



# Independent Liquor & Gaming Authority

The Following orders were made by the Civil and Administrative Tribunal of NSW by consent:  
1. Pursuant to s.63(3)(c) of the *Administrative Decisions Review Act 1997*, the Tribunal sets aside the decisions of the Independent Liquor and Gaming Authority in respect of Mr James Tupou dated 214 February 2017 and, in substitution decides to take no disciplinary action.  
2. The Tribunal notes that there is to be no order as to the costs of the proceedings.

Our ref: RM8 DOC17/030331

Mr Sean Goodchild Director of Compliance Liquor and Gaming NSW Level 6, 323 Castlereagh Street SYDNEY 2000 <a href="mailto:sean.goodchild@justice.nsw.gov.au">sean.goodchild@justice.nsw.gov.au</a> <a href="mailto:paul.irving@justice.nsw.gov.au">paul.irving@justice.nsw.gov.au</a>	Mr James Tupou Lakes Gaming Pty Ltd PO Box 946 WARNERS BAY NSW 2282 <a href="mailto:james@lakesgaming.com">james@lakesgaming.com</a>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

14 February 2017

Dear Sir

## Notice of Final Decision with Reasons on Complaint against Mr James Tupou and Lakes Gaming Pty Ltd under Part 8 of the *Gaming Machines Act 2001*

At its meeting of 14 December 2016 the Independent Liquor and Gaming Authority finalised a complaint made by a delegate of the Secretary of the NSW Department of Justice that was received by the Independent Liquor and Gaming Authority on 21 March 2016.

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

The Authority has decided to take the following disciplinary action:

- (i) Pursuant to section 131(2)(d) of the Act, the Authority **cancels**, with effect from 28 days after the date of this letter:
  - (a) The gaming machine seller's licence held by Mr Tupou (GMS1010483);
  - (b) The gaming machine technician's licence held by Mr Tupou (GMT4011610); and
  - (c) The gaming machine seller's licence held by Lakes Gaming Pty Ltd (GMS4013722).
- (ii) Pursuant to section 131(2)(f) of the Act, the Authority **disqualifies** Mr Tupou and Lakes Gaming Pty Ltd from holding a gaming-related licence or being a close associate of a gaming-related licensee for a period of **three (3) years**, commencing 28 days after the date of this letter.
- (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority orders that Mr Tupou and Lakes Gaming Pty Ltd pay the costs on the investigation that preceded the making of the Complaint under section 128 of the Act, amounting to **\$3,737.22**, to be paid to the New South Wales Department of Justice by no later than 28 days from the date of this decision.

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

Yours faithfully

Philip Crawford  
Chairperson

## STATEMENT OF REASONS

### INTRODUCTION

1. On 21 March 2016 the Authority received a complaint under Part 8 of the Act from Mr Anthony Keon, former Director of Compliance (**Complainant**) in his capacity as a delegate of the Secretary of the Department of Justice (**Secretary**) working within the Compliance Section of Liquor and Gaming NSW (**LGNSW**).
2. The Complaint Letter states that Lakes Gaming Pty Ltd (**Lakes Gaming**) has held a gaming machine seller's licence since 25 March 2008. Its principal place of business as approved by the Authority for the purposes of the Act is 5 Sandringham Avenue, Thornton NSW 2322.
3. Mr James Tupou is the sole owner and director of Lakes Gaming. He was *personally* granted a gaming machine technician's licence on 21 April 1988 and a gaming machine seller's licence on 22 May 1998.
4. Lakes Gaming subcontracts much of its gaming machine repair work to another company, LGS Technology Pty Ltd, which is directed by Mr Graeme Nowicz. Mr Nowicz has personally held a gaming machine technician's licence since 13 September 1994 and gaming machine seller's licence since 26 September 2013.
5. The Complainant explains by way of background that on 7 September 2015 the then Office of Liquor, Gaming and Racing (now LGNSW) commenced an investigation into the actions of a former club secretary in the Maitland area, Mr Chad McLetchie, who was alleged to have taken gaming machines damaged by fire and unlawfully provided them to Lakes Gaming.
6. The Authority notes that at the time of this letter it has not received any complaint against Mr McLetchie. A separate complaint has been made by the Complainant under Part 8 of the Act in relation to Mr Nowicz.

### GROUND OF COMPLAINT

#### Ground 1

7. Ground 1 is based upon the statutory ground of complaint provided by section 129(3)(a)(i) of the Act – that a licensee has contravened a provision of the Act or the regulations.
8. The Complainant alleges that between May and August 2015 Mr Tupou made certain applications on the *Quickchange* database (which the Authority notes is an electronic database that maintains records of each individual gaming machine that is authorised to be kept at each individual hotel and registered club in New South Wales). It is alleged that these applications contained deliberately misleading and incorrect information, contrary to section 71(1) of the Act.
9. Briefly, the misleading information that Mr Tupou is said to have provided is set out at Particulars 1 to 20 of the Complaint Letter, which are discussed in detail in the Authority's findings below.
10. Particulars 21 to 26 of Ground 1 further allege that Mr Tupou, on behalf of Lakes Gaming, instructed Mr Graeme Nowicz, a gaming technician, to engage in the following conduct, contrary to section 77 of the Act:
  - unlawfully change a compliance plate on an approved gaming machine
  - reset the hard and soft meters on those machines, and
  - enter false information into the *Quickchange* database.

11. Particular 27 alleges that Mr Tupou has admitted to LGNSW officers to:
  - making misleading representations on the *Quickchange* system
  - instructing Mr Nowicz to change the compliance plates of machines at Rathmines Memorial Bowling Club Ltd (**Rathmines Club**) and the Dora Creek Workers Club Ltd (**Dora Creek Club**) and
  - obtaining the Rathmines Club login details for *Quickchange* under false pretences.
12. Particular 28 alleges that Mr Tupou has committed an offence against section 77(5) by authorising or permitting another person to commit an offence under section 77(3), which makes it an offence to remove a compliance plate from an approved machine. The Complainant further alleges that Mr Nowicz committed an offence against section 77(3) and was acting under Mr Tupou's guidance or instructions when committing that offence.
13. Finally, Particular 29 alleges that the misleading information that was inputted into the *Quickchange* database also constituted an offence against section 36 of the *Gaming and Liquor Administration Act 2007* (**GALA Act**).

## Ground 2

14. Ground 2 is based upon the statutory ground provided by section 129(3)(e)(iv) of the Act – which provides that a licensee is no longer a fit and proper person to hold a gaming-related licence.
15. Particular 31 alleges that by virtue of the conduct specified in Particulars 1 to 30, both Lakes Gaming Pty Ltd and Mr Tupou are no longer fit and proper persons to hold a licence.
16. Particular 32 further alleges that Mr Tupou knowingly submitted false details in *Quickchange* applications regarding the price paid for gaming machines acquired by Lakes Gaming and that he obtained *Quickchange* details from the Rathmines Club and the Dora Creek Club under false pretences so that the “ordinary checks” with regard to *Quickchange* applications would not be performed by staff of those clubs.
17. Particular 33 alleges that Mr Tupou engaged in conduct that was designed to hinder LGNSW inspectors or erase complicity in offences against the Act. This conduct included arranging for Mr Nowicz to reset the hard meters of the relevant machines (an action that the Complainant submits is not otherwise permitted under the authority granted by a gaming machine technician's licence) and by Mr Tupou gaining access to club *Quickchange* login details under “false pretences”.

## DISCIPLINARY ACTION RECOMMENDED BY COMPLAINANT

18. The Complainant recommends that should the Complaint be established, the Authority should take the following disciplinary action under section 131 of the Act:
  - (i) the imposition of a financial penalty (the Authority notes that the quantum is not specified) upon Lakes Gaming Pty Ltd and Mr Tupou under section 131(2)(a)(i);
  - (ii) an order under section 131(2)(d) to cancel:
    - the seller's licence of Mr Tupou
    - the gaming technician's licence of Mr Tupou and
    - the seller's licence of Lakes Gaming Pty Ltd.
  - (iii) an order under section 131(2)(f) of the Act to disqualify Lakes Gaming Pty Ltd and Mr Tupou from holding a gaming related licence or being a close associate of a licensee for a period of ten years.

- (iv) An order under section 131(2)(i)(i) that “the respondents” pay the LGNSW costs on the investigation.

## COMPLAINT MATERIAL

19. The Complainant relies upon the following evidence or material:

- Complaint Letter
- *Quickchange* Application No. 236907
- Lakes Gaming Invoice to Mayfield Ex-Services Club (**Mayfield Club**) dated 13 May 2015
- *Quickchange* Report for Application No. 237304 as at 25 May 2015
- Lakes Gaming Invoice to Mayfield Club dated 13 May 2015
- *Quickchange* Report for Application No. 238134 as at 16 June 2015
- Lakes Gaming Invoice/Quote to The Entrance Leagues Club Ltd (**The Entrance Club**) 16 June 2015
- *Quickchange* Report for Application No. 239700 as at 23 July 2015
- Lakes Gaming Invoice to Dora Creek Club dated 20 July 2015
- *Quickchange* Report for Application No. 240362 as at 6 August 2015
- Lakes Gaming Invoice to Rathmines Club dated 20 July 2015
- LGNSW email to Mr Tupou dated 9 October 2015
- LGNSW Notice to Produce to Mr Tupou and Lakes Gaming
- Email from Rathmines Club to LGNSW with attachments
- File Note by LGNSW Inspector Newman dated 13 October 2015
- CMS Record for XAW850952 showing meter reset on 9 October 2015
- CMS Record for XAW855696 showing meter reset on 9 October 2015
- *Quickchange* Report for Application No. 243374 as at 9 October 2015
- LGNSW transcript of an interview with Mr James Tupou on 16 October 2015 (**Tupou Interview**).

## LEGISLATION

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

### 3 Objects of Act

- (1) *The objects of this Act are as follows:*
- (a) *to minimise harm associated with the misuse and abuse of gambling activities,*
  - (b) *to foster responsible conduct in relation to gambling,*
  - (c) *to facilitate the balanced development, in the public interest, of the gaming industry,*
  - (d) *to ensure the integrity of the gaming industry,*
  - (e) *to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.*
- (2) *The Authority, the Minister, the Director-General, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.*
- (3) *In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.*

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

## **71 Supply and purchase of gaming machines**

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

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

## **22. Section 77 regulates tampering with sensitive areas of gaming machines as follows:**

### **77 Protection of sensitive areas of gaming machines**

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

*Maximum penalty: 100 penalty units.*

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

*Maximum penalty: 100 penalty units.*

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

*Maximum penalty: 10 penalty units.*

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

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

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

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

*Maximum penalty: 10 penalty units.*

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

*Maximum penalty: 100 penalty units.*

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

*Maximum penalty: 100 penalty units.*

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

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

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

*Maximum penalty: 100 penalty units.*

- (6) *In this section:*

*authorised person means an inspector or a technician.*

*compliance plate has the same meaning as in section 121.*

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

23. Relevantly to this Complaint, section 129 prescribes requirements for the making of a complaint and the grounds of complaint available under the Act as follows:

#### **129 Grounds for making complaint**

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

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

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

- (3) *The grounds on which a complaint in relation to a licensee or close associate may be made are as follows:*

- (a) that the licensee:*

- (i) has contravened a provision of this Act or the regulations, or*

*...*

- (e) that the gaming-related licensee:*

- (i) has failed to comply with a condition of the gaming-related licence, or*
- (ii) has failed to comply with an order or direction of the Authority, or*
- (iii) has failed to make due payment of a penalty for late payment of a fee in accordance with this Act, or*
- (iv) is no longer a fit and proper person to hold a gaming-related licence,*

**24.** Section 131 provides the powers of the Authority when taking disciplinary action as follows:

**131 Disciplinary powers of Authority**

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*
- (2) *If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the licensee or close, associate, the Authority may decide not to take any action or may decide to do any one or more of the following:*
  - (a) *order the hotelier or gaming-related licensee to pay, within such time as is specified in the order:*
    - (i) *a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in any other case), or*
    - (ii) *if circumstances of aggravation exist in relation to the complaint – a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in any other case),*
  - (b) *order the club to pay, within such time as is specified in the order, a monetary penalty not exceeding 2,500 penalty units or, if circumstances of aggravation exist in relation to the complaint, not exceeding 5,000 penalty units,*
  - (c) *if the ground that applies is any of the grounds referred to in section 129(3)(a), (b), (c), (d) or (f):*
    - (i) *cancel the hotelier's or club's licence under the Liquor Act 2007 or the gaming-related licence, or*
    - (ii) *suspend the hotelier's or club's licence under the Liquor Act 2007 or the gaming-related licence for such period as the Authority thinks fit, or*
    - (iii) *cancel, suspend or modify any authorisation or approval under this Act for the hotelier or club to keep approved gaming machines, or*
    - (iv) *disqualify the hotelier or club from keeping approved gaming machines for such period as the Authority thinks fit,*
  - (d) *cancel the gaming-related licensee's licence or suspend the licence for such period as the Authority thinks fit,*
  - (e) *impose or vary a condition to which the gaming-related licence is subject,*
  - (f) *disqualify the gaming-related licensee from holding a gaming-related licence for such period as the Authority thinks fit,*
  - (g) *disqualify the close associate from being a close associate of a licensee for such period as the Authority thinks fit,*
  - (h) *disqualify the close associate from holding a gaming-related licence for such period as the Authority thinks fit,*
  - (i) *order the licensee to pay the amount of any costs incurred:*
    - (i) *by the Director-General in carrying out any investigation or inquiry under section 128 in relation to the licensee or close associate, or*
    - (ii) *by the Authority in connection with the taking of disciplinary action against the licensee or close associate under this section,*
  - (j) *reprimand the licensee or close associate.*
- (3) *If the Authority orders a licensee to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:*
  - (a) *cancel the licence, or*
  - (b) *suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).*

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

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

**36 False or misleading statements**

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

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

- (2) *In this section:*

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

## CONSULTATION

- 26. On 4 April 2016 a Show Cause Notice, enclosing an entire electronic copy of the Complaint Material, was emailed to Mr Tupou and Lakes Gaming (the **Respondents**) on 4 April 2016.
- 27. The Respondents have addressed the merits of the Complaint by way of an 8-page submission made through their barrister Mr Garry Sundstrom, dated 18 April 2016 (**Respondents Submission**). They have not elected to provide statements of evidence, such as statutory declarations, as indicated in the Show Cause Notice.
- 28. The Respondents Submission requests that the Authority exercise its discretion to decline to take any disciplinary action against the Respondents. The Respondents address each of the Particulars as below.
- 29. In relation to Particulars 1-7, 8-10, 11-13, and 14-16 of the Complaint Letter, Mr Tupou confirms his admission to LGNSW that he failed to complete the *Quickchange* application accurately, by failing to specify the correct cost, but submits that he “did not have any criminal or deceptive intent” when doing so.
- 30. In relation to Particulars 17-19 of the Complaint Letter, Mr Tupou accepts the factual matters specified by the Complainant but denies *intentionally* providing incorrect information and contends that his conduct was an “innocent error”.



31. By way of explanation, the Respondents contend that Mr Tupou's wife, Ms Barbara Tupou, who died in July 2014, was a director and active partner in the Lakes Gaming Pty Ltd business. Ms Tupou had been responsible for the administrative aspects of the business.
32. The Respondents contend that in addition to the grief and burden of responsibility brought by the death of Mrs Tupou, Mr Tupou also lacked her skill with respect to administrative matters, and a consequence of this is the errors made in the *Quickchange* system that are the subject of these Particulars.
33. In relation to Particulars 21-30 of the Complaint Letter, the Respondents contend that at the time of being contacted by LGNSW Inspector Mr Newman, Mr Tupou was not aware that the gaming machines provided to him by Mr Nowicz had been sourced from the Maitland Park Bowling Club, but he eventually discovered this through information provided by Mr Nowicz on 8 October 2015.
34. The Respondents further contend that it was not until 8 October 2015 that Mr Tupou became aware that Mr Nowicz had placed the wrong compliance plates on the gaming machines, by mistake, whereupon Mr Tupou instructed Mr Nowicz to correct this mistake by replacing the plates. Mr Tupou took it upon himself to use the Rathmines Memorial Bowling Club login to correct the *Quickchange* records.
35. In relation to Particular 32 of the Complaint Letter, the Respondents contend that Mr Tupou was not aware of any investigation of his business as at 9 October 2015 and denies that his decision to change the *Quickchange* records and request that Mr Nowicz change the compliance plates was intended to hinder LGNSW investigators.
36. In relation to Particular 34 of the Complaint Letter, the Respondents contend that Mr Tupou had been authorised by the Club to use its *Quickchange* login and was merely using that login to correct the records.
37. The Respondents submit that Mr Tupou remains a fit and proper person to hold his licences and those of Lakes Gaming Pty Ltd. The Respondents submit that Mr Tupou has offended against the Act and Regulation by "omission, mistake and mistake of judgment" at a time when he was "emotionally impacted" and "let down by Mr Nowicz".
38. The Respondents contend that Mr Tupou would "never have had anything to do with" the Maitland Park gaming machines (that had been approved for destruction and alleged to have been unlawfully supplied to Lakes Gaming) had Mr Nowicz informed him of their origin, nor would he have countenanced any interference with the meters on a gaming machine.
39. The Respondents contend that Mr Tupou has maintained a gaming licence for a long period of time without any prior issues being raised as to his integrity and he has maintained a good reputation within the industry.
40. Furthermore, the Respondents contend that Mr Tupou is a parent and recent widower; has six contractors who are dependent upon him for work; and only has skills within the gaming industry.

#### **No Further Submission from the Complainant**

41. The Complainant indicated in a short email sent to the Authority on 9 May 2016 that it does not intend to make any response or submission in relation to the submission from the Respondents.

## FINDINGS

42. A disciplinary complaint under Part 8 of the Act is an administrative matter, and findings are made to the civil standard of proof.
43. 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

44. Particular 1 alleges that on 15 May 2015 Mr Tupou submitted *Quickchange* Application number 236907 for the Mayfield Club. This allegation, which is not contested by the Respondents, is established on the basis of the record of *Quickchange* Application 236907 for the installation of four gaming machines and the disposal of eleven gaming machines at the Mayfield Club.
45. Particular 2 alleges that *Quickchange* Application 236907 was approved by the Authority. This allegation, which is not contested by the Respondents, is established on the basis of the record of *Quickchange* Application 236907.
46. Particular 3 alleges that the Seller Summary for *Quickchange* Application 236907 stated under the terms of contract “No written contract exists – no charge”. While the Complainant did not provide the seller summary for this Application, the Authority is satisfied that this Particular is established on the basis of the record of *Quickchange* Application 236907 and pages 5-7 of the transcript of the Tupou Interview and page 2 of the Respondents Submission dated 18 April 2016. The Respondents do not contest that Mr Tupou did not correctly complete this *Quickchange* Application.
47. Particular 4 alleges that the invoice issued by Lakes Gaming to the Mayfield Club on 15 May 2015 indicates that the Club was invoiced for \$153,704.10. The Respondents do not contest the allegation that an invoice for \$153,704.10 was issued, but contend in page 2 of the Respondents Submission that much of this invoice is for parts and labour, not for new installations, there being only two gaming machines referred to therein.
48. The Authority is satisfied, as alleged in this Particular, that an invoice for \$153,704.10 was issued by Lakes Gaming to the Mayfield Club but also accepts the explanation of the Respondents as to what this invoice concerned.
49. Particular 5, which alleges that on 25 May 2015 Mr Tupou submitted *Quickchange* Application 237304 for Mayfield Club for the installation of two gaming machines, is not contested by the Respondents and is established on the basis of the record of *Quickchange* Application 237304.
50. Particular 6 alleges that in the Seller Summary for *Quickchange* Application 237304, Mr Tupou stated under the terms of contract “No written contract exists – free”. The Respondents do not contest that Mr Tupou did not complete this Application accurately. The Particular is established on the basis of the record of *Quickchange* Application 237304, pages 5-7 of the transcript of the Tupou Interview and page 2 of the Respondents Submission.
51. Particular 7 alleges that an invoice issued by Lakes Gaming to the Mayfield Club on 22 July 2015 shows that the Club was invoiced for \$164,099.00.

52. The Respondents contest this allegation at page 2 of the Respondents Submission and contend that the amount referred to by the Complainant (\$164,099.00) actually comprises two invoices – one for \$10,394.90 regarding the supply of monitors and the other for \$153,704.10 regarding “parts and labour, not new installations, there being only two new machines therein”. The Respondents contend that the gaming machine installations relating to Particular 5 were “absorbed” within the invoice for the work that is outlined in Particular 7.
53. The Authority is satisfied that this Particular is established on the basis of the invoice issued to the Mayfield Club on 22 July 2015, indicating a total amount of \$164,099.00, noting that this total appears to comprise two different invoices – one for the amount of \$10,394.90 for monitors provided to the Mayfield Club and the other for \$153,704.10 which appears to be the same invoice that was issued on 15 May 2015 that is referred to in Particular 4.
54. Particular 8 alleges that on 16 June 2015 *Quickchange* Application 238134 was processed and authorised for the installation of three gaming machines and the disposal of three gaming machines at The Entrance Leagues Club. The Respondents do not contest that Mr Tupou submitted this Application and the Authority is satisfied that this Particular is established on the basis of the record for *Quickchange* Application 238134.
55. Particular 9 alleges that the Seller Summary for *Quickchange* Application 238134 stated under the terms of contract “No written contract exists – no charge”. The Respondents do not contest that Mr Tupou did not complete this *Quickchange* Application accurately. The Authority finds that this Particular is established on the basis of the record for *Quickchange* Application 238134, pages 5-7 of the Tupou Interview and page 2 of the Respondents Submission.
56. Particular 10 alleges that the invoice issued by Lakes Gaming to The Entrance Leagues Club Ltd on 16 June 2015 indicates that the Club was invoiced for \$72,600.00. This is not contested and the Authority finds that this Particular is established on the basis of the invoice provided in the Complaint Material.
57. Particular 11 alleges that on 23 July 2015 *Quickchange* Application 239700 was processed and authorised for the installation of two gaming machines, the disposal of two gaming machines, and the conversion of two gaming machines at the Dora Creek Club. The Respondents do not contest this Particular and the Authority finds that this Particular is established on the basis of the record of *Quickchange* Application 239700.
58. Particular 12 alleges that in the Seller Summary for *Quickchange* Application 239700, Mr Tupou stated under the terms of contract “No written contract exists – no charge”. The Respondents do not contest that Mr Tupou did not complete this Application accurately and the Authority finds that this Particular is established on the basis of record of *Quickchange* Application 239700, pages 5-7 of the Tupou Interview and page 2 of the Respondents Submission.
59. Particular 13 alleges that the invoice issued by Lakes Gaming to Dora Creek Club on 20 July 2015 indicates that the Club was invoiced for \$37,675.00. The Respondents do not contest this allegation and this Particular is established on the basis of the invoice that is provided with the Complaint Material.
60. Particular 14 alleges that on 6 August 2015 *Quickchange* Application 240362 was processed and authorised for the installation of two gaming machines and the disposal of two gaming machines at the Rathmines Memorial Bowling Club. The Respondents do not contest that Mr Tupou submitted *Quickchange* Application 240362 and the Authority finds that this Particular is established on the basis of the record of this *Quickchange* Application.
61. Particular 15 alleges that in *Quickchange* Application 240362 Mr Tupou stated that a 90-day contract existed but specified the value of this application as \$5,000.00. The Respondents do

not contest that Mr Tupou entered incorrect information in *Quickchange* Application 240362, but contend in page 2 of the Respondents Submission that this was by way of error rather than by design.

62. While noting that the Complainant has not provided the Seller Summary for this Application, the Authority finds that this Particular is established on the basis of *Quickchange* Application 240362, pages 5-7 of the Tupou Interview and page 2 of the Respondents Submission dated 18 April 2016.
63. While this explanation is not without concern from a regulatory perspective (as discussed with regard to Ground 2 below), on the available evidence or material before it and noting the absence of any rebuttal from the Complainant the Authority has decided, on balance, and exercising an appropriate degree of care when fact finding in a disciplinary context, that the incorrect data was entered by Mr Tupou in error.
64. Particular 16 alleges that the invoice issued by Lakes Gaming to the Rathmines Memorial Bowling Club on 20 July 2015 indicates that the Club was invoiced for \$18,150.00. The Respondents do not contest this allegation and the Authority finds that this Particular is established on the basis of the invoice provided with the Complaint Material.
65. Particular 17 alleges that the conduct of Mr Tupou has contravened section 71(1) of the Act by not complying with the requirement to inform the Authority of any discrepancy in *Quickchange* applications, such as the cost discrepancies in *Quickchange* applications 236907, 237304, 238134, 239700, and 240362. The Respondents do not contest these allegations and the Authority finds that this Particular is established on the basis of the records of *Quickchange* Applications 236907, 237304, 238134, 239700, and 240362, the invoices provided with the Complaint Material, pages 5-7 of the Tupou Interview and page 3 of the Respondents Submission.
66. Particular 18 contends or submits that a *Quickchange* application is an “official document” within the meaning of section 36 of the GALA Act. The Respondents do not contest this contention and the Authority accepts this contention or submission.
67. Particular 19 alleges that entering false amounts into a *Quickchange* application is an offence against section 36(1) of the GALA Act.
68. The Respondents do not contest the proposition that entering false amounts into a *Quickchange* application is an offence, but strongly deny that Mr Tupou *intentionally* provided incorrect information and contend that his conduct was simply an “innocent error”.
69. While this explanation is not without concern from a regulatory perspective (as discussed with regard to Ground 2 below), on the available evidence or material before it and noting the absence of any material in rebuttal from the Complainant - the Authority has decided, on balance, exercising appropriate care when fact finding in a disciplinary context, that the incorrect data was entered by Mr Tupou in error.
70. The Authority notes that the GALA Act is not the relevant “Act” to which section 129(3)(a)(i), (which provides the statutory basis for Ground 1) refers. An alleged contravention of the GALA Act cannot support Ground 1, although this conduct is repeated in relation to Ground 2 and has been considered in that context below.
71. Particular 20 states that a prosecution action for these offences is being considered by the Complainant separately. The Authority accepts, on the basis of the information provided in the Complaint Letter, that the Complainant was contemplating taking prosecution action in relation to the subject matter of this Complaint, but the Authority has received no further information about a prosecution at the time of this decision letter.

72. Particular 21 alleges that on 8 October 2015, Inspector Paul Newman of LGNSW contacted Mr Tupou and requested information regarding a number of approved gaming machines. This Particular is established on the basis of an email sent to Mr Tupou from Inspector Newman on 9 October 2015 that forms part of the Complaint Material and which refers to “our communications and correspondence this week in relation to Gaming Machines from Maitland Park Bowling and Sports Complex”.
73. The Respondents contend, at page 4 of the Respondents Submission dated 18 April 2016, that Mr Tupou has no recollection of an email sent by Inspector Newman on 8 October 2015 but he does recall a telephone conversation on this date that was followed by an email sent on 9 October 2015, including a Notice to Produce.
74. The Authority finds that Particular 21 is established on the basis of the email correspondence dated 9 October 2015.
75. Particular 22 alleges that on 9 October 2015 Mr Tupou was served by the then Office of Liquor Gaming and Racing (now LGNSW) with a Notice to Produce to provide certain documents and records.
76. The Authority is satisfied that this Particular is established on the basis of the email from Inspector Neman to Mr Tupou dated 9 October 2015 and the attached Notice to Produce which forms part of the Complaint Material. The Respondents acknowledge this correspondence at page 4 of the Respondents Submission. The Notice to Produce sought:
- Copies of all quotes issued for gaming machines that were previously at the Maitland Park Club that Mr Tupou sold to other venues
  - Copies of all quotes accepted for gaming machines that were previously at the Maitland Park Club that Mr Tupou sold to other venues
  - Copies of all correspondence between Mr Tupou and the venues which purchased the gaming machines
  - Copies of all bank statements for the transactions/transfer of funds relating to the sale of gaming machines previously owned by the Maitland Park Club and any other vendors/venues
  - Copies of all consignment vouchers or equivalent for the gaming machines received
  - Copies of the Quickchange applications (screen grabs of each step of the transaction for each machine, including method of payment, reason for no contract, etc).
77. Particular 23 alleges that on 13 October 2015, witnesses at the Rathmines Memorial Bowling Club and Dora Creek Club contacted Inspector Newman and advised that on 9 October 2015 an unidentified technician attended Rathmines Club when compliance plate XAW855696 was removed and replaced with XAW850953. Particular 23 further alleges that on that date an unidentified technician attended the Dora Creek Club where compliance plates XSG210085 and XSG700223 were replaced with compliance plates XUN600100 and XKA019974 respectively.
78. The Authority notes that a detailed letter from Mr Peter Blundell of the Rathmines Club dated 13 October 2015 (**Blundell Letter**) and another detailed letter from Ms Leanne Jones of the Rathmines Club dated “October 2015” (**Jones Letter**) form part of the Complaint Material. Both letters are in the form of unsworn signed statements and quote direct speech when describing conversations.
79. Briefly, the Jones Letter advises how at 11:12am on 9 October 2015 Ms Jones opened the Club’s doors to allow in an unnamed “Lakes Gaming Technician” who said he had just been to the Dora Creek Club and had come to perform two gaming machine conversions. The letter notes, *inter alia*, how Ms Jones challenged the technician about only having paperwork for work on machine number 9 (when he had referred to working on two machines) and the technician telling her that he would only convert one machine that day. Ms Jones also notes

challenging the technician about him changing the serial number on a machine and later viewing surveillance footage with Mr Blundell which showed that the technician had removed the compliance plate from machine number 17.

80. The Blundell Letter notes how on 8 October 2015 Mr Blundell received a telephone call from Mr Tupou advising that he will be at the Rathmines Club the next day to convert gaming machine number 9 from “Jade Mountain” to “Lucky Pig”. Mr Tupou asked Mr Blundell for his *Quickchange* login details to get the paperwork ready for this work. Mr Blundell states that no reference was made during that conversation to machine number 17, nor to any work to be performed with regard to that machine.
81. The Authority further notes an email sent by LGNSW Inspector Newman to LGNSW Manager of Revenue Assurance and Integrity Mr Brendan Walker-Munro dated 13 October 2015 which forms part of the Complaint Material. It indicates that Inspector Newman had been contacted by Mr Blundell regarding the removal of a compliance plate from a gaming machine at that Club. It also indicates that Inspector Newman had contacted staff at the Dora Creek Club and Maitland Park Club, who advised that Lakes Gaming had attended that Club on 9 October 2015 to perform a disposal/installation of four gaming machines at that venue.
82. In the Respondents Submission, the Respondents do not contest that Mr Nowicz actually replaced the compliance plate of a gaming machine at the Rathmines Club, but contend that no compliance plates were replaced at the Dora Creek Club.
83. The Respondents contend that Mr Tupou was not aware that Mr Nowicz had placed the wrong compliance plate on the relevant gaming machine at the Rathmines Club until 8 October 2015 when Mr Nowicz told Mr Tupou that he had made this mistake during repairs.
84. The Respondents contend that as it happened, Mr Nowicz was due to attend the Rathmines Club on 9 October 2015 for another job and Mr Tupou agreed that he should replace the incorrect compliance plate with the correct plate while he was on the premises.
85. Mr Tupou states that he “took advantage” of the authorisation that had been granted to him by the Rathmines Club to use that Club’s login, to create a *Quickchange* application that would “remedy” those incorrect records. Mr Tupou contends that he “assumed” that the Club’s management, with whom he enjoyed a good relationship, would want this error to be fixed.
86. Mr Tupou submits that he intended no malfeasance in this conduct, which was designed to correct an error, but he “now realises that he breached the Regulation”. He submits that he made “full and frank disclosure” of this matter to LGNSW during the Tupou Interview.
87. The Authority is satisfied, on the basis of the evidence provided by the Complainant, that the Lakes Gaming technician, Mr Nowicz, did remove the compliance plate of a gaming machine at the Rathmines Club, as alleged, but there is no evidence or information identifying that any compliance plates were removed from any gaming machines at the Dora Creek Club and the Authority does not make that finding.
88. On the material before it, and noting that the Complainant has not provided any submissions or evidence in rebuttal, the Authority accepts the Respondents’ account as to the motivation for removing this compliance plate at the Rathmines Club. The Particular is nevertheless established with regard to the Rathmines Club.
89. Particular 24 alleges that on 9 October 2015 the technician reset the soft and hard meters on all the gaming machines referred to in Particular 23. On pages 4-5 of the Respondents Submission, the Respondents contend that Mr Tupou did not discuss or authorise the interference with any of the mechanical or electronic meters of the machines that are the

subject of Particular 24. Mr Tupou understands that mechanical meters on gaming machines are not able to be reset.

90. The Authority is satisfied, on the basis of the CMS records for gaming machine serial numbers XAW850952 and XAW855696 as at 12 November 2015, that the soft and hard meters were reset as alleged. The Authority accepts Mr Tupou's explanation as to why this conduct occurred and accepts his position (which has not been the subject of any evidence or submissions in rebuttal from the Complainant) that Mr Tupou did not expressly authorise Mr Nowicz to reset the meters of those machines.
91. Particular 24 is established.
92. Particular 25 alleges that the technician referred to in Particulars 23 and 24 was later identified on the basis of CCTV footage to be Mr Graeme Nowicz. The Respondents do not contest this allegation and the Authority is satisfied that this Particular is established on the basis of page 8 of the Tupou Interview and page 4 of the Respondents Submission.
93. Particular 26 alleges that *Quickchange* records disclose that the technician licence ID used to record the completion of works performed at the Rathmines Club on 9 October 2015 was registered to Mr Tupou and that the relevant seller who was registered as conducting this transaction was Lakes Gaming.
94. The Respondents do not contest these allegations and the Authority finds that this Particular is established on the basis of the record for *Quickchange* Application 243374 which records the work undertaken at the Rathmines Club during October 2015.
95. Particular 27 alleges that on 15 October 2015 Mr Tupou made "full admissions" that:
  - he had instructed Mr Nowicz to change "the compliance plates"
  - he had provided false and misleading information in the *Quickchange* applications and
  - he obtained *Quickchange* login details of the Rathmines Club under false pretences, in order to process the application (that is, the Rathmines Club did not complete the *Quickchange* transaction on their end and Mr Tupou accessed the Rathmines Club account to approve the transaction).
96. The Respondents concede at page 4 of the Respondents Submission that Mr Tupou instructed Mr Nowicz to change the compliance plate on the gaming machine at the Rathmines Club in question. They contend that this was done in order to correct an error that had been previously made in placing the incorrect plate on that machine.
97. The Respondents further contend at pages 2-5 of the Respondents Submission that while Mr Tupou had provided incorrect information in *Quickchange* Applications, he intended no malfeasance when doing so.
98. The Respondents concede at page 5 of the Respondents Submission that Mr Tupou did use the login details of the Rathmines Club but submits that he did not obtain those details from the Club under "false pretences".
99. The Authority has considered, but is not satisfied, as to Mr Tupou's explanation for his conduct. The allegations in Particular 27 are factually established on the material before the Authority, noting the admissions made by Mr Tupou during his interview with LGNSW.
100. Particular 28 alleges that the above course of conduct contravened section 77(5) of the Act which concerns the authorising or permission of an offence against section 77(3), which prohibits removing, altering or interfering with a compliance plate on an approved gaming machine. The Complainant specifies that:

- Mr Nowicz removed the compliance plates XSG210085 and XSG700223 and replaced them with compliance plates XUN600100 and XKA019974 respectively
- none of the circumstances available under section 77(4) applied and
- Mr Nowicz was acting under Mr Tupou's instructions or guidance when conducting this work.

- 101.** At page 5 of the Respondents Submission Mr Tupou "realises that he has breached the regulation" but contends that he did so to correct a "wrong situation" and that he intended no malfeasance.
- 102.** The Authority is satisfied that Particular 28 is established on the basis of the Jones Letter and Blundell Letters from the Rathmines Club and the CMS records for the gaming machines with serial numbers XAW855696 and XAW850952. The Authority further notes that during the Tupou Interview Mr Tupou acknowledges that he instructed Mr Nowicz to change the compliance plates on the machines at the Rathmines Club and notes the Respondents Submission which acknowledges that Mr Tupou directed Mr Nowicz to change the plates on the gaming machines with serial numbers XAW855696 and XAW850952.
- 103.** Particular 29 submits that *Quickchange* applications constitute an "official document" for the purposes of section 36 of the GALA Act and that using the *Quickchange* credentials of the Rathmines Club is an offence under section 36(1) of that Act.
- 104.** The Respondents have not contested that Mr Tupou inputted the relevant information into the *Quickchange* system, but contest that such information was deliberately misleading and incorrect. The Respondents contend that Mr Tupou became responsible for the administrative duties of running Lakes Gaming upon the death of his wife (who had a history in banking and had previously handled the administrative side of the business). The Respondents contend that the incorrect information provided in the *Quickchange* system in evidence is the result of the additional burdens for which Mr Tupou became responsible following his wife's death.
- 105.** The Authority notes that the GALA Act is not the relevant "Act" to which section 129(3)(a)(i), which provides the statutory basis for Ground 1, refers. A contravention of the GALA Act cannot support Ground 1, although this conduct is repeated in relation to Ground 2 and is considered in that context below.
- 106.** Particular 30 alleges that a prosecution action for these offences is currently being considered separately. The Authority accepts, on the basis of the information provided in the Complaint Letter, that the Complainant was contemplating taking prosecution action in relation to the subject matter of this Complaint, but notes that it has received no further information about a prosecution at the time of this letter.

## Ground 2

- 107.** Particular 31 of the Complaint Letter alleges that by virtue of the conduct specified in Particulars 1-30, Mr Tupou and Lakes Gaming Pty Ltd are no longer fit and proper persons to hold a gaming-related licence for the purposes of section 129(3)(iv) of the Act.
- 108.** It is well established at common law that to be "fit and proper" for the purposes of licensing, a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541.
- 109.** In *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127, the High Court of Australia held that:



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

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

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

111. The Respondents contest the allegation that Mr Tupou and Lakes Gaming are not fit and proper persons for the reasons set out in their legal submission. In the alternative, they submit that should disciplinary action be deemed appropriate, it should take the form of a *financial penalty* rather than the disqualification of the Respondents from holding gaming-related licences.
112. The Authority notes that the Respondents have provided an account of events by way of a submission through their barrister, not in direct evidence through a statutory declaration from Mr Tupou in his personal capacity or as director of Lakes Gaming.
113. The Respondents have not provided positive evidence as to the relevant training or education that Mr Tupou possesses in relation to regulation of the gaming industry, nor directorship of a corporate licensee. The Respondents have provided little by way of positive evidence as to Mr Tupou’s honesty, knowledge and ability.
114. However, the Respondents have drawn the Authority’s attention to the length of time that Mr Tupou and Lakes Gaming have held their respective licences. The Authority is satisfied that Mr Tupou has held a gaming machine technician’s licence since 21 April 1988 and a gaming machine seller’s licence since 22 May 1998.
115. The Authority accepts that Mr Tupou has spent a substantial period of time in the gaming machines industry in New South Wales and there is no evidence of adverse regulatory concerns applicable to Mr Tupou or Lakes Gaming over and above the matters specified in this Complaint.
116. The Respondents further submit that in his interview with LGNSW on 16 October 2015 Mr Tupou was fully cooperative with Inspector Newman. The Authority accepts that Mr Tupou participated in and cooperated during the Tupou Interview. He accepted responsibility for a number of matters put to him.
117. A central issue is whether the Authority accepts the contentions made by Mr Tupou about the reasons why incorrect information was provided by him on the *Quickchange* database in the particular matters that are the subject of this Complaint. That is, whether Mr Tupou’s unfortunate personal circumstances explains the incorrect information that Mr Tupou concedes was entered into the *Quickchange* system – or whether that conduct involved deliberate action.

118. The Respondents Submission details how the Lakes Gaming business involved a division of labour between Mr Tupou (who was the public face of the business) and his late wife (who had a background in banking and handled the administrative side of the business).
119. The Respondents contend that following Mrs Tupou's death during 2014 Mr Tupou has been raising two young children. The Respondents contend that Mr Tupou is not as organised or as accurate as to administrative matters as his late wife although (it is also claimed) that he is "lifting his game" in this regard.
120. The Respondents contend that they had a "long standing business relationship with Mr Nowicz" and felt that they could trust Mr Nowicz. They contend that they were "let down badly" by Mr Nowicz at a time when Mr Tupou was "vulnerable". The Respondents contend that they would have had nothing to do with the Maitland Park machines had Mr Nowicz informed them of the origin of those machines, nor would they have countenanced any interference with the meters of a machine.
121. The Respondents claim and the Authority accepts that there was a degree of panic motivating Mr Tupou's conduct and that his intention was to correct an error that had arisen from an incorrect compliance plate in operation in the field, for which the company was responsible. Mr Tupou accepts that he requested a technician, Mr Nowicz, to attend the Rathmines Club to remove a compliance plate and acknowledges that this was in contravention of the Act and that he used his authority to use the Rathmines Club login to access the *Quickchange* system to an extent that that Club had not expressly authorised.
122. Nevertheless, the entry by Mr Tupou of incorrect or misleading information on a regulatory database is a serious matter, no matter what the motive, and is a basis for impugning Mr Tupou's knowledge and ability with regard to regulatory matters as both the personal holder of a gaming licence and the director of a corporate licensee. The more obvious course of action to correct any error on the system would have been for Mr Tupou to have contacted gaming licensing staff about the correct course of action.
123. The gaming machines industry is one of the most closely regulated areas of commerce under New South Wales law. This is for good reason, given the considerable scope for probity concerns and the potential social harm posed by the keeping of gaming machines. The authorisation and monitoring of gaming machines throughout the *Quickchange* database and the Central Monitoring System is a fundamental part of the regulatory scheme for the monitoring and control of gaming machines in hotels and clubs across New South Wales. It is an important aspect of maintaining the integrity of the industry. Users of the *Quickchange* system are presented with, and must acknowledge, declarations as to the accuracy of the information they input at various stages of the application process.
124. To the extent that Mr Tupou relies upon his personal circumstances with regard to the matters specified in Ground 1, the Authority accepts that Mr Tupou's personal circumstances, which are not the subject of evidence or submissions in reply, are as claimed in the submissions through his Counsel.
125. Accepting the proposition that Mr Tupou was both under pressure from his personal circumstances and not particularly adept with use of the *Quickchange* database, his found conduct nevertheless displayed a lack of diligence with regard to this fundamental aspect of his business. By inputting incorrect information into the *Quickchange* system on the several occasions identified by the Complainant, he is hampering the system from its purpose of properly regulating and tracking the local and control of the relevant gaming machines. It is neither prudent nor honest to use the login ID of a *Quickchange* password holder beyond the express purpose provided for that use. It is not satisfactory for Mr Tupou to assume this would have been acceptable, he should have obtained authorisation from the Club to use its login. This is another instance whereby Mr Tupou's conduct threatens the integrity of the gaming machines industry.

126. If a company director of a corporate licensee is under operational or personal pressure when in meeting the administrative demands of running a gaming licensed business, particularly those aspects of the business that may have significant regulatory consequences, then the short answer is to either engage staff or contractors with experience to assist the business, or leave the industry.
127. The Authority is satisfied that Ground 2 is established on the basis of the Authority's findings on Ground 1.
128. Ground 2 is also based upon the allegation in Particular 32 that Mr Tupou attempted to hinder the investigation of inspectors. The Respondents contend that Mr Tupou was not aware of any LGNSW *investigation* into his business at the relevant time, and that he was acting to correct a mistake. This submission has not been the subject of evidence or submissions in rebuttal. While Mr Tupou's conduct with regard to the *Quickchange* database was plainly inappropriate, and there may be cause for suspicion as to the timing of this conduct, Particular 32 is not supported by sufficient evidence to establish that he was hindering an investigation, taking due care with regard to fact finding in the context of a disciplinary complaint.
129. Particular 33 alleges that Mr Tupou knowingly submitted false details in *Quickchange* applications relating to the price paid for gaming machines installed by Lakes Gaming. As noted above, the Authority accepts, on balance (and on the material before it), that these transactions demonstrated a lack of honesty and diligence in use of the *Quickchange* system.
130. Particular 34 alleges that Mr Tupou obtained the *Quickchange* login details of the Rathmines Club so that the ordinary checks in relation to applications would not be done by an officer of the Club. Evidence in support of this finding includes the *Quickchange* applications provided by the Complainant, the CMS Records for the gaming machines for October 2015 and the email from the Rathmines Club to LGNSW dated 13 October 2015. Mr Tupou's account of this transaction is discussed at pages 8-14 of the Tupou Interview.
131. The Respondents contend that Mr Tupou was unaware that these checks were being carried out by LGNSW and that he acted to "correct a mistake" and not to obfuscate his actions. The Authority is satisfied that Mr Tupou should not have used the Club's login and was not forthright about his reasons for using the Club's login. Mr Tupou has not substantiated his claim that the Club would have consented to his use of its login. In any case, Mr Tupou's use of the Club's login in those circumstances evidences a lack of honesty and diligence with regard to use of the *Quickchange* system.

## **SUBMISSIONS ON DISCIPLINARY ACTION**

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

### **Complainant Submission on Disciplinary Action dated 14 October 2016**

133. On 14 October 2016, the Complainant provided the Authority with a submission on disciplinary action in relation to the Complaint.
134. The Complainant notes that the Authority is satisfied that both Grounds of Complaint are established in that Mr Tupou and Lakes Gaming Pty Ltd have contravened a provision of the Act or Regulation and are no longer fit and proper to hold a gaming-related licence. On the

basis of the Authority's findings, the Complainant submits that the Authority should make the following Orders:

- (i) Pursuant to section 131(2)(a)(i) of the Act, impose a financial penalty on Mr Tupou and Lakes Gaming Pty Ltd “in the amount the Authority deems appropriate”.
- (ii) Pursuant to section 131(2)(d) of the Act, cancel:
  - (a) The gaming machine seller's licence held by Mr Tupou (GMS1010483);
  - (b) The gaming machine technician's licence held by Mr Tupou (GMT4011610);
  - (c) The gaming machine seller's licence held by Lakes Gaming Pty Ltd (GMS4013722).
- (iii) Pursuant to section 131(2)(f) of the Act, disqualify Mr Tupou and Lakes Gaming Pty Ltd from holding a gaming-related licence and being a close associate of the holder of a gaming-related licence for “a period up to 10 years”.
- (iv) Pursuant to section 131(2)(i) of the Act, that the respondents pay the costs incurred by the Secretary of the Department of Justice (Liquor and Gaming NSW) in carrying out the investigation under section 128 of the Act.

**135.** Attached to the Complainant's submission is a schedule itemising the costs incurred by LGNSW in respect of the investigation that gave rise to the Complaint, which amount to **\$3,737.22**.

#### **No Submission from Mr Tupou or Lakes Gaming Pty Ltd**

**136.** Neither Mr Tupou nor Lakes Gaming Pty Ltd made any submissions in response to the Authority's findings on the Grounds of Complaint. The Authority notes that the Respondents Submission included an invitation to the Authority to take no disciplinary action, with some submissions on Mr Tupou's history in the industry and present circumstances.

#### **DECISION ON DISCIPLINARY ACTION**

**137.** At its meeting on 14 December 2016, the Authority further considered the Complaint and all of the material before the Authority, including the Complainant's final submission on disciplinary action.

**138.** The purpose of taking regulatory action is protective, not punitive. One of the Authority's functions is to assess all of the facts up to the time of making a decision and project into the future as to what regulatory action is in the public interest, with a view to protecting the industry and the wider community.

**139.** It is open to the Authority to take into account Mr Tupou's conduct up to the point of determining this Complaint, and incumbent upon the Authority to project into the future and determine what, if any, disciplinary action is necessary to protect the public interest in respect of the regulation of the gaming machines industry in New South Wales.

**140.** The gaming machines industry is one of the most closely regulated areas of commerce in New South Wales, by reason of the considerable scope for this cash intensive industry to be subject to fraud, corruption, money laundering, embezzlement and adverse impacts upon consumers of gambling services.

**141.** Harm minimisation, the balanced development of the industry, the integrity of the industry and the ongoing reduction in gaming machine numbers are all statutory objects under section 3(1) of the Act which inform the public interest in respect of the Act. Gambling harm

minimisation is a statutory consideration to which the Authority must have regard under section 3(2) of the Act when exercising functions under the Act.

142. The administrative arrangements for tracking all gaming machines in New South Wales, including the *Quickchange* database, the Central Monitoring System and physical manufacturer and compliance plates attached to every authorised gaming machine are fundamental to maintaining the integrity of the industry in New South Wales. They enable gaming related licensees, business operators, law enforcement and the Authority to monitor the provenance, control, location and performance of every authorised gaming machine in New South Wales at any given time.
143. Licensing requirements which govern proper use of the *Quickchange* database and interference with gaming machine compliance plates play a very important function. The Authority considers the inputting of incorrect information into the *Quickchange* system and any tampering with a compliance plate that falls outside the scope of conduct authorised by the Act or a licence is a most serious matter.
144. Users of the *Quickchange* database are in a particular position of trust in maintaining the integrity of the industry, as are gaming machine technicians like Mr Nowicz who were engaged by Mr Tupou to tamper with the compliance plate of a machine at the Rathmines Club in a manner contrary to the Act. Mr Tupou's conduct formed part of a course of conduct involving the improper handling of gaming machines that warrants a serious regulatory response. Whatever his motives, and accepting that there is insufficient evidence to establish that Mr Tupou was aware of the provenance of the machine at the time he directed Mr Nowicz to attend to the compliance plate – this is conduct that at least has the *potential* to undermine the monitoring of all gaming machines in New South Wales by regulators and law enforcement. It has the *potential* to facilitate fraud by others, such as the “rebirthing” of gaming machines.
145. Other than the matters specified in this Complaint, there is no adverse evidence as to Mr Tupou's conduct or character, whether in relation to the gaming machines industry or generally. The Authority is satisfied that Mr Tupou is a person who is of generally good character who has enjoyed a lengthy period of participation in the industry in New South Wales, spanning some 28 years.
146. However, the length of his involvement in the industry as both a licensed technician and a gaming machine dealer should have only reinforced his awareness that the careful inputting of correct data into the *Quickchange* system is essential to maintaining the integrity of the industry and that compliance plates should not be tampered with other than in circumstances that fall squarely within the scope of the authorisation conferred upon a licensee by the legislation and the relevant licence.
147. While the Authority maintains serious concerns about the allegations that are the subject of this Complaint, there is insufficient evidence to establish that Mr Tupou acted dishonestly. Nevertheless, he should have known that instructing or authorising Mr Nowicz to tamper with a compliance plate may potentially facilitate more serious misconduct by others. Gaming machine technicians are in a particular position of trust in maintaining the integrity of the industry. The conduct established by this Complaint amounts to either a serious lapse in Mr Tupou's knowledge and/or a substantial failing in his diligence or ability as a gaming-related licensee.
148. Similarly, he should have been aware of the utmost importance of inputting correct data into the *Quickchange* database and taken greater care to ensure that he did so than has been evident from the *five* transactions that have been found by the Authority to be incorrect. The software interface utilised by users of the database is not particularly sophisticated and the interface prompts a user to ensure that the information they are inputting is correct.

149. In the circumstances of this case, and having due regard to Mr Tupou's prior record and generally good character, the Authority does not consider that a period of ten years disqualification recommended by the Complainant is appropriate on the evidence or material before the Authority.
150. The Authority has also had regard to the submission made by the Respondents that Mr Tupou's business provides work for six contractors. The Authority accepts that this is the case and that this decision may adversely impact those contractors who may need to seek alternative sources of work.
151. Nevertheless, the Authority considers it necessary, in the public interest, to disqualify Mr Tupou from holding a gaming-related licence for a significant period of time. This will serve the protection of the community and the gaming industry in New South Wales and to send a clear signal to others that any similar lack of diligence with regard to gaming machine compliance plates and use of the Quickchange system may be met with a substantial regulatory response.
152. The Authority is satisfied that Mr Tupou's conduct formed part of a common sequence of events demonstrating a substantial disregard for regulatory compliance by both Mr Tupou and his contracted technician Mr Nowicz. While Mr Tupou did not personally interfere with the compliance plate on a gaming machine, the Authority cannot avoid concluding that his conduct in relation to this matter reflects adversely upon his knowledge and skill as a gaming-related licensee and a period of disqualification is appropriate in respect of his technician's licence and his seller's licence.
153. Notwithstanding that dishonesty has not been established by the Complainant in respect of the Quickchange entries, those five incorrect entries committed by Mr Tupou over a fairly short period of time establish a serious lack of ability or diligence. However, Mr Tupou's use of the Rathmines Club Quickchange login without express informed consent from the Club is a matter that reflects adversely upon both Mr Tupou's ability and honesty.
154. The Authority notes that some of the allegations that have been established by this Complaint involve modifying or unlawfully interfering with the compliance plates of approved gaming machines. The Act indicates that these are serious matters, attracting a maximum penalty of 100 penalty units or 12 months' imprisonment, should an offence be proven to the criminal standard for this conduct.
155. Looking forward, the findings made in this decision undermine the Authority's confidence in Mr Tupou's personal fitness to hold a gaming related licence and also Lakes Gaming's fitness to hold a licence, given Mr Tupou's central role with that business. On the facts and circumstances of this case, the Authority is satisfied that an appropriate period, substantial period of disqualification in respect of the gaming-related licences held by Mr Tupou and his company, Lakes Gaming Pty Ltd is **three (3) years**, commencing 28 days after the date of this letter.
156. The Authority is also satisfied that the costs specified by the Complainant in its final submissions are the actual costs of the Secretary on the investigation that preceded this Complaint. Noting that both Grounds of Complaint have been established, that a breakdown of the costs has been provided by the Complainant and that Mr Tupou did not make any submissions contesting the claim for costs, the Authority is satisfied that Mr Tupou should pay the costs of the Secretary's investigation that preceded the making of this Complaint, amounting to **\$3,737.22**, by no later than 28 days from the date of this decision.
157. The Authority recommends that Mr Tupou contact the Complainant for details as to the preferred mode by which costs shall be paid to the New South Wales Department of Justice and that Mr Tupou copy the Authority's General Counsel in to that communication so that the Authority will have a record of this payment being made.

- 158.** Mr Tupou is on notice that licensing staff will, in the usual course, record these Orders on LGNSW licensing records. Any delay or failure by Mr Tupou to make payment within the specified time period is a matter that may be taken into account in the context of any future complaint against Mr Tupou or any future application proposing that Mr Tupou undertake a regulated position within the New South Wales gaming industry.
- 159.** The Authority notes that the Complainant seeks that Mr Tupou pay a financial penalty in light of the Authority's findings on the Grounds of Complaint. However, given Mr Tupou's unfortunate personal circumstances and the significant regulatory action taken by the Authority to disqualify Mr Tupou and his company, Lakes Gaming Pty Ltd from holding a gaming-related licence for a period of 3 years, the Authority is not satisfied that imposing a financial penalty on Mr Tupou would serve any additional protective purpose at this time.

## ORDERS

- 160.** The Authority has decided to take the following disciplinary action:
- (i) Pursuant to section 131(2)(d) of the Act, the Authority **cancels**, with effect from 28 days after the date of this letter:
    - (a) The gaming machine seller's licence held by Mr Tupou (GMS1010483);
    - (b) The gaming machine technician's licence held by Mr Tupou (GMT4011610); and
    - (c) The gaming machine seller's licence held by Lakes Gaming Pty Ltd (GMS4013722).
  - (ii) Pursuant to section 131(2)(f) of the Act, the Authority **disqualifies** Mr Tupou and Lakes Gaming Pty Ltd from holding a gaming-related licence or being a close associate of a gaming-related licensee for a period of **three (3) years**, commencing 28 days after the date of this letter.
  - (iii) Pursuant to section 131(2)(i)(i) of the Act, the Authority orders that Mr Tupou and Lakes Gaming Pty Ltd pay the costs on the investigation that preceded the making of the Complaint under section 128 of the Act, amounting to **\$3,737.22**, to be paid to the Department of Justice by no later than 28 days from the date of this decision.

## REVIEW RIGHTS

- 161.** Pursuant to section 131C of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom any disciplinary action is taken under Part 8 of the Act, by no later than 28 days after those parties receive notification of this decision.
- 162.** For more information, please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully



Philip Crawford  
**Chairperson**

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