

ACT Gambling and Racing Commission

Report of an investigation into possible breaches of the *Gaming Machine Act 2004* by the Canberra Labor Club Limited in respect of the proposed sale of the Canberra Labor Clubs

February 2010

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Executive Summary

The ACT Gambling and Racing Commission (the Commission) was requested by the Treasurer on 17 August 2009 to investigate the allegation that the Canberra Labor Club had breached provisions of the *Gaming Machine Act 2004* in relation to the proposed sale of the Club. The ACT Legislative Assembly passed a motion on 19 August 2009 also requesting the Commission to investigate a possible breach of the *Gaming Machine Act 2004* by the Labor Club in relation to the proposed sale process.

The Commission investigated the claims under the provisions of Part Four of the *Gambling and Racing Control Act 1999.*

The investigation focussed on whether the Canberra Labor Club was in breach of section 14(1)(h) of the *Gaming Machine Act 2004* relating to whether the Club's Board had complete control over its operations. The meaning of 'complete control' was discussed in the context that the powers of the Board are subject to the overall requirements of the *Gaming Machine Act 2004,* the rules of the Club and the Memorandum and Articles of Association that constitute the Club.

The Commission found that there was considerable evidence that attempts were made to direct and influence the Club's Board in relation to the sale process.

The clearest evidence of attempts to influence the Board came from directions that were issued by the National Executive and the ACT Branch of the ALP. The Commission found, however, that there was no evidence to suggest that the Board did not make its own decisions on the sale process. This conclusion was based on the evidence that the Board took steps to independently inform itself about the sale process and its conduct and the fact that the Board made decisions contrary to the directions it had been given.

The Memorandum and Articles of Association give the Secretary of the ACT Branch of the ALP the power to veto proposed changes to the Memorandum and Articles of Association and the power to remove any of the six Directors of the Club that are nominated by the ACT Branch of the ALP. However, the Commission found no evidence that these powers had been used to lessen the control of the Board over the sale process.

In order to lessen the possibility that conflicts with the *Gaming Machine Act 2004* will arise in the future, the Commission recommends that the relevant authorities give urgent consideration to amending the Memorandum and Articles of Association of the Canberra Labor Club to remove powers the exercise of which would or could give rise to a conflict with the Act.

The Commission also recommends that a review be undertaken of the relevant club governance provisions of the *Gaming Machine Act 2004* with a view to clarifying the relationship between a club and its associated organisation thereby lessening the likelihood of legislative non-compliance.

1.0 Introduction and Background

1.1 The Gambling and Racing Commission

The ACT Gambling and Racing Commission (the Commission) is an independent statutory authority established under the *Gambling and Racing Control Act 1999* (the GRC Act) to control and regulate gaming and racing in the ACT. Its functions, amongst other things and as outlined in section 6 of the GRC Act, are to ensure compliance with the gaming laws (including the *Gaming Machine Act 2004*) and to take action as required to ensure that compliance is achieved. The Commission also has functions relating to the provision of advice to the Minister concerning policy matters relating to its functions. This includes reviewing legislation and policies and making recommendations to the Minister.

The Commission's powers to investigate matters are outlined in Part Four of the GRC Act and include the power to require the production of documents and to attend interviews including providing evidence on oath or affirmation.

1.2 Request to Investigate

On 17 August 2009, ACT Treasurer, Ms Katy Gallagher MLA, wrote to the ACT Gambling and Racing Commission (the Commission) drawing the Commission's attention to recent coverage in *The Canberra Times* and other media outlets on the proposed sale of the Labor Clubs by the Canberra Labor Club Ltd (CLC).

Ms Gallagher advised that concerns had been raised over compliance with the ACT *Gaming Machine Act 2004* in those media reports.

Ms Gallagher attached a copy of a four page letter dated 10 August 2009 signed by Mr Brian Hatch, the President and Chair of the Board of Directors of the Canberra Labor Club, which raised a number of compliance issues potentially faced by the Labor Club. Ms Gallagher asked that the Commission review the concerns raised by Mr Hatch on page two of his letter in relation to compliance with the *Gaming Machine Act 2004* (the GMA). While not explicitly stated, the substance of Mr Hatch's concerns surrounded the provisions of section 14(1)(h) of the GMA.

On 19 August 2009, the ACT Legislative Assembly passed a motion in respect of the proposed sale of the Canberra Labor Clubs. Relevantly, the Assembly:

(2) requests the ACT Gambling and Racing Commission:

> *(a) investigate claims made in The Canberra Times and The Australian newspapers regarding a possible breach of the Gaming Machine Act 2004 in relation to the proposed sale of assets by Canberra Labor Club Limited;*
>
> *(b) have tabled in the Assembly the full findings of an investigation into the claims, should an investigation be pursued and completed; and*
>
> *(c) provide to the Assembly reasons why it may decide it does not have sufficient grounds to conduct an investigation into the claims, if it finds that to be so."*

A copy of the complete motion is at Annexure A.

On 20 August 2009 Commission Chief Executive, Mr Greg Jones, advised the Treasurer by letter that the Commission would conduct an investigation into matters relating to the proposed sale of the Canberra Labor Club Limited and its compliance with the requirements of the *Gaming Machine Act 2004*.

Mr Jones advised that the investigation would be conducted in accordance with the Commission's powers under Part Four of the *Gambling and Racing Control Act 1999* and that the outcomes of the Commission's considerations would be provided to the Treasurer once the investigation was completed.

The Treasurer informed the ACT Legislative Assembly on 20 August 2009 of the Commission's advice that it did have the power to undertake the investigation and that it intended to do so under the provisions of Part Four of the *Gambling and Racing Control Act 1999.*

Due to changes in Ministerial portfolios during the investigation period the Commission will provide its report to the current Gaming and Racing Minister, Mr Andrew Barr MLA.

1.3 Investigation Methodology

1.3.1 Conduct of the Investigation

Upon receiving the request from the Treasurer, the Commission determined that an investigation should be conducted by a small team of three Authorised Officers under the direct control and guidance of the Chief Executive and in consultation with the Chairperson of the Commission.

The investigation was led by the Commission's Acting Manager of Compliance and Investigations, with assistance from two Authorised Officers from the Compliance and Investigations Team.

The Commission is satisfied that the investigating officers have no affiliation or involvement with any political party and no current link with the Labor Club.

The Commission considered that this small team approach was appropriate to ensure the integrity and focus of the investigation, to minimise the risk of inadvertent disclosure of sensitive information and to ensure that there was no conflict of interest or perceived conflict of interest.

The investigation team's findings were considered by the Commission along with a report of the investigation.

Upon appointment to the Commission, each member makes a declaration of any business or other potential conflict of interest that may impact on future deliberations. One member declared at the time of appointment a business association with the Labor Club Group.

In relation to consideration of this investigation, Commission members considered the nature of the business relationship declared by the member and assessed the potential for conflict against the criteria set out by the Independent Commission Against Corruption (ICAC)[1]. Based on the low level nature of the business relationship and the lack of any direct connection between the outcome of the investigation and the interests of the member, the Commission considered that registering the interest was the appropriate course of action consistent with the ICAC guidelines. Therefore, all members of the Commission participated fully in oversighting the investigation and finalising this Report.

[1] *Identifying and Managing Conflicts of Interest in the Public Sector.* Independent Commission Against Corruption - November 2009

1.3.2 Scope of Investigation

The Commission's investigation, consistent with its statutory functions, relates only to possible breaches of the *Gaming Machine Act 2004* by gaming machine licensee the Canberra Labor Club (CLC).

While the request from the Treasurer referred to media coverage of the sale process as well as issues raised in Mr Hatch's letter in relation to the *Gaming Machine Act 2004*, and the motion from the Legislative Assembly focused on claims made in certain newspapers, the Commission took the view that its investigation should consider relevant information from all available sources and not just those identified by the Treasurer and the Assembly.

It was noted that Mr Hatch also raised issues in relation to compliance with Taxation and Corporations Law in his 10 August 2009 letter referred to by the Treasurer, however these are not matters within the Commission's jurisdiction and were therefore not examined.

As advised to the Treasurer, the investigation was conducted utilising the Commission's powers pursuant to Part Four of the *Gambling and Racing Control Act 1999* (the GRC Act).

The Commission issued formal Notices pursuant to section 22 of the GRC Act to obtain documents and to require persons to attend and give evidence before investigating officers under oath or affirmation.

The Commission originally requested documents from the CLC by letter dated 4 September 2009.

CLC treated this letter as a Notice to Produce Documents under section 22 of the GRC Act and produced a substantial volume of the documentary material specified in the letter. CLC identified a further 93 documents and claimed that these documents were the subject of legal professional privilege under the *Evidence Act 1985* (C'th) and that section 22 of the GRC Act did not authorise the Commission to require production of the 93 documents to which that privilege attaches.

The Commission concluded that the provisions of the *Evidence Act 1985* (C'th) had no application in the conduct of the investigation and served a Notice to Produce Documents pursuant to section 22 of the GRC Act on the Chief Executive and Company Secretary of CLC requiring the production of the 93 documents.

The CLC, through its legal advisor, then claimed that the 93 documents were the subject of legal professional privilege under the common law and that section 22 of the GRC Act did not authorise the Commission to require the production of these documents. The Commission sought advice on this matter.

Ultimately, the Commission concluded that a court would be likely to find that the provisions of the GRC Act did not authorise it to require the production of documents to which the common law right of legal professional privilege attaches. In other words, the provisions of the GRC Act did not abrogate the common law right to claim legal professional privilege[2].

The Commission requested that the CLC review its claim of legal professional privilege in respect of the documents to ensure that the claim was well founded. As a result of its review, an additional 7 documents were provided to the Commission.

Consequently, the Commission has not had access to the remaining 86 documents which were the subject of CLC's ongoing claim of legal professional privilege.

On 27 October 2009, the Commission requested information from the ACT Branch of the ALP (ACT ALP) relating to the persons holding certain positions within ACT ALP during 2007, 2008 and 2009. The ACT ALP provided this information to the Commission on 31 January 2010.

The information requested from ACT ALP was, to a large degree, accessible from alternative sources including publicly available documents. Consequently, the delays in receiving this information did not impede the Commission's investigation.

Publicly available information was also utilised, including reports from a variety of media sources.

In relation to the requirement for persons to attend and give evidence under oath or affirmation, all members of the Board and the General Manager of the Club during the relevant period were interviewed by investigating officers. The Directors and General Manager were asked questions relevant to their positions and responsibilities in relation to the Board's decisions and the decision making processes.

Information and advice from other sources was also sought by the Commission as required.

[2] Refer to High Court decision of *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49.

1.4 Relevant Legislative Provisions

1.4.1 The *Gaming Machine Act 2004*

The *Gaming Machine Act 2004* (the GMA), amongst other things, provides for the control and regulation of gaming machines and gaming machine licensees in the ACT.

Section 14 – Grounds for refusing initial licence application by club

Section 14(1)(h) of the GMA provides that the Commission may refuse to issue a gaming machine licence to an applicant that is a club if satisfied that—

> (h) the club's management committee or board does not, for any reason, have complete control over the club's business or operations, or a significant aspect of the club's business or operations.

Section 39A – Compliance with requirements for issue of licence

It is a condition of a licence that the licensee—

> (a) continually meets each requirement for the issue of a gaming machine licence; and
>
> *Note* For the requirements for the issue of a gaming machine licence—see s 12 and s 13.
>
> (b) continues not to do anything that would, if the licensee were applying for a gaming machine licence, cause the licensee to be refused the licence.
>
> *Note* For the grounds for refusing to issue a gaming machine licence to an applicant that is a club—see s 14.

Section 55 – Other conditions of club licences

Each of the following is a condition of a licence for a club:

> (a) the proceeds from the conduct of gaming are used in a way that promotes the objects of the licensee; and
> (b) the licensee follows its objects or purposes honestly and seriously;
>
> (c) payments made under the licensee's objects are in the best interests of the licensee's members;
>
> (d) payments made for things bought by the licensee are reasonable;
>
> (e) salaries, wages, allowances or benefits paid or payable by the licensee to the licensee's executive officers and employees are reasonable;

(f) payments for services provided to the licensee are reasonable and necessary, particularly in relation to the scale of the licensee's licensed business;

Example

The licensee has 4 gaming machines and pays $150 000 a year for gaming machine advice. This payment is not reasonable because the payment is disproportionately large given the revenues from the 4 machines in relation to which the advice is being given.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(g) guests must be signed in by a club member and accompanied by the member who signed them in;

(h) only members and signed-in guests can play gaming machines in the club.

Part 9 of the GMA relates to club administration and provides a definition of eligible objects and eligible clubs.

Section 145 - Eligible objects

(1) An object of a club is an ***eligible object*** if—

(a) it furthers or promotes—

(i) recreation; or

(ii) social, religious, political, literary, scientific, artistic, sporting or athletic purposes; or

(iii) cultural or educational purposes; or

(b) it is approved, in writing, by the commission; or

(c) it is substantially the same as an object mentioned in paragraph (a) or (b).

(2) An approval under subsection (1) (b) is a disallowable instrument.

Section 146 - Eligible clubs

A club is an ***eligible club*** if—

(a) the club is incorporated in the ACT; and

(b) the club's statement of objects—

(i) includes eligible objects; and

(ii) indicates that the eligible objects together make up the main part of its objects; and

(c) the club is conducted mainly to achieve eligible objects; and

(d) the rules of the club—

(i) are in accordance with the regulations; and

(ii) are consistent with the licence conditions under part 3; and

(iii) do not prohibit the playing of games of chance for money on the club premises; and

(e) the club has at least 300 voting members; and
(f) the number of life members of the club is not more than 5% of the number of voting members of the club; and
(g) the premises occupied by the club, and the facilities and property of the club, are kept and maintained for the benefit of members generally.

Section 147 – Associated Organisations

(1) The Commission may, in writing, declare that an entity is an associated organisation for a club.

(2) However, the Commission may make a declaration for an entity only if satisfied that—
(a) it is associated with the club; and
(b) it is not carried on for profit or gain to its members or anyone else; and
(c) it is incorporated or a registered party; and
(d) its statement of objects—
(i) includes eligible objects; and
(ii) indicates that the eligible objects together make up the main part of its objects; and
(e) it is conducted mainly to achieve eligible objects; and
(f) approval of the entity as an associated organisation—
(i) would not cause the club to stop being conducted mainly to achieve eligible objects; and
(ii) would help the club to achieve its eligible objects.

(3) In this section—
(a) a reference to the ***statement of objects*** of an entity incorporated under the Corporations Act is a reference to its memorandum; and
(b) a reference to an ***eligible object*** of an entity that is not a club is a reference to an object that would be an eligible object if the entity were a club.

1.4.2 The *Gambling and Racing Control Act 1999*

The *Gambling and Racing Control 1999* (the GRC Act), amongst other things, sets out the functions and powers of the Commission.

The powers under the GRC Act that are relevant to this investigation are outlined in Annexure B.

2.0 The Investigation

2.1 Background Information

2.1.1 The Canberra Labor Club Group

The Canberra Labor Club Limited (CLC) is commonly referred to as the Canberra Labor Club Group and holds gaming machine licences in respect of four club venues across Canberra. References in this report to 'the Club' refer to all four venues that hold a gaming machine licence. Canberra Labor Club Limited is a Company limited by guarantee and therefore does not have share capital.

The Canberra Labor Club Group's licensed venues are located at Belconnen, Charnwood, Canberra City and Weston Creek. The ACT Branch of the Australian Labor Party (ACT ALP) is a declared associated organisation of the CLC for the purposes of section 147 of the GMA.

ACT ALP was an associated organisation under the (repealed) *Gaming Machine Act 1987* and was declared as an associated organisation of the Club under the *Gaming Machine Act 2004* by the Commission on 31 March 2006.

The Club was formed in 1979 by the executive, trustees and members of the ACT Branch of the Australian Labor Party. The Club's primary objective was to establish a social, literary, political and sporting Club for members and supporters of the Australian Labor Party, with a view to the furtherance of the political philosophy and activity of the Australian Labor Party in Local, Government, State and Federal spheres throughout Australia.

The group also owns commercial properties located at Belconnen and Braddon.

Brief details of the individual licensed venues are listed below:

Canberra Labor Club ***Licence 4500676***

Commenced trading from premises in Chandler Street Belconnen with around 1500 members in 1979.

City Labor Club ***Licence 4500190***

This venue was originally the Canberra Workers Club (CWC) located in Childers Street, Canberra City. It was purchased by the CLC in 1995 when the CWC experienced financial difficulties. It ceased trading at this location on 26 September 2003 and reopened at new premises in Petrie Plaza on 28 July 2006.

Ginninderra Labor Club Licence 4501069

This venue was originally the Charnwood Tavern which was purchased in early 1997 by the CLC and commenced operation as a licensed club in May 1997.

Weston Creek Labor Club Licence 4500730

Originally the Weston Creek Football Club Incorporated (WCFC), this venue was purchased by the CLC in 2001 and commenced operations as part of the CLC group in August 2001.

All four venues operate under the Memorandum and Articles of Association of the Canberra Labor Club Limited.

2.1.2 Canberra Labor Club Limited – Memorandum and Articles of Association

The Memorandum of Association of the Canberra Labor Club Limited outlines some 20 objects for the company.

The objects relevant to this investigation are:

> Object 3(e) *to render financial aid or to confer any other kind of benefit whether by way of gifts, loans or otherwise to the Australian Labor Party and/or any of its branches whether Territorial, State or otherwise.*
>
> Object 3(t) *to do all such acts, deeds, matters and things and to enter into and make agreements as are incidental or conducive to the attainment of the objects of the Club or any of them and it is DECLARED that all and each of the preceding objects of the Club are and shall be interpreted as separate and independent objects of the Club as if each was the sole object of the Club.*

Clauses in the Memorandum of Association of the Club relevant to this investigation are:

Clause 7 which provides for the distribution of property on dissolution or winding up of the Club.

> *If upon the winding up or dissolution of the Club there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed amongst the members of the Club but shall be given or transferred to the Australian Labor Party (ACT Branch).*

Clause 9 which contains 4 sub-clauses and relates to resolutions to amend the Memorandum or Articles of the Club.

(a) No resolution to effect an amendment to the Memorandum or Articles of the Club shall be carried otherwise than by special resolution at a General Meeting.
(b) No such special resolution shall be effectual to amend the Memorandum and Articles of the Club unless and until the Secretary for the time being of the Australian Labor Party (ACT Branch) ("the ACT Branch") shall have notified the Club in writing, within 60 days, of the passage of such special resolution, that the ACT Branch has approved of such resolution. Any such special resolution shall be deemed to be passed or made upon the date of receipt by the Club of such notification;
(c) If the Secretary for the time being of the ACT Branch has not notified the Club in writing, within the said period of 60 days, that the ACT Branch approves of such special resolution, or if in writing, within said period of 60 days, that the ACT Branch disapproved of such special resolution, then the special resolution shall not have any force or effect.
(d) The expression "special resolution" has the same meaning as that expression in the Act.

Clauses in the Articles of Association of the Club that are relevant to this investigation are:

Clause 23(a), 24(b), 26(c), 28(c) and 28(d) which relate to the appointment of Directors of the Club.

23 (a) The Australian Labor Party (ACT Branch) may nominate six candidates who are members of the Club for the office vacant on the Board of Directors at each Annual General Meeting.

24 (b) If the Australian Labor Party (ACT Branch) shall have nominated not more than 6 candidates for election as Directors then such candidates so nominated shall be declared elected.

26 (c) Any casual vacancy or vacancies which may occur in the Board of Directors in respect of Directors appointed by the Australian Labor Party (ACT Branch) may be filled by the Australian Labor Party (ACT Branch) appointing a person or persons at act as Director until that appointment is terminated by the Australian Labor Party (ACT Branch) or these articles. Such appointment shall be notified in the same manner as in Articles 23(b).

28 (c) A Director elected from the members nominated by the Australian Labor Party (ACT Branch) may be removed by notice in writing given by the Secretary for the time being of the Australian Labor Party (ACT Branch) and the office of such Director shall thereupon be declared vacant.

> *28 (d) In the event of a vacancy in the office of a Director elected from members nominated by the Australian Labor Party (ACT Branch), the Australian Labor Party (ACT Branch) shall nominate a member to fill that vacancy by notice in writing given by the Secretary for the time being of the Australian Labor Party (ACT Branch) and the Board shall appoint that person to be a Director to fill such vacancy.*

Clause 68 relates to the use of profits of the Club.

> *Clause 68. Profits if any shall be declared by the Board and any profit so declared otherwise than as required for the purposes of the Club shall be paid to the Australian Labor Party (ACT Branch).*

2.1.3 The Club's Board and the Directors

The CLC Board has nine members, with six appointed by ACT ALP in accordance with the Club's Memorandum and Articles of Association and the ACT ALP Rules. Three Directors are elected from the club's membership at the Annual General Meeting. All directors hold office for one year from the date of their election. Once elected, the Directors appoint from their numbers a President, two Vice Presidents and a Treasurer.

The Board is required to meet once each month, but particularly in the latter stages of the sale process was meeting more frequently.

All of the Board members during the sale process were also members of the Australian Labor Party. A number of the Directors also held positions within the ACT Branch of the ALP. Director's length of service on the CLC Board ranged from around two to over ten years.

The Board of Directors during the sale process was:

Name	***Title***
Mr Brian Hatch	President
Mrs Roberta McRae	Vice-President
Mr Anthony Luchetti	Vice President
Dr Brendan Long	Treasurer
Mr Matthew Cossey	Director
Mrs Eleanor Bates	Director
Mr David Tansey	Director
Mr Paschal Leahy	Director
Ms Eva Cawthorne	Director
Mr Ted Quinlan	Director

There were minor changes to the Board membership during the sale process, including the departure of Mr Cossey and the subsequent appointment of Mr Ted Quinlan in July 2009.

Mr Cossey had remained on the Board after stepping down as ACT ALP Branch Secretary at the end on November 2008 as the representative of the then ACT Branch Secretary, Mr Bill Redpath. Mr Quinlan was appointed to the CLC Board concurrently with his appointment as the Interim Branch Secretary of ACT ALP.

2.1.4 ALP Organisation and Structure - The Rules in Brief

Detailed analysis of the organisation and structure of the Australian Labor Party is outside the scope of this investigation, however the following information has been relevantly included to identify the relationship between the National Executive, the ACT Branch and the Canberra Labor Club.

The National Constitution of the ALP sets out the organisational structure of the ALP nationally.

Part B. Rules

Structure of Party Organisation

5(c) The National Executive shall be the chief administrative authority of the Party, subject only to the National Conference.

Powers & Duties of National Executive

7(c) Decisions of the National Executive shall be binding upon all sections and members of the ALP subject only to appeal to the National Conference. Pending the hearing of any appeal, the decision of the National Executive shall operate. The National Executive shall:

> (xi) have plenary powers to deal with and decide any matters which, in the opinion of an absolute majority of members of the Executive, affect the general welfare of the Labor Movement, provided that no decision of National Conference shall be abrogated under this rule;
>
> (xii) in the case of any State Executive, State Branch or section of the ALP acting or having acted in a manner deemed by the National Executive to be contrary to the National Constitution, Platform and Policy of the Party as interpreted by the National Executive, the National Executive may overrule such State Executive, State Branch or section and/or may declare that same

no longer exists and shall set up in place thereof an organisation competent to carry out the National Constitution, Platform and Policy of the ALP. Pending the hearing of any appeal, the decision of the National Executive shall operate. In the event of the National Executive taking any action under this paragraph, the National Executive shall be the body to approve any selection which otherwise would have been made by the body affected by the National Executive decision.

National Executive Committee

8(a) The National Executive Committee (NEC) shall consist of the National Secretary and such other members of the National Executive as may be elected by the National Executive.

(b) The National Executive Committee shall be responsible for the administration of the Party between meetings of the National Executive.

The ACT Branch of the ALP

The ACT Branch of the Australian Labor Party operates under the ACT Labor Party Rules. ACT ALP is established under a similar structure to the National ALP, with the Branch Conference as the ultimate authority. The powers and functions between Conferences have been delegated to the Branch Council and the Administrative Committee.

1.5 Composition of the ACT Branch

(1) The ACT Branch consists of:
a) affiliated trade unions and other affiliated organisations, and
b) individual members.

8.2 Functions of Branch Council

(1) Branch Council is subject to the decisions of ACT Branch Conference. Branch Council has the power to determine all matters affecting the ACT Branch, except in relation to matters where these rules specifically require a decision of ACT Branch Conference.
(2) The role of Branch Council is to:
(b) interpret these rules in a way that is consistent with the National Rules of the Party.

8.3 Branch Council Executive

(1) The Administrative Committee acts as the Executive of Branch Council.

10.2 Functions of Conference

(1) ACT Branch Conference may exercise all of the functions and duties of Branch Council.

11.1.2 Functions of Administrative Committee

(1) Administrative Committee is the administrative authority of the ACT Branch between meetings of Branch Council.

Regulation 7 of the ACT ALP rules deals with the selection and appointment of ACT ALP nominees to the Board of the CLC.

REGULATION 7 CANBERRA LABOR CLUB BOARD

Election of Australian Labor Party (ACT Branch) Nominees to the Board of Directors of the Canberra Labor Club Limited.

Reg 7.1 Preamble

(1) Under the Memorandum and Articles of Incorporation of the Canberra Labor Club Limited the Australian Labor Party (ACT Branch) is required to nominate six persons annually for election to the Board of Directors of the Canberra Labor Club at its AGM.
(2) The term of office of persons nominated by the ACT Branch is one year. Five persons must be elected at each ACT Branch Conference of the Australian Labor Party (ACT Branch) and the names of those persons and the ACT Branch Secretary/Treasurer forwarded to the Secretary of the Canberra Labor Club Limited within one week of the calling of nominations by the Canberra Labor Club for directors of the Club.
(3) A nominee must be a member of the ACT Branch.
(4) A nominee must be a financial member in good standing with the Canberra Labor Club.

Reg 7.2 Conduct of Election

(1) The election of the five nominees must be conducted so far as is applicable to the election of executive officers of the ACT Branch.
(2) The names of the five persons elected and the ACT Branch Secretary/Treasurer must be forwarded to the Canberra Labor Club for presentation as Australian Labor Party (ACT Branch) nominees for election to the Board of the Club at its next AGM.

Reg 7.3 Casual Vacancies

(1) Members of the Board of Directors of the Canberra Labor Club elected by the ACT Branch may not indicate their intention to resign from the Board of the Club without first obtaining the permission of Administrative Committee.
(2) Administrative Committee must fill, by election, any casual vacancy that occurs in the Board of Directors, in respect of Directors appointed by the Australian Labor Party (ACT Branch). Nominations must be called by newspaper advertisement and must allow 21 days between the calling of nominations and the conduct of any necessary ballot. The elected member holds office for the duration of the un-expired portion of the term of office.

11.3.1 Trustees

The Trustees of the ACT Branch for the time being are the ACT Branch President and Vice-Presidents, ACT Branch Secretary/Treasurer, Assistant Secretary and Assistant Treasurer.

2.2 The Sale Process

This section describes the events and decisions which it is alleged may have given rise to a breach of the GMA. It is in three parts. The first provides background to the commencement of the sale process. The second describes the process leading to the decision to sell. The third describes the sequence of events leading to the withdrawal from sale.

In its account of the material before the Board of the CLC, Directors views on that material and the decision making of the Board, the Report draws on the documentary material provided to it, including the minutes of the CLC Board meetings, and on the interviews the investigation team conducted with each Board member.

2.2.1 Background

The Directors of the Club advised the Commission during its investigation that the idea of selling the clubs was not new. It had been discussed over the years by various CLC Boards on several occasions since as early as 2000, however there had not been any previous attempt to sell the Club.

The Directors expressed concerns about a range of matters that could affect the future viability and profitability of the Club and were particularly cognizant of the potential for politically motivated regulatory change.

Directors cited previous attempts by other political parties to bring in legislation to prevent the Club from fulfilling its major role, which they considered was to provide funding to the ACT Branch of the ALP, in line with the Club's objects.

Matters mentioned as examples included the required level of Community Contributions under the *Gaming Machine Act 1987 (repealed)* which stipulated an additional levy above the generally required percentage for licensees in respect of political donations, *viz:*

> Section 60G - The required community contributions
>
> (1) In relation to a licensee that is a club, the *required community contribution* for a financial year is the total of—
>
> (a) an amount equal to the total of the contributions made by the licensee during the financial year to registered parties, associated entities, members of the Legislative Assembly, or candidates; and
> (b) the proportion of the club's net revenue in the financial year set out in the table below, or such other proportion as may be determined, in writing, by the Minister.

The above requirement was removed with the commencement of the *Gaming Machine Act 2004* in November 2004.

The *Gaming Machine (Political Donations) Amendment Bill 2003,* which ultimately failed to pass in the ACT Legislative Assembly, sought to amend the *Gaming Machine Act 1987 (repealed)* by prohibiting gaming machine licensees that are clubs from making any donation to a political party or associated entity.

Board members were also aware of a proposed review of the system of political donations in the ACT to be conducted by the ACT Greens and the ACT Liberals. They were also aware of the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (and 2009) and were concerned about the possible implications of this legislation for the Club fulfilling its objects.

The Board was of the view that to best meet its objects the Club should be sold to ensure the future viability of the Club and to provide a reliable future income stream for ACT ALP. The direct link between the Club and the ACT ALP should therefore be severed in order to best achieve its objects and ensure a secure funding source for the ALP.

The following additional reasons were also cited by Directors as providing motivation for selling the Club:

- regulatory changes had resulted in the Club only being able to make small donations (when compared to the value of the underlying assets) to the ACT ALP and the Club was therefore not getting a good return on the investment;
- the Club has missed out on previous opportunities for growth and expansion due to its close association with ACT ALP;
- the Club has always had to consider the impact on the ALP of its commercial decisions to ensure that those decisions did not have an adverse impact on the Labor Movement and consequently run counter to the purpose of the Club as stated in its Memorandum and Articles of Association;
- the unacceptable level of risk to the business through a lack of diversification and its overwhelming reliance on gaming machine revenue;
- the inherent uncertainty and risks associated with operating licensed clubs in a changing regulatory environment;
- changing attitudes within the community to gambling generally; and
- the potential for regulatory reform that, whilst targeted at the CLC, could be detrimental to the licensed club industry in general.

Directors believed that the licensed Club would continue to operate and to provide a full range of facilities and services to members, albeit under a different banner, and without the direct link to a major political party.

The Directors claimed that the Board's decision to sell the Club would therefore not disadvantage the members, staff or the Company and would accord with the Company's Memorandum and Articles of Association in that ACT ALP would be guaranteed a future revenue stream that was no longer connected with gambling or gaming revenue.

The decision to sell the Club and its assets initially appeared to have the broad support of the ALP. Prime Minister Kevin Rudd's public comments in relation to gaming machines and gaming revenue were well known and had been widely reported.

The ACT ALP Trustees had determined that the Club should be sold and the proceeds donated to the ACT Branch of the ALP in line with the dissolution clause in the Memorandum and Articles of Association. The Trustees views had been discussed by the Board at its meeting of 2 June 2008.

In summary, by early 2008 the Club Board was disposed to consider favourably an offer to buy the Club.

2.2.2 The Decision to Sell

The sale process appears to have been initiated in April 2008 after the Club received an unsolicited offer to purchase the Club during sponsorship negotiations with a major sporting entity.

The Board decided to obtain a full valuation of the CLC's assets and business as a going concern. Club representatives were authorised to enter into a confidentiality agreement with the sporting entity for due diligence in regard to the potential sale of the Club business and assets.

At the Board meeting of 10 June 2008, the Board agreed that a proposed timeline and process for the sale be developed ensuring that the decision to sell remained confidential with the formal process to commence on 28 July 2008. It appears that the commencement date was deliberately chosen by the Club Board as being after the ACT ALP Branch Conference which was scheduled for 26 July 2008.

At the 25 June 2008 Board meeting the timeline was distributed for discussion with the Board ensuring that key dates were selected to enhance the confidentiality of the process.

However, as it turned out and as recorded in the minutes of the Club's 24 September 2008 meeting, negotiations with the sporting entity ceased after the entity withdrew its interest.

After the failure of these negotiations, the sale process entered a period of low activity. The ACT Election was held on 18 October 2008 and the Board resumed serious discussions to advance the sale process in November including the development of a new process and timetable.

While fears that the amendments to the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* would impact on the Club's ability to fulfil its objects appear to have abated, concerns were raised by some Directors about the second tranche of changes likely to result from this Bill. However their implementation was not seen as any immediate threat.

Nevertheless, in December 2008 the Board agreed to sell the Club assets on the open market. A suitably skilled organisation to advise on the sale process was to be found and proposals for their engagement presented to the January 2009 Board meeting for consideration.

At its January meeting, the Board agreed that McGrath Nicol (MGN) be engaged to advise on and to manage the sale process on behalf of the Board.

MGN immediately raised concerns about the ability of the Club to give the proceeds of the sale to ACT ALP and recommended that the Board seek further advice to clarify the issue. The CLC has asserted legal professional privilege in respect of the Commission's access to that advice.

MGN prepared a sale proposal and conducted an indicative valuation of the Club, before commencing a closed bidding process where a small number of organisations were directly approached.

The sale process moved forward with bids received from the organisations approached. Due in part to the commercial sensitivity of the proposed sale transaction, no public announcement was made regarding the progress of the Club's sale. However, news of the sale entered the public arena when the Club President was interviewed on radio on 25 May 2009.

At this time it was announced by the Board of the CLC that the profits from the sale would go to the ACT Branch of the ALP and that it would be a challenge to maintain the party's revenue stream after the sale of the Club.

On 27 May 2009, the Board sent a letter to members of ACT ALP advising that a decision had been taken to sell the Club. The reasons put forward were that the Club was operating in a different environment where gambling was considered by some to be a social harm and that the continued ability to provide political donations was under increasing scrutiny. Further, it was claimed that the Club's association with the ALP had restricted the potential expansion and growth opportunities that would have provided additional benefits to members and the community.

Following a comprehensive analysis and assessment of the bids that were received, the CLC at their board meeting of 23 June 2009 determined that the Canberra Tradesmen's Union Club (CTUC) bid was the best offer and that exclusive contract negotiations should commence with CTUC.

2.2.3 Ending the Sale Process

The circumstances surrounding the ending of the sale process and the alleged "withdrawal" from the process by CTUC are by no means clear.

The CTUC advised the Commission during the investigation that at no time did CTUC actually withdraw from the sale process with the Canberra Labor Clubs.

By a letter dated 29 July 2009 addressed to the National Secretary of the ALP, with a copy forwarded to the CLC, the CTUC indicated that while they wished to continue with the process to acquire the Labor Clubs, given the recent media attention and for the betterment of the ALP, they would give consideration to withdrawing their current offer provided that they were reimbursed all costs incurred to date.

Various CLC Board members interpreted the CTUC letter in different ways, however there was general agreement that the letter raised significant concerns about whether CTUC intended to finalise the purchase.

With the uncertainty regarding CTUC's intentions, the CLC Board discussed suspending the process while the situation was clarified. At its meeting of 30 July 2009 the CLC Board decided to suspend the sale process pending further consideration.

At this time, some Board members considered that the sale process itself, together with the resultant media attention, was causing significant damage to the Club brand and should be abandoned.

The negative publicity that had been generated by this time appeared to some Board members to be generating a climate within the membership of the Club that was making the likely success of the required member ballot (to transfer the gaming machine licences as required under the GMA) extremely unlikely.

Documents provided by the Club showed that Club staff were receiving complaints from long-term members about the proposed sale as well as querying the right of the Board to sell their Club without consultation.

The Board was aware of the complaints and general dissatisfaction now growing amongst long-term members.

The CLC Board considered the stalled sale process at its meeting of 26 August 2009 where they acknowledged that the sale process had caused significant damage to the Club's name. There was general agreement that the sale did not have the support of Club members and no longer had the support of the ALP.

On the basis that any sale could no longer be considered to be in the best interests of the Company, the sale process was formally abandoned and a decision that the Club was not to be put up for sale for at least 7 years was taken.

2.3 Attempts to Influence the Sale Process

On its face the preceding account of the decision making by the Board of the CLC in regard to the sale of the Club is consistent with the view that Directors were striving to act in the best interests of the CLC having regard to the interest of its members and its objects. This process undoubtedly provoked a great deal of debate and it is to be expected that those holding strong views would seek to influence the views of Directors. Further, it would be appropriate for Directors to take some account of such points of view in forming their own view of which course of action was in the best interest of the CLC. It has been alleged, however, that certain entities sought to bring pressure to bear on Directors that exceeded persuasive exposition of a point of view. The Commission has identified a number of instances of this kind which, along with their apparent impact, are described in this section.

The ALP National Executive met on 19 June 2009 and carried a resolution regarding the sale of the CLC. In brief, the National Executive was concerned about the potential impact of the sale of the Clubs on the party's capacity to campaign in future ACT and federal elections and sought detailed information including CLC Board meeting minutes regarding the sale process.

A resolution was passed by the National Executive which was forwarded to the CLC Board. The resolution was discussed at the CLC Board meeting of 19 June 2009, with the Board concluding that the resolution was a matter for ACT ALP and that the requested information would not be released as the information pertained to the operations of the company ie. the Canberra Labor Club Limited.

The ACT Branch of the ALP responded to the National Executive Committee (NEC) on 26 June 2009 but did not provide the detailed information requested. A copy of the CLC Memorandum and Articles of Association was forwarded to the NEC.

By letter dated 6 July 2009 to the ACT Branch, the NEC reiterated the concerns expressed by the National Executive about the potential impact of the sale on the Party's capacity to campaign in future ACT and federal elections and again requested detailed information regarding the sale process.

The National Executive directed the ACT Branch of the ALP not to approve any amendment of the Memorandum or Articles of the CLC without the endorsement of the National Executive.

On 16 July 2009, the National Executive noted the failure of the ACT Branch to address its concerns regarding the sale of the Canberra Labor Club Group. It further directed the ACT ALP Branch to do everything in its power to prevent the finalisation of the sale of the Canberra Labor Club and that should a sale of the Club proceed, then no changes should be made to the Memorandum of Association of the Club. Additionally, the ACT Branch was to take no other action that would allow any assets

of the Canberra Labor Club, or assets held by the Canberra Labor Club, to be disposed of.

The ACT ALP Administrative Committee subsequently passed a resolution on 16 July 2009 that stated, amongst other things, that the CLC Board should end the sale process and that no decision to sell the Club be taken without consultation with the full membership of the ACT Branch of the ALP.

The Administrative Committee issued a direction to the ALP appointed Directors of the CLC to appoint an independent auditor to conduct an audit of all aspects of the sale process in conjunction with the ACT Parliamentary Labor Party and the National Secretariat and to report back by 28 July 2009. The ALP appointed Directors were further directed to defer the finalisation of the sale of the Canberra Labor Club until further advice.

These directions from ACT ALP and the National Executive prompted a significant amount of email traffic between some of the CLC Directors who were concerned that they were being directed to act other than in the Company's interests.

Two Directors raised concerns in this regard with the Company's auditor and the Australian Securities and Investments Commission.

At its meeting of 28 July 2009, the Directors considered an amended version of the ACT ALP resolution to end the sale process. The motion presented was to suspend the sale process, however this motion was defeated and the process continued.

The letter from the CTUC offering to withdraw their offer to purchase the Club was sent the following day, 29 July 2009, and the decision to suspend the sale process was taken at the next meeting of the CLC on 30 July, following consideration of the letter from the CTUC. The decision to end the sale process was not taken until the CLC Board meeting on 26 August 2009.

3.0 Conclusions

3.1 Meaning of 'Complete Control' Under the GMA

Critical to this investigation, section 14(1)(h) of the GMA provides that it is an initial requirement for the issue of a licence that a club's Board must have complete control over the club's business or operations or a significant aspect of the club's business or operations.

Section 39A of the GMA provides that it is an ongoing condition of all gaming machine licensees that they continually meet each requirement for the issue of a gaming machine licence. Further, the provision requires licensees to continue not to do anything that would, if the licensee were applying for a gaming machine licence, cause the licensee to be refused the licence.

On this basis, a club's Board must continually have complete control over the club's business or operations, or a significant aspect of the club's business or operations.

If the Board did not have complete control, the licensee would fail to comply with a condition of its licence and would therefore commit a strict liability offence against section 39 of the GMA.

If that were proved to be the case, it would be open for the Commission to commence disciplinary action against the licensee pursuant to section 57 of the GMA.

Possible disciplinary action ranges from a reprimand with an accompanying direction to rectify the matter that led to the disciplinary action through to cancellation of the gaming machine licences in respect of the Club(s).

To establish whether or not the Board of the CLC was in 'complete control' during the sale process, the Commission first considered the meaning of the term 'complete control' in the context of the CLC and the requirements of the GMA.

In determining the meaning of 'complete control' the general guidance provisions contained in Part 14.2 of the *Legislation Act 2001* were followed, including:

- that the interpretation that would best achieve the purposes of the Act is to be preferred to any other interpretation (section 139 of the Legislation Act 2001);

- that the provisions of the Act must be read in the context of the Act as a whole (section 140 of the *Legislation Act 2001*); and

- subject to the limitations set out in section 141 of the *Legislation Act 2001,* material (of the type identified in section 142 of the *Legislation Act 2001*) not forming part of the Act may be considered.

The context of the introduction of section 14(1)(h) of the GMA was on the basis of tightening the eligibility and control of clubs. The Gambling and Racing Commission's review of the 1987 Gaming Machine Act noted that:

> "Currently there are a number of clubs in the ACT whose club status is questionable. The submission from ClubsACT acknowledged that the current eligibility criteria for clubs needs to be tightened to control the establishment of "pseudo" clubs. It is proposed that the Act be amended to strengthen the eligibility criteria for clubs. Furthermore, club membership and control will be strengthened to reduce the opportunity for individual/s to benefit from clubs. This could be achieved by incorporating the provisions of interstate legislation where certain 'business' arrangements are prohibited (eg lease of premises from an associate of the club, or where an executive officer or club employee is a creditor) (eg section 58(4) *Gaming Machine Act 1991 (Queensland).* These provisions will seek to minimise the ability for the establishment of new 'pseudo' clubs anda reduce the viability for the influential individual/s of any established 'pseudo' clubs. These new provisions will not have any adverse effect on the existence, establishment or operation of legitimate clubs."

Recommendations 12 and 13 of the Commission's Policy Paper were:

> 12. Eligibility criteria for clubs needs to be tightened to control the establishment of "pseudo" clubs.
> 13. Club membership and control needs to be strengthened.

In its response to the Policy Paper, the Government supported recommendations 12 and 13.

The ordinary meaning of the word 'control' as typically described is: "To exercise restraining or directing influence over. To regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern"[3]. The concept of 'complete' involves an element of exercising that control to the exclusion of another.

The usual meaning of the term 'complete control' must be read subject to the purposes of the GMA[4]. The legislative purpose of section 14 was to ensure that a club's management committee or board exercised control over the business or operations of the club rather than the club being effectively controlled by influential persons and entities where those persons or entities may then profit from the Club.

The 'complete control' required of the board is qualified to the extent that the powers of the board are also subject to the overall requirements of the GMA, the rules of the club and the Memorandum and Articles of Association of the company that constitutes the club.

[3] Blacks Law Dictionary (Fifth Edition)
[4] See Legislation Act 2001, section 139.

3.2 Canberra Labor Club Board Decisions

The CLC Board does not operate in a vacuum. Its powers to conduct or control the Club's business are subject to numerous legislative and statutory constraints as well as the requirements of the Club's Memorandum and Articles of Association. External matters and events will also legitimately have an effect on the Board's control of the Club and may be a determining factor in the Board's decision making process.

The Commission considered whether or not the Labor Club's board had exercised its own judgement regarding the sale process rather than following directions about the sale process stemming from influential persons or entities including the Club's approved associated organisation, the ACT Branch of the ALP.

During interview, each of the Directors categorically stated that they were fully aware of their responsibilities, obligations and fiduciary duties as Company Directors under Corporations Law.

The CLC Board sought extensive advice regarding the sale process and engaged a well respected business advisory service with significant experience in the ACT licensed club industry to ensure that the process was managed effectively on its behalf.

The Commission noted that the eligible objects of the CLC centre on supporting the philosophy and aims of its associated organisation, the ACT Branch of the ALP. Indeed, one of the CLC's major eligible objects is to render financial aid to the Australian Labor Party (ACT Branch).

Thus, there could be expected to be a large degree of coincidence between the decisions of the Board and the interests of the Australian Labor Party. Further, such coincidence would not, by itself, indicate that the Board of the CLC did not have complete control over the company.

The Club is required by section 55 of the GMA to 'honestly and seriously' follow its objects which includes rendering financial aid to the ACT Branch of the ALP.

Specifically in relation to the sale process, the Commission's investigation did not obtain any evidence that indicated that the CLC Board was making decisions under the direction of, or on behalf of, another entity.

Indeed, some the decisions taken by the Board of the CLC, particularly in the later stages of the sale process, were contrary to express directions from the ALP.

While there is significant evidence that attempts to lobby or influence the Club Board was made, this does not in itself mean that those organisations attempting to influence the Club were in control, complete or otherwise.

Attempts to influence Boards, or lobby for a particular position, is a common and accepted practice in the business world. The responsibility of Directors under the Corporations Law is to carefully consider all relevant matters and make decisions that are in the best interest of the Corporation.

3.3 External Influence Through the Club's Memorandum and Articles of Association

Clause 9(c) of the CLC's Memorandum of Association provides the Secretary of the ACT Branch of the ALP with the power to reject a special resolution made by the CLC to amend its Memorandum and Articles of Association.

In addition, clause 28(c) of CLC's Articles of Association provides the Secretary of the ACT Branch of the ALP with the power to remove the six Directors of the Club that have been nominated by the ACT ALP.

These powers could be exercised to provide the ACT ALP Secretary with indirect control over the activities of the CLC by allowing the Branch Secretary to influence the content of the Memorandum and Articles of Association and to remove Directors of the Club at the Secretary's discretion. Exercise of these powers could affect the operations of the Club or the way in which it undertakes its activities.

However, as described in section 3.1 of this report, the question of 'complete control' cannot be considered except in relation to a specific set of circumstances and events because a determination depends on the facts of those particular circumstances.

In relation to the proposed sale process, there is no evidence to suggest that the Branch Secretary used the powers conferred under the Memorandum and Articles of Association to affect the operations of the CLC. This is despite media reports that the Board of the club would be sacked if they did not follow the ALP's instructions.

4.0 Findings of the Investigation

The Commission's major findings from its investigation are that:

- persons and entities, including the ALP National Executive and the ACT Labor Administrative Committee, sought to influence, including by issuing directions, the way in which Canberra Labor Club Directors voted on decisions in relation to the sale process;

- despite significant pressure to act otherwise, the Canberra Labor Club Board appeared to have made its own decisions in relation to the proposed sale process;

- in relation to the sale process, the Canberra Labor Club Board was in 'complete control' within the meaning of that term for the purposes of the *Gaming Machine Act 2004*;

- in relation to the sale process, there was no evidence of a breach of the *Gaming Machine Act 2004* by the Canberra Labor Club Limited;

- as currently constructed, the Memorandum and Articles of Association of the Canberra Labor Club give the Branch Secretary of the ACT ALP, and therefore the ALP National Executive (using its plenary powers):
    - power of veto over amendments to the Club's Memorandum and Articles of Association; and
    - the power to remove any of the six ALP nominated Directors of a total of nine Club Directors;

- while the exercise of the powers of the ACT Branch Secretary under the Memorandum and Articles of Association could exert indirect control over the business or operations of the Canberra Labor Club Limited, there is no evidence to suggest that these powers were exercised in relation to the sale process; and

- since the powers of the National Executive of the Australian Labor Party would be exercised through the powers of the ACT Branch Secretary, there is, consequently, no evidence that these powers were exercised in relation to the sale process.

5.0 Recommendations

The Commission recommends that:

1. in order to lessen the possibility that conflicts with the *Gaming Machine Act 2004* will arise in the future, the Commission recommends that the relevant authorities give urgent consideration to amending the Memorandum and Articles of Association of the Canberra Labor Club to remove powers the exercise of which would or could give rise to a conflict with the Act; and

2. a review be undertaken of the provisions of the *Gaming Machine Act 2004* relating to the governance of clubs, including (but not limited to) such matters as:
    - whether the Commission should have powers to require changes to a licensee's Memorandum and Articles of Association where they conflict (or potentially conflict) with the *Gaming Machine Act 2004;*
    - clarifying the relationship between clubs and their associated organisations in terms of the rights, powers and obligations of the associated organisation; and
    - the operation of the club control aspects of the *Gaming Machine Act 2004* in relation to relevant aspects of the Corporations Law (C'th).

ANNEXURE A

Legislative Assembly Motion of 19 August 2009

"That this Assembly:

(1) notes:

(a) the broad understanding and acceptance of the community that the provision of poker machine licences and subsequent profits were intended to be for the benefit of community projects in the ACT; and

(b) that the intent of the original grants and subsequent legislation was to ensure that profits from poker machines stay in the community; and

(2) requests the ACT Gambling and Racing Commission:

(a) investigate claims made in *The Canberra Times* and *The Australian* newspapers regarding a possible breach of the *Gaming Machine Act 2004* in relation to the proposed sale of assets by Canberra Labor Club Limited;

(b) have tabled in the Assembly the full findings of an investigation into the claims, should an investigation be pursued and completed; and

(c) provide to the Assembly reasons why it may decide it does not have sufficient grounds to conduct an investigation into the claims, if it finds that to be so."

ANNEXURE B

Relevant Provisions of the *Gambling and Racing Control Act 1999*

Section 22 – Power to require information, instruments or records or attendance for examination

(1) The Commission may, for a purpose related to the administration or enforcement of a gaming law, by written notice served on a person, require the person—

(a) to provide to the Commission (either orally or in writing) information that is described in the notice; or

(b) to attend and give evidence before the Commission or an authorised officer; or

(c) to produce to the Commission a record or other document described in the notice that is in the person's custody or control.

(2) If a notice to a person under subsection (1) is made to determine that person's tax liability, the notice must state that the requirement is made for that purpose, but the Commission is not otherwise required to identify a person in relation to whom any information, evidence, record or other document is required under this section.

(3) The Commission—

(a) may specify whether information or evidence to be provided or given under this section must be given orally or in writing; and

(b) may require any information or evidence given in writing to be in the form of, or verified by, a statutory declaration; and

(c) may require any information or evidence given orally to be given on oath or affirmation.

(4) A person must not, without reasonable excuse, fail—

(a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Commission; or

(b) to comply with any other requirement of the Commission about the giving of evidence or how information or evidence is to be provided or given under this section.

Maximum penalty: 50 penalty units.

(5) A person required to attend before an authorised officer to give oral evidence must be paid expenses in accordance with the scale of allowances determined under the *Taxation Administration Act 1999*, section 139 for that Act, section 82 (5).

(6) Subsection (5) does not apply to a person, or a representative of a person, giving evidence in relation to the person's own obligations under a gaming law.

Section 23 – Powers of entry and inspection

(1) An authorised officer may, for a purpose related to the administration or enforcement of a gaming law, enter and inspect any premises at any reasonable time and do any of the following:

(a) remain on the premises;

(b) examine all documents and remove, or take copies of or extracts from, any document on behalf of the commission;

(c) inspect any gaming equipment and remove any gaming equipment that the officer believes on reasonable grounds to be connected with an offence against a gaming law;

(d) remove any thing that the officer believes on reasonable grounds might be used as evidence in a prosecution for an offence against a gaming law;

(e) require any person on the premises to answer questions or otherwise give information, including information about the identity of the person or another person;

(f) require any person on the premises to give access to any document in the person's custody or control, and to—

(i) produce or display the document; or

(ii) provide a copy of the document or a version of it in some form other than that in which it is normally kept;

in any printed, electronic or other form that it is reasonably practicable to provide;

(g) require any person on the premises to produce any gaming equipment in the person's custody or control;

(h) require the owner or occupier of the premises to provide the officer with the assistance and facilities that are reasonably necessary to enable the officer to exercise powers under this part.

(2) An authorised officer who enters premises under subsection (1) and is requested by the occupier to identify himself or herself is not authorised to remain on the premises unless the officer produces his or her identity card to the occupier.

(3) The powers of entry and inspection under this section must not be exercised in relation to premises, or a part of premises, used for residential purposes except with the consent of the owner or occupier of the premises or part.

(4) In this section:

occupier, in relation to premises, includes a person apparently in charge or responsible for the premises.

Section 25 – Use and inspection of documents and records produced or seized

(1) This section applies to a document that has been produced to the Commission or seized and removed by an authorised officer.

(2) The document may be kept for as long as is reasonably necessary to enable it to be inspected, copies of, or extracts or notes from it to be made, and for a decision to be made about whether subsection (3) applies.

(3) If the document is required by the Commission as evidence for a legal proceeding, it may be kept until the proceeding is finally decided.

(4) The Commission must permit a person who would be entitled to inspect the document if it were not in the possession of the Commission to inspect the document at any reasonable time.

(5) Nothing in this section prejudices a lien a person has on the document.

Section 27 – Selfincrimination

(1) A person is not excused from answering a question, providing information or producing a document, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If the person objects to answering the question, providing the information or producing the document on that ground, the answer, information or document is not admissible against the person in any criminal proceedings other than—

(a) proceedings for an offence in relation to false or misleading statements, information or records; or

(b) proceedings for an offence in the nature of perjury.

Section 28 – Failing to comply with requirement of authorised officer

(1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this division.

Maximum penalty: 50 penalty units.

(2) A person does not commit an offence against this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer—

(a) identified himself or herself as an authorised officer; and

(b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

Section 35 – Gaming officers must respect confidentiality

(1) A person who is or has been a gaming officer must not, otherwise than in the performance of the person's duties as a gaming officer, make a record of any confidential information about another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person who is or has been a gaming officer must not disclose any information obtained under or in relation to the administration of a gaming law, except as permitted by this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) The Commission may require a gaming officer to make an oath or affirmation, in a way specified by the Commission in writing, to maintain secrecy in accordance with this section.

Note If a form is approved under s 53D for an oath or affirmation, the form must be used.

(4) For subsection (2), information disclosed to the Commission by a person exercising a function under a law of the Commonwealth, a State or another Territory in relation to gaming or racing is information obtained under this Act.

Section 36 – Permitted disclosures of a general nature

(1) The Commission may disclose information obtained under or in relation to the administration of a gaming law that does not and is not likely to—

(a) directly or indirectly identify a particular person; or

(b) disclose matters about the personal affairs of a particular person.

(2) The Commission may disclose statistical information that does not satisfy subsection (1) if—

(a) the reason that a person or his or her affairs might be identified is that there are few people in particular categories; and

(b) the Commission is satisfied that it is in the public interest to disclose that information.