



<p>Mr Sean Goodchild Director Compliance Operations Liquor and Gaming NSW Level 6, 323 Castlereagh Street SYDNEY NSW 2000 sean.goodchild@olgr.nsw.gov.au paul.irving@olgr.nsw.gov.au</p>	<p>Mr Graeme Nowicz c/o Mr Andrew Harrison Bilbie Dan Solicitors Level 1, 1 Market Street NEWCASTLE NSW 2300 lakesps360@gmail.com andrew@bilbiedan.com.au</p>
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24 January 2017

Dear Sir

**Notice of Final Decision with Reasons on Complaint against
Mr Graeme Nowicz under Part 8 of the *Gaming Machines Act 2001***

At its meeting of 16 November 2016 the Independent Liquor and Gaming Authority finalised a complaint made by a delegate of the Secretary of the NSW Department of Justice that was received by the Independent Liquor and Gaming Authority on 21 March 2016.

The Complaint is made under Part 8 of the *Gaming Machines Act 2001* and alleges that Mr Graeme Nowicz has contravened a provision of the Act or the *Gaming Machines Regulation 2010* and is not a fit and proper person to hold a gaming-related licence.

The Authority has decided to take the following disciplinary action:

- (i) Pursuant to section 131(2)(d) of the Act, the Authority cancels the gaming machine technician's licence number GMT4011371 held by Mr Graeme Nowicz and the gaming machine seller's licence number GMS1200019 held by Mr Graeme Nowicz.
- (ii) Pursuant to section 131(2)(f) of the Act, the Authority disqualifies Mr Nowicz from holding a gaming-related licence or being a close associate of a gaming-related licensee for a period of three (3) years.
- (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority orders that Mr Nowicz pay the costs incurred by the Secretary of the Department of Justice on the investigation under section 128 of the Act that preceded the making of the Complaint, in the sum of **\$6,287.47**, to be paid to the New South Wales Department of Justice no later than 28 days after the date of this letter.

Enclosed is a statement of reasons for the Authority's decision, including rights to review of this decision by the New South Wales Civil and Administrative Tribunal. If you have any enquiries about this letter, please contact the Authority via bryce.wilson@justice.nsw.gov.au.

Yours faithfully

**Philip Crawford
Chairperson**

STATEMENT OF REASONS

INTRODUCTION

1. On 21 March 2016 the Authority received a complaint (**Complaint**) under Part 8 of the *Gaming Machines Act 2001 (Act)*.
2. The Complaint was made by Mr Anthony Keon, then Director Compliance and Enforcement, Liquor and Gaming NSW (**LGNSW**) in his capacity as a delegate of the Secretary of the Department of Justice (**Complainant**).
3. The Complaint concerns Mr Graeme Nowicz, who the Complainant contends is a *close associate* of Lakes Gaming Pty Ltd (**Lakes Gaming**).
4. In the 8-page Complaint Letter dated 21 March 2016, the Complainant states that Lakes Gaming was registered as a company on 5 January 2004 and that that company was issued with a *gaming machine seller's licence* on 25 March 2008. The Complainant further states that Lakes Gaming's principal place of business, as approved by the Authority for the purposes of the Act, is 5 Sandringham Avenue, Thornton NSW.
5. The Complainant states that Lakes Gaming is a company owned by Mr James Fauolo Tupou, its sole managing director. Without specifying licence numbers, the Complainant states that Mr Tupou was *personally* granted a gaming technician's licence on 21 April 1988 and a gaming machine seller's licence on 22 May 1998.
6. The Complainant states that Mr Nowicz is the sole managing director and owner of his own company, LGS Technology Pty Ltd. This company performs gaming machine repairs for Lakes Gaming. Mr Nowicz was also *personally* granted a gaming machine technician's licence (number GMT4011371) on 13 September 1994 and a gaming machine seller's licence (number GMS1200019) on 26 September 2013.
7. The Complainant then explains by way of background that on 7 September 2015 LGNSW commenced an investigation into the actions of Mr Chad McLetchie, a former club secretary of the Maitland Park Bowling & Sporting Complex (**Maitland Park Club**) who is alleged to have taken gaming machines that had been damaged by fire and unlawfully provided them to Lakes Gaming.
8. The Complainant alleges that Mr Nowicz has become a close associate of Lakes Gaming.
9. The Authority notes that at the time of this letter it has not received any disciplinary complaint against Mr McLetchie, although a separate complaint was made by LGNSW during March 2016 in relation to Lakes Gaming and Mr Tupou. The Authority is yet to finalise that complaint. A further complaint was made by LGNSW against Mr Trevor Crow during March 2016 but that complaint was withdrawn in May 2016 after Mr Crow did not renew his licence and undertook not to seek another gaming-related licence for a period of three years.
10. This matter in relation to Mr Nowicz has been determined on the basis of the Complaint Material and submissions made on this Complaint only.

GROUNDINGS OF COMPLAINT

Ground 1

11. **Ground 1** is based upon the statutory ground of complaint provided by section 129(3)(a)(i) of the Act – that a licensee has contravened a provision of the Act or the regulations.

12. The Complainant contends that Mr Nowicz contravened section 71(2) of the Act by purchasing gaming machines from an unauthorised person (Mr McLetchie).
13. Particulars 1 to 12 of the Complaint Letter, discussed in detail in the Authority's findings below, set out the allegations that are said to establish this contravention of the Act.
14. The Complainant further contends that Mr Nowicz has contravened sections 77 and 86 of the Act by unlawfully changing the compliance plates on one approved gaming machine at the Rathmines Memorial Bowling Club Ltd (**Rathmines Club**) and two further approved gaming machines at the Dora Creek Workers Club Ltd (**Dora Creek Club**) on 9 October 2015. The Complainant also alleges that Mr Nowicz reset the hard and soft meters on those three gaming machines on that same date.
15. Particulars 13 to 20 of the Complaint Letter, discussed in detail in the Authority's findings below, set out the allegations that are said to establish contraventions of these two sections of the Act.

Ground 2

16. **Ground 2** is based upon the statutory ground of complaint provided by section 129(3)(e)(iv) of the Act – that the licensee is no longer a fit and proper person to hold a gaming-related licence.
17. Ground 2 refers to the same Particulars and evidence specified in support of Ground 1 and contends that by “virtue of the allegations above, Mr Nowicz is no longer a fit and proper person to hold a gaming-related licence”.
18. Additionally, in Particular 23, the Complainant contends that the actions of Mr Tupou and Mr Nowicz collectively appear to have been taken “after having been made aware of the existence of an investigation” by LGNSW and this conduct was either intended to “hinder inspectors in lawfully gathering evidence” or involved those persons “erasing their complicity in the commission of gaming machine offences”.
19. In Particular 24, the Complainant contends that Mr Nowicz took action to reset the “hard” meters of (unspecified) approved gaming machines in the Rathmines Club. The Complaint contends that this conduct is “not ordinarily allowed by the authority granted by a technician’s licence”.
20. The Complainant submits that the only “reasonable explanation” for Mr Nowicz’s conduct with regard to the hard meters is that he sought to remove all evidence of a connection between Lakes Gaming, or himself, to the matters under investigation by LGNSW.

DISCIPLINARY ACTION RECOMMENDED BY COMPLAINANT

21. The Complainant recommends that should the Complaint be established, the Authority take the following disciplinary action under section 131 of the Act:
 - (i) the imposition of a “financial penalty” (the Authority notes that the quantum is not specified) upon Mr Nowicz under section 131(2)(a)(i);
 - (ii) an order under section 131(2)(d) to cancel:
 - the gaming machine seller’s licence of Mr Nowicz (GMS1200019); and
 - the gaming machine technician’s licence of Mr Nowicz (GMT4011371);

- (iii) an order under section 131(2)(f) to disqualify Mr Nowicz from holding a gaming-related licence or being a close associate of a gaming-related licensee for a period of ten years;
- (iv) an order under section 131(2)(i)(i) that Mr Nowicz pay the LGNSW costs on the investigation.

COMPLAINT MATERIAL

22. The Complainant relies upon the following evidence or other material in support of each of the two Grounds of Complaint:

- *Quickchange* authorisation 231796 dated 22 December 2014;
- *Quickchange* authorisation 232367 dated 30 January 2015;
- Letter from Westpac Banking Corporation to LGNSW dated 13 October 2015 in response to a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007* issued by LGNSW to Mr Chad McLetchie furnishing bank statements for Mr McLetchie's accounts from 17 October 2014 to 16 October 2015;
- Email from Mr Nowicz to LGNSW staff dated 9 October 2015, attaching photographs of gaming machines that were in Mr Nowicz's possession at that time;
- Email from LGNSW staff to Mr Nowicz dated 9 October 2015 attaching a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007* dated 9 October 2015;
- Email from Rathmines Club to LGNSW staff dated 19 March 2016, including several attachments;
- LGNSW File Note dated 13 October 2015 recording the details of a conversation with LGNSW staff and Mr Paul Blundell of Rathmines Club that took place on 13 October 2015;
- Authority *Device History Report* from 12 November 2010 to 12 November 2015 for gaming machine serial numbers XAW855696 and XAW850952 printed on 12 November 2015;
- *Quickchange* Authorisation Report in relation to Application number 243374 printed on 16 October 2015;
- Transcript of a record of interview between Mr James Tupou and LGNSW Inspectors Paul Newman and Brett See held on 16 October 2015 (**Tupou Interview**)

(Complaint Material).

LEGISLATION

23. The objects and considerations to which the Authority must have regard are set out in section 3 of the Act as follows:

3 Objects of Act

- (1) *The objects of this Act are as follows:*
 - (a) *to minimise harm associated with the misuse and abuse of gambling activities,*
 - (b) *to foster responsible conduct in relation to gambling,*
 - (c) *to facilitate the balanced development, in the public interest, of the gaming industry,*
 - (d) *to ensure the integrity of the gaming industry,*
 - (e) *to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.*
- (2) *The Authority, the Minister, the Director-General, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need*

for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.

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

24. Relevantly to this Complaint, section 71(1) of the Act regulates the supply and purchase of gaming machines as follows:

71 Supply and purchase of gaming machines

- (1) *A person who supplies or offers to supply an approved gaming machine otherwise than by way of sale is guilty of an offence unless the supply or offer has been approved by the Authority and any conditions imposed by the Authority when giving the approval are complied with.*

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

25. Section 77 regulates tampering with sensitive areas of gaming machines as follows:

77 Protection of sensitive areas of gaming machines

- (1) *It is an offence for a person (other than an authorised person) to do any of the following:*

- (a) *break a seal securing a computer cabinet or gain access to anything within a computer cabinet,*
- (b) *affix a seal to a computer cabinet,*
- (c) *remove, replace or in any way affect or interfere with the operation of a computer cabinet or anything within a computer cabinet,*
- (d) *break a seal protecting the integrity of the game program of an approved gaming machine,*
- (e) *remove, or interfere with, any security device on an approved gaming machine,*
- (f) *remove, or interfere with, the housing protecting the meters of an approved gaming machine,*
- (g) *remove, disconnect or interfere with a meter of an approved gaming machine,*
- (h) *interfere with information received, stored or transmitted electronically by an approved gaming machine,*
- (i) *remove, or interfere with, any mark or seal affixed to an approved gaming machine to preserve the integrity of operation of the machine.*

Maximum penalty: 100 penalty units.

- (2) *An authorised person must, if the person breaks any seal in doing anything referred to in subsection (1), replace the seal.*

Maximum penalty: 100 penalty units.

- (2A) *If an authorised person, in doing anything referred to in subsection (1), breaks any seal on or in relation to an approved gaming machine kept in a hotel or on the premises of a club, the hotelier or club must ensure that the seal is replaced by the authorised person in accordance with subsection (2).*

Maximum penalty: 10 penalty units.

- (2B) *The hotelier or club does not commit an offence under subsection (2A) if the authorised person has, before the gaming machine is operated for the purposes of gambling:*

- (a) *certified, in the form approved by the Director-General, that the seal has been replaced by the person, and*
- (b) *given a copy of the certificate to the hotelier or club.*

- (2C) *If a copy of any such certificate is given to the hotelier or club, the hotelier or club must:*

- (a) *keep the copy in the hotel or on the premises of the club, and*
- (b) *if requested to do so by an inspector, produce the copy for inspection by the inspector.*

Maximum penalty: 10 penalty units.

- (2D) *An authorised person must not make any statement in a certificate under subsection (2B) that the person knows is false or misleading.*

Maximum penalty: 100 penalty units.

- (3) *A person (including an authorised person) who removes, alters or otherwise interferes with the compliance plate on an approved gaming machine is guilty of an offence.*

Maximum penalty: 100 penalty units.

- (4) *Subsection (3) does not prevent a technician from doing any of the following things in relation to the compliance plate on an approved gaming machine (so long as the gaming machine is not operated at any time when the compliance plate is not attached to the machine):*

- (a) *moving the compliance plate to another part of the gaming machine,*
- (b) *removing the compliance plate if it is damaged, and replacing it with a new compliance plate,*
- (c) *destroying any such damaged compliance plate,*
- (d) *temporarily removing the compliance plate in order to enable work to be done to the facade of the gaming machine,*
- (e) *temporarily removing the compliance plate in order to update or correct the particulars shown on the plate.*

- (5) *A person who authorises or permits another person to act in a way that is an offence under subsection (1) or (3) is also guilty of an offence.*

Maximum penalty: 100 penalty units.

- (6) *In this section:*

authorised person means an inspector or a technician.

compliance plate has the same meaning as in section 121.

computer cabinet means the sealable part of an approved gaming machine that contains the game program storage medium and the random access memory.

26. Section 86 of the Act regulates the servicing and repair of gaming machines, as follows:

86 Servicing and repair of gaming machines

- (1) *A person who services or repairs an approved gaming machine is guilty of an offence unless the person:*

- (a) *holds a dealer's licence or is a technician, or*
- (b) *services or repairs the gaming machine under the supervision of the holder of a dealer's licence or a technician for the purpose of receiving training and instruction in respect of the servicing and repair of approved gaming machines.*

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (2) *The holder of a dealer's licence or a technician who services or repairs an approved gaming machine otherwise than in accordance with the authority conferred by the licence is guilty of an offence.*

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

27. Relevantly, section 129 prescribes the following requirements for making a disciplinary complaint and the statutory grounds available:

129 Grounds for making complaint

- (1) *A complaint in relation to a licensee or close associate may be made to the Authority by any of the following (referred to in this Part as “the complainant”):*
 - (a) *the Director-General,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the regulations to make a complaint under this Part.*
- (2) *A complaint must be in writing and specify the grounds on which it is made.*
- (3) *The grounds on which a complaint in relation to a licensee or close associate may be made are as follows:*
 - (a) *that the licensee:*
 - (i) *has contravened a provision of this Act or the regulations, or*
 - ...
 - (e) *that the gaming-related licensee:*
 - (i) *has failed to comply with a condition of the gaming-related licence, or*
 - (ii) *has failed to comply with an order or direction of the Authority, or*
 - (iii) *has failed to make due payment of a penalty for late payment of a fee in accordance with this Act, or*
 - (iv) *is no longer a fit and proper person to hold a gaming-related licence,*
 - ...

28. Section 131 provides the powers of the Authority when taking disciplinary action. They include, relevantly to this matter:

131 Disciplinary powers of Authority

- (2) *If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the licensee or close, associate, the Authority may decide not to take any action or may decide to do any one or more of the following:*
 - (a) *order the hotelier or gaming-related licensee to pay, within such time as is specified in the order:*
 - (i) *a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in any other case), or*
 - (ii) *if circumstances of aggravation exist in relation to the complaint – a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in any other case),*
 - ...
 - (c) *if the ground that applies is any of the grounds referred to in section 129(3)(a), (b), (c), (d) or (f):*
 - (i) *cancel the hotelier’s or club’s licence under the Liquor Act 2007 or the gaming-related licence, or*
 - (ii) *suspend the hotelier’s or club’s licence under the Liquor Act 2007 or the gaming-related licence for such period as the Authority thinks fit, or*
 - (iii) *cancel, suspend or modify any authorisation or approval under this Act for the hotelier or club to keep approved gaming machines, or*
 - (iv) *disqualify the hotelier or club from keeping approved gaming machines for such period as the Authority thinks fit,*

- (d) *cancel the gaming-related licensee's licence or suspend the licence for such period as the Authority thinks fit,*
- (e) *impose or vary a condition to which the gaming-related licence is subject,*
- (f) *disqualify the gaming-related licensee from holding a gaming-related licence for such period as the Authority thinks fit,*
- ...
- (i) *order the licensee to pay the amount of any costs incurred:*
 - (i) *by the Director-General in carrying out any investigation or inquiry under section 128 in relation to the licensee or close associate, or*
 - (ii) *by the Authority in connection with the taking of disciplinary action against the licensee or close associate under this section,*
- (j) *reprimand the licensee or close associate.*
- (3) *If the Authority orders a licensee to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:*
 - (a) *cancel the licence, or*
 - (b) *suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).*
- ...

29. Section 36(1) of the *Gaming and Liquor Administration Act 2007*, which is also referred to in the Particulars of the Complaint, states:

36 False or misleading statements

- (1) *A person must not, in any official document, make a statement that the person knows, or could reasonably be expected to know:*
 - (a) *is false or misleading in a material respect, or*
 - (b) *omits material matter.*

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) *In this section:*

official document *means any application, instrument or other document that is, for the purposes of the gaming and liquor legislation, given to or lodged with the Minister, the Authority or the Secretary.*

CONSULTATION

- 30. On 1 April 2016, a Show Cause Notice enclosing an electronic copy of the Complaint Material was sent to Mr Nowicz.
- 31. On 29 April 2016, Mr Nowicz's lawyers, *Bilbie Dan Solicitors*, sent a 3-page letter requesting the Complainant to provide further particulars of the Complaint. The Complainant responded to that request in a 3-page letter dated 9 May 2016.
- 32. On 14 June 2016, *Bilbie Dan* noted that Mr Nowicz did not receive certain CCTV footage he had requested in his request for particulars until 9 June 2016 and noted that submissions on the merits of the matter would now be due 28 days from that date.
- 33. In a letter to the Authority dated 14 June 2016, *Bilbie Dan* advised the Authority that on 17 May 2016 Mr Nowicz had received 18 Court Attendance Notices for prosecutions commenced by LGNSW in the New South Wales Local Court on 4 May 2016.

34. *Bilbie Dan* submit that these prosecutions “appear to relate to the same subject matter” as the Complaint. Mr Nowicz submitted that the Complaint should be held in abeyance until the outcome of the prosecutions is known and that to do otherwise would prejudice Mr Nowicz’s interests in the matters now before the Court.
35. At its meeting of 29 June 2016, the Authority declined this request but granted Mr Nowicz another 14 days to complete his submissions.
36. On 19 July 2016, Mr Nowicz provided material in response to the merits of the Complaint. It comprised a 9-page submission letter from his solicitor, Mr Andrew Harrison of *Bilbie Dan* (**Nowicz Submission**) attaching the following documents:
- *Quickchange* “Instruments of Authority” pursuant to which Mr Nowicz claims he was working at the Dora Creek Workers Club Ltd (**Dora Creek Club**) on 9 October 2015;
 - *Quickchange* “Instruments of Authority” pursuant to which Mr Nowicz claims he was working at the Rathmines Club on 9 October 2015;
 - Communication between LGNSW Inspector Newman and Mr Nowicz’s solicitor dated 13 and 18 November 2015 (regarding Mr Nowicz declining an invitation to attend an interview but offering to provide answers to any written questions);
 - Statutory Declaration by Mr Graeme Nowicz dated 19 July 2016 declaring that Mr Nowicz has read the 9-page submission letter from his solicitor that was prepared on his instructions; that the statements of facts made in this submission are true and correct; and that the opinions expressed in the submission are opinions that he holds.
37. No further submissions or evidence were provided by the Complainant in reply to the Nowicz Submission.

FINDINGS

38. A disciplinary complaint under Part 8 of the Act is an administrative matter and findings are made on 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.
39. By way of background, the Authority notes that the *Quickchange* system is an electronic database maintained by Maxgaming NSW Pty Ltd under licence from the Minister for Justice. The database provides a means by which participants in the New South Wales gaming machines industry may either *make* or *sign off on* applications that record certain transactions in relation to gaming machines. The system is important to maintaining the integrity of the gaming machines industry in that it tracks which approved gaming machines have been authorised to be kept at which venues in New South Wales at any time. The applications made on the *Quickchange* system may authorise that a specific approved gaming machine be kept at a specific venue, or that a machine be moved from one venue to another, or that certain work be performed upon an authorised gaming machine – such as converting that machine into a new game or other work. Approved participants, including gaming machine licensees and venues capable of keeping gaming machines under the Act (hotels and registered clubs) may access the database using login details and personal identification numbers assigned to each user.

Ground 1

Authority Findings on Particulars 1 to 12

40. Particulars 1 to 12 concern the allegation that Mr Nowicz purchased gaming machines from an unauthorised person, in contravention of section 71(2) of the Act.
41. Particular 1 alleges that on 22 December 2014 Mr Trevor Crow, a licensed seller with Ainsworth Gaming, submitted *Quickchange* application number 231796 on the *Quickchange* database. Particular 2 alleges that this application was for the disposal of twenty (20) approved gaming machines.
42. Particular 3 alleges that this *Quickchange* application was approved by the Authority, authorising disposal of the said 20 gaming machines in accordance with the requirements of the Act and in accordance with the conditions to which this authorisation was subject.
43. Particular 4 alleges that one of the conditions to which this authorisation was subject specified that the approved gaming machines were to be disposed of by Mr Trevor Crow. However, the Complaint alleges that Mr Crow did not actually ensure that the disposal of these gaming machines occurred. Instead, he allowed the machines to remain in the possession of Mr Chad McLetchie, the (then) secretary manager of the Maitland Park Club.
44. The Authority notes that Mr Nowicz does not contest the allegations in Particulars 1 to 4. The Authority is satisfied, on basis of the record of the *Quickchange* application number 231796 provided with the Complaint Material, that Particulars 1 to 4 are established and that this application was approved by the Authority subject to the conditions specified on that record.
45. In the Nowicz Submission, Mr Nowicz states that Mr McLetchie, the person with whom Mr Nowicz was dealing, was then the secretary/manager of the Maitland Park Club. Mr Nowicz contends that he believed that he was dealing directly with the Maitland Park Club when dealing with Mr McLetchie. Mr Nowicz further contends that Mr Trevor Crow, a licensed gaming machine seller, referred this matter to Mr Nowicz and that Mr Nowicz believed that this *Quickchange* application “was proceeding with the imprimatur of Mr Crow”. The Authority is satisfied that the gaming machines were allowed to remain in Mr McLetchie’s possession, contrary to the conditions of the *Quickchange* application.
46. Particular 5 alleges that on 30 January 2015 Mr Crow caused *Quickchange* application number 232367 to be made in respect of the premises of the Maitland Park Club. Particular 6 alleges that this application was for the disposal of three approved gaming machines (serial numbers XAR141259, XAR141260 and XAR141261).
47. Particular 7 alleges that this application was approved by the Authority. This authorised the disposal of the relevant gaming machines in accordance with the requirements of the Act and in accordance with the conditions to which the authorisation was subject.
48. Particular 8 alleges that one of the conditions to which this authorisation was subject required that the approved gaming machines be disposed of by Mr Trevor Crow. However, Mr Crow did not actually ensure that the disposal of the approved gaming machines occurred. Instead, he allowed the machines to remain in the possession of Mr McLetchie.
49. The Authority notes that Mr Nowicz does not contest the allegations in Particulars 5 to 8. The Authority is satisfied, on the basis of the record of the *Quickchange* application number 232367 provided by the Complainant, that Particulars 5 to 8 of the Complaint are established and that this application was approved by the Authority subject to the conditions specified on that record.
50. Particular 9 alleges that between 20 and 25 May 2015, Mr McLetchie telephoned Mr Nowicz and offered to sell him eight gaming machines. Particular 10 alleges that Mr Nowicz agreed to purchase these eight gaming machines (serial numbers XAW879918, XAR125006, XAR125007, XAW855696, XAW855981, XAR141259, XAR141260 and XAR141261) from Mr McLetchie for a total of \$13,850.

51. Particular 11 alleges that between 25 May and 2 June 2015, Mr McLetchie received a total of \$13,850 from Mr Nowicz via electronic funds transfers and that the following words were recorded against those payments on the relevant Westpac bank transfer records:
- 25 May 2015: \$3,000 – “Spare parts AIN” [Ainsworth]
 - 28 May 2015: \$850 – “Paltronic equipment”
 - 28 May 2015: \$1,500 – “Veridan [*sic*, Viridian] Pokie”
 - 2 June 2015: \$8,500 – “Slant Tops”.
52. Particular 12 alleges that this course of conduct contravened section 71(2) of the Act, as:
- The Act requires that any purchase (or offer of purchase) for approved gaming machines must be made from a person authorised by or under the Act to sell the gaming machine;
 - Mr Nowicz purchased gaming machines from Mr McLetchie;
 - Mr McLetchie was not authorised to sell the gaming machines, either as a licensed gaming machine seller or in his capacity as secretary of the Maitland Park Club (as he then was);
 - The purchase was not otherwise authorised by the Authority.
53. In response to the allegations in Particulars 9 to 12, Mr Nowicz submits that he *believed* that he was dealing with the Maitland Park Club itself when making a purchase of six fire-damaged gaming machines. He contends that the evidence discloses that Mr McLetchie was the secretary/manager of that Club at that time. Mr Nowicz further contends that this matter had been referred to him by Mr Trevor Crow, who was a licensed gaming machine seller. Mr Nowicz contends that as far as he knew, this transaction was “proceeding with the imprimatur of Mr Crow”.
54. Mr Nowicz submits that the relevant dealings took place at the premises from which Mr Nowicz operates his business and that there was nothing unusual about Mr Nowicz purchasing or obtaining fire damaged gaming machines that required reconditioning and considerable work.
55. Mr Nowicz “disagrees” with Particulars 10 and 11 insofar as they allege that **8** machines were purchased for the sum of **\$13,850**. Mr Nowicz contends that he only purchased **6** machines at a price of **\$10,000** with the relevant transfers of money made on 28 May 2015 (\$1,500) and 2 June 2015 (\$8,500). Mr Nowicz states that he did take possession of two other gaming machines at this time, but did not pay any money for them as they were not in a merchantable condition.
56. Mr Nowicz contends that in “other proceedings” LGNSW has specified the purchase price of the gaming machines sold to be \$10,000, not the amount that is specified in Particular 11 of this Complaint. Mr Nowicz contends that the correct figure for the amount paid on his purchase of **6** fire damaged machines is \$10,000.
57. Mr Nowicz contends that the money for this purchase was transferred into an account number that had been given to Mr Nowicz by Mr McLetchie. Mr Nowicz contends that he “believed” this to be the bank account for the Maitland Park Club, as he was only given a BSB number and Account number for the transaction.
58. Mr Nowicz contends that the manner in which these money transfers occurred, in evidence before the Authority, supports his position that there was nothing unusual about him purchasing second hand damaged gaming machines. He argues that the “glaring” transparency of this transaction supports his contention that he was not trying to effect something “underhanded” or that he was involved in some kind of conspiracy in relation to these machines.

59. Mr Nowicz argues that he was “open and transparent” about what he saw as a “regular transaction” to which he put his name on the relevant electronic funds transfers, as shown in the bank records. He also added a narration to the funds transfers indicating that the funds concerned the purchase of gaming machines. He refers to the notations “Viridian Pokie” and “Slant Tops” in this respect.
60. Mr Nowicz also states that he lives with a secretary/manager of the Stockton RSL and Citizen Club. His housemate holds a gaming machine seller’s licence. Mr Nowicz claims, on this basis, that he was acting under the “honest belief, incorrectly” that *all* secretary managers [of registered clubs in New South Wales] held similar gaming licences.
61. Mr Nowicz submits that there “may be a technical breach of section 71(2)” in his conduct. He argues that if this transaction is considered in its correct context, the Authority will see that Mr Nowicz held an “honest and reasonable belief” that he was dealing with the [Maitland Park] Club itself while he was dealing with Mr McLetchie and that Mr Nowicz’s actions “were not part of any conspiracy to undermine the Act or the Authority”.
62. Mr Nowicz contends that Mr McLetchie, the secretary/manager of the Maitland Park Club, had been referred to him with damaged and second hand gaming machines by a licensed gaming machine seller, Mr Trevor Crow. Mr Nowicz contends that he believed he was purchasing gaming machines from that club. He reiterates that he was open about the nature of the transactions being conducted on the relevant banking transfer records.
63. With regard to Particular 9, the Authority is unable to be satisfied, on the material before it, that between 20 and 25 May 2015 Mr Nowicz and Mr McLetchie discussed via telephone the acquisition by Mr Nowicz from Mr McLetchie of **8** gaming machines. While there may well have been preceding discussions on the proposed sale or transfer of possession of these machines, the Complainant has provided no evidence in the Complaint Material to record these telephone calls and Mr Nowicz does not make a specific response to this Particular in the Nowicz Submission.
64. Particular 9 is not established.
65. The Authority is satisfied that Mr Nowicz paid valuable consideration for **6** gaming machines and paid a total purchase price of \$10,000 for those machines. These funds were transferred to Mr McLetchie’s bank account on 28 May 2015 and 2 June 2015. The Authority makes this finding on the basis of the Nowicz Submission and the bank statements for Mr McLetchie’s Westpac bank accounts from 17 October 2014 to 16 October 2015 provided by the Complainant.
66. The Authority is also satisfied that Mr Nowicz took possession of another **2** gaming machines from Mr McLetchie at the same time as making this purchase, but he did not pay any money for those 2 machines by reason that they were not in a merchantable condition. The Authority makes this finding on the basis of the Nowicz Submission, which has not been contradicted by the Complainant with any submissions in reply.
67. The Authority is satisfied that Particulars 10 and 11 are established to this extent.
68. With regard to Particular 12, the Authority accepts that Mr Nowicz held a mistaken belief that he was dealing with the Maitland Park Club on this transaction while he was dealing with Mr McLetchie, by reason that Mr McLetchie was then the Secretary of that Club.
69. However, the Authority does not find credible the explanation provided by Mr Nowicz, who has been in the gaming machine industry for 22 years, that because his housemate is a club secretary and also holds a gaming machine seller’s licence, he assumed that all club secretaries hold gaming-related licences.

70. That is not the case in New South Wales. Even if Mr Nowicz held such belief, it demonstrates a lack of knowledge and ability with regard to the gaming machines industry and a lack of diligence in his dealings with Mr McLetchie and this transaction.
71. The Authority is satisfied that Mr Nowicz breached section 71(2) of the Act when he purchased gaming machines from Mr McLetchie, who did not hold a gaming machine seller's licence and was therefore not authorised to sell those gaming machines. The Authority notes that Mr Nowicz has not alleged that Mr McLetchie positively represented to Mr Nowicz that Mr McLetchie held a gaming-related licence.
72. Particular 12 is established.

Allegations in Particulars 13 to 20

73. Particular 13 alleges that on 7 October 2015, LGNSW Inspector Paul Newman contacted Mr Nowicz and requested that information be provided to him regarding a number of approved gaming machines. Mr Nowicz did not respond to this request until 9 October 2015.
74. Particular 14 alleges that on 9 October 2015 Mr Nowicz was then served with a Notice to Produce by LGNSW under section 21 of the *Gaming and Liquor Administration Act 2007* and required to provide certain documents and records relating to his dealings with a number of approved gaming machines.
75. Particular 15 alleges that on 13 October 2015, witnesses at the Rathmines Club and the Dora Creek Club contacted LGNSW Inspector Newman and advised him that on 9 October 2015, an unidentified technician had:
- Attended the Rathmines Club, where compliance plate XAW855696 was removed and replaced with XAW850952;
 - Attended the Dora Creek Club, where compliance plates XSG210085 and XSG700223 had been replaced with XUN600100 and XKA019974 respectively.
76. Particular 16 then alleges that this unidentified technician at the Rathmines Club also reset the *soft* and *hard* meters on the above gaming machines (serial numbers XAW855696 and XAW850952) and that Central Monitoring System (**CMS**) records show that all meters on both machines were reset to zero on 9 October 2015.
77. Particular 17 alleges that this technician was later identified via CCTV recordings on both occasions as Mr Nowicz.
78. Particular 18 alleges that *Quickchange* records show that the technician licence ID used to record completion of the works on 9 October 2015 was registered to Mr Tupou and that the relevant seller registered as conducting this transaction was Lakes Gaming.
79. Particular 19 alleges that during a recorded interview on 15 October 2015, Mr Tupou made "full admissions" that he had instructed Mr Nowicz to change the compliance plates. Mr Nowicz declined to be interviewed by LGNSW on these allegations.
80. Particular 20(a) then alleges that the above course of conduct (that is, in Particulars 15 to 20) contravened section 77(3) of the Act which regulates the removal, alteration or interference with a compliance plate on an approved gaming machine, noting that:
- section 77(3) makes it an offence for any person (including a technician as an "authorised person") to remove a compliance plate from an approved gaming machine;
 - Mr Nowicz removed the compliance plates XSG210085 and XSG700223 and replaced them with XUN600100 and XKA019974 respectively;

- none of the circumstances available under section 77(4) of the Act [which the Authority notes prescribe instances when a compliance plate *may* legally be moved, removed and destroyed or temporarily removed] existed at the relevant time.

81. Particular 20(b) alleges that this conduct also contravened section 86(2) of the Act, which concerns the servicing of a gaming machine otherwise than in accordance with the authority conferred by a gaming-related licence, in that:

- the holder of a gaming machine technician's licence may, under section 86(1) of the Act, service or repair an approved gaming machine;
- the authority conferred by the licence only authorises a technician to reset "soft meters" when this is required by a *technical fault* in the gaming machine;
- this authority does not authorise a technician to interfere with the "hard meters" of the machine under any circumstances;
- there was no request by the Club to repair, nor any identified fault with, gaming machine serial numbers XSG210085 and XSG700223;
- Mr Nowicz acted "well outside" the authority granted to him by his technician's licence.

Mr Nowicz's Submissions on Particulars 13 to 20

- 82.** The Authority notes that Mr Nowicz does not make any specific submissions in response to Particulars 13 and 14.
- 83.** In response to Particulars 15 to 20, Mr Nowicz makes the general contention that at "no time did he interfere with the hard meters of any gaming machine" and submits that he is not guilty of any breach of section 86(2) of the Act.
- 84.** Mr Nowicz further submits that it is his "understanding" that hard meters are "no longer used in the industry" and that he "never inspects, reads or touches the hard meters on any gaming machine".
- 85.** Mr Nowicz contends it is "likely" that the hard meters on the subject gaming machines "have not been operational for quite some time". He submits that the Complaint Material does not include any evidence or material that shows that the *manual* or *hard meters* on the specified gaming machines were ever in use.
- 86.** Mr Nowicz submits that the allegations as to what took place at Dora Creek Club are "misconstrued" and are "in error". He contends that he did attend the Dora Creek Club with Mr Tupou (of Lakes Gaming) on 9 October 2015 and carried out the work whereby two gaming machines with serial numbers XUN600100 and XKA019974 were "de-licensed on the day". Mr Nowicz believes that this work was conducted pursuant to Lakes Gaming's licence and attaches the Instrument of Authority for *Quickchange* application number 243384 in respect of the work carried out at the Dora Creek Club on that day.
- 87.** Mr Nowicz contends that Lakes Gaming installed a machine XSG700223 (a brand-new machine from the manufacturer Scientific Games) and machine XSG210085 (a second hand machine newly introduced to the premises) at the Dora Creek Club on 9 October 2015.
- 88.** Mr Nowicz also contends that there was "no switching out or replacement of compliance plates at Dora Creek". Instead, these two machines were "de-licensed" and that different machines (one brand new and one second hand) were installed on the premises of that venue.
- 89.** Mr Nowicz submits that despite the allegations in Particular 15, there is nothing in the Complaint Material that indicates that any witnesses from the *Dora Creek Club* contacted LGNSW inspectors about anything.

90. Mr Nowicz makes the general submission that as a licensed gaming machine technician, he “simply works to the Authorised Instrument” provided to him for a job. He contends that the work that was performed by him at the Rathmines Club on 9 October 2015 was conducted by a licensed dealer, Lakes Gaming.
91. Mr Nowicz further contends that the principal of Lakes Gaming [which the Authority notes is an apparent reference to Mr James Tupou] has admitted to LGNSW that he instructed Mr Nowicz to carry out the work on the Rathmines Club premises on 9 October 2015. [The Authority notes that this is an apparent reference to the Tupou Interview.]
92. Mr Nowicz submits that the *Quickchange* instruments of authority that Lakes Gaming provided to him required Mr Nowicz, as a gaming machine technician, to perform two tasks on the premises of the Rathmines Club on 9 October 2015.
93. The first task was to carry out a gaming machine conversion so that the game featured on the machine in question would change from *Jade Mountain* to *Lucky Pig*. The second task was to change the compliance plate on another machine featuring the *Players Choice Class Act* game.
94. Mr Nowicz submits that he was “entitled to think” that the work assignments specified on these instruments of authority had been properly approved.
95. As for the game conversion task, Mr Nowicz contends that a change of game required him to “RAM clear” this machine for the new game to take effect. This, he submits, “necessarily results in zeroing the soft meters”.
96. As for changing the compliance plate on the *Players Choice* gaming machine, Mr Nowicz contends that since the instrument of authority had issued a new GMID number for this machine, the soft meters on this machine “necessarily needed to be reset” and were automatically reset to zero for this reason.
97. Mr Nowicz contends generally that if the GMID number on a gaming machine changes for any reason, the soft meters must automatically be reset to zero. The relevant instrument of authority provided to him by Lakes Gaming indicated a change in GMID number for this *Players Choice* machine.
98. Mr Nowicz further contends that the instrument of authority given to him on 9 October 2015 included a request to change the compliance plate of a gaming machine at the Rathmines Club.
99. Mr Nowicz refers to the Tupou Interview and contends that Mr Tupou instructed him to “put the correct compliance plate back on a gaming machine” at the Rathmines Club by reason of an administrative error made by Mr Tupou while using the *Quickchange* system.
100. Mr Nowicz contends that he “did not interfere with the hard meters of any machines” at the Rathmines Club.
101. Mr Nowicz contends that the relevant instruments of authority were issued to him by Lakes Gaming. He was carrying out these two tasks as a “simple technician working to the instrument”. This, he submits, is supported by Particulars 18 and 19 of the Complaint Letter and by Mr Tupou’s evidence during the Tupou Interview.
102. On the prospect of any disciplinary action by the Authority, Mr Nowicz submits that if a “technical breach” of section 77(3) is found to have occurred, this is a matter at the “minor end of the scale” that could be dealt by way of the imposition of a financial penalty pursuant to section 131(2)(a)(i) of the Act. Mr Nowicz submits that he was only a “minor player” in the events at the Rathmines Club, as he was engaged to and did carry out work that was

authorised by instruments of authority that had been provided to him by a registered and licensed company.

- 103.** Mr Nowicz further submits that the Complaint Material indicates that “all of the events at the Rathmines Club proceeded under Lakes Gaming Pty Ltd” and do not touch upon Mr Nowicz personally.
- 104.** Mr Nowicz submits that when questioned at the Rathmines Club by staff on 9 October 2015, he stated on three occasions that, “You really need to contact Lakes Gaming about this as I am just the technician”.
- 105.** Mr Nowicz makes the following points that he says arise from Mr Tupou’s statements in the Tupou Interview:
- only Mr Tupou is involved with Lakes Gaming;
 - Mr Tupou believes that, as a licensed dealer, he is authorised to remove a compliance plate from a working gaming machine;
 - Mr Tupou conducted the *Quickchange* authorisation for the subject 7 machines, including the ones in respect of which work was carried out at the Rathmines Club; and
 - one of the actions carried out at the Rathmines Club was for the technician (Mr Nowicz) to put a “correct” compliance plate back on a gaming machine.
- 106.** Mr Nowicz contends that he was not involved with and knows nothing about how the *Quickchange* instrument of authority came to be produced, or if the Maitland Park Club’s personal identification number was improperly accessed in order to issue this instrument.
- 107.** Mr Nowicz submits that the course of conduct that is the subject of Particular 20(a)(ii) of the Complaint concerns allegations regarding compliance plates for gaming machines XSG210085, XSG700223, XUN600100 and XKA019974. Mr Nowicz submits that these gaming machine numbers “are not those to do with Rathmines” and that this Complainant is “in error” with regard to allegations that concern the Dora Creek Club – as *no compliance plate was ever removed or replaced at the Dora Creek Club*.
- 108.** Mr Nowicz contends that the course of conduct specified by the Complainant at Particular 20(a) of the Complaint Letter relies upon a removal of compliance plates that “did not occur”.
- 109.** Mr Nowicz submits that there is nothing in the Complaint Material that establishes the allegations made with regard to the Dora Creek Club that are relied upon in Particular 20(a).
- 110.** In response to Particular 20(b) of the Complaint, Mr Nowicz contends that he has not interfered with or reset the hard meters of any gaming machine. He submits that there is no evidence of him interfering with any hard meters in the Complaint Material.
- 111.** Mr Nowicz concludes with the submission that Particular 20 of Ground 1 (alleging a breach of sections 77(3) and 86(2) of the Act) “is not made out”.

Authority Findings on Particulars 13 to 20

- 112.** Particulars 13 and 14 are established. The Authority makes these findings on the basis of the email communication between LGNSW Inspector Newman and Mr Nowicz dated 7 and 9 October 2015 and the Notice to Produce issued to Mr Nowicz dated 9 October 2015.
- 113.** The Authority is satisfied, as alleged in Particulars 15 and not contested by Mr Nowicz, that Mr Nowicz did in fact attend the Rathmines Club on 9 October 2015 where he removed the compliance plate for gaming machine number XAW855696 and replaced it with the compliance plate for gaming machine number XAW850952.

114. These findings are made on the basis of an email from the Rathmines Club to LGNSW staff dated 19 March 2016 attaching the *Quickchange* authorisation report and work item summary for application number 243383; a letter from Ms Leanne Jones of the Rathmines Club to LGNSW detailing her account of events on 9 October 2015; a letter dated 13 October 2015 from Mr Peter Blundell of the Rathmines Club detailing his recollection of a telephone conversation with Mr Tupou on 8 October 2015; and an LGNSW File Note dated 13 October 2015 recording the details of a conversation with LGNSW staff and Mr Blundell that took place on 13 October 2015.
115. However, there is insufficient evidence in the Complaint Material to establish the allegation in Particular 15 that Mr Nowicz attended the Dora Creek Club on 9 October 2015, where compliance plates XSG210085 and XSG700223 were allegedly replaced with compliance plates XUN600100 and XKA019974 respectively. The Authority does not make that finding.
116. Particular 15 is established, to the extent that it concerns the Rathmines Club.
117. The Authority is satisfied, as alleged in Particular 16, that the *soft* meters on gaming machine serial numbers XAW850952 and XAW855696 were actually reset to zero at the Rathmines Club on 9 October 2015. The Authority makes this finding on the basis of the CMS reads for the relevant machines dated October 2015, which form part of the Complaint Material.
118. Particular 16 is established.
119. The Authority is satisfied that the technician who attended the Rathmines Club and the Dora Creek Club on 9 October 2015 was in fact Mr Graeme Nowicz. Particular 17 is not contested by Mr Nowicz and is established on that basis.
120. The Authority is also satisfied, as alleged in Particular 18, that the technician licence ID used to record completing the works on 9 October 2015 was registered to Mr Tupou and that the seller registered as conducting the transaction was Lakes Gaming. The Authority makes this finding on the basis of the *Quickchange* Instrument of Authority for application number 243383 dated 9 October 2015 provided in the Complaint Material.
121. The Authority accepts, as stated in the Nowicz Submission, that Mr Nowicz may not have been aware of the technician licence ID used to record completing the relevant works. However, this Particular is factually established on the basis of the *Quickchange* Instrument of Authority for application number 243383 dated 9 October 2015 provided in the Complaint Material.
122. With regard to Particular 19, the Authority is satisfied, on the basis of the Tupou Interview that Mr Tupou admitted to instructing Mr Nowicz to remove the compliance plate for gaming machine number XAW855696 and replace it with the compliance plate for gaming machine number XAW850952 at the Rathmines Club on 9 October 2015.
123. As further alleged in Particular 19, the Authority is also satisfied, on the basis of the Nowicz Submission, that Mr Nowicz declined to be interviewed in relation to these allegations.
124. The Authority is satisfied that Particular 19 is established.
125. The Authority is *not* satisfied, as alleged in Particular 20(a), that Mr Nowicz contravened section 77(3) of the Act by reason that he attended the Dora Creek Club on 9 October 2015 and replaced compliance plates XSG210085 and XSG700223 with XUN600100 and XKA019974 respectively, in circumstances where he was not permitted to do so by any of the provisions of section 77(4).

126. While Mr Nowicz admits performing certain work on the premises of the Dora Creek Club on 9 October 2015, the Complainant has not provided evidence of Mr Nowicz interfering with the compliance plates of any machines on the premises of that club.
127. With regard to Particular 20(b), the Authority accepts Mr Nowicz's general submission that the soft meter must necessarily be reset to zero upon converting a gaming machine into a new game.
128. The Authority does not consider Mr Nowicz's explanation, in relation to his alleged conduct regarding the hard meters of gaming machine numbers XSG210085 and XSG700223 as entirely satisfactory.
129. Mr Nowicz makes the submission that hard meters are "no longer used in the industry". While it is true that hard meters are no longer the primary source of information about the operation of a gaming machine in New South Wales (given the availability of soft meters and their interface with the Central Monitoring System) the Authority is aware, as an industry regulator, that hard meters are in fact installed and remain operational on many gaming machines throughout New South Wales.
130. They are potentially available as a supplementary source of information about the operation of a gaming machine. It is difficult to accept that a person with Mr Nowicz's experience would not be aware of this, even if Mr Nowicz has little cause to deal with hard meters in his day to day work.
131. Nevertheless, applying the *Briginshaw* principle and taking due care when fact finding, the Authority accepts Mr Nowicz's contention that "at no time did he interfere" with the hard meters of the gaming machines in question.
132. While the Complainant has made allegations as to the zeroing of soft meters on gaming machines at the *Rathmines Club* on 9 October 2015, the Complainant has not provided any evidence in the Complaint Material establishing that the hard meters of gaming machine numbers XSG210085 and XSG700223 were reset to zero on 9 October 2015 and no finding is made in this regard. The Authority notes that it is the Dora Creek Club, not the Rathmines Club, that is the subject of Particulars 20(a) and (b) of the Complaint.
133. Particular 20(b) is not established.

Ground 2

Allegations in Particulars 22 to 24

134. Particular 22 [the Authority notes that there is no Particular numbered 21] alleges that by virtue of the above allegations, Mr Nowicz is no longer a fit and proper person to hold a gaming-related licence for the purposes of section 129(3)(iv) of the Act.
135. It is well established at common law that to be "fit and proper" for the purposes of licensing, a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541.
136. In *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127, the High Court of Australia held that:

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

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

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

- 138.** Particular 23 alleges that the actions of Mr Tupou and Mr Nowicz collectively appear to have been taken after having been made aware of the existence of an investigation by LGNSW, either to hinder inspectors in lawfully gathering evidence or erasing their complicity in the commission of gaming machine offences.
- 139.** Particular 24 further alleges that Mr Nowicz took action to reset the “hard” meters of approved gaming machines in the Rathmines Club, an action that is not ordinarily allowed pursuant to the authority granted by a gaming technician’s licence. The Complainant submits that the “only reasonable explanation” is that Mr Nowicz sought to remove all evidence of Lakes Gaming or his connection to the matters under investigation.

Mr Nowicz’s Submissions on Particulars 22 to 24

- 140.** In response to the allegation in Particular 22, Mr Nowicz contends that he has not engaged with Mr Tupou in any action that was designed to hinder LGNSW inspectors. He further submits that there is no evidence that he collectively engaged with Mr Tupou in any action designed to hinder the inspectors.
- 141.** Mr Nowicz submits that Particular 23 relies upon the “appearance” of such conduct and that is a standard of proof that the Authority should not be satisfied with, referring to the *Briginshaw* principle.
- 142.** Mr Nowicz specifically contends that he has not reset any hard meters of any gaming machine and that he has not had to interact with hard meters on a gaming machine for over 10 years in his daily work as a technician servicing machines. Mr Nowicz further contends that he has not sought to remove any evidence for Lakes Gaming, nor has he colluded with anyone.
- 143.** Mr Nowicz submits that the Authority should not be satisfied to rely upon evidence from Mr McLetchie, who is a “suspect and discredited source” and who has admitted being untruthful to a LGNSW inspector. Mr Nowicz rejects many of the assertions put forward in the versions of events provided by Mr McLetchie.
- 144.** The Authority notes that neither the Complainant nor Mr Nowicz has provided any interviews or statements made by Mr McLetchie as part of the Complaint Material. The only interview or statement in evidence is the Tupou Interview.
- 145.** Mr Nowicz submits that he had no knowledge of whether Mr McLetchie was perpetrating any fraud or wrongdoing against the Maitland Park Bowling and Sporting Complex. Mr Nowicz contends that he only dealt with Mr McLetchie, who was then the secretary/manager and CEO of the Maitland Park Club. Mr Nowicz states that he held the honest belief that he was dealing with the Club itself at all times when dealing with McLetchie.

- 146.** Mr Nowicz submits that Mr McLetchie’s interviews with LGNSW establish that:
- Mr McLetchie dealt with Mr Nowicz at his home business premises;
 - the \$10,000 payment made by Mr Nowicz to Mr McLetchie was for the gaming machines Mr Nowicz obtained from the Maitland Park Club;
 - Mr McLetchie passed money that had been paid by Mr Nowicz onto the Maitland Park Club (though apparently not the full amount);
 - at the time of these events Mr McLetchie was the secretary/manager and CEO of the Maitland Park Club; and
 - Mr McLetchie received verbal authorisation from the Chairman of the Maitland Park Club to sell the subject machines that were purchased by Mr Nowicz.
- 147.** Mr Nowicz rejects the Complainant’s contention that Mr Nowicz sought to conceal his involvement in the matters now under investigation. Mr Nowicz submits that at first instance he voluntarily attended an interview to answer the questions of LGNSW inspectors and that he also provided answers in response to a Notice to Produce that had been issued by the inspectors, and other information by email.
- 148.** Mr Nowicz submits that no adverse inference should be drawn against him for exercising his right to decline a second face-to-face interview with LGNSW. Mr Nowicz submits that he offered to assist LGNSW with matters by answering any questions in writing but that offer was not taken up by the Complainant.
- 149.** Mr Nowicz further notes that the Complainant has elected not to exercise its power to compel him to attend an interview, which they could have done if LGNSW thought there was something critically important to ask him. Mr Nowicz submits that he has cooperated with the LGNSW investigation and the Complainant has erroneously suggested that he has not been cooperative.
- 150.** Mr Nowicz concludes in response to Particular 24 that he did not willingly collude with anyone, did not interfere with any regulatory measures taken by LGNSW and that he did not divert or mislead LGNSW investigators or the Authority. Mr Nowicz reiterates his position that he was “simply fulfilling his role as a technician, a role that provides him with his livelihood and has done so for the past 22 years without prior incident”.
- 151.** Nevertheless, should the Authority find Ground 2 to be established Mr Nowicz submits that the Authority should only issue a warning, reprimand or at most impose a monetary penalty under section 131(2)(a)(i) of the Act if disciplinary action is contemplated.
- 152.** Mr Nowicz refers to the relevant commentary on legal principles underpinning the test of “fit and proper person” which can be found in *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127 and in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.
- 153.** Mr Nowicz submits that the Authority may be satisfied that he has acted innocently and with honest belief at all times. He submits that his 22 years in the industry is a testament to his knowledge and ability to properly execute his duties as a licensed person. His 22 previously “unblemished” years in the industry, coupled with his honest belief and the “innocent and transparent” manner in which he acted in relation to the matters that are the subject of this Complaint should give the Authority and the wider community comfort that any improper conduct that has occurred will not occur in the future and that he has done nothing to undermine the objects of the Act or anything that requires “drastic” action in the public interest.

Authority Findings on Particulars 22 to 24

154. The Authority notes that the gaming machines industry is one of the most closely regulated areas of commerce under New South Wales law. This is for good reason, given the considerable scope for probity concerns and the potential social harm posed by the keeping of gaming machines.
155. The Authority accepts, and it is not in dispute, that Mr Nowicz has held a gaming machine technician's licence since 13 September 1994 and a gaming machine seller's licence since 26 September 2013.
156. To the extent that it is alleged in the introductory paragraphs of this Complaint, the Complainant has not established how Mr Nowicz is a "close associate" of Lakes Gaming Pty Ltd within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*. The Authority is satisfied, on the basis of the Nowicz Submission, that Mr Nowicz is an independent contractor and licensed gaming machine technician who provides gaming machine services to Lakes Gaming's clients.
157. The Authority accepts that Mr Nowicz has spent a substantial period of time in the gaming machines industry in New South Wales and there is no evidence of previous adverse regulatory concerns with regard to Mr Nowicz or his company, LGS Technology Pty Ltd over and above the matters specified in this Complaint.
158. The Authority notes that while Mr Nowicz declined to participate in a second interview with LGNSW inspectors, he has nevertheless provided submissions through his solicitor on the merits of this Complaint, verified by a statutory declaration.
159. The Authority is not satisfied, as alleged in Particular 23, that Mr Nowicz deliberately acted in such a manner as to hinder LGNSW inspectors in lawfully gathering evidence or erasing his complicity in the commission of gaming machine offences.
160. The Authority is satisfied that in around May to June 2015, Mr Nowicz purchased 6 gaming machines from Mr McLetchie, a person who was not authorised to sell gaming machines, in contravention of section 71(2) of the Act. The allegations in Particulars 1 to 12 of the Complaint are largely established.
161. Mr Nowicz's assumption that Mr McLetchie would hold a gaming machine seller's licence indicates a lack of knowledge or ability/diligence in respect of his dealings with Mr McLetchie that falls short of the diligence expected of a gaming-related licensee.
162. The Authority is further satisfied that Mr Nowicz removed one compliance plate on gaming machine number XAW855696 and replaced it with the compliance plate for gaming machine number XAW850952 at the Rathmines Club on 9 October 2015 in contravention of section 77(3) of the Act.
163. Mr Nowicz has not provided a satisfactory explanation for his conduct with regard to the compliance plate and this conduct provides a further basis for impugning Mr Nowicz's knowledge and ability with regard to regulatory matters – as both the personal holder of a gaming licence and the director of a corporate licensee.
164. The Authority is satisfied that Ground 2 is established on the basis of the Authority's findings on Ground 1.

SUBMISSIONS ON DISCIPLINARY ACTION

165. On 19 October 2016 the Authority issued a detailed letter to the parties notifying its findings on the Grounds of Complaint and giving the Complainant 7 days and Mr Nowicz 14 days to make any final submissions addressing the question of what, if any, disciplinary action should be taken by the Authority in light of those findings.

Complainant Submission on Disciplinary Action dated 2 November 2016

- 166.** On 2 November 2016, the Complainant provided the Authority with a submission on disciplinary action in relation to the Complaint.
- 167.** The Complainant notes that the Authority is satisfied that both Grounds of Complaint are established in that Mr Nowicz has contravened a provision of the Act or Regulation and is no longer fit and proper to hold a gaming-related licence.
- 168.** On the basis of the Authority's findings as set out in its letter of 19 October 2016, the Complainant submits that the Authority should make the following Orders:
- (i) Pursuant to section 131(2)(a)(i) of the Act, impose a financial penalty on Mr Nowicz in the amount the Authority deems appropriate.
 - (ii) Pursuant to section 131(2)(d) of the Act, cancel:
 - (a) The gaming machine seller's licence held by Mr Nowicz (GMS1200019);
 - (b) The gaming machine technician's licence held by Mr Nowicz (GMT4011371).
 - (iii) Pursuant to section 131(2)(f) of the Act, disqualify Mr Nowicz from holding a gaming-related licence and being a close associate of the holder of a gaming-related licence for a period up to 10 years.
- 169. Annexure 1 to the Complainant's submission** is a schedule itemising the costs incurred by LGNSW in respect of the investigation that gave rise to the Complaint, which amount to **\$6,287.47**.

Submission from Mr Nowicz dated 11 November 2016

- 170.** On 11 November 2016, Mr Nowicz's solicitor emailed the Authority with a 6-page submission letter on disciplinary action.
- 171.** Briefly, Mr Nowicz notes that the Authority accepted that Mr Nowicz held a mistaken belief that he was dealing with the Maitland Park Club in the transaction with Mr McLetchie. Mr Nowicz submits that he was "open and transparent" when making the subject transactions.
- 172.** Mr Nowicz notes that the Authority was satisfied that the technician licence identification number used to record completing the works at the Rathmines Club on 9 October 2015 was registered to Mr James Tupou and the seller registered as conducting the transaction was Mr Tupou's company, Lakes Gaming Pty Ltd. The Authority was further satisfied that Mr Nowicz is not a close associate of Lakes Gaming Pty Ltd and that Mr Nowicz is an independent contractor.
- 173.** Mr Nowicz notes that the Authority was satisfied that Mr Tupou made full admissions during an interview with LGNSW inspectors that he instructed Mr Nowicz to remove and replace the compliance plate on a gaming machine at the Rathmines Club on 9 October 2015. No findings were made by the Authority of any adverse behaviour in respect of what took place at the Dora Creek Club on 9 October 2015.
- 174.** The Authority accepted Mr Nowicz's general submission that the soft meter of a gaming machine must necessarily be reset to zero upon converting a gaming machine into a new game, and accepted Mr Nowicz's contention that at no time did he interfere with the hard meters of the gaming machines in question.

- 175.** The Authority was not satisfied that Mr Nowicz deliberately acted in such a manner as to hinder LGNSW inspectors in lawfully gathering evidence or erasing his complicity in the commission of alleged gaming machines offences.
- 176.** The Authority accepted that Mr Nowicz has spent a substantial amount of time in the gaming machines industry in New South Wales and there was no evidence of previous adverse regulatory concerns regarding Mr Nowicz or his company, LGS Technology Pty Ltd, over and above the matters specified in the Complaint.
- 177.** Mr Nowicz submits that the majority of the allegations brought forward in the Complaint fell away, including the more serious allegations of collusion and hindering an investigation.
- 178.** Mr Nowicz states that the Authority found two breaches of the Act, as follows:
- (i) Mr Nowicz contravened section 71(2) of the Act by purchasing gaming machines from an unauthorised person (Mr McLetchie); and
 - (ii) Mr Nowicz removed one compliance plate on gaming machine number XAW855696 and replaced it with the compliance plate for gaming machine number XAW850952 at the Rathmines Club on 9 October 2015 in contravention of section 77(3) of the Act.
- 179.** Mr Nowicz submits that these two breaches of the Act were of a “technical” nature and that the Authority must undertake a “weighing up exercise” under section 131 of the Act to determine the appropriate penalty.
- 180.** With regard to penalty, Mr Nowicz states that he is 42 years old, and in a long term *de facto* relationship of 18 years. He has spent 22 years working in the gaming machine industry and it is his only source of income.
- 181.** Mr Nowicz refers to *Quin v Law Institute of Victoria* [2007] VCA 122 and *NSW Bar Association v Evatt* (1968) 117 CLR 177 and submits that due to the protective nature of the Authority's jurisdiction, the Authority should apply a “forward looking test” when determining penalty.
- 182.** Mr Nowicz submits that as the majority of the allegations made in the Complaint were not established and fell away, and that serious matters alleged regarding collusion and hindering inspectors were not established, the findings that were established against Mr Nowicz “come in at the lower end of the scale” for contraventions of the Act.
- 183.** In respect of the contravention of section 71(2) of the Act, Mr Nowicz submits that the Authority expected more diligence of Mr Nowicz notwithstanding the fact that the Authority credits him with the honest and mistaken belief that he was dealing with the Maitland Park Club in relation to the subject transaction.
- 184.** In respect of the contravention of section 77(3) of the Act, Mr Nowicz submits that the Authority found the “mitigating circumstances” that Mr Nowicz carried out this work as a technician at the request and instruction of a separately licensed technician and a company that was a separate registered and licensed seller. The Authority was not satisfied with the fullness of Mr Nowicz's explanation as to his conduct in relation to this matter.
- 185.** Applying a forward-looking approach, Mr Nowicz submits that his 22 “previously unblemished” years in the industry coupled with the finding made by the Authority that he acted with a mistaken belief will give the Authority and the general community comfort that any improper conduct will not occur in the future and that Mr Nowicz is unlikely to do anything that will undermine the integrity or objects of the Act in the future.

- 186.** In respect of Mr Nowicz's gaming machine technician's licence (GMT4011371), Mr Nowicz submits that:
- (a) Coming under adverse notice for only one matter in 22 years in circumstances where he was acting on the instructions of and under the banner of a separately licensed entity does not warrant Mr Nowicz's licence being cancelled or him being disqualified for a period of 10 years as pressed by the Complainant. This would be an "extreme" penalty, particularly given that Mr Nowicz has held an "unblemished" technician's licence for 22 years.
 - (b) It is open to the Authority to take no action against Mr Nowicz's technician's licence, or that otherwise the appropriate action in these circumstances is to reprimand the licensee and order a monetary penalty pursuant to section 131(2)(a)(i) of the Act.
- 187.** In respect of Mr Nowicz's gaming machine seller's licence (GMS1200019), Mr Nowicz submits that:
- (a) He has only held this licence for approximately three years and the finding that Mr Nowicz purchased gaming machines from an unlicensed person under an honest mistaken belief, not exercising sufficient due diligence is similarly capable of being dealt with by the imposition of a reprimand and a monetary penalty pursuant to section 131(2)(a)(i) of the Act.
 - (b) However if the Authority is minded to impose a stricter penalty in respect of the gaming machine seller's licence because it has only been held for a relatively short period, Mr Nowicz submits that a period of suspension or disqualification of 3 months would be appropriate, given the Authority's finding that Mr Nowicz was acting under the honest mistaken belief that he was dealing with the Maitland Park Club when carrying out the subject transaction.
- 188.** Mr Nowicz concludes that the imposition of a reprimand and monetary penalty would be a "sufficient deterrent" as it would be unfair in the mitigating circumstances of this case to "take Mr Nowicz's livelihood away from him".

DECISION ON DISCIPLINARY ACTION

- 189.** At its meeting on 16 November 2016, the Authority further considered the Complaint and all of the material then before the Authority. This did not include three character references that had been provided to the Authority late by Mr Nowicz's solicitor on 29 November 2016. This material was submitted almost three weeks after the time specified for any final submissions had passed. While this late evidence was not considered in making this decision, the Authority notes its finding below that Mr Nowicz is generally a person of good character.
- 190.** The Authority notes an apparent error in the Authority's Findings Letter regarding the McLetchie interview transcript which the Authority accepts formed part of the Complainant's letter dated 9 May 2016. The Authority had taken into account Mr Nowicz submissions with regard to that interview, as noted in the Findings Letter. The Authority is nevertheless satisfied that Mr Nowicz contravened section 71(2) of the Act and this adversely reflects upon his knowledge and ability as a gaming related licensee.
- 191.** The purpose of taking regulatory action is protective, not punitive. One of the Authority's functions is to assess all of the facts up to the time of making a decision and project into the future as to what regulatory action is in the public interest, with a view to protecting the industry and the wider community.
- 192.** It is open to the Authority to take into account Mr Nowicz's conduct up to the point of determining this Complaint, and incumbent upon the Authority to project into the future and

determine what, if any, disciplinary action is necessary to protect the public interest in respect of the regulation of the gaming machines industry in New South Wales.

193. The gaming machines industry is one of the most closely regulated areas of commerce in New South Wales, by reason of the considerable scope for this cash intensive industry to be subject to fraud, corruption, money laundering, embezzlement and adverse impacts upon consumers of gambling services.
194. The Authority notes that the allegations that have been established by this Complaint include non-compliance with restrictions on the supply and purchase of gaming machines and unlawfully interfering with the compliance plates of approved gaming machines. Parliament has specified that contravention of sections 71 and 77 of the Act are relatively serious matters among the offences prescribed in Part 6 of the Act, attracting a maximum penalty of 100 penalty units and 12 months imprisonment in the case of section 71 and 100 penalty units in the case of section 77, should a criminal conviction be secured in a Local Court.
195. Harm minimisation, the balanced development of the industry, the integrity of the industry and the ongoing reduction in gaming machine numbers are all statutory objects under section 3(1) of the Act which inform the public interest in respect of the Act. Gambling harm minimisation is a statutory consideration to which the Authority must have regard under section 3(2) of the Act when exercising functions under the Act.
196. The administrative arrangements for tracking all gaming machines in New South Wales, including the *Quickchange* database, the Central Monitoring System and physical manufacturer and compliance plates attached to every authorised gaming machine, are fundamental to maintaining the integrity of the industry in New South Wales. They enable gaming-related licensees, business operators, law enforcement and the Authority to monitor the provenance, control, location and performance of every authorised gaming machine in New South Wales at any given time.
197. The statutory requirements that restrict the manner and circumstances in which gaming machine compliance plates may be dealt with play a crucial role in the licensing regime. The Authority regards any tampering with a compliance plate that falls outside the scope of conduct authorised by the legislation and/or a licence is a most serious matter.
198. Other than the matters specified in this Complaint there is no adverse evidence as to Mr Nowicz's conduct, whether in this industry or otherwise. The Authority is satisfied that Mr Nowicz is generally a person who is of generally good character and has enjoyed a long period of participation in the industry in New South Wales, spanning 22 years.
199. However, the length of his involvement in the industry as both a licensed technician and gaming machine dealer should only have reinforced his awareness that compliance plates should not be tampered with other than in circumstances that fall squarely within the scope of authorisation conferred upon him by the legislation and the relevant licence.
200. There is insufficient evidence or material before the Authority to find that Mr Nowicz acted dishonestly when engaging in the conduct that has been found by the Authority. Nevertheless, whether or not he had awareness of what *others* may have been seeking to achieve with the gaming machines that he serviced, he should have known that tampering with a compliance plate on any gaming machine, otherwise than in accordance with the legislation and licence, may potentially facilitate serious misconduct by others.
201. Gaming machine technicians occupy a particular position of trust in maintaining the integrity of the industry. The conduct established by this Complaint indicates a serious lapse in Mr Nowicz's knowledge and/or a substantial failing as to his diligence or ability with regard to regulatory matters.

- 202.** Looking forward, the Authority's confidence in Mr Nowicz ability and diligence with regard to these most basic regulatory controls has been seriously undermined, notwithstanding his experience in the industry and prior good record.
- 203.** The Authority considered, but does not accept, Mr Nowicz' s earlier submission that disciplinary action should be confined to a monetary penalty or his later submission that disciplinary action be confined to a reprimand and disqualification for 3 months. That would not adequately reflect the seriousness of this matter. However, taking into account Mr Nowicz's prior record and his general good character, the Authority does not accept the Complainant's submission that a period of ten years' disqualification is appropriate in this case.
- 204.** The Authority considers it necessary, in the public interest, to disqualify Mr Nowicz from holding a gaming-related licence for a period that is substantial enough to serve the protection of the community and send a clear signal to gaming technicians and others in the industry that a lack of diligence with regard to the sale or supply of gaming machines and particularly the handling of gaming machine compliance plates may be met with a substantial regulatory response.
- 205.** The Authority accepts that this decision will necessarily remove Mr Nowicz's ability to earn a livelihood from this industry, but the Authority has given weight to protecting the integrity of the industry and finds this to be an appropriate, protective action to take.
- 206.** The Authority cannot avoid concluding that the adverse findings made on this Complaint with regard to both the sale and supply of gaming machines and the handling of compliance plates affect Mr Nowicz's fitness as a technician and also, by implication, the fitness of his company, LGS Technology Pty Ltd, of which Mr Nowicz is the owner and sole director.
- 207.** On the facts and circumstances of this case, the Authority is satisfied that both licences should be cancelled and that Mr Nowicz should be disqualified from holding a gaming related licence for three (3) years, commencing 28 days after the date of this letter.
- 208.** The Authority is further satisfied that the costs specified by the Complainant in its final submissions are the actual costs of the Secretary on the investigation that preceded this Complaint. Noting that both Grounds of Complaint have been established, that a breakdown of costs has been provided by the Complainant and that there are no specific submissions from Mr Nowicz contesting the Complainant's claim for costs, the Authority finds that Mr Nowicz should pay the costs of the Secretary's investigation that preceded the making of this Complaint in the sum of **\$6,287.47** by no later than 28 days from the date of this decision.
- 209.** In light of the substantial disciplinary action taken by the Authority, including the costs order, the Authority does not consider that there is any significant further public interest in issuing a monetary penalty or a reprimand against Mr Nowicz, as was proposed by the Complainant.
- 210.** The Authority recommends that Mr Nowicz contact the Complainant for details as to the preferred mode by which costs shall be paid to the New South Wales Department of Justice and that Mr Nowicz copy the Authority's General Counsel in to that communication so that the Authority will have a record of this payment being made.
- 211.** Mr Nowicz is on notice that licensing staff will in the usual course record these Orders on their relevant records. Any delay or failure by Mr Nowicz to make this payment within the specified time period is a matter that may be taken into account in the context of any future complaint against Mr Nowicz or any future application proposing that Mr Nowicz undertake a regulated position within the New South Wales gaming industry.

ORDERS

212. The Authority has decided to take the following disciplinary action:

- (i) Pursuant to section 131(2)(d) of the Act, the Authority **Cancels** the gaming machine technician's licence held by Mr Graeme Nowicz number GMT4011371 and the gaming machine seller's licence number GMS1200019 held by Mr Graeme Nowicz. Cancellation takes effect 28 days after the date of this letter.
- (ii) Pursuant to section 131(2)(f) of the Act, the Authority **disqualifies** Mr Nowicz from holding a gaming-related licence or being a close associate of a gaming-related licensee for a period of **three (3) years** , commencing 28 days after the date of this letter.
- (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority orders that Mr Nowicz pay the costs on the investigation that preceded the making of the Complaint under section 128 of the Act, amounting to **\$6,287.47** , to be paid to the Department of Justice by no later than 28 days from the date of this decision.

REVIEW RIGHTS

213. Pursuant to section 131C 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 or any person against whom any disciplinary action is taken under Part 8 of the Act, by no later than 28 days after those parties receive notification of this decision letter.

214. For more information, 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.

Yours faithfully



Philip Crawford

Chairperson

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