



Mr Sean Goodchild
Director, Compliance Operations
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Mr Robert Fletcher
[private address not published]

Mr Thomas Green
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Greyhound Social Club
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7 March 2017

Dear Sir

Notice of Final Decision with Reasons on Complaint under Part 6A of the *Registered Clubs Act 1976* in relation to the Greyhound Social Club Ltd, Yagoona

At its Board meeting on 22 February 2017 the Independent Liquor and Gaming Authority finalised a complaint made on 22 June 2016 in relation to the Greyhound Social Club Ltd by a delegate of the Secretary of the Department of Justice under Part 6A of the *Registered Clubs Act 1976 (Act)*.

The Authority has decided to take the following disciplinary action:

- (i) Declare, pursuant to section 57H(2)(g) of the Act, that for a period of three (3) years Mr Robert Fletcher be ineligible to stand for election, or to be appointed to, or hold office in, the position of secretary or member of a governing body of the Greyhound Social Club Ltd (**Club**) and all other registered clubs in New South Wales, with effect from the date of this decision letter.
- (ii) Order, pursuant to section 57H(2)(a) of the Act, that the Club pay a monetary penalty in the amount of **\$13,000**, payable to the New South Wales Department of Justice no later than 28 days from the date of this letter.
- (iii) Order, pursuant to section 57H(2)(i) of the Act, that the Club pay the costs incurred by the Secretary of the Department of Justice in conducting the investigation that preceded the Complaint, in the sum of **\$23, 839.42** payable to the Department of Justice no later than 28 days from the date of this letter.
- (iv) Decide, pursuant to section 57H(2) of the Act, to take no disciplinary action against the Club's former Chairperson, Mr Thomas Green.

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

Yours faithfully

David Armati
Deputy Chairperson
Independent Liquor and Gaming Authority

STATEMENT OF REASONS

INTRODUCTION

Complaint Material

1. On 22 June 2016, the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint (**Complaint**) from Mr Sean Goodchild (**Complainant**), Director Compliance Operations of Liquor & Gaming New South Wales (**LGNSW**), in his capacity as a delegate of the Secretary of the Department of Justice. The Complaint comprises a cover letter from the Complainant dated 22 June 2016 (**Complaint Letter**) and a bundle of supporting evidence or material (**Complaint Material**).
2. The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (**Act**) in relation to the Greyhound Social Club Ltd (**Club**).
3. Attached to the Complaint Letter are **64** Exhibits which comprise over **1,100** pages of Complaint Material, including transcripts of records of interview between LGNSW inspectors and Club directors and accountants; copies of Club board meeting minutes; Club auditor reports; Club bank account statements; Club financial statements and various other miscellaneous documents gathered during the course of the LGNSW investigation into the Club that gave rise to this Complaint.
4. An extract of the *OneGov* record of the Club's liquor licence as at 5 April 2016 that is provided with the Complaint Material indicates that the Club holds a registered club licence number LIQC300227545 under the *Liquor Act 2007*. The licence permits the sale or supply of liquor for consumption on the licensed premises 24 hours a day, and for consumption off the premises from 5:00am to 10:00pm on Monday through Saturday and from 10:00am to 10:00pm on Sunday.
5. The Complaint Letter states that the Club premises is located at 140 Rookwood Road, Yagoona NSW 2199. The Club operates as a multi-function facility, which includes a gaming area with 32 gaming machine entitlements, plus bar and bistro areas. The Complaint Letter advises that the Club also maintains the adjacent Potts Park Greyhound Racing Track and receives funding from Greyhounds NSW to maintain this facility.
6. The Complainant notes that at the time of this Complaint, the Club's secretary/manager on the liquor licence record is Mr Michael Ekert, whose appointment commenced on 22 December 2015.
7. By way of background, the Complainant advises that in June 2015 the Club applied to LGNSW to surrender its extended trading authorisation pursuant to section 51(9)(b) of the Act and seek *waiver* of its annual liquor licence fee under clause 5M of the *Liquor Regulation 2008* on financial hardship grounds. During LGNSW's review of Club records for the purposes of assessing that application, LGNSW Inspector Reshty identified "major anomalies" in the Club's accounts.
8. LGNSW inspectors issued notices to the Club under section 21 of the *Gaming and Liquor Administration Act 2007* and LGNSW conducted formal interviews with a number of current and former members of the Club's governing body, along with former and current Club secretaries. Inspectors also interviewed representatives of the Club's auditor, JAG Business Advisory (**Auditor**), Mr Jayant Gulwadi and Mr Gagen

Sud, together with Ms Celia Reichelt – a forensic accountant at Crawford & Co who provided an investigation report on behalf of the Club’s insurer, AIG.

9. The Complainant contends that this investigation revealed the Club’s non-compliance with legislation, misappropriation of Club funds, a lack of due diligence and control by the governing body and a general failure by the Club to adopt or adhere to industry best practice standards or to seek guidance from industry peak bodies including *ClubsNSW*.
10. The Complainant submits that the evidence obtained by LGNSW inspectors shows that over a number of years, until at least October 2014, there were “serious and systemic failures” of “corporate governance and financial controls” at the Club. Those failures and lack of due diligence by the then Club executive and governing body enabled the former secretary, Mr Robert Fletcher, to withhold the true financial position of the Club’s accounts from its governing body.
11. The Complainant alleges that Mr Fletcher, the Club’s secretary from 1996 to 1 October 2014, failed to report to the Club board substantial discrepancies that had been identified by the Club’s auditors in the Club’s trading accounts – including unreconciled deposits and cheques that had contributed to an overall shortfall of approximately \$300,000.00. The Complainant further alleges that the Club’s former secretary, Mr Fletcher misappropriated Club funds and that NSW Police are currently investigating his alleged criminal conduct.
12. The Complainant contends that during the relevant period of this Complaint Mr Thomas Green, the Club’s President and member of the governing body, was aware of the relevant corporate governance failures and mismanagement by Mr Fletcher. The Complainant contends that Mr Green was present during meetings with the Club’s Auditor who had raised serious concerns about large discrepancies in the Club’s accounts. The Complainant further alleges that Mr Green failed to take appropriate action to protect the Club’s assets and address what amounted to possible criminal conduct by Mr Fletcher.

GROUNDS OF COMPLAINT

13. The Complaint Letter specifies eight (8) grounds of complaint (**Grounds**), all of which are based upon statutory grounds available under section 57F(3) of the Act. Briefly:
14. **Grounds 1 to 6** are based on section 57F(3)(d) of the Act, which provides:

that the club has contravened a provision of this Act, whether or not it has been convicted of an offence in respect of that contravention.
15. Ground 1 alleges that the Club contravened section 34 of the Act when, between 2 March 2015 and 21 December 2015, the Club permitted a person (Mr Michael Ekert) to act as secretary of the Club without being approved by the Authority to act in that capacity.
16. Ground 2 alleges that the Club contravened section 32 of the Act when, between 2 March 2015 and 24 September 2015, both Mr Michael Ekert and Mr Thomas Green were in the position of secretary/CEO at the Club. That is, more than one person was acting as club secretary at the same time.

17. Ground 3 alleges that the Club contravened section 41M of the Act when, between 1996 and October 2014, it entered into contracts of remuneration with the Club secretary/CEO Mr Robert Fletcher without those contracts being first approved by the Club governing body.
18. Ground 4 alleges that the Club contravened section 41U of the Act when the Club did not give written notice to Mr Robert Fletcher or Mr Michael Ekert that they were a “top executive” of the Club.
19. Ground 5 alleges that the Club contravened clause 17 of the *Registered Clubs Regulation 2009* when the Club did not prepare financial statements on a quarterly basis as required by clause 17.
20. Ground 6 alleges that the Club contravened clause 18 of the *Registered Clubs Regulation 2009* when it did not record the information specified and keep it in an approved form as required by clause 18.
21. **Grounds 7 and 8** are based on section 57F(3)(g) of the Act, which provides:

that the secretary of the club or any other member of the governing body of the club is not a fit and proper person to act as such.
22. Ground 7 alleges that Mr Robert Fletcher, who was the Club’s secretary/CEO between 1996 and 1 October 2014, is not a fit and proper person to hold the position of secretary or member of the governing body of the Club by reason that he failed to exercise his duties as the secretary/CEO of the Club with the degree of knowledge, ability, care and diligence required of a secretary/CEO of a company limited by guarantee and to a standard required in the industry and by the relevant legislation.
23. Ground 7 specifies that Mr Fletcher is not a “fit and proper” person on the basis of the allegations made in Particulars 7.3(a) through 7.3(r) of this Ground, which are detailed in the Findings section of this letter.
24. Ground 8 alleges that Mr Thomas Green, who was a member of the Club’s governing body and its President/Chairman from 1996 to 8 October 2015 and the Club’s approved CEO/secretary from 1 October 2014 to 24 September 2015, is not a fit and proper person by reason that he failed to exercise his duties as a secretary/CEO and a member of the Club’s governing body with the degree of knowledge, ability, care and diligence required of a secretary/CEO and member of the governing body of a company limited by guarantee and to a standard required in the industry and by the relevant legislation.
25. Ground 8 specifies that Mr Green is not a “fit and proper” person on the basis of the allegations in Particulars 8.3(a) through 8.3(v) of this Ground, which are detailed in the Findings section of this letter below.

DISCIPLINARY ACTION RECOMMENDED BY THE COMPLAINANT

26. The Complainant submits that the standard of conduct that was exercised by Messrs Fletcher and Green, being duly appointed officers of a registered club and persons responsible for the management and corporate governance of the Club’s and members’ assets, is such that disciplinary action is warranted and both Messrs

Fletcher and Green ought to be found “not fit and proper persons” to be either a member of a governing body or a secretary of a registered club.

27. Messrs Fletcher and Green were entrusted with the authority and the responsibility to acquaint themselves with legislative obligations of a registered club and take all reasonable steps and exercise due diligence to ensure good corporate governance. The Complainant contends that they both failed to act in the best interests of the Club and its members and failed to obtain timely and appropriate training for themselves and other members of the Club’s governing body in key corporate governance practices and to ensure relevant legal compliance.
28. The Complainant calls for disciplinary action that is “proportionate” to the seriousness of the conduct and standard of behaviour demonstrated by Mr Fletcher and Mr Green and submits that this will act as a “general and specific deterrent” to other industry participants contemplating similar behaviour.
29. The Complainant recommends that the Authority disqualify Messrs Fletcher and Green for a period of three years from holding a regulated position at the Club or any other registered club pursuant to section 57H(2)(g). The Complainant recommends that the Authority order a monetary penalty in an amount “considered appropriate” by the Authority pursuant to section 57H(2)(a) of the Act and the Complainant also seeks an order pursuant to section 57H(2)(i) that the Club pay the Secretary’s costs on the investigation that preceded this Complaint.

CONSULTATION ON THE COMPLAINT

Show Cause Notices

30. On 18 July 2016, the Authority sent a notice to the Club (**Show Cause Notice**) enclosing the Complaint Material and inviting the Club to show cause, by way of written submissions, why disciplinary action should not be taken against it on the basis of the Grounds of Complaint.
31. On 18 July 2016 the Authority sent similar correspondence inviting written submissions or evidence in reply to the Complaint addressed to Mr Fletcher and Mr Green personally.
32. On 17 August 2016 Mr Michael Ekert, Secretary/CEO of the Club, advised the Authority by email that the Club did not propose to make any submissions on the Complaint.
33. On 5 September 2016, Mr Green provided his response by way of a 24-page submission letter (**Green Submission**) attaching a number of further documents which include:
 - Extracts of a transcript of a record of interview between LGNSW inspectors and Mr Green conducted on 29 January 2016;
 - Extracts of the *Registered Clubs Act 1976*;
 - Extract of a statement by LGNSW Inspector Michael Hanley dated 9 March 2016;
 - Letter dated 4 February 2016 to Mr Green confirming his renewal of membership to the Club Directors’ Institute;
 - Pages 67 to 86 of the February issue of *Club Director* magazine;
 - Pages 87 to 90 of the Club Directors’ Institute 2016 Pamphlet;

- Extract of report on Fidelity Guarantee Claim from Ms Celia Reichelt of Crawford & Co to the Club dated 18 February 2015;
- Club Bank Statements – Account Transactions (Accrual) for 01/07/13 to 31/07/13;
- Letter from Nelson Architecture to the Club (undated) regarding the Potts Hill Development;
- Notification to the Club of rent increase dated 16 November 2015;
- Email correspondence between Mr Fletcher and Club director Mr Roach regarding strategic planning and options dated 15 February 2013;
- Strategic Plan for the Club dated 28 November 2005 and revised in February 2013;
- Draft New Operating Standards Manual for the Club (undated).

34. Without purporting to restate all of Mr Green’s submissions, his position on the Particulars of the Complaint is briefly noted in the findings below.

35. Mr Fletcher has made no response to the Complaint whatsoever.

Authority Meeting on 12 October 2016

36. Mr Green requested the opportunity to attend the Authority board meeting on 12 October 2016 (**Meeting**) for the purpose of making supplementary oral submissions on the merits of the Complaint.

37. At the Meeting, the Complainant noted that the Grounds of Complaint solely concern breaches of the Act and the general requirements of fitness and propriety. However the specific case against Mr Green relates to failures of governance. The Complainant accepts that the Club engaged Auditors, but is concerned about the findings in the Auditor’s reports and the contents of letters sent from the Auditor to Club management.

38. In response to the Complainant’s comments, Mr Green made the following observations and contentions:

- Mr Green contends that he has been involved in the industry for 60 years, 52 of them as an employee of the Club. Mr Green states that he has also been appointed in four roles by the Office of Liquor, Gaming and Racing (the predecessor of LGNSW).
- Mr Green submits that this Complaint is the product of him being “targeted” by LGNSW by reason of his involvement with the greyhound racing industry in New South Wales.
- Of the 52 years that he has worked with the Club, 30 years were served as the Club’s secretary/CEO and 18 of them were served as its President. Mr Green submits that some of the questions put to him by LGNSW inspectors during his interview were asked at a “difficult time” and while Mr Green “was on painkillers”.
- Mr Green submits that he “trusted” the former CEO Mr Fletcher and the Club’s Auditors, JAG Business Advisory. He contends however that the Auditors did not “do the job they were paid for”. Mr Green contends that for three years Mr Fletcher had been deceiving the Club, but the Auditors did not once approach Mr Green and notify him of any concerns in this regard.

- Mr Green submits that the Club Auditors were of the view that Mr Green was “honest and naïve”. Mr Green submits that he is “not responsible” for Mr Fletcher’s actions and contends that the Club did not know there were any problems with Mr Fletcher’s conduct until Mr Fletcher left the Club. Mr Green submits that once the problems with Mr Fletcher became apparent, he notified NSW Police, WorkCover and the Club’s solicitors. Mr Green volunteered to serve as the Club’s CEO for a period after Mr Fletcher’s departure.
- In response to the allegation that the Club had two Secretary/CEOs in place at the same time, Mr Green contends that Mr Ekert was kept “in a holding pattern” until the point at which Police charged Mr Fletcher. Mr Green contends that he was the only person actually serving as the Club’s CEO following Mr Fletcher’s departure from the Club.
- Mr Green makes the general submission that he “disputes” all of the other alleged breaches of the Act that are specified in the Complaint, save for the allegation that the Club failed to post quarterly financial statements on the Club’s noticeboard. With regard to this matter Mr Green submits that the Club was unable to comply with this requirement after Mr Fletcher had left the Club by reason that the Club’s figures were “inaccurate” and it would have been “dishonest” to have posted incorrect figures. Mr Green further contends that there were electrical storms in the ensuing period following Mr Fletcher’s departure from the Club causing loss of data to the Club and he did not have all the relevant information on hand.
- With regard to the Complainant’s allegations regarding the investment of Club funds into *Provident Finance*, Mr Green submits that the Club invested its money with *Provident* on advice from the Club’s Auditors and on the basis that *Provident* “seemed sound”. Mr Green contends that he personally attended meetings with *Provident* and that he raised any issues with the Club board. Mr Green contends that *Provident* “went through the financial crisis” and the company was placed into receivership even though (according to Mr Green) it was not actually insolvent. Mr Green contends that he has attended every Court case involving *Provident*.
- With regard to allegations by the Complainant that the Club did not apply proper tender processes, Mr Green contends that the Club has used a tender process “for 52 years”.

FINDINGS

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

Findings on Ground 1

40. Particular 1 of Ground 1 alleges that between 2 March 2015 and 21 December 2015 the Club permitted a person to act as the secretary of the Club without being approved by the Independent Liquor and Gaming Authority, in contravention of section 34 of the Act.

41. Section 34 states:

34 Unapproved person not to act as secretary of registered club

(1) *In this section,*

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

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

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

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

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

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

42. Particular 1.2 alleges that at a meeting of the Club's governing body on 25 January 2015 a resolution was passed endorsing that Mr Michael Ekert be appointed to the position of CEO of the Club with a commencement date of 2 March 2015. Mr Ekert was given a letter dated 28 January 2015 confirming his appointment to the position of CEO with the agreed annual salary of \$85,000 plus superannuation. This letter was signed by Mr Thomas Green, the President/Chairman of the Club.

43. Particular 1.2(a) alleges that this occurred in circumstances where Mr Ekert was not approved by the Authority to act as a club secretary/CEO in accordance with section 33 of the Act until 22 December 2015. He was responsible to the governing body of the Club for the management of the business and affairs of the Club from 2 March 2015.

44. In the Green Submission, Mr Green contends that when Mr Fletcher ceased coming into work the Board was aware that the workload would be too much for Mr Green to carry on as voluntary or acting CEO and a replacement CEO was required. Mr Green interviewed Mr Ekert and the Board agreed to appoint him when he attended the board

meeting of 25 January 2015. The Club gave Mr Ekert a letter of appointment dated 28 January 2015.

45. Mr Green contends that Mr Ekert was appointed in March 2015 and paid the agreed salary but was then considered to be in a “learning phase”, especially with respect to the greyhound racing side of the business, of which he had no knowledge. Notwithstanding his appointment, Mr Green contends that Mr Ekert was not responsible for signing club cheques or banking and that “President and Acting CEO” Mr Green remained legally responsible for control of the Club and this was reported in the Club’s 2015 Annual Report.
46. Mr Green submits that it was always the intention of the governing body to switch over control from Mr Green to Mr Ekert “as soon as practical” and Mr Ekert was fully aware of this. In September 2015 Mr Ekert was instructed by the Board to apply for the position of secretary/CEO and take over Mr Green’s position as acting CEO.
47. Mr Green submits that although it “could be interpreted that there were two CEOs” in that Mr Green was approved by the Authority as CEO on 1 October 2014 and held that position until he resigned on 24 September 2015, Mr Green was actually “the one carrying out the responsibilities of the Club at that time”.
48. The Authority is satisfied, based on the Minutes for that Club board meeting and a copy of the letter from the Club dated 28 January 2015 to Mr Ekert confirming his appointment as CEO, that the Club determined to appoint Mr Ekert at that meeting on 28 January 2015 with a commencement date of 2 March 2015.
49. The Authority notes, on the basis of a club licence record dated 23 September 2015, that this occurred in circumstances where Mr Green was the only secretary on the licence record indicating that Mr Green had been the approved secretary since 1 October 2014.
50. A copy of the Club’s licence record dated 5 April 2016 in evidence before the Authority indicates that Mr Ekert was not approved to act as a club secretary, in accordance with section 33 of the Act, until 22 December 2015. The Authority makes this finding having considered Mr Green’s written and oral submissions and on the basis of the following evidence or material:
 - Letter from Club to Mr Ekert dated 28 January 2015 signed by Mr Green appointing Mr Ekert as Chief Executive Officer;
 - Club Minutes of Board Meeting dated 28 January 2015;
 - Club *Annual Report* for 2014/15 – particularly the President’s Report section;
 - Record of interview between LGNSW inspectors and former Club director Mr Barry Colless dated 18 January 2016 (**Colless Interview**) at pages 13 to 15;
 - Record of interview between LGNSW inspectors and current Club director Mr Noel Hayward dated 19 January 2016 (**Hayward Interview**) at page 13;
 - Record of interview between LGNSW inspectors and former Club president Mr Thomas Green dated 29 January 2016 (**Green Interview**) at pages 16 to 17;
 - Record of interview between LGNSW inspectors and current Club director Mr Lindsay Roach dated 19 January 2016 (**Roach Interview**) at pages 10 and 12; and
 - Record of interview between LGNSW inspectors and former Club director Mr Harold Haywood dated 18 January 2016 (**Haywood Interview**) at pages 12 to 14.

51. While Mr Green has described the early stages of Mr Ekert's appointment as a "holding pattern" or "learning phase" until Police charged Mr Fletcher, the evidence establishes that Mr Ekert was in fact appointed to act as the Club's secretary with a commencement date from 2 March 2015. None of the members of the governing body have asserted that Mr Ekert was approved by the Authority to act as a club secretary during the relevant period specified by this Ground and there is no other evidence or material before the Authority to that effect.

52. Ground 1 is established.

Findings on Ground 2

53. Particular 1 of Ground 2 alleges that the Club failed to meet the requirements of section 32 of the Act that requires that a registered club has one, but not more than one, secretary.

54. Relevantly, section 32(1) of the Act states:

32 Registered club to have only one secretary

(1) *A registered club must at any time have one, but not more than one, secretary who is to be the chief executive officer of the club.*

Maximum penalty: 100 penalty units.

55. Particular 2.2 alleges that between 2 March 2015 and 24 September 2015 both Mr Michael Ekert and Mr Thomas Green were acting in the position of secretary/CEO of the Club.

56. Particular 2.2(a) alleges that this occurred in circumstances where Mr Green was approved by the Authority as the secretary/CEO of the Club on 1 October 2014 and held that position until he resigned on 24 September 2015. Particular 2.2(b) alleges that this occurred in circumstances where Mr Ekert was appointed by the governing body of the Club as the CEO with a start date of 2 March 2015. He was responsible to the governing body of the Club for the management of the business and affairs of the Club. He was approved by the Authority as the secretary/CEO on 22 December 2015.

57. The Authority notes that Mr Green relies on his submissions on Ground 1 in respect of Ground 2.

58. The Authority is satisfied, having considered Mr Green's written and oral submissions and noting the copies of the *OneGov* record of the licence for the Club as at 23 September 2015 and 5 April 2016 respectively, provided in the Complaint Material, that both Mr Michael Ekert and Mr Thomas Green were acting in the position of secretary/CEO of the Club between 2 March 2015 and 24 September 2015. The Authority refers to the evidence and material noted in support of its findings on Ground 1 as also supporting Ground 2.

59. Ground 2 is established.

Findings on Ground 3

60. Particular 1 of Ground 3 alleges that the Club failed to meet the requirements of section 41M of the Act in that it entered into contracts of remuneration with the Club secretary/CEO Mr Robert Fletcher that were not first approved by the governing body of the Club.
61. Particular 3.2(a) alleges that Mr Fletcher served as the approved secretary/CEO of the Club from 1996 until 1 October 2014, in circumstances where there was no employment contract or contract of remuneration between the Club and Mr Fletcher that had been approved by the Club's governing body until 4 September 2013.
62. Particular 3.2(b) alleges that Mr Robert Fletcher received wage increases that were not approved by the Club's governing body throughout his period of employment at the Club, in that:
- (i) as at 21 April 2010, Mr Fletcher's gross weekly wage was \$1,441.84 (\$74,975.70 annually), however with additional unapproved overtime his actual yearly gross salary for the financial year ended 30 June 2010 was \$131,689 (average \$2,532.50 per week);
 - (ii) as at 13 April 2011, Mr Fletcher's weekly gross wage increased to \$1,467.34, however with additional unapproved overtime his gross salary for the financial year ended 30 June 2011 was \$139,943 (average \$2,691.20 per week);
 - (iii) as at 6 July 2011, Mr Fletcher's weekly gross wage increased to \$1,517.25, however with additional unapproved overtime his gross salary for the financial year ended 30 June 2012 was \$145,200 (average \$2,792.31 per week);
 - (iv) as at 1 August 2012, Mr Fletcher's weekly gross wage increased to \$1,550.00, however with additional unapproved overtime his gross salary for the financial year ended 30 June 2013 was \$169,107.00 (average \$2,792.30 per week).
63. Section 41M of the Act states as follows:
- 41M Remuneration of top executives**
- A registered club must not **enter into a contract** for the remuneration by the club of a top executive of the club unless the proposed contract has **first been approved** by the governing body of the club.*
64. The Authority notes that in the Green Submission Mr Green contends that Mr Fletcher was employed by the Club in 1996 under the Club Managers (NSW) Award, pursuant to which Mr Green was also employed. This award was based on the number of staff employed. The base wage had an allowance for cleaning, clothing and car allowance; with overtime on top at the award rate.
65. Mr Green submits that Mr Fletcher was to check all wages and overtime of his staff and ensure that all timesheets were prepared and signed by employees, including himself, on payment of their wages.
66. Mr Green submits that "as a small club that was trading poorly" the Club relied on Mr Fletcher's "honesty and integrity as CEO". Mr Fletcher was a person of "high esteem" and prior to becoming CEO of the Club, had been a director for 10 years. Mr Green submits that the Police investigation into Mr Fletcher has "mystified" all those who knew Fletcher.

67. Mr Green submits that he (Mr Green) never claimed overtime even though he was working “at least 80 hours per week”. He submits that Mr Fletcher was entitled to claim overtime but contends that to his knowledge, Mr Fletcher did not claim any overtime “until the last 14 years of his employment”.
68. Mr Green submits that during the last 3 years of Mr Green’s involvement with the Club, there were problems with staff taking time off for health issues or holidays, causing managerial personnel a “constant nightmare”. Mr Green himself had three major operations on his spine (on 22 February 2013, 13 December 2013 and 30 May 2014). During this time, Mr Green questioned Mr Fletcher as to the overtime claimed by him being out of proportion to his employment. Mr Green contends that Mr Fletcher had included entitlements to annual leave of 5 years.
69. Mr Green contends that he met with the senior adviser of the Club Managers’ Association, who observed that Mr Fletcher was entitled to claim overtime, although his base salary was too high. Mr Green reported back to the governing body, which offered Mr Fletcher a salary package of \$100,000 annually, containing all his entitlements, which Mr Fletcher then accepted at the Board meeting on 4 September 2013.
70. Mr Green contends that Mr Fletcher was not given a new letter for this agreement by reason that Mr Fletcher was “already in that position” as CEO and it was only his salary package that was under consideration at the time.
71. The Authority has considered the Complainant’s evidence as to whether the Club failed to meet the requirements of section 41M of the Act by entering into contracts of remuneration with the secretary/CEO Mr Fletcher that were not first approved by the governing body of the Club. The Complainant relies upon the following evidence or material:
- Minutes of Club Board Meeting dated 4 September 2013;
 - Club Payroll Activity Summary for Robert Fletcher from 1 July 2007 to 30 June 2015;
 - Employee time sheets of Robert Fletcher from 21 April 2010 to 27 August 2014 provided in the Complaint Material;
 - Pages 4, 5 and 8 of the LGNSW interview with Mr Robert Fletcher dated 29 January 2016 (**Fletcher Interview**);
 - Pages 8 and 9 of the Colless Interview;
 - Page 9 of the Hayward Interview;
 - Pages 6 and 7 of the Roach Interview;
 - Page 7 of the Haywood Interview; and
 - Pages 4, 6 and 7 of the LGNSW interview with Mr Domenic Tesoriero dated 28 January 2016 (**Tesoriero Interview**).
72. However, while Mr Fletcher was appointed in 1996 and the Club entered into a contract of employment with him at that time, section 41M of the Act was introduced into the Act by the *Registered Clubs Amendment Act 2003* and did not commence effect until 9 April 2004. The only contract for remuneration between the Club and Mr Fletcher in evidence before the Authority that was entered into after 9 April 2004 is recorded in the Minutes of the Board Meeting dated 4 September 2013. That contract was approved by the Board.
73. Ground 3 is not established.

Findings on Ground 4

74. Particular 4.1 alleges that the Club failed to meet the requirements of section 41U of the Act in that the Club did not give written notice to Mr Robert Fletcher or Mr Michael Ekert that they were a “top executive” of the Club.
75. Particular 4.2 alleges that Mr Robert Fletcher was the approved secretary/CEO of the Club from 1996 until 1 October 2014. Mr Michael Ekert was approved as secretary/CEO of the Club on 22 December 2015.
76. Particular 4.2(a) alleges that Mr Robert Fletcher was not given written notice that he was a top executive when he was approved as secretary/CEO of the Club.
77. Particular 4.2(b) alleges that Mr Michael Ekert was not given written notice that he was a top executive when he was approved as secretary/CEO of the Club.
78. Section 41U of the Act states:

41U Notification to top executives and defence

- (1) *When a person becomes a top executive of a registered club, the registered club must, as soon as practicable, give written notice to the person informing the person that he or she is a top executive and has responsibilities under this Part.*
- (2) *It is a defence to a prosecution for an offence against section 41D or 41E(1) in respect of a person who is a top executive of a registered club if the person establishes that at the time the offence was committed:*
- (a) *the person had not received a notice under subsection (1) from the club, and*
- (b) *the person could not reasonably have been expected to know that he or she was a top executive of the club without having received such a notice.*
79. On Particular 4.2(a), the Authority is satisfied that Mr Fletcher was not given written notice that he was a top executive when he was approved as secretary/CEO of the Club in 1996. This finding is made on the basis of page 9 of the Fletcher Interview, page 9 of the Colless Interview, page 7 of the Roach Interview and page 12 of the Green Interview.
80. However, section 41U was inserted into the Act by the *Registered Clubs Amendment Act 2003*. It commenced effect on 9 April 2004. No adverse finding is made on Particular 4.2(a) as the Club’s statutory duty to give the required notice to a newly appointed top executive did not even arise until around 8 years after Mr Fletcher was appointed as the Club’s secretary/CEO.
81. With regard to Particular 4.2(b), the Authority has considered Mr Green’s contention that Mr Ekert was given written notice to the effect that he was to become the Club’s CEO on an annual salary of \$85,000 plus superannuation. Mr Green submits that he advised Mr Ekert that Mr Ekert was kept in a “holding pattern” until the Police investigation into Fletcher was “confirmed” but then six months passed without any advice from Police. Mr Green contends that the Club board instructed Mr Ekert to “submit the necessary application” to the Authority in September 2015.
82. Nevertheless the Authority is satisfied, on the evidence and material regarding Mr Ekert’s appointment that is referred to in the Authority’s findings on Grounds 1 and

2, that Mr Ekert was actually appointed by the Club to act as the Club's CEO with effect from 2 March 2015.

83. While the Authority accepts Mr Green's contention that Mr Ekert received some form of written advice as to the nature of his appointment, Mr Green does not contend, and there is no evidence before the Authority indicating, that Mr Ekert was given the form of notice required by section 41U regarding Mr Ekert's responsibilities as a top executive under Part 4A of the Act. The Authority is further satisfied that the required notice was not given to Mr Ekert on the basis of page 13 of the Colless Interview, page 15 of the Green Interview and page 8 of the Tesoriero Interview.
84. Particular 4.2(b) is established.
85. Ground 4 is established in part.

Findings on Ground 5

86. Particular 5.1 alleges that the Club did not prepare financial statements on a quarterly basis as required by clause 17 of the *Registered Clubs Regulation 2009 (2009 Regulation)*.
87. Clause 17 of the 2009 Regulation, which was in force until 31 August 2015 and has since been replaced by a similar requirement in clause 21 of the *Registered Clubs Regulation 2015*, stated the following:

17 Reporting – financial statements

(1) *A registered club must:*

- (a) *prepare, on a quarterly basis, financial statements that incorporate:*
- (i) *the club's profit and loss accounts and trading accounts for the quarter, and*
 - (ii) *a balance sheet as at the end of the quarter, and*
- (b) *provide the financial statements to the governing body of the club, and*
- (c) *make the financial statements available to the members of the club within 48 hours of the statements being adopted by the governing body, and*
- (d) *indicate, by displaying a notice in the form approved by the Director-General on the club's premises and on the club's website (if any), how the members of the club can access the financial statements, and*
- (e) *provide a copy of the financial statements to any member of the club or the Director-General on the request (in writing) of the member or the Director-General.*

Maximum penalty: 50 penalty units.

88. Particular 5.2(a) alleges that the Club was required to prepare financial statements that incorporated the Club's profit and loss accounts, trading account and balance sheet for the quarter and provide these financial statements to the governing body of the Club, in circumstances where these financial statements were not prepared.

89. On the issue of the Club's financial records generally, the Green Submission makes the contention that the Club's 2014 Annual Report had not yet been completed when Mr Fletcher walked out on 27 August 2014. Mr Green contends that it was then "difficult" for the Club to complete that report without Mr Fletcher's input. Mr Green contends that from this time onwards, Mr Fletcher repeatedly produced medical certificates to justify his absence from duties and it became obvious that Mr Fletcher had no intention of returning to work soon.
90. Mr Green further contends that Club directors Messrs Tesoriero and Roach then communicated with the Club's Auditors, JAG, to try to uncover and resolve the anomalies apparent from the Club's accounts. Mr Green offered to act as CEO voluntarily.
91. As for clause 17 of the 2009 Regulation, Mr Green contended during the Meeting that the Club was left unable to comply with this requirement after Mr Fletcher ceased working, by reason that the figures then available to the Club were apparently inaccurate and it would have been "dishonest" to have published or posted incorrect figures. Furthermore, severe weather and electrical storms during April 2015 destroyed two of the Club's computers, losing valuable data. Mr Green contends that Telstra took six weeks to correct the problem. A computer expert was hired to transfer relevant data back into the system and correct any other errors that may have affected the Club's financial records maintained on MYOB software.
92. The Authority notes that Mr Green also made statements to this effect during the Green Interview.
93. Having considered Mr Green's submissions the Authority is nevertheless satisfied, noting the concessions made in pages 19 to 21 of the Fletcher Interview and page 20 of the Roach Interview, that the financial statements required to be produced and communicated by clause 17 were not prepared in accordance with that clause.
94. The Authority notes that Ground 5 of the Complaint Letter does not specify a period during which the Club is said to have failed to comply with clause 17. In the Evidence Matrix accompanying the Complaint, the Complainant refers to the Minutes of Board meetings which range from September 2009 to September 2015. The Authority notes that Minutes for all months during that period have not been provided.
95. As the Ground has not been denied, the Authority accepts that the non-compliance is established. Mr Green's submissions regarding difficulties the Club faced arising from Mr Fletcher's absence and the data failures resulting from the April 2015 storms are matters to which the Authority may have regard as circumstances in mitigation. However, those difficulties (at their highest) only cover a portion of the implicit period that is the subject of this Complaint.
96. Ground 5 is established.

Findings on Ground 6

97. Particular 1 of Ground 6 alleges that the Club did not record the information specified by clause 18 of the 2009 Regulation and keep it in the form prescribed by that clause.
98. Particular 6.2(a) alleges that the Club was required to keep the information required by clause 18 of the 2009 Regulation concerning particular disclosures and record it in an

approved form. The Club did not record details of the secretary's remuneration and employment contract in circumstances where the required register was not kept by the Club.

99. Clause 18 of the 2009 Regulation, which was in force until 31 August 2015 and has since been replaced by a similar requirement in clause 22 of the *Registered Clubs Regulation 2015*, stated:

18 Reporting – provision of information to members

(1) *A registered club must:*

- (a) *record the information specified in subclause (2) and keep it in a form approved by the Director-General, and*
- (b) *make the information available to the members of the club within 4 months after the end of the reporting period to which the information relates, and*
- (c) *indicate, by displaying a notice in the form approved by the Director-General on the club's premises and on the club's website (if any), how the members of the club can access the information, and*
- (d) *provide a copy of the information to any member of the club or the Director-General on the request (in writing) of the member or the Director-General.*

Maximum penalty: 50 penalty units.

(2) *The information to be recorded is as follows:*

...

- (e) *details of any contract for remuneration approved during the reporting period under section 41M of the Act,*

...

(5) *In this clause:*

gaming machine tax period means the period of 12 months beginning on 1 September in the financial year concerned and ending on 31 August in the following year.

reporting period means the relevant financial year of the registered club in relation to which the information is provided.

100. Mr Green submits that the Club maintained a register for seminar attendances at registered clubs functions and details were reported to the board of directors. Mr Green submits that he is “not sure” how detailed that information is as he no longer has access to the Club's records.
101. With regard to Mr Fletcher's appointment in 1996, Mr Green contends that Mr Fletcher's appointment complied with the requirements of the award and that the necessary details would have been entered in the Club's records. Mr Green submits that “at no stage was Mr Robert Fletcher under a contract”.
102. The Authority has reviewed all the Complaint Material and is satisfied, based on the statements made in page 25 of the Fletcher Interview, page 28 of the Hayward Interview, page 29 of the Haywood Interview and page 35 of the Green Interview, that the Club did not maintain a register recording the information that it was required to record by clause 18 of the 2009 Regulation in the form specified by that clause.

103. The Authority notes that Ground 6 of the Complaint Letter does not specify a period during which the Club is said to have failed to comply with the clause. The Authority is nevertheless satisfied that the admissions made by the Club's directors establish the Club's non-compliance during the implicit period that is the subject of this Complaint.
104. Ground 6 is established.

Findings on Ground 7 – Mr Robert Fletcher, Secretary/Manager

105. Particular 1 of Ground 7 alleges that Mr Robert Fletcher failed to exercise his duties as the secretary/CEO of the Club with the degree of knowledge, ability, care and diligence required of a secretary/CEO of a company limited by guarantee and to a standard required in the industry and by the relevant legislation. By reason of this conduct he has demonstrated that he is not "fit and proper" to hold such a position within the meaning of section 57F(3)(g) of the Act.

Fitness and Propriety at General Law

106. It is well established at common law for the purposes of licensing that to be "fit and proper" a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
107. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455.
108. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

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

109. The Authority is satisfied that Particular 7.1 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority's findings on the other Particulars of Ground 7, discussed below. Mr Fletcher has not demonstrated the honesty, knowledge and ability reasonably expected of a chief executive officer having regard to the nature and circumstances of this Club and its operations.

110. The Authority notes that Mr Fletcher has decided not to provide any submissions or evidence in response to the Complaint, other than the information provided to LGNSW investigators during the investigation of this Complaint. Many of the allegations against Mr Fletcher have gone uncontested and/or are the subject of concessions made by Mr Fletcher during the Fletcher Interview.
111. Particular 7.2 states that Mr Fletcher was the approved secretary/CEO of the Club from 1996 to 1 October 2014. The Authority accepts, and it is not in dispute, that Mr Fletcher occupied this position at the Club during the stated times. Particular 7.2 is established.
112. Particular 7.3(a) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure the requirements of section 41M of the Act were met in relation to the non-approval of his remuneration contract by the Club’s governing body.
113. The Authority repeats its findings and observations on Ground 3 above and notes Mr Fletcher’s concession, made at page 9 of the Fletcher Interview, that he did not know about section 41M of the Act. Nevertheless, the Authority repeats its findings on Ground 3 and Particular 7.3(a) does not support an adverse finding with regard to Mr Fletcher’s fitness and propriety.
114. Particular 7.3(b) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure that the requirements of section 41U were met by the Club in relation to him receiving written notice that he was a top executive of the Club.
115. The Authority repeats its observations and findings on Ground 4 above and the concession made by Mr Fletcher at pages 9 and 30 of the Fletcher Interview that he did not know about section 41U of the Act. The Authority is satisfied that Mr Ekert did not receive written notice that he was a top executive of the Club. Having regard to the scope of Mr Fletcher’s responsibilities as chief executive officer of the Club, Particular 7.3(b) is established to the extent found in Ground 4.
116. Particular 7.3(c) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure that the requirements of clause 17 of the *Registered Clubs Regulation 2009* were met in relation to the preparation of the required financial statements and the resulting failure to provide required financial statements to the governing body of the Club.
117. The Authority repeats its observations and findings on Ground 5 above and is satisfied that Mr Fletcher did not ensure, as the Club’s chief executive officer, that the Club met the requirements of clause 17 of the 2009 Regulation with respect to the preparation and dissemination of the required financial statements. Having regard to the scope of Mr Fletcher’s responsibilities as chief executive officer of the Club, Particular 7.3(c) is established.
118. Particular 7.3(d) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure that the requirements of clause 18 of the *Registered Clubs Regulation 2009* were met in relation to recording of the specified information (with respect to disclosures) and recording that information in an approved manner.
119. The Authority repeats its observations and findings on Ground 6 above and is satisfied that Mr Fletcher did not ensure, as the Club’s chief executive officer, that the Club kept

a register of disclosures in the approved form as required by clause 18 of the 2009 Regulation. Particular 7.3(d) is established.

120. Particular 7.3(e) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure that he had the necessary knowledge of the legislative requirements reasonably expected of a person in his position as the secretary/CEO of a registered club in NSW.
121. The Authority notes that Mr Fletcher, in response to a question from LGNSW inspector Hanley regarding how Mr Fletcher ensured that all of the Club’s legislative requirements were met, stated at page 30 of the Fletcher Interview: *“Well, ones that I knew had to be done, I would follow and do those. I mean, some of the other ones are probably just negligence on my part as far as understanding what all the regulations were...”*
122. The Authority is satisfied, on the basis of the statements made by Mr Fletcher at pages 9 and 30 of the Fletcher Interview, that Mr Fletcher failed to ensure that he had the necessary knowledge of the legislative requirements reasonably expected of a person in his position. Particular 7.3(e) is established.
123. Particular 7.3(f) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to ensure that adequate controls were in place at the Club in relation to legislative requirements and financial management. This lack of controls resulted in all day-to-day transactions being under his sole control, leading to his apparent misappropriation of Club funds.
124. Having regard to Mr Fletcher’s scope of responsibilities as the Club’s chief executive officer, the Authority is satisfied that Particular 7.3(f) is established on the basis of the following evidence or material:
 - Pages 11, 12, 13, 16 and 17 of the Fletcher Interview;
 - Pages 26 and 29 of the LGNSW interview with Mr Jayant Gulwadi and Mr Gagen Sud of JAG Business Advisory dated 28 January 2016 (**Gulwadi/Sud Interview**);
 - Pages 14 and 15 of the LGNSW interview with Mr Robert Fletcher dated 12 February 2016 (**Fletcher Interview 2**); and
 - Paragraph 20 of the LGNSW interview with Mr Michael Ekert dated 28 January 2016 (**Ekert Interview**).
125. Particular 7.3(g) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to monitor the performance of *Provident Capital Ltd*, the company in which the Club had \$5,000,000 invested, despite constant requests from the Club’s Auditor to do so. *Provident Capital Ltd* was placed in receivership in July 2013, resulting in the Club losing over \$3,000,000.
126. Having regard to Mr Fletcher’s scope of responsibilities as the Club’s chief executive officer, the Authority is satisfied that Particular 7.3(g) is established on the basis of the following evidence or material:
 - Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2009 to 30 June 2010;
 - Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2010 to 30 June 2011;

- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2011 to 30 June 2012; and
- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2012 to 30 June 2013.

127. Particular 7.3(h) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to pass on management letters from the Club’s Auditor to the governing body of the Club, thereby not alerting the governing body to the fact that there was a large amount of unreconciled cash deposits and cheques at the end of each financial year.

128. Having regard to his scope of responsibilities as the Club’s chief executive officer, directly reporting to the Club’s governing body, the Authority is satisfied that Particular 7.3(h) is established on the basis of the following evidence or material:

- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2009 to 30 June 2010;
- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2010 to 30 June 2011;
- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2011 to 30 June 2012;
- Report from JAG Business Advisory to Club management regarding a Club audit for the period from 1 July 2012 to 30 June 2013;
- Page 15 of the Colless Interview;
- Page 17 of the Hayward Interview;
- Pages 13 and 14 of the Roach Interview;
- Pages 17 to 18 of the Green Interview;
- Page 46 of the Gulwadi/Sud Interview; and
- Page 17 of the Fletcher Interview 2.

129. Particular 7.3(i) alleges that Mr Fletcher is not a “fit and proper” person on account of his conduct in signing the management representation letters to the Club’s Auditors as a director of the Club. Consequently, the directors did not see these letters and were not aware of the situation regarding unreconciled cash deposits and cheques.

130. Having regard to his scope of responsibilities as the Club’s chief executive officer, directly reporting to the Club’s governing body, the Authority is satisfied that Particular 7.3(i) is established on the basis of the following evidence or material:

- Letter from Club management to JAG Business Advisory for the year ended 30 June 2012;
- Letter from Club management to JAG Business Advisory for the year ended 30 June 2013;
- Pages 13 and 14 of the Tesoriero Interview;
- Page 15 of the Fletcher Interview;
- Page 21 of the Colless Interview;
- Page 19 of the Hayward Interview;
- Page 14 of the Roach Interview; and
- Pages 17 to 18 of the Green Interview.

131. Particular 7.3(j) alleges that Mr Fletcher is not a “fit and proper” person on account of his working a large amount of unapproved overtime, inflating his wage for the financial year ended 30 June 2012 to \$145,200.48 when his actual wage was \$78,884 (plus

clothing and cleaning allowance) and for the financial year ended 30 June 2013 to \$169,107.63 when his actual wage was \$80,600 (plus clothing and cleaning allowance).

132. The Authority is satisfied that Particular 7.3(j) is established in that it demonstrates a substantial degree of imprudence on the part of Mr Fletcher, reflecting adversely upon his ability as a custodian of the Club's assets. This finding is made on the basis of the following evidence or material:

- Payroll Activity Summaries for Robert Fletcher from 1 July 2007 to 30 June 2014;
- Employee time sheets for Robert Fletcher from 21 April 2010 to 27 August 2014;
- Pages 8, 9 and 10 of the Fletcher Interview, noting the concessions made by Mr Fletcher;
- Pages 7 and 12 of the Colless Interview;
- Page 7 of the Hayward Interview;
- Page 9 of the Roach Interview;
- Pages 13 and 14 of the Green Interview;
- Pages 31 and 45 of the Gulwadi/Sud Interview;
- Page 4 of the Fletcher Interview 2; and
- Page 7 of the Tesoriero Interview.

133. Particular 7.3(k) alleges that Mr Fletcher is not a "fit and proper" person on account of his failure to adhere to industry best practice by ensuring a tender process was in place for the purchase of goods or for major capital works.

134. The Authority is satisfied that Particular 7.3(k) is established on the basis of the following evidence or material:

- Minutes of a meeting of the governing body of the Club held on 28 October 2009;
- Minutes of a meeting of the governing body of the Club held on 27 July 2011;
- Pages 22 and 23 of the Fletcher Interview;
- Page 32 of the Colless Interview;
- Page 23 of the Roach Interview;
- Pages 24 and 30 of the Hayward Interview;
- Page 30 of the Green Interview;
- Page 24 of the Tesoriero Interview; and
- Page 28 of the Haywood Interview.

135. Particular 7.3(l) alleges that Mr Fletcher is not a "fit and proper" person on account of his failure to inform the governing body of the correct position and balance of the Club's bank accounts. He presented the governing body with a MYOB accounting software system balance in the monthly audit report that did not reflect the true state of the Club's trading accounts, the balance of which were considerably less than reported. This was due to the large amounts of unreconciled cash receipts that were not banked and large number of cheques that had not been sent to suppliers or presented.

136. The Authority is satisfied that Particular 7.3(l) is established on the basis of the following evidence or material:

- Monthly Audit Report for the Club for January 2013;
- Copy of account balance statement for the main Club account as at 31 January 2013;

- Page 17 of the Roach Interview;
- Pages 10 and 11 of the Fletcher Interview 2; and
- Page 21 of the Tesoriero Interview.

137. Particular 7.3(m) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to make up a shortfall in the Club’s Keno account of \$40,000. Mr Fletcher’s domestic partner wagered \$40,000 on credit on Keno at the Club. Mr Fletcher told Mr Green that he would honour his partner’s debt and personally pay the \$40,000 to the Club, but he instead transferred the money from two other Club accounts.

138. The Authority is satisfied that Particular 7.3(m) is established on the basis of the following evidence or material:

- NAB internet banking records for the Club dated 13 May 2013 showing the transfer of \$30,000 from the main Club account to the Keno account;
- NAB internet banking records for the Club dated 13 May 2013 showing the transfer of \$10,000 from the Club’s maxi saver account to the Keno account; and
- Pages 7 to 10 of the Fletcher Interview 2.

139. Particular 7.3(n) alleges that Mr Fletcher is not a “fit and proper” person by reason that he allowed over 100 signed cheques, totalling in excess of \$150,000, to remain in the Club safe. These cheques were dated from 23 January 2007 to 30 July 2014.

140. The Authority is satisfied that Particular 7.3(n) is established on the basis of a list of cheques located in the Club safe and copies of a number of those cheques as provided in the Complaint Material, and the statements made by Mr Fletcher at pages 26 to 29 and 32 of the Fletcher Interview.

141. Particular 7.3(o) alleges that Mr Fletcher is not a “fit and proper” person on account of his failure to provide training for himself and the governing body of Club as offered by *ClubsNSW*.

142. The Authority is satisfied that Mr Fletcher could have taken steps to undertake training and have the governing body undertake training to acquire a better knowledge of the Club’s statutory obligations and/or their duties, but he did not.

143. The Authority is satisfied that Particular 7.3(o) is established on the basis of the following evidence or material:

- Copy of the Club’s 52nd Annual Report and Balance Sheet for 2014-2015;
- Page 33 of the Fletcher Interview;
- Pages 44 to 46 of the Colless Interview;
- Page 32 of the Roach Interview;
- Page 29 of the Hayward Interview; and
- Pages 36, 37 and 42 of the Green Interview.

144. Particular 7.3(p) alleges that Mr Fletcher is not a “fit and proper” person on account of his lack of understanding of risk management and mitigating risk to the Club.

145. The Authority notes that when questioned by a LGNSW inspector as to the steps Mr Fletcher took to reduce risk to the Club, including the risks posed by paying staff in cash and leaving cheques in the safe for years, Mr Fletcher stated: “*Well, I hadn’t done*

anything then. I suppose that's the answer that is required. I mean, eventually they'd get around to be done."

146. The Authority is satisfied, on the basis of Mr Fletcher's statements with regard to risk management at page 32 of the Fletcher Interview, that Particular 7.3(p) is established.
147. Particular 7.3(q) alleges that Mr Fletcher is not a "fit and proper" person on account of his failure to ensure that the Club had a strategic plan in place.
148. The Authority is satisfied that Particular 7.3(q) is established in that there was an absence of strategic planning, on the basis of the statements made at pages 37 and 38 of the Green Interview; page 29 of the Haywood Interview; page 30 of the Tesoriero Interview and page 45 of the Colless Interview.
149. The Authority accepts that planning is a relevant factual matter when considering the knowledge and ability demonstrated by the Club's chief executive officer, whose role is to advise the Board on the overall management of the Club. Nevertheless, given the broad nature of this allegation, the Authority does not give great weight to it when assessing Mr Fletcher's fitness and propriety.
150. Particular 7.3(r) alleges that Mr Fletcher is not a "fit and proper" person on account of his failure to ensure that the governing body was effective in the guidance and corporate governance of the Club.
151. The Authority is satisfied that Particular 7.3(r) is established on the basis of the statements made at page 47 of the Colless Interview; page 30 of the Hayward Interview and page 50 of the Gulwadi/Sud Interview which indicate that the CEO/secretary was not particularly effective in bolstering the governance of the Club through providing leadership and advice, and that Mr Green was in reality providing that source of leadership. This Particular is vaguely worded and the Authority does not give weight to it when determining Mr Fletcher's fitness and propriety.

Findings on Ground 8 – Mr Thomas Green, Chairman

152. Particular 8.1 alleges that Mr Thomas Green failed to exercise his duties as secretary/CEO and a member of the Club's governing body (during a lengthy period as Chairman) of the Club with the degree of knowledge, ability, care and diligence required of a secretary/CEO and member of the governing body of a company limited by guarantee and to a standard required in the industry and by the relevant legislation. By reason of this conduct he has demonstrated that he is not "fit and proper" to hold such a position within the meaning of section 57F(3)(g) of the Act.
153. The Authority is satisfied that Particular 8.1 is established. This is a conclusion reached on the basis of a cumulative assessment of the Authority's findings on the other Particulars of Ground 8 and having regard to the scale and circumstances of this Club and its operations.
154. The Complainant has emphasised in its oral submissions that the Complaint makes no adverse allegation as to Mr Green's honesty and the Authority makes no adverse finding as to Mr Green's honesty.
155. As detailed below, the Authority has made a number of adverse findings with regard to the extent to which Mr Green has demonstrated the degree of knowledge and ability

expected of a member of a governing body of the Club who is also the Chairperson of the Board.

- 156.** The Authority is satisfied that Mr Green had a longstanding commitment to the Club and his efforts were well intentioned, but he did not stay sufficiently up to date with the legislative requirements impacting the operation of registered clubs in New South Wales and this adversely reflects upon the level of knowledge and ability demonstrated by him arising from the findings on this Complaint. During the Meeting between Mr Green, the Complainant and the Authority, the Complainant made clear that it was not questioning Mr Green's honesty and on the evidence and material before the Authority, there is no basis for any adverse finding as to Mr Green's honesty or integrity.
- 157.** The Complainant draws the Authority's attention to the observations of Austin J in *ASIC v Rich* [2003] NSWSC 85 (24 February 2003) at paragraphs 58 and 59, which state:
- In Woolworths Ltd v Kelly, Mahoney JA found that a person who is chairman of a board of directors has "additional rights and duties and additional opportunities" (4 ACSR at 445).*
- 158.** While noting those observations, the Complainant has not specified how any particular rights, duties or opportunities that may be held by a chairperson of a registered club are engaged in the allegations made in this Complaint. The Authority accepts that as Club Chairperson, Mr Green was in a position of leadership in respect of the Board.
- 159.** The Authority notes that the Complainant has elected to only challenge the fitness and propriety of Mr Green and not any other members of the Board. The Authority is largely in the hands of a complainant when considering a complaint under Part 6A of the Act and it has not been called upon to consider the fitness and propriety of the other Club directors.
- 160.** Particular 8.2 states that Mr Green has been a member of the Club's governing body and president/chairman from 1996 to 8 October 2015. He was also the approved secretary/CEO of the Club from 1 October 2014 to 24 September 2015. The Authority accepts, and it is not in dispute, that Mr Green occupied these positions at the Club during the stated times. Particular 8.2 is established.
- 161.** Particular 8.3(a) alleges that Mr Green is not a "fit and proper" person on account of the conduct outlined in Ground 1 above by failing to ensure the requirements of section 34 of the Act were met in circumstances where from 2 March 2015, Mr Michael Ekert acted as the secretary of the Club without being approved by the Authority.
- 162.** The Authority notes that Mr Green states in the Green Submission to "Refer to Ground 4" in response to this Particular.
- 163.** The Authority is satisfied that Particular 8.3(a) is established on the basis of the evidence and material that supports the Authority's findings on Ground 1 and noting the scope of responsibility that Mr Green had as a member of the governing body to ensure that the Club operated with a secretary/manager who had been approved to act in that role by the Authority.

- 164.** Particular 8.3(b) alleges that Mr Green is not a “fit and proper” person on account of the conduct outlined in Ground 2 above in failing to ensure the requirements of section 32 of the Act were met in circumstances where from 2 March 2015 to 24 September 2015 Mr Michael Ekert and Mr Thomas Green were both in the position of secretary/CEO at the Club.
- 165.** The Authority notes that Mr Green states in his Green Submission to “Refer to Ground 4” in response to this Particular.
- 166.** The Authority notes Mr Green’s contention, as set out in the Green Submission, that while Mr Ekert was appointed in March 2015 and paid the agreed salary, he was then in a “learning phase” especially with respect to the greyhound racing side of the business, of which he had no knowledge. Mr Ekert was not responsible for signing club cheques or banking. In his capacity as President and Acting CEO (a role which Mr Green voluntarily assumed) Mr Green was therefore legally responsible for control of the Club and he reported this in the Club’s 2015 Annual Report.
- 167.** Mr Green contends that it was always the intention of the governing body and Mr Green to switch over control to Mr Ekert “as soon as practical” and Mr Ekert was fully aware of this. In September 2015 Mr Ekert was instructed by the Board to start the procedure to assume Mr Green’s role as secretary/CEO of the Club.
- 168.** The Authority is satisfied that Particular 8.3(b) is established on the basis of the evidence and material that supports the Authority’s findings on Ground 2 and noting the scope of responsibility that Mr Green had, as a member of the governing body, to ensure that the Club operated with a secretary/manager who had been approved to act in that role by the Authority. Mr Green shared direct responsibility for the Club contravening section 32 of the Act by acting as secretary/CEO at the same time that Mr Ekert was appointed to act in that role.
- 169.** Particular 8.3(c) alleges that Mr Green is not a “fit and proper” person on account of the conduct outlined in Ground 3 above in failing to ensure the requirements of section 41M of the Act were met in relation to the non-approval of Mr Robert Fletcher’s remuneration contract by the Club’s governing body.
- 170.** The Authority refers to its findings on Ground 3 and does not make an adverse finding against Mr Green on the basis of this Particular.
- 171.** Particular 8.3(d) alleges that Mr Green is not a “fit and proper” person on account of the conduct outlined in Ground 4 above in failing to ensure that the requirements of section 41U of the Act were met in relation to Messrs Fletcher and Ekert receiving written notice that they were top executives of the Club.
- 172.** Mr Green submits in the Green Submission that the changes in salary for Messrs Fletcher and Ekert were passed and recorded by the governing body in the minutes for the March 2015 meeting and Mr Ekert was given written documentation to that effect at that meeting.
- 173.** The Authority is satisfied that Particular 8.3(d) is established on the basis of the evidence and material that supports the Authority’s findings on Ground 4 and noting the scope of responsibility that Mr Green, as a member of the governing body, had to ensure that the secretary/manager Mr Ekert received the form of written notice required by section 41U of the Act.

174. Particular 8.3(e) alleges that Mr Green is not a “fit and proper” person on account of the conduct outlined in Ground 5 above in failing to ensure the requirements of clause 17 of the *Registered Clubs Regulation 2009* was met in relation to the preparation of the required financial statements and the resulting failure to provide same to the governing body of the Club.
175. The Authority notes that in the Green Submission, Mr Green states to refer to his response to Particular 8.3(j), which is discussed below.
176. The Authority is satisfied that Particular 8.3(e) is established on the basis of the evidence and material that supports the Authority’s findings on Ground 5 and noting the scope of responsibility that Mr Green had, as a member of the governing body, to ensure that the requirements of clause 17 of the 2009 Regulation were observed by the Club, noting that this clause mandates the production of the relevant financial reports *to the Board*, and that Mr Green was well placed to be aware that this requirement was not being observed and take steps to arrange for the production and communication of those reports.
177. Particular 8.3(f) alleges that Mr Green is not a “fit and proper” person on account of the conduct outlined in Ground 6 above in failing to ensure the requirements of clause 18 of the *Registered Clubs Regulation 2009* were met in relation to recording of the specified information and recording the information in an approved manner.
178. The Authority is satisfied that Particular 8.3(f) is established on the basis of the evidence and material that supports the Authority’s findings on Ground 6 and noting the scope of responsibility that Mr Green had, as a member of the governing body, to ensure that the requirements of clause 18 of the 2009 Regulation were observed by the Club, noting that Mr Green should have been aware as Chairperson whether this requirement was being observed by the Club and take steps to arrange for these reporting requirements to be met.
179. Particular 8.3(g) alleges that Mr Green is not a “fit and proper” person on account of his alleged failure to ensure that he, the secretary/CEO and the members of the governing body of the Club had necessary knowledge of the legislative requirements in relation to a registered club in NSW.
180. The Authority notes that Mr Green submits in the Green Submission that he has been a member of the Club Directors’ Institute (**CDI**) since 2002, that computer tapes outlining requisites as a guide to directors are available at all times and that periodically, directors’ guide journals were supplied to the Board at meetings. The Authority has considered Mr Green’s evidence, which comprises a letter of renewal of membership to CDI dated 4 February 2016, pages 67 to 86 of the February issue of *Club Director Magazine* and pages 87 to 90 of a CDI 2016 pamphlet.
181. The Authority accepts that Mr Green performed this training but finds that it was insufficient to equip him with the requisite knowledge of *licensing legislation* required of a long-term member of a governing body of a registered club in New South Wales.
182. The Authority is satisfied that Particular 8.3(g) is established, on the basis of statements made by Mr Fletcher at page 30 of the Fletcher Interview, and that Mr Green failed to ensure that the secretary/CEO and the members of the governing body of the Club had necessary knowledge of the legislative requirements.

- 183.** Particular 8.3(h) alleges that Mr Green is not a “fit and proper” person as a result of his failure to ensure that adequate controls were in place at the Club in relation to legislative requirements and financial management. This lack of controls resulted in all day-to-day transactions being under the sole control of Mr Robert Fletcher, leading to the apparent misappropriation of Club funds.
- 184.** In the Green Submission Mr Green contends that the Club engaged its Auditors every month and the fact that they were independent of management and the governing body ensured that internal controls were in place. Director and Vice President Tesoriero was an accountant with 40 years’ experience – he prepared an analysis of the MYOB system for the Board, which included all aspects of trading. Mr Green submits that although the Club operated with minimal staff, “there were no problems with administration”.
- 185.** The Authority accepts Mr Green’s submissions as to what he actually did, and notes that Mr Green clarified during the Meeting that the Club’s Auditors were engaged with regard to financial and not regulatory matters. The Authority is satisfied that the Club’s Auditors were not engaged to provide advice that might have assisted Mr Green to ensure the Club’s compliance with the legislative requirements that are the subject of this Complaint. Mr Green was personally unable to ensure, applying his own knowledge and skill regarding licensing matters, that the Club observed those regulatory obligations.
- 186.** Having regard to Mr Green’s scope of responsibilities as Chairperson, the Authority is satisfied that Particular 8.3(h) is established on the basis of the following evidence or material:
- Pages 11, 12, 13, 16 and 17 of the Fletcher Interview;
 - Pages 26 and 29 of the Gulwadi/Sud Interview;
 - Pages 14 and 15 of the Fletcher Interview 2; and
 - Paragraph 20 of the Ekert Interview.
- 187.** Particular 8.3(i) alleges that Mr Green is not a “fit and proper” person as a result of not regularly monitoring the performance of *Provident Capital Ltd*, the company in which the Club had \$5,000,000 invested, despite constant requests from the Club’s Auditor to do so. *Provident Capital Ltd* was placed in receivership in July 2013, resulting in the Club losing over \$3,000,000.
- 188.** Mr Green refers to pages 18 and 19 of the Green Submission and submits that the allegation he did not monitor *Provident* was “totally untrue” in that Mr Green and Club directors Messrs Tesoriero and Colless attended all seminars organised by *Provident* and returned with documentation to relay to the Board.
- 189.** The Authority accepts Mr Green’s submissions in this regard and finds that this Particular 8.3(i) does not support an adverse finding against Mr Green’s fitness.
- 190.** Particular 8.3(j) alleges that Mr Green is not a “fit and proper” person on account of his alleged failure to request management letters from the Club’s Auditor to the governing body of the Club, thereby not alerting the governing body to the fact that there was a large amount of unreconciled cash deposits and cheques at the end of each financial year.

- 191.** In the Green Submission Mr Green contends that if correspondence from the Club's Auditors was not supplied to the Board by Mr Fletcher, the Board would not be aware of that correspondence. Mr Green does not accept the adequacy of the position taken by the Auditors that their letters were left with the office staff for a period of over three years, knowing the importance of the information. Mr Green questions why neither he (as the Club's President) nor Mr Tesoriero (as the Club's Vice President) was pulled aside by the Auditors and made aware of any anomalies. Mr Green relies upon the final paragraph of the report by Celia Reichelt from Crawford & Co in respect of this Particular.
- 192.** The Authority accepts Mr Green's account and considers that if Mr Green only received an audit report along the lines that he received, he was not required to call for a management letter. The Authority accepts that Mr Green had been dealing with Mr Fletcher about these matters and Mr Green accepted that Mr Fletcher had dealt with the issues. Mr Green was not, in the circumstances, sufficiently on notice through other information or events not to take Mr Fletcher at his word at that stage.
- 193.** This Particular does not support an adverse finding as to Mr Green's fitness.
- 194.** Particular 8.3(k) alleges that Mr Green is not a "fit and proper" person on account of his alleged failure to identify Mr Fletcher keeping key correspondence from the governing body including letters from the Club's Auditors over a number of years. The members of the Club's governing body did not see these letters and were not aware of the situation and risk concerning the unreconciled cash deposits and cheques.
- 195.** The Authority notes that Mr Green refers to his submission in relation to Particular 8.3(j) above. The Authority accepts Mr Green's submissions and does not accept that this matter supports an adverse finding as to Mr Green's fitness.
- 196.** Particular 8.3(l) alleges that Mr Green is not a "fit and proper" person on account of Mr Green allegedly "allowing" Mr Fletcher scope to work and claim an "unjustified and excessive" amount of overtime thereby inflating his wage; including in the financial year ending 30 June 2012, to \$145,200.48, when Mr Fletcher's actual wage was only \$78,884 (plus clothing and cleaning allowance); and for the financial year ending 30 June 2013, to \$169,107.63, when Mr Fletcher's actual wage was only \$80,600 (plus clothing and cleaning allowance).
- 197.** The Authority notes that at pages 13 and 14 of the Green Interview, Mr Green states that he was aware of Mr Fletcher's wage rises (even though this was at a time when Mr Green was dealing with back injuries) and that Mr Fletcher was doing "a lot of overtime" by reason that staff had been cut back.
- 198.** Having considered Mr Green's position the Authority is nevertheless satisfied that Particular 8.3(l) is established to the extent that Mr Green allowed Mr Robert Fletcher scope to work and claim an unjustified and excessive amount of overtime, thereby inflating his wage. The evidence with regard to this overtime is set out in the findings on Particular 8.3(m) below. This matter reflects adversely upon Mr Green's knowledge and ability, but has not been given substantial weight.
- 199.** Particular 8.3(m) alleges that Mr Green is not a "fit and proper" person on account of Mr Robert Fletcher not being entitled to overtime in accordance with the informal arrangements agreed to when he was initially employed by the Club, and in

circumstances where it was not financially prudent to be paying the Club's highest paid employee time and a half or double time.

- 200.** Mr Green refers to page 5 of the Green Submission in response to Ground 3 of the Complaint.
- 201.** While the Complainant has not provided sufficient evidence to establish that Mr Fletcher was not entitled to claim any overtime, the Authority is satisfied that Particular 8.3(m) has been established to the extent that there was a degree of imprudence in permitting Mr Fletcher to claim the extent of overtime that he did.
- 202.** The Authority notes page 7 of the Colless Interview where Mr Colless contended that Mr Fletcher approved his own overtime and at page 7 of the Tesoriero Interview, Mr Tesoriero submitted, *It wasn't until that last episode where we noticed that the wages were excessive*". However the Authority notes that at page 14 of the Green Interview, Mr Green submits that "we knew he was also doing a lot of overtime".
- 203.** The Authority is satisfied that the following evidence, as relied on by the Complainant, has established that the Club Board, including Mr Green, was aware of the issues:
- Payroll activity summaries for Robert Fletcher from 1 July 2007 to 30 June 2014;
 - Employee time sheets for Robert Fletcher from 21 April 2010 to 27 August 2014;
 - Pages 8, 9 and 10 of the Fletcher Interview;
 - Pages 7 and 12 of the Colless Interview;
 - Page 7 of the Hayward Interview;
 - Page 9 of the Roach Interview;
 - Pages 13 and 14 of the Green Interview;
 - Pages 31 and 45 of the Gulwadi/Sud Interview;
 - Page 4 of the Fletcher Interview 2; and
 - Page 7 of the Tesoriero Interview.
- 204.** This Particular is established, but having regard to Mr Green's submissions, this factor is not given substantial weight when assessing Mr Green's fitness and propriety.
- 205.** Particular 8.3(n) alleges that Mr Green is not a "fit and proper" person on account of his failure to ensure a tender process was in place for the purchase of goods or major capital works.
- 206.** In the Green Submission, Mr Green contends that tendering has always been in place and that the Club always sources three or more quotes for major works. Mr Green contends that he has "vast experience" with construction and notes his involvement in the development of the Club for over 52 years. He contends that in all purchases or work related expenses the Club always sought the best quality and price range from reputable outlets and qualified tradesmen, relying upon the following evidence:
- Pages 28 to 29 and 35 to 36 of the Green Interview; and
 - Club Bank Statements – Account Transactions (Accrual) for the period from 1 to 31 July 2013.
- 207.** The Authority has considered the evidence relied upon by the Complainant but accepts Mr Green's position on the Club's practice of using tenders. The Authority is satisfied that Mr Green has provided a reasonable explanation and the Authority is not

mind to make an adverse finding as to Mr Green's fitness on the basis of this Particular.

- 208.** Particular 8.3(o) alleges that Mr Green is not a "fit and proper" person on account of his failure to ensure the governing body was given the correct situation as regards the balance of the Club's bank accounts. Mr Fletcher presented the governing body with a MYOB balance in the monthly audit report that did not reflect the true state of the Club's trading accounts, the balance of which were considerably less than reported. This was due to the unreconciled large amounts of cash receipts that were not banked and large number of cheques that had not been sent to suppliers.
- 209.** In the Green Submission, Mr Green contends that he has no computer skills, so the responsibility to advise the Board of this type of information fell to the Auditors. During Mr Fletcher's time as CEO, he and two assistant managers were the only three people with the combination to the safe and keys to the internal cupboards within the safe. Mr Green contends that he did not have access to the safe for a period of 18 years, until Mr Fletcher left the Club with medical issues on "Wednesday, 29 August 2014" [sic]. Mr Green contends that he had no knowledge of what was occurring and neither did the Board of directors.
- 210.** The Authority has considered the evidence relied upon by the Complainant but accepts Mr Green's submissions and does not make any adverse finding against Mr Green's fitness and propriety on the basis of this Particular.
- 211.** Particular 8.3(p) alleges that Mr Green is not a "fit and proper" person on account of his failure to ensure Mr Fletcher made up a shortfall in the Club's Keno account of \$40,000. Mr Fletcher's domestic partner wagered \$40,000 on Keno on credit at the Club. Mr Fletcher told Mr Green that he would personally pay the \$40,000 back to the Club; but instead he transferred the money from two other Club accounts. Mr Green did not verify the source of the \$40,000.
- 212.** In the Green Submission, Mr Green contends that Mr Fletcher reported the fact that an employee of the Club (and also Mr Fletcher's domestic partner) had wagered \$40,000 on Keno without Mr Fletcher's knowledge and then walked out of the Club after completing his shift. Mr Fletcher "accepted full responsibility" and stated that he would pay the money back immediately. Two days later Mr Green checked and the Keno account was "correct". Mr Fletcher deposited \$40,000 into the Club's main bank account and Mr Green submits that there is no evidence that the funds had come from any of the other Club accounts.
- 213.** While Mr Green was aware of the issue, he had been told that the money was repaid. The Complainant has not clearly established why, in the circumstances prevailing at that time, Mr Green was imprudent or was obliged to verify these matters given the assurances made to him by Mr Fletcher. On balance, the Authority does not make an adverse finding as to Mr Green's fitness on the basis of this Particular.
- 214.** Particular 8.3(q) alleges that Mr Green is not a "fit and proper" person on account of him allowing over 100 signed cheques, totalling in excess of \$150,000, to remain in the Club safe. These unrepresented cheques dated from 23 January 2007 to 30 July 2014.
- 215.** The Authority notes that in the Green Submission, Mr Green contends that he had no knowledge of any unsigned cheques in the safe and that they should have been

picked up by the Auditors and brought to Mr Green’s attention. The board and the Auditors were unaware of this deceit for a period of 5 years.

- 216.** The Authority has considered the evidence relied upon by the Complainant but is satisfied that this matter does not form a sufficient basis for an adverse finding against Mr Green. It is not the Chairperson’s job to go through the Chief Executive’s safe. The Complainant has not established that Mr Green fell short of his duty to demonstrate reasonable knowledge, skill and ability as a Club Chairperson in this regard.
- 217.** Particular 8.3(r) alleges that Mr Green is not a “fit and proper” person on account of his failure to provide training for himself, the secretary/CEO and the governing body of the Club. Mr Green could have taken steps to undertake training and have the secretary/CEO and the governing body undertake training to acquire a better knowledge of the Club’s statutory obligations and/or their duties, but he did not.
- 218.** In response to this Particular, Mr Green refers to his submissions and evidence in response to Particular 8.3(g) above.
- 219.** The Authority is satisfied, on the basis of the following evidence (and noting that the issue of training relates to Particular 8.3(g) above), that Mr Green performed some training but this was insufficient to meet the demands of his responsibilities as the Chairperson and a director of a registered club in New South Wales. The Authority notes the following evidence in this regard:
- Copy of the Club’s 52nd Annual Report and Balance Sheet for 2014-2015;
 - Page 33 of the Fletcher Interview;
 - Pages 44 to 46 of the Colless Interview;
 - Page 32 of the Roach Interview;
 - Page 29 of the Hayward Interview; and
 - Pages 36, 37 and 42 of the Green Interview.
- 220.** Particular 8.3(s) alleges that Mr Green is not a “fit and proper” person on account of his lack of understanding of risk management and mitigation of risk to the Club.
- 221.** Mr Green submits, in the Green Submission, that risk management is relevant to many areas including trust in senior personnel, as well as investment. Any investment is a risk. Mr Fletcher had a new “Operating Standards” manual that all racing clubs must complete every three months in respect of operating requirements and every 12 months in respect of all aspects of the club’s affairs. The Club had to comply with these requirements or it would lose its licence.
- 222.** Mr Green contends that upon taking over as CEO in a voluntary capacity he had a Club director, Mr Roach assist him to transfer data to Greyhound Racing New South Wales and develop spreadsheets for future recordings. This data recording would be part of the new CEO’s responsibility in future. The Authority also notes that Mr Green relies upon the New Operating Standards Manual, which is attached to the Green Submission.
- 223.** Having considered Mr Green’s submissions, the Authority is satisfied that Particular 8.3(s) is established on the basis of page 32 of the Fletcher Interview.
- 224.** Particular 8.3(t) alleges that Mr Green is not a “fit and proper” person on account of his failure to ensure that the Club had a strategic plan in place.

- 225.** Mr Green submits, in the Green Submission, that strategic planning was addressed by the board in negotiations with Bankstown Council to rezone the Club to “High Rise” from its existing zoning of “Town Housing and Villas”. The zoning had been changed over the years from “Light Industrial” to the new zoning, of which Mr Green submits the Club had never been advised. The new zoning to “High Rise” would open opportunities for the Club to diversify its business.
- 226.** Mr Green relies upon the following evidence and material:
- Letter from Nelson Architecture to the Club (undated) regarding the Potts Hill Development;
 - Notification to the Club of rent increase dated 16 November 2015;
 - Email correspondence between Mr Fletcher and Club director Mr Roach regarding strategic planning and options dated 15 February 2013; and
 - Strategic Plan for the Club dated 28 November 2005 and revised in February 2013.
- 227.** The Authority has considered the evidence relied upon by the Complainant and while satisfied that there was no formal strategic plan in place, Mr Green was alive to broader issues, including planning issues, affecting the Club. This Particular, while established, does not warrant significant weight when assessing Mr Green’s fitness and propriety in the circumstances of this Club.
- 228.** Particular 8.3(u) alleges that Mr Green is not a “fit and proper” person on account of his failure to ensure that the governing body was effective in the guidance and corporate governance of the Club. Mr Green was, as one member of the governing body stated, “The supreme commander, if he said no, well the board went along with it”.
- 229.** Mr Green does not accept this Particular. Mr Green contends in the Green Submission that the reference to him acting in a “dictatorial manner” is not only untrue, but a “scurrilous attack on my integrity” as the other Board members were given the opportunity to voice their opinions, move motions and suggest amendments where required.
- 230.** Mr Green contends that the other directors “did not understand some of the items”, particularly with regard to racing, building construction or other areas in which Mr Green had more experience. Mr Green contends that he advised or assisted with any motions the Board wished to pursue and believes that any Chairman “would see this as his role”.
- 231.** The Authority has considered the evidence and material relied upon by the Complainant. While it is apparent that Mr Green was a dominant figure on the Board over a very long period of time, this matter does not support an adverse finding against Mr Green’s fitness and propriety in the circumstances of this case.
- 232.** Particular 8.3(v) alleges that Mr Green is not a “fit and proper” person on account of his failure to implement key performance indicators to measure and assess the performance of the secretary/CEO.
- 233.** The Authority notes that Mr Green has provided no specific response to this Particular. The Authority has considered the evidence and material relied upon by the

Complainant but is satisfied that this matter, which is expressed in general terms, does not support an adverse finding against Mr Green's fitness in the circumstances of this case.

SUBMISSIONS ON DISCIPLINARY ACTION

- 234.** On 8 December 2016 the Authority issued a detailed letter to the Complainant, Mr Fletcher and Mr Green notifying its findings on the Grounds of Complaint (**Findings Letter**).
- 235.** The Findings Letter gave the Complainant 7 days and the Respondents (the Club, Mr Fletcher and Mr Green) 14 days to make any final submissions addressing the question of what, if any, disciplinary action should be taken by the Authority in light of those findings. As the Authority did not communicate the Findings Letter to the Club until 14 December 2016, the Club was given 14 days to reply from that date.

Final Submission from Mr Green dated 11 December 2016

- 236.** Mr Green elected to make a brief final submission on disciplinary action on 11 December 2016, before any final submissions were made by the Complainant. Briefly, Mr Green makes the following observations and contentions:
- Mr Green's involvement in the registered clubs industry in New South Wales has been confined to just one registered club – the Club.
 - Mr Green was instrumental in establishing the Club in 1963 and served as the secretary/manager of the Club from 1967, a position which he held for 29 years.
 - On his retirement from that position in 1996, Mr Green was appointed treasurer for 1 year and was then elected Chairman of the Club, a role which he held until 1 October 2015.
 - In all capacities he always acted honourably, honestly, with the utmost integrity and in the best interest of the Club and its membership.
 - With the exception of the matters raised in the Complaint, Mr Green has never come under any adverse notice of any Police or regulatory authority, as evidenced by his appointments by the incumbent governments of the day as a Member of the Greyhound Racing Control Board (1988-1993), Director of the NSW Totalizator Agency Board (1989-1993), an Assessor to the NSW Racing Tribunal (2002-2007) and a Member of Greyhound Racing NSW (2009-2012).
 - Since relinquishing his role as Chairman of the Club in 2015, Mr Green has had *no involvement in the registered clubs industry*. He is now 80 years of age and has no desire to be involved in the industry in future.
 - Having diligently served the Club and its membership to the best of his ability for the better part of Mr Green's working life, to now be confronted with the Authority's findings on the Complaint has had a "devastating effect" upon Mr Green and his family.
 - Mr Green provides to the Authority an "absolute undertaking" that he will not in the future seek to be involved in any capacity in the registered clubs industry. He

requests that the Authority set aside its finding that Mr Green is not a fit and proper person, or in the alternative, not progress to taking any disciplinary action against him.

237. The Authority provided a copy of Mr Green's submission dated 11 December 2016 to the Complainant on 13 December 2016 and to the Club on 14 December 2016.

Final Submission from the Complainant dated 15 December 2016

238. On 15 December 2016, the Complainant provided the Authority with a final submission on disciplinary action in relation to the Complaint. In an email dated 15 December 2016 the Complainant advised that copies of its submission had been sent via *Express Post* to the Club, Mr Green and Mr Fletcher.

239. The Complainant acknowledges the findings made by the Authority and having regard to those findings, the evidence and submissions provided by Mr Green and his final submission dated 11 December 2016, the Complainant submits that the "more serious governance failings" related to Mr Fletcher, not Mr Green.

240. As a result, the Complainant now varies its initial recommendations on disciplinary action and recommends that the Authority make the following orders:

1. *That the Authority declare that Mr Robert Fletcher be ineligible for a period of three (3) years to stand for election, or to be appointed to, or hold office in, the position of secretary or member of a governing body of:*
 - (a) *The Greyhound Social Club Ltd, and*
 - (b) *any other registered clubs;*
2. *That the Authority declare that Mr Thomas Green be ineligible for a period of one (1) year to stand for election, or to be appointed to, or hold office in, the position of secretary or member of a governing body of:*
 - (a) *the Greyhound Social Club Ltd, and*
 - (b) *any other registered clubs;*
3. *That the Authority order, pursuant to section 57H(2)(a) of the Act, that the Club pay a monetary penalty as may be considered appropriate, having regard to:*
 - (a) *The seriousness of the conduct that involved numerous breaches of the Act and mismanagement of Club assets which led to misappropriation of substantial Club funds;*
 - (b) *The general and specific deterrent such a penalty will have on industry and relevant officers contemplating similar offending conduct;*
 - (c) *Measures and controls now introduced by the current Secretary and governing body to mitigate further risk to the Club, including but not limited to the implementation of relevant training for the governing body, the development of a strategic plan, and strengthened governance measures and internal controls.*
4. *That pursuant to section 57H(2)(i) of the Act, the Authority order the Club to pay the costs associated with the conduct of the investigation under Section 138 of the Act in the amount of \$23,839.42.*

No Submission from the Club or Mr Fletcher

241. Neither the Club nor Mr Fletcher made any submissions in response to the Authority's Findings Letter, nor the final submissions from Mr Green or the Complainant.

DECISION ON DISCIPLINARY ACTION

242. The Authority has given further consideration to the Complaint and all of the material before the Authority, including the final round of submissions on disciplinary action provided by the Complainant and Mr Green.

243. Section 57H of the Act provides the powers of the Authority to take disciplinary action in the event that a complaint is established. The section states:

57H Disciplinary powers of Authority

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

244. The Authority's disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in

Seagulls Rugby League Football Club Ltd v Superintendent of Licences (1992) 29 NSWLR 357 (at paragraph 373):

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

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

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

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

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

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

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

Disciplinary Action against the Club

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

249. The Authority notes that the Complainant has sought an order that the Club pay the amount of costs incurred by the Secretary of the Department of Justice in carrying out any investigation or inquiry under section 35A of the Act in relation to the Club.

250. The Complainant has specified its costs on the investigation at \$23,839.42. The Authority is satisfied, on the basis of the Complainant’s specification of its costs in its submission dated 15 December 2016, that these are the actual costs of the Secretary on the investigation that preceded this Complaint.

251. The Authority notes that seven of the eight Grounds specified by the Complainant have been established, in whole or in part. The Club has previously advised that it does not contest the Grounds of Complaint and has provided no response to the Complainant’s final submissions on disciplinary action, including the proposed costs order.

252. Noting that the Club was a victim of Mr Fletcher's dishonesty, but the Club's Chairperson has also been found wanting with regard to those Grounds of Complaint going to the Chairperson's regulatory knowledge and ability, the Authority considers it appropriate to order, pursuant to section 57H(2)(i)(i) of the Act, that the Club pay the Complainant's stated costs in carrying out the investigation under section 35A of the Act in relation to the Club that preceded this Complaint. That is, the Club shall pay \$23,839.42 within 28 days of the date of this letter.

Imposition of Monetary Penalty pursuant to section 57H(2)(a)

253. The Complainant has also sought that the Club be ordered to pay, pursuant to section 57H(2)(a) of the Act, a monetary penalty with regard to the Club's conduct that involved numerous breaches of the Act and other governing legislation.

254. The Authority notes that no final submission was made by the Club in response to this submission.

255. While reiterating that the Club was a victim of Mr Fletcher's fraud, the Authority nevertheless considers it appropriate to issue a monetary penalty against the Club by reason of those Grounds that have been established against the Club's Chairperson, Mr Green. His regulatory failings primarily arose from a lack of maintaining up to date knowledge of statutory requirements. The Club, along with Mr Green himself, shares responsibility for those regulatory failings.

256. Having considered the adverse findings made against Mr Green and the low to moderate degree of seriousness posed by these various contraventions, the Authority considers that they warrant monetary penalties ranging from \$1,000 to \$5,000 each. Considered on a cumulative basis, the Authority is satisfied that an order that the Club pay a monetary penalty in the sum of \$13,000 will send an appropriate signal to others in the industry who may not maintain sufficient rigour with regulatory compliance.

Disciplinary Action against the Individual Respondents

Mr Fletcher

257. Noting the Authority's discussion on fitness and propriety set out above and in the absence of any submissions in reply to the Complaint from Mr Fletcher, the Authority is satisfied that given the extent of Mr Fletcher's conduct as found to be established by the Authority in Ground 7 above, the only appropriate order to serve the protection of the public is to disqualify Mr Fletcher from participation in the registered clubs industry of this state in a regulated role for the maximum period available under the Act. The Authority is satisfied, on the information before it, that Mr Fletcher has dealt with a substantial amount of Club funds in a dishonest manner.

258. The Authority notes that, unlike disciplinary complaints made under Part 9 of the *Liquor Act 2007*, the period of disqualification that may be ordered by the Authority in respect of a complaint made under Part 6A of the *Registered Clubs Act 1976* is limited to a maximum period of three (3) years.

Mr Green

- 259.** Mr Green submits that no disciplinary action should be taken against him and emphasises his personal record of service to the Club, absence of any other adverse regulatory history and his service to the community. Mr Green has given an unqualified undertaking not to seek relevant office in the registered clubs industry in New South Wales again.
- 260.** It is not uncommon for respondents to disciplinary complaints to offer an undertaking to leave or stay out of the industry in the alternative to the Authority taking disciplinary action against them. The Authority will carefully scrutinise the facts and circumstances of each case when deciding what weight should be given to those undertakings.
- 261.** Ordinarily, the Authority would consider it appropriate to order a significant period of disqualification to any club chairperson who was found to have contravened the legislation to the extent that has been established against Mr Green in this case.
- 262.** While Mr Green's acts and omissions do not compare to the misconduct of Mr Fletcher, disciplinary action against individual officeholders who are found to have contravened the licensing legislation serves a broader protective purpose, by informing the community and others in the industry that non-compliance will have regulatory consequences.
- 263.** However, the undertaking given by Mr Green has some force in the present circumstances. Mr Green has only served one registered club throughout his lengthy involvement in the industry – this Club. There is no information that he has sought to participate in the liquor and gaming industry in a regulated or other capacity since his resignation from the Club. Mr Green's undertaking is given in unqualified terms, extending beyond the three years that would be open to the Authority to order his disqualification, were it minded to do so.
- 264.** In light of his advanced age and these additional factors, the Authority finds that that prospect of Mr Green changing his mind and participating in the registered clubs industry once again is remote.
- 265.** The Authority notes the absence of any adverse finding in this Complaint as to Mr Green's honesty, and accepts that he is a person of generally good character who has not been the subject of adverse regulatory action before. He has made a substantial contribution to the Club over many years, including a broader contribution to the community through his participation on several regulatory bodies.
- 266.** Mr Green did not authorise nor gain from Mr Fletcher's fraud, which was the primary impetus for Secretary making this Complaint. Mr Green's failings as to knowledge and ability have been recognised by the Authority's finding that he is not fit and proper as a member of a governing body in respect of those matters.
- 267.** The Authority notes the protective purpose of taking disciplinary action and has had regard to the costs order and monetary penalty that it has ordered against the Club. This will communicate to the industry the regulatory consequences of the matters established against the Club's Chairperson in this case. In all the prevailing circumstances at the time of finalising this Complaint, the Authority has decided to exercise its discretion under section 57H(2) of the Act to take no disciplinary action against Mr Green.

ORDERS

268. In conclusion, the Authority has decided to take the following disciplinary action:

- Declare, pursuant to section 57H(2)(g) of the Act, that for a period of three (3) years Mr Robert Fletcher be ineligible to stand for election, or to be appointed to, or hold office in, the position of secretary or member of a governing body of the Greyhound Social Club Ltd and all other registered clubs in New South Wales, with effect from the date of this letter.
- Order, pursuant to section 57H(2)(a) of the Act, that the Club pay a monetary penalty in the amount of **\$13,000**, payable to the New South Wales Department of Justice no later than 28 days from the date of this letter.
- Order, pursuant to section 57H(2)(i) of the Act, that the Club pay the costs incurred by the Secretary of the Department of Justice in conducting the investigation that preceded the Complaint, in the sum of **\$23,839.42** payable to the Department of Justice no later than 28 days from the date of this letter.
- Decide, pursuant to section 57H(2) of the Act, to take no disciplinary action against the Club's former Chairperson, Mr Thomas Green.

REVIEW RIGHTS

269. 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.

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

Yours faithfully



David Armati

Deputy Chairperson

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