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8 September 2016

Dear Sir/Madam

**Decision on Complaint under Part 6A of the *Registered Clubs Act 1976*
Cabra Vale Ex-Active Servicemen's Club, Canley Vale and Mr Stan Martin**

I refer to the disciplinary complaint dated 4 May 2015 made to the Independent Liquor and Gaming Authority by Mr Anthony Keon, the (then) Director of Compliance and Enforcement of the Office of Liquor, Gaming and Racing under Part 6A of the *Registered Clubs Act 1976* against the Cabra Vale Ex-Active Servicemen's Club Ltd located at 1 Bartley Street, Canley Vale NSW 2166 and the Club's former President, Mr Stan Martin.

At its meeting on 27 July 2016, the Authority decided to declare, under section 57H(2)(g) of the Act, that Mr Stan Martin is ineligible to stand for election, or to be appointed to, or to hold office in, the position of either secretary or member of the governing body of this Club or any other registered club in New South Wales for a period of three (3) years from the date of this decision; to order, under section 57H(2)(i) of the Act, that the Complainant's costs of \$10,019 be paid by the Club; and to impose, under section 57H(2)(e) of the Act, a condition on the Club licence requiring the Club Board and employees to undertake annual training on appropriate conduct in the workplace.

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

Yours faithfully

Philip Crawford
Chairperson

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

STATEMENT OF REASONS

INTRODUCTION

1. On 4 May 2015 the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint (**Complaint**) under Part 6A of the *Registered Clubs Act 1976* (**Act**). The Complaint was made by Mr Anthony Keon (**Complainant**), a then delegate of the Secretary of the Department of Justice and Director of Compliance and Enforcement of the Office of Liquor, Gaming and Racing (**OLGR**), now known as Liquor and Gaming NSW (**LGNSW**).
2. The Complaint is made in relation to the Cabra Vale Ex-Active Servicemen's Club Ltd located at 1 Bartley Street, Canley Vale NSW 2166 (**Club**) and the Club's former President, Mr Stan Martin (**Mr Martin**).
3. The Complaint is accompanied by a discrete bundle of supporting evidence or other material (**Complaint Material**), which primarily concerns the prosecution of Mr Martin by NSW Police at Liverpool Local Court for an offence against section 61L of the *Crimes Act 1900* for an act of indecent assault involving Mr Martin kissing a then employee of the Club, Ms Clarke, on the lips without her consent. The conduct in question occurred in a stairwell during a Christmas party held on the Club premises on 23 December 2013 while Ms Clarke was on duty.
4. Mr Martin was convicted by the Liverpool Local Court on 14 August 2014 and the Court placed Mr Martin on a 12-month good behaviour bond and ordered him to pay a \$500 fine.
5. Mr Martin appealed against this conviction to the NSW District Court which, on 15 December 2014, found the offence proven but dismissed the matter without recording a conviction pursuant to section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*.
6. In addition to the Complaint Material, the Complainant has also provided additional evidence or material (**Additional Material**) regarding the issue against Mr Martin of an Apprehended Violence Order (**AVO**). The AVO was obtained by New South Wales Police on behalf of Ms Clarke from the Liverpool Local Court.
7. The AVO was issued by the Court on 9 June 2015 on the basis of certain alleged further conduct by Mr Martin, discussed below, in relation to Ms Clarke on 22 April 2015 and other dates following Mr Martin's conviction for indecent assault at the Local Court on 14 August 2014.
8. By reason of the structure of the disciplinary provisions in Part 6A of the Act, the primary respondent to this Complaint is the Club, although as discussed below, the single ground of complaint that is agitated in this matter concerns the fitness of the Club's then President, Mr Stan Martin, to be a member of a governing body of a registered club in New South Wales.
9. After a round of written submissions was received from the respondents (the Club and Mr Martin), the Authority gave preliminary consideration to this matter at its meeting on 28 October 2015.

10. In light of the submissions from Mr Martin's barrister, Ms Amanda Cook, going to the facts found by the Courts as to the indecent assault charge, the Authority considered it appropriate to receive and consider transcripts from those proceedings – particularly the District Court's reasons for judgment on Mr Martin's appeal against his conviction. That material had not been provided with the Complaint Material.
11. Further time elapsed while the Complainant sought to procure transcripts from the relevant Courts. While the Local Court transcripts (for proceedings on 10 July 2014 and 14 August 2014) were furnished by the Complainant to the Authority and respondents on 17 November 2015, the District Court transcript (for the proceedings on 15 December 2014) was not furnished until 7 January 2016.
12. This was followed by a further round of written submissions to the Authority from Ms Cook on 8 January 2016 on the material provided in the transcripts.
13. Mr Martin then pressed for an opportunity to make oral submissions. The Authority endeavoured to obtain a suitable time at which Mr Martin's counsel, Ms Cook, could attend an Authority Board meeting.
14. Ms Cook was unavailable to attend Board meetings due to criminal trial commitments in February and March 2016. After advising that Ms Cook had a window to attend the Authority on the morning of 27 April 2016, time was set aside for the Board Meeting on that date. However, on 26 April 2016 Ms Cook advised that she was not excused from her Court matter on that date.
15. Mr Martin nevertheless attended the Authority meeting on 27 April 2016 accompanied by Ms Rachel Dunlop, solicitor. The Complainant was represented by Ms Anne-Marie Mannile, a solicitor from the NSW Department of Justice accompanied by Mr Paul Irving, the Manager of Investigations for LGNSW. The Club was represented by Mr John Ralston of *Pigott Stinson Lawyers*.

THE COMPLAINT LETTER

16. By way of background, the Complainant notes that the Club is a registered club that has been operating since 1956 at 1 Bartley Street, Canley Vale. Mr Martin was employed as the Financial Manager of the Club in 1966, and subsequently the Chief Executive Officer between 1974 and 1980.
17. The Complainant advises that Mr Boris Belevski is the current secretary of the Club and has been employed by the Club since 17 October 2013. The previous secretary was Mr William Francis O'Brien.
18. The Complainant notes that on 10 May 2013, the (then) Office of Liquor, Gaming and Racing filed a disciplinary complaint with the Authority under Part 6A of the Act against the Club, alleging that Mr O'Brien was not a fit and proper person to hold the position of a secretary or member of the governing body of a registered club (**O'Brien Complaint**).
19. The O'Brien Complaint alleged that Mr O'Brien had communicated to staff at the Club, by way of a Club issued mobile telephone, inappropriate and improper messages in a workplace. The Complainant submits that these messages involved racial and gender based discrimination, sexual innuendos and pornography (including bestiality and necrophilia).

20. On 28 March 2014, the Authority published its decision on disciplinary action in relation to the O'Brien Complaint. The Authority found that Mr O'Brien was not a fit and proper person to hold the position of a secretary or member of the governing body at a registered club, and disqualified him from holding such a position in New South Wales for the maximum available period under the Act of three (3) years.
21. The Complainant submits that the Complaint now before the Authority relates to the "inappropriate behaviour" of Mr Martin whilst holding the position of Club President for conduct occurring on the Club premises and that this matter "raises similar concerns about appropriate and professional behaviour in a contemporary workplace" to the O'Brien Complaint.

Ground of Complaint

22. Section 57F specifies a range of grounds of complaint that may potentially be agitated in a complaint made under Part 6A of the Act. There is only one ground specified in this Complaint (**Ground**), relying upon section 57F(3)(g) of the Act, which states:

(g) *that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such.*

23. The single Ground as specified in the Complaint Letter states:

The secretary or a member of the governing body of the club is not a fit and proper person to act as such.

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

24. Particular 1.1 of the Complaint alleges:

Mr Martin was elected to the governing body in March 1999, and subsequently the position of president since September 2004.

25. Particular 1.2 of the Complaint alleges:

During this period, Mr Martin failed to exercise his duties as the president with a degree of knowledge, ability, care and diligence required for the position as he was found guilty of an assault with act of indecency which occurred on the Club premises. The victim of the assault was Ms Amanda Clarke, a Club employee. The circumstances of the offence are as follows:

- (a) *Ms Clarke reported to NSW Police on 10 February 2014, that on 23 December 2013 Mr Martin assaulted her and kissed her on the lips without her permission in circumstances where:*
- (i) *Ms Clarke was employed by the Club on 11 February 2011;*
 - (ii) *Ms Clarke was working as a bar/gaming attendant on 23 December 2013;*
 - (iii) *Whilst conducting her duties as a bar/gaming attendant, Ms Clarke was asked by Mr Martin to leave the bar area in order for him to wish her a merry Christmas;*
 - (iv) *After Ms Clarke left the bar area Mr Martin took hold of her hand and led her to a staircase in the administration area;*

- (1) *Whilst being led to the administration area, Mr Martin let go of Ms Clarke's hand, however Ms Clarke continued to follow Mr Martin.*
- (v) *Mr Martin verbally and physically gestured for Ms Clarke to enter the staircase;*
- (vi) *After a short conversation Mr Martin kissed Ms Clarke partially on the lips twice in circumstances where:*
 - (1) *Ms Clarke assumed this was a kiss on the cheek;*
 - (2) *Ms Clarke tried to move her head to the side; and*
 - (3) *Ms Clarke pulled back from Mr Martin;*
- (vii) *Mr Martin again leaned in to kiss Ms Clarke, Ms Clarke moved her head and both Mr Martin and Ms Clarke have kissed each other on the cheek;*
- (viii) *As Ms Clarke attempted to leave, Mr Martin placed his hand on Ms Clarke's shoulder and pushed her into a wall;*
- (ix) *Whilst Ms Clarke was against the wall, Mr Martin placed both hands on her face and said "No I want to do this properly" to which Ms Clarke said "No";*
- (x) *Ms Clarke began to fall which resulted in Ms Clarke and Mr Martin hugging each other, where Mr Martin rubbed Ms Clarke's back;*
- (xi) *Ms Clarke then patted Mr Martin's back and said "Okay Stan let's get out of here";*
- (xii) *Both Ms Clarke and Mr Martin then left the area.*
- (b) *On 10 July 2014 Mr Martin was convicted of assault with act of indecency in the Liverpool Local Court.*
- (c) *On 14 August 2014 Mr Martin's conviction was recorded and he was sentenced to 12 months good behaviour with a \$500 fine.*
- (d) *On 14 August 2014 Mr Martin lodged an appeal on all grounds of the matter.*
- (e) *On 5 December 2014 the appeal was heard in the Parramatta District Court.*
- (f) *On 15 December 2014 a District Court Judge dismissed the appeal, but varied the orders made in the Local Court in order to dismiss the matter [and deal with it] pursuant to section 10(1) of the Crimes (Sentencing Procedure) Act 1999. That is, the offence of assault with an act of indecency by Mr Martin was proven without proceeding to a conviction.*

Complainant Submissions on the Complaint

- 26. The Complainant notes that OLGR previously submitted with regard to the O'Brien Complaint that the behaviour exhibited by Mr O'Brien could "undermine acceptable standards of behaviour in the workplace and create an environment conducive to harassment and discrimination".
- 27. The Complainant submits in relation to *this* Complaint that Mr Martin's conduct:

...exhibits an ongoing culture of inappropriate and improper behaviour at the Club and creates a heightened and unacceptable risk that this culture will perpetuate unless further regulatory action is taken.

28. The Complainant refers to clause 5 of the *ClubsNSW Club Code of Practice* which states that the directors, managers and staff of a registered club are custodians of the members' property and have an obligation to ensure that the administration and management of the club is conducted with efficiency, fairness and integrity. [The Authority notes that while the Complainant refers to the 2014 edition of the Code, the current 2015 edition includes the same provision.]
29. The Complainant further submits that the *ClubsNSW Best Practice Guidelines* provide that a club chairperson's responsibilities include providing appropriate leadership to the board and to the club. [The Authority notes that while no clause of the *Guidelines* is specified, this is an apparent reference to clause 7 of the current Best Practice Guidelines on *Board Operation*.]
30. The Complainant submits that a president of a registered club acts as the chairperson of the governing board of that club. The Complainant describes this as an "important" position in guiding and governing the "strategy and culture" of the club. The Complainant submits that a high level of ability and integrity is expected of a person acting in such a role.
31. The Complainant submits that Mr Martin, in assaulting (with act of indecency) a "vulnerable staff member" on the Club premises:

...demonstrates a profound failure in judgement and professionalism and falls well below the standard expected from a Club President. Further, such conduct shows a lack of regard for the business reputation of the Club and a fundamental failure to recognise the acceptable behaviours in a contemporary workplace.

32. The Complainant notes that Mr Martin was the Club's president during the period in which the former Secretary Mr O'Brien's misconduct occurred. Mr Martin remained as Club president during the process that resulted in disciplinary action being taken by the Authority on the O'Brien Complaint.
33. The Complainant submits that for this reason Mr Martin "should be acutely aware of his responsibilities to the Club for its reputation, good standing and legal liability".
34. The Complainant further submits that the nature of Mr Martin's conduct in the matter now before the Authority, committed in the context of a Club that was already recovering from "significant reputational issues" from the inappropriate behaviour of another person of significant influence within the Club, calls into question the suitability of Mr Martin to continue in the role of Club President.
35. The Complainant submits that in this context, Mr Martin's actions "undermine the acceptable standards in the workplace and create an environment conducive to further inappropriate behaviour and harassment".
36. Further, such conduct exposes the Club to a range of legal risks, including sexual harassment in the workplace. The Complainant submits that in this respect, it is accepted that "a singular act can be sufficient to establish a complaint of sexual harassment": *Hall v A & A Sheiban Pty Ltd* (1989) 85 ALR 503.

37. The Complainant further submits that:

...the actions of Mr Martin, whilst attending a Club function in his capacity as Club President, could, at its worst, be perceived as acceptable or normal behaviours, or at the very least, seen to be the Club condoning such behaviour. This results in a real risk of other staff adopting similar behaviours, which, in turn, devalues any of the Club's workplace policies and its ability to enforce them, and significantly increased the Club's exposure to litigation and regulatory intervention.

38. The Complainant refers to the case law on fitness and propriety in licensing matters and submits that this normally consists of three characteristics: "honesty, knowledge and ability" (*Hughes and Vale Pty Ltd v New South Wales (No 2)* (1995) 93 CLR 127 per Dixon CJ, McTiernan and Webb JJ).

39. The Complainant submits that it can be reasonably drawn from the facts of this matter that Mr Martin has demonstrated a "significant lack of judgement" which reflects on his ability to lead this Club as a member of its governing body.

40. The Complainant's concluding submission is that:

1. The conduct of Mr Martin is such that disciplinary action is warranted against Mr Martin; and
2. The evidence supports a conclusion that Mr Martin ought to be found not to be a "fit and proper" person to be a secretary or member of the governing body of the Club, or any other registered club in New South Wales.

Complainant Recommendations on Disciplinary Action

41. The Complainant recommends that should the Ground be established, the Authority take the following disciplinary action:

1. The Authority declare, pursuant to section 57H(2)(f) of the Act, that Mr Martin is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing of any registered club for the maximum of three (3) years [the Authority notes that is apparently intended to refer to section 57H(2)(g)]; and
2. The Authority impose, pursuant to section 57H(2)(e) of the Act, a condition on the licence of the Club that the Club board and Club employees must undertake annual training on appropriate workplace conduct, with such training to be delivered by a registered training provider; and
3. The Authority order, pursuant to section 57H(2)(i) of the Act, that the Club pay the costs of OLGR in connection with the investigation and the taking of disciplinary action against the Club.

COMPLAINT MATERIAL

42. The material relied upon by the Complainant comprises the following:

43. **Complaint Form dated 4 May 2015.** The Complaint Form states that the individual person the subject of the Complaint is Mr Stanley Martin and that the organisation the subject of the Complaint is the Club. It is signed by the Complainant.

- 44. Complaint Letter to the Authority dated 4 May 2015.** In this letter the Complainant states that the Complaint was made on the basis of evidence gathered by OLGR through its investigation into the operations of the Club and the conduct of its current President, Mr Martin. The single Ground of Complaint is alleged by the Complainant in the terms set out above, pursuant to section 57F(3)(g) of the Act.
- 45. Complainant Exhibit E01 – Copy of OneGov record for liquor licence number LIQC300226107 for the Club as at 22 April 2015.** The document discloses, *inter alia*, that the Club has unrestricted licensed trading hours for the consumption of liquor on the premises and that the Club is licensed to supply liquor for consumption off the premises between 5:00am and 10:00pm on Monday through Saturday and between 10:00am and 10:00pm on Sunday. The licence further discloses that the gaming machine threshold for the Club premises is 450. The shutdown period for the Club's gaming machines is between 3:00am and 9:00am Monday to Friday and between 6:00am and 9:00am on weekends and public holidays.
- 46. Complainant Exhibit E02 – Transcript of record of interview between OLGR Inspector Trainor and Mr Stanley Martin dated 6 November 2014.** This 50-page document comprises a record of an interview conducted at the Club on 6 November 2014 between OLGR Inspector Trainor and Mr Martin. Other persons recorded as having been present during this interview are OLGR Inspector Edwards, the Club's solicitor Mr Raymond Travers from *Pigott Stinson* and Mr Martin's solicitor, Ms Rebecca Dunlop.
- 47.** According to this transcript, Inspector Trainor provided Mr Martin with extracts of Part 6A of the Act. The focus of this interview involves Inspector Trainor questioning Mr Martin as to the events that occurred at the Club premises on 23 December 2013 that gave rise to Mr Martin's conviction for indecent assault on 14 August 2014.
- 48.** In this interview, OLGR Inspector Trainor asks Mr Martin in very general terms to describe the circumstances surrounding the events of 23 December 2013. Mr Martin explains his version of events (significantly different from Ms Clarke's version) as follows:

Well, it was a chance meeting with Amanda Clarke. I normally come to the club on Tuesdays and Fridays. I did what I normally do, I attend the club socially with my wife. We had – we had dinner at the club. After dinner my wife, who is quite disabled, enjoys playing the poker machines. I then took her down to the lower, sat her on the – made sure she was comfortable on the poker machines and then I went to the cashier's box to change some money for her to play the poker machines. This is what I do all the time. And then once she's settled there I go down to the bar and get her a nice glass of cold water, she likes, yeah. When I got to the bar I was pleasantly surprised to see Amanda there and she was pleasantly surprised to see me because all staff and all – all staff know that I come on Tuesdays and Friday nights. So she's, "This is a surprise, you don't normally come here, you normally come on a Tuesday." I explained to her then that as Tuesday was Christmas Eve we don't go out on Christmas Eve, that's why I've come today on Monday. Right. We had a conversation about what you're going to do on Christmas. I said, I'll be will with the family – Christmas dinner with the family. And finishing the conversation I said, "I won't be seeing you over the Christmas period so I better wish you a Merry Christmas and give you a Christmas kiss tonight." With that I went away. Did what I normally do when I'm in the club, walk around, talk to people in the club and, And then about two or three hours later – during that time I go back to see my wife and make sure if she wants something, another drink or whatever it appears to be and the last time I went and saw my wife she said, "I'm just about finished, you know, so we're going home."

When she said that I went down to see – go down to the bar to see Amanda to say Merry Christmas to her. She wasn't available then so I was walking around down there looking around and talking to people and going back to the bar every now and again to see if she – she was probably hosting in what's called the alfresco smoking area down there. Now, I did see her then, I said, "Amanda." I said, "Merle" – that's my wife's name – "Merle's spent all my money, now she wants to go home so I better wish you a Merry Christmas, give you a kiss now." She put her tray down and come with me. We walked to the – to the stairwell just a few – not far away from the bar and I opened the door, got the key out, that door is always shut, automatically locks itself when it's shut. I got a key out, I opened the – opened the door, I wished her a Merry Christmas, I went forward to – forward towards her, she stepped back, on reflex I fall – fall that step back. Because she's taller than me I leaned up to give her a Christmas kiss. She said, "No, Stan." With that I opened the door and we both left. A matter of seconds. That was it.

- 49. Complainant Exhibit E03 – Notice of Authority's Decision and Disciplinary Action in relation to the O'Brien Complaint against the Club dated 28 March 2014.** This 23-page letter from the Authority to the Complainant refers to a previous complaint made by OLGR to the Authority on 10 May 2013 in relation to Mr O'Brien pursuant to section 57F(3)(g) of the Act, alleging that Mr O'Brien, then the Secretary of the Club, is not a fit and proper person to act as such.
- 50.** The Authority is familiar with this decision letter, which details the particulars of that previous complaint, including the allegations that Mr O'Brien sent sexually explicit or other offensive images and text messages to Club employees using the Club's mobile telephone issued to Mr O'Brien. The letter details Mr O'Brien's submissions in response to that complaint and the Club's response to a Show Cause Notice issued in relation to that complaint.
- 51.** The letter then sets out detailed reasons for the Authority's decision made at its meeting of 18 December 2013 to order, pursuant to section 57H(2)(g) of the Act, that Mr O'Brien be disqualified from holding the office of secretary or member of a governing body of the Club or any other registered club in New South Wales for the maximum period of three (3) years from the date of the decision, and, pursuant to section 57H(2)(i)(i) of the Act, that the Club pay the amount of costs incurred by the (then) Director-General of the NSW Department of Trade and Investment in carrying out the investigation under section 35A in relation to the Club, being **\$43,632.07**, within five (5) days from the date of the decision.
- 52. Complainant Exhibit E04 – ASIC Company Extract for the Club dated 25 February 2015.** This document states that the Club was registered as a corporate entity on 29 November 1951 and that Mr Martin is a current director of the Club. The Club is a company limited by guarantee.
- 53. Complainant Exhibit E05 – Court Attendance Notice dated 14 August 2014.** This document records that Mr Stanley Martin appeared at the Liverpool Local Court at 9:30am on 14 August 2014, charged with the offence of assault with act of indecency contrary to section 61L of the *Crimes Act 1900*. The offence is stated as having occurred "between 11:00pm on 23/12/2013 and 1:00am on 24/12/2013 at Canley Vale" when Mr Martin "did assault Amanda Clarke and at the time of the assault committed an act of indecency on Amanda Clarke, to wit, kiss her on the mouth and side of the mouth".
- 54. Complainant Exhibit E06 – NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014.** This document sets out the facts relied

upon by Police in the matter of *Police v Stanley Martin*, provided by Constable Ashley Bull. Briefly, the facts as stated are as follows:

- (i) From 7:30pm on Monday 23 December 2013, Ms Amanda Clarke (“the victim”) was working in the lower lounge area of the Club as a host, providing tray service and poker machine service.
- (ii) At some point during the first few hours of the victim’s shift, Mr Stanley Martin (“the accused”) entered the bar area where the victim was talking with a colleague and said to the victim, “I want to wish you a Merry Christmas but a little later”, to which the victim replied, “Yeah, yeah not a problem” and the accused then walked away.
- (iii) A few hours later, the victim was in the same area speaking with the same colleague when the accused again entered the bar and asked the victim to come around the bar so that the accused could wish her a Merry Christmas. The victim did so and the accused took her hands to lead her away, saying, “Come, come follow me”. The accused then led the victim through the poker machine area and “looked around before getting his keys out of his pocket” and opening a door which leads up a staircase to the administration area.
- (iv) The accused held the door open and the victim took half a step inside before hesitating because there were no lights on in the staircase area. The accused then said to the victim, “Quick, quick, quick, get in”. The victim then walked about two steps before the accused said, “No, no, no, back down here, where are you going?”.
- (v) The accused and victim then had a short conversation before the accused leaned in to kiss the victim, which the victim assumed was just a friendly kiss on the cheek so she moved her head to the side. The accused actually kissed the victim on the lips, and did so again after the victim pulled back and moved her head again.
- (vi) The victim attempted to take a step in the direction of the door but the accused placed his hands on the front of the victim’s shoulders and started to push her back. The victim then said, “No, no, no, Stan, no, no, no”. The accused pushed the victim against the wall and said, “Shhh,shhh, shhh, no, no, no” and “I want to do this properly”, putting both his hands on the sides of the victim’s face.
- (vii) The victim then fell and hugged the accused in the process, at which point the accused began rubbing the victim’s back. The victim then patted the accused’s back and said, “Okay Stan, let’s get out of here”.
- (viii) The accused then left the area and turned right, while the victim walked straight ahead out of the staircase area to avoid further interaction with the accused. The victim then informed a few colleagues as to what had occurred.
- (ix) On Monday 30 December 2013, the victim returned to work. At some point during her shift, the accused came up behind the victim, placed one hand on the left side of her waist and grabbed her left arm. The accused said to the victim, “I know I’ve upset you and I just want to apologise. I hope everything is okay between us” and “I’m really sorry, but you have to understand that I’m a male and sometimes us males get carried away with ourselves. So sorry for being male”. The victim then faked a call to get away from the accused.

- (x) The accused approached the victim again about an hour later and began talking with her about “his position”. The victim went to the bathrooms and cried, then composed herself before getting permission to leave work early, stating that she was not feeling well.
- (xi) The victim saw a doctor who wrote a medical certificate stating she was “unfit for work from 3 January to 12 January 2014 inclusive” due to stress. The victim returned to work on 13 January 2014 and reported the incident to the Human Resources Manager on 20 January 2014.
- (xii) The victim reported the incident to NSW Police on 10 February 2014.
- (xiii) At 8:20pm on Thursday 13 February 2014, Police attended the accused’s home to offer him the chance to be interviewed. The accused told Police he did wish to be interviewed, however he asked if he could do it at a different time. Arrangements were made for an interview on 18 February 2014.
- (xiv) At about 5:15pm on Tuesday 18 February 2014, Police contacted the accused by telephone. The accused informed Police that he had sought legal advice and no longer wished to take part in an interview.

55. Complainant Exhibit E07 – Letter confirming the employment of Ms Amanda Clarke by the Club dated 11 February 2011. This letter is addressed to Ms Clarke and signed by the Club’s Human Resources Manager, Mr Brendon Collitts. It sets out the terms of Ms Clarke’s employment as a part-time bar and gaming attendant at the Club including, *inter alia*, her rate of pay, annual leave entitlements, superannuation, usual weekly hours and a 3-month probationary period.

56. Complainant Exhibit E08 – Notice of Dismissal of Appeal from the District Court of New South Wales at Parramatta dated 13 March 2015. This Notice in the matter of *R v Stanley Martin* records that while Mr Martin’s appeal is dismissed, the orders of the lower court are varied such that:

...the offender, Stanley Martin is found guilty but without proceeding to conviction the matter is dismissed pursuant to section 10(1)(a) of the Crimes (Sentencing Procedure) Act 1999.

57. The Notice refers to the lower court orders that Mr Martin pay a fine of \$500.00 and that Mr Martin is directed to enter into a 12-month good behaviour bond pursuant to section 9(1) of the *Crimes (Sentencing Procedure) Act 1999* to commence on 14 August 2014. Those orders are recorded as having been quashed by Justice Delaney of the District Court.

58. Complainant Exhibit E09 – Notice of Appeal to the District Court of NSW dated 14 August 2014. This Notice of Appeal is signed by Mr Martin and stamped by the Liverpool Local Court. The Notice states, “I am appealing against the above conviction and sentence because I am not guilty and because the sentence is too severe”.

59. Complainant Exhibit E10 – Email from Constable Ashley Bull of NSW Police, Cabramatta Local Area Command (LAC) to OLGR Compliance Officer Dan Tranter dated 11 February 2015. This email states:

Thanks for the update.

As for the case details before the district court, the case number is 2014/00056864.

The decision was handed down at the district court on 15/12/14 before Justice Delaney. The hearing date was the 5/12/14 [sic]. It was first mentioned at Parramatta District Court on 05/09/14.

In Liverpool Local Court the hearing was on 10/07/2014 before Magistrate DEGNAN.

It went for sentencing in this court on 14/08/2014.

Let me know if there is anything else I can help with.

60. Complainant Exhibit E11 – Notice to Produce from OLGR to Mr Boris Belevski dated 25 February 2015. This Notice was issued by OLGR to the Club under section 21 of the *Gaming and Liquor Administration Act 2007* and requires Mr Belevski, the Club Secretary, to provide to OLGR details of:

- any training undertaking by Mr Martin since he was elected as a member of the Club's governing body;
- details of any training undertaken by another Club director Mr John Dillon since he was elected as a member of the Club's governing body; and
- details of any training provided to staff and/or members of the Club's governing body relating to money laundering mitigation and awareness and problem gambling legislative requirements and/or awareness.

61. The Notice also requires Mr Belevski to produce, *inter alia*, a copy of all minutes of meetings of the Club's governing body held in February 2009, March 1999 and September 2004, a copy of all minutes, notes and correspondence for any internal Club disciplinary investigation and findings involving Mr Martin, a copy of the employee records for Ms Amanda Clarke, and a copy of all current Club policies and procedures relating to bullying and/or harassment, interactions between staff and patrons, and interactions between members of the Club's governing body and staff.

62. The Authority notes that the Complainant does not specify in the Complaint Letter whether Mr Belevski responded to this Notice to Produce. No material containing any of the details or documents specified in the Notice was provided as part of the Complaint Material.

ADDITIONAL MATERIAL ON APPREHENDED VIOLENCE ORDER

63. On 16 July 2015, the Authority received the following email from the OLGR Compliance and Enforcement Division on behalf of the Complainant:

Please find the attached additional information for the purposes of this complaint to the extent the Authority considers relevant. Consent to provide the information to the Authority has been obtained from the Complainant and Sgt Gary King of the Cabramatta LAC. Some information has been redacted.

It would be greatly appreciated if the Authority could advise this Office should the show cause notice for this matter be issued and provide an electronic copy.

64. This Additional Material comprises the following:

- 65. NSW Police Brief of Evidence dated 1 June 2015.** The cover sheet for this Brief of Evidence refers to an Application for an Apprehended Violence Order (**AVO**) number E22100283 sought by Police against Mr Stanley Martin for hearing at the Liverpool Local Court on 9 June 2015. The Brief includes the following documents:
- 66. Witness List and Summary of Evidence** listing two witnesses, being Amanda Clarke (“victim”) and Constable Bull (“OIC – investigating officer”).
- 67. Local Court Listing Advice for the hearing on 9 June 2015**, indicating that both Amanda Clarke and Constable Bull have provided statements in relation to this matter.
- 68. Application for Apprehended Personal Violence Order filed by Constable Bull against Mr Martin on 23 April 2015 (AVO Application).** This document includes a direction for Mr Martin to attend the Liverpool Local Court on 5 May 2015 at 9:30am and names the protected person as Amanda Clarke. The AVO Application seeks the standard orders that Mr Martin, for a period of two (2) years:
- must not “assault, molest, harass, threaten or otherwise interfere with” Ms Clarke or a person with whom Ms Clarke has a domestic relationship;
 - must not “engage in any other conduct that intimidates” Ms Clarke or a person with whom Ms Clarke has a domestic relationship; and
 - must not “stalk” Ms Clarke or a person with whom Ms Clarke has a domestic relationship.
- 69.** The document also seeks an additional order that Mr Martin “must not approach or contact [Ms Clarke] by any means whatsoever, except through [Mr Martin’s] legal representative”.
- 70.** In summary, the AVO Application states that the grounds of this application as follows:
- (i) On 10 February 2014, Ms Clarke attended Cabramatta Police Station and provided a statement alleging that Mr Martin had indecently assaulted her on 23 December 2013.
 - (ii) As a result of a Police investigation, Mr Martin was subsequently charged with and convicted of indecent assault in the Liverpool Local Court on 14 August 2014.
 - (iii) On 24 December 2014, Ms Clarke attended a meeting with Police during which she was advised that Mr Martin is not to approach, contact or have a third person contact her. However since this time, Ms Clarke has felt that Mr Martin “has been subtly attempting to intimidate her, growing more audacious in his actions”.
 - (iv) On an occasion “a few months ago”, Ms Clarke was approached by Mr Martin whilst she lined up to order food within the Club. After she moved away to sit down, Mr Martin walked over to where she was seated and “brushed past her” despite there being “ample space” for him to pass by. Ms Clarke was upset by Mr Martin’s behaviour.

- (v) Ms Clarke has indicated to Police that whenever she sees Mr Martin, it causes her to “suffer anxiety attacks” where she “starts to feel really tense, her legs go numb, she struggles to breathe and her heart races”. This usually results in Ms Clarke “getting extremely emotional, crying and having to leave work”.
- (vi) Ms Clarke has taken “precautionary measures” to avoid Mr Martin at the Club over the “last few months” however she feels that whatever action she takes, Mr Martin is “trying to follow her”.
- (vii) Between 6:00pm and 6:15pm on Wednesday 22 April 2015, Ms Clarke saw Mr Martin whilst working at the Club and required a “break to calm herself down”. After this, Mr Martin approached Ms Clarke in the upper level gaming area, stopped “about 3 metres away from the cashbox”, then walked directly up to Ms Clarke’s cashbox “despite the private agreement”.
- (viii) Ms Clarke said to Mr Martin, “No, go over there. She is open, go over there. I am not serving you”, and pointed to the other cashbox which was being serviced by another employee, to which Mr Martin in “an aggressive tone” replied, “No, you will do as I say”. Ms Clarke then “hit the glass window with her hands” and said, “Who do you think you are? You fucking assaulted me”. After this, Mr Martin walked away.
- (ix) Ms Clarke then suffered an anxiety attack and decided to leave work. The following day, 23 April 2015, she attended the Cabramatta Police Station to speak to Police about the incidents.
- (x) Ms Clarke states that Mr Martin’s behaviour “causes her to have anxiety attacks on a regular basis” and that she is “constantly in fear” that Mr Martin may “approach her and that his behaviour may escalate”.
- (xi) Police “hold fears” for Ms Clarke’s wellbeing and are concerned that Mr Martin may be attempting to intimidate her and that his actions are “escalating”, causing Ms Clarke “more harm”. Police are concerned that Mr Martin’s behaviour is “intimidating” Ms Clarke and is causing her “psychological and emotional distress”. Police state that there is a “need” for an AVO as the “current private agreement that is in place is ineffective” and Mr Martin “appears to have little regard for it”.

71. Interim Apprehended Personal Violence Order against Mr Martin dated 5 May 2015 (Interim AVO) issued by the Local Court at Liverpool directing Mr Martin to attend the Court on 9 June 2015 at 9:30am. The Interim Order states that it remains in force until revoked or a further order made by the Court becomes effective. The orders sought in the AVO Application are imposed by the Interim AVO.

72. Statement of a Witness in relation to the matter of *Police v Stanley Martin* by Ms Amanda Clarke dated 23 April 2015. This statement by Ms Clarke is sworn before a witness, Constable Ashley Bull of Cabramatta Police. The complete text of this document states (errors in original):

1. *This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false, or do not believe to be true.*

2. *I am 29 years of age.*
3. *I am currently employed by Cabravale Diggers Ex-Serviceman Club, located at 1 Bartley St, Canley Vale. I am employed in the capacity as a Bar and Gaming Attendant. I have worked for the club for the past 5 years. I also worked at the club for four years from 2005 to 2009 before leaving for eighteen months.*
4. *On the 10th of February 2014 I attended Cabramatta Police station and reported to police and provided them with a statement that Stanley MARTIN, the president of where I worked at Cabravale Diggers Ex-Serviceman Club had indecently assaulted me.*
5. *As a result of that statement police told me that Stanley MARTIN had been charged with Indecent Assault.*
6. *On 14 August 2014 we attended Liverpool Local Court in relation to the indecent assault. The magistrate found the accused guilty of indecent assault.*
7. *I was informed that Stanley MARTIN had appealed this decision to the district Court.*
8. *On the 15th of December 2014 I attended Parramatta District Court in relation to the appeal. The appeal was not upheld and the decision of the magistrate was upheld.*
9. *On 24th December 2014 I had a meeting with Kristen GOWER and Andrew DAVIS in relation to this matter.*
10. *At 1:07:08pm on the 24th of December 2014 I received an email from Andrew DAVIS, confirming what was discussed.*
11. *The email stated:*

Hi Amanda,

This is a quick email to confirm two points from today's meeting;

As agreed, Boris has requested that Stan Martin, not to approach you, not make contact with you or have a 3rd party make contact with you. Should you feel that the request that Boris has made isn't being followed, You are to advise the Duty Manager if you feel comfortable or alternatively you may contact Kirsten, Michael or myself.

Secondly, it was also agreed that any future meeting that are required to be held with you are to be organised by either Kristen or myself.

We will await for your response regarding medico legal report, until then we wish you a Merry Christmas and a Happy New Year.

Regards,

*Andrew Davis
Group ER & Compliance Manager*

12. *Since this time, I feel that Stanley MARTIN has been subtly attempting to intimidate me.*
13. *A few months ago, when I was lined up to order my food, I was standing with my friend Len, Stanley Martin came up and stood directly behind Len. As a result of that I felt intimidated, so we walked away and went and sat down. After I sat down in the bistro area of the club, he has walked over to where I was seated and brushed past me. There was ample space for him to have not*

walked past me and there was a number of different paths he could have taken. This upset me further and as a result we moved tables.

14. *I reported this to my manager and they stated as he said nothing that he hadn't done anything wrong.*
15. *I have also noticed when I have been working in different areas I always notice him nearby. I feel like he is watching me.*
16. *A few weeks back I remember working in the bottle shop, which is at the far right hand side of the club from the main entrance. I noticed him walk in my direct line of sight and saw him watching me. He has done this a few times.*
17. *Over the last few months when I see Stanley MARTIN, it causes me to have anxiety attacks. I start to feel really tense, my legs go numb, I struggle to breathe and my heart races. I start pacing to calm myself down and end up getting frustrated. It usually results in me getting extremely emotional, crying and leaving work.*
18. *Over the last few months when I notice Stanley MARTIN around the club, I often pack my belongings up and leave work to avoid an anxiety attack.*
19. *On Wednesday 22nd April 2015 I was rostered to work from 12pm – 3pm in reception and from 3pm – 10:30pm in the cashbox.*
20. *Between 6 and 6:15pm I saw Stanley Martin in the club. At this time he did not see me. On seeing him I went to the outdoor alfresco area to chill out and calm myself down. I called a friend. I told him how I was feeling. I stayed there for 10 minutes later. I saw Debbie and asked her to walk me back to the cash box.*
21. *I returned to the cashbox. I was in cashbox 1, number 2 was vacant and there was another employee in number 3.*
22. *Between 6:30 and 7pm I saw Stanley Martin come from the upper level gaming area. He had a ticket in his hand. He stopped about 3 metres away from the cashbox. He stood there looked directly at me, looked over at the other employee in the cash box. Neither of us had any customers.*
23. *Stanley Martin has walked directly up to my cashbox. As soon as I noticed I raised my voice so that I could be heard through the glass screen:

I said – “No, go over there, She is open go over there. I am not serving you.”*
24. *While saying this I pointed over to the other cashbox.

He said – “No, you will do as I say.”*
25. *As he stated this he pointed with his right index finger. The tone in his voice was aggressive.*
26. *This upset me.

I said – “Who do you think you are. You fucking assaulted me.”*
27. *I hit the glass window as I said this.*
28. *Stanley has walked away.*
29. *As this was occurring I felt myself having an anxiety attack. I was struggling to breathe. I decided to leave the area. I walked out of the area. I remember*

hearing someone shout out **"Amanda, are you ok?"** I don't recall who said this as I was already struggling to breathe and was crying.

30. *I grabbed my bag and walked out the door. I said to a few people through struggling to breathe, panicking and crying **"He came to my box."***
31. *I got in my car and went home.*
32. *I called up my Supervisor Robin later on and told him what had happened and informed him that I left work.*
33. *Stanley's behaviour is intimidating to me. It is causing me to have anxiety attacks on a regular basis. I am constantly in fear that he may approach me and that his behaviour may escalate.*
34. *It concerns me that he may approach me when no one else is around and attack me again. He has been watching me from a distance and has now approached me. I am in fear of what it is he may do next.*

73. NSW Police Statement by Constable Ashley Bull dated 28 May 2015. This statement by Constable Bull is sworn before a witness, Constable Thomas Kirk of Cabramatta Police. The complete text of this document states (errors in original):

1. *This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false, or do not believe to be true.*
2. *I am 26 years of age.*
3. *On the 23rd April 2015 I was rostered to work from 9:30am – 7:30pm. I was working with Constable LEWIS and we were in plain clothes.*
4. *About 12pm that day I received a call that Amanda CLARKE was at the front counter of Cabramatta Police Station and was asking to speak with me.*
5. *I went to the station area and met with Amanda and her Aunty. In took her into one of the interview rooms. She was distressed and upset. I could tell this as she was talking quickly and shaking slightly. She explained to me that she was afraid of Stanley Martin.*
6. *As a result of what she told me I took a 4 page statement from her. At the conclusion of taking the statement I provided Amanda a copy which she verified was accurate before signing each page.*
7. *I have then completed an Application for an Apprehended Personal Violence Order, Event Number E60311483.*

I NOW PRODUCE AVO APPLICATION NUMBER E60311483.

8. *I have contacted Amanda and informed her of the application and the court date, being the 5th May 2015.*
9. *On the 30th April 2015 I contacted Cabra-Vale Ex-Active Servicemen's Club and requested the CCTV footage from the incident.*
10. *I received a sealed envelope containing a letter, dated 30th April 2015 from Michael Foulkes which had CCTV footage also enclosed that same afternoon.*

11. *I watched the footage and it depicted the incident described to me in the statement.*

I NOW PRODUCE CCTV FOOTAGE FROM CABRAVALE DIGGERS.

- 74. JusticeLink record of AVO issued on 9 June 2015.** This document records that Mr Martin was present at the Liverpool Local Court on 9 June 2015 when the AVO was made for the protection of Ms Clarke for a period of 12 months.

LEGISLATION

- 75.** In determining the Complaint, the Authority has considered relevant provisions contained in Part 6A of the Act, as follows:

57F Grounds for making complaint

- (1) *A complaint in relation to a registered club may be made to the Authority by any of the following (referred to in this Part as “the complainant”):*

- (a) *the Director-General,*
- (b) *the Commissioner of Police,*
- (c) *a person authorised by the regulations to make a complaint under this Part.*

- (2) *A complaint must be in writing and specify the grounds on which it is made.*

- (3) *Disciplinary action may be taken by the Authority against a registered club on any one or more of the following grounds:*

...

- (g) *that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such,*

57H Disciplinary powers of Authority

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

- (2) *If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the registered club or a person who is the secretary or member of the governing body of the club, the Authority may decide not to take any action or may decide to do any one or more of the following:*

- (a) *order the club to pay a monetary penalty not exceeding 2,500 penalty units within such time as is specified in the order,*
- (b) *suspend the club’s licence for such period as the Authority thinks fit,*
- (c) *cancel the club’s licence,*
- (d) *suspend or cancel any authorisation held by the registered club under this Act,*
- (e) *impose a condition on the club’s licence or on any authorisation held by the club under this Act,*
- (f) *remove from office the secretary of the club or a member of the governing body of the club,*

- (g) *declare that a specified person is, for such period (not exceeding 3 years) as is specified by the Authority, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:*
- (i) *the club, and*
 - (ii) *if the Authority so determines – all other registered clubs or such other registered clubs as are specified (or as are of a class specified) by the Authority,*
- (h) *appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club,*
- (i) *order the registered club to pay the amount of any costs incurred by:*
- (i) *the Director-General in carrying out any investigation or inquiry under section 35A in relation to the club, or*
 - (ii) *by the Authority in connection with the taking of disciplinary action against the club or any other person under this section.*

PROGRESS OF THE COMPLAINT

76. On 28 July 2015, a Show Cause Notice was sent by the Authority to the Club and an Invitation to Make Submissions in relation to the Complaint was sent to Mr Martin. Briefly, the Show Cause Notice and the Invitation to Make Submissions set out the Ground of Complaint; list the Complaint Material and the Additional Material and invite each respondent to make submissions, by way of written submissions, as to why disciplinary action should not be taken on the basis of the Ground specified in the Complaint.
77. The Show Cause Notice and the Invitation to Make Submissions offer the respondents the opportunity to request that a Conference be convened, pursuant to the version of *Authority Guideline 8 on Disciplinary Complaints Against Registered Clubs under Section 57F of the Registered Clubs Act 1976* that was in effect at that time.
78. The Show Cause Notice and the Invitation to Make Submissions set out the following timetable for submissions:
- Any request for further or better particulars of the Ground of Complaint or any submission of an interlocutory nature is to be made by **24 August 2015**.
 - The Complainant is to respond to any request for particulars or reply to any interlocutory submission by **7 September 2015**.
 - Each respondent is to submit any evidence or material addressing the merits of the Complaint by **5 October 2015**.
 - The Complainant is to submit any evidence or material in reply to a respondent's submissions by **12 October 2015**.
79. Initially, *Pigott Stinson* advised that it was representing both the Club and Mr Martin. The Show Cause Notice to the Club and the Invitation to Make Submissions sent to Mr Martin were both communicated to *Pigott Stinson* by email on 28 July 2015.

80. However, Mr Martin subsequently advised that he has obtained separate representation through his Counsel, Ms Angela Cook.
81. On 1 October 2015, Mr Martin sent his primary submissions addressing the merits of the Complaint through his Counsel, Ms Angela Cook, via email to the Authority.
82. On 8 October 2015, the Authority received an email from *Pigott Stinson* stating the following:

We are finalising the submissions on behalf of the Club.

However, the CEO has been delayed in overseas travel. Currently, he is expected to return sometime tomorrow and once we have final sign off, we will lodge the submissions.

We also did not expect to receive the submissions from Mr Martin's lawyer before we lodged ours, so we have amended our submissions to refer to them, as opposed to referring to expected submissions.

I called and left a message in case you were at your ILGA office.

Please call if you wish to discuss. John and I are in at different times today, so if you can't get one of us, just ask for the other.

83. On 14 October 2015, the Club sent its primary submissions addressing the merits of the Complaint by email from its legal representatives *Pigott Stinson*.

SUBMISSIONS FROM MR MARTIN DATED 1 OCTOBER 2015

84. In this submission made through his barrister, Ms Cook, Mr Martin submits that the "allegations made by Ms Clarke are not conceded".
85. Mr Martin submits that the District Court did not accept the "entirety" of the complaint made by Ms Clarke, but was simply satisfied that the "elements of the offence were established".
86. Mr Martin submits that he has volunteered a "very significant amount of time, effort and skill" to the Club, including holding the positions of Finance Manager (1966-1976), Secretary Manager (1976-1980), Treasurer (1999-2004) and President (2004-2015). Mr Martin submits that these positions "have not been remunerated (with the exception of a nominal honorarium)" and that his "steadfast commitment and loyalty" to the Club is a "very significant and mitigating feature" which should be taken into account in his favour when determining the Complaint.
87. Mr Martin submits that he is 84 years of age and an ex-serviceman who has "made a positive contribution to the community". Mr Martin submits that he should be given "the benefit of leniency" from the Authority on the basis of his "good character", which is demonstrated by "an absence of antecedent criminal history" and his "contributions to the Club and broader community".
88. Mr Martin submits that the criminal matter that is the subject of this Complaint was finalised by the District Court of New South Wales pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, meaning that "while there was a finding of guilt, the charge was dismissed".

89. Mr Martin submits that the dismissal of this charge demonstrates that the sentencing judge determined that it was “inexpedient to inflict any punishment” and that the granting of a section 10 dismissal was justified on the basis of Mr Martin’s character, age, health, the existence of “extenuating circumstances”, and the “sufficiently trivial nature” of the offence.
90. Mr Martin submits that these findings and the determination of the District Court are “persuasive” and should be a relevant factor for consideration by the Authority when determining this Complaint.
91. Mr Martin submits that the NSW Police Statement of Facts and the Police Brief in relation to the apprehended violence order issued against Mr Martin relied upon by the Complainant are “not evidence” but rather a “hearsay representation by the investigating police officer” which is “not supported by CCTV footage”.
92. Mr Martin further submits that the statements of witnesses relied upon by the Complainant are “not evidence” as they were “not given in Court under oath or affirmation”.
93. Mr Martin submits that it is evident from the reasons given by the judge in the District Court judgment that “the basic elements of the offence were established, however the entirety of Ms Clarke’s version was not accepted” and that this is “in large part due to the inconsistency with the independent version in the CCTV”.
94. Mr Martin submits that it is crucial that the CCTV footage capturing the alleged incident be obtained and considered in order to “ensure transparency” in the conduct of this Complaint.
95. Mr Martin contends that the CCTV footage demonstrates “by way of timeframe and sequence” that what is alleged by Ms Clarke to have occurred in the stairwell at the Club on 23 December 2013 is “simply implausible and not possible”.
96. Mr Martin further submits that the case against him is “very different” from the case against Mr O’Brien in 2013. Whereas the allegations against Mr O’Brien related to “sustained behaviour over a lengthy period of time”, the allegation made against Mr Martin is in relation to a “single isolated incident in circumstances of no planning” involving a single staff member.
97. Mr Martin further submits that unlike Mr O’Brien, he had never received warnings regarding his conduct at the Club and this was “due to an absence of conduct to justify the same”.
98. Mr Martin submits that while Mr O’Brien held a salaried position with the Club, Mr Martin’s services were “provided on a voluntary basis (with the exception of the honorarium)”.
99. Mr Martin states that he is willing to undertake “any form of training and education” to “demonstrate his commitment” to his position with the Club. He advises that on 27 September 2015, he resigned his role as Club President due to his age and the ill health of his wife. Mr Martin states that he “does not propose to hold any such position in the future”.

100. Mr Martin submits that the Authority should accept the version of events that was given in his interview with OLGR Inspector Trainor on 6 November 2014 as to what occurred at the Club on 23 December 2013.
101. Mr Martin submits that he was in attendance at the Club “in his personal/private capacity” on that date.
102. Mr Martin submits that this version of events is “supported by the only available independent evidence being the CCTV footage”.
103. In conclusion, Mr Martin submits that this version of events does not demonstrate that Mr Martin is not a fit and proper person to maintain his position as Club President, and that even if the Authority disagrees with this submission it “need not take disciplinary action”.

SUBMISSIONS ON THE MERITS OF THE COMPLAINT FROM THE CLUB DATED 13 OCTOBER 2015

104. In this submission, the Club states that the Complaint is founded on a “compound assertion” that:
 - (i) The Club should be disciplined as Mr Martin is not a fit and proper person to be a member of the Club’s board; because
 - (ii) Mr Martin was found guilty of an incident assault upon an employee of the Club, Ms Amanda Clarke, at the Club’s premises on 23 December 2013.
105. The Club submits that the Complaint relies upon a “Brief of Evidence” for a Police AVO proceeding commenced against Mr Martin on 23 April 2015. It submits that the AVO proceedings are “not particularised” in the Complaint as a matter or circumstance tending to prove the allegations against Mr Martin and the Club which are contained in the Complaint.
106. [The Authority notes that the “Brief of Evidence” to which the Club here refers is the bundle of Additional Material, mainly concerning the AVO proceedings, that was provided by the Complainant on 16 July 2015, after the initial Complaint was made.]
107. The Club submits that the “Fact Sheet” relied upon by the Complainant is “not evidence” and does not “reflect the curial findings of fact” made in the indecent assault proceedings against Mr Martin.
108. The Club submits that “any contest” as to the effect of the curial findings of the District Court of NSW in the indecent assault proceedings is between the Complainant and Mr Martin and “not between OLGR and the Club”.
109. However, the Club submits that a finding of guilt is not “*prima facie* evidence” that a person is not “fit and proper”. The Club cites a decision of the Victorian Supreme Court in *LSB v McGrath (No. 2)* [2010] VSC 332 as authority for the proposition that, in determining whether a person is fit and proper, “the extent and circumstances of the offence...are relevant”.
110. The Club submits that Mr Martin was in attendance at the Club “in his personal capacity” when the alleged offence occurred on 23 December 2013, rather than in his capacity as Club President, as asserted in the Complaint.

- 111.** In relation to the Complainant's assertion that the allegation against Mr Martin raises similar concerns to those raised with the Authority in the O'Brien Complaint, the Club submits that "on no view" is Mr Martin's conduct comparable to the conduct of Mr O'Brien. The Club "denies that Mr Martin's actions result in the Club somehow condoning his behaviour".
- 112.** The Club submits that the "informality" of the Authority's processes does not permit a disciplinary complaint to be treated as other than a formal legal process and that a legally valid complaint is "jurisdictionally essential" for the exercise of the Authority's statutory functions.
- 113.** The Club further submits that the "informality" of the Authority's processes does not permit unsubstantiated links to be made about a registered club concerning the conduct of a former officer and, several years later, the unrelated conduct of another officer.
- 114.** The Club submits that over the last 20 months it has:
- engaged an expert human resources consultant;
 - reviewed and re-drafted its employee handbook; and
 - trained all employees and directors on workplace conduct including anti-discrimination and harassment policies.
- 115.** In relation to the Authority's assessment as to whether Mr Martin is a fit and proper person to act as a director of the Club, the Club submits that the following factors, *inter alia*, should be taken into account:
- Mr Martin is 84 years of age;
 - Mr Martin served for six years in the Royal Australian Navy including two years on *HMAS Anzac II* during the Korean War;
 - Mr Martin has been a member of the Club since 28 July 1964, was first elected to the Board in 1999, and given life membership in 2002;
 - Mr Martin has led the Club Board in meetings and guided its policies and "forward planning";
 - Mr Martin did not seek re-election in 2015 and having regard to his age, "it is not likely that he will ever again become a director of the Club or any other club";
 - Mr Martin is "well liked" by the "great majority" of the Club's staff;
 - The District Court of New South Wales determined that, while the indecent assault offence that occurred on 23 December 2013 was proven, no conviction was to be recorded against Mr Martin.
- 116.** The Club submits that the indecent assault offence that was found proven against Mr Martin was "unprecedented in all of his years at the Club" and that "nothing comparable had been alleged or otherwise suspected".

117. In relation to the recommendation in the Complaint that the Club's board and the Club's employees be required to undertake annual training on appropriate workplace conduct pursuant to section 57H(2)(e) of the Act, the Club submits that it has no objection to the imposition of a condition upon the Club's licence, in the following terms:

The Club must at least once a year for three (3) years from the date this condition is imposed ensure that training conducted by a registered training organisation be provided on the Club's premises to all persons who are either employees and directors in relation to appropriate workplace conduct.

118. In relation to the recommendation in the Complaint that the Club pay the costs of OLGR in connection with the investigation and the taking of disciplinary action against the Club, the Club submits that the indecent assault is not alleged to be the consequence of any "systemic failure" by the Club and that Mr Martin's "frolic of his own" affords no basis for a costs order against the Club.
119. The Club reiterates that the conduct the subject of this Complaint "involves conduct by Mr Martin other than as a member of the governing body of the Club".
120. Nevertheless, the Club agrees to pay the "reasonable" costs of the (then) Director-General in carrying out an investigation under section 35A of the Act in relation to this matter, noting that it had requested further and better particulars of the quantum of OLGR's costs on 26 August 2015 but had not received a response to that request.

STATUTORY DECLARATION FROM MR MARTIN DATED 15 OCTOBER 2015

121. This 2-page statutory declaration provided by Mr Martin is sworn before a witness, Ms Linda Fong JP. The complete text of this document states (errors in original):

I was born on 8 February 1931. I am 84 years old. I am married. I have been married for 62 years. My wife is unwell. I am the carer for my wife. She does not have full use of her legs and uses a walker. I have 3 children and 5 grandchildren.

I am an accountant by trade/qualifications.

I served 6 years in the Royal Australian Navy including 2 years on HMAS Anzac II during the Korean War.

I joined Cabravale Diggers Club on 28th July 1964 (some 51 years). I was appointed life membership to the Club in 2002. I was elected by the Board as President from 2004 to 27 September 2015. I was elected by the Board as Treasurer from 1999 to 2004. I was the Finance Manager for the Club from 1966 to 1976. I was the Secretary Manager/General Manager for the Club from 1976 to 1980. I was first elected to the Board in 1999 and served many years as the Treasurer.

During my time with the Club, I would dedicate approximately 15 hours per week doing unpaid work for the Club. When I say "unpaid", I acknowledge and recognise that I did receive the notional honorarium.

On 27 September 2015, the Board membership was re-elected. I did not sit for re-election as a result of the health of my wife and my age. Given my age and my commitment to the care of my wife, I do not propose to sit for Board membership again.

I have dedicated a significant part of my life to the betterment and advancement of Cabravale Diggers Club and its members. The Club means a lot to me and is a significant part of my life.

Whilst I do not concede what Ms Clarke has alleged I did on 23 December 2013 (and I have given my version in an interview with Inspector Trainor on 6 November 2014) I do deeply and sincerely regret having any communication/contact with Ms Clarke and the trouble and upset that it has caused Ms Clarke and other people involved.

My experience of the entire court proceedings was highly stressful and hugely embarrassing. It was also a very expensive process funding my legal representatives. I have learnt a very significant lesson and will never involve myself in any similar situation in the future.

I do not have any criminal record or convictions. I have never been involved with or had any trouble with the police prior to this matter. I found my experience with the police has taught me a salient lesson. It was scary, it was intimidating, it was embarrassing.

I have never had any adverse comments or complaints made against me either in my working life, my life at the Club or in my personal life. I consider myself to be a respectful individual and am considerate and polite to all people with whom I have contact. I consider myself to be well-liked by people at the the Club.

STATUTORY DECLARATION FROM MR PETER MERCOURIS DATED 14 OCTOBER 2015

- 122.** In this statutory declaration, also provided to the Authority by Mr Martin, Mr Mercouris states that he is the Principal of Australian Investigation Security Management (**AISM**) which has provided security services to the Club for the past six years. He states that through his employment with AISM, he has regularly attended the Club and has become well acquainted with Mr Martin over this period.
- 123.** Mr Mercouris states that he has observed Mr Martin interacting with the Club staff and that he is “respectful” in these interactions and appears to be “popular”. Mr Mercouris states that he believes Mr Martin has “dedicated a lot of his time” to assisting the Club with management matters.
- 124.** Mr Mercouris states that he believes Mr Martin is a “gentle, kind, thoughtful and considerate gentleman” and that he does not believe that the allegations against him are “consistent with Stan’s character that I have observed over a lengthy period of time”. He states that the “criminal process” has had a “significant impact” on Mr Martin, including causing him to appear “stressed, confused and embarrassed” as well as “regretful for the situation”.
- 125.** Mr Mercouris states that through his role at the Club he is aware that Ms Clarke communicated “a threat of harm” towards Mr Martin to other staff members. Mr Mercouris concludes that Mr Martin is a “person of high standing in our community and is of good character”.
- 126. Annexure “A” to Mr Mercouris’ statutory declaration** is a 1-page document (apparently an excerpt from a Club newsletter) entitled “Life and Veteran Members Luncheon” describing the annual reunion of the Club’s 450 life and veteran members held on 27 June 2015. The document notes that at this Luncheon, Mr Martin was presented with a “Quilt of Valour” in recognition of “valour, service and sacrifice for our country” and features a photograph which appears to be of Mr Martin being presented with this award.

THREE BRIEF CHARACTER REFERENCES FOR MR MARTIN DATED 19 OCTOBER 2015

127. On 19 October 2015 Ms Cook emailed three further statutory declarations. Two declarations dated 16 October 2015 annex a short character reference signed jointly by Mr Allan Forsyth and Mr Colin Forsyth of Cabramatta dated 16 October 2015.

128. The full text of that character reference is as follows:

We have known Stan Martin, of Huon Street Cabramatta, for over 50 years.

During this time he has been a valued friend and neighbour. His children attended the local Primary and High Schools with our children and his son played soccer with my son in locally based teams.

At present, he is his wife's carer as her health has deteriorated in recent years.

We believe Stan is a respected member of the local community and all our dealings with him over the years have been conducted with honesty and integrity.

129. A third declaration dated 19 October 2015 annexes a short character reference from Ms Georgina Lamb of Cabramatta.

130. The full text of that character reference is as follows:

I have known Stan Martin of Huon Street Cabramatta for fifty years and have found [him] to be of good character, honest and trustworthy at all times. He is a good husband and father. My son went to school with his boys.

I believe Stan is a respected member of the local community over the years with honesty and integrity.

SUBMISSION FROM COMPLAINANT IN REPLY DATED 20 OCTOBER 2015

131. On 20 October 2015 a brief submission in reply was provided by the Complainant, having the benefit of the above mentioned material from the Club and Mr Martin. Briefly, the Complainant does not propose to put on any further evidence but relies upon the material provided with the Complaint and the submissions in reply for the Authority to make a finding that the indecent assault has been committed and the Ground of Complaint is established.

132. The Complainant notes that both the Club and Mr Martin have made general submissions about the Police Facts comprising part of the Complaint Material and have expressed "general disagreement" with that material. However, neither the Club nor Mr Martin has made submissions as to what specific aspects of the Police Facts are disagreed with.

133. The Complainant notes paragraph 5 of Mr Martin's submission dated 1 October 2015, which acknowledges that the District Court was satisfied that the elements of the offence of assault with act of indecency were established. The Complainant submits that:

...there can be no dispute that Mr Martin was guilty of an indecent assault, that the assault occurred on the Club premises and that the victim of the assault was a Club employee. Whilst there may be some argument about specific details of how the incident occurred, these central facts are clear and are the most relevant facts which go to the core of the Complaint.

134. The Complainant further submits that the respondents have failed to “clearly and specifically articulate” how they believe the facts differ from those submitted as part of the Complaint.
135. The Complainant also provides a schedule of its costs and expenses in relation to the investigation preceding the making of the Complaint and seeks that the Authority grant an order for costs of the investigation in the amount of **\$8,885.09** in favour of the Complainant.

FURTHER TRANSCRIPTS FROM COMPLAINANT AND MR MARTIN’S REPLY

Transcripts for Local Court proceedings on 10 July 2014 and 14 August 2014

136. On 29 October 2015 the Authority’s General Counsel requested that the Complainant provide transcripts of the Court proceedings referred to in the submissions, particularly the District Court proceedings. That material was requested within 21 days.
137. On 17 November 2015 Mr Sean Goodchild, A/Director of Compliance, OLGR sent the following email to the Authority, copying the respondents:

As requested in your email below, please find attached transcripts from the local court for the indecent assault matter. We have also ordered the transcript from the district court, however we are unlikely to receive the transcript with the 21-day period set in your email below (i.e. by 19 November 2015). It is unlikely that the district court transcripts will be available for at least another 21 days, but we will send the transcript through as soon as we receive it.

I also note that in the letter from the complainant to the Authority dated 20 October 2015 (copy attached for ease of reference) the complainant sought an order for the Club to pay OLGR’s investigation costs of \$8,885. The cost of the attached local court transcript was \$993 and the district court transcript is likely to be a similar amount. The complainant intends to submit a revised estimate of investigation costs which will include costs of the local and district court transcripts. We will be able to provide an updated figure once we have an invoice from the district court.

138. Attached to that email were Liverpool Local Court transcripts dated 10 July 2014 and 14 August 2014 which concern the entire indecent assault proceedings, including the evidence.
139. Relevantly, Local Court Magistrate Degan made the following comments in his judgment of 14 August 2014. Given that the Complainant has not furnished CCTV footage before the Court, the Authority has referred to this decision as providing a detailed summary by a judicial officer of what appears on the CCTV footage:

The defendant has pleaded not guilty to charges of assault and indecent assault alleged to have been committed upon Amanda Clarke during the evening of 23 December 2013 at what has been referred to as the Cabra-Vale Ex-Active Servicemen’s Club or Cabra Vale Diggers Club. At the time of the alleged incident, the defendant was the president of the club and had been a director for many years. Ms Clarke was a permanent part time employee in her second stint at the club. Initially in 2005, 2009 she was employed there and then returned in 2011 up until the present time. In short it is alleged that the defendant kissed Ms Clarke in an unsolicited and passionate manner, that is in an open mouth fashion in a darkened stairwell within the club. There was no issue taken that such an act would constitute an assault and act of indecency as required. Such an act in the circumstance as

being one which right minded persons would consider to be contrary to community standards of decency.

That being said, the question for the Court is whether or not the prosecution have established beyond reasonable doubt that such a kiss occurred. It is notable that the defendant has raised good character. This is something I am entitled to take into account in favour of the defendant on the question of whether the prosecution has proved his guilt beyond a reasonable doubt. It is relevant to the likelihood of his having committed the offence alleged. I can take that into account by reasoning such a person is unlikely to have committed the offence charged. None of this means of course that good character provides the defendant with some kind of defence. It is only one of many factors I take into account. I am also mindful the defendant has exercised his right of silence. He has no obligation to provide any evidence and that is in concurrence with the fact he bears no onus of proof in respect of any of the facts in dispute. I note I also do not speculate as to what evidence might have been given by other potential witnesses who have been referred to including Dean Quintano, Amanda Dulain(?), Michelle Moreau and Idia Hagi(?).

In this matter the police do not take a significant role. Their inquiries led to the presentation of closed-circuit TV footage taken from within the club. They also took statements from some witnesses that were called and gave oral testimony before me. That closed-circuit TV has been viewed and it indicates a number of things. The first is shown as camera zero. The times whilst all around the 11 o'clock mark I am told each cameras times are not synchronized. Camera zero showed quite clearly the defendant Stanley Martin within the club, wearing a light coloured shirt and also showed Ms Clarke within the club wearing dark clothing and that camera angle showed them in the vicinity of the bar area in the lower lounge bar adjacent to a number of rows of poker machines. Dean Quintano is also seen behind the bar. There is some short exchange between the defendant and Ms Clarke and it is noted there is no audio on the footage.

In the agreed sequence, I say agreed, that is agreed between the parties, the prosecution and its counsel Ms Cook, the second image in time is again camera zero which shows Ms Clarke and the defendant walking past the pokies, a row of poker machines towards some, a short flight of stairs. Camera 6 then shows her, Ms Clarke and the defendant just and prior to going up those few stairs, adjacent to them and from my viewing of the tape, they appear to be holding hands. Ms Clarke's right hand in the hand of the defendant's left hand. The next camera is camera 3 showing Ms Clarke and the defendant leaving the lounge bar having gone up the stairs and veering off to the left. Camera 5 then shows the doorway into what has been described as the stairwell which leads to the administrative offices of the club. It shows Ms Clarke and the defendant at the doorway. The defendant removed some keys from his right hand pants pocket and unlocks the door and opens the door. They go inside, the door is shut and the door remains shut for about 30 seconds on my viewing of the footage.

After the door re-opens Ms Clarke is seen to come outside and head off in the direction from which she had originally approached the door. The defendant heads off to the left in the opposite direction. The next camera footage that was shown is again back to camera 6. It showed Ms Clarke returning to the lounge bar/poker machine area. Apart from the closed-circuit TV footage I have heard the, as I say the oral testimony from Ms Clarke as well as another employee from the club Juliette David who gave evidence that she was also working at the club. Before I get to Ms Clarke's evidence I will refer to that evidence of Ms David which was that she was able to confirm seeing Ms Clarke leave the stairwell and noticed that she appeared to be upset. She said she had seen them leave the lounge bar area and headed upstairs and when she saw them enter the door into the administrative stairwell and then later she saw, she said "I just saw and when they coming out of the door Amanda's face was like in shock". She said she followed her and said, "What's wrong?, what's happened, just let me know what's happened?" Ms Clarke was shaking her head and Ms David eventually said something, "Listen what's wrong, if something happened there", I said, "If something happened cause I know what

happened is happened to me too". At the end she said she did tell me what happened, she said to her, he tried to kiss her. She said that he kissed me and that's what happened. When I questioned her as to the exact words I said to Ms David, "Those are the words she used, she said he kissed me?" And she replied, "Yes". Ms David was cross-examined in regard to a number of aspects of her evidence including the fact that she had said this incident occurred about halfway through her shift. Again I have heard no evidence of the reliability of the timing of the cameras, merely a concession that they certainly were not all exhibiting the same time.

She was asked whether they were inside the doorway, inside the door, in the stairwell for more than 30 seconds, Ms David said she did not know but she did see Amanda coming out and saw her face and that is all I looked at. She was questioned as to how she came about, how it came about that she was a witness in these proceedings and she conceded that she received a text message from Amanda on 19 June this year, some many months after the alleged incidents which are said to have occurred on 23 December last year. She said the text was her being asked if she could help her out. She was questioned in regards to the statement she made to police on 26 June 2014, some six months after the alleged incident. It was put to her that did she say to Ms Clarke, "Don't do anything, keep your mouth shut" in response to the question, what should I do having revealed what had occurred. Ms David said "I don't remember saying that but I said well he's the president of the club to just be careful what you're saying". She indicated that she had spoken to Ms Clarke between the event or alleged incident and the time when she asked her to assist and before her statement to the police, that is Ms David's statement to the police. I accept that the evidence as complaint evidence.

Ms Cook on behalf of the defendant has submitted that I ought to be very mindful of how the complaint evidence arose.

It is noted that she was not approached until 19 June but I have also heard evidence that Ms Clarke had referred to making complaint to Ms David earlier. An inconsistency in the time when trying to refer to something raised some six months later in my view does not affect the veracity of Ms David's evidence of the complaint itself. The complaint is consistent with the evidence of Ms Clarke. It was made at a time and in a manner which one might expect someone might confide in a fellow worker at the time particularly bearing in mind these were allegations of impropriety by the president of the club in which Ms Clarke was employed. She was in a much less powerful position than the defendant was and one could readily understand her reticence in taking the complaint immediately to other persons in some authority. What occurred within the stairwell was only witnessed by Ms Clarke and the defendant. I am very mindful of the submission by Ms Cook on behalf of the defendant that the prosecution does rely upon the evidence only of Ms Clarke as to what occurred during that 30 seconds. She has referred to what is called a Murray Direction which is a direction that is recognised that when a prosecution case is relied upon really the word of one person then the Court must scrutinise that evidence very carefully and must determine that that evidence is not only honest but also reliable before relying upon it beyond a reasonable doubt to establish a charge. She challenges the accuracy and the credibility of Ms Clarke and in particular she raises the closed-circuit TV. She raises the fact that in her evidence Ms Clarke referred to the incident involving three kisses all up and a number of conversations or as Ms Clarke referred to it, questions and answers.

Ms Cook has submitted that if you look at the time being 30 or 29 seconds, that conversation just could not have occurred even if one was talking very, very quickly. If all of that conversation occurred he could not repeat it within 29 seconds. Ms Clarke gave evidence that she was rambling. She gave evidence that she was anxious. She gave evidence of wanting to be out of the room and she gave evidence that it actually seemed like about five minutes. She believed it was a couple of minutes and according to the CCTV footage it was only 30 seconds. There were other conversations she had with the defendant during the course of the evening, is that a possible explanation as to when some of these things may have been mentioned. But I need to scrutinise her evidence very carefully. Not everything has

to be proven beyond a reasonable doubt. What needs to be proven beyond a reasonable doubt are the elements of the offence. In further cross-examination of Ms Clarke, there was raised a conversation with Michelle Moreau. She agreed there had been such a conversation on 20 January which is prior to her providing her statement to the police. She agreed that she said it was put to her, "You spoke to her for a little less than an hour?" She said, "Possibly". It was put to her that she said to Ms Moreau, that the defendant had leant forward to kiss her on the head, she leant forward to kiss him on the cheek and the defendant kissed her on the lips. She agreed that she had said something along those lines. It was suggested she told Ms Moreau that Mr Martin came in again and went to kiss again but there was a hug that she told her that she went to walk away, his hands were on her, pushed her against the wall, that the defendant said, "I want to do this properly" and then he leant in to kiss and Ms Clarke said her legs gave way, went to grab the rail, also put my arm around him at the same time.

She was quite adamant that she certainly did not mention the rail because there was no rail on those stairs. She said much of what she told Ms Moreau was very fast, there were bits and pieces everywhere, it was overall correct, there was a mention of, she had said to Ms Moreau, "I thought he was going to give me a hug, kiss and wish me Merry Christmas and joked that he'd finally found a dark room" and then they go back to work. She agrees although she said some of it was out of context but she agrees she told Ms Moreau, "I didn't expect a passionate kiss". It was also put to her that she said to Ms Moreau, "I don't want to cause a scene" which again was an overall thing that she said she agreed with. It was put to her that she said, "I'm curious how he will handle the allegations", she disagreed with that. It was put to her that she said to Ms Moreau that she was after an assurance that she was not crazy and making it up and her response to that suggestion was that, no, no what she wanted was validation. She wanted him to acknowledge what he did was wrong. It was put to her that she mentioned she was considering a complaint to the OLGR and she agreed with that saying the Office of Licensing, Gaming and Racing. She said she had spoken to Ms Moreau because she was the most experienced person to handle it.

A version was also put to Ms Clarke that it did not happen the way that she said but it happened in this way. The defendant had approached her and said, "I won't see you over Christmas I want to wish you Merry Christmas", she disagreed with that. She said when they were near the stairwell, the defendant said, "My wife has spent all the money I'm going home now", her response was, no the defendant did not mention Mel at that time. It was put to her the defendant said to her, "I want to wish you a Merry Christmas" and she agreed with that. It was put to her that once inside the stairwell the defendant said, "Merry Christmas" and leant forward to give her a kiss, she said that is true but there was more. That she said, "No, Stan, no" then the defendant backed off, opened the door and said, "Merry Christmas" and walked out. She disagreed that it was so short and said, "No" at the end, I said, "Better get out, I've got to go". There was some further evidence as well that there was another occasion where the defendant had approached her on 30 December. In chief Ms Clarke gave evidence that the defendant came up to her from behind, put his hand on her lower left back, held her arm and said, "Are we still friends?" She responded by saying, "Yeah we're still friends, why wouldn't we be?" The defendant said, "I know you're upset about what happened the other night, I hope I haven't ruined things between us" and she responded by saying words to the effect of, "No, no it's all good".

He went on to say, "I can tell I've upset you, I want to apologise for the other night, I'm not sorry but you have to understand I'm a male, sometimes we get carried away with ourselves I'm sorry for being a male" and she responded by saying, "No, no it's all good" she said she just wanted to get rid of him. I agree with him, wanted him gone. It would appear that while she was saying it is all good, it was not all good. The defendant said to her, "Are we still friends?" And she said, "Yep, yep, all good, yes all good" and then walked away. An alternate version of that meeting was put to her in cross-examination. It was put to her that that conversation was very brief where the defendant said, "Hello Amanda", she did not respond, he then said, "If I've upset you

in any way I apologise” and Ms Clarke rejected that version of the conversation. Ms Cook has rightly said that I am not here as any moral judge, judging the behaviour of the defendant in that way. I am only here to deal with allegations of a criminal nature and his guilt if proven beyond a reasonable doubt. According and it must be said, the only version of what happened is that of Ms Clarke. All of the questions put to Ms Clarke as all the questions put to Ms David are not evidence only the answers are evidence. If they disagree with something there is no evidence that that occurred. I am still bound as Ms Cook rightly pointed out to scrutinise Ms Clarke’s evidence very carefully because the defendant wears the cloak of innocence unless and until the prosecution have established their case beyond reasonable doubt.

I found Ms Clarke to be a very impressive witness. I found her to be quite consistent in her version and genuinely shocked and appalled by the defendant’s behaviour. I accept that she was surprised to be led into a dark stairwell and I accept her evidence beyond a reasonable doubt that the defendant gave her an open mouth kiss in an unsolicited fashion. I am not persuaded by any suggestion because of his size and Ms Clarke being taller that he would have been incapable of such, I have heard no evidence from him as to any frailty on his part and in the CCTV failed to show any frailty on his part as he moved around the club. So I reject that notion. I find that the behaviour of Ms Clarke as stated previously is quite consistent with a person in her position as a permanent part time employee where the president of the club has acted in an inappropriate manner. I find that consistency of behaviour enhanced her credibility. The only question I ever had which I am certainly prepared to excuse was the amount of conversation that she referred to, having occurred within the stairwell. I am quite satisfied that the actions could have all occurred within that timeframe but the level and extent of conversation did not take place. Despite that, as I said, I am satisfied beyond a reasonable doubt that the unsolicited kiss occurred and I find the defendant guilty of the charge of indecent assault.

140. With regard to sentencing, Local Court Magistrate Degnan made the following remarks:

Mr Martin, this offence carries five years gaol. That obviously is available for the most serious of these types of offences of which this is not one. By saying that I am certainly not saying it is a minor matter. It is a serious abuse of your position. You hold a, well as a president and on the board of directors of the club, you hold a very high position. Ms Clarke as a part time permanent employee is in a very lowly position. When persons take advantage of those positions then it is a matter of great concern. Indecent assault can take many forms, inappropriate touching even right up to the very limit of sexual penetration would still be an indecent assault. So one can see the full range of these types of offences. You are a person of prior good character, you have shamed yourself in front of other members of the club and I am sure that public shame will also provide you with deterrence in the future from behaving in this inappropriate manner again. I am also aware and I do take into account the countless hours you would have been putting into the community over many, many years. Mr Foulkes spoke very highly of you and the work that you have done and I think he said...Yes it was gobsmacked by the allegations. Well they are no longer allegations, they are proven facts.

I intend to convict you so you have now spoiled your clean record. I do not think this matter is minor enough to allow you to walk out of Court without a conviction because of the disparate positions between yourself and Ms Clarke but I certainly do not consider it a matter that calls for a custodial sentence. I propose to deal with this matter by way of a good behaviour bond for a period of 12 months. I do not require the involvement of Community Corrections as I do not believe it is necessary in this case for any rehabilitation purposes. One would hope this whole experience even of being charged and now convicted would ensure there is no further behaviour of this manner. I am also satisfied that general deterrence is sufficiently dealt with by the use of a bond and the other purposes of sentencing can be met. They are all set out in section 3A of the Crimes (Sentencing Procedure) Act which I do not propose to pronounce in open court. There will also be a fine of \$500.

Transcript for District Court proceedings on 15 December 2014

141. On 9 January 2016 OLGR Compliance Officer Mr James Shand sent an email to the Authority, copying in the respondents:

The District Court Transcript in this matter for the hearing day of 15 December 2014 has just been received and is attached as requested.

The department has been invoiced \$141 for the transcription and seeks to recover the amount as part of investigations costs sought. Following receipt of the transcripts, the revised estimate of OLGR's investigations costs is now \$10,019.

142. Attached to that email was a District Court transcript for the judgment in the District Court appeal in relation to the indecent assault conviction heard at Parramatta District Court on 15 December 2014.

143. Relevantly, his Honour Justice Delaney made the following findings on appeal:

The appellant appeals against his conviction for one count of assault with an act of indecency for which he was convicted at the local court. The appeal is being conducted by way of a rehearing on the transcript with the exhibits which were tendered in the local court. One of those exhibits included a CCTV footage of the area of the licences premises where it is alleged that the event occurred which shows actions of both the appellant and the complainant during the course of the date of the offence, 23 December 2013.

The purpose of the tender of the transcript of the evidence, the reasons of the magistrate and the exhibits is to allow the Court to deal with the rehearing in accordance with s 17 of the Crimes (Sentencing Procedure) Act. The rehearing does not involve a completely fresh hearing by this Court of all of the evidence but the Court is to take into account all of the matters of relevance in that transcript and come to its conclusion about whether or not the Crown has proved its case beyond reasonable doubt.

The transcript shows that there were, apart from the disks which were tendered and shown, a statement of Constable Bull of 9 April 2014, the evidence of Constable Bull, the evidence of Mr David, Mr Foulkes and the evidence of the complainant.

In summary, the Crown's case is that on the evening of 23 December 2013 an incident occurred between the appellant and the complainant which involved an act of kissing which the Crown submits should be determined to be an indecent assault.

To prove an offence of indecent assault the Crown must prove that there was an assault, that is, by contact between one person and the other, that it was deliberate and non-accidental, that there was no consent and that person's in our society would consider that the action itself was indecent in that it had overtones of sexuality.

Because there was no evidence given by the appellant, the only evidence for consideration by the Court was the evidence of the complainant. The complainant, having given the only evidence of what occurred at the particular time when it was said that this assault took place, her evidence was not the subject of contrary evidence as in evidence from somebody saying that did not happen although it was suggested during the course of cross-examination that that, in fact, was the case.

Not surprisingly views which were expressed by the Court of Appeal in many cases of recent years about the way in which a court should look at the evidence of those who give their evidence applies in this case, namely, that unless it can be clearly shown on the evidence that the person who says what occurred cannot be believed on their

oath or there is some other good reason why their evidence should be rejected, then their evidence should be accepted.

Judgments of the Court of Appeal particularly in relation to civil cases apply here. In this case the complainant, in summary, said that she was an employee at the club. The appellant was a director. On the evening of 23 December he approached her, and I am giving this in summary, said that he wanted to wish her a Merry Christmas. During the course of the evening this was repeated until eventually he came to an area where the complainant was near a bar and they went together to a door which led, as I was told, to the administration section of the club. This door was shown in a CCTV footage. It appeared that when they reached there the door was locked. The appellant took out the key and unlocked the door. The CCTV footage shows that in that area there appeared to be no light. The door was then closed. The two people were inside. The door then opened, the complainant came out and then subsequently the appellant came out, while CCTV footages are never perfect, because it is not continuous real time, it did appear when I was looking at the footage to me anyway that there was nothing untoward in the way in which either the complainant came out or the appellant came out, as he waved at her at the end. The CCTV footage then shows them, as it had earlier, doing various things at the bar.

Therefore, in my view the CCTV footage was of little assistance in relation to proving the Crown case beyond reasonable doubt, except for one particular thing. It showed the appellant walking around the club in the period before the appellant and the complainant came together and went to the room. It showed in my opinion quite clearly that he was waiting to engage with her. It showed that they walked through various areas of the club in circumstances where one might have assumed that if it was intended to wish someone a Merry Christmas and Happy New Year in a way which would often and normally happen, particularly in workplace organisations, that could have been done without them going into the room or to the entrance to the stairs that went up into the administration block.

The complainant said that when they got into that room there was discussion and in the course of them being in there the appellant kissed her on the lips and then attempted to do so again and she avoided that occurring.

I found a significant problem with the evidence in this case about what this room was like. What the stairwell was like, how bit it was, how wide it was, where the lights were. This was all evidence which was capable of being adduced to enable the Court to determine just what the prospects were that such activity as was allegedly occurred during the course of what appeared to be a short time when one looked at the CCTV footage counters, but seemed to be longer when considering what was alleged by the complainant to have been the extent of the conversation, one had great difficulty in working out just what would have occurred in that timeframe. However, what the complainant said did occur was that the assault took place.

One more thing I should say about the CCTV footage, I reject the submission that was made that that footage showed that the appellant took the hand of the complainant and guided her to any place within the club. It seemed to me that they just held hands together for a short time, if anything the hand of the complainant was the first to be taken.

What then did the complainant say. She was asked a question:

“Q. What happened then?”

A. As I've gone in Stan has kissed me straight on the lips and then he went in with closed lips and then once he hit my lips he opened his lips and his lips kind of went over mine and so I pulled back and as I started pulling back he kept coming forward and he got me again on the right side of the cheek so then I took a step back and I was just like awkward at that point because I didn't know if that was intentional or not.”

That was a passage of the evidence which I have quoted because one of the things that the Crown has to prove is whether or not there was intent. Intent can be inferred. The problem here was there was no evidence that witness satisfactory as to the extent of the lighting in the stairwell. Indeed, the question that I have to decide here is whether or not, if I accept Ms Clarke, as I think that I should, the kiss that was referred to was intentional or occurred inadvertently or accidentally.

During the course of her evidence the complainant said in answer to this question:

“Q. So he got the keys out, what happened then?

A. He got his keys out and he opened the door. He pulled the handle and walked out pulling the door outwards and because - I was kind of standing in a way where I kind of - I couldn't see originally because like I was focusing on him opening the door and then as I went to walk in I've kind of stopped because I didn't know if he noticed the lights were off and so I kind of just stopped and did a double take and he - he was - I kind of looked at him and he's like 'Go go, you know, go in' and I was like okay. So I just walked in and started to walk up the stairs.”

I must confess that from that passage of evidence I found some difficulty actually ascertaining what facts were being related in that passage, but I assume that the answer to that may possibly be obtained from the following piece of evidence (p 37 line 50):

“Q. Okay?

A. I got to may be the fourth, fifth step because I just assumed we were going up the stairs up to - I didn't think we were - stopping at a bunch of stairs. So I just continued to walk up the stairs and he was like, 'No, no, no, where are we going, come back down here, come back down here' and I kind of for me like when I get nervous because I was like we're in the dark, why are we not going up the stairs, so I kind of, I turned around and I know kind of made a joke of it because I got really nervous and said, 'Oh you know Stan has taken you know eight years to find a room, you always said you were going to find a room, you know the joke's on me', and he laughed and he was like, 'Yeah, yeah it took me awhile but I found a room...’”

It was then that the complainant said that there was a series of conversations about relatives of both herself and the appellant. She was then asked to describe what happened. She said in answer to that question, the question being:

“Q. Sorry, can you do it again?

A. I went in for like a kiss on the cheek.

Q. You've indicated leaning over to the left with your head slightly tilted to the left exposing your right cheek?

A. Yep.

Q. Okay, that's what you said you did?

A. Yes.”

It was then that she said that as she had gone in Stan had kissed her straight on the lips.

I confess that I have greatest difficulty in working out whether or not accepting the complainant as I do that she indeed was kissed on the lips. Was kissed on the lips by accident or intentionally.

As it is part of the Crown case that this was intentional indecent assault that question is a matter for which I have had considerable regard and it is for that reason that I have taken into account, as I mentioned before, what occurred as shown on the CCTV footage.

I appreciate this is a case which requires the Crown to prove its case beyond reasonable doubt but inferences may be drawn from the surrounding circumstances. Inferences may be drawn from the actions and inactions.

It was submitted by the appellant that when one looked at the complaints that were subsequently made, indeed late complaints in this case, that those complaints were inconsistent with the evidence that was given by the complainant. I accept that there are clearly some inconsistencies there, after all memories are fluid things and one can remember one thing one day and not another.

I have, therefore, considered and made the following findings.

Firstly, that the complainant and the appellant were together in the club, that the complainant was there as an employee, that the appellant wished to wish her a Merry Christmas but wished do so in a private setting. After they got into that private setting an incident occurred where I am satisfied that there was a kiss on the lips. I am satisfied that the general situation in the community is that that kiss on the lips would be considered to be indecent.

In those circumstances, I am not satisfied that there is sufficient, as submitted by Ms Cook on behalf of the appellant, that could undermine the evidence about how this incident occurred. I am satisfied that there was an assault. I am satisfied that it was indecent and the Crown has proved its case.

144. With regard to sentencing, Justice Delaney made the following remarks:

Those of us who have lived long and productive lives in our community are entitled to the benefit of that long and productive life particularly when one considers the extent to which these events were alleged to have occurred.

In my opinion this is not a case where any conviction should be imposed on Mr Martin. In my opinion the offence has been found to be proved but the conviction and sentence should be quashed under section 10.

Supplementary submissions from Mr Martin dated 8 January 2016

145. On 12 January 2016 Mr Martin made further submissions through his Counsel dated 8 January 2016, with observations on the facts as found by the District Court and the Court's reasons for only ordering a bond (set out in detail above).

146. The supplementary submissions from Mr Martin also reiterate his earlier submissions that disciplinary action should not be taken against Mr Martin as it has not been demonstrated by the conduct alleged that he is not a fit and proper person to hold the position of Club president or director, nor should action be taken to prevent Mr Martin from holding the position of club president or director.

No CCTV Footage before the Authority

147. In an email from the Authority's General Counsel to Ms Cook and copied to the other parties dated 12 January 2016, General Counsel noted that the Authority does not have any CCTV footage before it in relation to this matter and that if any party wants to rely on CCTV footage they will need to provide it to the Authority on a USB drive. That email advised that if no CCTV footage is available the Authority will proceed on the basis of the submissions and the Local and District Court transcripts provided by the Complainant. No CCTV footage was provided by any party.

CONFERENCE WITH AUTHORITY ON 27 APRIL 2016

- 148.** After this matter was deferred for several months while the Authority endeavoured to accommodate the commitments of Mr Martin's Counsel, a conference was convened during the Authority's ordinary Board meeting on 27 April 2016 for the purpose of hearing oral submissions from the Complainant, the Club and Mr Martin (**Conference**).
- 149.** At the Conference, the Complainant was represented by Mr Paul Irving, Principal Investigator at the Compliance Branch of Liquor and Gaming NSW and Ms Anne-Marie Mannile, solicitor with the Office of General Counsel, NSW Department of Justice.
- 150.** The Club was represented by Mr John Ralston of the law firm *Pigott Stinson*, and Mr Martin was represented by his solicitor, Ms Rebecca Dunlop. Mr Martin's Counsel did not attend.

No Oral Submissions from the Complainant

- 151.** The Complainant did not wish to make oral submissions and noted that it relied upon its previous written submissions.

Oral Submissions on behalf of Mr Martin

- 152.** Briefly, Ms Dunlop submitted that Mr Martin relies upon the previous submissions from Ms Cook and that it is Mr Martin's "firm position" that the conduct that was proven against him in the District Court is not conduct that is sufficient to establish that Mr Martin is not a fit and proper person.
- 153.** Ms Dunlop submitted that Mr Martin's conduct was an "isolated incident" and that "it was a finding that while the Court was not satisfied that it was necessarily a deliberate or intentional act, that there was in fact a kiss on the lips and in those circumstances, the Court found that the elements of the offence were found proven".
- 154.** Ms Dunlop submitted that instead of convicting Mr Martin, the Court found it appropriate, given the "rather trivial nature" of the matter, to proceed without recording a conviction against him, which is a "very important factor" that would be taken into account when determining the matters in these proceedings.
- 155.** Ms Dunlop submitted that Mr Martin is in "no way comparable" to the Club's former CEO, Mr O'Brien as this is not a case where there has been "ongoing conduct" or "a pattern of degrading, racist, sexual type conduct". This was an "isolated incident" and a matter where the District Court saw fit not to convict Mr Martin.
- 156.** Ms Dunlop noted that Mr Martin relies "very heavily" on the character evidence that has been filed in relation to this Complaint, including statutory declarations that "support a finding that Mr Martin is a man of great integrity, he is well liked and well respected in the community".
- 157.** Ms Dunlop submitted that Mr Martin has "contributed to the community and to our country" as he served in the Korean War. Mr Martin is a man with no criminal convictions and, notwithstanding what was found proved in the District Court, he "remains a man with no criminal convictions".

158. In conclusion, Ms Dunlop submitted that:

...taking into account the minor nature of the incident, the lack of any other complaints or any ongoing conduct and the way in which the District Court decided or saw fit to dispose of the matter, it is our submission that the test has not been made out and that there would not be a finding that Mr Martin is not a fit and proper person.

159. The Authority's Deputy Chairperson, Mr David Armati, then raised a question as to “the obvious difference between the function of criminal sentence and section 10 versus discipline and secondly, the differences in the burdens of proof that arise in respect of criminality and civil disciplinary complaints” and asked Ms Dunlop whether she wished to supplement Ms Cook’s submissions on that point.

160. In response, Ms Dunlop submitted that if the Complainant wishes to rely upon the finding of guilt, it would be “artificial” not to consider the actual findings of fact that were made by the District Court.

161. Authority Member Craig Sahlin put it to Ms Dunlop that the conduct in which Mr Martin engaged cannot be linked to the conduct of the Club’s former CEO, Mr O’Brien, but that the Club, its officers and its members “must have been very much on notice of issues relating to inappropriate conduct” and that, notwithstanding this, Mr Martin “seems not to have turned his mind to that issue at all when he engaged in this activity”. Ms Dunlop elected not to provide further submissions on this proposition and relied on Mr Martin’s written submissions.

162. Ms Sahlin also noted that Ms Dunlop had used the word “trivial” in her oral submissions and enquired as to whether it was Mr Martin’s position that the indecent assault incident was “trivial”.

163. Ms Dunlop explained that the reference to “trivial” is a reference to the wording of section 10 of the *Crimes Sentencing Procedure Act 1999* and that this was a factor that was taken into account when determining how the District Court dealt with the criminal proceedings.

164. Ms Dunlop submitted that it is not Mr Martin’s position that the proceedings are trivial and that the Court proceedings have “had a significant effect” on Mr Martin. Mr Martin simply wishes to highlight that the Court found that “on the criminal calendar or scale of offending, this matter was trivial and fell toward the lower end”.

165. In response to a further question from Authority Member Craig Sahlin, Ms Dunlop agreed that the word “trivial” was not actually used by the District Court.

166. Mr Sahlin noted that Ms Dunlop has suggested that there was no “intent” on the part of Mr Martin in committing the indecent assault against Ms Clarke. Mr Sahlin referred Ms Dunlop to page 3 of District Court transcript where Justice Delaney was quite clear that the CCTV disclosed that Mr Martin had been “waiting around, waiting his time” before the incident with Ms Clarke. Mr Sahlin asked Ms Dunlop to comment on that part of the transcript. In response, Ms Dunlop submitted that:

I don't think I can really take the issue any higher other than to highlight the difficulties that the Court had after hearing the sworn testimony of the witnesses and considering the objective evidence by way of CCTV footage about what could and could not be accepted beyond reasonable doubt. And in this particular matter, the Court did express a difficulty with, or an uncertainty about whether the actual act of kissing on the lips rather than on the cheek, per se, was something that was either accidental or

deliberate; there was an expression of difficulty with that finding, but I can't take it any further...

167. The Authority's General Counsel noted that the allegations in respect of the Apprehended Violence Order obtained by NSW Police against Mr Martin in favour of Ms Clarke on 9 June 2015 and the Apprehended Violence Order itself form part of the Complainant's case, albeit not part of the specified Ground of Complaint. General Counsel invited Ms Dunlop to make any further submissions about the relevance of that conduct to these proceedings, and Ms Dunlop referred to the written submissions and that she did not wish to further address this matter.

No Oral Submissions from the Club

168. The Club did not wish to make any oral submissions during the meeting and noted that it relied upon its previous written submissions dated 13 October 2015.

FURTHER CONSULTATION

Letter Notifying Findings on Grounds of Complaint dated 30 May 2016

169. After further deliberation the Authority sent a letter to the parties dated 30 May 2016 notifying the Authority's findings on the Ground of Complaint and inviting final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.

Final Submission from the Complainant dated 8 June 2016

170. In its final submission dated 8 June 2016, the Complainant advised that it relies upon its earlier submissions on the merits of the Complaint and presses the recommended disciplinary action, including an order that the Club pay the Secretary's costs on the investigation. The Complainant provided a spreadsheet itemising the costs incurred by the Secretary, which amount to **\$10,019.00**.
171. The Complainant also submitted that it had recently received advice that ClubsNSW, in partnership with the Club Directors Institute, can facilitate suitably qualified governance and leadership training via its Directors Pathways Plus Program. The Complainant recommends that this training "would be appropriate to mitigate ongoing risk at the Club" and provides a fact sheet relating to that training program.

No Further Submissions from the Respondents

172. Neither the Club nor Mr Martin made any final submissions on disciplinary action in relation to the Complaint after the Conference of 27 April 2016.

FIINDINGS ON THE GROUND OF COMPLAINT

173. The sole Ground of Complaint states:

The secretary or a member of the governing body of the club is not a fit and proper person to act as such.

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

Fitness and Propriety at General Law

174. 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.

175. In *Hughes & Vale Pty Limited 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.

176. 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.

177. Disciplinary complaints are civil matters, and findings are made applying the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

Findings on Particular 1.1

178. Particular 1.1 of the Complaint alleges:

Mr Martin was elected to the governing body in March 1999, and subsequently the position of president since September 2004.

179. While this Particular is not in dispute, the Authority is satisfied that Particular 1.1 of the Complaint is established on the basis of the Complaint Letter, page 4 of the transcript of the record of interview between OLGR Inspector Trainor and Mr Stanley Martin dated 6 November 2014 (Complainant Exhibit E02) and the ASIC Company Extract for the Club as at 25 February 2015 (Complainant Exhibit E04).

Findings on Particular 1.2

180. Particular 1.2 of the Complaint alleges:

During this period, Mr Martin failed to exercise his duties as the president with a degree of knowledge, ability, care and diligence required for the position as he was found guilty of an assault with act of indecency which occurred on the Club premises. The victim of the assault was Ms Amanda Clarke, a Club employee.

181. The Authority is satisfied, as alleged in Particular 1.2(a)(i) that Ms Amanda Clarke was employed by the Club on 11 February 2011. While this Particular is not apparently in dispute, this finding is made on the basis of the letter confirming the employment of Ms Amanda Clarke by the Club dated 11 February 2011 (Complainant Exhibit E07).
182. The Authority is satisfied, as alleged in Particular 1.2(a)(ii), that Ms Clarke was working at the Club as a bar/gaming attendant on 23 December 2013. This finding is made on the basis of page 7 of the transcript of the record of interview between OLGRI Inspector Trainor and Mr Stanley Martin dated 6 November 2014 (Complainant Exhibit E02) and page 1 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06). This Particular is also apparently not in dispute.
183. The Authority is satisfied, as alleged in Particular 1.2(a)(iii), that while working at the Club on 23 December 2013, Ms Clarke was asked by Mr Martin to leave the bar area so that Mr Martin could wish Ms Clarke Merry Christmas. This finding is made on the basis of the information provided on page 2 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
184. While Mr Martin has generally denied Ms Clarke's account of events in his interview with OLGRI Inspector Trainor on 6 November 2014 and in his submissions on this Complaint, the Authority does not have before it any direct and specific evidence or statement, sworn or unsworn, contesting that Mr Martin asked Ms Clarke to leave the bar/gaming area, as alleged.
185. While no party to this matter has provided any CCTV footage from the Club, the Authority has the benefit of very detailed accounts of the CCTV footage provided by Magistrate Degnan (**Magistrate**) of the Fairfield Local Court and Justice Delaney of the District Court (**Judge**) in their respective judgements.
186. The Magistrate notes that the CCTV does not provide audio but records a short exchange between the two persons who then walk away from the gaming area to the stairwell area holding hands. The Judge was satisfied that Ms Clarke was at work on 23 December 2013 and both persons are shown on CCTV walking from the bar/gaming area to the administration area.
187. While the CCTV evidence does not have the benefit of audio and hence cannot confirm who asked whom to leave the bar/gaming area, the Authority is satisfied that Mr Martin, as alleged, wanted to wish Ms Clarke Merry Christmas in a private location. Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement addressing this allegation has been provided in this matter, the Authority does not have positive evidence or even an unsworn statement from Mr Martin to the contrary.
188. The Authority accepts, for the purpose of assessing this allegation and all allegations in relation to which the Police Fact Sheet is relied upon by the Complainant, Mr Martin's submission that a Police Fact Sheet is not a statement of evidence. However it is information that was formally tendered to a Court by the prosecution in a criminal proceeding where an offence was proven beyond reasonable doubt. In

circumstances where the allegations are not contested by a direct and specific statement of evidence in reply, it is open to the Authority to make findings on the basis of that information.

- 189.** Particulars 1.2(a)(iv) and 1.2(a)(iv)(1) allege that after Ms Clarke left the bar area Mr Martin took hold of her hand and led her to a staircase in the administration area, and while being led to the administration area, Mr Martin let go of Ms Clarke's hand, however Ms Clarke continued to follow him.
- 190.** The Authority accepts the allegation on the basis of information provided in page 2 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06). While some reservations were expressed by the Judge as to whether the CCTV footage supports the offence in question, it was apparent to both the Magistrate and Judge that the two persons are shown holding hands and moving from the gaming area towards the administration area. The Authority is satisfied that Particulars 1.2(a)(iv) and 1.2(a)(iv)(1) are established, noting an absence of direct sworn or unsworn evidence to the contrary.
- 191.** Particular 1.2(a)(v) alleges that Mr Martin verbally and physically gestured to Ms Clarke to enter the stairwell. The Authority accepts this allegation on the basis of the information provided in page 2 of the Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06), noting an absence of any direct sworn or unsworn statement of evidence to the contrary. The Authority notes that the CCTV evidence before the Magistrate and Judge is inconclusive with regard to this allegation.
- 192.** Particulars 1.2(a)(vi)(1), 1.6(a)(vi)(2) and 1.6(a)(vi)(3) allege that after a short conversation Mr Martin kissed Ms Clarke partially on the lips twice in circumstances where Ms Clarke assumed this was a kiss on the cheek; Ms Clarke tried to move her head to the side; and Ms Clarke pulled back from Mr Martin. The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 193.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied that Mr Martin, as alleged by the Complainant, kissed Ms Clarke partially on the lips twice. Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no direct and specific statement of evidence addressing this allegation has been provided in this matter, the Authority does not have positive evidence or even an unsworn statement from Mr Martin to the contrary.
- 194.** Particular 1.2(a)(vii) alleges that Mr Martin again leaned in to kiss Ms Clarke, Ms Clarke moved her head and both Mr Martin and Ms Clarke have kissed each other on the cheek. The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 195.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied that Mr Martin, as alleged by the Complainant, again leaned in to kiss Ms Clarke, Ms Clarke moved her head and both Mr Martin and Ms Clarke have kissed each other on the cheek. Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement addressing this allegation has

been provided in this matter, the Authority does not have positive evidence or even an unsworn statement from Mr Martin to the contrary.

- 196.** Particular 1.2(a)(viii) alleges that as Ms Clarke attempted to leave, Mr Martin placed his hand on Ms Clarke's shoulder and pushed her into a wall. The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 197.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied that as Ms Clarke attempted to leave, Mr Martin placed his hand on Ms Clarke's shoulder and pushed her into a wall. Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement addressing this allegation has been provided in this matter, the Authority does not have positive evidence or even an unsworn statement from Mr Martin to the contrary.
- 198.** Particular 1.2(a)(ix) alleges that whilst Ms Clarke was against the wall, Mr Martin placed both hands on her face and said, "No, I want to do this properly" to which Ms Clarke said "No". The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 199.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied that whilst Ms Clarke was against the wall, Mr Martin placed both hands on her face and said, "No, I want to do this properly" to which Ms Clarke said "No". Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement addressing this allegation has been provided in this matter, the Authority does not have a direct and specific statement of evidence from Mr Martin to the contrary.
- 200.** Particular 1.2(a)(x) alleges that Ms Clarke began to fall which resulted in Ms Clarke and Mr Martin hugging each other, where Mr Martin rubbed Ms Clarke's back. The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 201.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied that Ms Clarke began to fall which resulted in Ms Clarke and Mr Martin hugging each other, where Mr Martin rubbed Ms Clarke's back. Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement addressing this allegation has been provided in this matter, the Authority does not have a direct and specific statement of evidence from Mr Martin to the contrary.
- 202.** Particular 1.2(a)(xi) alleges that Ms Clarke then patted Mr Martin's back and said "Okay Stan let's get out of here". The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06).
- 203.** While the CCTV footage does not have the benefit of audio, nor does it cover the stairwell area where the indecent assault actually occurred, the Authority is satisfied

that Ms Clarke then patted Mr Martin's back and said "Okay Stan let's get out of here". Noting that Mr Martin did not elect to give evidence in the related criminal proceedings before either Court and that no statement directly addressing this allegation has been provided in this matter, the Authority does not have a statement of evidence from Mr Martin to the contrary.

- 204.** Particular 1.2(a)(xii) alleges that both Ms Clarke and Mr Martin then left the area. The Authority accepts this allegation on the basis of the information provided in page 3 of the NSW Police Facts Sheet in the matter of *Police v Stanley Martin* dated 21 February 2014 (Complainant Exhibit E06). This finding is also supported by the account of what is shown on the CCTV footage that is provided by the Magistrate and the Judge.
- 205.** With regard to Particular 1.2(b), the Authority is satisfied, on the basis of the Notice of Dismissal of Appeal from the Parramatta District Court of NSW dated 13 March 2015 (Complainant Exhibit E08) and the email from Constable Ashley Bull of NSW Police, Cabramatta Local Area Command to OLGR dated 11 February 2015 (Complainant Exhibit E10), that on 10 July 2014 Mr Martin was convicted of assault with act of indecency in the Liverpool Local Court. Particular 1.2(b) is established. The Authority notes that this Particular is apparently not in dispute.
- 206.** With regard to Particular 1.2(c), the Authority is satisfied, on the basis of the Notice of Dismissal of Appeal from the Parramatta District Court of NSW dated 13 March 2015 (Complainant Exhibit E08), that on 14 August 2014 Mr Martin's conviction was recorded and he was sentenced to 12 months good behaviour with a \$500 fine. Particular 1.2(c) is established. The Authority notes that this Particular is apparently not in dispute.
- 207.** With regard to Particular 1.2(d), the Authority is satisfied, on the basis of the Notice of Appeal to the District Court of NSW dated 14 August 2014 (Complainant Exhibit E09), that on 14 August 2014 Mr Martin lodged an appeal on all grounds of the matter. Particular 1.2(d) is established. The Authority notes that this Particular is apparently not in dispute.
- 208.** With regard to Particular 1.2(e), the Authority is satisfied, on the basis of the Notice of Dismissal of Appeal from the Parramatta District Court of NSW dated 13 March 2015 (Complainant Exhibit E08) and the Notice of Appeal to the District Court of NSW dated 14 August 2014 (Complainant Exhibit E09), that on 5 December 2014 the appeal was heard in the Parramatta District Court. Particular 1.2(e) is established. The Authority notes that this Particular is apparently not in dispute.
- 209.** With regard to Particular 1.2(f), the Authority is satisfied, on the basis of the Notice of Dismissal of Appeal from the Parramatta District Court of NSW dated 13 March 2015 (Complainant Exhibit E08), that on 15 December 2014 a District Court Judge dismissed the appeal, but varied the orders made in the Local Court in order to dismiss the matter and deal with it pursuant to section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*. That is, the offence of assault with an act of indecency by Mr Martin was proven without proceeding to a conviction. Particular 1.2(f) is established. The Authority notes that this Particular is apparently not in dispute.
- 210.** On the basis of the above findings, the Authority is satisfied that Particular 1.2 of the Complaint has been established.

- 211.** The Authority is satisfied that the Ground of Complaint has been established and that Mr Martin “failed to exercise his duties as the Club President with a degree of knowledge, ability, care and diligence required for the position” while Mr Martin acted in that role between 2004 and 2015.
- 212.** The Authority has considered the positive character evidence provided by Mr Martin in his statement dated 15 October 2015 and the statutory declarations provided by the Club security contractor on 14 October 2015 and three short personal references dated 16 October 2015 and 19 October 2015.
- 213.** The Authority accepts, on the basis of Mr Martin’s statement dated 15 October 2015, that Mr Martin is aged 84 and that he is the carer for his ill wife. The Authority accepts that Mr Martin has no prior criminal record and does not, at this time, have any convictions recorded against him. The Authority accepts that Mr Martin has made a positive contribution to the community, including his service in the Royal Australian Navy in the 1950s and his more recent service to the Club, which is a major local community enterprise of some considerable scale.
- 214.** While the Club has not published its latest Annual Report on its website at the time of this decision, the Authority noted in its decision on the O’Brien Complaint that the Club’s then published Financial Report for 2013 disclosed a consolidated profit (revenue less expenses) from the Club’s gaming machine business across its two premises at Canley Vale and Campbelltown of **\$29,566,933.00**. This provides an indication of how substantial this Club’s operations are in the local community.
- 215.** The Authority accepts that Mr Martin has been a member of the Club since 1964 and became a life member in 2002 and that he spent approximately 15 hours per week engaged in unpaid work for the Club, save for a notional honorarium. The Authority also accepts that Mr Martin has no prior involvement with Police and has not received any adverse comments or complaints in his working life, his personal life or during his time as a member of the Club.
- 216.** The Authority accepts these matters and has taken them into account in an assessment of his general character. However, when considering Mr Martin’s character, the Authority must also have regard to the matter that is the subject of this Complaint – the facts and circumstances of the indecent assault, that the Authority is satisfied occurred on the balance of probabilities.
- 217.** While the AVO against Mr Martin was issued after the filing of this Complaint and does not form part of the Particulars specified in the Ground of Complaint, the AVO and the information that prompted the Court to issue that Order is nevertheless information pertaining to a broader assessment of Mr Martin’s character that is before the Authority for the purposes of this Complaint and cannot be ignored. It is appropriate to have regard to that information along with the positive evidence going to an assessment of Mr Martin’s honesty, knowledge and ability.
- 218.** Notwithstanding that Mr Martin’s personal history is free of prior convictions for licensing or other offences, the Authority is satisfied that the misconduct in question evidences a serious lack of personal judgement as to what personal conduct is expected by a member of a club board in relation to a staff member on duty. The Authority considers Mr Martin’s conduct to represent a significant incident of sexual harassment for a junior employee to receive kisses on the mouth by a Club chairman many years her senior without her consent.

- 219.** The Authority would be more willing to dismiss the incident as a “moment of madness” or a lapse in personal judgment were there not some element of planning around the misconduct. It is a common enough human experience for people to embarrass themselves romantically. However, the Authority is satisfied, on its assessment of all the material before it and noting particularly the Judge’s examination of the CCTV evidence, that there was an element of premeditation and planning to Mr Martin’s conduct. The Authority finds Mr Martin’s conduct to be entirely at odds with the stature of a man of Mr Martin’s position in the organisation. The Authority does not consider it likely that Mr Martin would have ended up in a stairwell, away from CCTV cameras or the observation of others, with a junior staff member, without some degree of premeditation.
- 220.** The Authority is further satisfied that there was a substantial power imbalance at play on the basis of the comparative age and status of Mr Martin and Ms Clarke in the Club organisation. Mr Martin is 84 years old. He has been the Club president since September 2004 and a member of the governing body since March 1999. He has held senior positions with the Club for many years before that.
- 221.** Ms Clarke is employed as an assistant in the Club’s bar and gaming operations. The Authority expects that Ms Clarke’s job was of some importance to her. It is not in dispute that she was on duty on the evening of 23 December 2013. While Mr Martin submits that he was at the Club in a private capacity on the day of the assault, he was nevertheless on Club premises and he cannot realistically separate his status as Club President when dealing with an employee by reason that he was not carrying out Board functions at the time of this incident.
- 222.** The Authority is concerned as to the extent to which Mr Martin takes responsibility for his conduct in his submissions. He has (as is his right) challenged his Local Court conviction and secured dismissal of the matter on appeal with no conviction recorded by the District Court.
- 223.** However the offence was proven to the criminal standard. Mr Martin’s oral submissions during his interview with Liquor and Gaming New South Wales and his submissions to the Authority speak to the regret and embarrassment he feels and the financial and emotional impact of the Court proceedings upon him, but there is limited focus, in the material before the Authority, upon the impact of his conduct, proven to the criminal standard, upon Ms Clarke.
- 224.** The Authority accepts that Mr Martin has been embarrassed and that the Court proceedings have been very stressful for him, but the facts found in relation to the indecent assault satisfies the Authority that, on balance, notwithstanding his good personal record, Mr Martin is not a fit and proper person to be the member of a governing body of a registered club. A finding as to Mr Martin’s fitness is not concerned with punishing Mr Martin, but an assessment of what is in the public interest in respect of the protection of the community and the industry.
- 225.** The Authority does not equate Mr Martin’s conduct with the misconduct at issue in the O’Brien Complaint, but that recent complaint provides a context to this matter in which Mr Martin ought to have been alive to the Club’s tarnished reputation from inappropriate conduct in the workplace perpetrated by high level officers of the Club. Mr Martin should have taken greater care, as the Club’s chairperson, than to sexually harass a junior staff member while she was on duty and on the Club premises. This conduct suggests that Mr Martin is simply out of touch with what conduct is

appropriate in the modern workplace and it reflects adversely upon his ability as a member of a governing body of a registered club.

- 226.** While the Ground of Complaint has been established without needing to refer to the Additional Material, the Authority is satisfied that Mr Martin engaged in further conduct after his Local Court conviction that moved the Court to issue an AVO against Mr Martin on 9 June 2015. This evidence or material is discussed below.

DECISION ON DISCIPLINARY ACTION

- 227.** The purpose of disciplinary action under Part 6A of the Act is protective rather than punitive and when considering disciplinary action, the Authority is concerned with reducing the risk posed by the individual in question, for the protection of the public.
- 228.** The Authority has considered the Complaint and all of the material before it, including the oral submissions made on behalf of Mr Martin at the Conference on 27 April 2016.
- 229.** On the evidence or material before it and its findings on the Ground of Complaint, the Authority is satisfied that on 23 December 2013 Mr Martin, who held the position of President of the Club at the time, committed a pre meditated indecent assault upon a young female employee of the Club many years his junior, on the Club premises on 23 December 2013.
- 230.** While not at the most serious end of criminality, the seriousness of Mr Martin's overall conduct for the purposes of disciplinary proceedings is underscored by his status within the Club organisation and his further behaviour toward this junior employee, which culminated in the issue of an Apprehended Violence Order against Mr Martin in June 2015.
- 231.** While the Apprehended Violence Order is not specified as a particular of the Ground of Complaint, the Complainant does make the general submission that this further conduct is relevant to an assessment of Mr Martin's character. The Authority accepts that this information is relevant to a decision on whether disciplinary action is appropriate.
- 232.** The Authority has considered Mr Martin's submissions and his positive character evidence. The Authority accepts that Mr Martin has no prior criminal record and still does not have a criminal record. The Authority accepts that Mr Martin has made a significant positive contribution to the community over the years at the Club and also through his past military service.
- 233.** However, Mr Martin's conduct in relation to the indecent assault at the Club and the subsequent AVO issued against him is, in the Authority's view, compounded by Mr Martin's limited expression of responsibility for this matter and his attempts to minimise the seriousness of this Complaint.
- 234.** The Authority does not consider, on the material before it, that Mr Martin genuinely appreciates his leadership obligations as a member of the governing body of a major local community enterprise with a diverse workforce.
- 235.** Mr Martin's conduct has also been considered in the context of a Club that has only recently demonstrated (through the O'Brien Complaint) serious shortcomings as to the knowledge and ability demonstrated by senior management, with regard to appropriate standards of inter personal conduct in the contemporary workplace.

- 236.** The O'Brien Complaint resulted in the disqualification of the former secretary, Mr O'Brien from holding a position of secretary or membership of a governing body after the Board did not take action to remove him. Mr Martin was Club President at that time.
- 237.** While the Authority does not consider that Mr Martin's conduct rises to the level of seriousness of Mr O'Brien's conduct, the Club's experience with the O'Brien complaint should have made clear to Mr Martin that higher standards of personal conduct were expected of senior officers to avoid further adverse impact upon the Club's employees or further reputational damage to the Club.
- 238.** Mr Martin's conduct indicates a serious lack of diligence in this regard. He acted with a degree of impunity with regard to a junior employee. His conduct is inconsistent with his long standing position of leadership and responsibility as a senior officer of the Club.
- 239.** Notwithstanding that Mr Martin has now resigned, there is a real chance that Mr Martin may seek to serve of this Club or another club board again. He does not submit that he is physically unable to serve as a director.
- 240.** Whether or not Mr Martin seeks such appointment, disciplinary action will send a message to the industry that conduct of this kind will be met with a strong disciplinary response, particularly when a Club has demonstrated repeated cultural problems, at senior levels of management, that have given rise to repeated disciplinary action.
- 241.** The Authority considers that the best disciplinary response to protect this Club, the wider industry and community is to declaring Mr Martin ineligible to hold a regulated position in the industry for three years, noting that this is the maximum period of disqualification available under the Act.
- 242.** These apparent cultural problems also warrant the imposition of a new licence condition requiring the Club's employees to participate in the annual training, as recommended by the Complainant, which is not opposed by the Club.
- 243.** The Authority notes that the Club has not opposed an order that it pay the Secretary's costs on the investigation that gave rise to this Complaint, subject to particulars being provided. Those costs have now been particularised by the Complainant to the Authority's satisfaction.

ORDERS

244. The Authority makes the following orders:

- (i) To impose, under section 57H(2)(e) of the Act, a condition on the Club licence that states:

The Club board and employees will undertake annual training, each calendar year, commencing in 2016, on appropriate workplace conduct. Such training shall be delivered by a registered training provider.

- (ii) To declare, pursuant to section 57H(2)(g) of the Act, that Mr Stan Martin is ineligible to stand for election, or to be appointed to, or to hold office in, the position of either secretary or member of the governing body of this Club or any

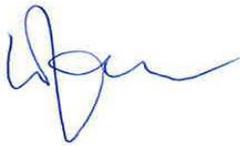
other registered club in New South Wales for a period of three (3) years from the date of this decision; and

- (iii) To order, pursuant to section 57H(2)(i) of the Act, that the Club pay to the NSW Department of Justice the costs incurred by the Secretary of the Department of Justice on the investigation or inquiry in relation to the Club under section 35A of the Act, being **\$10,019.00**, to be paid to the Department of Justice within 12 months of the date of this decision.

REVIEW RIGHTS

245. Pursuant to section 57L of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant, the Club or any person against whom disciplinary action is taken by the Authority under Part 6A of the Act. An application for review should be made within 28 days of the date of notification of this decision.

246. Please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney for further information.



Decision Date: 31 August 2016
Philip Crawford
Chairperson