



Mr John Howard Lyons
1528/5 Bindon Place
ZETLAND NSW 2017

cc: Mr John Howard Lyons
address not published

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address not published

[john.lyons@\[not published\]](mailto:john.lyons@[not published])
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Dear Mr Lyons

**Final Decision on Complaint in relation to Mr John Howard Lyons
Licensed Gaming Machine Technician
under section 129 of the *Gaming Machines Act 2001***

SUMMARY OF DECISION

1. The Authority has decided to take the following disciplinary action:
 - (i) Pursuant to section 131(2)(d) of the Act, the Authority **cancel**s Mr John Howard Lyons' gaming-related licence number GMT4015396, with effect from the date of this decision.
 - (ii) Pursuant to section 131(2)(f) of the Act, the Authority **disqualifies** Mr John Howard Lyons from holding a gaming-related licence for a period of **ten (10) years**, with effect from the date of this decision.
 - (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority **orders** that Mr John Howard Lyons pay to the NSW Department of Justice the costs incurred by the Secretary on the investigation preceding the making of the Complaint under section 128 of the Act, amounting to **\$1,349.17**, to be paid to the Department of Justice by no later than **28 days** from the date of this decision.

BACKGROUND

2. On 8 December 2015 the Authority received a complaint made by Mr Anthony Keon (**Complainant**), Director of Compliance and Enforcement of the (then) Office of Liquor, Gaming and Racing (**OLGR**), now known as Liquor and Gaming NSW (**LGNSW**) in his capacity as a delegate of the Secretary of the NSW Department of Justice.
3. The Complaint concerns Mr John Howard Lyons, who is the holder of gaming machine technician's licence number GMT4015396.
4. The Complaint is made under section 129 of the *Gaming Machines Act 2001* (**Act**) and was dated and emailed to the Authority on 8 December 2015. The Authority notes that this is the first disciplinary complaint received by the Authority under this Act since the Authority commenced operations on 1 July 2008.
5. The Authority gave preliminary consideration to the Complaint at its meeting of 16 December 2015, confined to the question of whether the Authority should show cause on the Complaint. A Show Cause Notice was issued by the Authority and sent to Mr Lyons via email and ordinary mail on 17 December 2015, and a copy of that correspondence was provided to the Complainant.
6. The Authority considered the merits of the Complaint at its meeting on 24 February 2016. On 2 March 2016, the Authority issued a letter to the parties notifying its findings on the Grounds of the Complaint, giving the Complainant 7 days and Mr Lyons 14 days to make submissions addressing the question of what, if any, disciplinary action should be taken by the Authority in light of those findings.
7. The Authority considered the question of disciplinary action and finalised its decision on the Complaint at its meeting on 30 March 2016.
8. The cover letter of Complaint dated 8 December 2015 (**Complaint Letter**) advises that this matter arose out of an audit conducted by LGNSW on certain gaming-related licensees during September 2015.
9. In the Complaint Letter, the Complainant contends that Mr Lyons was granted a gaming machine technician's licence (GMT4015396) on **7 April 2008**, which remains current as of the date of this Complaint.
10. The Complainant states that Mr Lyons is currently the owner and sole director of Poker Machine Distributors (Australia) Pty Ltd.
11. Poker Machine Distributors (Australia) Pty Ltd held a gaming machine *dealer's* licence from 3 March 2009 to 15 February 2013.
12. The Complainant states that Mr Lyons has also *applied* for a gaming machine *seller's* licence (application number 1-2349911115), which has been held in abeyance by the Authority.
13. The Complainant states that on 4 September 2015, LGNSW commenced an audit of gaming-related licensees and their compliance with various regulatory requirements of the Act, and that Mr Lyons was one of the gaming-related licensees selected for audit.
14. The Complainant states that Mr Lyons also controls a producer/wholesaler liquor licence (LIQW824006662) under the *Liquor Act 2007*, which is held in the name of Liquor Distributors (Australia) Pty Limited.

GROUNDS OF COMPLAINT

15. In the Complaint Letter, the Complainant specifies four (4) grounds of complaint (**Grounds**) that are available under section 129(3) of the Act.

Ground 1

16. This Ground is available under subsection 129(3)(a)(i) of the Act, which states:

...that the licensee has contravened a provision of this Act or the regulations.

17. Particular 1 of Ground 1 alleges as follows:

Under section 125 of the Act, gaming-related licensees must notify the Secretary of any "change in state of affairs" prescribed by the Regulations.

18. Particular 2 of Ground 1 alleges as follows:

The Gaming Machine Regulations 2010 prescribes what events constitute a "change in state of affairs".

19. Particular 3 of Ground 1 alleges as follows:

A change in state of affairs includes:

- a. *The commencement, settlement, discontinuance or finalisation of civil or criminal proceedings to which the licensee is a party.*
- b. *A change consisting of: (a) the obtaining of judgment against the licensee, or (b) the creation of a charge over any property of the licensee, or (c) repossession of any property of the licensee.*

20. Particular 4 of Ground 1 alleges as follows:

Extracts from NSW Court records showed that Mr Lyons (DOB: 11 December 1944) was involved in the following criminal proceedings:

- a. *10 April 2012 - convicted in absentia by the Local Court at Sutherland of two offences under Commonwealth law, for failing to make out a statement of company affairs and failing to deliver books to a liquidator.*
- b. *10 July 2012 - convicted in absentia by the Local Court at Sutherland of two offences under Commonwealth law, for failing to make out a statement of company affairs and failing to deliver books to a liquidator.*

21. Particular 5 of Ground 1 alleges as follows:

At no stage did Mr Lyons notify the Secretary within 14 days of these Court proceedings.

22. Particular 6 of Ground 1 alleges as follows:

Extracts from NSW Court records showed that Poker Machine Distributors (Australia) Pty Ltd, a company of which Mr Lyons was and is sole director, was involved in the following Court proceedings:

- a. *1 May 2013 - judgment entered against Poker Machine Distributors at the Local Court of NSW, General Division at Waverley, in the amount of \$39,749.87 inclusive of costs. Judgment was incurred for failing to pay the Hakoah Club for gaming machines purchased when the Club ceased trading on 4 November 2009.*
- b. *3 February 2014 - judgment entered against Poker Machine Distributors at the Local Court of NSW, Civil Division at Sydney in the amount of \$4,849.29 inclusive of costs. Judgment was incurred for failing to pay a worker's compensation claim to the Nominal Insurer.*

23. Particular 7 of Ground 1 alleges as follows:

At no stage did Mr Lyons notify the Secretary within 14 days of these Court proceedings.

24. Particular 8 of Ground 1 alleges as follows:

As a result of the Court proceedings of 3 February 2014, a writ of seizure was issued to the Sheriff's Office of NSW in respect of the judgement debt of \$4,849.29.

25. Particular 9 of Ground 1 alleges as follows:

At no stage did Mr Lyons notify the Secretary within 14 days of the creation of a charge over his property.

Ground 2

26. This Ground is available under subsection 129(3)(a)(ii) of the Act, which states:

...that the licensee has failed to comply with any requirement under this Act or the regulations that relates to the licensee.

27. Particular 1 of Ground 2 alleges as follows:

On 25 July 2013, Mr Lyons was served with a Notice to Produce (the First Notice) by Compliance Officer Paul Rankin, issued under section 21 of the Gaming & Liquor Administration Act 2007. The Notice required production of certain documents by 8 August 2013.

28. Particular 2 of Ground 2 alleges as follows:

On 25 July 2013, Compliance Officer Rankin received an electronic "read receipt" by email, indicating that Mr Lyons had read the email containing the First Notice.

29. Particular 3 of Ground 2 alleges as follows:

On 31 July 2013, Compliance Officer Rankin again emailed Mr Lyons, advising him of the requirement to respond to the First Notice by 8 August 2013.

30. Particular 4 of Ground 2 alleges as follows:

On 26 August 2013 Compliance Officer Rankin contacted Mr Lyons on his mobile 0438 888 013. During the conversation Mr Lyons stated that he had provided the First Notice to his legal representative, who would contact Inspector Rankin the following day. Inspector Rankin again advised Mr Lyons he was required to respond to the First Notice.

31. Particular 5 of Ground 2 alleges as follows:

On 2 September 2013 Compliance Officer Rankin sent a further email to Mr Lyons providing an extension to comply with the First Notice until 5pm on 3 September 2013.

32. Particular 6 of Ground 2 alleges as follows:

On 16 September 2013 Compliance Officer Rankin sent a further email to Mr Lyons which contained a final warning letter providing another extension to respond to the First Notice by 27 September 2013.

33. Particular 7 of Ground 2 alleges as follows:

No response was received from Mr Lyons at any time between 26 August 2013 and 27 September 2013.

34. Particular 8 of Ground 2 alleges as follows:

On 6 January 2015 Mr Lyons was served with a Notice to Produce (the Second Notice) by Daniel Zuccarini, A/Manager - Revenue Assurance & Integrity, issued under section 95 of the Gaming Machines Act 2001. The Notice required production of certain documents by 13 January 2015.

35. Particular 9 of Ground 2 alleges as follows:

On 13 January 2015 Mr Lyons replied to the Second Notice, but did not produce the documentary evidence required by the Second Notice.

Ground 3

36. This Ground is available under subsection 129(3)(e)(i) of the Act, which states:

...that the gaming-related licensee has failed to comply with a condition of the gaming-related licence.

37. Particular 1 of Ground 3 alleges as follows:

Under clause 72(1) of the Gaming Machine Regulations 2010, a technician must not conduct their business from any other place than the address approved by the Authority.

38. Particular 2 of Ground 3 alleges as follows:

Under section 117(2) of the Act, it is a condition of the licence that a technician must maintain at least one place of business in the State and keep the records that relate to the business at that place.

39. Particular 3 of Ground 3 alleges as follows:

The business address currently approved by the Authority is recorded as U1528/5 Bindon Place, Zetland.

40. Particular 4 of Ground 3 alleges as follows:

However according to ASIC the registered business address for Poker Machine Distributors (Australia) Pty Ltd is U7/2 Burrows Road, St Peters. Mr Lyons was evicted from these premises in 2012.

41. Particular 5 of Ground 3 alleges as follows:

Mr Lyons also listed two other addresses in his recent seller's application:

- a. *PO Box 42, Edgecliff NSW 2027*
- b. *20A Burrabirra Avenue, Vaucluse NSW 2030.*

42. Particular 6 of Ground 3 alleges as follows:

Mr Lyons was issued a Notice under section 95 of the Act on 6 January 2015 that required he produce documents relating to providing proof of his current business address.

43. Particular 7 of Ground 3 alleges as follows:

Mr Lyons failed to comply with this Notice, so there is no evidence produced that Mr Lyons operates or has ever operated from the Zetland address.

Ground 4

44. This Ground is available under subsection 129(3)(e)(iv) of the Act, which states:

...that the gaming-related licensee is no longer a fit and proper person to hold a gaming-related licence.

45. Particular 1 of Ground 4 alleges as follows:

By virtue of the allegations above, Mr Lyons is no longer a fit and proper person to hold a gaming-related licence.

46. Particular 2 of Ground 4 alleges as follows:

Further, by way of written correspondence of 2 October 2015 Mr Lyons was asked to make comment on all of the above matters and, in particular, was invited to interview to provide a response to the allegations.

47. Particular 3 of Ground 4 alleges as follows:

In his response of 10 October 2015, it was noted that Mr Lyons' signature block included the words "Gaming Machine Seller's Licence 1-2349911115".

48. Particular 4 of Ground 4 alleges as follows:

A review of previous correspondence indicates that he has used the signature block since at least January 2015.

49. Particular 5 of Ground 4 alleges as follows:

The use of these numbers falsely represents that Mr Lyons holds a Gaming Machine Sellers licence. A person who falsely holds himself out to be licensed to sell gaming machines could mislead industry stakeholders and lead to their inadvertent commission of offences against the Act.

Complainant's Submissions on the Complaint

50. Briefly, the Complainant submits that Mr Lyons "does not consider himself subject to regulation and is at best dismissive, and at worst recklessly negligent" in his response to attempts by authorities to enforce legitimate requirements upon him. This attitude, it is said, extends to "other regulators" outside of the gaming industry, including ASIC and the Courts.
51. The Complainant further submits that Mr Lyons has "failed to observe legitimate requirements" that are imposed upon gaming-related licence holders to notify the Secretary of Court proceedings and the imposition of charges over property. The Complainant submits that these requirements are "an important protection" for the community against persons who are convicted of serious offences from retaining a foothold in the "highly regulated" gaming machines industry.
52. The Complainant further submits that Mr Lyons has subsequently failed to provide information to LGNSW despite two prior instances of officers exercising coercive powers

under two separate statutory frameworks and numerous extensions of time to comply with those Notices to Produce.

53. The Complainant submits that it is “near to impossible to ensure the integrity of the gaming industry” if “reasonable and lawful requests for information” made by the regulator “may be ignored with impunity by gaming-related licensees”.
54. The Complainant submits that the commonality of Mr Lyons’ conduct described in this Complaint appears to be a “failure to apprehend and apply” the most basic legal requirements, applicable not only to a gaming-related licensee, but of any person conducting themselves in trade or commerce.
55. The Complainant submits that Mr Lyons’ “consistent ignorance” of “reasonable and lawful demands” cannot be countenanced by his continued holding of any form of gaming-related licence.
56. The Complainant concludes, with regard to the objects of the Act, particularly the need to ensure the integrity of the gaming industry, that it is “appropriate to disqualify Mr Lyons from ever again practising in the gaming machine industry”.

Disciplinary action sought by Complainant

57. The Complainant recommends that the Authority make the following Orders, should the Complaint be established:
 1. Pursuant to section 131(2)(d) of the Act, cancel the gaming machine technician’s licence held by Mr Lyons.
 2. Pursuant to section 131(2)(f) of the Act, disqualify Mr Lyons from holding a gaming-related licence for life.
 3. Pursuant to section 131(2)(a)(i) of the Act, impose a financial penalty as determined by the Authority.
 4. Pursuant to section 131(2)(i)(i) of the Act, order Mr Lyons to pay the costs of carrying out the investigation under section 128 of the Act that preceded the making of this Complaint.

COMPLAINT MATERIAL

58. In addition to the Complaint Letter, the Complainant has provided a 65-page bundle of 14 attachments comprising additional material in support of the Complaint. What follows is a brief summary of those documents.
59. **Complaint Attachment 1:** *JusticeLink* records of Court outcomes for Mr Lyons and correspondence between LGNSW and the Sydney City Sheriff’s Office, dated 16 November 2015. These records indicate the following Court outcomes:
 - 10 April 2012: Local Court – Crime, Sutherland – *R v John Howard LYONS* – Director/secretary not make out statement of company affairs.
 - o Status: “Determined (case closed)” “Convicted *in absentia*”
 - o Monetary order: \$800.00.
 - 10 April 2012: Local Court – Crime, Sutherland – *R v John Howard LYONS* – Officer not deliver books to liquidator.

- Status: “Determined (case closed)” and “Convicted *in absentia*”
 - Monetary order: \$1,200.00.
 - 10 July 2012: Local Court – Crime, Sutherland – *R v John Howard LYONS* – Director/secretary not make out statement of company affairs.
 - Status: “Determined (case closed)”.
 - Monetary order: \$1,500.00.
 - 10 July 2012: Local Court – Crime, Sutherland – *R v John Howard LYONS* – Officer not deliver books to liquidator.
 - Status: “Determined (case closed)”.
 - Monetary order: \$2,200.00.
 - 29 October 2012: Local Court – Civil, Waverley – *Hakoah Club Limited v Poker Machine Distributors (Australia) Pty Ltd*.
 - Status: “Determined (case closed)”.
 - Outcome 1 May 2013: “Default judgment \$39,749.87”.
 - 22 November 2013: Local Court – Civil, Sydney – *Workers Compensation Nominal Insurer v Poker Machine Distributors (Australia) Pty Ltd*.
 - Status: “Determined (case closed)”.
 - Outcomes 3 February 2014: “Writ 4,849.29” and “Default judgment for monetary amount \$4,507.09”.
 - 14 December 2015: District Court – Civil, Sydney – *Poker Machine Distributors (Aust) Pty Ltd ACN 899 226 891 as trustee for the EGM Trust v Richard Michael Haddock*.
 - Status: “Active (case open)”.
 - 13 November 2015: District Court – Civil, Sydney - *Poker Machine Distributors (Aust) Pty Ltd ACN 899 226 891 as trustee for the EGM Trust v Richard Michael Haddock*.
 - Status: “Determined (case open)”.
60. **Complaint Attachment 2:** Section 21 *Gaming and Liquor Administration Act 2007* Notice to Produce issued to Mr Lyons via email dated 25 July 2013 (**First Notice**) and an email “read receipt” indicating that the email containing the First Notice had been opened by Mr Lyons on 25 July 2013.
61. **Complaint Attachment 3:** Email from LGNSW Compliance Officer Rankin to Mr Lyons dated 31 July 2013 advising Mr Lyons of the requirement to respond to the First Notice by 8 August 2013.
62. **Complaint Attachment 4:** File Note dated 26 August 2013 recording details of a conversation between LGNSW Compliance Officer Rankin and Mr Lyons in relation to the requirement to respond to the First Notice (**LGNSW File Note**).
63. **Complaint Attachment 5:** Email from LGNSW Compliance Officer Rankin to Mr Lyons dated 2 September 2013 providing an extension of time to comply with the First Notice until 5:00pm on 3 September 2013.
64. **Complaint Attachment 6:** Further email from LGNSW Compliance Officer Rankin to Mr Lyons dated 16 September 2013 containing a final warning letter and providing another extension of time to respond to the First Notice by 27 September 2013.

65. **Complaint Attachment 7:** Section 95 *Gaming Machines Act 2001* Notice to Produce dated 6 January 2015 (**Second Notice**) issued to Mr Lyons by email dated 7 January 2015 from Probity Compliance, LGNSW.
66. **Complaint Attachment 8:** Mr Lyons' response to the Second Notice by email dated 13 January 2015 to Inspector Rankin and copied to Mr Robert Harris.
67. **Complaint Attachment 9:** *Government Licensing System (GLS)* Internal Report. This document extracted from the licensing database then known as GLS and now known as *OneGov* records full liquor licence details in relation to Mr Lyons' gaming machine technician's licence number GMT4015396 as at 16 November 2015 indicating that the address of the "primary premises" associated with the licence is "U1528/5 Bindon Place, Zetland".
68. **Complaint Attachment 10:** ASIC Current and Historical Company Extract for Poker Machine Distributors (Australia) Pty Limited, ACN 002 419 892 dated 16 November 2015 indicating that the registered business address for that company is "U7/2 Burrows Road, St Peters".
69. **Complaint Attachment 11:** document entitled "Letter of Demand and Notification of Lock-out" issued by Taylor Nicholas Group and addressed to "Poker Machine Distributors", sent via email dated 12 September 2012 in respect of the premises at U7/2 Burrows Road, St Peters.
70. **Complaint Attachment 12:** Application Form for a gaming machine seller's licence signed by Mr Lyons and dated 4 March 2014 in which Mr Lyons listed two other addresses in Edgecliff and Vacluse. The Form indicates that the applicant is Mr John Lyons in his personal capacity.
71. **Complaint Attachment 13:** Correspondence from LGNSW to Mr Lyons dated 2 October 2015 inviting Mr Lyons to participate in an interview in relation to enquiries to ascertain whether a disciplinary complaint should be made against him.
72. **Complaint Attachment 14:** Email from Mr Lyons to LGNSW in response to correspondence dated 2 October 2015 displaying Mr Lyons' signature block which included the words "Gaming Machine Seller's Licence 1-2349911115". This email states as follows (errors in original):

Dear Mr. Walker-Munro,

It appears that you may have taken over from Mr. Daniel Zuccarini?

Please see my complaint about Mr. Paul Rankin in the copies of the attached correspondence.

I now have a further letter from your office from you, "Should you require further information on this matter, Mr. Paul Rankin, Compliance Officer, can be contacted etc".

Would you kindly review your files and respond my previous letter as per attached please?

It is possible that you have not viewed a substance of other correspondence that we/I have previously sent to your Office, which includes but is not limited to the attached.

In particular I attach a copy of a clear National Police Certificate dated 22.2.2014, which appears to be at odds with your allegation of offences dated 10.4.2012 and 10.7.2012?

I have no knowledge of these alleged offences, and indeed your email is the first I have heard of these matters.

Your urgent responses to these matters together with any evidence that to have to substantiate your claims would be appreciated.

Regards

*John Lyons
Sole Director*

* *Poker Machine Distributors (Australia) Pty Limited,*
ATF The EGM Trust
Gaming Machine Seller's Licence 1-2349911115,
Gaming Machine Technician's Licence No. 24015396,
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Edgecliff NSW 2027
Australia.
(Cell/Mobile)
(E) johnlyons@lyonsbro.com.au.

LEGISLATION

Part 8 of the *Gaming Machines Act 2001* – Disciplinary Action

73. In determining the Complaint, the Authority has considered the provisions contained in Part 8 of the Act. Relevantly, sections 129 through 131A and section 131C state as follows:

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*
 - (ii) *has failed to comply with any requirement under this Act or the regulations that relates to the licensee, or*
 - (iii) *has been convicted of an offence under this Act or the regulations or of an offence prescribed by the regulations for the purposes of this section,*
 - (b) *that the hotelier or club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the hotel or on the premises of the club concerned,*
 - (c) *that the hotelier or club has failed to comply with any of the conditions to which an authorisation under Part 5 is subject (including, in the case of a hotelier, the condition that the hotelier comply with the hotel primary purpose test as referred to in section 15 of the Liquor Act 2007 in respect of the hotel),*
 - (d) *that the hotelier or club has failed to pay tax within the meaning of the Gaming Machine Tax Act 2001, or an instalment of any such tax, within the time allowed by or under that Act, or has failed to pay a penalty or interest due for late payment of any such tax or instalment,*
 - (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,*
 - (f) *that the close associate is (or has become) a close associate of a hotelier or gaming-related licensee while disqualified by the Authority from being a close associate,*
 - (g) *that the close associate is not a fit and proper person to be a close associate of a hotelier or gaming-related licensee,*
 - (h) *that a complaint against a hotelier or gaming-related licensee under this section has been made and that:*
 - (i) *the close associate knew or ought reasonably to have known that the hotelier or gaming-related licensee was engaging (or was likely to engage) in conduct of the kind to which the complaint relates, and*
 - (ii) *the close associate failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind,*

- (i) that a person who is interested in the business, or in the conduct or profits of the business, carried on under the gaming-related licence is not a fit and proper person to be so interested,
- (j) that the gaming-related licence has not been exercised in the public interest,
- (k) that the licensee or close associate has failed to comply with a requirement of the Director-General made under section 128 in relation to the investigation of the licensee or close associate.

130 Procedure for taking disciplinary action

- (1) If a complaint in relation to a licensee or close associate is made under this Part, the Authority must, before taking any disciplinary action against the licensee or close associate, notify the licensee or close associate in writing of the grounds on which the Authority is proposing to take disciplinary action.
- (2) Any such notice is to invite the licensee or close associate to show cause, by way of a written submission, as to why the Authority should not take disciplinary action against the licensee or close associate.
- (3) The Authority must also, before taking disciplinary action against a gaming-related licensee, invite written submissions from the following persons:
 - (a) each person named in the written statement referred to in section 91 that accompanied the application for the licence,
 - (b) each person named in the information provided to the Authority (as required by section 118) who has become interested in the business, or the conduct of the business, carried out on the licence.
- (4) 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.
- (5) 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 licensee or close associate concerned.

131 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 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),
 - (b) order the club to pay, within such time as is specified in the order, a monetary penalty not exceeding 2,500 penalty units or, if circumstances of aggravation exist in relation to the complaint, not exceeding 5,000 penalty units,
 - (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,
 - (g) disqualify the close associate from being a close associate of a licensee for such period as the Authority thinks fit,

- (h) *disqualify the close associate 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).*
- (4) *While a person is disqualified by the Authority under this section from being a close associate of a gaming-related licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a gaming-related licensee.*
- (5) *For the purposes of this section, circumstances of aggravation exist in relation to a complaint if any of the following paragraphs applies:*
 - (a) *the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist,*
 - (b) *the Authority, in finding that the matter of the complaint has been made out, is of the opinion (having regard to such matters as the number and seriousness of the contraventions involved, the number of people involved in the contravention, the seriousness of the outcome of the contravention, or other relevant consideration) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist.*

131A Procedure for implementing disciplinary action

- (1) *If the Authority decides to take disciplinary action against a licensee or close associate under this Part, the Authority is required to serve on the licensee or close associate a notice informing the person of the Authority's decision.*
- (2) *The notice must include the reasons for the Authority's decision.*
- (3) *Any disciplinary action under this Part 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 licensee or close associate 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 licensee or close associate is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.*

131C Administrative review by NCAT of decision by Authority under this Part

- (1) *An application for an administrative review under the Administrative Decisions Review Act 1997 of a decision by the Authority in relation to a complaint under this Part may be made to the Civil and Administrative Tribunal.*
- (2) *An application for such a review may be made by:*
 - (a) *the licensee or person against whom any disciplinary action is taken by the Authority in relation to the complaint, or*
 - (b) *the complainant.*
- (3) *Part 2 of Chapter 3 of the Administrative Decisions Review Act 1997 does not apply to an application to the Civil and Administrative Tribunal for an administrative review of a decision by the Authority under this Part.*

Section 125 Gaming Machines Act 2001 – Change in State of Affairs

- 74. Section 125 of the Act requires a gaming-related licensee to notify the Authority of a prescribed change in state of affairs. It states:

125 Change in state of affairs of gaming-related licensee

If a change of a kind prescribed by the regulations takes place in the state of affairs of the holder of a gaming-related licence, the licensee must, within 14 days of the change taking place, notify the Director-General of such particulars in relation to the change as are prescribed by the regulations.

Maximum penalty: 20 penalty units.

75. Clause 76 of the *Gaming Machines Regulation 2010* defines a “prescribed change in a state of affairs of the holder of a gaming-related licence”. It states:

76 Notification of change in the state of affairs of gaming-related licensee

For the purposes of section 125 of the Act:

- (a) *a prescribed change in the state of affairs of the holder of a gaming-related licence is any change referred to in Column 1 of Schedule 1 that the licensee is aware of, and*
- (b) *the prescribed particulars in respect of that change are those particulars set out next to the change concerned in Column 2 of Schedule 1 that the licensee knows or could find out by reasonable inquiry.*

76. Schedule 1 to the Regulation provides the following in relation to prescribed changes and particulars in respect of gaming-related licensees (clause 76 of the Regulation):

COLUMN 1	COLUMN 2
Prescribed change	Prescribed particulars
<i>A change in: (a) the name of the licensee, or (b) the principal residential address of the licensee, or (c) the business or private telephone number of the licensee.</i>	<i>Particulars of those matters as changed.</i>
<i>In the case of a seller or technician, a change in the business address of the seller or technician.</i>	<i>Particulars of the address as changed.</i>
<i>The commencement, settlement, discontinuance or finalisation of civil or criminal proceedings to which the licensee is a party.</i>	<i>Particulars of: (a) (a) the nature of the proceedings, and (b) (b) the names and addresses of the other parties to the proceedings, and (c) (c) the date of the commencement, settlement, discontinuance or finalisation of the proceedings, and (d) (d) the terms of the settlement (unless the terms of settlement are prohibited from being disclosed) or the result of the finalisation of the proceedings (including the making of an order under section 10 of the <u>Crimes (Sentencing Procedure) Act 1999</u>).</i>
<i>A change consisting of: (a) the obtaining of judgment against the licensee, or (b) the creation of a charge over any property of the licensee, or (c) repossession of any property of the licensee.</i>	<i>Particulars giving: (a) (a) the terms of the judgment or charge, and (b) (b) the reasons for and circumstances of the repossession, and (c) (c) a description of the property affected.</i>
<i>The licensee: (a) becomes bankrupt, or (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or (c) compounds with creditors or makes an assignment of remuneration for their benefit, or</i>	<i>Particulars of: (a) (a) the terms, and (b) (b) the date, of the bankruptcy, application, compounding, assignment, compromise or scheme of arrangement.</i>

COLUMN 1	COLUMN 2
Prescribed change	Prescribed particulars
<i>(d) enters into a compromise or scheme of arrangement with creditors.</i>	
<i>A person obtains a direct or indirect interest in the business that is carried on under the authority of the licence.</i>	<i>Particulars of:</i> <i>(a) (a) the name of the person obtaining the direct or indirect interest, and</i> <i>(b) (b) that person’s date of birth, and</i> <i>(c) (c) that person’s residential address, and</i> <i>(d) (d) the nature of that person’s interest, and</i> <i>(e) (e) the details of any offence that person has been convicted of (in New South Wales or elsewhere), other than parking and traffic offences, and</i> <i>(f) (f) the details of any charges pending against that person (in New South Wales or elsewhere), other than parking or traffic charges.</i>

Section 117 Gaming Machines Act 2001 – Record Keeping

77. Section 117 of the Act prescribes requirements for the keeping of records by gaming-related licensees:

117 Keeping of records

- (1) *If the holder of a gaming-related licence is a corporation, it is a condition of the licence that the licensee keep the records prescribed by the regulations that relate to the business carried on under the licence at the registered or principal office of the corporation under section 142 or 601CT of the Corporations Act 2001 of the Commonwealth.*
- (2) *If the holder of a gaming-related licence is not a corporation or an employee, it is a condition of the licence that the licensee maintain at least one place of business in the State and keep the records prescribed by the regulations that relate to the business carried on under the licence:*
 - (a) *if only one place of business is maintained in the State—at that place, or*
 - (b) *if more than one place of business is maintained in the State—at the principal such place.*

Clause 72 Gaming Machines Regulation 2010 – Place of Business

78. Clause 72 of the Regulation requires Authority approval of a gaming machine technician’s place of business:

72 Technician’s place of business

- (1) *A technician must not, without the approval of the Authority, conduct the technician’s business on or from premises other than the premises approved by the Authority, at the time of grant of the technician’s licence, as being the premises on or from which the activities authorised by the licence are to be carried on.*
Maximum penalty: 20 penalty units.
- (2) *This clause does not prevent:*
 - (a) *a technician from conducting business at or from premises approved by the Authority, or*
 - (b) *a technician from carrying out the service, repair or maintenance of an approved gaming machine at a place where the gaming machine is lawfully in the possession of:*
 - (i) *the holder of a gaming-related licence, or*
 - (ii) *a hotelier or registered club.*

Section 95 Gaming Machines Act 2001 – Notice to Produce

79. Section 95 of the Act provides that the Secretary may require further information in relation to an application for a gaming-related licence, as follows:

95 Director may require further information

- (1) *The Director-General may, by notice in writing, require a person whose application for a gaming-related licence has been referred to the Director-General, or may require a close associate of any such person, to do one or more of the following things:*
 - (a) *provide, in accordance with directions in the notice, such information verified by statutory declaration as is relevant to the investigation of the application and is specified in the notice,*
 - (b) *produce, in accordance with directions in the notice, such records as are relevant to the investigation of the application and permit examination of the records, the taking of extracts from them and the making of copies of them,*
 - (c) *authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),*
 - (d) *furnish to the Director-General such authorities and consents as the Director-General requires for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates.*
- (2) *A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.*
- (3) *The Authority may refuse to grant an application for a gaming-related licence if a requirement made under this section in relation to the application is not complied with.*

Section 21 Gaming and Liquor Administration Act 2007 – Notice to Produce

80. Section 21 of the *Gaming and Liquor Administration Act 2007* contains a requirement to provide information and records, as follows:

21 Requirement to provide information and records

- (1) *The Authority or an inspector or police officer may, by notice in writing given to a person, require the person to furnish to the Authority, inspector or police officer such information or records (or both) as the Authority, inspector or officer requires by the notice in connection with any matter arising under or in connection with the gaming and liquor legislation.*
- (2) *Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.*

Section 3 – Objects of the Gaming Machines Act 2001

81. In determining the Complaint, the Authority has also considered the objects and considerations of the Act, which further inform the public interest in respect of the Act, prescribed by section 3 which states 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.*

NO SUBMISSIONS FROM MR LYONS

82. A Show Cause Notice was sent via email and Express Post to all of Mr Lyons' known addresses on 17 December 2015.
83. Mr Lyons was requested to respond to the Show Cause Notice within 35 days of its issue to request further and better particulars, or make any submissions of an interlocutory nature.
84. The timetable in the Notice required the Complainant to respond to any such preliminary submission within 7 days of receiving such request or submission, with Mr Lyons to provide any submissions or evidence addressing the merits of the Complaint within 28 days after receiving the Complainant's response.

85. At 5:19pm on 23 December 2015, Mr Lyons emailed Authority staff, requesting an extension of time to make submissions. The full text of this email states as follows:

I have received the correspondence in various forms. I respectfully do not consider the time frame of 35 days for response as being in any circumstances adequate to respond to the substantial brief of evidence and the serious nature of the allegations and complaints. In particular both the Courts and many Legal Practitioners are on vacation for at least the next 21 days.

If you are yourself not on holidays would you kindly call me on an informal basis tomorrow to discuss the procedure available to look at re-scheduling the timeline?

86. The Authority's Chief Executive declined this request in an email sent at 6:36pm on 23 December 2015. The full text of that email is as follows:

Thank you for your letter of today's date seeking further time to make submissions in respect of the disciplinary complaint made against you.

As advised in the Show Cause letter, the first date is for responses of a preliminary or procedural nature only, should they be required. A further period of time is available to address the merits of the complaint.

The Authority provided an additional 7 days to the first phase of the timetable to account for the Christmas/New Year period.

The Authority will be available over the Xmas/New Year period and is actively dealing with a number of other matters. Further, the material and evidence relied upon by the complainant is not extensive.

The Show Cause Notice was sent to you on 17 December 2015 and made clear that if legal advice was to be sought, it should be sought immediately. It is in the public interest for this matter to proceed in an efficient manner.

The Authority will be proceeding in accordance with the timetable specified in the Show Cause letter.

87. The Authority considered the Complaint at its meeting of 24 February 2016. As of that time, Mr Lyons had provided no substantive submissions or evidence in response to the Show Cause Notice.
88. The Authority is satisfied that Mr Lyons has had a reasonable opportunity to respond to the merits of the Complaint, but has apparently elected not to do so.

FINDINGS

Ground 1

89. This Ground is based on the statutory ground of complaint provided by section 129(3)(a)(i) of the Act, which states as follows:

...that the licensee has contravened a provision of this Act or the regulations.

90. The Authority notes that section 125 of the Act states:

125 Change in state of affairs of gaming-related licensee

If a change of a kind prescribed by the regulations takes place in the state of affairs of the holder of a gaming-related licence, the licensee must, within 14 days of the change taking place, notify the Director-General of such particulars in relation to the change as are prescribed by the regulations.

Maximum penalty: 20 penalty units.

91. As noted above, the Authority notes that Schedule 1 of the Regulation lists various matters that constitute a “change in the state of affairs” for the purposes of section 125 of the Act.
92. They include, relevantly to the allegation made in Ground 1:

Prescribed change	Prescribed particulars
<p><i>The commencement, settlement, discontinuance or finalisation of civil or criminal proceedings to which the licensee is a party.</i></p>	<p><i>Particulars of:</i></p> <p><i>(a) (a) the nature of the proceedings, and</i></p> <p><i>(b) (b) the names and addresses of the other parties to the proceedings, and</i></p> <p><i>(c) (c) the date of the commencement, settlement, discontinuance or finalisation of the proceedings, and</i></p> <p><i>(d) (d) the terms of the settlement (unless the terms of settlement are prohibited from being disclosed) or the result of the finalisation of the proceedings (including the making of an order under section 10 of the <u>Crimes (Sentencing Procedure) Act 1999</u>).</i></p>

93. The Authority is satisfied, on the basis of the GLS Internal Report as at 16 November 2015, that Mr John Lyons holds a gaming machine technician’s licence number GMT4015396 which was granted to him on 7 April 2008. This remains current at this time.
94. The Authority is satisfied, as alleged in Particular 4 of Ground 1 and as evident from the *JusticeLink* records of Court outcomes provided by the Complainant, that Mr Lyons was involved in the following Court proceedings, resulting in the following outcomes:
- (i) Sutherland Local Court proceedings on 10 April 2012 – in which Mr Lyons was convicted *in absentia* of two offences under Commonwealth law, for failing to make out a statement of company affairs and failing to deliver books to a liquidator.
 - (ii) Sutherland Local Court proceedings on 10 July 2012 – in which Mr Lyons was convicted *in absentia* of two offences under Commonwealth law, for failing to make out a statement of company affairs and failing to deliver books to a liquidator.

95. The Authority is satisfied, as alleged in Particular 5 of Ground 1, that at no stage did Mr Lyons notify the Secretary within 14 days of these Court outcomes, being relevant changes in circumstances requiring notification to the Secretary pursuant to section 125 of the Act.
96. Mr Lyons' failure to give notice to the Secretary is established on the basis of the uncontested allegation made in the Complaint Letter, combined with the *JusticeLink* records in question.
97. The Authority is satisfied, as alleged in Particular 6 of Ground 1, that extracts from NSW Court records show that Poker Machine Distributors (Australia) Pty Ltd, a company of which Mr Lyons was and is sole director, was involved in the following Court proceedings resulting in the following outcomes:
- (i) 1 May 2013: Judgment entered against Poker Machine Distributors (Australia) Pty Ltd at the Local Court General Division at Waverley, in the amount of **\$39,749.87** inclusive of costs for failing to pay the Hakoah Club for gaming machines purchased when the Club ceased trading on 4 November 2009.
 - (ii) 3 February 2014: Judgment entered against Poker Machine Distributors (Australia) Pty Ltd at the Local Court Civil Division at Sydney, in the amount of **\$4,849.29** inclusive of costs for failing to pay a worker's compensation claim to the Nominal Insurer.
98. The Authority is satisfied, as alleged in Particular 7 of Ground 1, that at no stage did Mr Lyons notify the Secretary within 14 days of these Court proceedings. This allegation has not been contested by Mr Lyons and the Authority's finding is made on the basis of the uncontested allegation in the Complaint Letter and the *JusticeLink* records in question.
99. The Authority is satisfied, as alleged in Particular 8 of Ground 1, that as a result of the Court proceedings of 3 February 2014, a writ of seizure was issued to the Sherriff's Office of NSW in respect of the judgment debt of **\$4,849.29**. The Authority makes this finding on the basis of:
- (i) *JusticeLink* records of Court outcomes for Mr John Howard Lyons provided by the Complainant; and
 - (ii) Correspondence between LGNSW and the Sydney City Sherriff's Office dated 16 November 2015 providing details of a writ for levy of property at "South Unit 7, 2 Burrows Road, St Peters" issued against Poker Machine Distributors (Australia) Pty Ltd by the Sydney Local Court on 3 February 2014 in the amount of \$4,849.29.
100. The Authority is satisfied, as alleged in Particular 9 of Ground 1, that at no stage did Mr Lyons notify the Secretary within 14 days of the creation of a charge over his property. This allegation has not been contested by Mr Lyons and the Authority's finding is made on the basis of the allegation in the Complaint Letter, the correspondence between LGNSW and the Sherriff's office dated 16 November 2015 and the *JusticeLink* records in question.
101. However, the Authority notes that the Court outcomes involving judgment being entered in Local Courts at Waverley and Sydney against Poker Machine Distributors (Australia) Pty Ltd concern that company, not Mr Lyons personally. As the failure to notify these outcomes was not specified against Mr Lyons in his capacity as a close associate of that company, these matters have *not* been found by the Authority to support Ground 1 as it has been specified.

102. On the basis of the above findings, the Authority is satisfied that Ground 1 of the Complaint is established, but only in respect of Particulars 1 to 5 of this Ground. Particulars 6 to 9 of this Ground are not established.

Ground 2

103. This Ground is based on the statutory ground of complaint provided by section 129(3)(a)(ii) of the Act, which states as follows:

...that the licensee has failed to comply with any requirement under this Act or the regulations that relates to the licensee.

104. The Authority is satisfied, as alleged in Particular 1 of Ground 2, that on 25 July 2013 Mr Lyons was served with a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007*.
105. The Authority is further satisfied, as alleged in Particular 2 of Ground 2, that on 25 July 2013, LGNSW Compliance Officer Rankin received an electronic “read receipt” by email indicating that Mr Lyons had read the email containing the First Notice.
106. These findings are made by the Authority on the basis of the uncontested allegation in the Complaint Letter, the section 21 *Gaming and Liquor Administration Act 2007* Notice to Produce issued to Mr Lyons via email dated 25 July 2013 and the read receipt indicating that the email had been opened by Mr Lyons on 25 July 2013.
107. The Authority is satisfied, as alleged in Particular 3 of Ground 2, that on 31 July 2013, Compliance Officer Rankin again emailed Mr Lyons, advising him of the requirement to respond to the First Notice by 8 August 2013. This finding is made on the basis of the uncontested allegation provided in the Complaint Letter and the email from Compliance Officer Rankin to Mr Lyons dated 31 July 2013 provided by the Complainant.
108. The Authority is satisfied, as alleged in Particular 4 of Ground 2, that on 26 August 2013, Compliance Officer Rankin contacted Mr Lyons on his mobile telephone number 0438 888 013 and that during the ensuing conversation Mr Lyons stated that he had provided the First Notice to his legal representative, who would contact Inspector Rankin the following day. The Authority is further satisfied that Inspector Rankin again advised Mr Lyons that he was required to respond to the First Notice.
109. This uncontested allegation is found by the Authority on the basis of the LGNSW File Note dated 26 August 2013 detailing this telephone conversation, as provided by the Complainant.
110. The Authority is satisfied, as alleged in Particular 5 of Ground 2, that on 2 September 2013 Compliance Officer Rankin sent a further email to Mr Lyons providing an extension to comply with the First Notice until 5:00pm on 3 September 2013.
111. This uncontested allegation is found by the Authority on the basis of a copy of this email from LGNSW Compliance Officer Rankin to Mr Lyons dated 2 September 2013 granting Mr Lyons an extension of time to comply with the First Notice until 5:00pm on 3 September 2013.
112. The Authority is satisfied, as alleged in Particular 6 of Ground 2, that on 16 September 2013 Compliance Officer Rankin sent a further email to Mr Lyons which contained a final warning letter providing another extension to respond to the First Notice by 27 September 2013.

113. This uncontested allegation is found by the Authority on the basis of the email from LGNSW Compliance Officer Rankin to Mr Lyons dated 16 September 2013 provided by the Complainant.
114. The Authority is satisfied, as alleged in Particular 7 of Ground 2, that no response was received from Mr Lyons at any time between 26 August 2013 and 27 September 2013. This allegation is found on the basis of the uncontested allegation made in the Complaint Letter and the absence of any evidence to the contrary.
115. The Authority is satisfied, as alleged in Particular 8 of Ground 2, that on 6 January 2015 Mr Lyons was served with a Notice to Produce (the Second Notice) by Mr Daniel Zuccarini, Assistant Manager – Revenue Assurance & Integrity, issued under section 95 of the Act requiring production of certain documents by 13 January 2015.
116. This finding is made by the Authority on the basis of the copy of an email sent at 1:45pm on 7 January from probity@olgr.nsw.gov.au to john.lyons@lyonsbro.com.au and by mail to PO Box 42, Edgecliff, enclosing a Section 95 *Gaming Machines Act 2001* Notice to Produce addressed to Mr Lyons and dated 6 January 2015, as provided by the Complainant.
117. The Authority is satisfied, as alleged in Particular 9 of Ground 2, that Mr Lyons replied to the Second Notice, but did not produce documentary evidence required by the Second Notice. Part 2 of this Notice sets out the “Requirements” of the Notice as follows:
1. *Provide documentary evidence that is independently verifiable that you reside at Lot 11, 176 Fowlers Lane Bangalow 2479.*
 2. *Provide a current ASIC printout confirming the ABN number, details and your directorship.*
 3. *Provide documentary evidence that is independently verifiable of the business address of the EGM Trust (Trustee Poker Machine Distributors).*
118. This uncontested allegation is found by the Authority on the basis of the copy of Mr Lyons’ response by email to the Second Notice to Inspector Rankin dated 13 January 2015, as provided by the Complainant. This email states (errors in original):
- I refer to the notice dated 6/1/2015, signed under delegation by Daniel Zuccarini.
My new residential address from 3/1/2015 is 1528/5 Bindon Place, Zetland, NSW, 2017.
This is also the new Registered Office of the Company. I still on occasion live at Bangalow with one of my Daughters (Claudine Claridge), and previously was residing also at Darling Point, but for the purpose of my Gaming Machine Technician’s Licence and the EGM Trust’s Seller’s Licence the Zetland Address is to be now to be utilised.
As discussed with your colleague Robert Harris, the Storage Facility is now located in Bankstown.
You would be aware that there is a substantial dispute between the previous landlord (Richard Haddock) and our Trust in respect of our former store premises at St. Peters. We have instituted proceedings against Mr. Haddock, claiming substantial damages, and we reserve the right to join the Authority into those proceedings.
In so far as your enquiries are concerned contained in Part 2, I confirm the information herein provided, and if you have an issue with such confirmation, you are at liberty to carry out an ASIC search in this regard.
Yours Faithfully,
John Lyons
Sole Director*
119. However, notwithstanding the above factual findings, the Authority is *not* satisfied that Ground 2 is established on the material before the Authority.

120. The Authority notes that the First Notice issued on 25 July 2013 was issued under the *Gaming and Liquor Administration Act 2007*, not the *Gaming Machines Act 2001*.
121. That is, while the Authority is satisfied that Mr Lyons did not comply with that Notice, it was not a notice issued under “this Act” within the meaning of section 129(3)(a)(ii), which refers to the *Gaming Machines Act 2001*. That is, Mr Lyons’ non-compliance with the First Notice does not support the statutory ground upon which Ground 2 is based.
122. As for the Second Notice issued on 6 January 2015, this was a notice issued under section 95 of the *Gaming Machines Act 2001*. The Authority is satisfied that Mr Lyons failed to comply with this Notice.
123. However, the Second Notice was not issued to Mr Lyons in respect of his status as a “licensee” (in relation to Mr Lyons holding a gaming machine technician’s licence).
124. Rather, the Second Notice concerned his *application* for a gaming machine seller’s licence, which was signed by Mr Lyons on 4 March 2014 but according to the Complaint, has not been granted to Mr Lyons.
125. Ground 2 of this Complaint is predicated upon the words of section 129(3)(a)(ii) of the Act which provides that a complaint may be made if a “licensee” has failed to comply with any requirements under the Act or Regulation “that relates to the licensee”.
126. As the Second Notice was not issued to Mr Lyons in relation to his status as the holder of a gaming machine technician’s licence, but in relation to an *application* for a gaming machine seller’s licence, there is an insufficient legal nexus between the non-compliance with the Second Notice (that is factually established) and Mr Lyons’ capacity as a *relevant* “licensee”.
127. Nevertheless, as discussed below, Mr Lyons’ non-compliance with two Notices to Produce issued by LGNSW under the liquor and gaming legislation are not without consequence in the assessment of his fitness and propriety to hold a gaming-related licence for the purposes of Ground 4 of this Complaint.

Ground 3

128. This Ground is based on the statutory ground of complaint provided by section 129(3)(e)(i) of the Act, which states as follows:

...that the gaming-related licensee has failed to comply with a condition of the gaming-related licence.

129. As noted above, the Authority is satisfied that Mr Lyons currently holds a gaming-related licence, being a gaming machine technician’s licence number GMT4015396.
130. The Authority notes that clause 72(1) of the Regulation states:
 - (1) *A technician must not, without the approval of the Authority, conduct the technician’s business on or from premises other than the premises approved by the Authority, at the time of grant of the technician’s licence, as being the premises on or from which the activities authorised by the licence are to be carried on.*
Maximum penalty: 20 penalty units.

131. The Authority notes that section 117(2) of the Act states:

- (2) *If the holder of a gaming-related licence is not a corporation or an employee, it is a condition of the licence that the licensee maintain at least one place of business in the State and keep the records prescribed by the regulations that relate to the business carried on under the licence:*
- (a) *if only one place of business is maintained in the State—at that place, or*
 - (b) *if more than one place of business is maintained in the State—at the principal such place.*

132. The Authority is satisfied, as alleged by Particular 3 of Ground 3, that the business address that is currently approved by the Authority with respect to this gaming machine technician’s licence is recorded as U1528/5 Bindon Place, Zetland.

133. This uncontested allegation is made on the basis of the GLS Internal Report for gaming technician’s licence number GMT4015396 dated 16 November 2015.

134. The Authority is further satisfied, as alleged by Particular 4 of Ground 3, that ASIC records indicate that the registered address for Poker Machine Distributors (Australia) Pty Ltd is U7/2 Burrows Road, St Peters.

135. This finding is made on the basis of the ASIC Current and Historical Company Extract for Poker Machine Distributors (Australia) Pty Limited, ACN 002 419 892 dated 16 November 2015.

136. The Authority is further satisfied, as alleged in Particular 4 of Ground 3, that Mr Lyons was evicted from the Zetland address during 2012. This finding is made on the basis of the “Letter of Demand and Notification of Lock-out” issued by Taylor Nicholas Group to Mr Lyons via email dated 12 September 2012 in respect of the premises at U7/2 Burrows Road, St Peters. This document states:

LETTER OF DEMAND AND NOTIFICATION OF LOCK-OUT

*TENANT: Poker Machine Distributors
PROPERTY ADDRESS: 7/2 Burrows Road, St Peters
CURRENT RENT PAID TO DATE: 01/07/12
TOTAL RENT OVERDUE: \$15,881.25
TOTAL OUTGOINGS OVERDUE: \$0.00
PROPOSED LOCK-OUT DATE: Monday 17th September 2012*

COPY OF TAX INVOICE TO FOLLOW

To avoid the landlord taking possession of the property and further legal action being taken, it is recommended that ALL outstanding amounts be paid to our office by no later than Monday 17th September. Our bank account details are as follows; BSB: 062-206 Account: 1000 3094 Name: Taylor Nicholas Trust Account

137. The Authority notes that this eviction notice is addressed to a business, Poker Machine Distributors Pty Ltd. It provides only circumstantial evidence that Mr Lyons (in his capacity as a gaming machine technician) was also evicted.

138. The Authority is further satisfied, as alleged in Particular 5 of Ground 3, that Mr Lyons has indicated two further contact addresses. Those two addresses were indicated on Mr Lyons’ application for a gaming machine seller’s licence and are “PO Box 42, Edgecliff NSW 2027” and “20A Burrabirra Avenue, Vaucluse NSW 2030”.

139. This finding is made on the basis of the Application Form for a gaming machine seller's licence signed by Mr Lyons and dated 4 March 2014.
140. The Authority is satisfied, as alleged in Particular 6 of Ground 3, that Mr Lyons was issued with a Notice to Produce under section 95 of the Act on 6 January 2015 that required him to produce documents relating to providing proof of his current business address.
141. This finding is made on the basis of the Second Notice issued to Mr Lyons, which is dated 6 January 2015.
142. The Authority is further satisfied, as alleged in Particular 7 of Ground 3, that Mr Lyons failed to comply with this Notice to Produce. This finding is made on the basis of Mr Lyons' email dated 13 January 2015 in response to the Second Notice, set out above in the Authority's findings on Particular 9 of Ground 2 of the Complaint.
143. Particular 7 of Ground 3 further alleges, or invites the Authority to conclude, that there is "no evidence" that Mr Lyons "operates or has ever operated from the Zetland address".
144. While this allegation is not contested by Mr Lyons, it is a conclusion that does not necessarily follow from the evidence provided by the Complainant. While it is potentially open to the Authority to draw an inference from circumstantial evidence and the Authority's findings are made on the civil standard of proof, the Authority is nevertheless mindful of its obligation to take care when fact finding in a disciplinary context, pursuant to the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336 in which Dixon J stated:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved.
145. While the Complainant may well have reasonable cause for suspicion arising from Mr Lyons' non-compliance with the Notice to Produce dated 6 January 2015, the Authority would require some positive evidence to establish the allegation that Mr Lyons has *never* traded from the Zetland address, given that there is at least some evidence (albeit a bare indication from the application for a gaming machine technician's licence) that an address in Zetland is the approved address of Mr Lyons' gaming machine technician business.
146. The Authority is satisfied, on the basis of the "Letter of Demand and Notification of Lock-out" issued by Taylor Nicholas Group to the "Poker Machine Distributors" business via email dated 12 September 2012, that this tenant was evicted from the 7/2 Burrows Road, St Peters address on or around 17 September 2012. This document supports a circumstantial inference that Mr Lyons has not been conducting business as a gaming machine technician from that approved address since that time.
147. In order to make that finding, the Authority would need some positive evidence of Mr Lyons actually *carrying on business* from a place other than the approved Zetland address.
148. On the limited evidence or other material before it, the Authority is *not* satisfied that Mr Lyons has contravened clause 72(1) of the Regulation by conducting his business from any other place than the address that was approved by the Authority in relation to the gaming machine technician's licence number GMT4015396.

149. The fact that Mr Lyons has provided alternative contact addresses on an application form is not sufficient to establish that he is actually carrying on a gaming machine technician business from a site other than the approved address on the record for the gaming machine technician's licence.
150. Letters, emails or photographs evidencing transactions being conducted, advertising or other communication evidencing business being available, or gaming machines being delivered to an unapproved address, would positively establish that the relevant gaming machine business is actually being carried on at some specified unapproved address.
151. Furthermore, on the limited evidence or other material before it, the Authority is not satisfied that Mr Lyons has contravened section 117 of the Act, which requires that a gaming machine technician maintain at least one place of business in the State and keep records that relate to that business at that place.
152. While the Complainant may well have reasonable cause to suspect that this requirement is not being satisfied, in light of Mr Lyons' eviction from his former place of business in Zetland and his failure to respond to the Notice to Produce – that does not, of itself, establish contravention of this statutory requirement. Mr Lyons may potentially have some place of business that has not been disclosed to the Authority and he may potentially keep records relating to that place of business that have not been disclosed to the Complainant.
153. Nevertheless, as discussed below, while Ground 3 has not been established on the evidence or material presently before the Authority, Mr Lyons' failure to respond to the Notice to Produce dated 6 January 2015 is not without consequence when assessing his fitness and propriety to hold a gaming-related licence for the purposes of Ground 4 of this Complaint.

Ground 4

154. This Ground is based on the statutory ground of complaint provided by section 129(3)(e)(iv) of the Act, which states as follows:

...that the gaming-related licensee is no longer a fit and proper person to hold a gaming-related licence.

155. Particular 1 of Ground 4 specifies that this Ground is based upon "the allegations above" – that is, all of the allegations specified in the Particulars of Grounds 1 to 3 of the Complaint – and alleges that Mr Lyons is no longer a fit and proper person to hold a gaming-related licence. Notably, it does not refer to the "grounds above" but the allegations made within those grounds. The Authority notes that it has made adverse findings on some, but not all of the allegations contained in those Grounds of Complaint.
156. Particular 2 of Ground 4 further alleges that on 2 October 2015, LGNSW sent a communication to Mr Lyons inviting him to comment on the allegations specified in Grounds 1 to 3 above and to attend an interview with LGNSW.
157. Particular 3 of Ground 4 then alleges that in his response of 10 October 2015, Mr Lyons sent an email which contained an email signature block that included the words "Gaming Machine Seller's Licence 1-2349911115".
158. Particular 4 of Ground 4 alleges that a review of previous correspondence indicates that Mr Lyons has used this email signature block since "at least January 2015".

159. Particular 5 of Ground 4 alleges, or submits, that the use of these numbers [an apparent reference to the gaming machine seller's licence number specified in Particular 3] "falsely represents that Mr Lyons holds a Gaming Machine Seller's licence" and that a person who falsely holds himself out to be licensed to sell gaming machines "could mislead industry stakeholders" and "lead to their inadvertent commission of offences against the Act".
160. With regard to Particular 2 of Ground 2, the Authority is satisfied, on the basis of a three page letter sent from Mr John Walker-Munro of the (then) OLGR addressed to "Mr John Howard Lyons, Director Poker Machine Distributors (Australia) Pty Ltd" and addressed to an Edgecliff PO Box address and Mr Lyons' email address, that Mr Lyons was, as alleged by the Complainant, invited to respond to the allegations made in Grounds 1 to 3 of the Complaint.
161. While the copy of this letter provided by the Complainant in evidence before the Authority is undated, the Authority accepts that the letter was sent to Mr Lyons on 2 October 2015, on the basis of an email sent from Mr Walker-Munro to Mr Lyons at 3:05pm on 2 October 2015.
162. This letter placed Mr Lyons on notice that LGNSW was contemplating taking disciplinary action against him and requests a response to the matters raised in the letter by 16 October 2015. The letter also invites Mr Lyons to attend an interview with LGNSW.
163. The Authority is satisfied, on the basis of the email from Mr Lyons to Mr Walker-Munro sent at 7:38pm on 2 October 2015 [not "10 October 2015" as stated in the Complaint Letter], that Particular 3 of Ground 4 is established. In that email, Mr Lyons provided the following reply, with the signature block as follows (errors in original):

Dear Mr. Walker-Munro,

It appears that you may have taken over from Mr. Daniel Zuccarini?

Please see my complaint about Mr. Paul Rankin in the copies of the attached correspondence.

I now have a further letter from your office from you, "Should you require further information on this matter, Mr. Paul Rankin, Compliance Officer, can be contacted etc".

Would you kindly review your files and respond my previous letter as per attached please?

It is possible that you have not viewed a substance of other correspondence that we/I have previously sent to your Office, which includes but is not limited to the attached.

In particular I attach a copy of a clear National Police Certificate dated 22.2.2014, which appears to be at odds with your allegation of offences dated 10.4.2012 and 10.7.2012?

I have no knowledge of these alleged offences, and indeed your email is the first I have heard of these matters.

Your urgent responses to these matters together with any evidence that to have to substantiate your claims would be appreciated.

Regards

John Lyons

Sole Director

** Poker Machine Distributors (Australia) Pty Limited,*

ATF The EGM Trust

Gaming Machine Seller's Licence 1-2349911115,

Gaming Machine Technician's Licence No. 24015396,

PO Box 42,

Edgecliff NSW 2027

Australia.

(Cell/Mobile)

(E) johnlyons@lyonsbro.com.au.

164. Mr Lyons' email refers to several attachments identified as "OLGR Letters 15.01.2015 and 16.01.2015.pdf" and "15 Pages of Correspondence OLGR and ILGA.pdf". Those attachments do not form part of the material before the Authority.
165. With regard to Particular 4 of Ground 4, the Authority is satisfied, on the basis of Mr Lyons' email to LGNSW in response to the Notice to Produce issued under section 95 of the Act dated 14 January 2015, that Mr Lyons was using this signature block since that date.
166. With regard to Particular 5 of Ground 4, the Authority is satisfied, on the basis of the evidence provided of the signature block used by Mr Lyons in his emails before the Authority dated 14 January 2015 and 2 October 2015, that the signature block falsely represents that his *company* Poker Machine Distributors (Australia) Pty Ltd holds or controls a gaming machine seller's licence, which is not the case.
167. However the Authority is not satisfied that the misrepresentation contained in the signature block indicates that Mr Lyons *personally* holds a gaming machine seller's licence, which is how this Particular has been specified in the Complaint.

FITNESS AND PROPRIETY AT GENERAL LAW

168. 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.
169. 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..."
170. 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.
171. The Authority is satisfied that Ground 1 has been established, and that Grounds 2 and 3 have not been established.
172. However, noting the Authority's satisfaction that Mr Lyons has failed to respond to two Notices to Produce that were lawfully issued to him by LGNSW and are the subject of allegations in Grounds 2 and 3, the Authority considers that these acts of wilful non-compliance with Notices to Produce issued by a regulatory authority raise serious concerns as to Mr Lyons' fitness to hold a gaming-related licence.

173. As noted above, the objects and considerations provided by section 3 of the Act are 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.*

174. The Authority accepts the Complainant's submissions that:

Mr Lyons has failed to observe the legitimate requirements imposed on gaming-related licence holders to notify the Secretary of Court proceedings and imposition of charges over property. These requirements are an important protection for the community against persons convicted of serious offences from retaining a foothold in the highly regulated gaming machine industry. These requirements also allow for the monitoring of 'warning signs' for gaming machine licensees that may be experiencing financial difficulties – these businesses then become higher risk for the commission of illegal activity and interference in public revenue.

Mr Lyons' proceedings were of significant concern, given that they involved:

- *criminal convictions for offences against corporations law related to the winding up of his company, where he refused reasonable and lawful requests for information to be provided to liquidators that would reasonably have been within his custody*
- *civil judgements for failing to make payment for legitimate financial debts incurred through his business, Poker Machine Distributors (Australia) Pty Ltd.*

The criminal proceedings against Mr Lyons are particularly alarming given that Mr Lyons failed to make himself available to the Court on two separate occasions, and was convicted in absentia.

His failures to submit to subsequent orders of the Court are also of extreme concern. Disobedience of a Court order to the extent that a failure to pay judgement debts is grounded in a writ of seizure not only raises questions over the financial viability of Mr Lyons' business as a going concern, but indicates a certain contempt for Australian laws that is inappropriate for the holder of a gaming-related licence. These proceedings are particularly alarming given that Poker Machine Distributors were sued and subsequently found liable for failing to honour legitimate financial requirements imposed on the company by way of trade.

Mr Lyons has subsequently refused to provide information to this Office despite two prior instances of officers exercising coercive powers under two separate statutory frameworks. Mr Lyons was even offered extensions to the timeframe to comply, totalling six weeks, and still failed to produce the information required. Further, despite being warned that his application for a seller's licence could be refused for non-compliance, he failed to comply with a statutory demand for documentation to support his current business being located in Zetland. It is near to impossible to ensure the integrity of the gaming industry if reasonable and lawful requests for information by the regulator may be ignored with impunity by gaming-related licensees.

175. The Authority notes that the liquor and gaming industries are closely regulated areas of commerce. This is for good reason, given the considerable scope for social and economic harm that may arise from the unregulated supply of those services to the community.

176. Depending upon the location and circumstances of the business in question, gaming machines offer a potentially lucrative source of revenue. In New South Wales, only registered clubs, hotels and The Star Casino may lawfully operate gaming machines.
177. By virtue of the considerable amount of cash that gaming machines may generate within a short period of time and the attendant risk of theft, fraud, corruption, money laundering, embezzlement, and other forms of illegal conduct pertaining to their operation, the Act and Regulation prescribe a number of key requirements with regard to gaming machine clearance, maintenance, record keeping and reporting.
178. Gaming machine dealers, technicians, testing facilities and system operators are also closely regulated as to the manner in which they are licensed and the manner in which their respective businesses may be conducted once licensed. It is essential that licensees and applicants for gaming-related licences cooperate with regulatory authorities when lawful requests for information are made, in order to preserve the integrity of the industry.
179. These requirements play an important role in preserving the integrity of the gaming machines industry, which is one of the objects of the Act pursuant to section 3(1)(d) of the Act and in furthering the object of harm minimisation which is an object of the Act pursuant to section 3(1)(a) of the Act.
180. In conclusion, the Authority has considered cumulatively the limited number of adverse findings made by the Authority on the allegations made in this Complaint. They concern Mr Lyons' failures to notify changes in circumstances relating to his status as a gaming-related licensee which were required to be notified by the legislation and his failure to comply with Notices to Produce issued by a regulatory authority (OLGR/LGNSW). The Authority is satisfied, on the basis of those findings, that Mr Lyons has not demonstrated the level of honesty, knowledge and ability that is reasonably expected of a gaming-related licensee in New South Wales.
181. The specific allegation in Ground 4 as to the alleged misrepresentation arising from Mr Lyons' use of the email signature block does not establish the Ground of Complaint to which this allegation has been directed.
182. Nevertheless, the evidence of Mr Lyons' use of that misleading signature block in relation to a company that Mr Lyons directs has been proven and is, in the Authority's view, a relevant further factual matter which is adverse to an assessment of Mr Lyons personal conduct and is relevant to an assessment of his honesty, knowledge and ability to hold a gaming-related licence in New South Wales. This is notwithstanding that the misconduct occurred in relation to an unlicensed entity.
183. The Authority is satisfied that the gaming-related licensee, Mr John Howard Lyons is no longer a fit and proper person to hold a gaming-related licence. Ground 4 of the Complaint is established.

SUBMISSIONS ON DISCIPLINARY ACTION

184. At 10:30am on 2 March 2016, the Authority issued a letter to the parties notifying its findings on the Grounds of this Complaint, giving the Complainant 7 days and Mr Lyons 14 days to make submissions addressing the question of what, if any, disciplinary action should be taken by the Authority in light of those findings.
185. At 11:10am on 2 March 2016, Mr Lyons emailed the Authority's general email address, stating as follows (errors in original):

Thank you for the copy of the Complaint made.

The only responses at this stage are that the Officers of OLGR have taken up to two years to make out this/these complaint/s, and requested that I respond to these within a period of 42 days. Such period encompassed the Christmas/New year period where many holidays are taken, particularly within the Court System and the Legal Fraternity.

Accordingly your demands may well be seen to be unreasonable.

The matters raised are complex, but there are reasonable responses to all matters and the complaint/s will be defended. Neither the Company, the Trust nor me have breached any Law or Regulations.

I should be able to respond in detail within 28 Days.

Regards

John Howard Lyons

Sole Director

Poker Machine Distributors (Australia) Pty. Limited

ATF The EGM Trust,

P.O. Box 42

Edgecliff NSW 2027

(P)

(E) john.lyons@lyonsbro.com.au

186. On the afternoon of 2 March 2016, the Authority's Chief Executive emailed Mr Lyons, confirming that he has **14 days** (until 16 March 2016) to make submissions addressing the question of what, if any, disciplinary action the Authority should take in light of its findings on the Grounds of Complaint.

Complainant Submission on Disciplinary Action dated 3 March 2016

187. On 3 March 2016, the Complainant provided the Authority with a submission on disciplinary action in relation to the Complaint.
188. The Complainant refers to the Authority's findings on the Complaint communicated to the parties in a detailed letter dated 2 March 2016 and notes that the Authority is satisfied that Mr Lyons:
- Is the holder of a gaming-related licence;
 - Contravened a provision of the Act, relating to non-disclosure of Court proceedings as outlined in Particulars 1 through 5 of Ground 1 of the Complaint;
 - Failed to comply with two Notices to Produce issued under the liquor and gaming legislation; and
 - Used a signature block in relation to a company (of which Mr Lyons is the director) that is "misleading".
189. The Complainant further notes the Authority's findings in its letter of 2 March 2016 that "acts of wilful non-compliance with Notices to Produce issued by a regulatory authority raise serious concerns as to Mr Lyons' fitness to hold a gaming-related licence" and that the Authority is "satisfied that the gaming-related licensee, Mr John Howard Lyons is no longer a fit and proper person to hold a gaming-related licence".
190. The Complainant reiterates the Authority's finding that "it is essential that licensees and applicants for gaming-related licences cooperate with regulatory authorities when lawful requests for information are made, in order to preserve the integrity of the industry" and notes that the Authority "is satisfied that...Mr Lyons has not demonstrated the level of

honesty, knowledge and ability that is reasonably expected of a gaming-related licensee in New South Wales”.

191. On the basis of the Authority’s findings as set out in its letter of 2 March 2016, the Complainant submits that the Authority should make the following Orders:
1. Under section 131(2)(d) of the Act, order that Mr Lyons’ gaming-related licence be cancelled;
 2. Under section 131(2)(f) of the Act, disqualify Mr Lyons from holding a gaming-related licence for a period of not less than ten (10) years;
 3. Under section 131(2)(g) of the Act, disqualify Mr Lyons from being a close associate of a gaming-related licensee for a period of not less than ten (10) years; and
 4. Under section 131(2)(i)(i) of the Act, order that Mr Lyons pay the costs of investigating the Complaint, amounting to **\$1,349.17**.
192. **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 **\$1,349.17**.

No Submission from Mr Lyons in relation to Disciplinary Action

193. Mr Lyons did not provide a substantive submission on whether disciplinary action should be taken against him in light of the findings made by the Authority in its letter dated 2 March 2016. Mr Lyons’ limited response to that letter was provided in a short email to the Authority dated 2 March 2016 that is noted above.

DISCIPLINARY ACTION

194. At its meeting on 30 March 2016, the Authority further considered the Complaint and all of the material before the Authority, including the brief final submission on disciplinary action from the Complainant.
195. The Authority notes that 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.
196. The Authority notes that there is no evidence or material before the Authority from Mr Lyons as to his fitness and propriety to hold a gaming-related licence. Mr Lyons has not provided the Authority with any substantive submissions contesting the substance of the allegations made against him.
197. It is open to the Authority to take into account Mr Lyons 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.
198. The Authority notes that the allegations that have been established by this Complaint are *not* at the most serious end of misconduct under the Act. There is no allegation of financial fraud or of modifying or unlawfully interfering with gaming machines.

199. However, the Authority notes that Mr Lyons is currently a licensed gaming machine technician and that he has failed to disclose significant changes in circumstances to the Secretary and has failed to respond to Notices to Produce issued by the regulator, LGNSW.
200. Mr Lyons has also participated in conduct likely to mislead the community to believe that a company that he controls (Poker Machine Distributors (Australia) Pty Ltd) is the holder of a gaming-related licence when that is not the case.
201. The licensing system is integral to the integrity of the gaming machines industry in New South Wales and misleading representations of that kind pose a serious threat to the integrity of the industry, contrary to the object prescribed by section 3(1)(d) of the Act.
202. The Authority does not accept Mr Lyons' submissions that he has had insufficient time to respond to the case against him. The Complaint Material, which was provided to Mr Lyons on 17 December 2015, was not voluminous. The Authority does not accept that it should not proceed to consider disciplinary matters during the Christmas/January period or that legal advice was not available to Mr Lyons during this period.
203. The liquor and gaming industry does not cease operations during the New Year period, and nor does the regulation of the industry. In any event, even taking into account the Christmas and New Year break and public holidays associated with that period, the Authority is satisfied that Mr Lyons had over 8 weeks within which to make a submission in response to the Complaint before the Authority made its findings on the Grounds of Complaint at its meeting on 24 February 2016.
204. The Authority notes that the Complainant has sought disqualification of Mr Lyons from the industry for a period of ten years. Having assessed cumulatively the adverse findings made by the Authority as communicated to Mr Lyons by letter dated 2 March 2016, and noting the absence of any substantive submissions from Mr Lyons in response to the allegations made against him or his character generally, the Authority considers that disqualifying Mr Lyons will serve the protective purpose of ensuring that he does not work in a relevant capacity in the gaming industry in New South Wales for a period of ten years.
205. The Authority is satisfied that this ten-year period of disqualification will also send an appropriate message to others in the industry of the regulatory consequences of engaging in the kind of conduct that has been established by this Complaint.
206. The Authority notes that the Complainant has also proposed that Mr Lyons be disqualified from being a close associate of a gaming-related licensee. However, none of the Grounds specified in the Complaint were framed by reference to Mr Lyons' status as a close associate.
207. While Mr Lyons is in fact a close associate of an unlicensed company (Poker Machine Distributors (Australia) Pty Ltd), the Authority does not make the proposed order disqualifying him from being a close associate of a gaming-related licensee by reason of the manner in which this Complaint has been framed and the wording of the power to take disciplinary action under section 131(2)(g) which enables the Authority to:

*(g) disqualify **the close associate** from being a close associate of a licensee for such period as the Authority thinks fit,*
208. The Authority is 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 a brief breakdown of those costs has been provided and there are no submissions in reply from Mr Lyons, the Authority is satisfied that Mr Lyons should be ordered to pay the costs of the Secretary's investigation that preceded the making of this Complaint, amounting to **\$1,349.17**, by no later than **28 days** from the date of this decision.

209. The Authority recommends that Mr Lyons 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 Lyons copy the Authority's General Counsel in to that communication so that the Authority will have a record of this payment being made.
210. Mr Lyons is on notice that licensing staff will in the usual course record these Orders on their relevant records. Any delay or failure by Mr Lyons 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 Lyons or any future application proposing that Mr Lyons undertake a regulated position within the New South Wales gaming industry.

ORDERS

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

- (i) Pursuant to section 131(2)(d) of the Act, the Authority **cancel**s Mr John Howard Lyons' gaming-related licence number GMT4015396, with effect from the date of this decision.
- (ii) Pursuant to section 131(2)(f) of the Act, the Authority **disqualifies** Mr John Howard Lyons from holding a gaming-related licence for a period of **ten (10) years**, with effect from the date of this decision.
- (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority **orders** that Mr John Howard Lyons pay to the NSW Department of Justice the costs incurred by the Secretary on the investigation preceding the making of the Complaint under section 128 of the Act, amounting to **\$1,349.17**, to be paid to the Department of Justice by no later than **28 days** from the date of this decision.

REVIEW RIGHTS

212. 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.
213. 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



20 APR 2016

DB Armati
Deputy Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**