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Dear Sir/Madam

**Final Decision on Ground of Complaint in Relation to  
Riverwood Legion and Community Club Limited  
under Part 6A of the *Registered Clubs Act 1976***

**INTRODUCTION**

1. On 6 March 2015, the Independent Liquor and Gaming Authority (Authority) received a complaint dated 4 March 2015 (Complaint) in relation to the Riverwood Legion and Community Club Limited (Club) under Part 6A of the *Registered Clubs Act 1976* (Act).
2. The Complaint is made by the Director of Compliance and Enforcement of the Office of Liquor, Gaming and Racing (OLGR), Mr Anthony Keon (Complainant) in his capacity as a delegate of the (then) Secretary of NSW Trade and Investment, now the Secretary of the Department of Justice.
3. There is only one ground of complaint, being the statutory ground available under section 57F(3)(g) of the Act that the secretary or member of the governing body is not a fit and proper person to act as such. Specifically, the Complainant alleges that the Club's now former secretary, Mr Simon de Munck, has demonstrated by his conduct that he is not a fit and proper person to act as such.
4. At its meeting on 29 July 2015, the Authority gave consideration to the Complaint, the Brief of Evidence provided by OLGR accompanying the Complaint, and all other

submissions received, noting that Mr de Munck has not elected to make any submissions in reply to the invitation to make submissions.

5. The Authority has found, on the basis of the evidence provided in support of the Complaint and the submissions made by the Club, that Mr Simon de Munck, the former secretary of the Club, is not a fit and proper person to act as such within the meaning of section 57F(3)(g) of the Act, as detailed in the reasons set out below.

## THE COMPLAINT MATERIAL

### Letter of Complaint from Mr Anthony Keon, delegate of the Secretary of the Department of Justice, dated 4 March 2015

6. There is only one ground specified in the Complaint (Ground), being the ground available under section 57F(3)(g) of the Act, which provides:
  - (g) *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.*
7. Ground 1 alleges that by reason of the conduct of Mr de Munck whilst Club secretary, he has demonstrated that he is not "*fit and proper*" to hold such a position.
8. The particulars specified by the Complainant in support of the Ground are as follows:
9. Particular 1.1 of the Complaint alleges that the Club entered into an employment contract with Mr de Munck on 3 July 2006 for the position of "*Manager*".
10. Particular 1.2 of the Complaint alleges that Mr de Munck was the Club secretary between 15 August 2006 and 10 April 2014.
11. Particular 1.3 of the Complaint alleges that, during this period, Mr de Munck failed to exercise his duties as the secretary of the Club with a degree of knowledge, ability, care and diligence by reason that:
  - (a) *Mr de Munck provided authorisation for the payment of \$800,000 of Club funds without authority.*
    - (1) *On 14 January 2014, Mr de Munck obtained access to the Club's NABConnect banking system;*
      - (i) *There is no minute of a meeting of the governing body of the Club approving this access.*
    - (2) *On 18 February 2014, Ms Divna Repaja, sole director of Repaja & Co Pty Limited, informed Mr de Munck by email of an investment opportunity in a pool which could:*
      - (i) *Provide an interest profit of 52.57 percent over a 10 week period; and*
      - (ii) *Based upon an investment of \$550,000.00, provide an interest profit of \$289,135.00.*
    - (3) *On 21 February 2014, the Club's daily electronic funds transfer limit was set at \$150,000;*
    - (4) *On 21 February 2014, Mr de Munck was the only employee of the Club capable of overriding the Club's daily electronic funds transfer limit by using the security token issued to him personally as the nominated "security officer" by the bank;*
    - (5) *On 21 February 2014, Mr de Munck had general authority from the governing body to authorise payments from the Club's main trading account up to the daily withdrawal limit. Any payments which exceeded \$150,000.00 per day, other than gaming taxes, payroll taxes and quarterly BAS taxes, required approval from the Club's governing body;*
    - (6) *The Club's online banking system requires one person to "set up" a payment by entering the particulars of the transaction, including the payee details and the payment amount, and then requires another person to "authorise" the payment within a set time limit. Payments that are in excess of the Club's daily electronic funds transfer limit require additional authorisation codes to be entered, including the use of Mr de Munck's security token.*

- (7) On 21 February 2014, Ms Repaja provided Mr de Munck the following bank account details by email in relation to the "pool":
  - (i) Bank: ST GEORGE  
Account Name: REPAJA CO PL  
BSB: 112-879  
ACC: 421789898  
Ref: 855353883  
Amount: \$800,000.00
- (8) On 21 February 2014, Mr de Munck gave the Club's Accounts Payable and Payroll Clerk, Ms Meagan Ringwood, a handwritten note stating "Repaja & Co, BSB: 112-879, Acc: 421789898, Ref 855353883 \$800k";
- (9) On 24 February 2014, Mr de Munck directed Ms Ringwood:
  - (i) to "set up" the \$800,000.00 payment for authorisation; and
  - (ii) to assist him in "authorising" the payment in the Club's online banking system. Authorisation was effected by entering Mr de Munck's authorisation codes, PIN and using Mr de Munck's security token issued by the bank.
- (10) On 24 February 2014, the payment of \$800,000.00 was credited to the St George bank account held by "Repaja & Co Pty Limited, C/- Mrs D Repaja".
- (11) Mr de Munck authorised the payment of \$800,000.00 to Repaja & Co referred to at Particular 1.3(a)(9)(i) above in circumstances where:
  - (i) the \$800,000.00 were funds owned by the Club;
  - (ii) there is no evidence that the transaction was for the benefit of the Club and its members; and
  - (iii) there is no minute of the members of the governing body approving the payment of \$800,000.00.
- (b) Mr de Munck failed to disclose to the members of the governing body the \$800,000.00 payment he authorised to Repaja & Co Pty Limited on 24 February 2014.
  - (1) Between 24 February 2014 and 27 March 2014, no disclosure was made to Mr Michael Free, the Club President and member of the governing body, when Mr de Munck and Mr Free had regular communication;
  - (2) On 25 February 2014, no disclosure was made by Mr de Munck when he attended a meeting of the governing body of the Club;
  - (3) On 3 March 2014, no disclosure was made by Mr de Munck when he attended a meeting of the governing body of the Club;
  - (4) Mr de Munck did not bring the matter to the governing body until 27 March 2014 when the Club's legal representative attempted to contact the Club President.
- (c) Mr de Munck attempted to deceive the Club, its governing body and members of the true nature of the \$800,000.00 payment he authorised to Repaja & Co Pty Limited on 24 February 2014:
  - (1) Mr Paul Cheeseman, partner of BDO East Coast Partnership (BDO), prepares financial reports for the Board during the third week of the succeeding month following the month being audited.
    - (i) In March 2014, the third working week was Monday 17 March to Friday 21 March.
  - (2) On 21 February 2014, Ms Repaja advised by email that the funds "will be back well well well before the 21st".
  - (3) On 21 February 2014, Mr de Munck sent an email to 'Divna' requesting an invoice from Repaja & Co Pty Limited for \$8,000.00 worth of furniture to provide Mr de Munck an "option for an out".
  - (4) On 4 March 2014, an email folder titled 'Divna' was deleted from Mr de Munck's email account.
  - (5) On 26 March 2014, Mr de Munck advised the Club's legal representatives, Thomson Geer Solicitors, that Club funds totalling \$800,000.00 had been mistakenly transferred to Repaja & Co for furniture, and that the payment should have been \$8,000.00;
  - (6) On 31 March 2014, Mr de Munck contacted Ms Ringwood. Ms Ringwood alleges that Mr de Munck said "I am just ringing regarding the \$800,000.00 transaction, could you say it was just a mistake and that it was meant to be \$8,000.00?"
  - (7) The Club engaged Mr Adam Stafford, a forensic IT specialist from BDO Australia, to image Mr de Munck's computer at the Club. Mr Stafford recovered extensive email communication between Mr de Munck and Ms Repaja.
  - (8) Mr de Munck took active steps to minimise detection by:
    - (i) wanting to ensure Club funds were returned before being detected in an audit of the Club likely to be held on or about 21 March 2014;
    - (ii) obtaining a furniture invoice which could be, and was, used to explain the payment as a mistake in the event the Club's funds were not returned on time;

- (iii) deleting email correspondence and email folders; and
      - (iv) contacting staff members and attempting to manipulate their evidence.
- (d) Mr de Munck provided false and misleading information to the Club's lawyers and caused an affidavit containing false and misleading information to be presented to the Supreme Court.
  - (1) On 26 March 2014, Mr de Munck provided Thomson Geer Solicitors documentation containing false and misleading documents supporting his claim that the \$800,000.00 transaction to Repaja & Co Pty Limited was a mistake.
  - (2) On 27 March 2014, Mr de Munck caused Mr Adam Pope, solicitor at Thomson Geer Solicitors to swear an affidavit containing false and misleading information and file it in the Supreme Court.
- (e) Mr de Munck failed to comply with the Club's annual leave policy and direction given by the governing body:
  - (1) On 27 June 2011, Mr de Munck requested to be paid the monetary value of 25 weeks annual leave he had accrued.
  - (2) The governing body of the Club approved payment and directed Mr de Munck not to accrue annual leave to excess and directed him that the Club's annual leave policy is to be adhered to.
  - (3) The Club's annual leave policy relevantly states:
    - (i) annual leave "must be taken within six (6) months of the anniversary date"; and
    - (ii) "the payment of annual leave, without actually taking the leave is prohibited, except on termination".
  - (4) On 22 January 2014, Mr de Munck was transferred \$32,268.00 from the Club's main trading account. The transaction:
    - (i) was labelled with the reference "Wages-Holiday Pay";
    - (ii) was not approved by the governing body of the Club; and
    - (iii) was paid without the annual leave being taken and was in breach of the Club's annual leave policy.
- (f) Mr de Munck was dismissed by the governing body of the Club from his position as Secretary:
  - (1) On 31 March 2014, Mr de Munck was suspended from his position due to the commencement of an investigation into the payment of \$800,000.00 as detailed above at Particular 1.3(a)(9)(i).
  - (2) On 9 April 2014, Mr de Munck was directed by the Club's President to attend a meeting with Thomson Geer Solicitors to discuss the circumstances of the \$800,000.00 payment detailed above at Particular 1.3(a)(9)(i).
  - (3) Mr de Munck did not attend the meeting with Thomson Geer Solicitors and was terminated by the Club on 10 April 2014.
- (g) On 9 May 2014, the Club reported the alleged criminal conduct involving Mr de Munck to NSW Police, who are currently involved in an ongoing investigation.

## **OLGR Brief of Evidence and Index to Complaint dated 21 April 2015**

12. Accompanying the Complaint is a 607 page document of evidence or other material prepared by OLGR (Brief of Evidence) which contains the Complaint, an Index of the supporting material relied upon by the Complainant, statements of members of the governing body of the Club, and full copies of the documents relied upon by the Complainant in support of the single Ground of Complaint.

## **SHOW CAUSE NOTICES**

13. On 8 May 2015, the Authority sent by Express Post to the Club governing body a copy of the Complaint and Brief of Evidence. The Show Cause Notice invites the Club to show cause by way of written submissions and supporting evidence as to why disciplinary action should not be taken on the basis of the Ground specified in the Complaint. The Notice specified a timetable for any evidence or submissions on the merits of the Complaint.
14. On 8 May 2015, a separate letter was sent by Express Post to the then known address of Mr Simon de Munck. The letter enclosed the Complaint and Brief of Evidence and invited Mr de Munck to make written submissions as to why disciplinary action should not be taken on the basis of the Ground of Complaint, and set out the timetable in

accordance with which the parties are to file any evidence or submissions. The letter enclosed the Show Cause Notice to the Club and specified the same timetable for evidence or submissions on the merits of the Complaint.

15. After the Authority received advice that Mr de Munck had changed his address, a further copy of the Show Cause Notice and letter inviting submissions was sent on 18 May 2015 to Mr de Munck's latest address advised by the Complainant on information provided by NSW Police.
16. That correspondence advised that by reason of the time elapsed, the timetable specified in the Authority's initial Show Cause Notice dated 8 May 2015 was extended by 10 days.
17. On 21 May 2015, an entire electronic copy of the Show Cause Notice and a link to the entire OLGR Brief of Evidence was also provided to Mr de Munck's solicitor, Mr James Jordan of Jordan Djundja, a law practice based in Kogarah who act for Mr de Munck in a related criminal prosecution arising from the transaction that is the subject of this Complaint.

### **CLUB SUBMISSIONS**

18. After initially seeking particulars of the costs sought by the Complainant in relation to the OLGR investigation that preceded the Complaint, the Club's primary submissions took the form of a letter from their solicitors, Thomson Geer dated 13 July 2015.
19. In this letter, the Club discusses the history of its employment of Mr de Munck and the alleged fraudulent transaction that is the subject of the Complaint. The Club recounts the civil action taken by it in the Supreme Court of New South Wales, modification of the Club's financial controls and procedures and the Club's recent financial performance, notwithstanding the major fraud perpetrated against it.
20. The Club does not dispute the Ground of Complaint but submits that "Mr de Munck's employment has been terminated and he no longer holds the position of secretary".
21. With respect to the alleged fraudulent transaction that is the subject of the Complaint, the Club contends, *inter alia*, that Mr de Munck "was not (and knew that he was not) authorised to make the payment"; that Mr de Munck "went to considerable lengths to mislead other Club staff about his misconduct"; that the Club Board "has at all times co-operated with the OLGR"; that "at the time the Payment was made, the Club's Board believed that appropriate controls were in place in relation to the Club's finances"; and that "Mr de Munck was aware that stealing would not be tolerated".
22. The Club further submits that it has been the victim of a fraud; Mr de Munck's "fraudulent activity breached his contract of employment" and constituted a "breach of his fiduciary and statutory duties".
23. The Club submits that Mr de Munck's fraud was "deliberate and well planned", being achieved "only by misleading his colleagues" and that the Club is "very disappointed that Mr de Munck abused the trust of his fellow staff". The Club submits that prior to making this transaction, Mr de Munck was a "well-respected employee of over 10 years standing" who had "full trust and confidence of the Board".
24. The Club further contends that the Club Board has demonstrated, through promptly suspending and later terminating his employment, that it will enforce "appropriate standards of conduct among employees".

25. The Club submits that it has demonstrated its "commitment and capacity to maintain appropriate standards with the *Registered Clubs Act*"; that the Club reported the matter to Police and OLGR at the "earliest practicable opportunity" whilst also engaging "experienced external consultants to conduct an independent investigation"; that the Club's systems and procedures "met the standards required under its insurance policy" as the insurer has "accepted a claim and paid money" and that the transaction in question was "identified within 24 hours of the transfer of funds" with Club staff promptly raising the matter with Mr de Munck, who then provided them with "misleading information".
26. The Club acknowledges that in light of this incident, improvements may be made to the systems in place that manage the Club's finances and submits that as a result, additional measures have been implemented.
27. Those additional measures taken by the Club include, *inter alia*, that a daily limit has been set with the National Australia Bank that requires the Club to contact the Bank "to make specific arrangements if any payment exceeding" the limit is required; that prior authorisation is required from the Chief Executive Officer and a member of the Board's Executive Committee for any payment which is "outside the ordinary course of the Club's operations"; that "any single payment exceeding \$20,000 must be approved by the Board or the Board's Executive Committee"; that two people are required to set up and authorise each payment; that staff have been directed to refuse to participate in a transfer "unless they are satisfied that the necessary paperwork and authorisations are in place"; and that new vendors and suppliers "are highlighted when invoices are received, and an ABN check is to be done".
28. The Club submits that the Board has "demonstrated its capacity to properly manage the affairs of the Club"; that the Club has achieved "very pleasing trading results for the year in which the fraud took place", placing it in a "solid financial position according to the usual industry bench marking; and that the independent investigation "did not uncover evidence implicating any other Club staff member or contractor" and it "appears that this was an extraordinary and isolated event, which does not reflect the culture of the Club's staff as a whole".
29. The Club submits that if the Authority is satisfied that the Ground of Complaint is established, the Club "agrees with the order sought by OLGR that Mr de Munck should be declared 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 or any other registered club for the maximum period of three years".
30. The Club also "consents to any direction of the Authority to pay the costs" of OLGR in "relation to the Complaint pursuant to section 57H(2)(i) of the *Registered Clubs Act 1976* in the amount of up to \$12,675.83, within five business days after the date the Club is notified of the Authority's decision".
31. The Club submits that "no other order should be made against the Club".

## LEGISLATION

32. When determining the Complaint, the Authority has considered the provisions contained in Part 6A of the Act, as follows:

*57F Grounds for making complaint*

- (1) *A complaint in relation to a registered club 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) *Disciplinary action may be taken by the Authority against a registered club on any one or more of the following grounds:*
  - (a) *that the requirements specified in section 10(1) are not being met, or have not been met, by or in relation to the club,*
  - (b) *that the supply of liquor to the club, or on the premises of the club, has not been under the control of the governing body of the club,*
  - (c) *that the club or the secretary of the club has contravened a condition to which any of the following authorisations held by the club is subject:*
    - (i) *a non-restricted area authorisation under section 22,*
    - (ii) *a junior members authorisation under section 22A,*
    - (iii) *a club functions authorisation under section 23,*
  - (d) *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,*
  - (e) *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,*
  - (f) *that the club has been conducted, or the premises of the club have been habitually used, for an unlawful purpose,*
  - (g) *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,*
  - (h) *that a requirement of the Director-General made under this Act in relation to the investigation of the secretary of the club or any member of the governing body of the club has not been complied with,*
    - (i) *that the club has ceased to exist,*
    - (j) *any other ground that the complainant considers appropriate for the taking of disciplinary action against the club.*

**57G Procedure for taking disciplinary action**

- (1) *If a complaint in relation to a registered club is made under this Part, the Authority must, before taking any disciplinary action against the club, notify the registered club in writing of the grounds on which the Authority is proposing to take disciplinary action.*
- (2) *Any such notice is to invite the registered club to show cause, by way of a written submission, as to why the Authority should not take disciplinary action against the club.*
- (3) *The Authority may specify:*
  - (a) *the time within which a submission under this section may be made, and*
  - (b) *any other requirements that must be complied with in relation to the making of any such submission.*
- (4) *If any written submission is made in accordance with this section, the Authority must take the submission into consideration in deciding whether or not to take disciplinary action against the registered club concerned.*

**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.*

57I *Procedure for implementing disciplinary action*

- (1) *If the Authority decides to take disciplinary action under section 57H against a registered club or against the secretary or a member of the governing body of a registered club, the Authority is required to serve on the club or the person a notice informing the club or the person of the Authority's decision.*
- (2) *The notice must include the reasons for the Authority's decision.*
- (3) *The disciplinary action specified in the notice takes effect when notice of it is given or on a later date specified in the notice.*
- (4) *The Authority may, by serving a further notice on the registered club or person concerned, cancel a notice under this section before the notice takes effect.*
- (5) *The Authority is not prevented from taking disciplinary action under this Part merely because the registered club, or the secretary or member of the governing body of the registered club concerned, as the case requires, is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.*

## **FINDINGS ON GROUND OF COMPLAINT**

- 33. The Authority is satisfied, as alleged by Particular 1.1 of the Complaint, that the Club entered into a contract of employment with Mr de Munck on 3 July 2006 for the position of "Manager".
- 34. This finding is made on the basis of a "Service Agreement" between the Club and Mr de Munck setting out the conditions of Mr de Munck's employment signed by Mr Michael Free on behalf of the Club and Mr de Munck and dated 10 August 2006 (Complainant document E020). The document states that the agreement was made on 3 July 2006.
- 35. The Authority is satisfied, as alleged by Particular 1.2 of the Complaint, that Mr de Munck was the Club secretary between 15 August 2006 and 10 April 2014. This finding is made on the basis of a letter to Mr de Munck from the Club notifying the termination of Mr de Munck's employment with the Club dated 10 April 2014 (Complainant document E026); the liquor licence for the Club dated 10 January 2014 (Complainant document E036) and an ASIC extract for the Club (Complainant document E037).
- 36. The Authority is satisfied, as alleged by Particular 1.3 of the Complaint, that during the period of Mr de Munck's employment by the Club – that is, between 15 August 2006 and 10 April 2014 – Mr de Munck failed to exercise his duties as the Club secretary with a degree of knowledge, ability, care and diligence. The Authority is satisfied of this failure on the basis of the Authority's findings on the sub-Particulars of Particular 1.3 of the Complaint, as follows:
- 37. The Authority is satisfied, as alleged by Particular 1.3(a) of the Complaint, that Mr de Munck provided authorisation for the payment of \$800,000 of Club funds without having the authority to do so.



38. This finding is made on the basis of an email dated 14 January 2014 from *NABConnect* to Mr de Munck stating that "you have been assigned access to NAB Connect" (Complainant document E013) and a 21-page submission to Police from the Club in relation to the theft of \$800,000 from the Club, which states at pages 5 to 6 that on 24 February 2014, Mr de Munck approached Ms Meagan Ringwood (the Club Administration Payroll Clerk) to create the payment of \$800,000 in the Club's *NABConnect* trading account (Complainant document E010).
39. The Authority is satisfied, as alleged by Particular 1.3(a)(1)(i) of the Complaint, that there is no minute of any meeting of the governing body of the Club approving the access to *NABConnect* which Mr de Munck obtained on 14 January 2014. This finding is made on the basis of Complainant documents E002 and E003 which are copies of minutes of Club board meetings dated 3 December 2013 and 20 January 2014 respectively, neither of which refers to any decision by the Club Board to approve the access that Mr de Munck actually obtained.
40. The Authority is satisfied, as alleged by Particular 1.3(a)(2) of the Complaint, that on 18 February 2014, Ms Divna Repaja informed Mr de Munck via email of an investment opportunity in a "pool" which could provide an interest profit of 52.57 per cent over a 10 week period and an interest profit of \$289,135.00, given an initial investment of \$550,000.00. This finding is made on the basis of Complainant document E011, being an email recovered using *X-ways Forensics* software [the Authority notes that *X-Ways Forensics* is a computer forensics program]. The email was sent from "Divna Repaja" to "Simon" on 18 February 2014 at 1:00pm stating these potential profit interest rates and amounts.
41. The Authority is further satisfied, as alleged by Particular 1.3(a)(2) of the Complaint, that Ms Divna Repaja is the sole director of Repaja & Co, on the basis of an ASIC extract for Repaja & Co (Complainant document E035).
42. The Authority is satisfied, as alleged in Particular 1.3(a)(3) of the Complaint, that on 21 February 2014 the Club's daily electronic funds transfer limit was set at \$150,000.00.
43. This finding is made on the basis of the statement of Mr Michael Free, the Club President, dated 22 May 2014 in which Mr Free states at point 54 that "Mr de Munck had general authority from the Board to authorise payments from the Main Trading Account up to the total daily withdrawal limit of \$150,000.00"; and on the basis of the statement of Ms Meagan Ringwood, the Accounts Payable and Payroll Clerk at the Club, dated 13 May 2014 in which Ms Ringwood states at point 20 that the "Net Connect Account" has a "set limit of \$150,000.00 expenditure in any one day".
44. The Authority is satisfied, as alleged by Particular 1.3(a)(4) of the Complaint, that on 21 February 2014 Mr de Munck was the only employee of the Club capable of overriding the Club's daily electronic funds transfer limit "on all services", by using the security token issued to him personally as the nominated "security officer" by the bank.
45. This finding is made on the basis of Complainant documents E010 and E033. Annexure A to document E010, which is a document entitled "Club Rivers Guiding Principles and Financial and Accounting Systems" attached to a submission from the Club to Police in relation to the theft of \$800,000 of Club funds, states at point 14 that "Ms Ringwood does not have the authority to release the actual transfer of funds to the account of the vendor, Messrs de Munck and Jamieson can only do so in the system using their individual security tokens". Complainant document E033, entitled "Riverwood Legion and Community Club Limited information as at 24/02/2014", states at point 7 that "user

Simon de Munck has access on all services to override this limit, however user Stuart Jamieson has access on only Linked Account Transfers".

46. The Authority is satisfied, as alleged by Particular 1.3(a)(5) of the Complaint, that on 21 February 2014 Mr de Munck had a general authority from the governing body to authorise payments from the Club's main trading account up to the daily withdrawal limit, and that any payments that exceeded \$150,000.00 per day, other than gaming taxes, payroll taxes and quarterly BAS taxes, required approval from the Club's governing body.
47. This finding is made on the basis of point 54 of the statement of Mr Michael Free, which states that "Mr de Munck had general authority from the Board to authorise payments from the Main Trading Account up to the total daily withdrawal limit of \$150,000.00", and point 55 of that statement that "where there were Club tax payments [such as gaming tax and/or quarterly BAS tax] due, the Board had authorised Mr de Munck to authorise payment of those taxes, even though they might exceed the \$150,000 limit".
48. The Authority is satisfied, as alleged by Particular 1.3(a)(6) of the Complaint, that the Club's online banking system requires one person to "set up" a payment by entering the particulars of the transaction and then requires another person to "authorise" the payment within a set time limit, and further authorisation codes must be entered to make payments that are in excess of the Club's daily electronic funds transfer limit.
49. This finding is made on the basis of the statement of Ms Ringwood, which describes the process for "creating payments for invoices in ACCPAC". Ms Ringwood states at point 9 of the statement that she would "go to the create payments portal and initiate payment, enter in payment type, vendor bank account from invoice, invoice reference with BSB and account number" and then print out a "Direct Credit Report" which she would "take to either Mr de Munck or Mr Jamieson for them to release the payment". Ms Ringwood states at point 13 of the statement that "this requires them to access the *NABConnect* Portal and the relevant Domestic Payment Report and release the transaction". Ms Ringwood states at point 33 of her statement, with respect to the transfer of \$800,000.00 from the Club to Repaja & Co Pty Limited, that "the release of a large amount of funds required the entering of several authorisation codes by Mr de Munck into the *NABConnect* portal".
50. The Authority is satisfied, as alleged by Particular 1.3(a)(7)(i), that on 21 February 2014 Ms Repaja provided Mr de Munck with the following bank account details by email in relation to the "pool":  
  
*Bank: ST GEORGE*  
*Account name: REPAJA CO PL*  
*BSB: 112-879*  
*ACC: 421789898*  
*Ref: 855353883*  
*Amount: \$800,000.00*
51. This finding is made on the basis of an email recovered with *X-ways Forensics* software sent from the email of "Divna Repaja" to "Simon" which states that "it has been a pleasure to introduce you to this booster pool" and sets out those bank account details "for the transfer" (Complainant document E014).
52. The Authority is satisfied, as alleged by Particular 1.3(a)(8) of the Complaint, that on 21 February 2014 Mr de Munck gave the Club's Accounts Payable and Payroll Clerk, Ms Meagan Ringwood, a handwritten note stating "*Repaja & Co, BSB: 112-879, Acc: 421789898, Ref 855353883 \$800k*", on the basis of Complainant document E012, being

a photocopy of a handwritten note in the same terms as those set out in Particular 1.3(a)(8) of the Complaint.

53. The Authority is further satisfied that this Particular is established on the basis of point 21 of Ms Ringwood's statement that: "Mr de Munck then approached me at my desk in the Administration Office with a handwritten piece of paper on which he had recorded in his own handwriting" those details.
54. The Authority is satisfied, as alleged by Particular 1.3(a)(9) of the Complaint, that on 24 February 2014 Mr de Munck directed Ms Ringwood to "set up" the \$800,000.00 payment for authorisation and to assist him in "authorising" the payment in the Club's online banking system, which required Mr de Munck's authorisation codes, PIN and security token to be entered.
55. This finding is made on the basis of Ms Ringwood's statement, which provides an account of Mr de Munck approaching Ms Ringwood at her desk on 24 February 2014 to set up the \$800,000.00 transaction and asking her "how do you release the transaction for this payment to Repaja & Co", and the two of them together "using his authorisation codes" as well as his "security token and PIN number" to "get the process correct and the release activated".
56. The Authority is satisfied, as alleged by Particular 1.3(a)(10) of the Complaint, that on 24 February 2014 the payment of \$800,000.00 was credited to the St George bank account held by "*Repaja & Co Pty Limited, C/- Mrs D Repaja*".
57. This finding is made on the basis of a bank statement for Repaja & Co Pty Limited which shows a credit of \$800,000.00 on 24 February 2014 with the transaction description "Legion Club 855353883" (Complainant document E022).
58. The Authority is satisfied, as alleged by Particular 1.3(a)(11) of the Complaint, that Mr de Munck authorised the payment of \$800,000.00 to Repaja & Co in circumstances where the funds were owned by the Club, that there is no evidence that the transaction was for the benefit of the Club and its members and there is no minute of the members of the governing body approving such payment.
59. This finding is made on the basis of Complainant document E023, being an email recovered with *X-Ways Forensics* software that was sent on 29 January 2014 from "Simon de Munck" to "Divna Repaja" stating "*just because its [sic] Club money, will the money be able to be shown as a current balance???*".
60. This finding is also made on the basis of Complainant document E018, being a bank statement for the *NABConnect* account of "Riverwood Legion and Community". This statement shows a debit of \$800,000.00 on 24 February 2014 to "45874479 Repaja Co".
61. The Authority is further satisfied that this Particular is established on the basis of Complainant documents E002 to E007, being minutes of Club Board meetings dated 3 December 2013, 20 January 2014, 10 February 2014, 3 March 2014, 7 April 2014 and May 2014 respectively, none of which disclose that the Club board approved a payment of \$800,000.00 from the Club to Repaja & Co. This Particular is also established on the basis of Complainant document E019, being a record of interview between OLGR officer Mr Dan Tranter and Mr Michael Free dated 22 May 2014.
62. Particular 1.3(b) of the Complaint alleges that Mr de Munck failed to disclose to the members of the governing body the \$800,000.00 payment that he had authorised be made to Repaja & Co Pty Limited on 24 February 2014.

63. The Authority is satisfied, as alleged by Particular 1.3(b)(1) of the Complaint, that between 24 February 2014 and 27 March 2014, no disclosure was made to Mr Michael Free, the Club President and member of the governing body, in circumstances where Mr de Munck and Mr Free had regular communication.
64. This finding is made on the basis of Mr Free's statement in which Mr Free submits at point 65 that "at no time" did Mr de Munck "raise with me the so-called mistaken transaction" despite the fact that Mr Free and Mr de Munck had "almost daily communications and some meetings" between 24 February and 27 March 2014.
65. The Authority is satisfied, as alleged by Particular 1.3(b)(2) of the Complaint, that on 25 February 2014 no disclosure was made by Mr de Munck when he attended a meeting with the Club's Executive Committee.
66. This finding is made on the basis of Mr Free's statement; Annexure B of Complainant document E010 which is a chronology of events including the "non-disclosure by Mr de Munck" of "an issue regarding the \$800,000.00" at the Executive Committee Meeting held on 25 February 2014 and Complainant document E034, being a questionnaire completed by Mr Bill Ross, Club Director, stating that "at no stage did Mr de Munck mention the mistaken transaction or the \$800,000.00" between 24 February 2014 and 27 March 2014.
67. The Authority is satisfied, as alleged by Particular 1.3(b)(3) of the Complaint, that on 3 March 2014 no disclosure was made by Mr de Munck when he attended a meeting of the governing body of the Club.
68. This finding is made on the basis of the statement of Mr Free, which states at point 63 that Mr de Munck was "present throughout" the board meeting of 3 March 2014 "including during presentation of financial reports" and at point 64 of Mr Free's statement that "at no time" did Mr de Munck "raise the issue of the anomaly" of the \$800,000.00 payment to Repaja & Co. This finding is also supported by the minutes of the Club board meeting of 3 March 2014 which do not include any mention of an \$800,000.00 payment (Complainant document E005).
69. The Authority is satisfied, as alleged by Particular 1.3(b)(4) of the Complaint, that Mr de Munck did not bring this matter to the attention of the governing body until 27 March 2014, when the Club's legal representative attempted to contact the Club President.
70. This finding is made on the basis of the statement of Mr Free, which states at point 59 that on 27 March 2014 at about 6:30pm, Mr Free received a phone call from Mr de Munck in which Mr de Munck asked whether Mr Free would "take a phone call" from one of the Club's solicitors and that Mr de Munck said that he had "made a mistake and instead of transferring \$8,000.00 I transferred \$800,000" by "simply hitting the wrong button". The Club's solicitors advised Mr de Munck that they wished to speak to Mr Free.
71. Particular 1.3(c) of the Complaint alleges that Mr de Munck then attempted to deceive the Club, its governing body and members of the true nature of the \$800,000.00 payment that he had authorised be made to Repaja & Co on 24 February 2014.
72. The Authority is satisfied, as alleged by Particular 1.3(c)(1) of the Complaint, that Mr Paul Cheeseman, partner of BDO, prepares financial reports for the Board during the third week of the succeeding month following the month being audited. This finding is made on the basis of the statement of Mr Free, which states at point 48 that the Board has "over some years engaged Paul Cheeseman" and at point 50 that the financial

reporting of Mr Cheeseman "would occur normally in the third week of the succeeding month following the month being audited".

73. The Authority is further satisfied, as alleged by Particular 1.3(c)(2), that on 21 February 2014 Ms Repaja advised Mr de Munck by email that the funds "*will be back well well well well before the 21st*" [the third working week in March 2014 being the working week which was Monday 17 March to Friday 21 March].
74. This finding is made on the basis of email number 9 of Complainant document E031, being an email recovered with *X-Ways Forensics* software from "Divna Repaja" on 21 February 2014 at 1:04pm which states the above sentence.
75. The Authority is satisfied, as alleged by Particular 1.3(c)(3) of the Complaint, that on 21 February 2014 Mr de Munck sent an email to "Divna" requesting an invoice from Repaja & Co for \$8,000.00 worth of furniture to provide Mr de Munck with "*an option for an out*".
76. This finding is made on the basis of Complainant document E015, being an email recovered with *X-Ways Forensics* software sent from "Simon de Munck" to "Divna" containing the above phrase. This finding is also supported by Annexure B to Complainant document E010, being a chronology of events prepared by Regents Risk Advisory and Integrity Risk Solutions for the Club dated 7 February 2014 which sets out, at point 121, the text of an email sent from Mr de Munck to Ms Repaja at 4:43pm in the same terms as the text of the email recovered with *X-Ways Forensics*.
77. The Authority is satisfied, as alleged by Particular 1.3(c)(4) of the Complaint, that on 4 March 2014 an email folder entitled "Divna" was deleted from Mr de Munck's email account. This finding is made on the basis of Complainant document E031, being a copy of an email from Mr Adam Pope of Thomson Geer Solicitors to Mr Stuart Snaith, attaching various emails and an "event log showing Mr de Munck's deletion of a folder called "Divna" from his computer on 4 March 2014", which appears at item 42 of the document.
78. Particular 1.3(c)(5) of the Complaint alleges that on 26 March 2014, Mr de Munck advised the Club's legal representatives, Thomson Geer Solicitors, that Club funds totalling \$800,000.00 had been mistakenly transferred to Repaja & Co for furniture, and that the payment should have been \$8,000.00.
79. The Authority notes that the Complainant here relies upon document E016. This document is a brief from Mr de Munck to Thomson Geer Solicitors, which states that after a meeting on 19 March 2014 with Stuart Jamieson (Operations Manager) and Ha Pham (Financial Controller), Mr de Munck "recommended" that Mr Jamieson "take my brief straight to the Club's Solicitors who should handle the matter from herein".
80. While this document does not explicitly record Mr de Munck making the direct disclosure that the Complainant alleges was made by Mr de Munck to Thomson Geer on 26 March 2014, the Authority is nevertheless satisfied that Mr de Munck recommended that his "brief" on the relevant transaction be taken to Thomson Geer, and that this brief included the claim that the transaction had been made by mistake.
81. The Authority is satisfied, as alleged by Particular 1.3(c)(6) of the Complaint, that on 31 March 2014, Mr de Munck contacted Ms Ringwood and according to Ms Ringwood, Mr de Munck stated, "*I am just ringing regarding the \$800,000.00 transaction, could you say it was just a mistake and that it was meant to be \$8,000?*". This finding is made on

the basis of the statement of Ms Ringwood, which sets out the conversation between herself and Mr de Munck on 31 March 2014 "to the best of [Ms Ringwood's] recollection".

82. The Authority is satisfied, as alleged by Particular 1.3(c)(7) of the Complaint, that the Club engaged Mr Adam Stafford, a forensic information technology specialist from BDO Australia, to image Mr de Munck's computer at the Club, and that Mr Stafford recovered extensive email communication between Mr de Munck and Ms Repaja.
83. This finding is made on the basis of Complainant document E031, being a collection of recovered emails between Mr de Munck and Ms Repaja, and Annexure B to Complainant document E010, being a chronology of events prepared by Regents Risk Advisory and Integrity Risk Solutions for the Club dated 7 February 2014 which states at points 482 to 483 that on Sunday 5 April 2014, Mr Adam Stafford attended the Club with Mr Adam Pope, the Club's solicitor, and "imaged" Mr de Munck's desktop computer.
84. The Authority is satisfied, as alleged by Particular 1.3(c)(8) of the Complaint and supported by the evidence cited above, that Mr de Munck took active steps to minimise detection by seeking to ensure Club funds were returned before being detected in an audit likely to be held on or about 21 March 2014; obtaining a furniture invoice which could be, and was, used to explain the payment as a mistake in the event the Club's funds were not returned on time; deleting email correspondence and email folders and contacting staff members (specifically Ms Ringwood) and attempting to manipulate their evidence.
85. Particular 1.3(d) of the Complaint alleges that Mr de Munck provided false and misleading information to the Club's lawyers and caused an affidavit containing false and misleading information to be presented to the Supreme Court of New South Wales.
86. The Authority is satisfied, as alleged by Particular 1.3(d)(1) of the Complaint, that on 26 March 2014, Mr de Munck provided Thomson Geer Solicitors documentation containing false and misleading documents supporting his claim that the \$800,000.00 transaction to Repaja & Co Pty Limited was a mistake.
87. This finding is made on the basis of Complainant document E016, being a brief from Mr de Munck to Thomson Geer Solicitors to which are attached photographs of "Repaja & Co" furniture and furniture advertising, and an invoice from Repaja & Co Pty Limited totalling \$8,000.00 for "16 salon black chairs" and "5 round solid base chairs".
88. The Authority is satisfied, as alleged by Particular 1.3(d)(2) of the Complaint, that on 27 March 2014, Mr de Munck caused Mr Adam Pope, solicitor at Thomson Geer Solicitors, to swear an affidavit containing false and misleading information and file it in the Supreme Court of New South Wales.
89. This finding is made on the basis of an affidavit sworn by Mr Adam Pope dated 27 March 2014, which describes the transfer of \$800,000.00 authorised by Mr de Munck to Repaja & Co Pty Limited as a "mistake" (Complainant document E027).
90. This finding is also supported by an email from Mr Pope to Mr de Munck dated 26 March 2014 stating, *inter alia*, that "it appears that the money was paid by mistake and that the Repaja's have no right to it", an email in response from Mr de Munck dated 27 March 2014 which does not correct this statement, and a further email from Mr Pope dated 27 March 2014 confirming Mr de Munck's instructions "about 15 minutes" before seeing the duty judge (Complainant document E030).

91. The Authority is satisfied, as alleged by Particular 1.3(e) of the Complaint, that Mr de Munck failed to comply with the Club's annual leave policy and a direction that had been given by the governing body.
92. The Authority is satisfied, as alleged by Particular 1.3(e)(1) of the Complaint, that on 27 June 2011 Mr de Munck requested to be paid the monetary value of 25 weeks annual leave that he had accrued, on the basis of a letter from Mr de Munck to the Club Rivers Board of Directors stating "I write to request that the monetary value of 25 weeks of annual leave be paid" as "I currently have 33 weeks annual leave accrued" (Complainant document E028).
93. The Authority is satisfied, as alleged by Particular 1.3(e)(2) of the Complaint, that the governing body of the Club approved payment and directed Mr de Munck not to accrue annual leave to excess and directed him that the Club's annual leave policy is to be adhered to.
94. This finding is made on the basis of Complainant document E029, being a letter from Mr Michael Free, Club President to Mr de Munck dated 27 June 2011 stating that "the Board has agreed to your request that the monetary value of 25 weeks annual leave be paid" and requesting that "in future your annual leave is not accrued to excess and that the recent employee annual leave policy is adhered to at all times".
95. Particular 1.3(e)(3) of the Complaint sets out a number of provisions which the Complainant alleges are contained within Club's annual leave policy. The Authority is satisfied that Particular 1.3(e)(3) is established on the basis of Complainant document E021, being a document entitled *Club Rivers Employee Handbook* which states at point 2.2.1 that "full-time employees are entitled to four weeks holiday per year due on the completion of each full year of employment and must be taken within six months of the anniversary date" and that "the payment of Annual Leave, without actually taking the leave, is prohibited, except on termination".
96. The Authority is satisfied, as alleged by Particular 1.3(e)(4) of the Complaint, that on 22 January 2014, \$32,268.00 was transferred from the Club's main trading account to Mr Simon de Munck. This finding is made on the basis of Complainant document E017, being a *NABConnect* Transaction History Report for the account name "Riverwood Legion and Community", showing a transfer debit of \$32,268.00 to "44830726 Simon de Munck" on 22 January 2014.
97. The Authority is satisfied, as alleged by Particular 1.3(e)(4)(i) of the Complaint, that the transaction was labelled with the reference '*Wages-Holiday Pay*', on the basis of Complainant document E032, being a *NABConnect* Domestic Payment Report for the payment of \$32,268.00 from the account entitled "Legion Club" to "Simon de Munck" with the reference '*Wages-Holiday Pay*', dated 22 January 2014.
98. The Authority is satisfied, as alleged by Particular 1.3(e)(4)(ii) of the Complaint, that this transaction was not approved by the governing body of the Club. This finding is made on the basis of Complainant documents E002, E003 and E004, being minutes of Club board meetings dated 3 December 2013, 20 January 2014 and 10 February 2014 respectively which do not record approval of the transaction by the Club Board; and Complainant document E019, being a record of interview between OLGR officers and Mr Michael Free dated 22 May 2014. In this record of interview, Mr Free states at page 45 that, "we found an amount of \$32,000 roughly" for annual leave that Mr de Munck had "cashed in" which "certainly was not authorised" by "anybody".

99. The Authority is satisfied, as alleged by Particular 1.3(e)(4)(iii) of the Complaint, that Mr de Munck was actually paid without the annual leave being taken, in breach of the Club's annual leave policy in this respect. This finding is made on the basis of the record of interview with Mr Free dated 22 May 2014, and the *Club Rivers Employee Handbook* which states at point 2.2.1 that "payment of Annual Leave, without actually taking the leave is prohibited, except on termination" (Complainant document E021).
100. The Authority is satisfied, as alleged by Particular 1.3(f)(1) of the Complaint, that on 31 March 2014 Mr de Munck was suspended from his position as secretary of the Club due to the commencement of an investigation into the \$800,000.00 transaction, as detailed in Particular 1.3(a)(9) above.
101. This finding is made on the basis of Complainant document E024, being a letter to Mr de Munck from Mr Free, Club President dated 31 March 2014 stating that "the Club has formed the view that it is appropriate to suspend you from your employment until we have completed our investigation" of "the circumstances around which the Club paid a supplier, Repaja & Co, \$800,000".
102. The Authority is satisfied, as alleged by Particular 1.3(f)(2) of the Complaint, that on 9 April 2014 Mr de Munck was directed by the Club's President to attend a meeting with Thomson Geer Solicitors to discuss the circumstances of the \$800,000.00 payment. This finding is made on the basis of Complainant document E025, being a letter from Mr Free to Mr de Munck dated 9 April 2014 entitled "*Direction to attend meeting*".
103. The Authority is satisfied, as alleged by Particular 1.3(f)(3) of the Complaint, that Mr de Munck did not actually attend the requested meeting with Thomson Geer Solicitors and was terminated by the Club on 10 April 2014. This finding is made on the basis of Complainant document E026, being a letter from Mr Free to Mr de Munck dated 10 April 2014 which states, "Your failure to comply with the Club's directions to attend a meeting regarding its investigation is serious misconduct in accordance with clause 16.2.2 of your services agreement with the Club" and that "it is for this reason that your employment has been terminated summarily without notice, effective today".
104. The Authority is satisfied, as alleged by Particular 1.3(g) of the Complaint, that on 9 May 2014, the Club reported the alleged criminal conduct involving Mr de Munck to NSW Police, who are currently involved in an ongoing investigation. This finding is made on the basis of Complainant document E010, being a submission to Police by the Club which states at page 2 that Mr Michael Free (Club President) attended the Riverwood Police Station on 9 May 2014 and reported to Constable Steven Steven the alleged misappropriation of \$800,000.00, and at page 20 sets out "lines of inquiry" for NSW Police to "pursue as part of their investigations".

## DECISION AND REASONS

105. 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. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Limited v NSW (No 2)* (1955) 93 CLR 127.
106. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:



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

107. On the basis of the above findings on the Particulars of the Complaint, the Authority is satisfied that the Ground of Complaint has been established and that the former secretary of the Club, Mr Simon de Munck, is not a fit and proper person to act as such. He has transferred of a very large sum of Club funds to a third party without contractual or other authority from the Club to do so.
108. Without the benefit of Mr de Munck's account of events in response to this Complaint, or a clear understanding as to whether, and if so, how Mr de Munck stood to gain from this transaction, the Authority is satisfied on the balance of probabilities that by making this large transfer of funds without authorisation, Mr de Munck exposed the Club to a risk of substantial financial loss through fraud.
109. In facilitating the transaction, Mr de Munck demonstrated a lack of honesty, knowledge and ability with regard to his duties as the secretary and chief executive officer of a registered club with respect to the misappropriation of Club's funds.
110. The Authority is also satisfied that, by attempting to cover up the facts and circumstances of the transfer and by instructing the Club's solicitors to provide a false account of events to the New South Wales Supreme Court, Mr de Munck has acted with further dishonesty.
111. In addition to the Ground of Complaint being established on the material provided by the Complainant, the Authority further notes, on the basis of the copy of a judgment in the matter of *Riverwood Legion & Community Club Limited v Repaja & Co Pty Limited* [2015] NSWSC 383 which has been provided in the submissions from the Club dated 13 July 2015, that the civil claims made by the Club in relation to unjust enrichment in relation to this transaction have been proven in the New South Wales Supreme Court.
112. The Authority is satisfied that the transaction at issue involved the fraudulent misappropriation of Club funds in breach of Mr de Munck's contractual, fiduciary and statutory duties to the Club.
113. The Authority notes the decision of Stevenson J in Equity who at paragraph 25 of the judgement made the following findings (in the absence of any appearance by Ms Repaja, Repaja and Co or Mr de Munck):
  25. *I am satisfied on the evidence that Mr de Munck misappropriated, that is to say, stole the \$800,000 that he caused to be transferred from the Club's account to Repaja & Co's account on 24 February 2014. In equity, those funds belong to the Club; the funds were trust monies in Mr de Munck's hands, and he was incapable of divesting them of that character: Black v Freedman at 110 per O'Connor J; see generally Tu v Lowe at [141] ff per Gleeson JA.*
  26. *Further, the evidence satisfies me that Ms Repaja, and thus Repaja & Co, knew that Mr de Munck had misappropriated the \$800,000. Contrary to her representations to Mr de Munck, Ms Repaja did not invest the stolen funds on Mr de Munck's behalf but, rather, as I have said, used them to pay \$599,999.99 at Ms Fistar's direction (purportedly in "repayment" of funds Ms Fistar had earlier advanced to Ms Repaja for investment) and to purchase a Porsche.*

27. *In those circumstances, the Club is entitled to the relief it seeks against the fraudsters Ms Repaja, Repaja & Co and Mr de Munck on the various bases I set out below.*
28. *It is also entitled to the relief it seeks against Ms Fistar. Ms Fistar has received funds which, to the extent of \$481,189.75, represent monies that Mr de Munck misappropriated from the Club. Ms Fistar used those funds to complete her purchase of the Dolls Point property. Ms Fistar received those funds as a volunteer. Ms Fistar thought Ms Repaja was "repaying" money Ms Fistar had earlier provided Ms Repaja to be invested on her behalf. But Ms Repaja was using money that she knew that Mr de Munck had stolen from the Club. She was not, in fact, "repaying" Ms Fistar at all.*
29. *Both the Club and Ms Fistar are victims of Ms Repaja's fraudulent activities. The Club is also a victim of Mr de Munck's fraudulent activities.*
30. *In substance, the matter for determination in these proceedings is which of those two innocent parties must bear the loss caused by this fraudulent conduct.*
31. *My conclusion is that it is Ms Fistar who must bear that burden, subject to such right of recovery as she is able to obtain from Ms Repaja and Repaja & Co.*

## **SUBMISSIONS ON DISCIPLINARY ACTION**

114. On 2 September 2015, an 18 page decision letter was sent by the Authority to the parties advising the Authority's findings on the Ground of Complaint and inviting final written submissions on the question of what, if any, disciplinary action should be taken by the Authority pursuant to section 57H of the Act in light of those findings.
115. Submissions from the Complainant were requested by 9 September 2015. Submissions in reply from the Club were requested by 16 September 2015 and submissions in reply from Mr de Munck were requested by 23 September 2015.

## **Final Submission from the Complainant dated 9 September 2015**

116. In a short email submission to the Authority dated 9 September 2015 from Mr Sean Goodchild, OLGR Acting Director of Compliance and Enforcement, on behalf of the Complainant (which was copied to the other parties) Mr Goodchild states:

*Thank you for your email enclosing the decision letter dated 2 September 2015. I note the decision letter invited submission by today's date on what if any disciplinary action should be taken by the Authority in light of the Authority's findings. I have reviewed the Authority's decision on the grounds of complaint as well as the initial letter of complaint, which are attached for reference. Based on the material before me, I consider the suggested disciplinary action set out within the letter of complaint to be appropriate. I reproduce those recommendations below for ease of reference:*

*It is submitted that it is appropriate for the Authority to make Orders:*

1. *Pursuant to Section 57H(2)(g) of the Act declaring Mr de Munck as ineligible to stand for election, or to be appointed to, or to hold office in, the position of secretary or member of a governing body of the Club and any other registered Club for the maximum period of three years; and*
2. *Pursuant to Section 57H(2)(i) of the Act that the Club pay the costs of the OLGR in connection with the investigation and the taking of disciplinary action against the Club.*

*Given the findings on Mr de Munck's degree of dishonesty, it is strongly submitted that this is a case where the proposed order in respect to ineligibility hold positions within a Club should be for the maximum period of three years.*

*I also note that a schedule of costs has been supplied to the Club and the Club has provided consent; referred to at paragraph 30 of the Authority's decision.*

## **Submission from the Club dated 9 September 2015**

117. In a short email submission to the Authority dated 9 September 2015 from Mr Brett Boon of the law firm Thomson Geer on behalf of the Club (which was copied to the other parties) Mr Boon states:

*I am instructed that the Club has no objection to the orders sought by the OLGR as set out below, and I note that the Club has agreed to pay the costs of the OLGR in the amount of \$12,675.83 within 5 business days after the date the Club is notified of the Authority's decision.*

*The Club does not wish to make any submission in addition to the matters set out in my letter of 13 July 2015, unless the Authority is minded to impose some penalty other than the orders sought by the OLGR in which case the Club would seek the opportunity to address on that penalty.*

## **No Submission from Mr de Munck**

118. Consistent with Mr de Munck's failure to respond to any correspondence from the Authority during the course of this matter, no submission addressing the question of disciplinary action was received by the Authority on behalf of Mr de Munck, notwithstanding that the Authority's decision on the Ground of Complaint was sent by Express Post to Mr de Munck's last known home address and via email to his solicitor in the related criminal proceedings, Mr Jordan.

## **DISCIPLINARY ACTION**

119. The Authority gave further consideration to this matter at its ordinary monthly meeting on 2 October 2015, with the benefit of the final round of submissions from the Complainant and the Club.
120. Noting the Authority's discussion on fitness and propriety set out above and in the absence of any submissions in reply to the Complaint from Mr de Munck, the Authority is satisfied that given the extent of dishonesty Mr de Munck has displayed in relation to the fraudulent transaction that is the subject of this matter, the only appropriate order to serve the protection of the public is to disqualify Mr de Munck from participation in the registered clubs industry of this state in a regulated role for the maximum period available under the Act.
121. The Authority notes that, unlike disciplinary complaints made under Part 9 of the *Liquor Act 2007*, the period of disqualification that may be ordered by the Authority in respect of a complaint made under Part 6A of the *Registered Clubs Act 1976* is limited to a maximum period of three (3) years.
122. The Authority is satisfied that the Complaint has been established and the Club does not oppose the Complainant's request that the Club meet the costs of the Secretary's investigation that preceded the making of this Complaint. The Club does not dispute the Complainant's submission that costs in the sum of \$12,675.83 be payable to the Secretary within five (5) business days of the Authority notifying its final decision.
123. The Authority recommends that the Club contact the Complainant for details as to the preferred mode in which costs shall be paid to the New South Wales Department of Justice and that the Club copy the Authority's General Counsel on that communication so that the Authority will have a record of this payment being made.

## ORDERS

124. The Authority declares, under section 57H(2)(g) of the Act, that Mr Simon de Munck is ineligible to stand for election, or to be appointed to, or to hold office in, the position of both secretary or member of a governing body of the Club or any other registered club in New South Wales for a period of three (3) years from the date of this decision.
125. The Authority orders the Club, under section 57H(2)(i)(i) of the Act, to pay to the NSW Department of Justice the costs incurred by the (then) Department of Trade and Investment on the investigation or inquiry in relation to the Club under section 35A of the Act, being \$12,675.83, to be paid to the Department of Justice within five (5) business days from the date of this decision.

## REVIEW RIGHTS

126. 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.
127. Please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney for further information.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie'.

Micheil Brodie  
**Chief Executive**

18 November 2015