentley, dated 8 August 2011 and addressed to Mr Bentley. This report was considered at the Club's Audit Compliance Committee meeting on 20 September 2011 and at the Club's Board meeting on 27 September 2011.
500. The Ex-Officers submit that the Russell Corporate Advisory report dated 5 July 2013 is the only evidence relied upon by the Complainant and that this document does not evidence that any of the Ex-Officers "failed to address" the *Agreed upon Procedure Report*, except as to one recommendation. The Ex-Officers contend that this recommendation contained within the Russell Corporate Advisory report "implicitly acknowledges" that other matters were addressed.
501. In response to Particular 12.3(q) of the Complaint, the Ex-Officers note that section 127 of the *Corporations Act 2001* provides the following: "A company may execute a document..." by having two (2) directors sign the document or witness the affixation of a seal to it.
502. The Ex-Officers submit that this section does not *require* such a signing or a witnessing. The provision is "facultative, not prescriptive". The Ex-Officers question how any commercial organisation of any scale could operate if every contract to be made by that organisation required two directors to sign. The Ex-Officers submit that the allegation in this Particular is founded on a misreading of section 127 of the *Corporations Act*.
503. In response to Particular 12.3(r) of the Complaint, the Ex-Officers note that the Complainant's case is that the Board's resolution of 27 April 2011 specified several terms for any contract to be entered into in relation to an outsourced operation of the Club's *Tahoe* venue, and that the contract actually entered into by the Club on 12 December 2011 was "relevantly different and less favourable to" the Club.
504. The Ex-Officers note that Mr Sassen and Mr Bentley signed this contract, but no complaint has been made against Mr Sassen. The Ex-Officers contend that this is because Mr Sassen was authorised to enter into that contract, on which basis so too was Mr Bentley.
505. The Ex-Officers question the basis upon which the conduct of Messrs Spagnolo, Libertini and Kelly are being proceeded against in respect of this Particular. The Ex-Officers submit that Mr Bentley's statement reveals how the whole Board was involved in and was aware of that process.
506. In response to Particular 12.3(s) of the Complaint, the Ex-Officers contend that the allegation of involvement or acquiescence with regard to the alleged alteration of Club membership records is a "serious allegation" that "should be supported by clear evidence" that would "clearly and unequivocally establish the allegation".
507. The Ex-Officers submit that the only evidence tending to suggest that Mr Spagnolo had knowledge of the alleged practice to backdate Club memberships was contained in Ms Blues' interview with OLGR. The Ex-Officers contend that Ms Blues' evidence is not capable of establishing that Mr Spagnolo was actually aware of the content of the conversation in which she had participated.

508. Further in relation to this allegation, the Ex-Officers refer to Mr Bentley's statement which indicates that he reported deficiencies in Club membership records to Messrs Cinque, Chidiac, McGee and Mss Blues and Ikonomidis (or Guerreiro) on 10 April 2013.
509. The Ex-Officers submit that the Complainant has been unable to elicit support for this allegation from any other person apart from Ms Blues. The Ex-Officers submit that the propounding of this allegation against Messrs Spagnolo and Bentley is "unjustified" and, having regard to "what befell them", the Authority should make a finding to that effect.

Authority Findings on Ground 12

Fitness and Propriety at General Law

510. 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 is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127.
511. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

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

512. Particular 12.2 is established. It is contended in the Complaint Letter and is not in dispute that former Club Chairman Roy Spagnolo was in fact a member of the Club's governing body between 5 May 2009 and 13 May 2013.

Particular 12.3

513. Particular 12.3 makes the broad allegation that Mr Spagnolo is not a fit and proper person, by reason that he "failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence". This broad allegation is in turn founded upon numerous specific allegations contained within sub-Particulars 12.3(a) to (s).
514. The Authority's findings on those sub-Particulars are as follows:

Particular 12.3(a)

515. Particular 12.3(a) refers to the conduct that is alleged in Ground 1 in relation to the processing of expense claims without the authorisation of the governing body.

516. On the basis of the evidence or material identified in the Authority's findings on Ground 1, the Authority is satisfied as follows:
517. The Club did pay the reimbursement of Mr Spagnolo's expense claim in the sum of \$2,860.44 on 13 February 2012 in respect of Mr Spagnolo's expenses for hosting the 2011 PNRL Club Christmas Party.
518. The Club did pay the reimbursement of Mr Spagnolo's expense claim in the sum of \$3,337.80 on 7 January 2013 in respect of Mr Spagnolo's expenses for hosting the 2012 PNRL Club Christmas Party.
519. The reimbursement of these two expense claims occurred without observance by the Board of the proper process for approval of such expenses, notwithstanding that the Board was actually aware of these claims and did informally approve the reimbursement of both expenses.
520. The Authority is satisfied that Particular 12.3(a) is established. The Club has a duty to ensure that any benefits or advantages provided by a Club to members of the governing body that are captured by section 10(1)(i) of the Act fall squarely within one of the available exceptions provided by section 10(6) of the Act.
521. This is a duty that falls upon the Club, and the Board, as a whole.
522. The Authority accepts the submission made by the Ex-Officers that these two reimbursements were transacted in an "irregular" manner, but there is no suggestion of a lack of transparency or secrecy involved with the making of these payments.
523. The Authority accepts the Ex-Officers' submission that the Board decided that Mr Spagnolo should be partially reimbursed for his personal costs for hosting the PNRL Club Christmas Parties in 2011 and 2012. Mr Spagnolo did not initiate that Board decision.
524. On the basis of the evidence and material identified in its findings on Ground 1, the Authority is satisfied that the Board was actually aware of and did actually approve reimbursement of these expenses and that the sources of expenses for food and beverages were substantiated with receipts.
525. Nevertheless, the Authority is not satisfied that the Club had approved and recorded the reimbursement in the manner required by section 10(1)(i) of the Act.
526. The Ex-Officers have pointed to resolutions passed by Club members at the 2010 and 2011 Annual General Meetings approving the reimbursement of "reasonable out of pocket expenses for ...entertainment" as an alternative basis for approval of these transactions. However, the Authority notes that these AGM resolutions are, in their own terms, "subject to a resolution of the Board".
527. While Particular 12.3(a) is established, the Authority is not satisfied, given the particular circumstances of these two transactions, that great weight should be given to this compliance failure on the part of the Club for the purposes of assessing Mr Spagnolo's personal knowledge, ability, care and diligence.

Particular 12.3(b)

528. Particular 12.3(b) refers to the conduct alleged in Ground 2 with respect to authorising the bonus payment made to Mr Bentley "calculated by reference to" the receipts of the Club for liquor sold and the operation of gaming machines at the Club.

529. It is noted that this Particular *does not refer to the other allegations in Ground 2 that the bonus payment to Mr Bentley was incorrectly calculated by the Club*. That is, it has not been pleaded by the Complainant that Mr Spagnolo's lack of fitness turns upon the substantial error that the Authority has found to have occurred with regard to the overpayment of Mr Bentley's bonus in its findings on Ground 2.
530. Particular 12.2(b) is based on the contention that Mr Bentley's bonus was paid in a manner that contravened the requirement in section 10(1)(k) of the Act. As noted above, this section requires that a club secretary, manager, employee or member of a governing body not be entitled to receive, either directly or indirectly, any payment "calculated by reference to" the quantity of liquor purchased, supplied, sold or disposed of, or the receipts for liquor supplied or disposed. Nor may such payment be "calculated by reference to" the keeping or operation of approved gaming machines in the club.
531. The Authority is satisfied, on the basis of the evidence or material identified in the Authority's findings on Ground 2, that Mr Bentley's contract of employment dated 22 October 2012 included the following provisions for the payment of a bonus:
- (1) *a bonus calculated to be the greater of \$50,000.00 or 1 per cent of the profit of the Club before grants as determined by reference to the audited accounts and payable within 21 days of the publication of those accounts; and*
 - (2) *a further bonus as determined by the Board by exercise of its discretion, provided any such discretionary bonus not exceed 10 per cent of the total Remuneration Package for the previous 12 months (before tax).*
532. As noted in its findings on Ground 2, the Authority is satisfied that the Club's profits for the year 2011/12 did include and were principally derived from revenue from the operation of its 494 gaming machines. This is notwithstanding that the Club also derives income from other sources that are noted in the Club's submissions.
533. In circumstances when the Club's profits were overwhelmingly the product of gaming machine revenue, the mechanism for calculating Mr Bentley's bonus (1 per cent of Club profits) agreed by the Board for inclusion in Mr Bentley's contract on 22 October 2012 was such that it contravened the requirement of section 10(1)(k)(ii) of the Act.
534. The Authority is not aware of any superior Court authority on the interpretation of section 10(1)(k) and its requirement that an entitlement to a benefit not be "calculated by reference to" a club's liquor sales or gaming machine operations.
535. As noted in its findings with regard to Ground 2, the purpose of section 10(1)(k) is to effect harm minimisation by preventing a registered club from giving its officers or employees any incentive to promote the sale or supply of liquor, or the provision and operation of gaming machine services.
536. The Authority observes that there are numerous means by which a registered club may potentially engage a chief executive officer or other staff on terms that include a bonus mechanism that cannot be characterised as enabling a bonus to be "calculated by reference to" liquor sales or the operation of gaming machines.
537. For example, a performance bonus may potentially be framed by reference to an annual increase in the number of members of the club; the number of individual patron visits to the premises during a financial year; an annual reduction in a defined basket of recurring operational costs; the delivery of specified major project(s) on time and on budget; a defined maximum exposure to certain adverse regulatory events (Compliance or Penalty Notices issued by Police, OLGR or Council, or maintenance of the club's declared

premises status under Schedule 4 of the *Liquor Act 2007*); or through an independent annual survey of awareness of the Club within a defined community catchment area.

538. All of these approaches avoid the risk of contravening section 10(1)(k) of the Act that may otherwise arise if a bonus is framed by reference to the club's overall sales, or even profit, in circumstances where the sale of liquor or the operation of gaming machines are likely to determine the level of overall sales or club profit/surplus in a given year.
539. In circumstances where the Club has agreed for Mr Bentley's bonus to be calculated as a percentage of the Club's profits, and the quantum of the Club's profit was overwhelmingly contingent upon its considerable gaming machine operations, the Authority is satisfied that the bonus provision agreed by this Club in Mr Bentley's contract contravened section 10(1)(k)(ii) of the Act.
540. As a member of the governing body when Mr Bentley's contract was agreed by the Club, the inclusion of this bonus provision is a matter that potentially adversely reflects upon Mr Spagnolo's knowledge, ability, care and diligence.
541. However, it is apparent from the statutory declaration dated 28 May 2015 made by the Club's lawyer, Mr Belling that Mr Bentley's bonus provision in the contract dated 22 October 2012 was entered into by the Board with the benefit of legal advice.
542. Further, the Ex-Officers submit that the provision of profit based bonuses in senior executive employment contracts is common practice in NSW registered clubs.
543. In the absence of any judicial interpretation of this provision and in light of the fact that Mr Bentley's bonus was, according to Mr Belling's evidence, included in the employment contract pursuant to legal advice to the Club, it would be inappropriate to find that this instance of non-compliance by the Club reflects adversely upon the fitness and propriety of the then directors or Mr Bentley.

Particular 12.3(c)

544. With regard to Particular 12.3(c), the Authority is satisfied, on the basis of the evidence and material identified in its findings on Ground 3, that the Club did fail to comply with the requirement in section 41M of the Act that a registered club must not enter into a contract for the remuneration by the club of a top executive of the club unless the proposed contract has first been approved by the governing body of the club.
545. The allegation as to Mr Spagnolo's fitness is here directed to the failure, by the Club, specified in Particular 3.2 of the Complaint, to ensure that the Club not enter into contracts for remuneration with four top executives without prior approval by the governing body. The top executives specified are: Mr Bentley (contracts dated 1 June 2010, 25 August 2010 and 22 October 2010); Mr Tony Cinque, Chief Financial Officer (contracts dated 24 June 2011 and 16 April 2012); Mr Stephen McGee, Marketing Manager (contract dated 21 January 2011) and Ms Jodie Blues, Gaming Manager (contract dated 22 July 2011).
546. The Authority is satisfied that the Particulars of Ground 3 are established and that the Board did not provide prior approval to the contracts with these top executives. There was an attempt at prior approval but that concerned the remuneration provisions only, not the contracts themselves.
547. The Authority notes that the Club admits Ground 3 of the Complaint.

548. The Authority considers that the purpose of the requirement in section 41M is to ensure that the governing body is on notice of the terms of a club's contracts with its top executives, not simply their remuneration packages. The Ex-Officers have emphasised that the Board was on notice of proposed remuneration before the relevant contracts were entered into, but section 41M is not simply concerned with executive staff remuneration, it is concerned with contracts for remuneration.
549. Noting the importance of a club's top executive staff to a club's operations, the Authority considers it an important responsibility of a governing body to be aware of, and approve the terms upon which executive staff are employed. This is particularly important with regard to the club secretary.
550. The Authority notes the Ex-Officers' submission to the effect that the alleged failings identified in Ground 3 of the Complaint do not involve any secrecy on the part of the then Board.
551. The Authority accepts that this is the case, but the purpose of section 41M is to ensure that the Board maintains adequate knowledge of and approves the terms upon which top executives are employed. This is a statutory obligation of the Board and so it is a particular responsibility of individual Board members, especially the Chairman of the Board, to ensure that it occurs.
552. This assists the Board to exercise oversight and systemic guidance and accountability, particularly through the secretary/chief executive officer, of the Club's operations.
553. The Authority is satisfied that there were no improper motives on the part of the Ex-Officers that are evident from the manner in which these four executive staff members were hired by the former Board, but there was a significant deficiency in procedure.
554. The Board should have had the contracts before it to approve those top executive contracts before they were entered into. This did not occur.
555. Particular 12.3(c) is established and it demonstrates a significant deficiency on the part of Mr Spagnolo in particular, as Chairman of the Board, and the other directors with regard to their knowledge, ability, care and diligence as members of a governing body.

Particular 12.3(d)

556. Particular 12.3(d) refers to the failure identified in Ground 4, to ensure that the Club complied with section 41U of the Act (which requires that written notice be given as soon as practicable to persons who become top executives of their status and responsibilities under Part 4A of the Act).
557. The Authority is satisfied, on the basis of the evidence and material identified in support of its findings on Ground 4, that the Club did fail to provide written notice of their status and Part 4A responsibilities "as soon as practicable" to the top executives Robert Bentley, Tony Cinque, Stephen McGee, Jodie Blues and John Chidiac (in respect of his employment contract dated 1 July 2010).
558. The Authority notes that the Club admits Ground 4.
559. The Authority is satisfied that all of the contracts with respect to these top executives were entered into without compliance with section 41U. Mr Bentley and Mr Cinque were notified, but not "as soon as practicable", and there is no evidence of any notification to Ms Blues or Mr McGee.

560. The Ex-Officers have made reference to later notification, but the Authority is not satisfied that such notification was made as soon as practicable and in compliance with the Act.
561. The Authority regards this as a compliance failure on the part of the Club as a whole. This particular function of providing notification is not specified to involve action to be taken on the part of the Board.
562. While this compliance failing reflects adversely upon the Club as a whole, the Authority does not consider it to be illustrative of a personal lack of knowledge, ability, care and diligence on the part of Mr Spagnolo or the other individual directors.
563. A failure to ensure that top executives are notified of their obligations promptly after being employed does, however, reflect upon the Club's chief executive officer at the time, Mr Bentley, who may be said to have more direct responsibility for compliance matters of this kind.

Particular 12.3(e)

564. This Particular is based upon Ground 5 of the Complaint which is no longer pressed by the Complainant. This Particular is not established.

Particular 12.3(f)

565. Particular 12.3(f) is based upon the compliance failure that is identified in Ground 6, which alleges that the Club failed to ensure compliance with section 41K of the Act, which requires that a proposed contract between a club and a member of the governing body, top executive, or a company or other body with which such member or top executive has an interest, is first approved by the governing body.
566. The Authority is satisfied, on the basis of the evidence and material identified in its findings on Ground 6.2, that the Club did not fail to comply with its obligation to ensure prior Board approval before *entering into* the arrangement for the supply of meat trays to the Club by the business known as "*Grothe's Meat and Raffle Trays*" or "*Freshy's*" in respect of which governing body member Eric Grothe Snr was proprietor.
567. The Authority is satisfied that the commercial arrangement in question actually pre-dated Mr Grothe Snr's election to the Board. The arrangement was entered into by the Club at a time while Mr Grothe Snr was an ordinary member of the Club.
568. However, the Authority is also satisfied that this arrangement continued after Mr Grothe Snr's election to the governing body on 24 April 2012 until he ceased to be a member of the governing body on 29 May 2013.
569. In this regard, the Authority prefers the Ex-Officers' submissions on the interaction between section 41K and the arrangement between the Club and Mr Grothe Snr's meat business.
570. Mr Grothe Snr should have formally disclosed his interest in the commercial arrangement and that interest should have been noted formally in the Board's minutes. This did not occur. However, the Complaint as it has been framed does not deal with this failure.
571. The Authority is satisfied, on the basis of the evidence and material identified in its findings on Ground 6.3, that the Club did not comply with its obligation to ensure prior Board approval before entering into the commercial arrangement for the supply of pizza

dough to the Club by the business known as "*La Piazza Sydney Pty Ltd*", of which governing body member Mario Libertini was a director and shareholder.

572. The Authority is satisfied, and it is not disputed, that Mr Libertini was elected to the governing body of the Club on 5 May 2009. The Authority is satisfied that on or about May 2011, the Club entered into the commercial arrangement with La Piazza to supply product in circumstances where there is no Board minute approval to enter into a contract and no Board minute of the details of any proposed contract.
573. The Authority notes the submission of the Ex-Officers that Mr Libertini did actually disclose his interest to the Board Meeting on 27 April 2011. The Board then resolved to authorise Mr Bentley to assess prices and quality, following which La Piazza was engaged.
574. While the Authority accepts this account of events, and does not consider that there is any indication that the Board or Mr Libertini sought to keep this arrangement secret, the Authority is not satisfied that prior approval was provided by the Board of the terms of the arrangement required by section 41K.
575. This is a requirement of the Act that involves approval at Board level and the Club's failure to ensure compliance is a matter that adversely reflects upon the degree of knowledge, ability, care and diligence that is to be expected of a reasonably competent club director. There is no issue of dishonesty, but this particular compliance failure does evidence a shortcoming with respect to the knowledge and skill of Mr Spagnolo and the other Board members, in addition to the secretary, Mr Bentley.

Particular 12.3(g)

576. The allegation that is the subject of Particular 12.3(g) has not been established against the Club, and accordingly no adverse finding is made in relation to Mr Spagnolo's fitness and propriety.

Particular 12.3(h)

577. The allegation that is the subject of Particular 12.3(h) has been established as a compliance failure by the Club, but is not sufficiently related to the functions of the Board to warrant an adverse finding against Mr Spagnolo in his capacity as a former director.

Particular 12.3(i)

578. The Authority is not satisfied that the allegation of non-compliance that is the subject of Particular 12.3(i) has been proven as against the Club, and accordingly no adverse finding is made in relation to Mr Spagnolo's fitness and propriety.

Particular 12.3(j)

579. The Authority is not satisfied that the allegation of non-compliance with the Club's functions authorisation that is the subject of Particular 12.3(j) has been proven against the Club, and accordingly no adverse finding is made in relation to Mr Spagnolo's fitness and propriety.

Particular 12.3(k)

580. The Authority is not satisfied that the allegation in Particular 12.3(k) that the Club had subleased a part of its premises without authorisation from the Authority has been

established, and accordingly no adverse finding is made in relation to Mr Spagnolo's fitness and propriety.

Particular 12.3(l)

581. With respect to Ground 12.3(l) regarding the Club's alleged failure to comply with *ClubsNSW Guidelines*, the Authority accepts the Ex-Officers' submission that these documents are guidelines that provide advice on best practice, but do not prescribe minimum legal rules in respect of which non-compliance may found an independent ground of complaint.
582. Industry guidelines provide a useful framework for the training of club officers and staff and may, in their terms, provide a plain English guide to minimum statutory requirements. A good working knowledge of *ClubsNSW Guidelines* on the part of club directors or senior executives may have the collateral benefit of enhancing knowledge and skill and provide a means by which regulated officers become aware of and refresh themselves as to regulatory requirements and avoid managing club premises in a manner that exposes an enterprise to systemic risk and/or regulatory action.
583. ClubsNSW guidelines may also provide a source of evidence as to what the industry considers to be best practice with regard to the content of a regulatory duty that is the subject of a statutory requirement.
584. As a club secretary is the chief executive officer of a club and has greater responsibility over the day to day affairs of a registered club than the members of a governing body, the Authority considers that the secretary of a club that is a member of ClubsNSW may be expected to possess a reasonable working knowledge of that organisation's Guidelines. If not, this may support a conclusion that some identified failing by a club to satisfy a statutory requirement was the product of a lack of knowledge or skill on the part of its secretary.
585. The Authority does not need to make findings on the sub-Particulars of Particular 12.3(l) by reason that it is not satisfied that non-compliance with individual *ClubsNSW Guidelines* gives rise to an independent ground for disciplinary action.

Particular 12.3(m)

586. With regard to Particular 12.3(m), there is no evidence that the internal Club guidebooks referred to in this Particular of the Complaint were adopted by the Board as legally binding directives to Club staff when exercising powers and functions on behalf of the Club. In this respect, the Authority does not need to make findings on the sub-Particulars by reason that it is not satisfied that non-compliance would give rise to an independent basis for disciplinary action.

Particular 12.3(n)

587. With regard to the allegation in Particulars 12.3(n)(1), (2) and (3) that bonuses were paid in a manner that was not in accordance with the contracts upon which their payment was purportedly based and/or that no Audit Committee review was performed and/or without Board approval, the Authority accepts the submissions and contentions made by the Ex-Officers in relation to these payments and finds that these Particulars of the Complaint are not established.

Particular 12.3(o)

588. With regard to the allegation in Particular 12.3(o), the Authority does not find that the provision of financial or in kind support for the benefit of the PNRL Club or staff of that Club is prohibited. The Club has established that it provides extensive support for its subsidiary PNRL Club. In the absence of evidence of serious financial irregularity in relation to the matters identified, the Authority accepts the Ex-Officers' submissions in this regard and makes no adverse finding on the basis of the financial support that the Authority accepts was provided to the subsidiary PNRL Club and its staff.

Particular 12.3(p)

589. With regard to the allegation in Particular 12.3(p), the Authority is not satisfied that a failure to adopt a recommendation made by an auditor, of itself, exposes a club or its directors to an adverse finding as to their fitness or propriety.

590. Failure to comply with an auditor's advice, like any expert advice, may or may not lead to compliance or commercial issues down the track, but it is the breach of relevant legal requirements, not the advice *per se*, that will ground an adverse finding. Evidence of failure to heed expert advice prior to contravention of a legal requirement may more clearly demonstrate a lack of diligence by the relevant officers.

Particular 12.3(q)

591. With regard to the allegation in Particular 12.3(q), as to an alleged failure to comply with section 127 of the *Corporations Act 2001*, the Authority prefers the view of section 127 advanced by the Ex-Officers and no adverse finding is made on the basis of the Club's failure to have its contracts signed in only one of the modes provided for by that section. This Particular is not established.

Particular 12.3(r)

592. With regard to the allegation in Particular 12.3(r), the Authority accepts the Ex-Officers' submission and finds that Mr Spagnolo had no involvement with the execution of the relevant documents. This Particular is not established.

Particular 12.3(s)

593. With regard to the allegation in Particular 12.3(s), the Authority agrees with the Ex-Officers' submission that the allegation of tampering with membership records with a view to obtaining some kind of electoral advantage is a very serious allegation and requires a degree of substantiation that is not present on the material before the Authority. The allegation is that some 145 member records were varied out of a total membership of around 30,000, and about 30 of them were referred to NSW Police.

594. There is no evidence before the Authority as to what the Police did with this referral or whether any person has been charged with an offence in relation to the allegation and, if so, what the results of any prosecution were.

595. Notably, there is no evidence from any persons whose membership records were varied. One person, Ms Blues (the Club's compliance manager), informed OLGR officers that the alterations were made, but did not know whether or not the alterations were proper. The Authority accepts her evidence but notes that it does not establish the allegation made against Mr Spagnolo or Mr Bentley.

596. There is no direct evidence before the Authority that improper alterations were made, only submissions by the Complainant based upon inferences.
597. It is possible, in the context of the relatively small number of active voters, that numbers of this scale could influence the outcome of an election. It is possible that membership records were varied or updated for an improper purpose connected with the election. It is also possible that membership records were varied or updated for more prosaic, administrative reasons – such as inaccuracies in the original data entry.
598. Having considered the information provided by Ms Blues and in the absence of actual evidence that membership records were improperly altered, such as corroboration in the nature of evidence identifying individual(s) who have actually had their details changed without good reason, the Authority is *not satisfied* that this allegation, which is primarily directed against Mr Bentley but also involves Mr Spagnolo, has been established.
599. The Authority considers this to be an aspect of the Complaint that warranted further investigation at the expense of more minor and technical Grounds that have been pressed, but on the material before it and having regard to the gravity of the allegation, the Authority is *not satisfied* that Particular 12.3(s) has been established.
600. On the basis of the Authority's findings with regard to the Particulars specified in Ground 12, the Authority is satisfied that Ground 12 has been established and that Mr Spagnolo is not a fit and proper person to be the member of the governing body of a registered club, by reason that he has not demonstrated the degree of knowledge and skill that the Authority would expect from a reasonably competent director of a club of this scale. This finding is especially based upon the Club's failure in relation to Particular 12.3(c) with regard to the requirement for prior Board approval of the contracts of senior executives and also the failure in relation to the prior approval of the commercial arrangements with Mr Libertini. The Authority notes that as Chairman of the Board, Mr Spagnolo had the added responsibility of ensuring that regulated contracts came before the Board for approval in accordance with the Act. There is no basis for impugning Mr Spagnolo's honesty.

GROUND 13

601. Ground 13 alleges as follows:

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

602. Particular 13.1 of Ground 13 alleges as follows:

By reason of the conduct of Mr Libertini whilst a member of the governing body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.

603. Particular 13.2 of Ground 13 alleges as follows:

Mr Libertini was a member of the governing body of the Club between 5 May 2009 and 13 May 2013.

604. Particular 13.3 of Ground 13 alleges as follows:

Mr Libertini became a member of the governing body again on 24 September 2013 and resigned from that position and from the Club's governing body on 30 May 2014.

605. Particular 13.4 of Ground 13 alleges as follows:

Mr Libertini is not a "fit and proper" person as he failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence by reason of:

- (a) the conduct outlined in paragraph 1 above in processing expense claims without authorisation of the governing body;*
- (b) the conduct outlined in paragraph 2 above in authorising the payment made to Mr Bentley calculated by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club;*
- (c) the failure outlined in paragraph 3 above to ensure the Club complied with section 41M of the Act by proposed contracts of "top executives" being first approved by the governing body;*
- (d) the failure outlined in paragraph 4 above to ensure the Club complied with section 41U of the Act and gave written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act;*
- (e) the failure outlined in paragraph 5 above to ensure the Club complied with section 41C of the Act and ensured members of the governing body who had material personal interests in matters that related to the affairs of the Club declared, as soon as practicable after the relevant facts came to the member's knowledge, the nature of the interest at a meeting of the governing body;*
- (f) the failure outlined in paragraph 6 above to ensure the Club complied with section 41K of the Act to ensure any proposed contract between the Club and a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, was first approved by the governing body of the Club;*
- (g) the failure outlined in paragraph 7 above to ensure the supply of liquor on the premises of the Club remained under the Club's control;*
- (h) the failure outlined in paragraph 8 above to ensure the Club recorded information required to be recorded by clause 18 of the Regulation;*
- (i) the failure outlined in paragraph 9 above to ensure the Club reported to the Club's Board the information required clause by clause 17(2) of the Gaming Machines Regulation 2010;*
- (j) the failure outlined in paragraph 10 above to ensure all functions at the Club were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act;*
- (k) the failure outlined in paragraph 11 above to ensure the Club gained approval from the Authority before it leased part of the licensed premises;*
- (l) the failure outlined in paragraph 12.3 (l) to comply with ClubsNSW Guidelines;*
- (m) the failure outlined in paragraphs 12.3(m)(1)-(5) and (7)-(8) to comply with the Club Guidelines, Charters and Handbooks;*

- (n) *the failure outlined in paragraph 12.3(n) above to ensure the Club did not pay unsupported or unauthorised bonuses;*
- (o) *the failure outlined in paragraph 12.3(o) above to ensure payment was not made from the Club's funds to benefit PNRL staff and players;*
- (p) *the failure outlined in paragraph 12.3(p) to comply with the recommendations of Club Auditors;*
- (q) *the failure outlined in paragraph 12.3(q) above to ensure Employment Agreements entered into by the Club were executed in accordance with section 127 of the Corporations Act 2001;*
- (r) *the failure outlined in paragraph 12.3(r) above to comply with decision of the governing body of the Club; and*
- (s) *his admission in a record of interview held on 22 April 2014 with inspectors from OLGR about the occurrence of events which were not brought to the Board's attention.*

606. Particular 13.5 of Ground 13 notes that the evidence in support of this Ground is detailed in Schedule 13 to the Complaint Letter, and the corresponding Schedule for any repeated Particulars.

Club Response to Ground 13

607. The Club did not provide a response to Ground 13 of the Complaint

Ex-Officers' Response to Ground 13

608. The Ex-Officers contend that Ground 13 fails and refer to their submissions on Ground 12 above.

Authority Finding on Ground 13

609. Particular 13.2 is established. It is contended in the Complaint Letter and is not in dispute that former Club Director Mr Mario Libertini was in fact a member of the Club's governing body between 5 May 2009 and 13 May 2013.

610. Particular 13.3 is established. It is contended in the Complaint Letter and is not in dispute that former Club Director Mr Mario Libertini became a member of the governing body again on 24 September 2013 and resigned from that position and from the Club's governing body on 30 May 2014.

611. Particular 13.4 makes the broad allegation that Mr Libertini is not a "*fit and proper*" person, by reason that he "*failed to exercise his duties as a member of the governing body with a degree of knowledge, ability care and diligence*".

612. This broad allegation is in turn founded upon numerous specific allegations contained within sub-Particulars 13.4(a) to (s), which mirror the allegations contained within sub-Particulars 12.3(a) to (s) in respect of Mr Spagnolo, save for that:

- sub-Particulars 12.3(m)(6) and 12.3(m)(9) in respect of Mr Spagnolo are not pleaded in relation to Mr Libertini; and

- sub-Particular 13.4(s) alleges that Mr Libertini made an "admission" in a record of interview with OLGR Inspectors dated 22 April 2014 about the occurrence of events which were not brought to the Board's attention.
613. The Authority makes the same findings for Mr Libertini on Particulars 13.4(a) to (r) as it does with respect to Mr Spagnolo on Particulars 12.3(a) to (r), and on the basis of the same evidence or material and additionally the OLGR interview with Mr Libertini dated 22 April 2014 (Complainant Exhibit 14).
614. The Authority is also satisfied, with regard to Particular 13.4(s) in respect of the allegation that Mr Libertini made the following statement in his interview on 22 April 2014, that:
- I'm disappointed at some of the things that have occurred there, have not been brought to the Board's attention...*
615. Particulars 13.4(c) and (f) are established with respect to Mr Libertini.
616. On the basis of the Authority's findings with regard to the Particulars specified in Ground 13, the Authority is satisfied that Ground 13 has been established and that Mr Mario Libertini is not a fit and proper person to be the member of the governing body of a registered club, by reason that he has not demonstrated the degree of knowledge and skill that the Authority would expect from a reasonably competent director of a club of this scale. This finding is especially based upon the Club's failure in relation to Particular 14.3(c) with regard to the requirement for prior Board approval of the contracts of senior executives and also the failure in relation to the prior approval of the commercial arrangements with Mr Libertini. There is no basis for impugning Mr Libertini's honesty.

GROUND 14

617. Ground 14 alleges as follows:

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

618. Particular 14.1 of Ground 14 alleges as follows:

By reason of the conduct of Mr Grothe Snr whilst a member of the governing body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.

619. Particular 14.2 of Ground 14 alleges as follows:

Mr Grothe Snr was a member of the governing body of the Club between 24 April 2012 and 29 May 2013,

620. Particular 14.3 of Ground 14 alleges as follows:

Mr Grothe Snr is not a "fit and proper" person as he failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence by reason of:

- (a) *during the period of time of his directorship, the conduct outlined in paragraph 1 above in processing expense claims without authorisation of the governing body;*
- (b) *the conduct outlined in paragraph 2 above in authorising the payment made to Mr Bentley calculated by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club;*

- (c) *during the period of time of his directorship, the failure outlined in paragraph 3 above to ensure the Club complied with section 41M of the Act by proposed contracts of "top executives" being first approved by the governing body;*
- (d) *during the period of time of his directorship, the failure outlined in paragraph 4 above to ensure the Club complied with section 41U of the Act and gave written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act;*
- (e) *during the period of time of his directorship, the failure outlined in paragraph 6 above to ensure the Club complied with section 41K of the Act to ensure any proposed contract between the Club and a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, was first approved by the governing body of the Club;*
- (f) *during the period of time of his directorship, the failure outlined in paragraph 7 above to ensure the supply of liquor on the premises of the Club remained under the Club's control;*
- (g) *during the period of time of his directorship, the failure outlined in paragraph 8 above to ensure the Club recorded information required to be recorded by clause 18 of the Regulation;*
- (h) *during the period of time of his directorship, the failure outlined in paragraph 9 above to ensure the Club reported to the Club's Board the information required clause by clause 17(2) of the Gaming Machines Regulation 2010;*
- (i) *the failure outlined in paragraph 10 above to ensure all functions at the Club were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act;*
- (j) *the failure outlined in paragraph 12.3 (l) to comply with ClubsNSW Guidelines;*
- (k) *the failure outlined in paragraphs 12.3(m)(1)-(2), (4)-(5) and (7) to comply with the Club Guidelines, Charters and Handbooks;*
- (l) *the failure outlined in paragraph 12.3(n) above to ensure the Club did not pay unsupported or unauthorised bonuses; and*
- (m) *the failure outlined in paragraph 12.3(p) to comply with the recommendations of Club Auditors.*

621. Particular 14.4 of Ground 14 notes that the evidence in support of this Ground is detailed in Schedule 14 to the Complaint Letter, and the corresponding Schedule for any repeated Particulars.

Club Response to Ground 14

622. The Club did not provide a response to Ground 14 of the Complaint.

Ex-Officers' Response to Ground 14

623. The Ex-Officers contend that Ground 14 fails and refer to their submissions on Ground 12 above.

Authority Finding on Ground 14

624. Particular 14.2 is established. It is contended in the Complaint Letter and is not in dispute that former Club Director Mr Eric Grothe Snr was in fact a member of the Club's governing body between 24 April 2012 and 29 May 2013.
625. Particular 14.3 makes the broad allegation that Mr Grothe Snr is not a "*fit and proper*" person, by reason that he "failed to exercise his duties as a member of the governing body with a degree of knowledge, ability care and diligence".
626. This broad allegation is in turn founded upon numerous specific allegations contained within sub-Particulars 14.3(a) to (m), which refer to the sub-Particulars in respect of Mr Spagnolo in Particular 12.3, in that:
- Particulars 14.3(a) to (d) in respect of Mr Grothe Snr mirror the allegations contained within sub-Particulars 12.3(a) to (d) in respect of Mr Spagnolo;
 - Particulars 14.3(e) to (i) in respect of Mr Grothe Snr mirror the allegations contained within sub-Particulars 12.3(f) to (j) in respect of Mr Spagnolo;
 - Particular 14.3(j) in respect of Mr Grothe Snr mirrors the allegation contained within Particular 12.3(l) in respect of Mr Spagnolo;
 - Particular 14.3(k) in respect of Mr Grothe Snr mirrors the allegations contained within sub-Particulars 12.3(m)(1), (2), (4), (5) and (7) in respect of Mr Spagnolo;
 - Particular 14.3(l) in respect of Mr Grothe Snr mirrors the allegation contained within Particular 12.3(n) in respect of Mr Spagnolo; and
 - Particular 14.3(m) in respect of Mr Grothe Snr mirrors the allegation contained within Particular 12.3(p) in respect of Mr Spagnolo.
627. The Authority makes the same findings for Mr Grothe Snr on Particulars 14.3(a) to (m) as it does on the corresponding Particulars with respect to Mr Spagnolo as set out above, and on the basis of the same evidence or material and additionally the OLGR interview with Mr Grothe Snr dated 9 April 2014 (Complainant Exhibit 13).
628. Particulars 14.3(c) and (e) are established in respect of Mr Grothe Snr.
629. On the basis of the Authority's findings with regard to the Particulars specified in Ground 14, the Authority is satisfied that Ground 14 has been established and that Mr Eric Grothe Snr is not a fit and proper person to be the member of the governing body of a registered club, by reason that he has not demonstrated the degree of knowledge and skill that the Authority would expect from a reasonably competent director of a club of this scale. This finding is especially based upon the Club's failure in relation to Particular 14.3(c) with regard to the requirement for prior Board approval of the contracts of senior executives and also the failure in relation to the prior approval of the commercial arrangements with Mr Libertini. There is no basis for impugning Mr Grothe Snr's honesty.

GROUND 15

630. Ground 15 alleges as follows:

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

631. Particular 15.1 of Ground 15 alleges as follows:

By reason of the conduct of Mr Kelly whilst a member of the governing body of the Club, he has demonstrated that he is not "fit and proper" to hold such a position.

632. Particular 15.2 of Ground 15 alleges as follows:

Mr Kelly was a member of the governing body of the Club between 5 May 2009 and 29 July 2013.

633. Particular 15.3 of Ground 15 alleges as follows:

Mr Kelly is not a "fit and proper" person as he failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence by reason of:

- (a) the conduct outlined in paragraph 1 above in processing expense claims without authorisation of the governing body;*
- (b) the conduct outlined in paragraph 2 above in authorising the payment made to Mr Bentley calculated by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club;*
- (c) the failure outlined in paragraph 3 above to ensure the Club complied with section 41M of the Act by proposed contracts of "top executives" being first approved by the governing body;*
- (d) the failure outlined in paragraph 4 above to ensure the Club complied with section 41U of the Act and gave written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act;*
- (e) the failure outlined in paragraph 5 above to ensure the Club complied with section 41C of the Act and ensured members of the governing body who had material personal interests in matters that related to the affairs of the Club declared, as soon as practicable after the relevant facts came to the member's knowledge, the nature of the interest at a meeting of the governing body;*
- (f) the failure outlined in paragraph 6 above to ensure the Club complied with section 41K of the Act to ensure any proposed contract between the Club and a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, was first approved by the governing body of the Club;*
- (g) the failure outlined in paragraph 7 above to ensure the supply of liquor on the premises of the Club remained under the Club's control;*
- (h) the failure outlined in paragraph 8 above to ensure the Club recorded information required to be recorded by clause 18 of the Regulation;*
- (i) the failure outlined in paragraph 9 above to ensure the Club reported to the Club's Board the information required clause by clause 17(2) of the Gaming Machines Regulation 2010;*
- (j) the failure outlined in paragraph 10 above to ensure all functions at the Club were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act;*

- (k) *the failure outlined in paragraph 11 above to ensure the Club gained approval from the Authority before it leased part of the licensed premises;*
- (l) *the failure outlined in paragraph 12.3 (l) to comply with ClubsNSW Guidelines;*
- (m) *the failure outlined in paragraphs 12.3(m)(1)-(5) and (7) to comply with the Club Guidelines, Charters and Handbooks;*
- (n) *the failure outlined in paragraph 12.3(n) above to ensure the Club did not pay unsupported or unauthorised bonuses;*
- (o) *the failure outlined in paragraph 12.3(p) to comply with the recommendations of Club Auditors;*
- (p) *the failure outlined in paragraph 12.3(q) above to ensure Employment Agreements entered into by the Club were executed in accordance with section 127 of the Corporations Act 2001; and*
- (q) *his admission in a record of interview held on 29 April 2014 with inspectors from OLGR about the occurrence of events he should have been aware of.*

634. Particular 15.4 of Ground 15 notes that the evidence in support of this Ground is detailed in Schedule 15 to the Complaint Letter, and the corresponding Schedule for any repeated Particulars.

Club Response to Ground 15

635. The Club did not provide a response to Ground 15 of the Complaint.

Ex-Officers' Response to Ground 15

636. The Ex-Officers contend that Ground 15 fails and refer to their submissions on Ground 12 above.

Authority Finding on Ground 15

637. Particular 15.2 is established. It is contended in the Complaint Letter and is not in dispute that former Club Director Mr Saidley (Sid) Kelly was in fact a member of the Club's governing body between 5 May 2009 and 29 July 2013.

638. Particular 15.3 makes the broad allegation that Mr Kelly is not a "*fit and proper*" person, by reason that he "*failed to exercise his duties as a member of the governing body with a degree of knowledge, ability care and diligence*".

639. This broad allegation is in turn founded upon numerous specific allegations contained within sub-Particulars 15.3(a) to (q), which refer to the sub-Particulars in respect of Mr Spagnolo in Particular 12.3, in that:

- Particulars 15.3(a) to (n) in respect of Mr Kelly mirror the allegations contained within sub-Particulars 12.3(a) to (n) in respect of Mr Spagnolo, save for that sub-Particulars 12.3(m)(6), 12.3(m)(8) and 12.3(m)(9) are not alleged in respect of Mr Kelly;
- Particular 15.3(o) in respect of Mr Kelly mirrors the allegation contained within Particular 12.3(p) in respect of Mr Spagnolo;

- Particular 15.3(p) in respect of Mr Kelly mirrors the allegation contained within Particular 12.3(q) in respect of Mr Spagnolo; and
- Particular 15.3(q) in respect of Mr Kelly alleges that Mr Kelly made an admission in a record of interview with OLGR Inspectors dated 29 April 2014 about the occurrence of events he should have been aware of.

640. The Authority makes the same findings for Mr Kelly on Particulars 15.3(a) to (q) as it does on the corresponding Particulars with respect to Mr Spagnolo as set out above, and on the basis of the same evidence or material and additionally the OLGR interview with Mr Kelly dated 29 April 2014 (Complainant Exhibit 16).

641. The Authority is also satisfied, with regard to Particular 15.3(q) in respect of the allegation that Mr Kelly made the following statement about the occurrence of events which he should have been aware of in his interview on 29 April 2014:

I mean, obviously, there's a lot of happenings here that perhaps I was not aware of that I should have been aware of but I believe at - at the time or the period that I spent on the Club I certainly had the best interests of the Club at heart. And certainly there's nothing in my conscience that requires me to be concerned about any activity that occurred whilst I was there.

642. Particulars 15.3(c) and (f) are established in respect of Mr Kelly.

643. On the basis of the Authority's findings with regard to the Particulars specified in Ground 15, the Authority is satisfied that Ground 15 has been established and that Mr Saidley Kelly is not a fit and proper person to be the member of the governing body of a registered club, by reason that he has not demonstrated the degree of knowledge and skill that the Authority would expect from a reasonably competent director of a club of this scale. This finding is especially based upon the Club's failure in relation to Particular 15.3(c) with regard to the requirement for prior Board approval of the contracts of senior executives and also the failure in relation to the prior approval of the commercial arrangements with Mr Libertini. There is no basis for impugning Mr Kelly's honesty.

GROUND 16

644. Ground 16 alleges as follows:

Section 57F (3) (g) – The secretary or a member of the governing body of the Club is not a fit and proper person to act as such.

645. Particular 16.1 of Ground 16 alleges as follows:

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

646. Particular 16.2 of Ground 16 alleges as follows:

Mr Bentley was the Club secretary between 21 May 2010 and 27 July 2013.

647. Particular 16.3 of Ground 16 alleges as follows:

Mr Bentley is not a "fit and proper" person as he failed to exercise his duties as a member of the governing body with a degree of knowledge, ability, care and diligence by reason of:

- (a) *the conduct outlined in paragraph 1 above in processing expense claims without authorisation of the governing body;*
- (b) *the conduct outlined in paragraph 2 above in authorising the payment made to Mr Bentley calculated by reference to the receipts of the Club for liquor sold and the operation of gaming machines at the Club;*
- (c) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 3 above to ensure the Club complied with section 41M of the Act by proposed contracts of "top executives" being first approved by the governing body;*
- (d) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 4 above to ensure the Club complied with section 41U of the Act and gave written notice "as soon as practicable" to persons who became "top executives" of the Club, informing them they were a "top executive" and had responsibilities under Part 4A of the Act;*
- (e) *the failure outlined in paragraph 5 above to ensure the Club complied with section 41C of the Act and ensured members of the governing body who had material personal interests in matters that related to the affairs of the Club declared, as soon as practicable after the relevant facts came to the member's knowledge, the nature of the interest at a meeting of the governing body;*
- (f) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 6 above to ensure the Club complied with section 41K of the Act to ensure any proposed contract between the Club and a member of the governing body of the Club or a "top executive", or with a company or other body in which such a member or "top executive" has a pecuniary interest, was first approved by the governing body of the Club;*
- (g) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 7 above to ensure the supply of liquor on the premises of the Club remained under the Club's control;*
- (h) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 8 above to ensure the Club recorded information required to be recorded by clause 18 of the Regulation;*
- (i) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 9 above to ensure the Club reported to the Club's Board the information required clause by clause 17(2) of the Gaming Machines Regulation 2010;*
- (j) *the failure outlined in paragraph 10 above to ensure all functions at the Club were held in accordance with the "Club functions authorisation" as defined by section 23 of the Act;*
- (k) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 11 above to ensure the Club gained approval from the Authority before it leased part of the licensed premises;*
- (l) *the failure outlined in paragraph 12.3 (l) to comply with ClubsNSW Guidelines;*
 - (1) *Guideline for the Remuneration of Club Executives:*
 - (A) *failing to ensure employment agreements of Club executives outlined in paragraph 3 above contained Key Performance Indicators ("KPIs") and*

- performance reviews conducted periodically against these KPIs [section 10];*
- (B) *the salaries of "top executives" of the Club were increased in a manner inconsistent with the ClubsNSW Guideline:*
- i. at all relevant times Mr Tony Cinque was a "top executive" of the Club;*
 - ii. on or about 29 April 2013 Mr Bentley wrote to Mr Cinque and advised that his base salary had increased to \$210,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration;*
 - iii. at all relevant times Mr Stephen McGee was a "top executive" of the Club;*
 - iv. on or about 29 April 2013 Mr Bentley wrote to Mr McGee and advised that his base salary had increased to \$180,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration;*
 - v. at all relevant times Ms Jodie Blues was a "top executive" of the Club; and*
 - vi. on or about 29 April 2013 Mr Bentley wrote to Ms Blues and advised that her base salary had increased to \$160,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration,*
- (2) *Guideline for Board Operation:*
- (A) *failure as a member of the management team to comply with the strategic planning guideline [section 15],*
- (3) *Repeat particulars in paragraph 12.3(l)(3) outlining the Guideline for the Procurement of Goods and Services,*
- (m) *the failure outlined in paragraph 12.3(m)(1)-(3) above to ensure the Club did not pay unauthorised expenses;*
- (n) *the failure outlined in paragraph 12.3(n) above to ensure the Club did not pay unsupported or unauthorised bonuses, and the acceptance of unauthorised bonuses;*
- (o) *during the period of time in which he was the Club secretary, the failure outlined in 12.3(r) to comply with a decision of the governing body of the Club;*
- (p) *the failure outlined in paragraph 12.3(p) to comply with the recommendations of Club Auditors;*
- (q) *the failure to maintain adequate internal controls and systems between May and August 2011 to prevent safe variances;*
- (r) *during the period of time in which he was the Club secretary, the failure outlined in paragraph 12.3(q) above to ensure Employment Agreements entered into by the Club were executed in accordance with section 127 of the Corporations Act 2001;*
- (s) *the failure outlined in paragraph 12.3(r) above to comply with decision of the governing body of the Club; and*
- (t) *the knowledge, involvement or acquiescence outlined in paragraph 12.3(s) above regarding Club memberships.*

648. Particular 16.4 of Ground 16 notes that the evidence in support of this Ground is detailed in Schedule 16 to the Complaint Letter, and the corresponding Schedule for any repeated Particulars.

Club Response to Ground 16

649. The Club did not provide a response to Ground 16 of the Complaint.

Ex-Officers' Response to Ground 16

650. The Ex-Officers contend that Ground 16 fails and refer to their submissions on Ground 12 above.

651. However, the Ex-Officers submit in response to Particular 16.3(q) of Ground 16 that Mr Bentley addresses this issue in his statement and makes the point that this matter was investigated by the Club's financial controller, Mr Ratnarajah.

652. The Ex-Officers submit that Mr Cinque replaced Mr Ratnarajah and was employed in June 2011, commencing work on 4 July 2011. The matter of safe variances was "immediately and thoroughly addressed and resolved".

653. The Ex-Officers also submit in response to this Particular that it "remains unclear" whether the net variance (\$13,000.00) was a "loss" or a bookkeeping error. The Ex-Officers note that Mr Cinque tends to the latter view, but submit in any event that it "cannot be said" that Mr Bentley failed to competently perform the Chief Executive function.

Authority Finding on Ground 16

654. Particular 16.2 is established. It is contended in the Complaint Letter and is not in dispute that former Club officer Mr Robert Bentley was in fact the Club Secretary and a member of the governing body between 21 May 2010 and 27 July 2013.

655. Particular 16.3 makes the broad allegation that Mr Bentley is not a "*fit and proper*" person, by reason that he "failed to exercise his duties as a member of the governing body with a degree of knowledge, ability care and diligence".

656. This broad allegation is in turn founded upon numerous specific allegations contained within sub-Particulars 16.3(a) to (t), which largely refer to the sub-Particulars in respect of Mr Spagnolo in Particular 12.3, in that:

- Particulars 16.3(a) to (k) in respect of Mr Bentley mirror the allegations contained within Particulars 12.3(a) to (k) in respect of Mr Spagnolo;
- Particular 16.3(l) in respect of Mr Bentley alleges that:
 - (l) *the failure outlined in paragraph 12.3 (l) to comply with ClubsNSW Guidelines;*
 - (1) *Guideline for the Remuneration of Club Executives:*
 - (A) *failing to ensure employment agreements of Club executives outlined in paragraph 3 above contained Key Performance Indicators ("KPIs") and performance reviews conducted periodically against these KPIs [section 10];*
 - (B) *the salaries of "top executives" of the Club were increased in a manner inconsistent with the ClubsNSW Guideline:*
 - i. *at all relevant times Mr Tony Cinque was a "top executive" of the Club;*

- ii. *on or about 29 April 2013 Mr Bentley wrote to Mr Cinque and advised that his base salary had increased to \$210,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration;*
 - iii. *at all relevant times Mr Stephen McGee was a "top executive" of the Club;*
 - iv. *on or about 29 April 2013 Mr Bentley wrote to Mr McGee and advised that his base salary had increased to \$180,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration;*
 - v. *at all relevant times Ms Jodie Blues was a "top executive" of the Club; and*
 - vi. *on or about 29 April 2013 Mr Bentley wrote to Ms Blues and advised that her base salary had increased to \$160,000.00 effective immediately in circumstances where there is no Board minute approval for increase in remuneration,*
- (2) *Guideline for Board Operation:*
- (A) *failure as a member of the management team to comply with the strategic planning guideline [section 15],*
- (3) *Repeat particulars in paragraph 12.3(l)(3) outlining the Guideline for the Procurement of Goods and Services;*
- Particular 16.3(m) in respect of Mr Bentley mirrors the allegation contained within sub-Particulars 12.3(m)(1) to (3) in respect of Mr Spagnolo;
 - Particular 16.3(n) in respect of Mr Bentley mirrors the allegation contained within Particular 12.3(n) in respect of Mr Spagnolo;
 - Particular 16.3(o) in respect of Mr Bentley, *during the period of time in which Mr Bentley was the Club Secretary*, mirrors the allegation contained within Particular 12.3(r) in respect of Mr Spagnolo;
 - Particular 16.3(p) in respect of Mr Bentley mirrors the allegation contained within Particular 12.3(p) in respect of Mr Spagnolo;
 - Particular 16.3(q) in respect of Mr Bentley alleges that Mr Bentley is not a "fit and proper person" by reason of his "failure to maintain adequate internal controls and systems between May and August 2011 to prevent safe variances";
 - Particular 16.3(r) in respect of Mr Bentley, *during the period of time in which Mr Bentley was the Club Secretary*, mirrors the allegation contained within Particular 12.3(q) in respect of Mr Spagnolo;
 - Particular 16.3(s) in respect of Mr Bentley mirrors the allegation contained within Particular 12.3(r) in respect of Mr Spagnolo; and
 - Particular 16.3(t) in respect of Mr Bentley mirrors the allegation contained within Particular 12.3(s) in respect of Mr Spagnolo.

657. The Authority makes the same findings for Mr Bentley on Particulars 16.3(a) to (p) and Particulars 16.3(r) to (t) as it does on the corresponding Particulars with respect to Mr Spagnolo as set out above, and on the basis of the same evidence or material and additionally the documents relied upon by the Complainant in Schedule 16 to the Complaint Letter being a *List of Club Top Executives* from June 2010 to April 2013 produced by the Club in response to a Notice to Produce dated 24 June 2014 that had

been issued by OLGR Inspectors pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* (Complainant Exhibit E1); a letter dated 29 April 2013 from CEO Mr Robert Bentley to Mr Tony Cinque advising of a salary increase to \$210,000 per annum (Complainant Exhibit R50); a letter dated 29 April 2013 from CEO Mr Robert Bentley to Mr Stephen McGee advising of a salary increase to \$180,000 per annum (Complainant Exhibit R55); a letter dated 29 April 2013 from CEO Mr Robert Bentley to Ms Jodie Blues advising of a salary increase to \$160,000 per annum (Complainant Exhibit R60); the written answers to OLGR questions from Mr Bentley dated 6 June 2014 and 1 July 2014 (Complainant Exhibits 21 to 23) and the (undated) written answers to OLGR questions from Mr Cinque (Complainant Exhibits 24 to 25).

658. However, the Authority is also satisfied, with regard to Particular 16.3(q) in respect of Mr Bentley's alleged failure to "maintain adequate internal controls and systems between May and August 2011 to prevent safe variances", that this Particular has been established on the basis of the written answers to OLGR questions from Mr Bentley dated 6 June 2014 and 1 July 2014 (Complainant Exhibits 21 to 23) and the (undated) written answers to OLGR questions from Mr Cinque (Complainant Exhibits 24 to 25).
659. Particulars 16.3(c), (d) and (f) are established with respect to Mr Bentley.
660. On the basis of the Authority's findings with regard to the Particulars specified in Ground 16, the Authority is satisfied that Ground 16 has been established and that Mr Robert Bentley is not a fit and proper person to be the secretary or member of the governing body of a registered club, by reason that he has not demonstrated the degree of knowledge and skill that the Authority would expect from a reasonably competent director of a club of this scale. This finding is especially based upon the Club's failure in relation to Particular 16.3(c) with regard to the requirement for prior Board approval of the contracts of senior executives and also the failure in relation to the prior approval of the commercial arrangements with Mr Libertini. There is no basis for impugning Mr Bentley's honesty.
661. As chief executive officer, Mr Bentley has a particular responsibility to ensure the Club's compliance in its day to day management and operations. Responsibility for the Club's failings with respect to compliance is more directly attributable to the Secretary than is the case for the Board.

PROPOSED DISCIPLINARY ACTION

662. On the basis of the findings on Grounds 1 to 16, it is clear on the basis of the great deal of material before the Authority that there were significant defects with regard to the Club's regulatory compliance during the period from 2009-2013.
663. These failings tend to be defects as to procedure rather than substance, but some of the Club's failings involve relatively serious procedural faults with potential systemic consequences - such as the Board's failure to approve the contracts of its senior executives and its failure to approve commercial contracts involving members of the governing body.
664. The most serious allegation in the Complaint – the allegation of tampering with membership records - has not been proved.
665. Having considered the findings cumulatively the Authority is minded to take the following disciplinary action:
- First, to censure all of the Ex-Officers.

- Second, to disqualify Mr Bentley from holding the position of secretary or member of a governing body of the Club, or any other registered club in New South Wales, for a period of 12 months (noting that the maximum period of disqualification from registered clubs, unlike other licensed premises, is fixed by the Act at three years).
- Third, to order the Club to pay the Secretary's costs on the investigation that gave rise to the Complaint.

666. The Authority is not minded to impose an additional penalty against the Club itself, by reason that this would adversely impact the membership, noting that the Ex-Officers who are the subject of this Complaint no longer hold office.

INVITATION TO MAKE SUBMISSIONS ON DISCIPLINARY ACTION

667. If the Complainant, the Ex-Officers or the Club wish to make a final written submission on the question of what, if any, disciplinary action the Authority should take in light of its findings, they may do so not later than seven (7) days after the date of this letter.

Yours sincerely



Micheil Brodie
Chief Executive

10 JUL 2015

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