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15 December 2016

Dear Sir/Madam

Final Decision with Reasons on Complaint under Part 6A of the *Registered Clubs Act 1976* in relation to Wentworth Services Sporting Club Ltd

I am writing to you about a disciplinary complaint made to the Independent Liquor and Gaming Authority dated 11 February 2016 under Part 6A of the *Registered Clubs Act 1976* by the Assistant Director of Compliance and Enforcement for Liquor and Gaming NSW, Mr Paul Irving in his capacity as a delegate of the Secretary of the Department of Justice.

On 12 November 2016, the Authority decided to make the following orders, with effect from the date of this letter:

- (i) The Authority **cancel**s the licence for the Wentworth Services Sporting Club Ltd, licence number LIQC300243656, pursuant to section 57H(2)(c) of the Act.
- (ii) The Authority **declares**, under section 57H(2)(g) of the Act, that the former secretary, Mr Nicholas Dickens, is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body of the Club and all other registered clubs in New South Wales, for a period of 12 months from the date of this letter.
- (iii) The Authority **orders** the Club, under section 57H(2)(i)(i) of the Act, to pay to the NSW Department of Justice part of the costs incurred by the Secretary of the Department of Justice on the investigation or inquiry in relation to the Club under section 35A of the Act, being **\$27,340.80**, to be paid to the Department of Justice within 28 days of the date of this letter.

This letter encloses the reasons for that decision. Please contact the Authority's General Counsel via bryce.wilson@justice.nsw.gov.au if you have any advice or enquiries about this letter or the attached reasons for decision. Rights of review in relation to this decision are detailed at the end of the statement of reasons.

Yours faithfully

Philip Crawford
Chairperson

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

STATEMENT OF REASONS

INTRODUCTION

1. On 11 February 2016, the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint (**Complaint**) from the Assistant Director of Compliance and Enforcement for Liquor and Gaming NSW (**LGNSW**) Mr Paul Irving (**Complainant**) in his capacity as a delegate of the Secretary of the Department of Justice (**Secretary**).
2. The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (**Act**) in relation to the Wentworth Services and Sporting Club Ltd (**Club**). The Complaint comprises a cover letter from the Complainant dated 11 February 2016 (**Complaint Letter**) and a bundle of some 604 pages of supporting evidence or material (**Complaint Material**).
3. An extract of the *OneGov* record of the licence as at 2 December 2015 that is provided with the Complaint Material indicates that the Wentworth Club holds a registered club licence number LIQC300243656 under the *Liquor Act 2007*. The licence permits the sale or supply of liquor for consumption on the licensed premises from 5:00am to 12:00 midnight and for consumption off the premises from 5:00am to 10:00pm.
4. The Complaint Letter states that the Wentworth Club's principal premises are located at 61-79 Darling Street, Wentworth NSW 2648, which include a multi-function area, a gaming area with "79" entitlements (the *OneGov* licence specifies 40 entitlements as at 2 December 2015), plus café, bistro and bar areas. The Complaint Letter advises that the Wentworth Club also controls a separate sports complex in Beverley Street, Wentworth that is situated on Crown Land and that provides lawn bowls, tennis and golf facilities.
5. At the time of the Complaint the Wentworth Club's secretary/manager on the liquor licence record is Mr Nicholas Dickens whose appointment commenced on 21 July 2014.
6. By way of introduction, the Complainant states that inspectors of the Office of Liquor, Gaming and Racing (**OLGR**, now LGNSW) have conducted investigations into the Wentworth Club. LGNSW have identified arrangements that the Complainant describes as "concerning". These pertain to loan and management contracts associated with the sale of the Wentworth Club premises to a property developer, Mr John Kelly, who also owns the property of the Mildura Working Man's Club located in the state of Victoria (the **Mildura Club**).
7. The Complainant alleges that these arrangements together facilitated a "corporate takeover" of a New South Wales registered club by a Victorian club. The Complainant alleges that this occurred with "no apparent regard to compliance with relevant NSW law".
8. By way of background to the Wentworth Club's financial affairs, the Complainant states that on 6 March 2014 Mr Ryan Eagle and Mr Morgan Kelly of the insolvency practice *Ferrier Hodgson* obtained approval from the Authority to act as voluntary administrators of the Wentworth Club.
9. At a meeting of the Wentworth Club's creditors on 22 May 2014, the Wentworth Club's members resolved to enter into a Deed of Company Arrangement (**DOCA**) pursuant to the *Corporations Act 2001*.

10. The Complaint Letter provides an account of the terms of the DOCA, the financial contributions made by third parties to the DOCA fund and notes approval of the DOCA at a meeting of the Wentworth Club's members on 11 July 2014. At that meeting the members also approved the sale of the Club's Darling Street property to Mr John Kelly's nominees, Bellevine Pty Ltd and Second Kay Pty Ltd on 11 July 2014 for a sum of \$450,000. The Complaint Letter describes how in a lease executed on 21 August 2014 the Club leased back its former property from Bellevine Pty Ltd for a period of ten years at a rent of \$100,000 per annum plus GST.
11. These transactions are discussed in greater detail by the Authority in its findings on Ground 1 and 2 below.
12. The Complaint Letter advises that the Wentworth Club recommenced trading in September 2014 under control of a new governing body (including directors named in Grounds 7 to 14 of this Complaint) and traded for another 9 months, incurring losses in the order of **\$530,000** during that period, before finally ceasing to trade on 30 June 2015.
13. The Complainant contends that the *Mildura Club* engaged Mr Greg Russell of *Russell Corporate Advisory* to review the Wentworth Club's position and advise on winding it up. Mr Russell prepared a review of the Wentworth Club's affairs dated 10 August 2015 (**Russell Report**) which identified potential areas of non-compliance with the Act.
14. The Complaint Letter states that on 2 September 2015 Messrs Russell, Harlock and Cawood held meetings with LGNSW inspectors. This gave rise to the investigation that preceded the making of this Complaint.
15. At the time of the Complaint and at the date of this letter the Wentworth Club is in liquidation with Mr Greg Russell appointed as liquidator.

GROUNDINGS OF COMPLAINT

16. The Complaint Letter specifies 15 grounds of complaint (**Grounds**), all of which are based upon statutory grounds that are available under section 57F(3) of the Act. Each Ground specifies a number of Particulars, which are dealt with in the "Findings" section of this letter, below. Briefly:
17. **Ground 1** is based on section 57F(3)(a) of the Act, which provides:

that the requirements specified in section 10 (1) are not being met, or have not been met, by or in relation to the club.
18. The Complainant alleges that on 20 August 2014 the Wentworth Club failed to meet the requirements of section 10(1)(m) of the Act when it entered into a management contract with the Mildura Club contrary to the requirements of section 41O of the Act.
19. **Ground 2** is also based on section 57F(3)(a) of the Act. The Complainant alleges that on 21 August 2014 the Wentworth Club failed to meet the requirements of section 10(1)(m) of the Act when it entered into a loan contract with the Mildura Club contrary to the requirements of section 41O of the Act.
20. **Ground 3** is based on section 57F(3)(e) of the Act which provides:

that a rule of the club referred to in section 30 (1) has been broken or any other rule of the club has been habitually broken.

21. The Complainant alleges that the Wentworth Club failed to meet the requirements of section 30(1)(c) of the Act in that a meeting of the governing body was not held in each month of the year – specifically, that no meetings were held for September 2014, December 2014, March 2015 and May 2015.
22. **Ground 4** is based on section 57F(3)(d) of the Act which provides:

that the club has contravened a provision of this Act, whether or not it has been convicted of an offence in respect of that contravention.
23. The Complainant alleges two contraventions of the Act. First, that from 11 July 2014 the Wentworth Club permitted Mr John Harlock to act in a position of management of the Wentworth Club where he was responsible to the governing body of that club for the management of the business and affairs of that club in circumstances where Mr Harlock was not approved by the Authority to act as secretary of the Wentworth Club as required by section 33 of the Act.
24. Second, that the Wentworth Club contravened clause 17 of the *Registered Clubs Regulation 2009* when it did not prepare or produce to the governing body the quarterly financial statements that incorporate profit and loss accounts, trading accounts and a balance sheet as required by that clause.
25. **Ground 5** is based on section 57F(3)(j) of the Act which provides:

any other ground that the complainant considers appropriate for the taking of disciplinary action against the club.
26. The Complainant here alleges that the Wentworth Club did not record the information required for each gaming machine as prescribed by clause 17 of the *Gaming Machines Regulation 2010*.
27. **Grounds 6 to 15** are all based upon section 57F(3)(g) of the Act, which provides:

that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such.
28. Grounds 6 through 15 allege that each of the 10 persons named in those Grounds respectively failed to exercise his or her duties with the degree of knowledge, ability, care and diligence required as the secretary or member of the governing body (as the case may be) of a company limited by guarantee and to a standard required in the industry and by the relevant legislation.
29. Ground 6 concerns Mr John Harlock, who the Complainant alleges acted as the Wentworth Club's secretary/manager without having been approved to act in that role by the Authority.
30. Grounds 7 to 14 concern the fitness and propriety of Wentworth Club directors, all of whom have held their appointments since being appointed by the members on 11 July 2014, save for Mr Shane Smith who is stated by the Complainant to have been appointed by the governing body in "early October" 2014.
31. Ground 7 concerns Mr Wallace Robson, Ground 8 concerns Mr Daniel Cawood, Ground 9 concerns Mr Eric Fiesley, Ground 10 concerns Mr John Zigouras, Ground 11 concerns Mr Kevin Hogarth, Ground 12 concerns Ms Sally Layton, Ground 13 concerns Mr Christopher Hobart and Ground 14 concerns Mr Shane Smith.

32. Ground 15 concerns the fitness and propriety of Mr Nicholas Dickens, who the Complainant states, and the licence record indicates, has been the secretary of the Wentworth Club on the record from 21 July 2014 to the time of the Complaint.
33. Grounds 6 through 15 each specify that the respective officers are not “fit and proper” persons to act as such by reason of the following matters:
- His or her conduct in failing to meet the requirements of section 30(1)(c) of the Act in relation to ensuring that meetings of the governing body of the Wentworth Club were held at least once in each month of the year.
 - His or her conduct in failing to meet the requirements of section 30(1)(j) of the Act in relation to the Wentworth Club accepting memberships for which no fee was charged.
 - His or her conduct in that Mr John Harlock acted as secretary of the Wentworth Club from 11 July 2014 when he was not approved by the Authority, contrary to section 34 of the Act.
 - His or her conduct in failing to meet the requirements of clause 17 of the *Registered Clubs Regulation 2009* in relation to preparing the required financial statements, and as a result of this failure, they were not able to be provided to the governing body of the Wentworth Club.
 - His or her conduct in failing to meet the requirements of clause 17 of the *Gaming Machines Regulation 2010* in relation to recording the required information relating to gaming machines kept on the Wentworth Club premises.
 - His or her failure to comply with section 35.1 of the Wentworth Club’s constitution in relation to the Wentworth Club accepting memberships for which no fee was paid.
 - His or her failure to comply with section 58 of the Wentworth Club’s constitution in relation to the governing body of the Wentworth Club not holding meetings at least once in each calendar month.
 - His or her failure to comply with section 9 of the ClubsNSW *Best Practice Guidelines* in relation to the conduct of board meetings where meetings did not include the adoption of minutes of the last meeting and finance reports that reflected the true financial position of the Wentworth Club.
 - His or her failure to comply with section 10 of the ClubsNSW *Code of Practice* in relation to the Wentworth Club having more than one secretary.
 - His or her failure to undertake training and to take steps to acquire a better knowledge of the Wentworth Club’s statutory obligations and/or his or her own duties as a secretary or member of the Wentworth Club’s governing body.
 - His or her failure to provide training for the governing body and secretary of the Wentworth Club and to take steps to have the governing body undertake training to acquire a better knowledge of the Wentworth Club’s statutory obligations and/or their duties as secretary or as a member of the governing body.

- His or her failure to engage a registered valuer to establish that the lease payments made by the Wentworth Club to Bellevine Pty Ltd were fair and the process of establishing the payments was transparent, given the relationship between the Mildura Club and Mr John Kelly.
 - His or her failure to ensure that the directorships of the Wentworth Club governing body were notified to ASIC.
- 34.** Grounds 6 through 9 each specify that the respective officers are not “fit and proper” persons to act in their respective roles by reason of his or her lack of willingness to engage with/knowledge of/desire to engage with New South Wales legislative requirements.
- 35.** Grounds 11 through 14 specify that the officers the subject of those Grounds are not “fit and proper” persons to act in their respective roles by reason that he or she has a lack of knowledge as to the duties in relation to their position as a member of the Wentworth Club governing body.
- 36.** Ground 15 specifies that the Mr Dickens is not a “fit and proper” person to act in his role as secretary by reason that he has a lack of knowledge in relation to his duties as the secretary of the Wentworth Club.
- 37.** Grounds 6 through 13 and Ground 15 further allege that the officers the subject of those Grounds, save for Mr Shane Smith, are also not fit and proper persons to act in their roles by reason of:
- His or her conduct in failing to meet the requirements of section 10(1)(m) of the Act in relation to the Wentworth Club entering into a management contract with the Mildura Club.
 - His or her conduct in failing to meet the requirements of section 10(1)(m) of the Act in relation to the Wentworth Club entering into a loan contract with the Mildura Club.

DISCIPLINARY ACTION RECOMMENDED BY THE COMPLAINANT

- 38.** The Complainant makes the following general submissions on the standard of conduct that was exercised by the respondents to this Complaint:
- (a) The conduct of the Wentworth Club and Messrs Harlock, Robson, Cawood, Fiesley, Zigouras, Hogarth, Hobart, Smith, Dickens and Ms Layton warrants disciplinary action against them and each individual ought to be respectively found not “fit and proper” to be a member of a governing body of a registered club or a secretary of a registered club;
 - (b) Messrs Harlock, Robson, Cawood, Fiesley, Zigouras, Hogarth, Hobart, Smith, Dickens and Ms Layton had no prior industry experience with New South Wales registered clubs and did not promptly obtain suitable training as to corporate governance and/or legal compliance and best practice; and
 - (c) The conduct identified provides evidence that each of the nominated Wentworth Club officers failed to demonstrate the requisite knowledge and/or ability required by law and expected by industry standards. In each case the respective conduct calls for disciplinary action that reflects the seriousness and consequences of the actions and that have led to the Wentworth Club and members’ assets being

mismanaged. Disciplinary action must act as a general and specific deterrent to others involved in the registered club industry.

39. The Complainant then recommends that the Authority make the following orders, should the Grounds of Complaint be established:
- (a) Declare that each of Messrs Harlock, Robson, Cawood, Fiesley, Zigouras, Hogarth, Hobart, Smith, Dickens and Ms Layton are “ineligible” to stand for election or be appointed to, or hold office in, the position of secretary or member of the governing body (or both those positions) for the maximum period of three years, with respect to the Wentworth Club and all other NSW registered clubs;
 - (b) Order that the Wentworth Club pay a monetary penalty with regard to:
 - (i) the conduct that involved numerous breaches of the Act and other governing legislation;
 - (ii) the fact that the Wentworth Club has ceased trading;
 - (c) Order that the Authority cancel the Wentworth Club’s licence;
 - (d) Order that the Wentworth Club pay the costs of the Secretary in connection with the investigation that gave rise to this Complaint.

CONSULTATION

40. After receiving the Complaint Letter on 11 February 2016, the Authority sent a Show Cause Notice to the Wentworth Club’s liquidator Mr Greg Russell of *Russell Corporate Advisory*, via email on the evening of Friday 12 February 2016. That email provided the liquidator with an electronic copy of the Complaint Material in the form of a bookmarked, indexed, searchable PDF document.
41. Further letters in similar terms to the Show Cause Notice but inviting written submissions from the individual respondents named in Grounds 6 through 15 were sent via email on 12 February 2016 to those respondents for whom the Complainant had provided email addresses.
42. As email addresses were not provided by the Complainant for Messrs Hogarth, Robson and Dickens, a copy of the Complaint Material and letters inviting submissions were sent via *Express Post* on Monday 15 February 2016.
43. The Authority notes that there are now two sets of separately represented respondents. *Gilchrist Connell Solicitors* represent the Wentworth Club itself and those individual officers who are the subject of Grounds 8, 9, 11, 12, 13, 14 and 15 (**Gilchrist Connell Respondents**).
44. *Sparke Helmore Solicitors* represent those officers who are the subject of Grounds 6, 7 and 10 (**Sparke Helmore Respondents**).
45. On 26 February 2016, the Wentworth Club’s lawyers *Gilchrist Connell* first made contact with the Authority via email and requested a 28-day extension to the timetable – that is, another 28 days upon the initial period specified in the Show Cause Notice to request further and better particulars, with the rest of the timetable to be adjusted accordingly.
46. On 27 February 2016, the Authority declined this request.

47. On 11 March 2016, *Gilchrist Connell* sent a 10-page request for further particulars of the Complaint via email to the Complainant, copying the Authority.
48. On 22 March 2016, the Authority received advice via email from the Complainant correcting certain apparent typographical errors in the Complaint Letter that had been identified by *Gilchrist Connell*.
49. On 23 March 2016, the Complainant provided a 12-page Statement of Further Particulars to *Gilchrist Connell*.
50. On 31 March 2016, the Complainant provided a corrected version of the Complaint Letter with their Statement of Further Particulars attending to those typographical errors.
51. On 13 April 2016, *Sparke Helmore* advised the Authority that it now acts for three of the former Wentworth Club officers (Mr Harlock, Mr Robson and Mr Zigouras, noting that Mr Robson was in hospital at that time).
52. *Sparke Helmore* requested an extension of 28 days to the timetable for the preparation of evidence and submissions on behalf of those three officers (that is, an extension to 18 May 2016).
53. On 13 April 2016, the Authority advised an extension to 18 May 2016 for the *Sparke Helmore* Respondents to address the merits of the Complaint.
54. On 20 April 2016, the Authority received an email from *Gilchrist Connell*, stating that it would be “unfair” to its clients should they be required to file their evidence and submissions before *Sparke Helmore*’s clients and that due to “the conflict of interest issue” which had arisen, preparation of its clients’ evidence and submissions had been “unable to advance” for some time. An extension was sought for the filing of evidence and submissions, to 18 May 2016 with respect to the former officers, and to 25 May 2016 with respect to the Wentworth Club. This extension was granted by the Authority on that date.
55. On 16 May 2016 *Sparke Helmore* emailed the Authority seeking a further extension to 3 June 2016 to file material addressing the Complaint for their clients. The Complainant opposed that request and on 16 May 2016 the Authority granted an extension of a further 1 week only to complete submissions and evidence. The Wentworth Club would then have a further week (to 1 June 2016) to file its submissions with the Complainant to file submissions in reply by 8 June 2016.
56. On 25 May 2016, *Sparke Helmore* requested until 12:00 midday on 26 May 2016 to file all submissions together due to a delay in getting a signed declaration from Mr Zigouras. This further half day extension was granted, with a consequential extension for the other parties.
57. On the afternoon of 26 May 2016, *Gilchrist Connell* sent via email to the Authority submissions and evidence addressing the merits of the Complaint on behalf of the seven individual Club officers whom they represent. This material comprises:
 - Legal submission on behalf of the *Gilchrist Connell* Respondents dated 26 May 2016 prepared by Mr Sinclair Gray, Barrister (**Gilchrist Connell Submission**), which includes the following:
 - o Legal submission on behalf of Mr Daniel Cawood (**Cawood Submission**);

- Legal submission on behalf of Mr Eric Fiesley (**Fiesley Submission**);
 - Legal submission on behalf of Mr Kevin Hogarth (**Hogarth Submission**);
 - Legal submission on behalf of Ms Sally Layton (**Layton Submission**);
 - Legal submission on behalf of Mr Christopher Hobart (**Hobart Submission**);
 - Legal submission on behalf of Mr Shane Smith (**Smith Submission**);
 - Legal submission on behalf of Mr Nicholas Dickens (**Dickens Submission**);
- Statement of Mr Daniel Cawood dated 24 May 2016 (**Cawood Statement**);
 - Statement of Mr Eric Fiesley dated 24 May 2016 (**Fiesley Statement**);
 - Statement of Mr Kevin Hogarth dated 24 May 2016 (**Hogarth Statement**);
 - Statement of Ms Sally Layton dated 24 May 2016 (**Layton Statement**);
 - Statement of Mr Christopher Hobart dated 29 May 2016 (**Hobart Statement**);
 - Statement of Mr Shane Smith dated 24 May 2016 (**Smith Statement**);
 - Statement of Mr Nicholas Dickens dated 25 May 2016 (**Dickens Statement**);
 - Letter from Mr Geoff Lucas to (Authority General Counsel) Bryce Wilson dated 18 April 2016;
 - Letters from Messrs Mark Kemp and Barry Bottams to Bryce Wilson dated 21 April and 17 May 2016;
 - Letter from Cr Ali Cupper to Bryce Wilson (undated);
 - Letter from Mr Larry O'Brien to Bryce Wilson (undated);
 - Letter from Senior Constable Melanie Vanderwall to Bryce Wilson dated 24 May 2016;
 - Letter from Ms Rachel Teasdale to Bryce Wilson dated 24 May 2016;
 - Letter from Mr W J Warren to Bryce Wilson dated 16 May 2016;
 - Letter from Mr Geoff Steedman to Bryce Wilson dated 19 May 2016;
 - Letter from Mr Scott Anderson to Bryce Wilson (undated).

58. On the afternoon of 26 May 2016, *Sparke Helmore* sent via email to the Authority submissions and evidence with respect to Mr Harlock and Mr Robson, comprising:

- Statutory declaration of Mr John Emil Harlock dated 25 May 2016 (**Harlock Statement**);
- Statutory declaration of Mr Wallace Charles Robson dated 25 May 2016 (**Robson Statement**);
- Legal submission on behalf of Mr Harlock dated 26 May 2016 (**Harlock Submission**);
- Legal submission on behalf of Mr Robson dated 26 May 2016 (**Robson Submission**).

59. In a separate email later in the afternoon of 26 May 2016, *Sparke Helmore* filed submissions and evidence with respect to Mr Zigouras, comprising:

- Statutory declaration of John Zigouras dated 26 May 2016 (**Zigouras Statement**);
- Legal submission on behalf of Mr Zigouras dated 26 May 2016 (**Zigouras Submission**).

Overview of the Wentworth Club's Response to Complaint

60. On 2 June 2016, *Gilchrist Connell* provided to the Authority via email a letter with legal submissions made on behalf of the Wentworth Club.

61. In this 5-page submission letter dated 2 June 2016 from Mr Sinclair Gray, barrister, the Wentworth Club relies upon, and adopts, the evidence of each of the officeholders whom

it represents – Messrs Cawood, Fiesley, Hogarth, Hobart, Smith, Dickens, and Ms Layton. Their respective positions are discussed in the Authority’s findings below.

62. Briefly, the Wentworth Club makes the general submission that the evidence before the Authority discloses a “lack of clear communication” among the Club’s governing body, and between Mr Harlock and Mr Dickens in particular, and that it is “apparent” that the former directors of the Club considered Mr Harlock to be carrying out the functions of Wentworth Club Secretary, although Mr Harlock himself considered that Mr Dickens was the Secretary.
63. The Wentworth Club further submits that a number of the Grounds relied upon by the Complainant are “technical or formal in nature” (including the failure to hold monthly meetings and to produce gaming machine reports) and that these failures should not “overshadow” the former officeholders’ commitment to “the Wentworth community and the Club’s members”.
64. The Wentworth Club submits that it was not until the Club itself brought its own deficiencies to the attention of LGNSW, as they had appeared in a report prepared by *Russell Corporate Advisory*, that LGNSW became aware of the matters now the subject of this Complaint.
65. The Wentworth Club submits that the imposition of a financial penalty is “meaningless” where a company is being wound up, relying upon the decision of the Full Court of the Federal Court in *ACCC v Dataline.Net.Au Pty Ltd* (2007) ALR 300.
66. The Wentworth Club submits that there is no basis for the Authority to take any action in response to the Complaint and that none of the Grounds of Complaint have been established.
67. The Wentworth Club generally adopts the evidence and submissions provided by the individual Club officers who are also represented by *Gilchrist Connell* in response to the specific allegations made in the Complaint.

No further submissions or evidence from the Complainant in Reply

68. On 6 June 2016, the Authority received an email from the Complainant advising that it relies upon the Complaint Material and its previous submissions.

FINDINGS

69. A disciplinary complaint under Part 6A of the Act is an administrative matter, and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

Findings on Ground 1

70. Particular 1 of Ground 1 alleges that on 20 August 2014 the Wentworth Club failed to meet the requirements of section 10(1)(m) of the Act when it entered into a *management contract* with the Mildura Club contrary to the requirements of section 41O of the Act.

71. Particular 1.2 alleges that at a meeting of the Wentworth Club's governing body held on 20 August 2014 a resolution was passed that the Club "would enter into" a management agreement with the Mildura Club for the Mildura Club to manage the Wentworth Club on behalf of the Wentworth Club and that the Mildura Club is to be appropriately remunerated and compensated for its management services. The Authority is satisfied, on the basis of the Minutes for that Meeting, that these resolutions were passed.
72. Particular 1.2(a) alleges that the Mildura Club supplied management staff to the Wentworth Club. Particular 1.2(b) alleges that the Mildura Club administered the Wentworth Club's accounting process, and Particular 1.3(c) alleges that a fee "believed to be \$1,800 per week" was paid by the Wentworth Club to the Mildura Club for the management services.
73. Particular 1.2 further alleges that this occurred in circumstances where employees of the Mildura Club exercised functions in relation to the management of the business and affairs of the Wentworth Club; that the Wentworth Club members were not notified one month in advance of entering into the management contract with the Mildura Club; and the Wentworth Club did not provide the required report to the Secretary of the Department on the proposed management contract.
74. The Authority is satisfied that no formal *written* management contract was ever created. This finding is made on the basis of the observations of Mr Russell, the Wentworth Club's liquidator, who states at pages 4 to 5 of the transcript of his interview with LGNSW on 11 November 2015:

No. I actually inquired into that issue as to whether there was one, and was told there wasn't.

75. The Gilchrist Connell Respondents concede that the Wentworth Club entered into an "informal" management agreement with the Mildura Club. However, they argue at paragraph 8.2 of the Gilchrist Connell Submission that while such agreement was "entered into" at the Club's board meeting of 20 August 2014, this was the "mere formalisation" of "an arrangement that had been reached during the period of administration".
76. Notwithstanding that there is no written management contract available, the Authority is satisfied that an informal arrangement or understanding had been reached between the two Clubs, to the effect that officers of the Mildura Club would assume management control of the Wentworth Club. This understanding was reached during the first quarter of 2014, on the basis of the following evidence and material:
- Transcript of LGNSW interview with Mr John Harlock dated 28 October 2015 (**Harlock Interview**) where, at pages 7 to 8, he describes how the Mildura Club provided maintenance staff and his own services to the Wentworth Club from mid-February 2014;
 - Transcript of LGNSW interview with Ms Sally Layton dated 26 October 2015 (**Layton Interview**) where, at pages 6 to 7, she describes a management agreement between the two clubs involving a fee payable from the Wentworth Club to the Mildura Club in return for management of the Wentworth Club by the Mildura Club. While not certain, she believed the fee payable to be "around \$10,000 per month";
 - Transcript of LGNSW interview with Mr Daniel Cawood dated 27 October 2015 (**Cawood Interview**) at page 9 where he describes the management agreement as

involving the Mildura Club being entitled to compensation for its provisions of management services and expertise to the Wentworth Club. According to Mr Cawood, the agreed fee for these services was “approximately \$8,000 per month”;

- Transcript of LGNSW interview with Mr Christopher Hobart dated 27 October 2015 (**Hobart Interview**) where, at pages 6 to 7, he describes the management agreement as involving “a range of management staff” being provided by the Mildura Club to the Wentworth Club and being involved in the day to day operations of the Wentworth Club. This included Mr Harlock who would operate the Wentworth Club business as its “CEO” with a fee payable by the Wentworth Club to the Mildura Club at an unspecified “set rate”;
- Transcript of LGNSW interview with the Club’s liquidator Mr Greg Russell dated 6 November 2015 (**Russell Interview**) where, at pages 4 to 5, he describes a management agreement between the clubs whereby the Mildura Club would provide accounting services and management staff, offering day to day support to the Wentworth Club, for a fee payable to the Mildura Club at around \$1,800 per week, with Mr Harlock acting as the Wentworth Club’s CEO.

77. In order to provide context to the allegations in Ground 1 and 2 and noting the matters stated in the introduction to the Complaint Letter, the Authority is satisfied, on the basis of the uncontested information provided in the Complaint Letter and the ASIC Company Extract for the Wentworth Club (as at 23 September 2015), that on 6 March 2014 Messrs Ryan Eagle and Morgan Kelly of the insolvency firm *Ferrier Hodgson* were appointed as voluntary administrators of the Wentworth Club.

78. The Authority is further satisfied that on 22 May 2014 a second meeting of the Wentworth Club’s creditors approved a Deed of Company Arrangement (**DOCA**) that had been proposed by Mr John Kelly, a private property developer who also owned the property of the Mildura Club.

79. Having considered this Deed, it is apparent that the purpose of the DOCA fund was to pay out employee entitlements, the secured creditor (National Australia Bank) and provide a pool to pay unsecured creditors of \$40,000.00.

80. A copy of the DOCA dated 13 June 2014 is before the Authority. It was executed by the Deed Administrators, Messrs Ryan Eagle and Morgan Kelly of *Ferrier Hodgson* and the Wentworth Club. The DOCA provides that:

- Mr John Kelly would provide an (unconditional) contribution of \$1,020,000.00;
- Wentworth Shire Council would make a contribution of \$125,000.00;
- Wentworth and District Community Bank would make a contribution of \$125,000.00.

81. The DOCA is silent as to the existence of any management agreement or any requirement for the two clubs to enter into a management contract for the purposes of that Deed.

82. The Authority is satisfied, on the basis of the Harlock Interview, that Mr Harlock began performing preliminary work with a view to the foreshadowed management takeover of the Wentworth Club by Mildura Club personnel from mid-February 2014. The Authority accepts, on the basis of evidence in the Harlock Interview, that Mr Harlock was working long hours at both the Mildura Club and the Wentworth Club premises between February and June 2014.

83. As documented by the minutes for this meeting, the members of the Wentworth Club convened on 11 July 2014. The meeting was chaired by Mr Ryan Eagle, Deed Administrator pursuant to clause 5.6.17(1) of the *Corporations Regulations 2001*.
84. During that meeting the members appointed new directors to the governing body, being Messrs Wallace Robson, Daniel Cawood, Eric Fiesley, John Zigouras, Kevin Hogarth, Christopher Hobart and Ms Sally Layton.
85. The members also approved the DOCA and the proposed sale of the Wentworth Club's Darling Street property to Bellevine Pty Ltd, First Kay Pty Ltd and Second Kay Pty Ltd (Mr John Kelly's nominees) for the price of \$450,000. The members recorded in the minutes that the land had been valued at \$600,000.00.
86. The minutes make no reference to any management contract. There is a paucity of any records in evidence before the Authority as to the terms of any proposed management agreement, notwithstanding that a management takeover of the Wentworth Club by officers of the Mildura Club was understood as the intention of the two Clubs from the first quarter of 2014. This is evidenced by the evidence of the following officers:
- Harlock Interview at pages 7 to 8;
 - Layton Interview at pages 6 to 7;
 - Cawood Interview at page 9;
 - Hobart Interview at pages 6 to 7;
 - Russell Interview at pages 4 to 5;
 - Robson Statement at paragraph 9;
 - Zigouras Statement at paragraph 11.
87. However, on 20 August 2014 the Wentworth Club Board recorded the following resolutions:

Executive Officer: J Harlock

J Harlock advised that in order for the DOCA to be finalised, there were a number of forms that directors were required to sign. Settlement is scheduled for tomorrow, Thursday August 21st 2014.

J Harlock advised that he had arranged for the date on the lease to reflect the settlement occurring on Thursday August 21st.

The following resolutions were passed:

1. *The Wentworth Services Sporting Club Ltd support and facilitate the sale of the land and lease back to the Club with settlement due on 21 August 2014 and to sign all necessary documentation and do all things reasonably necessary to ensure settlement is effected.*
2. *The Wentworth Services Sporting Club Ltd enter into a loan arrangement with Mildura Working Man's Club Incorporated with part of the loan amount being provided by Mildura Working Man's Club Ltd on 21 August 2014 and the balance by way of working capital. It was resolved that a Loan Agreement be entered into to detail the loan arrangements and to protect and secure the Mildura Working Man's Club interests.*
3. ***That Wentworth Services Sporting Club Ltd enter into a Management Agreement with Mildura Working Man's Club for Mildura Working Man's Club to manage the Club on behalf of Wentworth Services Sporting Club Limited. Mildura Working Man's Club is to be appropriately remunerated and***

compensated for its management services and any reasonable and appropriate expenses incurred by Mildura Working Man's Club.

[Authority emphasis]

88. At paragraph 8.13 of the Gilchrist Connell Submission those respondents submit that they are not aware of what, if any, fee was actually *paid* on the management agreement.
89. Nevertheless, the Authority is satisfied that the fee *payable* by the Wentworth Club for the provision of management services by the Mildura Club was, as alleged by the Complainant, understood by the clubs to be around \$1,800 per week.
90. This finding is made on the basis of page 8 of the Cawood Interview where Mr Cawood (the Wentworth Club's financial director) states that the fee payable was "approximately 8,000 per month". This is also the fee specified by Mr Russell at page 5 of the Russell Interview, informed by his analysis of the Wentworth Club's affairs.
91. The Gilchrist Connell Respondents submit, at paragraph 8.5 of the Gilchrist Connell Submission, that the five persons who were "supplied" by the Mildura Club to the Wentworth Club pursuant to the management agreement were not actually "employees" of the Mildura Club, but persons "appointed as directors" of the Wentworth Club by that club's members on 11 July 2014.
92. Nevertheless, the Authority is satisfied, as alleged by the Complainant, that the Mildura Club did in fact make available its officers (its CEO, Mr Harlock and members of the Mildura Club governing body) to manage the affairs of the Wentworth Club, with the Mildura directors appointed to their roles on the Wentworth Board on 11 July 2014.
93. The point at which the Wentworth Club commenced or entered into a contractual relationship for the management of the Club by officers of the Mildura Club is open to debate. The clearest record of a management contract emerges with the Wentworth Club Board minutes of 20 August 2014.
94. On the limited evidence available, the Authority is satisfied that the Wentworth Club board formally determined to enter into a contractual management agreement with the Mildura Club at that point. This is also the point at which the new directors commenced meeting as a governing body and delivering their part of the management services that had been foreshadowed in the hitherto informal understanding between the two clubs.
95. The Authority is satisfied that Mr Harlock, who had already been working at the Wentworth Club from February 2014, assumed the role of chief executive officer and secretary manager from around 11 July 2014.
96. The Wentworth Club concedes, at paragraph 8.17 of the Gilchrist Connell Submission, that Mr Harlock commenced working as the Club's CEO "upon execution of the DOCA" but the Authority considers it more likely that Mr Harlock acted in the manner of a chief executive from around 11 July 2014 – being the point at which the members approved the DOCA and appointed the new board to which Mr Harlock would report.
97. The specific allegation in Particular 1.2(b) that the Mildura Club administered the Wentworth Club's "accounting processes" is not denied by the Club. Rather, at paragraph 8.11 of the Gilchrist Connell Submission, they submit that it was "prudent" of the Wentworth Club to draw upon its connections to the Mildura Club in order to "share accounting resources" during the attempt to "re-establish" the Wentworth Club. This is

another incident of the Mildura Club delivering management expertise to the Wentworth Club pursuant to the management agreement.

98. The Gilchrist Connell Respondents submit at paragraph 8.14 of the Gilchrist Connell Submission that the Wentworth Club's failure to notify its members of the proposed management contract in the manner specified by section 41O (by not publishing the proposed agreement on the Club's noticeboard or website) amounts to a "technical" breach of the legislation only. They also contend, on the basis of the minutes of the meeting of the Wentworth Club members on 11 July 2014, that Wentworth Club members were *actually* informed at the 11 July 2014 meeting that the Mildura Club was "in effect, going to run the Club".
99. While the Authority accepts that the Wentworth Club members were broadly aware of the proposed management arrangement, subsections 41O(3) and (4) of the Act provide a consistent and specific process for the notification of club members whenever a registered club *contemplates* the entry into a management contract and at least one month before such contract is actually entered into.
100. Publishing a proposed management agreement on a registered club noticeboard or website serves the purpose of ensuring clear and ongoing disclosure to the members of the affected club of the terms of a proposed contract. It will ensure (for example) that those members who may not attend a meeting are nevertheless able to receive notice of the proposal. Clearly, the degree of transparency required by section 41O was not observed with regard to the management contract, that the Board determined to enter into on 20 August 2014.
101. Particular 1.2 alleges that the Wentworth Club did not provide the Secretary (now the jurisdiction of the Secretary of the Department of Justice) with a report on the proposed management contract as required by section 41O of the Act.
102. The requirements for a registered club to notify the Secretary of a *proposed* management contract in the prescribed manner and the Secretary's power to direct a club not to enter into a proposed contract are contained in subsections 41O(5) though (11) of the Act.
103. The Gilchrist Connell Respondents accept that no report was ever provided to the Secretary, but contend at paragraph 8.17 of the Gilchrist Connell Submission that "in reality" the Wentworth Club had entered into a management agreement *upon execution of the DOCA* which is when they submit Mr Harlock "commenced to run the Club".
104. They submit that the "proper time" for the Wentworth Club to notify the Secretary of the management contract was *during the period of administration*, but this was "not possible" because no formal agreement was contemplated at that time.
105. They further submit that it was only due to the "prudence" of the governing body that the management agreement was "documented" by the Board in "August 2014" (which the Authority understands to be a reference to the Board minutes of 20 August 2014).
106. The Gilchrist Connell Respondents contend at paragraph 8.18 of the Gilchrist Connell Submission that the DOCA had "contemplated" that OLG's consent to that Deed would be obtained by the Deed Administrators and that such consent would "no doubt" include consideration of the "ongoing conduct" of the Wentworth Club. They argue that any failure by the Wentworth Club to obtain the Secretary's consent to any management contract "falls upon the Deed Administrators".

107. The minutes for the 11 July 2014 meeting of the Wentworth Club members record (relevantly):

The Chairman advised that the purpose of the meeting was to:

- *Consider and approve the execution of the Deed of Company Arrangement (DOCA), executed by the Club on 13 June 2014;*
- *Approve the sale of the Club's land and buildings to Mr John Kelly's nominees, Bellevine Pty Ltd, First Kay Pty Ltd and Second Kay Pty Ltd; and*
- *Approve the appointment of the members detailed in the notice of meeting to the Board of the Club in the positions as described in the notice.*

108. The minutes make no reference to the Wentworth Club's entry into a management agreement or contract. While the DOCA was approved at that meeting, the DOCA is silent as to the Wentworth Club's entry into a management contract with the Mildura Club.

109. Section 41O applies whenever a registered club is contemplating entering into a regulated management contract. The Authority is satisfied, on the evidence of several Mildura board members turned members of the Wentworth Club, that a management agreement or arrangement was contemplated between the two clubs from the first quarter of 2014 (Harlock Interview at pages 7 to 8; Layton Interview at pages 6 to 7; Cawood Interview at page 9; Hobart Interview at pages 6 to 7; Russell Interview at pages 4 to 5; Robson Statement at paragraph 9; Zigouras Statement at paragraph 11).

110. The Authority is satisfied, on the material before it (and it is not denied by the Club itself), that the Wentworth Club did not take steps to reduce the proposed management agreement to writing and notify the Secretary, in the prescribed form, of the terms of the proposed management contract at least one month prior to entering into a contractual relationship with the Mildura Club on 11 July 2014.

111. The Authority does not accept that the submissions made in the Gilchrist Connell Submission provide an adequate excuse for the Club's non-compliance with section 41O of the Act. Section 41O(2) provides that a club must not enter into any management contract with any person unless the requirements of that section are satisfied.

112. The Wentworth Club could have, but did not, give one month's prior notice of its intention to enter into a management contract to its members, or the Secretary, in the manner prescribed by section 41O. No such notice was provided before the Club Board formally decided to enter into a management contract on 20 August 2014 nor at any point thereafter.

113. The Authority is satisfied that the management agreement commenced effect on the basis of the Board's resolution of that date and through the actual provision of management services from 20 August 2014 when the new directors commenced governing the Wentworth Club. The Authority is satisfied that the Club contravened section 41O of the Act.

114. Ground 1 is established.

Findings on Ground 2

115. Ground 2 alleges that on 21 August 2014, the Wentworth Club failed to meet the requirements of section 10(1(m) of the Act when it entered into a *loan contract* with the Mildura Club, contrary to the requirements of section 41O of the Act. The Authority is

satisfied, on the basis of its findings in relation to the Particulars of this Ground, that this allegation is established.

116. Particular 2.2 alleges that the Club entered into a loan contract with the Mildura Club on 21 August 2014 for the amount of \$520,000.
117. The Authority notes that an executed written loan contract of that date is in evidence in the Complaint Material. The Gilchrist Connell Respondents do not contest that a loan contract was agreed and entered into.
118. Particular 2.2 also alleges that the interest rate for this loan was specified at 6.5% (which the Gilchrist Connell Respondents do not contest) and that security for this loan was the furniture, plant and equipment, the liquor and gaming licences, the lease and other such assets of the Wentworth Club.
119. The Gilchrist Connell Respondents do not contest this allegation but simply note at paragraphs 8.26 and 8.27 of the Gilchrist Connell Submission that no security interest has been registered on the Personal Property and Securities Register.
120. Particular 2.2 further alleges that the loan contract was entered into in circumstances where the Wentworth Club used the lease for the property occupied by the Club as security for the loan; that the Mildura Club is not a bank or an authorised deposit-taking institution (for the purposes of section 41O); that the Club members were not notified in the manner required by section 41O of the entry into the loan contract; and that the Club did not provide the Secretary with a report on the proposed loan agreement.
121. The Gilchrist Connell Respondents concede, at paragraph 8.28 of the Gilchrist Connell Submission, that the required notice of the loan contract was not provided to the Wentworth Club's members in accordance with section 41O of the Act. They contend, however, that the Club's members "would reasonably have been aware of the loan" in that at the 11 July 2014 meeting the members were informed that Mr Kelly and the Mildura Club were contributing \$1,020,000 to the DOCA and the members voted to approve the sale of the Club land to the Mildura Club for the sum of \$450,000.
122. On the basis of this, the Gilchrist Connell Respondents contend that it was "reasonable" for the members to assume that the balance of these funds "would be provided by the Mildura Club by way of a loan" but concede that no report on the proposed loan agreement was provided to the Secretary.
123. The Authority is satisfied that the allegations in Particular 2.2 are established, on the basis of the following evidence or material:
 - Executed loan contract dated 15 January 2015 between the Mildura Club (lender) and the Wentworth Club (borrower);
 - Harlock Interview at pages 8 to 10;
 - Cawood Interview at page 13;
 - Hobart Interview at page 18;
 - Russell Interview at page 6; and
 - Layton Interview at pages 8 to 9.
124. The Authority does not accept the Gilchrist Connell Submission as to what Wentworth Club members may have "assumed" provides an adequate response to the allegations in Particular 2.2.

125. Sections 41O(3) and (4) provide a mechanism for the specific and ongoing disclosure to club members of a proposed loan contract. Section 41O(5) through (11) provide for regulatory oversight to be provided by the Secretary whenever a registered club proposes to enter into a loan contract.
126. Section 41O(2) provides that a registered club must not enter into any loan contract with any person unless the requirements of that section are satisfied. The evidence and material before the Authority does not indicate that the Wentworth Club made any meaningful attempt to comply with section 41O with regard to the loan contract.
127. Ground 2 of the Complaint is established.

Findings on Ground 3

128. Particulars 3.1 and 3.2 allege that after the Wentworth Club's governing body was elected at a meeting of members on 11 July 2014, monthly meetings of the board at least every month of the year, as required by section 30(1)(c) of the Act. This non-compliance occurred during the months of:

- September 2014;
- December 2014;
- March 2015; and
- May 2015.

129. The report from Russell Corporate Advisory dated 10 August 2015 (**Russell Report**) makes the following observation at page 4:

The governing body of the club shall hold a meeting at least once in each month of the year and minutes of all proceedings and resolutions of the governing body shall be kept and entered in a book provided for the purpose. It is apparent that this has not been the case.

130. The Gilchrist Connell Respondents contend at paragraph 9.9 of the Gilchrist Connell Submission that the Wentworth Club board meetings for the four months in question had been "cancelled" by reason of a lack of a quorum. They refer to page 14 of the Hobart Interview and page 13 of the Smith Interview in this regard. They submit that it "cannot be the intent" of section 30(1)(c) of the Act that meetings of the board of a registered club are required to be held even if no quorum can be arranged.
131. The Gilchrist Connell Respondents further submit at paragraph 9.7 of the Gilchrist Connell Submission that the Authority could not conclude, on the balance of probabilities, that *no meetings* were held during the months alleged. Alternatively, they submit at paragraph 9.11 of the Gilchrist Connell Submission that any failure by the governing body to hold those four monthly meetings "does not justify the penalties sought".
132. The Authority is satisfied that the governing body of the Wentworth Club did not in fact convene board meetings within or in respect of the four months in question. This finding is made on the basis of the Club's minutes for all meetings held between 1 August 2014 and 31 July 2015; the Harlock Interview at pages 13 to 14; the Layton Interview at pages 13 to 14; the transcript of the LGNSW interview with Kevin Hogarth dated 28 October 2015 (**Hogarth Interview**) at page 12; the Cawood Interview at pages 17 to 18; the Hobart Interview at page 14 and the abovementioned extract from page 4 of the Russell Report.

133. While the Authority accepts the Gilchrist Connell Respondents' contention that those meetings were cancelled due to a lack of a quorum, that is not an excuse for non-compliance by the Club with four meetings. There is no evidence (nor is it submitted) that the Wentworth Club board made any effort to reschedule alternative dates to make up for the cancelled meetings.
134. In the Authority's view, the statutory requirement to conduct monthly meetings is a fundamental minimum requirement of corporate governance required by the Act. Plainly enough, the Wentworth Club did not comply. A registered club's governing body cannot repeatedly avoid holding monthly meetings because not enough members make themselves available to reach a quorum. Directors who are appointed to a board which repeatedly fails to arrange monthly meetings have the option of resigning, approaching the Authority to appoint a temporary administrator or winding up the club.
135. Particular 3.3 alleges that the Wentworth Club contravened a requirement of section 30(1)(j) of the Act in that new member so the Club were not charged a membership fee. Particular 3.4 alleges that at a meeting of the Wentworth Club governing body on 30 April 2015 Mr Harlock informed members that free memberships would be offered to persons aged between 18 and 21 years, in circumstances where section 30 (1)(j) requires that club membership should be an amount of not less than \$2.
136. The Authority is satisfied that the allegations in Particulars 3.3 and 3.4 are established on the basis of the Wentworth Club board meeting minutes for 30 April 2015; the Harlock Interview at page 18; the transcript of the LGNSW interview with Mr Wallace Robson dated 28 October 2015 (**Robson Interview**) at page 17; the Hogarth Interview at page 14 and the transcript of the LGNSW interview with Mr Nicholas Dickens dated 27 October 2015 (**Dickens Interview**) at page 17.
137. The Gilchrist Connell Respondents do not contest this allegation, but submit at paragraph 9.14 of the Gilchrist Connell Submission that Mr Harlock's proposal was considered by the board to be a "good idea" in order to encourage new membership at the Club amongst a younger demographic. They further submit at paragraph 9.15 of the Gilchrist Connell Submission that it was reasonable for the officers to rely upon Mr Harlock "having considered the legal ramifications (including permissibility)" of this proposal.
138. In the alternative, the Gilchrist Connell Respondents submit at paragraph 9.17 of the Gilchrist Connell Submission that in the absence of any evidence that the Wentworth Club had actually *accepted* membership applications without payment of a fee, the Authority ought not be satisfied that there was any actual contravention of the Act.
139. With regard to the allegation in Particular 3.3 that new members of the Club "were not charged a membership fee", the Authority accepts the Gilchrist Connell Submission that there is no evidence of a membership application actually being granted without fee. The Authority is nevertheless satisfied that the allegation in Particular 3.4 is established in that the Wentworth Club did resolve to accept free membership for persons aged between 18 and 21 years.
140. Section 30(1)(j) is a requirement, albeit a modest one, among several specified by the Act that are designed to ensure that registered clubs have procedures in place to operate as *bona fide* clubs and not simply licensed venues with an "open door" policy.
141. The Authority is satisfied that the Wentworth Club acted in a manner that is contrary to the requirement of section 30(1)(j) by resolving to change its rules and enable free membership.

142. Ground 3 of the Complaint is established, save for the allegation in Particular 3.3.

Findings on Ground 4

143. Particular 4.1 alleges that from 11 July 2014, Mr John Harlock acted in a position in the management of the Wentworth Club whereby he was responsible for the “management of the business and affairs of the Club” in circumstances where he was “not an approved secretary in accordance with section 33 of the Act”.
144. At paragraph 10.3 of the Gilchrist Connell Submission, the Gilchrist Connell Respondents (including the Club itself) concede that “Mr Harlock was the CEO of the Club. Accordingly, under section 32(1) of the Act, he was also the secretary.”
145. At paragraph 10.4 of the Gilchrist Connell Submission, the Gilchrist Connell Respondents concede that Mr Harlock did not have any approval from the Authority to act as a club secretary and that “his acting as secretary was in contravention of section 34 of the Act”.
146. However, they make the general submission that the Wentworth Club had sought external legal advice on its “arrangements” prior to execution of the DOCA and that the Club relied on that advice. They contend that the Wentworth Club’s legal advisors “did not suggest that Mr Harlock acting as CEO or secretary was in breach of any legislative requirement”.
147. The Gilchrist Connell Respondents further submit at paragraph 10.6 that Mr Harlock was appointed to “act as CEO/secretary of the Club” upon the execution of the DOCA (on 13 June 2014) *before* the individuals who are now the respondents to this Complaint were appointed to the governing body on 11 July 2014. They refer to page 3 of the Board meeting minutes of 11 July 2014 in this regard.
148. The Authority notes that the Gilchrist Connell Respondents do not provide evidence of any written legal advice provided to the Wentworth Club, nor do they specify the scope of legal advice sought from the Club’s then lawyers, *Ryan Commercial Lawyers*, with any great specificity.
149. The Club was in a position to waive privilege and disclose what, if any, legal advice as to regulatory matters the Club received at relevant times, but has not done so. In those circumstances the Authority is unable to find that the Club’s reliance upon external legal advice brought about this regulatory failure.
150. In his own evidence and submissions at paragraph 37 of the Harlock Statement and paragraph 22 of the Harlock Submission, Mr Harlock disputes that he was ever appointed to, or acted as, a secretary of the Wentworth Club. He contends, on the basis of the Wentworth Club’s liquor licence as at 2 December 2015 provided by the Complainant and the Dickens Statement dated 25 May 2016, that *Mr Dickens* was the Club’s secretary, as defined in the Act, at all times relevant to the Complaint.
151. The Authority has considered Mr Harlock’s position, but is satisfied that Mr Harlock did *in fact* act as the Wentworth Club’s *de facto* secretary manager even though he was not approved by the Authority to act in that role, nor was he formally appointed by the board to act as the club’s “secretary”.
152. At paragraph 10.4 of the Gilchrist Connell Submission the Club does not dispute that no approval was ever obtained from the Authority pursuant to section 33 of the Act with

regard to Mr Harlock acting as the Wentworth Club's secretary. While denying that he ever acted as a club secretary, at paragraph 22 of the Harlock Statement Mr Harlock does not dispute that no approval was ever obtained from the Authority.

- 153.** The Authority is satisfied that Mr Harlock did manage the business and affairs of the Wentworth Club from around 11 July 2014 and reported to the Club's board in the manner of a chief executive and secretary manager until the Wentworth Club ceased operations. This is notwithstanding that Mr Dickens remained as the Wentworth Club's secretary/manager *on the licence record*.
- 154.** With regard to Mr Harlock's evidence and submissions regarding Mr Dickens, the Authority accepts that Mr Dickens remained *on the record* as the Wentworth Club's secretary/manager during the relevant period.
- 155.** However, the Authority is satisfied, on the basis of the evidence and material specified above in support of its findings on Ground 4 and Mr Dickens' own evidence at paragraphs 18.1 through 18.6 of the Dickens Submission that Mr Harlock was acting as CEO while Mr Dickens' actual function was reduced to "managing the accounts payable, MYOB and helping on reception".
- 156.** The Authority notes the Club's concession that Mr Harlock was acting as the Wentworth Club's CEO and Secretary and that from 11 July 2014 (when the new board was appointed) until 30 June 2015.
- 157.** The Authority's satisfaction that Mr Harlock acted as the Wentworth Club's CEO and secretary/manager is also supported by the following further evidence or material:
- The Layton Interview at pages 5 to 6 and 17;
 - The Robson Interview at pages 5 and 18;
 - The Cawood Interview at page 21;
 - The Hobart Interview at pages 5 and 18;
 - The Smith Interview at page 20;
 - The Dickens Interview at pages 4, 6 to 8, 16 and 18;
 - The transcript of the LGNSW interview with Mr Eric Fiesley dated 27 October 2015 (**Fiesley Interview**) at pages 6 and 24; and
 - The Russell Interview at page 5;
 - Wentworth Club Board Meeting Minutes dated 30 April 2015 and 20 August 2014 recording Mr Harlock as attending these meetings as "chief executive officer";
 - OneGov record of the Wentworth Club liquor licence as at 2 December 2015 which records Mr Dickens and not Mr Harlock as the Club's secretary/manager.

158. The Authority notes that sections 33 and 34 of the Act state:

33 Approval of person to act as secretary of registered club

- (1) *A person may apply to the Authority for approval to act as the secretary of a registered club. Any such application is to be in the form and manner approved by the Authority.*
- (2) *The Authority may grant such an approval or refuse to grant the approval.*
- (3) *The Authority must refuse to grant an approval of a person to act as secretary of a registered club if the Authority is satisfied that the applicant is not a fit and proper person to act as the secretary of a registered club.*

- (4) *The Authority must not refuse to grant an approval unless the Authority has given the applicant an opportunity to make written submissions in relation to the application and has taken any such submissions into consideration before making the decision.*

34 Unapproved person not to act as secretary of registered club

- (1) *In this section,*

*"**approved secretary**", in relation to a registered club, means a person to whom approval to act as the secretary of that club has been granted under section 33.*

- (2) *If a person who is not an approved secretary of a registered club:*

- (a) ***acts as the secretary** of that club, that person, or*
(b) *is appointed by that club as its secretary, the club,*

is guilty of an offence and liable to a penalty, in the case of such a person, not exceeding 50 penalty units and, in the case of the registered club, not exceeding 100 penalty units.

- (3) *Subsection (2) does not apply so as to preclude a person who is not an approved secretary of a registered club from acting, or being appointed to act as the secretary of a registered club for a period not exceeding 2 months or for such longer period as the Authority may, on the application of that person or club, allow if that person has been appointed by the club to act as secretary of the club but does so apply at the expiration of 7 days after the person's being so appointed unless the name of that person has been notified to the Authority as the acting secretary of the club.*

- (3A) *For the purposes of this section, a person is **considered to be acting as the secretary** of a registered club whenever he or she **holds or acts in a position in the management** of the club whereby the person **is responsible to the governing body of the club for the management of the business and affairs of the club** or is **otherwise responsible for the exercise of the functions of chief executive officer** of the club.*

[Authority emphasis]

- 159.** Mr Harlock has argued that the provision in section 34 whereby a person may be *considered* to be acting as the secretary of a club applies "only for the purposes of section 34 of the Act". He submits that section 34 does not extend the meaning of what constitutes a "club secretary" for the purposes of the disciplinary provisions in Part 6A of the Act.
- 160.** While it is a matter of interpretation and not beyond doubt, the Authority is of the view that the disciplinary provisions in Part 6A of the Act that refer to club secretaries should be read together with the definition of secretary in section 4 *and* the deeming provision in section 34 as to when a person may be "considered" to be acting as a club secretary.
- 161.** Particular 4.1 is established.
- 162.** Particular 4.2 alleges that the Club did not prepare and submit to the board those financial statements required to be submitted on a quarterly basis in the form required by clause 17 of the (then) *Registered Clubs Regulation 2009*.
- 163.** The Authority notes that this requirement is now provided by clause 21 of the *Registered Clubs Regulation 2015*.
- 164.** The Authority is satisfied that this allegation is established on the basis of the following evidence and material:
- The Harlock Interview at page 16;

- The Layton Interview at pages 14 and 16;
- The Cawood Interview at page 19;
- The Smith Interview at pages 6 to 7; and
- The Russell Interview at page 6.

165. The Gilchrist Connell Respondents do not contest this Particular, but contend at paragraph 10.12 of the Gilchrist Connell Submission that a number of the Club's officers had requested that financial statements be prepared during the relevant period (from 11 July 2014 to 30 June 2015). They refer to the Hobart Interview at page 13; the Smith Interview at page 6; and the Board meeting minutes for 14 November 2014 in this regard.

166. The Gilchrist Connell Respondents argue that this conduct shows that the Wentworth Club's failure to prepare the relevant financial reports was not a failing "arising at governance level" but rather a *compliance failure* that arose either at the "employee level" or "in the communication between the secretary and employees".

167. The Gilchrist Connell Respondents further submit that the minutes of Board meetings from February 2015 onwards nevertheless record a "substantial discussion" in relation to the Club's financial records. They refer to the Board meeting minutes of 25 June 2015 and 9 July 2015 in this regard. The Gilchrist Connell Respondents submit that this demonstrates that the Club's officers were in fact "appraised" of the Wentworth Club's financial position, notwithstanding the absence of the clause 17 reports.

168. The Authority has considered these submissions, but is satisfied that the Wentworth Club in fact did not comply with the requirements of clause 17 of the Regulation. It did not prepare reports in the form required by the Regulation nor present them to the Board on a quarterly basis. This deprived the board of an important means of financial oversight of the Wentworth Club's gaming machine operations and fell short of a governance requirement imposed upon all clubs in New South Wales.

169. Particular 4.2 of the Complaint is established.

170. Ground 4 is established.

Findings on Ground 5

171. Particular 5.1(a) specifies that the Club failed to comply, between 11 July 2014 and 30 June 2015, with the requirement in clause 17 of the *Gaming Machines Regulation 2010* that registered clubs record, at monthly intervals, in respect of each approved gaming machine kept on the premises, a cash flow analysis and a comparison of cancelled credit and jackpot meter readings with the corresponding entries in the club's payout sheets.

172. The Authority is satisfied that this Particular is established on the basis of the following evidence and material:

- Harlock Interview at page 15;
- Layton Interview at pages 14 to 15;
- Robson Interview at page 13;
- Hogarth Interview at page 12;
- Hobart Interview at page 15;
- Cawood Interview at pages 18 to 19;
- Smith Interview at page 16; and

- Russell Interview at page 6.

173. The Gilchrist Connell Respondents do not contest these allegations, but submit at paragraph 11.3 of the Gilchrist Connell Submission that the Wentworth Club's failure "did not occur at governance level".

174. They contend that members of the governing body brought the requirements of clause 17 of the *Gaming Machines Regulation* to Mr Harlock's attention, noting page 15 of the Layton Interview, where the following exchange is recorded:

MR HANLEY: Thanks for that. What can you tell me about the gaming reports that were presented to the governing body of the Wentworth Club?

MS LAYTON: I don't think we had – and again, just remembering, I'd have to look through the minutes to see – well, you would know. I don't think we got – we got sort of reports like, "Oh, it's going well," or, "We need different sort of machines," or whatever. I knew we had issues because I actually came here either the first day or in the first week, and two fairly large payouts of 7,000 and 12,000 came out on the one day, and they were very confused as to how to pay it because the records didn't match up with anything, and they didn't know how to do it, and that sort of rang alarm bells, but we didn't get gaming – and – and Mildura doesn't really get – the finance committee gets a gaming – we didn't have a subcommittee at Wentworth. The – at Mildura, we get a gaming report whenever we ask for it, but it doesn't really happen very often. It's usually just a story.

MR HANLEY: I'll just produce to you regulation 17 of the Gaming Machines Regulation 2010, marked R11.

...

MS LAYTON: I have a copy of this in my car, which I had shown to John Harlock and said, "We need to be doing this," and I've written on it John Harlock's comment was, "Don't worry. It's all under control".

MR HANLEY: Okay. So there was no - - -

MS LAYTON: So that never happened. Well, to my knowledge, that never happened.

MR HANLEY: Looking through the minutes of the meetings that was provided, there's no record anywhere of those reports being produced; would you agree with that?

MS LAYTON: I would, and I have raised with him, but – yeah.

175. While this exchange demonstrates that some level of concern about gaming machine operations was expressed by Ms Layton at some unspecified point in time, it does not demonstrate that Ms Layton or the other directors possessed the relevant knowledge or awareness of this particular regulatory issue. It does not establish that the directors demonstrated the ability to require the production of compliant reports to the Board, given that the non-compliance occurred over some months. It does demonstrate a degree of reliance by the Board upon Mr Harlock as the Wentworth Club's chief executive and secretary/manager. This underscores the importance of the role assumed by Mr Harlock with respect to compliance with the licensing legislation, particularly in circumstances when the directors were unfamiliar with the New South Wales regulatory framework.

176. At paragraph 11.5 of the Gilchrist Connell Submission they make the alternative submission, on the basis of a decision of the New South Wales Supreme Court of Appeal

in *Castellorizian Club Limited v Director of Liquor and Gaming* [1996] NSWCA 95, that a breach of this type of legislative requirement does not justify the penalties now sought by the Complainant.

177. They submit that in order to be a “proper ground for complaint against a club”, a ground must be “so serious that it would justify calling upon the club to show why its licence should not be cancelled”.
178. The Authority does not accept that the acts or omissions at issue are analogous to the conduct that formed the basis of the complaint in *Castellorizian* case, which concerned a show cause notice issued by the then Director of Liquor and Gaming under the now repealed disciplinary provisions in section 17 of the *Registered Clubs Act 1976*.
179. At that time, the former section 17(1AAA)(e) of the Act empowered a decision maker to dismiss a complaint on the basis that a disciplinary complaint was “frivolous, vexatious, or not a proper ground of complaint”.
180. The sole basis of that complaint comprised an allegation that the Castellorizian Club had contravened the (now repealed) section 79(5) of the Act with respect to its acquisition of 23 poker machines. Specifically, the club’s lateness in paying its bills for the acquisition of some of those machines and the club’s modification of some of those machines (before property had passed to the club in respect of those machines) contravened the prohibition in section 79(5) against modifying gaming machines before an acquisition of machines had been finalised.
181. In the present Complaint, Particular 5.1 is based upon the ground provided by section 57(3)(j) of the Act. It concerns the Wentworth Club’s failure to comply with a monthly reporting obligation to the board with respect to the club’s gaming machine operations, which persisted over some 11 months.
182. The Authority considers that clause 17 provides an important mechanism whereby the board of any registered club receives information enabling it to maintain systemic oversight of that club’s gaming machine operations.
183. If the required reports are not prepared or not furnished to the board, a governing body may well lose oversight of an aspect of that club’s business (gaming machines) that Parliament has very closely regulated through the *Gaming Machines Act 2001* by reason of the social impact and probity issues that arise from the keeping those machines. Depending upon a club’s business model, gaming machines may well play a substantial role in a club’s revenue base and its overall financial performance.
184. The conduct in Particular 5.1 should not be dismissed as so minor and technical as not forming a proper basis for complaint under the present scheme in Part 6A of the Act, or (in the language of the current Act) not move the Authority to show cause on a complaint. In any event, Particular 5.1 is only one of numerous allegations that constitute the Complaint before the Authority.
185. The Authority is satisfied that the required reports were not prepared and submitted on a monthly basis, depriving the board of an important means of systemic oversight of the Wentworth Club’s gaming machine operations, which (on the basis of the Club’s gaming machine entitlements discussed at the commencement of this letter) formed a substantial aspect of the Club’s licenced entertainment operations.
186. Ground 5 is established.

Findings on Ground 6 – Mr John Harlock, Secretary/Manager

- 187.** The Authority is satisfied that Particular 6.1, which alleges that Mr John Harlock is not “fit and proper” to hold the position of a secretary of a registered club within the meaning of section 57F(3)(g) of the Act, is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority’s findings on the other Particulars of Ground 6.
- 188.** At paragraph 42 of the Harlock Submission, Mr Harlock, citing *Australian Broadcasting Tribunal v Bond* [1990] HCA 33, makes the general submission that his fitness and propriety should be analysed as to “matters other than the financial, technical and management capabilities of a person” including “the public interest”.
- 189.** At paragraph 43 of the Harlock Submission, Mr Harlock makes the further general submission that in all the circumstances of this case, any steps taken by him in relation to the Wentworth Club were in the “best interests of the Club and its members” or were made with “a view to saving the Club as a going concern”.
- 190.** Notwithstanding that the managerial takeover (discussed in Ground 1 above) had the purpose of improving management of the Wentworth Club and providing a further benefit to the Wentworth community, the Club only traded for a further 11 months after 11 July 2014 in this reconfigured format.
- 191.** During that short period of further operation several significant and avoidable regulatory failings occurred, primarily through a lack of knowledge as to New South Wales legislation on the part of Mr Harlock and the directors to whom he reported as the Club’s chief executive and secretary/manager.
- 192.** The evidence and material before the Authority does not establish that the Club’s regulatory failings were the product of dishonesty on Mr Harlock’s part, but it does demonstrate that Mr Harlock’s did not possess sufficient knowledge of regulatory matters arising under the Act, nor did he demonstrate ability with respect to those matters in light of the role he occupied with the Wentworth Club.
- 193.** Ensuring regulatory compliance is a central responsibility of any registered club’s secretary/manager. As chief executive officer and the highest ranking employee reporting to the board, a person appointed as (or otherwise acting as) a club’s secretary manager bears the ultimate responsibility for ensuring that a club satisfies its legislative requirements on a day to day basis unless there are good reasons for not attributing a particular failing to a secretary.
- 194.** The matters established against Mr Harlock in Ground 6 indicate a lack of knowledge as to the core regulatory obligations under the Act for which a person acting in the role of a club secretary in New South Wales should be aware. Mr Harlock admits that he did not possess that knowledge.
- 195.** Mr Harlock also demonstrated a lack of skill in respect of the Club’s non-compliance, in that he failed to arrange training for himself or the directors that may have placed those officers in a better position to avoid or reduce the scope for regulatory non-compliance that is the subject of Grounds 1 to 5. This was particularly important given the lack of familiarity the Mildura Club directors had with acting on a governing body in New South Wales.
- 196.** The directors submit and the Authority accepts that the board reasonably relied upon Mr Harlock to ensure that the matters brought before board meetings were supported by an awareness of regulatory requirements in the Act. To the extent that third party expertise

was required on a specific transaction, it was primarily Mr Harlock's responsibility to ensure that relevant expertise was procured.

197. In the Harlock Statement Mr Harlock contends that he relied upon the advice of the *Mildura Club's* external lawyers, *Ryan Commercial Lawyers*, in several respects but he does not provide evidence or submissions going to the scope of any legal advice that was actually provided on the specific regulatory matters that are the subject of this Complaint.
198. Mr Harlock does not identify with any degree of specificity how his reliance upon advice from those external lawyers (who were engaged for the Mildura Club and not the Wentworth Club) led him or the Wentworth Club into error with regard to regulatory compliance.
199. In these circumstances, the Authority makes no adverse finding about the quality of legal advice provided to the Wentworth Club on regulatory matters arising under the Act. The Authority is not satisfied that the Wentworth Club's reliance upon external legal advice explains or reasonably excuses the Club's non-compliance in Grounds 1 to 5 of the Complaint.
200. Paragraph 6.2 alleges that Mr Harlock has been working as the secretary of the Wentworth Club since 11 July 2014. The paragraph further alleges that although he was not approved as the Secretary by the Authority he was acting as such in accordance with section 34(3A) of the Act. The Authority is satisfied, on the basis of its findings on Particular 4.1 against the Club that Mr Harlock was working as the Club's secretary since 11 July 2014 and was not approved by the Authority to act in that role.
201. Particular 6.3(a) alleges that Mr Harlock is not a "fit and proper" person on account of the failure to meet the requirements of section 10(1)(m) of the Act in relation to the Club entering into a *management contract* with the Mildura Club.
202. At paragraph 38(a) of the Harlock Submission, Mr Harlock submits that he cannot be held personally responsible for the Club's decision to enter into the management contract with the Mildura Club, by reason that this decision was made by the Club *Board* or, in the alternative, that *even if he were* the Club's "secretary" at the relevant time (which he disputes), responsibility for satisfying the requirements of subsections 41O(3) and 41O(5) of the Act would not have fallen to him, but to "the Club".
203. The Authority repeats its findings on Ground 1 and Particular 4.1 and is satisfied that Mr Harlock was in fact acting as the Wentworth Club's secretary/manager during the relevant period.
204. The Authority is satisfied that the Wentworth Club's failure to comply with section 10(1)(m) is a contravention of the Act that is attributable to the knowledge and ability demonstrated by Mr Harlock, who should have been, but was apparently not, aware of these important statutory requirements with respect to management contracts under section 41O of the Act. Mr Harlock's lack of knowledge of the Act and his failure to obtain training is established in the findings on Particulars 6.3(l) and (m) of this Ground below.
205. As the Wentworth Club's secretary/manager, Mr Harlock should have ensured that the Board satisfied these legislative requirements while the management agreement was proposed and before the Club resolved to enter into this agreement.
206. Although the requirements in section 41O are expressed to be the responsibility of the "club", this is a substantial regulatory failing on the part of the Wentworth Club that also

adversely reflects upon the knowledge and ability demonstrated by Mr Harlock, given the centrality of his role in managing the business affairs of the Club and reporting to the new board from 11 July 2014.

207. Particular 6.3(a) is established.
208. Particular 6.3(b) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure to meet the requirements of section 10(1)(m) of the Act in relation to the Club entering into a *loan contract* with the Mildura Club.
209. Mr Harlock submits, at paragraph 38(b) of the Harlock Submission, that the decision to enter into this loan contract was made by the Club *Board* and that he cannot be held personally responsible for that decision.
210. The Authority repeats its findings with regard to Ground 2 and Particular 4.1. Notwithstanding that this legislative requirement is stated by section 41O to be imposed upon the “club” this is a failing by the Wentworth Club that adversely reflects upon the knowledge and ability demonstrated by Mr Harlock, given the centrality of his role in managing the business affairs of the Club.
211. Particular 6.3(b) is established.
212. Particular 6.3(c) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure to meet the requirements of section 30(1)(c) of the Act in relation to the Club ensuring that meetings of its governing body are held at least once in each month of the year. Similarly, Particular 6.3(i) alleges that Mr Harlock is not a “fit and proper” person by reason of his failure to comply with section 58 of the Club’s constitution requiring that the Club’s governing body hold meetings at least once each calendar month.
213. Mr Harlock submits at paragraph 38(c) of the Harlock Submission that the Authority “cannot be satisfied” that the allegation is made out by reason that Mr Harlock was “not a member of the Club’s governing body” and that the Act does not impose any responsibility on a club secretary for ensuring such meetings are held.
214. The Authority accepts that Mr Harlock was not a member of the Wentworth Club’s governing body, but repeats its findings on Ground 3 and Particular 3.1.
215. Particular 6.3(c) is another instance of the Wentworth Club’s non-compliance with the Act, while 6.3(i) concerns non-compliance with the Club’s own constitution.
216. Particulars 6.3(c) and (i) are established and support adverse findings as to the knowledge and ability demonstrated by Mr Harlock given the centrality of his role as the Club’s secretary/manager, who is reasonably expected to have a working knowledge of relevant requirements of the Act and the Club’s constitution.
217. This is a basic requirement of corporate governance of any registered club of which Mr Harlock should have been aware. He should have, but did not, demonstrate sufficient skill to ensure that monthly meetings were held, or alternative meetings arranged to replace those meetings that were cancelled by reason of a lack of quorum.
218. Particulars 6.3(c) and (i) are established.
219. Particular 6.3(d) alleges that Mr Harlock is not a “fit and proper” person by reason of the Wentworth Club’s failure to meet the requirements of section 30(1)(j) of the Act in relation to the Club accepting memberships for which no fee was charged. Similarly, Particular

6.3(h) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure to comply with section 35.1 of the Club’s constitution in relation to the Club accepting memberships for which no fee was paid.

220. Mr Harlock submits, at paragraph 38(d) of the Harlock Submission, that determining the fees payable by new members was the responsibility of the Club’s *governing body* and that he cannot be responsible for this alleged failure.
221. The Authority repeats its findings with regard to Particular 3.4. Notwithstanding that this legislative requirement is imposed by section 30(1)(j) upon the “club”, it is a regulatory failing that adversely reflects upon the knowledge and ability demonstrated by Mr Harlock as the Club’s secretary manager.
222. Mr Harlock made this proposal for free club membership to the Board as recorded in the board minutes for the meeting of 30 April 2015. The Authority accepts that the purpose was to attract younger membership, but this is another incident that adversely reflects upon the knowledge and ability to ensure compliance with regulatory matters, given the centrality of his role as the Wentworth Club’s chief executive.
223. Particulars 6.3(d) and (h) are established.
224. Particular 6.3(e) alleges that Mr Harlock is not a “fit and proper” person by reason that he acted as the secretary of the Wentworth Club from 11 July 2014 when he was not approved by the Authority to act as such, contrary to section 34 of the Act.
225. At paragraph 22 of the Harlock Submission and paragraph 37 of the Harlock Statement, Mr Harlock reiterates that he has not been, nor has he acted as, the secretary of the Wentworth Club at any time. He contends that while from time to time he “assisted with management”, he was engaged on a daily basis at that time by the Mildura Club. He refers to his own “direct evidence” at pages 5 to 6 of the Harlock Interview, which he submits is “to be preferred” over the “indirect evidence of other parties”.
226. The Authority repeats its findings with regard to Particular 4.1. Notwithstanding that this legislative requirement is imposed upon the “club” and not any specific officer of the club, this is a regulatory failure that adversely reflects upon the knowledge and ability demonstrated by Mr Harlock, given the centrality of his role managing the business of the Wentworth Club.
227. The Authority does not accept that Mr Harlock merely “assisted with management” of the Wentworth Club. As found in relation to Ground 4 and as conceded by the Club and several officers of the Wentworth Club, Mr Harlock was, in practice, managing the affairs of the Wentworth Club from 11 July 2014 and acting as the Club’s chief executive. That Mr Harlock also held another job managing the Mildura Club is accepted, but this does not exclude him from also managing the affairs of the Wentworth Club in a manner consistent with him acting as that Club’s chief executive and secretary/manager.
228. Particular 6.3(e) is established.
229. Particular 6.3(f) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure by the Club to meet the requirements of clause 17 of the *Registered Clubs Regulation 2009* regarding the preparation of the required quarterly financial statements and providing them to the Club’s governing body.
230. Mr Harlock submits at paragraph 38(f) of the Harlock Submission that this regulatory requirement is imposed upon “the club alone” and he cannot be held responsible for this

failure. Mr Harlock further contends that he “assisted” the Wentworth Club with preparing its monthly financial statements and these documents were “comprehensive”.

231. The Authority repeats its findings with regard to Particulars 4.1 and 4.2. The Wentworth Club’s failure to present reports to the Board in a manner that complies with the *Registered Clubs Regulation* is a matter that adversely reflects upon the knowledge and skill demonstrated by Mr Harlock as a person acting at that Club’s chief executive and secretary/manager.
232. Particular 6.3(f) is established.
233. Particular 6.3(g) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure of the Wentworth Club to meet the requirements of clause 17 of the *Gaming Machines Regulation 2010* in relation to recording the required information for gaming machines kept on the Club premises.
234. Mr Harlock submits, at paragraph 38(g) of the Harlock Submission, that he cannot be held responsible for preparing the relevant gaming machine reports, as this responsibility “fell to the Club”. Mr Harlock further submits that Mr Dickens was responsible for “fulfilment of the Club’s gaming obligations”.
235. The Authority repeats its findings on Ground 5. The Wentworth Club’s failure to present reports to the Board in a manner that complies with the *Gaming Machines Regulation* is another matter that adversely reflects upon the knowledge and skill demonstrated by Mr Harlock as a person acting at that Club’s chief executive and secretary/manager.
236. Particular 6.3(g) is established.
237. Particular 6.3(j) alleges that Mr Harlock is not a “fit and proper” person by reason of the failure to comply with section 9 of the ClubsNSW *Best Practice Guidelines* in that the minutes of Club Board meetings did not include the adoption of minutes of the last meeting and financial reports reflecting the true financial position of the Wentworth Club.
238. Mr Harlock submits, at paragraph 38(h) of the Harlock Submission, that he was “not responsible” for the conduct of Board meetings, “much less the adoption of minutes or financial reports”.
239. The Authority is satisfied that Board meeting minutes were not adopted, as alleged, on the basis of the Smith Interview at page 12; the Russell Interview at page 6; and the minutes of Board meetings provided by the Complainant.
240. While the allegation in Particular 6.3(j) is established as a factual matter in that the minutes did not conform with the *Best Practice Guidelines*, the Authority does not give weight to this incident of non-compliance when assessing the knowledge and ability demonstrated by Mr Harlock in the context of a disciplinary complaint. It is a matter of good practice, recommended by an industry body, but non-compliance does not constitute breach of a minimum legislative requirement.
241. Particular 6.3(k) alleges that Mr Harlock is not a “fit and proper” person by reason of his failure to comply with section 10 of the ClubsNSW *Code of Practice* in relation to the Wentworth Club having more than one secretary.
242. While the Authority repeats its findings on Particular 4.1 and is satisfied, as alleged by Particular 6.3(k), that the Club operated with more than one secretary and did not conform with the *Code of Practice*, the Authority does not give weight to this apparent

failure in assessing the knowledge and ability demonstrated by Mr Harlock in the context of a disciplinary complaint.

- 243.** Compliance with the *Code of Practice* is a matter of good practice, recommended by an industry body, but it does not involve contravention of a minimum legislative requirement. Although non-compliance with section 32 of the Act (requiring that a club have one, but no more than one, secretary) would constitute a breach warranting an adverse finding, that is not what is alleged in this Particular.
- 244.** Particular 6.3(l) alleges that Mr Harlock is not a “fit and proper” person by reason of his *personal* failure to undertake training and that he could have taken steps to acquire a better knowledge of his own duties as a club secretary but did not do so. Particular 6.3(m) alleges that Mr Harlock is not a “fit and proper” person by reason of his failure to provide training for the Club’s *governing body*.
- 245.** Mr Harlock concedes, at paragraph 38(j) of the Harlock Submission, that he “might have done more” to inform *himself* of the Wentworth Club’s statutory obligations, but denies that he was responsible to ensure that the Club’s governing body was so trained. He submits that he “did not ever occupy a role” which *required* him to take those steps and that the Authority cannot be satisfied that the allegations in Particulars 6.3(l) and (m) are established.
- 246.** The Authority repeats its findings on Particular 4.1. Mr Harlock’s failure, while acting as the Wentworth Club’s secretary/manager, to ensure that he underwent relevant training, such as the training specified by clause 21B of the *2009 Clubs Regulation* is a matter that adversely upon the knowledge and ability demonstrated by him.
- 247.** The Authority is satisfied that Mr Harlock’s failure to arrange training for the Wentworth Club’s governing body further reflects upon the knowledge and ability demonstrated by him as a person acting as a club chief executive and secretary/manager, particularly since the governing body appointed on 11 July 2014 was operating in a jurisdiction with which those new directors were unfamiliar.
- 248.** It is apparent from the interviews between LGNSW and the Wentworth Club’s former officers that they were not aware of the key statutory obligations to which the registered clubs in New South Wales are subject (Harlock Interview at page 7; Robson Interview at page 13; Cawood Interview at page 9; Fiesley Interview at page 5; Hogarth Interview at page 15; Layton Interview at page 7; Hobart Interview at page 19; Smith Interview at page 24; Dickens Interview at page 8).
- 249.** The Mildura Club board members who became directors of the Wentworth Club were not without relevant skills. One new director, Ms Layton, is an accountant. Another, Mr Zigouras, was a solicitor.
- 250.** In those circumstances, the Authority considers it likely that had Mr Harlock arranged appropriate training for himself and the directors, either prior to or shortly after the point at which the Mildura Club officers were elected to the board of Wentworth Club on 11 July 2014, the Club would have been better far placed to avoid (or at least minimise) some of the instances of non-compliance that have been established against the Wentworth Club in Grounds 1 to 5 of this Complaint.
- 251.** The proposed change of management control through appointment of Mildura Club directors to the board of the Wentworth Club has been acknowledged by Mr Harlock and several directors ((Harlock Interview at pages 7 to 8; Layton Interview at pages 6 to 7; Cawood Interview at page 9; Hobart Interview at pages 6 to 7; Russell Interview at pages

4 to 5; Robson Statement at paragraph 9; Zigouras Statement at paragraph 11) as having been known to them since the first quarter of 2014. Mr Harlock concedes that he was unfamiliar with the Act and had some time to contemplate the training requirements of the incoming board, which he did not act upon while they served on the Wentworth Club board.

- 252.** Particulars 6.3(l) and (m) are established. These matters adversely reflect upon the knowledge and ability demonstrated by Mr Harlock, given the significance of his role managing the business of the Club.
- 253.** Particular 6.3(n) alleges that Mr Harlock is not a “fit and proper” person by reason of his failure to engage a registered valuer to establish that the lease payments to be made by the Wentworth Club to Bellevine Pty Ltd were fair and that the process of establishing these payments was transparent, given the relationship between the Mildura Club and Mr John Kelly.
- 254.** Mr Harlock submits at paragraph 38(k) of the Harlock Submission that it was the *Wentworth Club Board’s* decision to enter into this lease and he cannot be held responsible for any failure by the *Club* to ensure that any “pre-conditions” to the lease were satisfied.
- 255.** Neither Mr Harlock nor the Club (through *Gilchrist Connell*) contests the allegation that no advice from a registered valuer was actually received by the Wentworth Club on this transaction.
- 256.** The lease document in evidence was between the lessor, Bellevine Pty Ltd and the lessee, the Wentworth Club. It commenced on 21 August 2014 and extended for a period of ten years. The rent payable was \$100,000.00 per year plus GST.
- 257.** The Wentworth Club was in effect leasing back its former property from the new owner of that land, a company controlled by Mr John Kelly, after that land was acquired from the Club in a sale dated 22 August 2014 that had been approved by the Wentworth Club’s members on 21 July 2014.
- 258.** In the Complaint Letter, the Complainant states that this sale of land had been conducted in compliance with the requirements of section 41J of the Act. The Authority is satisfied that the lease does not involve a “disposal” of the “core property” of a registered club for the purposes of section 41J. Obtaining the advice of a registered valuer was not *mandated* by section 41J.
- 259.** Nevertheless, in light of the lengthy duration of the lease, the quantum of rent payable and the circumstances of the parties (including the fact that Mr Kelly owned the Mildura Club property, which was governed by the same persons as the Wentworth Club board) the Authority considers that some independent professional valuation of rent payable was a prudent course for a reasonably diligent club to take in the circumstances. Not only would it have provided relevant information to the Club board, it would also, as alleged, provide a degree of transparency to the process of entry into this substantial commercial commitment.
- 260.** Mr Harlock was acting as the Club’s chief executive and secretary/manager at this time. He did not procure independent valuation advice for the Club or its board to consider.
- 261.** Particular 6.3(n) is established. This is a relevant factual matter that adversely reflects upon the extent to which Mr Harlock has demonstrated the ability to act as a club

secretary manager, although it does not warrant the weight that would apply were the Club acting in contravention of section 41J.

- 262.** Particular 6.3(o) alleges that Mr Harlock is not a “fit and proper” person by reason of his failure to ensure that the directorships of the Club were notified to ASIC.
- 263.** Mr Harlock submits, at paragraph 38(l) of the Harlock Submission, that responsibility for lodging the necessary notices with ASIC “fell to the Club” – meaning “the directors or the Club’s secretary”, and that Mr Harlock acted in neither capacity.
- 264.** The Authority notes that the source of the obligation to notify ASIC of the appointment of a company director arises under section 601CV(1)(c) of the *Corporations Act 2001*.
- 265.** As a person acting as the Wentworth Club’s chief executive and secretary/manager, Mr Harlock should have been aware of and was ultimately responsible for the key corporate reporting responsibilities imposed upon clubs, noting that section 10(1)(b)(i) of the Act anticipates that most clubs (like this one) will be companies.
- 266.** Mr Harlock should have but did not demonstrate sufficient diligence to ensure that the appointment of the Wentworth Club’s new directors on 11 July 2014 was notified to ASIC in the manner required by the *Corporations Act*. While this is an administrative responsibility imposed upon the *company*, it is another matter that adversely reflects upon the ability demonstrated by Mr Harlock as the Wentworth Club’s secretary/manager.
- 267.** Particular 6.3(p) alleges that Mr Harlock is not a “fit and proper” person by reason of his “lack of willingness” to engage with NSW legislative requirements and that this is evidenced by his statement during the Harlock Interview that:
- But I’ll be up front. I’ve never read one page of the Registered Clubs Act, to be honest.*
- 268.** At paragraph 38(m) of the Harlock Submission, Mr Harlock denies that he at any time demonstrated a lack of *willingness* to engage with NSW legislative requirements to the extent that he was required to engage with any of the provisions relied upon by the Complainant. Mr Harlock concedes that he “should have investigated further” the Club’s statutory obligations, but submits that he was “acting in the best interests” of the Club by prioritising the need to “get the Club open as soon as possible” to ensure its success.
- 269.** Mr Harlock further submits at paragraph 38(m) of the Harlock Submission that he relied “to an extent” on the advice of others, who he says were apprised of the Wentworth Club’s obligations. He refers to pages 18 to 19 of the Harlock Interview and states at paragraph 35 of the Harlock Statement that the Mildura Club’s lawyers, *Ryan Commercial Lawyers*, at the time did point the Board to relevant sections of the Act.
- 270.** Mr Harlock does not elaborate on which regulatory provisions the Board were advised upon but contends at paragraph 45 of the Harlock Statement that this law firm “should have been instructed by me to provide specific advice” with regard to the Wentworth Club’s obligations.
- 271.** While the evidence does not necessarily establish that Mr Harlock was “unwilling” to obtain any training, the Authority is satisfied, on the basis of the Harlock Interview and in particular the statement at page 7 extracted above, that Mr Harlock did not, in fact, make any real effort to obtain relevant training to perform the role of a secretary/manager in New South Wales.

272. As noted above, Mr Harlock could have sought relevant training, including but not limited to training consistent with the requirements of clause 21B of the *2009 Clubs Regulation*. This could have occurred either before or during his assumption of the functions of chief executive and secretary manager as part of the management takeover which began in earnest from 11 July 2014.

273. While the evidence and material does not establish that Mr Harlock was necessarily “unwilling” to receive training, it is clear enough from paragraph 35 of the Harlock Statement that Mr Harlock did not bother to turn his mind to core legislative requirements for clubs under the Act, nor did he demonstrate the skill to arrange training for himself or the directors in this regard, as evidenced by his statement that:

Ryan [Commercial Lawyers] did point me to some particular provisions of the NSW legislation that we were required to abide by, however I failed to follow up in a thorough manner and I accept responsibility for this omission. I cannot now recall the particular provisions to which I was taken.

274. This deprived him of the knowledge and ability to advise the board or even be alert to potential regulatory matters that may require the provision of third party legal or regulatory advice to the Club, that a reasonably informed club secretary may be expected to hold.

275. Particular 6.3(p) is established to the extent that Mr Harlock did make the statement attributed to him during the Harlock Interview. This admission adversely reflects squarely upon his lack of knowledge as a person acting in the role of a club secretary manager.

276. Ground 6 is established.

Findings on Ground 7 – Mr Wallace Robson, Director

277. The Authority is satisfied that Particular 7.1, which alleges that Mr Wallace Robson is not “fit and proper” to act as a member of a club’s governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of findings on the other Particulars of this Ground.

278. There is no evidence of dishonesty on the part of Mr Robson or the other directors, but he did not possess sufficient knowledge of regulatory matters arising under the Act of which club directors need to be aware. This lack of knowledge contributed to the Club’s non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.

279. Mr Robson concedes at paragraph 21 of the Robson Submission and paragraph 15 of the Robson Statement, as do other officers represented by *Sparke Helmore*, that he did not possess knowledge of relevant provisions of the Act, nor did they acquire it while acting in their respective roles with the Wentworth Club.

280. Mr Robson makes similar introductory submissions in the Robson Submission to those made by Mr Harlock regarding the meaning of the expression “fit and proper person” (citing *Australian Broadcasting Tribunal v Bond* [1990] HCA 33). He submits that an assessment of a member of a governing body’s fitness and propriety should encompass matters such as ability to manage the business and financial affairs, to ensure the Club’s ongoing viability and the regulatory compliance responsibilities of the person in question. He submits that on this basis, it is “not appropriate” for the Authority to find that he is not fit and proper to be a member of the governing body of a registered club.

- 281.** Mr Robson also makes general submissions that he acted in the best interests of the Wentworth Club. He further notes, at paragraphs 7 to 10 of the Robson Submission, that he has a long association with the Mildura district, has been president of the Mildura Club for over 20 years, has been a member of the Wentworth Club since 1958 and has a distinguished civic history including National Service and volunteer work.
- 282.** The Authority accepts Mr Robson's contentions with regard to his past community and national service and accepts as a general proposition that Mr Robson and all the directors believed that they were acting in the best interests of the Wentworth Club.
- 283.** Nevertheless, the Authority is satisfied that Mr Robson and the other directors who are the subject of this Complaint failed to demonstrate relevant knowledge of the Act and failed to obtain relevant training as to their responsibilities as directors of a registered club in New South Wales – whether by means of the training prescribed by clause 26 of the *Registered Clubs Regulation 2015*, or otherwise. As the Authority has found in Ground 6, Mr Harlock shares responsibility for not arranging training for the directors, who had hitherto operated as club directors in another jurisdiction.
- 284.** The Authority further accepts, on the basis of the evidence of several directors including Messrs Cawood, Fiesley, Zigouras, Hogarth, Hobart and Dickens, that the governing body relied on the advice of Mr Harlock, who was acting as the Wentworth Club's chief executive and who was also an experienced chief executive with the Mildura Club.
- 285.** The Authority accepts that the Board was placed in a position of disadvantage by Mr Harlock's lack of knowledge of the Club's obligations arising under New South Wales licensing legislation and with respect to Mr Harlock's lack of diligence in not obtaining relevant external advice (including legal and valuation advice) for the Wentworth Club.
- 286.** Turning to the Particulars of Ground 7, while it is not subject to dispute, the Authority is satisfied, as alleged in Particular 7.2, that Mr Robson was a member of the Club's governing body since 11 July 2014. This finding is made on the basis of the Board meeting minutes of 11 July 2014, the Robson Interview at page 4 and the Robson Submission at paragraph 11.
- 287.** Particular 7.3(a) attributes the matters specified against the Wentworth Club in Ground 1 (regarding the management contract) to Mr Robson's fitness and propriety as a director of the Club.
- 288.** The Authority refers to its findings on Ground 1 and the evidence upon which those findings are made against the Wentworth Club.
- 289.** Club directors will not be responsible for every regulatory failing by a registered club. They do not have the same scope of day to day responsibility for the conduct of a club's business and regulatory affairs as that which is to be exercised by a club's secretary/manager. The club governing body provides systemic oversight and control, not day to day control of a club's operations.
- 290.** However, club directors may potentially be responsible for systemic regulatory compliance failure and should at least have sufficient knowledge and ability to discharge those regulatory functions that a registered club must observe under the licensing legislation that involve powers and functions *exercised at board level*.
- 291.** Given the role of a club governing body in entering into regulated management contracts, the governing body should have been aware of the notification and reporting requirements of section 41O of the Act pertaining to management contracts.

- 292.** It is apparent from the evidence and submissions before the Authority in relation to Ground 1 that Mr Robson or the other directors were not even aware of the Club's statutory notification and reporting obligations under section 41O.
- 293.** In the absence of any written contract, the paucity of records as to the terms of the proposed management agreement and in light of the Authority's findings on Ground 1, the Authority is satisfied that the Wentworth Club most likely "entered into" a management contract on 20 August 2014.
- 294.** The new directors had been appointed to their roles on 11 July 2014 but were, it would seem, not even aware of the requirements of section 41O of the Act when they decided to enter into a management contract with the Mildura Club on 20 August 2014 or at any point thereafter.
- 295.** The Authority accepts the submission made by other directors in the Gilchrist Connell Submission that this resolution showed some degree of diligence by the new directors, in that they at least recognised a need to formalise the management arrangement that had been understood between the two clubs, but the resolution of 20 August 2014 and the evidence and submissions provided by Mr Robson and the other directors establishes a lack of knowledge by the directors of their regulatory responsibilities under section 41O of the Act.
- 296.** Particular 7.3(a) is established.
- 297.** With regard to Particular 7.3(b), the Authority repeats its findings on Ground 2. The Authority is satisfied that the Club's statutory non-compliance with regard to the loan contract the Club decided to enter into on 21 August 2014 is a matter for which Mr Robson and the other directors share responsibility, along with the secretary/manager Mr Harlock who should have, but did not, assist them in this regard.
- 298.** The Authority is satisfied, on the evidence relied upon in support of Ground 2, that Mr Robson and the other directors were not aware of the Club's statutory duties under section 41O with regard to the Club's entry into this loan agreement on 21 August 2014. The Club did not give the required one month's prior notice to the Wentworth Club's members nor did the Club report to the Secretary on this proposed loan contract.
- 299.** Particular 7.3(b) is established.
- 300.** With regard to Particular 7.3, the Authority repeats its findings on Particulars 3.1 and 3.2 and is satisfied that Particular 7.3(c) supports an adverse finding against the knowledge and ability demonstrated by Mr Robson and the other directors at that time. The statutory requirement for a club to convene monthly meetings is a fundamental minimum requirement of corporate governance that directly concerns functions of the board itself. Directors of registered clubs in New South Wales should at least be aware of the requirement.
- 301.** Mr Robson submits at paragraph 14 of the Robson Statement that he attended all meetings of the Wentworth Club board that he was physically able to attend. The Authority accepts this.
- 302.** Nevertheless, the Wentworth Club's failure to convene four monthly meetings during the short tenure of this new governing body has been established on the facts. This adversely reflects upon the knowledge and ability demonstrated by the board itself,

noting that there is no evidence of Mr Robson or the other directors taking steps to arrange alternative meeting dates for the cancelled monthly meetings.

- 303.** Particular 7.3(c) is established.
- 304.** With regard to Particular 7.3(d), which concerns the conduct described in Ground 3 to admit members without payment of a fee, the Authority repeats its findings on Particular 3.4. This is another matter that supports an adverse finding as to the knowledge and ability demonstrated by Mr Robson and the other directors at that time. Directors of registered clubs in New South Wales should at least have knowledge of those rules that apply to all registered clubs in New South Wales through the operation of section 30(1) of the Act.
- 305.** While the Authority notes that the proposal to accept as new members persons aged 18 to 21 without payment of a membership fee was initiated by Mr Harlock, the failure by the Wentworth Club to observe section 30(1)(j) in relation to accepting free memberships is another matter that involved board deliberation and adversely reflects upon the knowledge demonstrated by those directors.
- 306.** Particular 7.3(d) is established
- 307.** With regard to Particular 7.3(e), which concerns Mr Harlock acting in the role of the Wentworth Club's secretary without approval of the Authority, the Authority repeats its findings on Particular 4.1. This matter supports an adverse finding on the knowledge demonstrated by Mr Robson and the other directors.
- 308.** The Wentworth Club's failure to comply with section 34 of the Act arose when Mr Harlock acted as secretary manager of the Wentworth Club without the Authority's approval. This is another matter that adversely reflects upon the level of knowledge demonstrated by the directors, given the governing body's direct responsibility for appointing any chief executive and secretary/manager and noting the secretary's direct position of accountability to the board.
- 309.** Appointment of a chief executive officer is one of the most important functions that any board will exercise. Mr Robson and the other directors should have been aware of the requirement under section 33 of the Act but the evidence and submissions before the Authority (Cawood Statement at paragraph 21; Cawood Submission at paragraph 12.26; Fiesley Submission at paragraph 13.20; Zigouras Statement at paragraph 20) establish that Mr Robson and the other directors were simply unaware of this requirement, even though Mr Harlock was primarily responsible for submitting documentation to obtain Authority approval.
- 310.** Particular 7.3(e) is established.
- 311.** With regard to Particular 7.3(f), regarding the failure to produce quarterly reports under clause 17 of the *Registered Clubs Regulation 2009*, the Authority repeats its findings on Particular 4.2.
- 312.** The Club's non-compliance adversely reflects upon the knowledge and ability demonstrated by the members of the governing body. The Authority accepts the contention made by Ms Layton at paragraphs 33 to 37 of the Layton Statement that she made some enquiries of Mr Harlock about this matter in about November or December 2014, demonstrating some level of knowledge and ability on her part, but the reports were not produced to the board as required during the tenure of this new governing body.

- 313.** Mr Robson submits at paragraph 13 of the Robson Statement that Mr Harlock “prepared or arranged to be prepared all necessary financial and gaming reports” and that he (Mr Robson) “felt comfortable” relying on the information presented by Mr Harlock with regard to those financial reports.
- 314.** Most of the directors acknowledge that they were simply not aware of this statutory requirement (Cawood Statement at paragraph 21; Cawood Submission at paragraph 12.26; Fiesley Submission at paragraph 13.20; Zigouras Statement at paragraph 20). Along with Mr Harlock, who was ultimately responsible for preparing these reports, the directors share responsibility for the Club’s repeated failing in this regard.
- 315.** Particular 7.3(f) is established.
- 316.** With regard to Particular 7.3(g), regarding the Wentworth Club’s failure to produce and present monthly reports to the board, as required by the *Gaming Machines Regulation*, the Authority repeats its findings on Ground 5. Most of the directors acknowledge that they were simply not aware of this statutory requirement (Cawood Statement at paragraph 21; Cawood Submission at paragraph 12.26; Fiesley Submission at paragraph 13.20; Zigouras Statement at paragraph 20). Along with Mr Harlock, who was ultimately responsible for preparing these reports, Mr Robson and the other directors share responsibility for the Club’s repeated failing in this regard.
- 317.** Particular 7.3(g) is established.
- 318.** With regard to Particular 7.3(h), which concerns the Wentworth Club’s failure to observe section 35.1 of the Club’s constitution when it resolved to accept free memberships, the Authority repeats its findings on Ground 3.3 and 3.4. The Authority notes that section 35.1 of the Club’s Constitution is in evidence and requires that:
- 35.1** *The entrance fees and subscriptions or payments payable by members of the Club shall be such as the Board may from time to time prescribe provided that the annual subscription payable by Ordinary members shall be not less than two dollars or such other minimum subscription provided from time to time by the Registered Clubs Act.*
- 319.** While this proposal was initiated by Mr Harlock, who shares responsibility for this matter, this Particular is established and it adversely reflects upon the level knowledge demonstrated by Mr Robson and the other directors who should have been, but were not, aware of this requirement.
- 320.** Particular 7.3(h) is established.
- 321.** With regard to Particular 7.3(i), which concerns the Wentworth Club’s failure to observe section 58 of its constitution requiring monthly board meetings, the Authority repeats its findings on Ground 3.2. The Authority notes that the Club’s Constitution is in evidence and that section 58 requires that:
- 58** *The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit provided that the Board shall meet whenever it deems it necessary but at least once in each calendar month for the transaction of business and a record of all members of the Board present and of all resolutions and proceedings of the Board shall be entered in a Minute Book provided for that purpose. The President shall preside at every Meeting of the Board or if at any meeting he is not present or is unwilling or unable to act then the Senior Vice President or in his absence or if he is unwilling or unable to act, the Junior Vice President shall act as Chairman. If neither the Senior Vice President nor the Junior*

Vice President are present or if they are both unwilling or unable to act, then the Board members present may elect their own Chairman. The quorum for meetings of the Board shall be five (5) members personally present.

- 322.** Directors should be aware of the requirement to convene monthly meetings under section 58 of the Wentworth Club's constitution and take steps to ensure compliance with that obligation. The Wentworth Club's failure to convene four monthly meetings for the months of September 2014, December 2014, March 2015 and May 2015 during the short tenure of this governing body adversely reflects upon the level of knowledge demonstrated by Mr Robson and the other directors.
- 323.** Particular 7.3(i) is established.
- 324.** The Authority accepts, as a factual matter, the allegation in Particular 7.3(j) that the Wentworth Club board meeting minutes did not conform with the section 9 of the ClubsNSW *Best Practice Guidelines* with respect to adopting previous meeting minutes and finance reports. However, the Authority does not make an adverse finding as to Mr Robson or the other directors' fitness and propriety by reason of non-conformance with industry guidelines, in the context of a disciplinary complaint.
- 325.** The Authority accepts, as a factual matter, the allegation in Particular 7.3(k) that the Wentworth Club failed to comply with section 10 of the ClubsNSW *Code of Practice* in respect of having more than one secretary. However, the Authority does not make an adverse finding as to Mr Robson or the other directors' fitness and propriety by reason of non-conformance with industry guidelines, in the context of a disciplinary complaint.
- 326.** Particular 7.3(l), which concerns Mr Robson's *personal* failure, as a director, to undertake training that would have given him a better knowledge of the Wentworth Club's statutory obligations and his own duties, the Authority is satisfied that neither Mr Robson (nor the other directors) obtained such training during their tenure as directors of the Wentworth Club.
- 327.** The Authority notes that clause 26 of the *Registered Clubs Regulation 2015* (which commenced effect on 1 September 2015) make specific provision for the training courses required of the members of the governing body of a registered club in New South Wales, with certain allowances made for "small clubs".
- 328.** Prior to the 2015 Clubs Regulation, a similar provision was contained in clause 21A of the *Registered Clubs Regulation 2009*, which was in effect during 2014.
- 329.** The Authority is satisfied, as alleged, that such training would have placed Mr Robson (and each other director) in a better position to understand the Club's statutory duties and their personal responsibilities as directors of a registered club.
- 330.** The Authority is satisfied, having considered the Robson Interview, Robson Submission and Robson Statement that Mr Robson did not obtain the relevant training prescribed by the Regulation, nor make arrangements to do so for himself or the other members of the governing body or Mr Harlock. The Authority notes the following exchange at page 14 of the Robson Interview:

MR HANLEY: Well, looking at that, when you became directors, and in your case the president of the Wentworth Club, did you undergo any training in relation to the New South Wales requirements of directors?

MR ROBSON: No.

...

MR HANLEY: Did any of the other directors undergo any training in relation to the New South Wales requirements?

MR ROBSON: Not that I'm aware of.

- 331.** This absence of training underscores the shortcomings of Mr Robson (and the other directors) with regard to their knowledge. It also indicates a lack of *ability* on their part, in that all directors could have, but did not, arrange to perform relevant training during their time on the Wentworth Club board, notwithstanding that they were operating in a new jurisdiction.
- 332.** As noted in Ground 6, the Authority finds that the directors' failure to undertake training is a matter for which responsibility is shared with the Club's secretary, Mr Harlock who should have arranged for such training as the Club's chief executive and secretary/manager.
- 333.** Particular 7.3(l) is established.
- 334.** Similarly, the Authority is satisfied that Particular 7.3(m) is established in relation to Mr Robson's failure, as a director, to ensure that *other members of the governing body and the secretary, Mr Harlock*, obtained relevant training.
- 335.** As noted in Ground 6, the Authority finds that the directors' failure to undertake training is a matter for which responsibility is shared with the Club's secretary, Mr Harlock who should have arranged for such training as the Club's chief executive and secretary/manager.
- 336.** Particular 7.3(m) is established.
- 337.** With regard to Particular 7.3(n) which concerns the Wentworth Club's failure to obtain the advice of a registered valuer before entering into a lease of the former club premises, the Authority repeats its findings on Ground 2 with respect to the circumstances of the lease and its findings on Particular 6.3(n) with regard to why an independent professional valuation would have been prudent in the circumstances, notwithstanding that it was not mandated by the Act.
- 338.** The Authority notes its findings on Particular 6.3(n) with respect to Mr Harlock's failure to obtain independent advice on this transaction. This is a matter that adversely reflects upon the degree of diligence exercised by Mr Harlock and the directors when the Wentworth Club executed this lease without the benefit of an independent professional valuation.
- 339.** The Authority is satisfied that it would have been prudent for the Wentworth Club to have obtained independent professional advice, not only to better inform the Club on the valuation of the rent payable but also, as alleged, to provide a degree of transparency to the process of entry into this substantial commercial commitment in light of the relationship of the parties.
- 340.** Particular 7.3(n) is established.
- 341.** While the Authority is satisfied, as alleged in Particular 7.3(o), that ASIC were not notified of the appointment of Mr Robson or other members of the governing body to the board, the Authority repeats its findings on Particular 6.3(o).

- 342.** The Authority does not attribute this administrative failing to the knowledge and skill demonstrated by Mr Robson or the other directors. The board reasonably relied upon Mr Harlock as the Wentworth Club's chief executive to ensure that this administrative requirement was attended to under the Corporations Act.
- 343.** Particular 7.3(p) alleges that Mr Robson had a "lack of knowledge" of legislative requirements and this is indicated by the statement made to LGNSW investigators "I think there was a lot of mistakes made because we were working under the Victorian situation".
- 344.** Mr Robson makes the bare assertion, at paragraph 21 of the Robson Submission, that he has "eradicated" his lack of knowledge. However, he does not explain, let alone provide positive evidence, that he has actually undergone relevant education or training. The Authority notes that none of the directors the subject of this Complaint have provided such evidence.
- 345.** Mr Robson makes the submission at paragraph 15 of the Robson Statement that "more specific guidance" could have been provided to the Board by the Club's lawyers, *Ryan Commercial*.
- 346.** However, neither Mr Robson nor any other respondent has provided copies of advice received from the Wentworth Club's then lawyers, nor specified the scope of advice sought from those lawyers with any great precision, sufficient to persuade the Authority that the Club's regulatory failings should be attributed to the Wentworth Club's lawyers rather than shortcomings in the knowledge and ability demonstrated by the Club's secretary/managers or directors.
- 347.** Particular 7.3(p) is established.
- 348.** Ground 7 is established.

Findings on Ground 8 – Mr Daniel Cawood, Director

- 349.** The Authority is satisfied that Particular 8.1, which alleges that Mr Daniel Cawood is not "fit and proper" to act as a member of a club's governing body, is established. This conclusion has been drawn on the basis of a cumulative assessment of the Authority's findings on the other Particulars of this Ground.
- 350.** There is no evidence of dishonesty on the part of Mr Cawood, but he did not possess sufficient knowledge of regulatory matters arising under the Act of which club directors need to be aware. This lack of knowledge contributed to the Club's non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.
- 351.** At paragraph 12.41 of the Cawood Submission Mr Cawood concedes, as do the other Gilchrist Connell Respondents, that he did not possess knowledge of relevant provisions of the Act, nor did they acquire it while acting in their respective roles with the Wentworth Club.
- 352.** While it is not in dispute, the Authority is satisfied, as alleged in Particular 8.2, that Mr Cawood has been a member of the Club's governing body since 11 July 2014. This finding has been made on the basis of the board meeting minutes of 11 July 2014 and the Cawood Statement, provided with the submissions on behalf of the individual Gilchrist Connell Respondents.

- 353.** In response to Particular 8.3, which alleges that Mr Cawood is not a “fit and proper” person by reason that he failed to exercise his duties as a member of the Wentworth Club’s governing body with a degree of knowledge, ability, care and diligence, Mr Cawood makes the general submission at paragraph 12.3 of the Cawood Submission that these sub-Particulars “individually and cumulatively” do not support a finding that he is not “fit and proper”.
- 354.** At paragraph 12.4 of the Cawood Submission, Mr Cawood submits that as a member of the Club’s governing body, he was entitled to and did in fact rely upon information that was provided by “external legal advisors” and information provided by Mr Harlock as the “CEO and secretary of the Club”.
- 355.** Mr Cawood refers to *Australian Securities and Investments Commission v Maxwell and Ors* [2006] NSWSC 1052 per Brereton J at [101], noted at paragraph 6.6 of the Gilchrist Connell Submission dated 26 May 2016, which is as follows:
- Directors are not required to exhibit a greater degree of skill in the performance of their duties than may reasonably be expected for persons of commensurate knowledge and experience, in the relevant circumstances [ASC v Gallagher]. And while directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company [Daniels v Anderson (1995) 37 NSWLR 438, 495-505; 16 ACSR 607, 659-668], they are entitled to rely upon others, at least except where they know, or by the exercise of ordinary care should know, facts that would deny reliance [Re City Equitable Fire Insurance Co; Biala Pty Ltd v Mallina Holdings Ltd (No 2) (1993) 11 ACSR 785, 856-8; 11 ACLC 1082; (1994) 15 ACSR 1, 60-2; Daniels v Anderson (1995) 37 NSWLR 438, 502-504; 16 ACSR 607, 665-6; Re Property Force Consultants Pty Ltd (1995) 13 ACLC 1051 (QSC)].*
- 356.** Mr Cawood contends at paragraph 12.59 of the Cawood Submission that the “gravity of the consequences” of the Authority finding that he is not a fit and proper person to act as a member of a governing body of a New South Wales registered club will impact his insurance work, his real estate licence and his professional record. He submits that these consequences would not be proportionate to his alleged misconduct as a member of the Club’s governing body.
- 357.** The Authority notes that Mr Cawood has not explained, let alone substantiated, how a finding that he is not fit and proper to run a registered club will necessarily impact his ability to work in the insurance industry or in real estate.
- 358.** While it is generally credible to submit that reputational impacts may flow from a decision finding Mr Cawood to be not fit and proper, he has not identified what likely disciplinary or commercial impacts will arising in those particular fields of employment from a finding that he is not fit and proper to direct a *registered club* in New South Wales.
- 359.** Mr Cawood further submits at paragraphs 12.60 and 12.63 of the Cawood Submission that he “has not acted dishonestly” and that he is willing to give an undertaking that he will not stand as a member of any registered club for a period of 3 years.
- 360.** As noted in Ground 7, the Authority does not consider that there is evidence of the Club directors acting dishonestly. At issue is the degree of knowledge and ability that they have demonstrated arising from the matters specified in this Complaint.
- 361.** In response to Particular 8.3(a), which concerns the management agreement, Mr Cawood states, at paragraph 15 of the Cawood Statement, that he understood that all requirements had been met in relation to that contract. He further states, at paragraphs 17 to 19, that at the members’ meeting of the Wentworth Club in July 2014 the Club’s

administrator explained to the 400 members present what would take place pursuant to the DOCA and that he and the other members of the governing body the subject of this Complaint had no control at that time. He states that members were advised that there was to be “a loan contract, a lease, and a management contract” and that “some of the Mildura Club directors were to be the directors of the Wentworth Club”. He states that the members “unanimously voted in favour of the DOCA”.

- 362.** At paragraphs 20 to 24 Mr Cawood states that Mr Harlock dealt with the law firm “Ryan Legal” [an apparent reference to *Ryan Commercial Lawyers*] on all these arrangements and Mr Cawood had no reason to question their expertise. At paragraph 27 he states his belief that OLGR had “accepted” Mr Harlock as the club’s secretary.
- 363.** The Authority repeats its findings on Ground 1 and Particulars 6.3(a) and 7.3(a). The Authority attributes the Wentworth Club’s failure to comply with section 41O in respect of the management contract to Mr Harlock and the directors, who were unaware of the requirements of this section. The governing body, including Mr Cawood, took no steps to notify the members or report to the Secretary and this adversely reflects upon their knowledge and ability demonstrated by the directors.
- 364.** With regard to Mr Cawood’s submissions to the effect that the Club relied upon advice from solicitors engaged by Mr Harlock when entering into this management contract, the Authority has not been provided with sufficient evidence that would satisfy the Authority that the Club was relevantly led into error by the acts or omissions of its legal advisors. The Authority does not accept this submission.
- 365.** At paragraph 12.12 of the Cawood Submission, Mr Cawood again submits that he was “required” to enter into this loan agreement pursuant to the terms of the DOCA which he submits was “binding upon him pursuant to s.444G of the *Corporations Act*”. The Authority is not satisfied that the entry into the DOCA prevented the Club directors from taking steps to comply with the proposed management agreement, which was contemplated as early as 11 July 2014 and recorded in a resolution on 20 August 2014. This agreement was in the board’s contemplation and, while never formalised, the board had ample opportunity to comply with section 41O but did not do so.
- 366.** Particular 8.3(a) is established.
- 367.** In response to Particular 8.3(b), concerning the Wentworth Club’s non-compliance with section 41O in relation to the loan contract, Mr Cawood submits at paragraph 30 of the Cawood Statement that he “assumed” the loan agreement was in order by reason that Mr Harlock had presented the relevant documents to the Club board and had the benefit of legal advice on this transaction.
- 368.** Mr Cawood accepts that the loan contract was not put to members in the formal manner required by the Act but that this loan was discussed at the Wentworth community meeting to the effect that the Mildura Club would provide the necessary finance to the Wentworth Club. He submits that this loan was for the “eventual benefit of the Wentworth community”.
- 369.** The Authority repeats its findings on Ground 2 and Particulars 6.3(b) and 7.3(b). The Authority does not accept that the Wentworth Club’s entry into the DOCA so constrained the ordinary powers and discretions of the Club’s governing body that the directors could not have taken steps to ensure compliance with section 41O regarding the Club’s entry into this loan contract.
- 370.** Particular 8.3(b) is established.

- 371.** In response to Particulars 8.3(c) and (i), both of which concern the Club's failure to conduct monthly meetings, Mr Cawood submits at paragraph 29 of the Cawood Statement that he "did his best" to attend board meetings when they were called and that he relied upon Mr Harlock to ensure that these legislative requirements were met.
- 372.** The Authority repeats its findings on Particulars 3.1, 6.3(c) and 7.3(c).
- 373.** Particulars 8.3(c) and (i) are established.
- 374.** In response to Particulars 8.3(d) and 8.3(h), both of which concern the Wentworth Club's resolution to offer free memberships to certain persons, Mr Cawood submits at paragraph 12.17 of the Cawood Submission that there is an "absence of sufficient evidence" to establish that the Club actually accepted memberships for which no fee was paid, such that this allegation cannot support a finding that Mr Cawood is not a fit and proper person.
- 375.** The Authority repeats its findings on Particulars 3.3, 6.3(d) and 7.3(d).
- 376.** Particulars 8.3(d) and (h) are established.
- 377.** On Particular 8.3(e), which concerns Mr Harlock acting as a club secretary from 11 July 2014 when not approved to do so, Mr Cawood contends at paragraph 21 of the Cawood Statement that it was his understanding that Mr Harlock had been "accepted" to act as the Club's secretary, and that he relied upon Mr Harlock in this respect.
- 378.** The Authority is satisfied that members of the governing body should have been, but were not aware of, the requirements of section 33 and 34 of the Act in respect of persons acting in the role of a secretary/manager and the duty to obtain Authority approval of a person acting in that role. There is no indication that the directors even had knowledge of this legislative requirement issue, let alone made enquiries about Mr Harlock's approval.
- 379.** The Authority repeats its findings and analysis on Particulars 4.1, 6.3(e) and 7.3(e) and is satisfied that Particular 8.3(e) is established.
- 380.** On Particular 8.3(f), which concerns the Wentworth Club's failure to provide to the board quarterly financial reports in accordance with clause 17 of the *Registered Clubs Regulation 2009*, Mr Cawood submits at paragraphs 12.23 and 12.24 of the Cawood Submission that financial statements were in fact presented to the Club's governing body "albeit sporadically" and that those statements "met the intention of the legislative requirement" to keep the governing body apprised of the Club's financial position.
- 381.** He further contends at paragraph 46 of the Cawood Statement that he "made requests" of Mr Harlock for the provision of financial statements, including a comment in "about January 2015" to the Club Board that "we needed to monitor the club's financials". This, he says, "demonstrated diligence and skill".
- 382.** The Authority has considered but does not accept that the matters raised in Mr Cawood's submissions and evidence provide an adequate response to the allegations in this Particular. Mr Cawood does not provide sufficient evidence that he identified and complained of the specific regulatory failure identified in this Particular, nor took steps to remedy it.
- 383.** The Authority refers to its findings on Particulars 4.2 and 7.3(f) and is satisfied that Particular 8.3(f) is established.

- 384.** With regard to Particular 8.3(g), regarding the Wentworth Club's failure to provide monthly reports to the board in accordance with clause 17 of the *Gaming Machines Regulation 2010*, Mr Cawood submits at paragraph 12.26 of the Cawood Submission that he "accepts his failings" on this matter but submits that he "relied upon Mr Harlock to ensure these requirements were met".
- 385.** The Authority repeats its findings on Ground 5, and Particulars 6.3(g) and 7.3(g) and is satisfied that Particular 8.3(g) is established.
- 386.** Mr Cawood submits that procedural failings of the kind alleged in Particular 8.3(h) regarding the Club's resolution to accept membership without fee and Particular 8.3(i) regarding contravention of the Club's constitution by not holding monthly meetings do not meet the test for making adverse findings in relation to disciplinary complaints that was enunciated in *Castellorizian Club Limited v Director of Liquor and Gaming* [1996] NSWCA 95.
- 387.** The Authority repeats the observations on the *Castellorizian Club* case on Ground 5. The Authority repeats its findings on Particulars 7.3(h) and (i) and does not accept the submission that these matters are so minor and technical as not to be the proper subject matter of a disciplinary complaint under Part 6A of the Act.
- 388.** Particulars 8.3(h) and (i) are established.
- 389.** On the allegation in Particular 8.3(j), regarding the Club's failure to comply with section 9 of the ClubsNSW *Best Practice Guidelines* with respect to board minutes not adopting the previous meeting nor finance reports that reflect the true position of the club, the Authority repeats its findings and observations on Particular 7.3(j) and does not make an adverse finding in relation to Mr Cawood or any other director's fitness and propriety on the basis of the Club's non-conformance with the Guidelines.
- 390.** On Particular 8.3(k), regarding a failure to comply with section 10 of the ClubsNSW *Code of Practice* in relation to the Club having more than one secretary, Mr Cawood submits at paragraph 12.37 of the Cawood Submission that on his view, "Mr Harlock was the secretary and Mr Dickens never acted as the secretary, nor was he appointed as the secretary during Mr Cawood's tenure".
- 391.** While the Authority is satisfied that Mr Harlock did act as the Wentworth Club's secretary/manager without approval from the Authority to do so and that Mr Dickens remained on the record as the Wentworth Club's secretary during the relevant period (as discussed in relation to Ground 15, below), the Authority repeats its observations on Particular 7.3(k) with regard to the *Code of Practice* and does not make an adverse finding on the fitness or propriety of Mr Cawood or any other director on the basis of this Particular.
- 392.** In response to Particular 8.3(l), which concerns Mr Cawood's *personal* failure to undertake training to acquire better knowledge of the Wentworth Club's statutory obligations and his own duties as a member of the governing body, and Particular 8.3(m), which concerns his failure to provide training for the governing body and secretary of the Wentworth Club, Mr Cawood submits at paragraph 12.40 of the Cawood Submission that he had 12 months from his appointment to undertake training. He further submits that there is no evidence that his failure to undertake the training sooner than this was done "dishonestly or with any intent to deceive".

- 393.** Mr Cawood further contends at paragraph 12.41 that he has attended “a number of training workshops” with regard to Victorian clubs legislation conducted through external providers and that he has “heavily invested” in undertaking training at his own expense to “increase his business and professional skills”.
- 394.** The Authority accepts that Mr Cawood has engaged in some unspecified training with regard to the Victorian legislation but Mr Cawood does not suggest that he undertook training with regard to the Act. The Authority accepts Mr Cawood’s observation that he and the other directors had 12 months from the date of their appointment to undergo the training required by the 2015 Clubs Regulation. The Authority notes that the Wentworth Club closed its doors on 30 June 2015, shortly before that 12-month period elapsed.
- 395.** Mr Cawood concedes at paragraph 12.45 of the Cawood Submission that he did not arrange the required training but submits that he “continued to act diligently” by “relying upon external advisors, including lawyers” and that the governing body’s primary concern was “re-establishing the Club”.
- 396.** The *Registered Clubs Regulation* provides a specific regime and a time frame for club directors to undergo industry training, to avoid the very serious deficiencies in knowledge and ability arising at board level with regard to regulatory compliance that have transpired in this case.
- 397.** Particulars 8.3(l) and (m) do not allege non-compliance with the Regulation but allege that training was not undertaken that would have enabled Mr Cawood, the other directors and Mr Harlock to acquire a better knowledge of the Club’s statutory obligations and their respective obligations of those officers.
- 398.** The Authority is satisfied that Mr Cawood had not arranged for the required training for himself, the other directors or Mr Harlock while serving on the board. None of those parties was in a position to comply with the requirements of the Regulation. The Authority repeats its observations on Particulars 7.3(l) and (m) and the level of knowledge and ability demonstrated by the directors in this regard, and is satisfied that Particulars 8.3(l) and (m) are established.
- 399.** Particular 8.3(n) concerns the Club’s failure to engage a registered valuer on the lease payments to be made by the Club to Bellevine Pty Ltd. Mr Cawood submits at paragraph 12.48 of the Cawood Submission that the Complainant has provided no evidence as to what rent would have been “fair”. He further contends at paragraph 12.49 of the Cawood Submission that the rent specified was “reasonable” according to the law and on the basis of his own experience as a licensed real estate agent. Mr Cawood further contends that the Wentworth Club’s solicitors had reviewed this lease and he was entitled to rely upon their advice.
- 400.** Particular 8.3(n) is established.
- 401.** The Authority repeats its findings on Particulars 6.3(n) and 7.3(n). The Complainant does not allege that the rent specified in this lease was unfair but that obtaining advice from an independent professional valuer would have provided a degree of transparency to the process, given the relationship of the parties. The Authority is satisfied that it would have been prudent for the Club to have obtained independent professional advice in these circumstances, not only to better inform the Club and its members but also to provide greater transparency to the process of entry into this substantial commitment.
- 402.** On Particular 8.3(o), which concerns the Wentworth Club’s failure to notify ASIC of the appointment of directors, Mr Cawood submits at paragraph 12.55 of the Cawood

Submission and at paragraphs 73 to 74 of the Cawood Statement that he did in fact complete the relevant ASIC form notifying his appointment as a director and provided it to Mr Harlock for lodgement.

403. The Authority accepts Mr Cawood's account. The Authority is satisfied that he was aware of this obligation under the *Corporations Act* and took reasonable steps to have the form submitted to ASIC by handing it to the Club's secretary manager, Mr Harlock. The Authority does not attribute the Club's failure to notify ASIC to the personal fitness and propriety of Mr Cawood.

404. Particular 8.3(p) concerns Mr Cawood's said lack of willingness to engage with NSW legislative requirements, as evidenced by his statement during the Cawood Interview that:

Obviously clearly from our meetings in Sydney and clearly from, obviously advisors are now reporting to us as to, you know, where we've fallen down in terms of some of these administrative and legislative requirements that we haven't met.

405. Mr Cawood submits at paragraph 12.57 of the Cawood Submission that this statement does not evidence that he lacked *knowledge* of legislative requirements, but rather that he (and the Club) took positive steps to audit the Wentworth Club's compliance with legislative requirements.

406. The Authority is satisfied, on the basis of the transcript of the Cawood Interview, that this brief statement was made and that it provides some acknowledgement that the governing body had failed to observe legal requirements.

407. The statement is also couched in terms of reliance upon advisors. The Authority refers to its previous observations that there is an absence of evidence as to what legal or expert advice the Wentworth Club board actually received with regard to regulatory matters arising under the Act. For this reason it cannot attribute fault to the Club's lawyers in a manner that excuses the governing body from not demonstrating the requisite knowledge and ability. This brief statement provides some acknowledgement of a lack of knowledge and ability at the board level.

408. Particular 8.3(p) is established.

409. Ground 8 is established.

Findings on Ground 9 – Mr Eric Fiesley, Director

410. The Authority is satisfied that Particular 9.1, alleging that Mr Eric Fiesley is not "fit and proper" to act as a member of the Club's governing body, is established. The Authority draws this conclusion on the basis of a cumulative assessment of its findings on the other Particulars of this Ground.

411. There is no evidence of dishonesty on the part of Mr Fiesley, but he did not possess sufficient knowledge or ability with respect to regulatory matters arising under the Act of which club directors need to be aware. This lack of knowledge contributed to the Club's non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.

412. While Mr Fiesley does not contest that he was a member of the Club's governing body during the relevant period, the Authority is satisfied, as alleged in Particular 9.2, that Mr Fiesley has been a member of the Club's governing body since 11 July 2014. This

finding has been made on the basis of the Board meeting minutes of 11 July 2014 and paragraph 13.2 of the Fiesley Submission.

- 413.** Mr Fiesley submits at paragraphs 13.21 to 13.23 of the Fiesley Submission that the contraventions alleged are not sufficient to characterise him as improper or unfit for the purposes of section 57(3)(g) of the Act; that he has not acted dishonestly; and that he is willing to give an undertaking that he will not stand as a member of any registered club in NSW for a period of 3 years.
- 414.** With regard to Particulars 9.3(a) through 9.3(o), the Authority repeats the findings made on Particulars 8.3(a) through (o) respectively and is satisfied that Particulars 9.3(a) through 9.3(o) are established in respect of Mr Fiesley. On the same analysis, the Authority does not find that the matters specified in Particulars 9.3(j), (k) and (o) support an adverse finding as to Mr Fiesley's fitness or propriety as a director.
- 415.** Particular 9.3(p) alleges that Mr Fiesley is not a "fit and proper" person by reason of his lack of willingness to engage with NSW legislative requirements as evidenced by his statement in the Fiesley Interview:

And I must admit, there's a lot of that which has happened in the management of this club that I have just watched it from a very great distance insofar as not trying – not even bothering to try to understand what was going on.

- 416.** Mr Fiesley concedes at paragraph 13.20 of the Fiesley Submission that he "assumed" that NSW legislative requirements were "no different to those in Victoria", which was incorrect. He submits that he relied upon Mr Harlock to "make him aware of any relevant differences" and that in those circumstances this contravention is "not sufficient" to characterise him as improper.
- 417.** While Mr Fiesley was frank in his dealings with LGNSW, this concession nevertheless underscores his lack of knowledge as a member of a governing body for a registered club in New South Wales.
- 418.** Particular 9.3(p) is established.

419. Ground 9 is established.

Findings on Ground 10 – Mr John Zigouras, Director

- 420.** Particular 10.1, which alleges that Mr John Zigouras is not "fit and proper" to act as a member of the Club's governing body, is established. The Authority draws this conclusion on the basis of its cumulative assessment of its findings on the other Particulars of this Ground.
- 421.** While not in dispute, the Authority is satisfied, as alleged in Particular 10.2, that Mr Zigouras has been a member of the Club's governing body since 11 July 2014. This finding has been made on the basis of the Board meeting minutes of 11 July 2014 and paragraph 13 of the Zigouras Statement.
- 422.** Particular 10.3 alleges that Mr Zigouras is not a "fit and proper" person as he failed to exercise his duties as a member of the Club's governing body with a degree of knowledge, ability, care and diligence.
- 423.** There is no evidence of dishonesty on the part of Mr Zigouras, but he did not possess sufficient knowledge and ability with respect to regulatory matters arising under the Act of

which club directors need to be aware. This lack of knowledge contributed to the Club's non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.

424. At paragraph 22 of the Zigouras Submission, Mr Zigouras contends that he has a "lengthy history" of acting on boards. Mr Zigouras contends that he is "financially literate" and a person of the "utmost integrity".
425. The Authority notes that Mr Zigouras has not specified the boards upon which he has served but accepts that Mr Zigouras has acted on other boards in the past.
426. In response to the allegation in Particular 10.3(a) regarding the management contract, Mr Zigouras contends at paragraph 25 of the Zigouras Submission and at paragraph 14 of the Zigouras Statement that he was "not present" at the Club's meeting of 20 August 2014, nor did he participate in the approval of this management agreement.
427. The Authority accepts that Mr Zigouras was not at this meeting, but notes that Mr Zigouras has not provided evidence as to whether he was aware or, or took any action before or after that meeting to identify any concerns that the Club had not complied with section 41O in respect of the proposed management agreement or to ensure that this proposal or the Club's resolution was ever reported to Club members or the Secretary in the manner required by that section of the Act.
428. The Authority repeats its findings on Ground 1 and Particular 7.3(a) of the Complaint and is satisfied that Particular 10.3(a) is established.
429. On Particular 10.3(b), which concerns the loan contract with the Mildura Club, Mr Zigouras again contends at paragraph 26 of the Zigouras Submission that he "was not present" at the meeting on 20 August 2014 when a resolution was passed to enter into this loan agreement, nor did he sign the loan agreement.
430. The Authority accepts that Mr Zigouras was not at this meeting, but notes that Mr Zigouras has not provided evidence as to whether he was aware of, or took any action before or after that meeting to identify any concerns that the Club had not complied with section 41O in respect of the proposed loan agreement or to ensure that the loan agreement was ever reported to Club members or the Secretary in the manner required by that section of the Act.
431. The Authority repeats its findings on Ground 2 and Particular 7.3(b) and is satisfied that Particular 10.3(b) is established.
432. On Particulars 10.3(c) and 10.3(i), both of which concern the Wentworth Club's failure to ensure that meetings of the governing body of the Club are held at least once in each month of the year, Mr Zigouras states at paragraph 15 of the Zigouras Statement that he attended all of the Club's meetings "that he was able to" and that "occasionally" he could not attend a Board meeting due to "work commitments". He submits that he was "not responsible" for organising the Club's meetings.
433. While the Authority accepts that Mr Zigouras did not and was not responsible for personally arranging board meetings, the failure by the Club to conduct the meetings for the four months in question during the short tenure of this board has been established.
434. The Authority repeats its findings on Ground 3 and Particular 7.3(c) and is satisfied that Particulars 10.3(c) and (i) are established.

435. On Particulars 10.3(d) and 10.3(h), both of which concern the Wentworth Club accepting memberships for which no fee was charged, Mr Zigouras contends at paragraphs 17 and 28 of the Zigouras Statement that he was not present at the Board meeting of 30 April 2015 when the Board decided to accept certain members without payment of a fee.
436. The Authority accepts that Mr Zigouras was not at this meeting, but notes that Mr Zigouras has not provided any evidence as to whether he was aware of the requirements of section 10(1)(j) or the Club's constitution or that he took any action before or after this meeting to raise his concerns that the requirements of section 10(1)(j) or the constitution had not been complied with.
437. The Authority repeats its findings and observations on Particulars 3.3, 3.4 and Particular 7.3(d) and is satisfied that Particulars 10.3(d) and (h) are established to that extent.
438. On Particulars 10.3(e) and 10.3(k), both of which concern the Wentworth Club's failure to ensure that the Club had no more than one secretary who was approved by the Authority, Mr Zigouras states at paragraph 29 of the Zigouras Submission and at paragraph 18 of the Zigouras Statement that he "believed" that Mr *Dickens*, and not Mr Harlock was the Club's only secretary, in the sense that Mr Dickens was both the "approved secretary" and that Mr Dickens also "filled that role in practice".
439. The Authority repeats its findings and observations on Ground 4 and Particulars 6.2 and 7.3(e), and is satisfied that Particular 10.3(e) is established.
440. Particular 10.3(f) alleges that Mr Zigouras is not a "fit and proper" person by reason of the Club's failure to meet the requirements of clause 17 of the *Registered Clubs Regulation 2009* requiring the preparation and submission of quarterly financial statements to the governing body.
441. Similarly, Particular 10.3(g) alleges that Mr Zigouras is not a "fit and proper" person by reason of the Club's failure to meet the requirements of clause 17 of the *Gaming Machines Regulation 2010* to record prescribed information about the gaming machines kept on the Club's premises.
442. Particular 10.3(j) alleges that Mr Zigouras is not a fit and proper person by reason of the Club's failure to record in its minutes the adoption of the minutes at the last meeting and financial reports reflecting the true financial position of the Club. These matters are alleged to be failures to comply with section 9 of the *ClubsNSW Best Practice Guidelines*.
443. In response to Particulars 10.3(f), 10.3(g) and 10.3(j), Mr Zigouras submits at paragraph 30 of the Zigouras Submission that he did not "consider himself responsible" for the conduct of what he describes as "administrative tasks" such as the preparation of financial or gaming reports or the recording of minutes of the Board's meetings, as he "believed" that those tasks fell to "the Club's secretary or management".
444. The Authority rejects this submission and repeats its findings and observations on Grounds 4 and 5 in relation to the Club and Particulars 7.3(f), 7.3(g) and 7.3(j) on the responsibility of the governing body for regulatory matters that involve functions conducted at Board level. The Authority is satisfied that Particulars 10.3(f), (g) and (j) are established against Mr Zigouras.
445. However, while the Authority accepts the factual allegation in Particular 7.3(j) that the Wentworth Club board minutes did not conform with section 9 of the *Best Practice Guidelines* with respect to adopting previous meeting minutes and finance reports

reflecting the true position of the Club, the Authority does not make an adverse finding as to the governing body's fitness and propriety by reason of non-conformance with industry guidelines in the context of a disciplinary complaint.

- 446.** On Particular 10.3(l) regarding Mr Zigouras' failure to undertake training to acquire better knowledge of the Wentworth Club's statutory obligations and his own duties as a member of the Club's governing body, and Particular 10.3(m), regarding a failure to provide training for the Club's governing body, Mr Zigouras concedes that no formal training was undertaken by members of the Club's governing body. At paragraph 32 of the Zigouras Submission, he makes the general contention that the Club's external lawyers "would have advised of all legislative training requirements" and "offered any appropriate training".
- 447.** At paragraph 20 of the Zigouras Statement, Mr Zigouras submits that at the time of the *Mildura Club Board's* appointment to the Club, the Board was receiving advice from *Ryan Commercial Lawyers*. He understood that this advice was being given to Mr Harlock on behalf of both clubs, but he did not see any advice and relied on Mr Harlock to pass on any such advice.
- 448.** Mr Zigouras also "understands" that the Club's board was addressed by Mr John Kelly's lawyers, *Maloney Anderson*. He states that at no stage was he provided with advice about the impact of NSW legislation on the agreements the Club board was proposing to implement. He submits that *Ryan Commercial* "did not offer" any training to the Mildura Board's members and Mr Zigouras "wrongly assumed" that "all legislative requirements would be fulfilled by *Ryan Commercial*".
- 449.** In the absence of evidence as to what the Wentworth Club's lawyers were engaged to advise and what advice was provided, the Authority is not in a position to attribute fault to the Club's lawyers, or find that the governing body fell into error in reliance upon external advice.
- 450.** The Authority accepts Mr Zigouras statement that the directors were not provided with advice on the impact of New South Wales legislative requirements but these Particulars of the Complaint are concerned with a lack of relevant training undertaken by Mr Zigouras and the other directors, which is established on the evidence and material before the Authority.
- 451.** The Authority repeats its findings on Particulars 7.3(l) and (m) and is satisfied that Particulars 10.3(l) and (m) are established.
- 452.** On Particular 10.3(n), which concerns the failure to engage a registered valuer on the lease payments to be made by the Club to Bellevine Pty Ltd given the relationship between the Mildura Club and Mr John Kelly, Mr Zigouras submits at paragraph 31 of the Zigouras Submission that he was not present at the meeting of 20 August 2014 at which the relevant lease was approved, that he did not sign the lease, and that he cannot be held responsible for the terms on which the lease was entered into.
- 453.** While accepting that Mr Zigouras was not present at this meeting the Authority notes that Mr Zigouras does not contend that he was unaware of the Club's proposed entry into this substantial lease, nor that he took issue with the process that gave rise to its execution. The Authority repeats its findings and observations on Particular 7.3(n) and is satisfied that Particular 10.3(n) is established.
- 454.** Particular 10.3(o), which concerns the failure to ensure that the directorships of the Club were notified to ASIC, Mr Zigouras submits at paragraph 33 of the Zigouras Submission

that the task of notifying ASIC of changes in the company directorship fell to “the Club’s secretary or the Club’s accountants” and therefore he was “not personally responsible” for this alleged failure. The Authority accepts that submission and repeats its findings and observations on Particular 7.3(o) in respect of Particular 10.3(o).

455. Ground 10 is established.

Findings on Ground 11 – Mr Kevin Hogarth, Director

456. The Authority is satisfied that Particular 11.1, which alleges that Mr Kevin Hogarth is not “fit and proper” to act as a member of a club’s governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of the findings on the other Particulars of this Ground.

457. There is no evidence of dishonesty on the part of Mr Hogarth or the other directors, but he did not possess sufficient knowledge and ability with respect to regulatory matters arising under the Act of which club directors need be aware. This lack of knowledge contributed to the Club’s non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.

458. Mr Hogarth admits, as alleged in Particular 11.2, that he has been a member of the Club’s governing body since 11 July 2014. The Authority has made this finding on the basis of this admission and the Board meeting minutes for 11 July 2014.

459. Mr Hogarth submits at paragraphs 14.19 to 14.21 of the Hogarth Submission that the contraventions alleged are not sufficient to characterise him as improper or unfit for the purposes of section 57(3)(g) of the Act; that he has not acted dishonestly; and that he is willing to give an undertaking that he will not stand as a member of any registered club in NSW for a period of 3 years.

460. Particular 11.3 alleges that Mr Hogarth is not a “fit and proper” person as he failed to exercise his duties as a member of the Club’s governing body with a degree of knowledge, ability, care and diligence.

461. With regard to Particulars 11.3(a) through 11.3(o), the Authority repeats the findings made on Particulars 8.3(a) through (o) respectively and is satisfied that Particulars 11.3(a) through 11.3(o) are established in respect of Mr Hogarth. On the same analysis, the Authority does not find that the matters specified in Particulars 11.3(j), (k) and (o) support an adverse finding as to Mr Hogarth’s fitness or propriety as a director

462. Particular 11.3(p) alleges that Mr Hogarth is not a “fit and proper” person by reason of his lack of knowledge with regard to his duties as a member of a governing body. The Complainant contends that this is evidenced by his statement in the Hogarth Interview, when, in response to a question about the Wentworth Club’s major asset, being its gaming machine entitlements, Mr Hogarth stated:

We’ve been told that so many being sold and all about the last 10 and all this sort of stuff, but I didn’t sort of think it was much to do with me so I just let it go.

463. At paragraph 14.18 of the Hogarth Statement Mr Hogarth responds that the sale of the Wentworth Club’s gaming machine entitlements occurred after the Club’s closure and after the Club had engaged *Russell Corporate Advisory* to provide external advice. He submits that the “sale of assets” is a matter in respect of which Mr Hogarth was entitled to rely upon Mr Harlock and external advice.

464. The Authority is satisfied that Mr Hogarth did not possess knowledge as to his duties as a member of a governing body. This is established by the concessions that he has made in the Hogarth Submission and underscored by the lack of training that is found above.
465. The brief comment specified in Particular 11.3(p) adds little to establishing Mr Hogarth's lack of knowledge with regard to the Act. More pertinent with regard to that issue is the Wentworth Club's non-compliance with clause 17 of the *Gaming Machines Regulation 2010*, the subject of Ground 5 and Particular 7.3(g).
466. Ground 11 is established.

Findings on Ground 12 – Ms Sally Layton, Director

467. The Authority is satisfied that Particular 12.1, which alleges that Ms Sally Layton is not "fit and proper" to act as a member of the Club's governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of findings on the other Particulars of this Ground.
468. There is no evidence of dishonesty on the part of Ms Layton but she did not possess sufficient knowledge and ability with respect to regulatory matters arising under the Act of which club directors need be aware. This lack of knowledge contributed to the Club's non-compliance with the matters specified in Grounds 1-5 of this Complaint.
469. Ms Layton states at paragraphs 63 to 64 of the Layton Statement in relation to Particular 12.3 generally that she has had "significant community involvement" including in the Black Saturday fires in Victoria (for which she received a *National Emergency Medal* from Her Majesty the Queen in October 2011). Ms Layton also acts as an administrator for an "elderly neighbour and friend". The Authority accepts these contentions about her community involvement.
470. While it is not in dispute the Authority is satisfied, as alleged in Particular 12.2, that Ms Layton has been a member of the Wentworth Club's governing body since 11 July 2014. The Authority makes this finding on the basis of the Board meeting minutes for 11 July 2014.
471. Particular 12.3 alleges that Ms Layton is not a "fit and proper" person as she failed to exercise her duties as a member of the Club's governing body with a degree of knowledge, ability, care and diligence.
472. Ms Layton submits at paragraphs 15.24 to 15.26 of the Layton Submission that the contraventions alleged are not sufficient to characterise her as improper or unfit for the purposes of section 57(3)(g) of the Act; that she has not acted dishonestly; and that she is willing to give an undertaking that she will not stand as a member of any registered club in NSW for a period of 3 years.
473. With regard to Particulars 12.3(a) through 12.3(o), the Authority repeats the findings made on Particulars 8.3(a) through (o) respectively and is satisfied that Particulars 12.3(a) through 12.3(o) are established in respect of Ms Layton. On the same analysis, the Authority does not find that the matters specified in Particulars 12.3(j), (k) and (o) support an adverse finding as to Ms Layton's fitness or propriety as a director
474. On Particular 12.3(f), which concerns the Wentworth Club's failure to meet the requirements of clause 17 of the *Registered Clubs Regulation 2009*, Ms Layton contends at paragraph 15.9 of the Layton Submission and paragraph 35 of the Layton Statement that she brought the requirements of clause 17 to Mr Harlock's attention on several

occasions including “in about November/December 2014”, that she was informed that it was “all under control”, and that meeting minutes also record her requests for financial statements. Ms Layton also refers to the minutes of the Club Board meeting of 14 November 2014 in this regard.

- 475.** The Authority repeats its observations and findings on Ground 4 in relation to the Club and Particular 7.3(f). While accepting that Ms Layton did indicate some level of awareness of the need for financial statements and (like the other directors) placed reliance upon the Club’s secretary/manager, Mr Harlock, the Authority is satisfied that Particular 12.3(f) is established against Ms Layton.
- 476.** On Particular 12.3(g), which concerns the Wentworth Club’s failure to comply with clause 17 of the *Gaming Machines Regulation 2010*, Ms Layton “repeats and relies” on the Gilchrist Connell Respondents’ submissions in response to Ground 5. Ms Layton contends at paragraph 15.11 of the Layton Submission and paragraph 38 of the Layton Statement that she brought these requirements to Mr Harlock’s attention and was informed that he and Mr Dickens were “liaising with the Authority about it”.
- 477.** The Authority repeats its observations and findings on Ground 5 in relation to the Club and Particular 7.3(g), and is satisfied that Particular 12.3(g) is established against Ms Layton.
- 478.** On Particular 12.3(j), concerning the failure to comply with section 9 of the ClubsNSW *Best Practice Guidelines*, Ms Layton submits at paragraph 15.12 of the Layton Submission and paragraph 42 of the Layton Statement that she raised the “quality of minutes” with Mr Harlock who informed her he had “legal advice” that the minutes were acceptable.
- 479.** The Authority repeats its observations and findings on Particular 7.3(j), and is satisfied that the allegation in Particular 12.3(j) is established against Ms Layton. The Authority makes this finding on the basis of page 12 of the Smith Interview, page 6 of the Russell Interview and the minutes of meetings of the Club’s governing body.
- 480.** However the Authority does not make an adverse finding as to Ms Layton’s fitness and propriety by reason of non-conformance with industry guidelines in the context of a disciplinary complaint.
- 481.** On Particular 12.3(k), concerning the failure to comply with section 10 of the ClubsNSW *Code of Practice*, Ms Layton submits at paragraph 15.14 of the Layton Submission and paragraph 43 of the Layton Statement that Mr Harlock was the “only person” who “presented himself”, and whom she regarded, as the secretary.
- 482.** The Authority repeats its observations and findings on Grounds 1 to 5 in relation to the Club and Particular 7.3(k), and is satisfied that Particular 12.3(k) is established against Ms Layton. While the Authority is satisfied that Ms Layton did not bring these matters to the attention of Mr Harlock, the Wentworth Club’s failing with regard to observing section 10 of the ClubsNSW *Code of Practice* does not provide a basis for an adverse finding as to Ms Layton’s fitness and propriety.
- 483.** On Particular 12.3(l), which concerns Ms Layton’s failure to undertake training to acquire better knowledge of the Club’s statutory obligations and her own duties as a member of the governing body, and Particular 12.3(m), which concerns a failure to provide training for the Club’s governing body and secretary, Ms Layton contends at paragraph 15.15 of the Layton Submission that she did in fact undertake a training course at the Institute of

Company Directors in 2012 which dealt with “finance, strategy, risk and governance for directors”.

- 484.** Ms Layton further contends at paragraph 15.16 of the Layton Submission that she was aware of legislative requirements for training in NSW, that she brought these requirements to the attention of Mr Harlock and the governing body, and that she “attempted to arrange training on site”. [The Authority notes that no documentary evidence has been provided by Ms Layton of the completion of any training course.]
- 485.** The Authority repeats its observations and findings on Particulars 7.3(l) and 7.3(m), and is satisfied that Particulars 12.3(l) and 12.3(m) are established against Ms Layton.
- 486.** Particular 12.3(p) alleges that Ms Layton is not a “fit and proper” person by reason of her lack of knowledge as to her duties in relation to her position as a member of the Club’s governing body, as evidenced by her statement in the Layton Interview that:

There was a – there was a distinct lack of willingness to engage with New South Wales legislation, I guess.

- 487.** Ms Layton contends at paragraph 15.19 of the Layton Submission and paragraph 53 of the Layton Statement that this statement was not made about herself but was a “clear reference to the President and to Mr Harlock”.
- 488.** The Authority is satisfied, considering the context of that statement, that Ms Layton’s concession about a lack of engagement with New South Wales legislation was directed to the Wentworth Club generally and not herself specifically.
- 489.** However while Ms Layton’s statements above represent a relevant concession with respect to the level of knowledge held by the Club, an assessment of Ms Layton’s fitness is better served by a cumulative assessment of those contraventions of the legislation that have been proven on the evidence and in respect of which the governing body may be attributed responsibility – rather than this brief statement in isolation.
- 490.** The Authority does not make an adverse finding as to Ms Layton’s fitness and propriety on the basis of this statement in isolation, but it does concede a lack of knowledge at board level, which the Authority has otherwise found to be the case, underscored by a lack of relevant training received by Ms Layton, the other directors or Mr Harlock with regard to their duties under the Act.
- 491.** Ground 12 is established.

Findings on Ground 13 – Mr Christopher Hobart, Director

- 492.** The Authority is satisfied that Particular 13.1, which alleges that Mr Christopher Hobart is not “fit and proper” to act as a member of the Club’s governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of findings on the other Particulars of this Ground.
- 493.** There is no evidence of dishonesty on the part of Mr Hobart, but he did not possess sufficient knowledge and ability with respect to regulatory matters arising under the Act of which club directors need be aware. This lack of knowledge contributed to the Club’s non-compliance with the matters specified in Grounds 1-5 of this Complaint.

- 494.** Mr Hobart admits, as alleged in Particular 13.2, that he has been a member of the Club's governing body since 11 July 2014. The Authority makes this finding on the basis of the Board meeting minutes for 11 July 2014 and this admission.
- 495.** In relation to Particular 13.3, which alleges that Mr Hobart is not a "fit and proper" person as he failed to exercise his duties as a member of the Club's governing body with a degree of knowledge, ability, care and diligence, Mr Hobart submits at paragraph 16.1 of the Hobart Submission (through his legal representatives *Gilchrist Connell*) that the sub-Particulars "individually and cumulatively" do not support a finding that he is not "fit and proper".
- 496.** Mr Hobart submits at paragraphs 16.24 to 16.27 of the Hobart Submission that the contraventions alleged are not sufficient to characterise him as improper or unfit for the purposes of section 57(3)(g) of the Act; that his intentions were "at all times genuine"; and that he is willing to give an undertaking that he will not stand as a member of any registered club in NSW for a period of 3 years.
- 497.** Mr Hobart further submits that his personal "integrity, honesty and community mindedness" is demonstrated by 16 years of contribution to the "not-for-profit sector". The Authority accepts that Mr Hobart has this history of commitment to the not for profit sector.
- 498.** With regard to Particulars 13.3(a) through 13.3(o), the Authority repeats the findings made on Particulars 8.3(a) through (o) respectively and is satisfied that Particulars 13.3(a) through 13.3(o) are established in respect of Mr Hobart. On the same analysis, the Authority does not find that the matters specified in Particulars 13.3(j), (k) and (o) support an adverse finding as to Mr Hobart's fitness or propriety as a director
- 499.** On Particular 13.3(l), which concerns Mr Hobart's failure to undertake training to acquire better knowledge of the Club's statutory obligations and his own duties as a member of the governing body, and Particular 13.3(m), which concerns a failure to provide training for the Club's governing body and secretary, Mr Hobart submits at paragraphs 16.13 to 16.14 of the Hobart Submission and paragraphs 42 to 45 of the Hobart Statement that he "began familiarising" himself with the Club's statutory obligations by downloading a copy of the Act in "about August 2014", through which he ascertained there was a 12-month window to undertake training.
- 500.** He submits that prior to his appointment to the Wentworth Club Board, he had undertaken a *Certificate of Governance* course with the Australian Institute of Company Directors in Melbourne and also attended a "governance training session" during his time with the Club.
- 501.** Mr Hobart further submits through his solicitor at paragraph 16.16 of the Hobart Submission that he "encouraged" the Club Board to "pursue a training agenda".
- 502.** These are relevant submissions to which the Authority has had regard when considering Mr Hobart's knowledge of the legislation, noting that the Company Directors course would focus on general corporate governance (*Corporations Act* matters) rather than *Registered Clubs* issues, but that is still relevant education.
- 503.** The Authority notes that no documentary evidence has been provided by Mr Hobart of the completion of any training course, but accepts that his prior course of training was conducted by Mr Hobart.

- 504.** Having considered his submissions as to the education and training undertaken by Mr Hobart and noting that the issue raised by the Complainant is training with regard to Mr Hobart's statutory obligations under the Act with regard to his duties as a director of a registered club in New South Wales, the Authority is satisfied that Particulars 13.3(l) and 13.3(m) are established against Mr Hobart.
- 505.** Particular 13.3(p) alleges that Mr Hobart is not a "fit and proper" person by reason of his lack of knowledge in relation to his duties as a member of the Wentworth Club's governing body, as evidenced by his statement in the Hobart Interview:
- I struggle with how we've failed to meet our statutory and regulatory requirements. That and we as a board, we need to take responsibility for that.*
- 506.** At paragraph 16.19 of the Hobart Submission, Mr Hobart contests this allegation on the basis that "OLGR has misconstrued this statement" which was meant as an "acknowledgement" that the Club has failed to meet legislative requirements in circumstances where the governing body was "attempting to revive and rebuild the Club".
- 507.** At paragraphs 16.24 and 16.26 of the Hobart Submission, Mr Hobart submits generally in response to Particular 13.3 that in undertaking training, being cognisant of legislative requirements, and drawing them to Mr Harlock's attention, his conduct was "of a high standard" and on this basis the Authority cannot be satisfied that the allegations in this Particular are made out.
- 508.** The Authority assesses Mr Hobart's fitness on the basis of a cumulative assessment of the Club's proven regulatory failings, once findings are made in that regard rather than this acknowledgement of the Board's responsibility, taken in isolation. The Authority does not make an adverse finding as to Mr Hobart's fitness and propriety on the basis of the allegations in Particular 13.3(p).
- 509.** Ground 13 is established.

Findings on Ground 14 – Mr Shane Smith, Director

- 510.** The Authority is satisfied that Particular 14.1, which alleges that Mr Shane Smith is not "fit and proper" to act as a member of a club's governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of the findings on the other Particulars of this Ground.
- 511.** There is no evidence of dishonesty on the part of Mr Smith, he did not possess sufficient knowledge and ability with respect to regulatory matters arising under the Act of which club directors need to be aware. This lack of knowledge contributed to the Club's non-compliance with the matters specified in Grounds 1 to 5 of this Complaint.
- 512.** At paragraph 17.3 of the Smith Submission, Mr Smith admits, as alleged in Particular 14.2, that he has been a member of the Club's governing body since "about October 2014". Unlike the other directors appointed by the members on 14 July 2014, the Authority is satisfied, on the basis of the Smith Submission, that Mr Smith was appointed by the governing body in October 2014.
- 513.** Particular 14.2 is established.
- 514.** Mr Smith submits at paragraph 17.3 of the Smith Submission and paragraph 3 of the Smith Statement that the conduct at issue in several of the grounds identified in the Complaint had "already occurred" by the date of his appointment. The Authority accepts

that this is the case and notes that the matters specified in Grounds 1 and 2 against the Club are not attributed by the Complainant to Mr Smith.

- 515.** In relation to Particular 14.3, which alleges that Mr Smith is not a “fit and proper” person as he failed to exercise his duties as a member of the Club’s governing body with a degree of knowledge, ability, care and diligence, Mr Smith submits at paragraph 17.2 of the Smith Submission (through his legal representatives *Gilchrist Connell*) that the sub-Particulars “individually and cumulatively” do not support a finding that he is not “fit and proper”.
- 516.** Mr Smith submits at paragraphs 17.31 to 17.33 of the Smith Submission that the contraventions alleged are not sufficient to characterise him as improper or unfit for the purposes of section 57(3)(g) of the Act; that he has not acted dishonestly; and that he is willing to give an undertaking that he will not stand as a member of any registered club in NSW for a period of 3 years.
- 517.** Mr Smith contends that a finding that he is not fit and proper would have grave consequences for his “small business”, which has been in operation for 30 years and has a “strong community focus”, as well as his business and personal reputations.
- 518.** While the Authority finds that it is generally credible to submit that an adverse finding will have some reputational impact upon a respondent, Mr Smith has not substantiated how a finding on a lack of fitness to *direct a registered club in New South Wales* necessarily adversely impacts his business affairs.
- 519.** On the allegation in Particular 14.3(a), the Authority repeats its findings on Particular 8.3(c), except with regard to September 2014 when Mr Smith was not a member of the governing body. On the allegation in Particular 14.3(b), the Authority repeats its findings on Particular 8.3(d). On the allegation in Particular 14.3(c), the Authority repeats its findings on Particular 8.3(e). On the allegation in Particular 14.3(d), the Authority repeats its findings on Particular 8.3(f). On the allegation in Particular 14.3(e), the Authority repeats its findings on Particular 8.3(g). On the allegation in Particular 14.3(f), the Authority repeats its findings on Particular 8.3(h). On the allegation in Particular 14.3(g), the Authority repeats its findings on Particular 8.3(i). On the allegation in Particular 14.3(h), the Authority repeats its findings on Particular 8.3(j). On the allegation in Particular 14.3(i), the Authority repeats its findings on Particular 8.3(k). On the allegation in Particular 14.3(j), the Authority repeats its findings on Particular 8.3(l). On the allegation in Particular 14.3(k), the Authority repeats its findings on Particular 8.3(m). On the allegation in Particular 14.3(l), the Authority repeats its findings on Particular 8.3(n).
- 520.** On the same analysis, the Authority finds that the matters specified in Particulars 14.3(h), (i) and (m) of the Complaint *do not* support an adverse finding as to Mr Smith’s fitness or propriety as a director of a registered club.
- 521.** On Particular 14.3(e), which concerns the Wentworth Club’s failure to comply with clause 17 of the *Gaming Machines Regulation 2010*, Mr Smith “repeats” the submissions made in the Gilchrist Connell Submission in response to Ground 5. He also submits at paragraph 17.15 of the Smith Submission and paragraphs 33 to 34 of the Smith Statement that he relied upon *Mr Dickens* to produce these reports as a “matter of practical operation”. He also submits that “to his credit” he made his own enquiries.
- 522.** The Authority repeats its observations and findings on Ground 5 in relation to the Club and Particular 7.3(g), and is satisfied that Particular 14.3(e) is established against Mr Smith.

523. Noting that there is no Particular 14.3(n) alleged against Mr Smith, Particular 14.3(o) alleges that Mr Smith is not a “fit and proper” person by reason of his lack of knowledge in relation to his duties as a member of the Club’s governing body, as evidenced by his statement in the Smith Interview that:

Look, I just think that – you know, the board has got a lot to answer for as a board, including myself, because we didn’t know rules and regulations as you produced to me today. I guess somehow we should have known that. But then again, if they do a – they do a test in Mildura the same thing is going to happen.

524. Mr Smith responds at paragraphs 17.27 to 17.28 of the Smith Submission that it is “not necessary” for him to have “detailed knowledge” of each legislative obligation which “binds the Club” as this would be “overly onerous”. Mr Smith submits that he was entitled to rely upon the Club’s legal advisors in this regard, and that he in fact “made independent enquiries” to familiarise himself with the “obligations and duties” upon him.

525. Nevertheless, awareness of those provisions of the Act that directly concern a registered club director’s functions is an appropriate element of assessing a director’s fitness and propriety as a member of a governing body. The lack of knowledge demonstrated by Mr Smith and the other directors is underscored by an absence of evidence that Mr Smith underwent or arranged relevant training either before or after accepting appointment as a director of the Wentworth Club.

526. In the comment attributed to him in Particular 14.3(o) Mr Smith makes certain frank admissions that the Wentworth Club Board was not aware of the legislative requirements they were expected to oversee as members of a governing body. Particular 14.3(o) is established.

527. Ground 14 is established.

Ground 15 – Mr Nicholas Dickens, Secretary/Manager

528. The Authority is satisfied that Particular 15.1, which alleges that Mr Nicholas Dickens is not “fit and proper” to act as a member of the Club’s governing body, is established. This is a conclusion that has been reached on the basis of a cumulative assessment of findings on the other Particulars of this Ground.

529. The Authority is satisfied that Mr Dickens did not possess sufficient knowledge or ability with regard to regulatory matters arising under the Act. This arose primarily through his decision to remain on the record as the Wentworth Club’s secretary manager in circumstances when, after July 2014, he was no longer actually serving as the Wentworth Club’s chief executive and secretary/manager.

530. Remaining on the record during the relevant period of this Complaint is conduct that is likely to mislead the Authority and other regulatory bodies (such as LGNSW). It also exposes Mr Dickens to share in responsibility for the Club’s regulatory non-compliance that has been established in Grounds 1 to 5.

531. Particular 15.2 alleges that Mr Dickens has been the secretary of the Club since 21 July 2014. This is not disputed by Mr Dickens and the Authority is satisfied that this Particular is established.

532. At paragraph 18.1 of the Dickens Submission and paragraphs 4 to 13 of the Dickens Statement Mr Dickens contends that he was made secretary “prior to the period of administration, in about February 2014” and that he held this position “for all of about two

weeks before the Club closed". Mr Dickens submits that he only remained on the Club's liquor licence as secretary to "assist with the Club reopening".

533. Mr Dickens contends at paragraph 18.2 of the Dickens Submission that the other members of the governing body "did not consider him to be the Secretary" and that "Mr Harlock filled that role". He submits that his job revolved around "managing the accounts payable, MYOB and helping on reception".

534. On the extent of his role as Club's secretary/manager during the relevant period, Mr Dickens contends at paragraphs 11 to 13 and 16 to 17 of the Dickens Statement that:

On 27 June 2014 I applied to become the secretary of the Wentworth Club because I was asked by Ms Harlock as he had not undertaken the course for responsible service of alcohol and gambling I had.

Following this I expected and understood that Mr Harlock was performing the role of general manager and that this entitled him performing all of the physical obligations usually performed by the secretary of the club, such as keeping minutes.

After the Wentworth Club reopened I was never given a job title or job description. A small part of my job involved assisting with my finances. I performed this aspect of my role under the supervision of Mr Closey who was the finance officer of the Wentworth Club.

...

In any event I did not believe it was within my role to ensure that any legislative notifications were provided. This is because Mr Harlock was the CEO and had control of the Wentworth Club and was responsible for its management.

Further, I understood that Mr Harlock was obtaining legal advice in relation to the arrangements and I expected that this would have included compliance requirements in relation to those arrangements.

535. As noted by the Authority in its findings with regard to Mr Harlock in Ground 6, the Authority accepts that Mr Harlock was actually managing the business and acting as the Wentworth Club's chief executive and secretary/manager from around 11 July 2014.

536. The Authority is satisfied, on the basis of the evidence and material specified above in support of its findings on Ground 4, Mr Dickens' own evidence at paragraphs 18.1 through 18.6 of the Dickens Submission that Mr Harlock was acting as chief executive while Mr Dickens' role had been limited to "managing the accounts payable, MYOB and helping on reception". The Authority notes the Club's concession that Mr Harlock was acting as the Wentworth Club's CEO and Secretary, that while Mr Dickens remained the secretary on the record, his role was in reality much reduced as Mr Harlock actually performed the role of the Wentworth Club's chief executive officer from that point.

537. In relation to Particular 15.3, which alleges that Mr Dickens is not a "fit and proper" person as he failed to exercise his duties as secretary with a degree of knowledge, ability, care and diligence, Mr Dickens submits at paragraphs 18.20 to 18.23 of the Dickens Submission (through his legal representatives *Gilchrist Connell*) that the alleged contraventions are not sufficient to characterise him as improper or unfit for the purposes of section 57(3)(g) of the Act.

538. Mr Dickens further submits that his intentions were "always honourable" and states that he is willing to give an undertaking that he will not stand as a member of any registered club in NSW for a period of 3 years.

539. With regard to Particulars 15.3(a) through 15.3(o), the Authority repeats the findings made on Particulars 6.3(a) through (o) respectively and is satisfied that Particulars 15.3(a) through 15.3(o) are established in respect of Mr Dickens. He *shares* responsibilities for these matters by reason that he remained as secretary/manager on the record even though he was no longer acting as the Club's secretary/manager and chief executive, a function that Mr Harlock had acquired, as found by the Authority on the basis of the evidence or material noted in the findings on Ground 4 above. On the same analysis, the Authority does not find that the matters specified in Particulars 15.3(j) and (k) support an adverse finding as to Mr Dickens' fitness or propriety as a secretary.
540. Particular 15.3(p) alleges that Mr Dickens is not a "fit and proper" person by reason of his "lack of knowledge" in relation to his duties as the Club's secretary, as evidenced by his response in the Dickens Interview, when asked if he had undertaken any training in relation to his role as secretary or whether he was aware of the roles and responsibilities of the secretary of a registered club: "No".
541. Mr Dickens refers to his response to Particular 15.3(l) at paragraph 18.16 of the Dickens Submission and paragraph 45 of the Dickens Statement that he "conducted some training", and that he was "more than happy to undertake additional training" but did not due to "workload" and his understanding that his position was "temporary".
542. The Authority assesses Mr Dickens' fitness on the basis of a cumulative assessment of the Club's proven regulatory failings while Mr Dickens elected to remain on the record as its secretary. Mr Dickens' concessions as to his lack of knowledge and training with regard to regulatory matters and his decision to remain on the record notwithstanding that his role had changed support the finding that Mr Dickens does not possess the knowledge and ability to act as a club secretary manager.
543. Ground 15 is established.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

544. On 13 September 2016 a letter notifying the Authority's findings on the Grounds of Complaint (**Findings Letter**) was sent to the parties, inviting submissions from the Complainant confined to the question of what, if any, disciplinary action should be taken against the Club and the Respondents in light of the Authority's findings.

Final Submission from the Complainant dated 20 September 2016

545. On 20 September 2016, the Complainant provided a final submission to the Authority addressing the question of disciplinary action. Briefly, the Complainant notes that Grounds 1 through 15 of the Complaint are established and that only Particular 3.3 has not been established.
546. In light of the Authority's findings, the Complainant maintains its earlier position that an "appropriate" period of disqualification for each of the individuals the subject of Grounds 6 through 15 of the Complaint who were found to be "not fit and proper" is the maximum period available under the Act of 3 years.
547. The Complainant notes that it also continues to press proposed Orders 2, 3 and 4 as set out in the Complaint Letter. With regard to proposed Order 4 seeking that the Club pay the costs associated with the conduct of the investigation under section 35A of the Act, the Complainant attaches to its submission a breakdown of the costs incurred by LGNSW in respect of the investigation into the Club's operations which gave rise to the Complaint, which amount to **\$27,340.80**.

Further Correspondence between the Authority and the Parties

548. On 6 October 2016, the Authority wrote to *Gilchrist Connell* and *Sparke Helmore* inviting final submissions from their respective clients and noting that, subject to consideration of any final submissions from the respondents, the Authority was contemplating taking no action against the Wentworth Club directors were they to provide, within 14 days, a written undertaking not to act as a secretary or director of a registered club in New South Wales for a period of 2 years, or until such time during that period when they have completed either:
- (a) the course entitled “Board Governance, the Company Secretary and the General Manager” conducted by or on behalf of the Club Managers’ Association of Australia; or
 - (b) any other course relating to club governance approved by the Secretary of the NSW Department of Justice.

Final Submission from the Gilchrist Connell Respondents received on 19 October 2016

549. On 19 October 2016 *Gilchrist Connell*, the legal representatives for the Club and six of its directors (Messrs Cawood, Fiesley, Hogarth, Hobart and Smith and Ms Layton) provided final submissions on behalf of their clients, accompanied by written undertakings from each of those six directors (discussed below).
550. With regard to Grounds 1 through 5 of the Complaint, which concern the Club, the Gilchrist Connell Respondents submit that there are three “very good reasons” as to why no financial penalty ought to be imposed nor any order for costs made against the Club.
551. First, any financial penalty and any order to pay the costs incurred by LGNSW will not be a provable debt in the liquidation of the Club (*ACCC v Dateline.Net.Au Pty Ltd* (2007) ATPR 42-138; [2006] FCA 1427 at [117] (not challenged on appeal) and *Foots v Southern Cross Mine Management Pty Ltd* [2007] HCA 56; (2007) 234 CLR 52).
552. Second, as discussed by the Full Court of the Federal Court of Australia in *ACCC v Dateline.Net.Au Pty Ltd* (2007) 244 ALR 300, whether a penalty is imposed on a company in such a position depends on all the circumstances, including the fact of its liquidation and whether or not a penalty would in fact be paid. The Gilchrist Connell Respondents submit that a penalty is “meaningless” where a company is being wound up, in the absence of any evidence that it could be paid. There is no such evidence before the Authority.
553. Third, all other factors ordinarily taken into account are either neutral or against the imposition of any financial penalty or order as to costs. The Gilchrist Connell Respondents submit that “none of the contraventions are the result of deliberate disregard for the law, nor did they occur over an extended period of time”. The Club “cannot be said to have had a culture that was not conducive to compliance” as the individuals involved simply did not know and, when alerted to the Club’s failings, showed a disposition to cooperate with the authorities.
554. The Gilchrist Connell Respondents submit that in the above circumstances, no further action should be taken in respect of the Club.
555. The Gilchrist Connell Respondents note that each of Grounds of Complaint in respect of each of the individual directors was established, although some Particulars were established in part only and others did not support an adverse finding as to fitness and

propriety. The Authority also did not find any evidence of dishonesty on the part of any of the Gilchrist Connell Respondents.

- 556.** Furthermore, the Gilchrist Connell Respondents themselves approached the (then) OLGRC about the legislative breaches that formed the subject matter of the Complaint. The individual directors did not knowingly breach their obligations or attempt to conceal them. The Authority ultimately concluded that the lack of knowledge of the Gilchrist Connell Respondents as to NSW legislative requirements led to the Grounds of Complaint being established against them.
- 557.** The Gilchrist Connell Respondents refer to their previous submissions of 26 May 2016, noting the character references provided in support of each individual director and the impact of these proceedings on the directors and their families. Further, none of the Gilchrist Connell Respondents have previously been the subject of disciplinary proceedings of any kind.
- 558.** The Gilchrist Connell Respondents note that they offered an undertaking not to be a member of the governing body of any registered club in NSW for a period of three years, on the basis that the Authority make no adverse finding with regard to fitness and propriety. This demonstrates a “willingness” on the part of the Gilchrist Connell Respondents to cease involvement with any NSW registered club.
- 559.** As for the lack of knowledge, the Gilchrist Connell Respondents submit that these proceedings alone are sufficient to inform the individual directors of the legislative provisions of which they were previously unaware. Further, the Authority accepted that some of the Gilchrist Connell Respondents had undergone relevant training subsequent to the conduct giving rise to the Grounds of Complaint.
- 560.** As for the protection of NSW residents, the Gilchrist Connell Respondents submit that they reside in places other than New South Wales and are “invested” in community involvement in their respective States. There is nothing to suggest that NSW residents need to be further protected from the Gilchrist Connell Respondents acting as governing members of any registered club in NSW, nor that the events that have taken place do not inform the Gilchrist Connell Respondents (and others) of their need for adequate training and compliance.
- 561.** The Gilchrist Connell Respondents conclude that in all of the circumstances, there should be no disciplinary action imposed upon the individual directors.
- 562.** Attached to the submission from the Gilchrist Connell Respondents are six undertakings dated either 17 or 18 October 2016 from Messrs Cawood, Fiesley, Hogarth, Hobart and Smith and Ms Layton. Each of these undertakings states that the individual concerned will neither seek nor accept appointment as a secretary or member of the governing body of any registered club in New South Wales for a period of 2 years from the date of the undertaking, until such time as he or she has completed the course entitled “Board Governance, the Company Secretary and the General Manager” as conducted by or on behalf of the Club Managers’ Association of Australia, or any other course relating to club governance approved by the Secretary of the NSW Department of Justice.

Final Submission from Mr Robson received on 20 October 2016

- 563.** On 20 October 2016 Mr Robson, through his solicitors *Sparke Helmore*, provided a final submission on disciplinary action in relation to the Complaint, accompanied by a signed written undertaking dated 18 October 2016 which states that he will neither seek nor accept appointment as a secretary or member of the governing body of any registered

club in New South Wales for a period of 2 years from the date of the undertaking, until such time as he has completed the course entitled “Board Governance, the Company Secretary and the General Manager” as conducted by or on behalf of the Club Managers’ Association of Australia, or any other course relating to club governance approved by the Secretary of the NSW Department of Justice.

- 564.** Briefly, Mr Robson submits that he has been president of the Mildura Club for over 20 years. Mr Robson has been a member of the Wentworth Club since 1958. He has a “distinguished civic history”, having served as a National Serviceman and continuing to volunteer, despite his ill health, with the National Servicemen’s Association and Legacy.
- 565.** Mr Robson submits that he, “from the earliest occasion”, has acknowledged that he did not adequately apprise himself of the legislative obligations imposed upon a registered club in New South Wales. He believed that he acted at all times with the best interests of the Club in mind and with a view to “salvaging the Club as a community resource”.
- 566.** Mr Robson submits that there is no suggestion, nor should there be, that Mr Robson sought to benefit personally from any of the acts or omissions relied upon in support of the Complaint against him. As found by the Authority, Mr Robson’s “only real failing” was a lack of familiarity with New South Wales legislation while seeking to assist a club in a different jurisdiction. Mr Robson “may” also have placed too much reliance on Mr Harlock, whom the Authority has determined also lacked sufficient knowledge of local legislation and failed to arrange training for the directors, including Mr Robson, in relation to that legislation. Mr Robson contends that he has no history of criminal convictions, breach of licensing laws or adverse disciplinary findings.
- 567.** Mr Robson submits that in all the circumstances, the Authority’s need to protect the public and members of registered clubs will be “adequately discharged” by accepting Mr Robson’s proffered undertaking. The Authority would therefore be minded to exercise its discretion under section 57H(2) of the Act to take no further action against Mr Robson in respect of the subject Complaint.

Final Submission from Mr Zigouras received on 20 October 2016

- 568.** On 20 October 2016 Mr Zigouras, through his solicitors *Sparke Helmore*, provided a final submission on disciplinary action in relation to the Complaint, accompanied by a signed written undertaking dated 20 October 2016 which states that he will neither seek nor accept appointment as a secretary or member of the governing body of any registered club in New South Wales for a period of 2 years from 11 February 2016, until such time as he has completed the course entitled “Board Governance, the Company Secretary and the General Manager” as conducted by or on behalf of the Club Managers’ Association of Australia, or any other course relating to club governance approved by the Secretary of the NSW Department of Justice.
- 569.** Briefly, Mr Zigouras submits that he was admitted to practise as a solicitor on 2 March 1964 and has remained continuously admitted since that time. Mr Zigouras has “extensive experience” acting on the boards of sporting clubs. He was elected to the board of the Mildura Club in 2006 and was part of the board that oversaw a period of “unprecedented” growth and success at the Mildura Club. Mr Zigouras at all times believed he was acting in the best interests of the Club, with a view to rescuing the Club from what he considered to be its certain demise, for the benefit of the local community. He did not at any stage seek to benefit personally from the conduct the subject of the Complaint.

570. Mr Zigouras contends that he has not ever been convicted of a criminal offence, nor has he been the subject of any adverse disciplinary action in any jurisdiction, both of which attest to his general good character and integrity. To the extent that there was any failing on the part of Mr Zigouras, he claims that it was a “technical” one arising out of a failure by him to completely familiarise himself with the legislative obligations imposed on registered clubs in New South Wales. Mr Zigouras submits that he has now been taken through those provisions “at length” – that is, the failing of which he stands accused has now been overcome. Mr Zigouras submits that he “may” also have placed too much reliance on external lawyers to ensure that he was familiar with the applicable legislation.
571. Mr Zigouras submits that there was never any intention to deliberately fail to comply with applicable legislation and there is no intention to do so in the future. The “educative process” upon which Mr Zigouras has embarked by reason of this Complaint has “ensured” any previous mistakes will not be repeated. This position is underscored by Mr Zigouras’ willingness to proffer the (above mentioned) undertaking attached to his submission.
572. Mr Zigouras submits that the Authority’s protective jurisdiction will be “adequately fulfilled” by accepting the offered undertaking and there is no need for further disciplinary action to be taken to protect the public or members of registered clubs in NSW, particularly having regard to Mr Zigouras’ residence in Victoria. In all the circumstances, Mr Zigouras submits that the Authority would be minded to exercise its discretion under section 57H(2) of the Act to take no further action against Mr Zigouras in respect of the subject Complaint.
573. The Authority notes that Mr Zigouras’ undertaking was backdated to the date the Complaint was initially filed with the Authority, being 11 February 2016.
574. On 14 November 2016, the Authority advised Mr Zigouras’ solicitors that it was not contemplating accepting a *backdated* undertaking as a basis for exercising its discretion not to take disciplinary action and invited him to provide an undertaking in similar terms to the other directors.
575. On 15 November 2016 Mr Zigouras provided an amended undertaking specifying that he will neither seek nor accept appointment as a secretary or member of a governing body of any registered club in New South Wales for a period of two years or until such time during that period when he completes a course relating to club governance approved by the Secretary of the NSW Department of Justice, to take effect from the date of the undertaking, being 20 October 2016.

Final Submission from Mr Harlock received on 27 October 2016

576. On 27 October 2016 Mr Harlock, through his solicitors *Sparke Helmore*, provided a final submission on disciplinary action in relation to the Complaint, accompanied by a signed written undertaking dated 26 October 2016 which states that he will neither seek nor accept appointment as a secretary or member of the governing body of any registered club in New South Wales for a period of 3 years from the date of the undertaking, until such time as he has completed the course entitled “Board Governance, the Company Secretary and the General Manager” as conducted by or on behalf of the Club Managers’ Association of Australia, or any other course relating to club governance approved by the Secretary of the NSW Department of Justice.
577. Briefly, Mr Harlock submits that the following matters are relevant to Mr Harlock’s submissions on disciplinary action:

- Mr Harlock has overseen a significant turnaround in the fortunes of the Mildura Club in his time as CEO and it is now a highly profitable club;
- at all times relevant to the Complaint, Mr Harlock acted altruistically, with a view to turning the Wentworth Club into a successful club and believed he was acting in the best interests of the Club;
- Mr Harlock worked very hard in attempting to resurrect the Club as a going concern;
- there is no evidence of any dishonesty on the part of Mr Harlock;
- as a result of the process of participating in interviews with the Authority and preparing a detailed response to the Complaint against him, Mr Harlock is now highly familiar with all legislative provisions the subject of the Complaint;
- Mr Harlock was “instrumental” in bringing the potential deficiencies at the Club to the attention of the authorities with a view to remedying them; and
- from an early time in the complaint process (while being interviewed), conceded he made mistakes in relation to the Club and demonstrated contrition.

- 578.** Attached to Mr Harlock’s main submission is a short letter from Mr Harlock supplementing the above mentioned matters. Briefly, Mr Harlock expresses his regret for the “breaches of governance” which occurred over the period of his involvement with the Club and for which Mr Harlock “accepts full responsibility”.
- 579.** While Mr Harlock’s intentions were “perfectly honourable” he allowed his judgement to be clouded by his desire to provide the local community of Wentworth with a “reinvented community club” and in doing so, failed to acknowledge the differing circumstances between the structures which apply to NSW clubs and those that apply to Victorian clubs.
- 580.** However Mr Harlock notes his extensive experience within the hospitality and other closely associated industries since 1964, including 15 years as CEO at the Mildura Club, and is “hopeful” that the Authority will give this some consideration in its deliberations on disciplinary action.
- 581.** In his main submission letter, Mr Harlock notes that the disciplinary powers granted to the Authority under Part 6A of the Act are protective in nature. In exercising those powers, the Authority is concerned with reducing the risk posed by the individual the subject of a complaint, for the protection of the public.
- 582.** Mr Harlock’s efforts at the Mildura Club demonstrate that generally he possesses sufficient knowledge and skill to successfully fulfil the role of CEO of a club. This emphasises, as appears to have been accepted by the Authority, that his “real failure” in this matter was a failure to sufficiently familiarise himself with NSW legislation before assisting at the Club. That failure extended to his failure to advise the governing body of the Club of its legislative obligations. Mr Harlock accepts those shortcomings and has demonstrated remorse and contrition for those mistakes.
- 583.** Further, Mr Harlock submits that the Complaint Material demonstrates a “clear absence of dishonesty or attempt to derive personal benefit” on the part of Mr Harlock in committing the impugned conduct the subject of the Complaint. There is no other evidence before the Authority of any general lack of integrity, honesty or ability on the part of Mr Harlock.
- 584.** By reason of the offered undertaking and the “educative process” embarked upon by Mr Harlock in responding to this Complaint, the risk of Mr Harlock repeating the mistakes the subject of the Complaint is “minimal to non-existent”.

- 585.** Mr Harlock submits that these matters argue against any need for the Authority to take disciplinary action as a means of protecting the NSW public or members of registered clubs, or for reasons of specific deterrence.
- 586.** Further, Mr Harlock contends that he has no licensing convictions recorded against him, has had no adverse disciplinary action taken against him, has no criminal convictions and has not been issued with any penalty notices in connection with the operation of a registered club.
- 587.** Mr Harlock submits that contrasting his conduct with other recent decisions of the Authority (in relation to Cabra Vale Ex-Active Servicemen's Club and Riverwood District and Community Club) underscores the submission that the protective jurisdiction conferred on the Authority will be adequately discharged by the acceptance of Mr Harlock's offered undertaking, such that no further disciplinary action need be taken. In particular, Mr Harlock's conduct in seeking to act in the best interests of the Club to turn around its fortunes did not involve any abuse of power and there is a "distinct absence of dishonesty or intention to gain personal benefit" on the part of Mr Harlock.
- 588.** In providing a written undertaking, Mr Harlock has also removed the ability for him to act in a position of management in or on the governing body of a registered club until, at the earliest, he has undertaken sufficient training to allow him to ensure the standards laid down by the Act are maintained, again demonstrating that the public and members of registered clubs will be adequately protected by acceptance of Mr Harlock's undertaking.
- 589.** Mr Harlock submits that the provision of a signed undertaking is to be contrasted with Mr Dalley Robinson of Marrickville RSL, who merely posited an absence of desire to act in a position of management in a regulated club. In that case, the Authority was "spurred to action" by Mr Robinson's inaction, an element which is "not present" in this case.
- 590.** In all the circumstances, Mr Harlock submits that the protective functions of the Authority have been adequately fulfilled by the offering of an undertaking by Mr Harlock. He does not otherwise pose a risk to the public or members of any registered club. Comparing his conduct to that the subject of other recent decisions of the Authority, it would be unjust to take disciplinary action against Mr Harlock. His impugned conduct is of an entirely lesser order than that referred to in the Authority decisions referred to above and he has acted to ensure it will not be repeated.

No Further Submission on behalf of Mr Dickens

- 591.** The Authority notes that while Gilchrist Connell act for the former Club secretary, Mr Nicholas Dickens, no further submissions on disciplinary action were made to the Authority on his behalf.

DECISION ON DISCIPLINARY ACTION

- 592.** The Authority has given further consideration to this matter with the benefit of a final round of submissions from the Complainant, the Club, the Gilchrist Connell Respondents and the Sparke Helmore Respondents.
- 593.** Section 57H of the Act provides the powers of the Authority to take disciplinary action in the event that a complaint is established. The section states:

57H Disciplinary powers of Authority

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*

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

594. The Authority's disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.

595. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 (**Lambert**), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a punitive effect. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

596. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the "punitive effects" may be relevant to the need for protection in that:

...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.

597. At paragraph 85 of the judgment, Basten JA observes that:

...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.

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

Disciplinary Action against the Club

Cancellation of the licence pursuant to section 57H(2)(c)

599. With respect to the Club, the Authority is satisfied that it should order, pursuant to section 57H(2)(c) of the Act, the **cancellation** of the Wentworth Club's licence number LIQC300243656, noting that this course of action has been sought by the Complainant and is not contested by the Club.

600. The Authority is satisfied, on the basis of the submissions from the Respondents, that the Club is now in liquidation and there is little apparent prospect of the Club operating again. In the present circumstances, there is no apparent public interest in the licence being maintained on the Club premises at 61-79 Darling Street, Wentworth NSW 2648 or otherwise.

Costs order against the Club pursuant to section 57H(2)(i)(i)

601. The Authority notes that the Complainant has sought an order that the Club pay the amount of costs incurred by the Secretary of the Department of Justice in carrying out any investigation or inquiry under section 35A of the Act in relation to the Club. The Complainant has specified its costs on the investigation at **\$27,340.80**. The Authority is satisfied, on the basis of the Complainant's breakdown of its costs in its final submissions dated 20 September 2016, that these were the actual costs of the Secretary on the investigation that preceded making this Complaint.

602. In its final submissions of 19 October 2016, the Club submits that no costs should be ordered at all. The Club argues that a costs order made by the Authority would not constitute a "provable debt" in the liquidation of the Club and that all of the factors ordinarily taken into account are "either neutral or against" the imposition of any order as to costs.

603. The Club submits that none of the contraventions are the result of deliberate disregard for the law, nor did they occur over an extended period of time and that the Club "cannot be said to have had a culture that was not conducive to compliance" as the individuals

involved simply did not know and, when alerted to the Club's failings, showed a disposition to cooperate with the authorities.

- 604.** However, having considered the submissions from the Complainant and the Club on the issue of a costs order, the Authority is satisfied that it is in the public interest in respect of the due administration of the Act that the Authority order, pursuant to section 57H(2)(i)(i) of the Act, that the Club pay the Secretary's costs in carrying out the investigation under section 35A of the Act in relation to the Club that preceded this Complaint.
- 605.** While the Authority accepts that the Complainant may face practical difficulties in *recovering* those costs by reason that the Club is in liquidation, the Authority is nevertheless satisfied, in light of the significant regulatory failings attributable to the Club, that it is appropriate to issue a costs order against the Club. Disciplinary complaints are not confined to matters involving dishonesty and their purpose is not punitive but to protect the public interest in respect of the Act.
- 606.** All of the Grounds specified by the Complainant have been established. The making of this order will signal to others in the industry that a substantial costs order may follow when contraventions of the Act are established by a disciplinary complaint.
- 607.** In all the circumstances of this case, the Authority considers it appropriate to order, pursuant to section 57H(2)(i)(i) of the Act, that the Club pay the Complainant's costs in carrying out the investigation under section 35A of the Act in relation to the Club that preceded this Complaint. That is, the Club shall pay **\$27,340.80** within 28 days of the date of this decision letter.

No imposition of monetary penalty pursuant to section 57H(2)(a)

- 608.** The Complainant has also sought that the Club be ordered to pay, pursuant to section 57H(2)(a) of the Act, a monetary penalty with regard to the Club's conduct that involved numerous breaches of the Act and other governing legislation; and the fact that the Wentworth Club has ceased trading.
- 609.** The Club submits that the imposition of a monetary penalty would not constitute a "provable debt" in the liquidation of the Club and that all of the factors ordinarily taken into account are "either neutral or against" the imposition of any order as to costs.
- 610.** Having considered the submissions of the Complainant and the Club, noting that the Club is highly unlikely to recommence trading and that the Authority has now determined to cancel the licence and order that the Club pay the Complainant's substantial costs, the Authority considers that imposing a monetary penalty against the Club under section 57H(2)(a) of the Act would not serve any further protective purpose.

Disciplinary Action against the Individual Officers

- 611.** The Authority accepts, on the basis of the submissions made to the Authority on behalf of the Gilchrist Connell Respondents and Sparke Helmore Respondents, that the board of directors of the Mildura Working Man's Club engaged in a management takeover of the failing Wentworth Services Club in early 2014. They did so in an attempt to assist the Wentworth Club, which was in voluntary administration at the time.
- 612.** The Authority notes the subsequent closure of the Club and that, through the financial arrangements entered into by the Club's administrators, the Club's trade creditors and employees were paid upon the winding up of the Club.

- 613.** The Authority has not made any finding of dishonesty against any Club director among the Gilchrist Connell Respondents, and notes that each of Messrs Cawood, Fiesley, Hogarth, Hobart, Smith and Ms Layton have now provided an undertaking to neither seek nor accept appointment as a secretary or member of the governing body of any registered club in New South Wales for a period of **2** years, or until such time during that period when a course relating to club governance approved by the Secretary of the NSW Department of Justice is completed by that individual.
- 614.** With regard to the Sparke Helmore Respondents, the Authority notes that the former director Mr Robson provided an undertaking in identical terms to the Gilchrist Connell Respondents whereas Mr Harlock made an undertaking not to seek or accept appointment as a secretary or member of the governing body of any registered club in New South Wales for a period of **3** years, or until such time during that period when he completes a course relating to club governance approved by the Secretary of the NSW Department of Justice.
- 615.** The Authority accepts that these directors and the former Secretary Mr Harlock did not knowingly breach their obligations or attempt to conceal them but that it was an almost complete lack of knowledge as to NSW legislative requirements that led to the Club's contraventions of the Act and the Grounds of Complaint being established against them.
- 616.** The Authority often receives offers by respondents to disciplinary complaints to undertake not to participate in the industry for a proposed period of time and for this reason, it is said to be "not necessary" for the Authority to take any disciplinary action. The Authority will typically be concerned that a voluntary undertaking does not adequately protect the industry in that it is not enforceable should a respondent change their mind or should circumstances change. Further, taking no action on the strength of an undertaking may not communicate the regulatory consequences of non-compliance to others in the industry.
- 617.** The failures by the Club's directors and secretaries to obtain sufficient knowledge with regard to NSW legislation before acting in a regulated role present as serious matters that have resulted in an adverse finding as to their fitness and propriety. It cannot be dismissed as a "technical" matter, as submitted by Mr Zigouras, but a substantive failing.
- 618.** Nevertheless, the facts are unusual in that these officers reside in Victoria and are unlikely to seek involvement in New South Wales again. Their excursion into the affairs of the Wentworth Club was a well-intentioned but misconceived attempt to assist the nearby Wentworth community, arising from their relationship with the Mildura Club in Victoria. They did not seek to benefit from their roles and did not do so during the period in which the Club traded under their governance.
- 619.** The Club is no longer operating and the industry will be protected in that the officers will not act in a regulated position in the New South Wales industry again, within the periods specified by them, without first completing appropriate training and study.
- 620.** In light of the winding up of the Wentworth Club and the written undertakings given by these officers, the Authority has decided to exercise its discretion under section 57(2) of the Act to take no disciplinary action in relation to the individuals the subject of Grounds 6 through 14 of the Act. That is, the Authority takes no action against Mr John Harlock, Mr Wallace Robson, Mr Daniel Cawood, Mr Eric Fiesley, Mr John Zigouras, Mr Kevin Hogarth, Ms Sally Layton, Mr Christopher Hobart and Mr Shane Smith.
- 621.** However, noting that Mr Nicholas Dickens, the secretary on the licence record for the Club during the relevant period, did not provide a similar undertaking, the Authority is

satisfied that it would be appropriate to order, pursuant to section 57H(2)(g) of the Act, that Mr Dickens be ineligible to stand for election or to be appointed to, or hold office in, the position of secretary or member of the governing body of the Wentworth Club or any other registered club in NSW for a period of 12 months. Although he was similarly motivated and played a passive role, he should have taken steps to remove himself from the record and by not doing so this had the clear potential to mislead the regulator and law enforcement agencies, in circumstances where Mr Harlock was in fact acting as the Club's Secretary.

ORDERS

- 622.** In light of the fact that the Club is now in liquidation, the Authority does not consider it necessary to formally order the removal from office of any of the individuals who were still serving as at the date of the Complaint.
- 623.** In conclusion, the Authority has decided to take the following disciplinary action:
- (i) In respect of Grounds 1 through 5 of the Complaint, the Authority **Cancels** the licence number LIQC300243656 for the Wentworth Services Sporting Club Ltd pursuant to section 57H(2)(c) of the Act, with effect from the date of this decision letter.
 - (ii) In respect of Ground 15, the Authority **declares** , under section 57H(2)(g) of the Act, that the former secretary, Mr Nicholas Dickens, is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body of the Club and all other registered clubs in New South Wales, for a period of 12 months from the date of this decision letter.
 - (iii) The Authority **orders** the Club, under section 57H(2)(i)(i) of the Act, to pay to the NSW Department of Justice part of the costs incurred by the Secretary of the Department of Justice on the investigation or inquiry in relation to the Club under section 35A of the Act, being **\$27,340.80** , to be paid to the Department of Justice within 28 days of the date of this decision letter.

REVIEW RIGHTS

- 624.** Pursuant to section 57L of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant, the Club or any person against whom disciplinary action is taken by the Authority under Part 6A of the Act. An application for review should be made within 28 days of the date of notification of this decision.
- 625.** Please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney for further information.

Yours faithfully



Philip Crawford

Chairperson

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