NSW GOVERNMENT

Report of the Inquiry under the Charitable Fundraising Act 1991

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into

The Returned and Services League of Australia (New South Wales Branch)

RSL Welfare and Benevolent Institution

RSL LifeCare Limited

January 2018

© State of New South Wales Department of Finance, Services and Innovation through the Inquiry under the *Charitable Fundraising Act* 1991.

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Published January 2018.

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INQUIRY UNDER THE
***CHARITABLE FUNDRAISING ACT* 1991**

31 January 2018

The Honourable Matthew Kean MP
Minister for Innovation and Better Regulation
52 Martin Place
SYDNEY NSW 2000

Dear Minister

On 15 May 2017 by Instrument of Appointment issued by you under the *Charitable Fundraising Act* 1991 (the Act) I was appointed to inquire into The Returned and Services League of Australia (New South Wales Branch), RSL Welfare and Benevolent Institution and RSL LifeCare Limited with respect to certain matters under the Act and to report to you on the Inquiry, the information obtained and any appropriate recommendations.

In accordance with section 41E(2) of the Act I present to you the Report.

Yours sincerely

The Hon P A Bergin SC
Public Inquirer

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1. TERMS OF INQUIRY AND OVERVIEW

1.1 On 15 May 2017 the Minister for Innovation and Better Regulation, the Honourable Matthew Kean MP (the Minister), caused an inquiry under section 26 of the *Charitable Fundraising Act* 1991 (the Act) to be made by the Authorised Inspector, the Honourable P.A. Bergin SC, appointed pursuant to section 49(1) of the Act, with respect to matters arising under the Act (the Inquiry).

1.2 On 14 August 2017 the Act was amended by the *Charitable Fundraising Amendment (Inquiries) Act* 2017 with the effect that from that date the Inquiry continued as a Public Inquiry and the Authorised Inspector was appointed as the Public Inquirer.

1.3 The three entities and persons into which the Minister has required inquiry are The Returned and Services League of Australia (New South Wales Branch) (RSL NSW), including but not limited to the members of the governing body and officers of RSL NSW; the RSL Welfare and Benevolent Institution (RSL WBI), also known as RSL DefenceCare, and its Trustees including but not limited to the members of the governing body and officers of RSL WBI; and RSL LifeCare Limited (RSL LifeCare), including but not limited to the members of the governing body and officers of RSL LifeCare.

TERMS OF INQUIRY

1.4 The matters into which the Minister has required inquiry under the Terms of Inquiry are:

1. Whether or not:

   (a) RSL NSW has since 1 July 2007 complied with condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

   (b) the terms of the said condition 20 are adequate to achieve its purpose and to ensure good governance of RSL NSW in respect of matters relevant to the operation of the Act;

   (c) funds of RSL NSW have since 1 July 2007 been used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to RSL NSW and/or who had in respect of any such decision a conflict of interest;

   (d) any other condition of RSL NSW's authority to conduct charitable fundraising has been breached since 1 July 2007.

2. Whether or not:

   (a) RSL WBI has since 1 July 2007 complied with condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

   (b) the terms of the said condition 20 are adequate to achieve its purpose and to ensure good governance of RSL WBI in respect of matters relevant to the operation of the Act;

   (c) funds of RSL WBI have since 1 July 2007 been paid to RSL LifeCare or otherwise used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to RSL WBI and/or who had in respect of any such decision a conflict of interest; and

   (d) any other condition of RSL WBI's authority to conduct charitable fundraising has been breached since 1 July 2007.

3. Whether or not:

   (a) RSL LifeCare has since 1 July 2007 complied with condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

   (b) the terms of the said condition 20 are adequate to achieve its purpose and to ensure good governance of RSL LifeCare in respect of matters relevant to the operation of the Act;

   (c) funds of RSL LifeCare have since 1 July 2007 been used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to RSL LifeCare and/or who had in respect of any such decision a conflict of interest; and

   (d) any other condition of RSL LifeCare's authority to conduct charitable fundraising has been breached since 1 July 2007.

4. Whether or not the management of RSL NSW, RSL WBI or RSL LifeCare since 1 January 2007, or the conduct of any fundraising appeal by them since 1 January 2007, or any other matter that comes to the attention of the inquiry, involves or indicates:

   (a) a breach of the Act; or

   (b) a ground upon which I could be satisfied of a matter listed in subsection 16(2) or subsection 31(1) of the Act,

   and by 1 February 2018 to report to me on the inquiry, the information that it has obtained, and any recommendations you think appropriate.

THE INQUIRY

1.5 Between 15 May 2017 and 10 November 2017, 105 Notices or Summonses were served on various entities and persons. There were four private hearing days and 32 public hearing days with a total of 35 witnesses who gave evidence in the public hearings of the Inquiry.[1]

1.6 It is appropriate to say something about the approaches adopted by each of the entities the subject of the Terms of Inquiry. Each entity has made admissions of non-compliance with the Act, the relevant Charitable Fundraising Regulations[2] and their respective fundraising authorities.[3] Each entity has suspended all charitable fundraising within its organisation from August 2017 until further notice. It should be recorded that the approach that each of the entities adopted in this regard has enabled the Inquiry to be concluded and the Report submitted to the Minister within what clearly was a very tight timeframe having regard to the matters upon which the Minister called for Report, ranging over a decade between 2007 and 2017. It is also appropriate to acknowledge the assistance of each of the legal representatives that appeared for the entities in the Inquiry that enabled the achievement of these approaches.[4]

1.7 The Terms of Inquiry required investigation into the conduct of fundraising appeals during the decade covered by the Terms of Inquiry by RSL NSW, RSL WBI and RSL LifeCare with particular focus upon whether each had been in breach of the conditions of their respective fundraising authorities dealing with conflicts of interest. These investigations were in connection with the matters in each of the Terms of Inquiry.

1.8 The widespread ignorance in each of the entities of the Act, the Regulations and the terms of the respective fundraising authorities exposed during the Inquiry is a cause for deep concern. The statutory regime that is in place for the protection of funds raised from the public has been ignored or misconceived by those upon whom the RSL NSW members and the public depended to comply with their obligations so as to ensure that each of the entities complied with the statutory regime.

1.9 The auditors of each of the organisations, most recently Grant Thornton, Audit Pty Ltd (Grant Thornton) were in part responsible for the perpetuation of some of the misconceptions in respect of the application of the Act to the funds received from the public. In the result, the financial statements of each of the entities were not prepared in accordance with the Act, the Regulations or their fundraising authorities. Thus there was no transparency in respect of the use of funds raised from the public that the statutory regime was designed to achieve.

1.10 There have also been investigations into the State Presidential Expenses Policy of RSL NSW; the expenses incurred by the former President of RSL NSW, Mr Donald Rowe; the use by Mr Rowe of an RSL NSW credit card; and the circumstances surrounding Mr Rowe's resignation and its aftermath.

1.11 These investigations involved each of the RSL NSW State Councillors who held office at the relevant time giving evidence of their involvement in dealing with the question of Mr Rowe's use of his credit card and the level of his expenses, Mr Rowe's resignation and the public statements that were made in respect of that resignation.

1.12 Mr Rowe gave evidence admitting misuse of the RSL NSW credit card and improper conduct in dealing with expenses that were funded or reimbursed by RSL NSW. It should be noted that Mr Rowe's admissions in this regard obviated the need for a deal of other evidence being called to establish that to which he ultimately admitted; albeit that it was necessary for the Inquiry to investigate many matters prior to Mr Rowe being called to give evidence. These investigations were in connection with the matters in paragraphs 1 and 4 of the Terms of Inquiry.

1.13 Between 2014 and 2017, RSL NSW pretended to its members and the public that the only reason Mr Rowe resigned was ill health, when the truth was that but for being confronted with questions about his expenses he would not have resigned at that time. The misleading statements that were published that his resignation was for reasons of ill health were embellished with statements from various RSL NSW State Councillors and officers and the RSL National President of warm wishes of gratitude for Mr Rowe's wonderful service and for a speedy return to good health.

1.14 This pretence, combined with RSL NSW State Council's decision in February 2015 not to conduct a wider investigation into Mr Rowe's use of the RSL NSW credit card and/or refer his conduct to the NSW Police Force (NSW Police), has had far reaching consequences for RSL NSW and its officers, who served on a voluntary basis for many years.

1.15 The expression "cover up" is an apt description of these events. That is not so much for the failure to refer the matter to the NSW Police (although that in itself was at the very least a serious error of judgment), because it is clear that the State Councillors relied on the advice provided by their long serving Honorary Legal Advisor, Mr John Cannings, that Mr Rowe did not have the requisite criminal or fraudulent intent. Rather it is the fact that they all knew that irrespective of any difficulties with his health the real reason Mr Rowe resigned so suddenly was because his improper conduct had been exposed.

1.16 The State Councillors, with the encouragement of the RSL National President, acted in part to protect the good name of the RSL or the "RSL Brand". They were also motivated to protect themselves from criticism. Their actions have had the opposite effect. The cover up has besmirched the good name of the RSL and damaged the individual reputations of the State Councillors involved.

1.17 There have also been investigations into the establishment of a regime of payment of consulting fees to directors of RSL LifeCare; the manner in which the system was implemented and continued during the period covered by the Terms of Inquiry; and its cessation in 2016 and 2017. The directors of

RSL LifeCare who approved their own consultancy contracts and approved increases in their own consulting fees gave evidence admitting that this placed them in a position of conflict of interest and was in breach of their obligations to RSL LifeCare. These investigations were in connection with the matters in paragraphs 3 and 4 of the Terms of Inquiry.

1.18 There is no evidence that any of the directors of RSL LifeCare conducted themselves dishonestly in respect of the payment and receipt of consulting fees. However, there is ample evidence of cronyism, ineptitude and a lack of understanding or appreciation of directors' obligations in dealing with conflicts of interest to ensure transparency and accountability in respect of the use of funds raised from the public.

1.19 There were also investigations into RSL LifeCare's funding of attendances by directors (and in some instances their spouses) and employees at political functions. These investigations were in connection with matters in paragraphs 3(c) and 4 of the Terms of Inquiry.[5]

1.20 Each of the organisations has apologised for the conduct in respect of which they have made admissions. Each organisation has had a change of leadership and a change of professional advisers and auditors. Each organisation has embarked on a process of reform and rebuilding, the detail of which is dealt with later in this Report.[6]

1.21 Each entity has recognised its severe shortcomings and failings but has submitted that it is now in the process of establishing itself as an organisation that the Minister and the public will be satisfied can be trusted with public funds in future charitable fundraising.

ANSWERS TO THE QUESTIONS POSED IN THE TERMS OF INQUIRY

1.22 At this juncture it is appropriate to provide the answers to the questions posed by the Minister in the Terms of Inquiry in respect of each of the entities. The information upon which these answers are provided is detailed in the Chapters that follow.

Paragraphs 1(a), 2(a) and 3(a) of the Terms of Inquiry

1.23 RSL NSW, RSL WBI and RSL LifeCare each failed to comply with condition 20 of its fundraising authority. Each of RSL NSW and RSL WBI failed to set up a Register of Pecuniary Interests and failed to establish a proper mechanism for dealing with conflicts of interest prior to the commencement of the Inquiry. RSL LifeCare also failed to set up a Register of Pecuniary Interests until late 2016 and failed to establish a proper mechanism for dealing with conflicts of interest until 2017.

Paragraphs 1(b), 2(b) and 3(b) of the Terms of Inquiry

1.24 The terms of condition 20 on their own were not adequate to achieve its purpose and ensure good governance of RSL NSW, RSL WBI and RSL LifeCare in respect of matters relevant to the operation of the Act.

Paragraphs 1(c), 2(c) and 3(c) of the Terms of Inquiry

1.25 Since 1 July 2007 funds of RSL NSW, RSL WBI and RSL LifeCare have been used or expended pursuant to decisions by a person, or a group including a person inconsistently with their obligations to RSL NSW, RSL WBI and RSL LifeCare respectively and/or who had in respect of any such decision a conflict of interest. This included the monies paid by RSL NSW for Mr Rowe's expenses; the consulting fees paid by RSL LifeCare to its directors; and the political donations made by RSL LifeCare.

Paragraph 4 of the Terms of Inquiry

1.26 The widespread failures in RSL NSW, RSL WBI and RSL LifeCare, between 2007 and the commencement of this Inquiry on 15 May 2017, are quite extraordinary, particularly in light of the assessment made by NSW Fair Trading, which is currently responsible for administering the Act, in mid-2016 that there was "no evidence of any particular problem in the sector".

1.27 The cover up of Mr Rowe's conduct; the false and misleading statements issued by and on behalf of RSL NSW about Mr Rowe's resignation; the faulty mechanisms of approving the Presidential expenses; the inability to trace publicly donated funds through its financial records; and the abysmal failures to comply with the legislation and the fundraising authorities was conduct not only in breach of the Act but was also conduct that provides grounds upon which the Minister could be satisfied of the matters in section 31(1) of the Act, in particular that RSL NSW was not a fit and proper entity to administer or be associated with a fundraising appeal for charitable purposes.

1.28 The inability to trace publicly donated funds through RSL WBI's financial records; its abysmal failures to comply with the legislation and the fundraising authorities; and the fact that RSL WBI was for years more probably than not operating in breach of its objects was conduct not only in breach of the Act but was also conduct that provides grounds upon which the Minister could be satisfied of the matters in section 16(2) of the Act, in particular that RSL WBI was not a fit and proper entity to administer or be associated with a fundraising appeal for charitable purposes.

1.29 The development of the scheme for payment of consulting fees to all of the directors of RSL LifeCare; the widespread failures by the directors of RSL LifeCare to recognise that approving their own consultancy contracts and increases in their own consulting fees for many years placed them in a position of conflict of interest and in breach of their obligations to RSL LifeCare; the inability to trace publicly donated funds through RSL LifeCare's financial records; and the abysmal failures to comply with the

legislation and the fundraising authorities was conduct not only in breach of the Act but was also conduct that provides grounds upon which the Minister could be satisfied of the matters in section 31(1) of the Act, in particular that RSL LifeCare was not a fit and proper entity to administer or be associated with a fundraising appeal for charitable purposes.

THE REALITY

1.30 The chilling statistic of 41 suicides of veterans in the first six months of 2016[7] is the stark reality of the urgent need for support and expert assistance for those returning from combative deployments and/or transitioning out of the Defence Forces to civilian life.[8] The wonderful programs that have been and are being developed require funding for cohesion, enhancement and expansion to ensure that the appropriate services are delivered at the critically important time of need. There is immense public interest in making certain that such programs are properly funded (including with funds raised from the public). It is clear that vast numbers in the community wish to make contributions in this regard, either monetary or by providing their time as volunteers or both. However they are entitled to expect that those organisations to which they make the contributions will ensure that it is the veterans who are the beneficiaries.

1.31 Each of these RSL entities must live with the shame of not only the governance and other failures of their former leaders but also the fact that in the past it has not been possible to vouch that every dollar of publicly raised funds to assist veterans has been used for that purpose. It will take time, commitment and public support for the new leaders of these organisations to expunge that stain with which the many thousands of volunteers who have worked tirelessly and honestly for years do not deserve to be associated.

1.32 The expression "old guard" is relevantly understood as "the original or long-standing members of a group regarded as unwilling to accept change or new ideas".[9] It is an expression that is exquisitely apt for the State Councillors of RSL NSW, the Trustees of RSL WBI and the Chairman and State Councillor directors of RSL LifeCare who were in office at the time the controversies were made public.

1.33 In the six or eight months from the time investigative journalists exposed the controversies within the organisations and pressed them into the public arena in late 2016, the old guard had dug in.[10] They had to be persuaded to step aside while the internal inquiries proceeded. Some mounted staunch defences of their actions in the media. Others wrote explanatory memoranda justifying their actions to the members and supporters.

1.34 At the time this Inquiry was announced on 15 May 2017, RSL NSW was in deep crisis with its operations in a holding pattern and in the control of a management committee.

THE FUTURE

1.35 Thankfully there was a concomitance of a mood for change in the grass roots membership and the presence of two extraordinarily capable change agents who were willing to serve in an attempt to save these ancient entities from almost certain demise. The membership chose change with the election of Mr James Brown as the new President of RSL NSW with the consequent appointment as Trustee of RSL WBI. RSL LifeCare followed suit with the appointment of Mr Andrew Condon as its Chairman.

1.36 The questions that then arise relate to the future involvement of these RSL entities in charitable fundraising.

1.37 The enormous efforts that have been made by these three entities since 15 May 2017 to rid themselves of the leaders who let them down and the compromised structures and practices that fostered toxic cultures[11] and created dysfunctional systems are detailed later in the Report.[12] These are all matters that will no doubt be necessary to consider in the ultimate decision as to whether these RSL entities (or the new structures to be established) have reached the point that they may now be trusted to be granted the privilege to once again be involved in charitable fundraising.

1.38 At the time of preparation of this Report, the reforms and the proposals for restructure have not been finalised. These are to be notified to the Minister and/or NSW Fair Trading as the Minister's delegate in early 2018. If the proposed systems are in place and are certified to the Minister by Ernst & Young (EY) and the special conditions referred to later in the Report are imposed on the relevant entity or entities, then it is probable that these refreshed entities may well satisfy the tests of fitness and propriety under the Act.

1.39 As for those who took or assisted in taking these organisations close to the brink of destruction, there are recommendations for the Minister to consider referring them to the appropriate regulators and authorities.

1.40 As for Mr Rowe, whose reprehensible conduct was a catalyst for the exposure of so many problems within each of the organisations, there is a recommendation for a much wider NSW Police investigation surrounding his misuse of RSL NSW funds and the circumstances of his departure.

ENDNOTES

[1] The list of witnesses who gave evidence during the public hearings is Appendix C.
[2] *Charitable Fundraising Regulation* 1998 (1998 Regulation); *Charitable Fundraising Regulation* 2003 (2003 Regulation); *Charitable Fundraising Regulation* 2008 (2008 Regulation); *Charitable Fundraising Regulation* 2015 (2015 Regulation).
[3] Chapter 7.3.
[4] A list of legal representatives is included in Appendix D.
[5] Chapter 10.
[6] Chapter 11.
[7] Tr 3299.
[8] Tr 1386; 2074; 2107 - 2111; 2676 - 2680. For instance; Homes for Heroes facilities and the Veterans' Centre established at Bondi Junction by the North Bondi RSL NSW sub-Branch.
[9] Angus Stevenson (ed) (*Oxford Dictionary of English*, Oxford University Press, 3rd ed, 2010).
[10] Tr 1603 - 1604.
[11] Tr 883.
[12] Chapter 11.

2. INTRODUCTION

THE ENTITIES

2.1 Although it will be necessary to deal with the three entities the subject of the Terms of Inquiry in some detail later, it is appropriate to provide an overview of them at this juncture.

RSL National

2.2 The three entities the subject of the Terms of Inquiry are all part of or associated with The Returned and Services League of Australia Limited, otherwise known as "the League" and "RSL National" (RSL National). RSL National was established in 1916 consequent upon recognition of the need for support for those returning from Gallipoli and the Western Front in World War I and the families of those who did not return.

2.3 The broad objects of RSL National include providing support for serving Australian Defence Force (ADF) members (and their dependants) at home and abroad and actively assisting them in their transition to civilian life, especially if they have been detrimentally affected by their Defence service.[1] The objects also include maintaining a national association, which is non-sectarian and non-partisan and from time to time enunciating a policy on national questions to encourage members of RSL National to abide by, support and actively carry out such policy so far as permitted by law.[2] They also include conducting commercial, marketing and sponsorship activities consistent with relevant legislation and RSL National's reputation for the purpose of delivering the objects and outcomes as directed by the Board of RSL National.[3]

RSL NSW

2.4 RSL NSW was established in 1917 to provide for the well-being, care, compensation and commemoration of former and current ADF members and their dependants. It has operated continuously since 1917, raising funds from the public (and others) to further its charitable purpose of the promotion of the interests and welfare of former and current members of the ADF and their dependants throughout Australia.[4]

2.5 Membership of RSL NSW is limited to those who have served in the ADF or the Armed Forces of other countries of the Commonwealth, the United Kingdom and the United States of America, those who have served for a specified period in the Cadets and those who are otherwise qualified with attendant special circumstances (as "Service Members"); those who are members of RSL National (as "National Members"); and the relatives of Service Members (as "Affiliate Members").[5] There are also Honorary Members. Members are required to join an RSL NSW sub-Branch in their district, unless they are allocated to the

unattached List of Members held at RSL NSW headquarters, ANZAC House in Sydney.

2.6 RSL NSW is administered by its State Council (members of which are elected at State Congress, the annual meeting of State Council), which meets approximately once every two months, its State Executive, which meets outside those times, and various State Branch Committees. There are numerous RSL NSW sub-Branches throughout New South Wales with District Councils that are responsible for the sub-Branches in their district. The sub-Branches communicate with the RSL NSW State Branch through their relevant District Councils. There is also the RSL Central Council of Women's Auxiliaries (CCWA) (that reports to State Council) to which the various Women's Auxiliaries formed at sub-Branch level report.

2.7 RSL NSW has held a fundraising authority under the Act for the period 2007 to 2017. However during the period 2007 to 2014 fundraising for RSL NSW was, in the main, administered by the United Returned Services Fund (URSF), of which RSL NSW was a member, and which itself held a charitable fundraising authority under the Act. After URSF was wound up in 2014, the fundraising for RSL NSW has been administered under the name "RSL Appeals NSW" which was registered by the trustees of RSL WBI.

RSL WBI

2.8 RSL WBI is a charitable trust and not-for-profit organisation, the trustees of which until recent times were the State President, the Honorary State Treasurer and the State Secretary of RSL NSW. It was first established as a trust pursuant to a Deed dated 6 January 1964 and until 11 April 2012 was known as the RSL Welfare and Benevolent Fund. Its Administrative Rules were approved by the Supreme Court of New South Wales on 11 April 2012.[6]

2.9 RSL WBI was established "to provide complete welfare and pensions services for ex-Service personnel and their dependants who are in necessitous circumstances".[7] Its other objects include helping to "meet sickness, and distress, suffering, ill health, destitution, helplessness, poverty, the care of War Widows and Widowed Mothers", and to provide "housing for the Aged War Veterans and their dependants".[8]

2.10 RSL WBI has held a fundraising authority under the Act during the period covered by the Terms of Inquiry, at least until mid-2017. It has a pending application for a further fundraising authority under the Act, which is currently being considered by the Minister's delegate, NSW Fair Trading.

2.11 RSL WBI has conducted its charitable fundraising under the name "DefenceCare" and "RSL DefenceCare" and has been referred to as the "operational arm" and "charitable services arm" of RSL NSW.[9] It has raised funds from the public (and others) for its charitable purposes during the period covered by the Terms of Inquiry and has done so in more recent times under the names "DefenceCare" and "RSL Appeals NSW".

RSL LifeCare

2.12 RSL LifeCare was formed in 1911 and the company, RSL LifeCare Limited, was registered in 1942. It operates retirement living and residential aged care services throughout New South Wales and the Australian Capital Territory as well as providing in-home care services. RSL LifeCare retirement village accommodation is available to members of RSL NSW; those eligible to become members of RSL NSW; dependants of those members or eligible members; and, in the absolute discretion of the directors, any "other deserving person".[10]

2.13 The only members of RSL LifeCare are RSL NSW and each director of RSL LifeCare while holding office as a director.[11] The President of RSL NSW, may consent to hold office as a director, *ex officio*, and thereby become a member of RSL LifeCare.[12] RSL NSW has the power to appoint and remove the RSL LifeCare directors.[13] RSL LifeCare must have a minimum of five and a maximum of nine directors, not less than 50% of whom, excluding the President of RSL NSW, must have relevant professional experience.[14]

2.14 RSL LifeCare has held a charitable fundraising authority under the Act for the period covered by the Terms of Inquiry. It has raised funds from the public (and others) for its charitable purposes from time to time during that period.

BACKGROUND TO THE INQUIRY

2.15 In May 2015 a State Councillor raised a question with Mr Roderick White, the then Honorary Treasurer of RSL NSW and Chairman of RSL LifeCare, as to whether the directors of RSL LifeCare who were also RSL NSW State Councillors were being paid consultancy fees. Mr White, who had been a recipient of such fees whilst he was a director and Chairman of RSL LifeCare since 2007,[15] wrote to the State Councillor threatening "every action possible" either under the RSL NSW Constitution or by "other means if necessary".[16]

2.16 In each of the RSL LifeCare financial statements during the period covered by the Terms of Inquiry there was a Note recording that "[no] directors receive fees for services rendered as Directors".[17] The Note also contained statements that certain named directors received "consulting fees" during the relevant years. In 2006 and 2007 the Notes recorded the specific payments made to the individual directors.[18] However there was no description of the nature of the services that were provided for which the consulting fees were paid. In the period 2008 to 2016 there was no reference to the specific amounts paid to any individual director. Rather the Notes recorded the names of the directors to whom consulting fees were paid and the total amount paid each year by way of consulting fees.[19]

2.17 In June 2016 a different State Councillor sought advice from the then RSL NSW State Secretary Mr Glenn Kolomeitz as to the constitutional validity of the payment of consulting fees to RSL NSW State Councillors who were on the Board of RSL LifeCare. On 6 July 2016 the State Secretary received advice from Mr Cannings, then a partner of PricewaterhouseCoopers (PwC) and Senior Honorary Legal Advisor to RSL NSW, that relevant provisions of the RSL NSW Constitution were to "ensure that the position of State Councilors' (sic) are honorary (other than for reimbursement of expenses) and not paid positions".[20] Mr Cannings advised that any payments by RSL LifeCare to directors who were also RSL NSW State Councillors were not in breach of the RSL NSW Constitution provided that such payments were "in respect to services provided by such persons" to RSL LifeCare and not for services rendered as State Councillors to RSL NSW.[21]

2.18 From September 2016 the media, both print and electronic, began reporting on what were described as "fraud" allegations within RSL NSW relating to expenses paid to or on behalf of the former President of RSL NSW, Mr Rowe.[22] There were also reports in relation to the payments of the RSL LifeCare consulting fees.[23] RSL NSW then took further legal advice, this time from law firms independent from Mr Cannings' firm.

2.19 On 6 October 2016 RSL NSW received advice from Hunt & Hunt Lawyers (Hunt & Hunt), who noted the provisions of the RSL LifeCare Constitution and concluded that it was reasonable, and indeed prudent, that a significant make-up of the RSL LifeCare Board would not be charitable volunteers, but people of significant professional expertise.[24] Hunt & Hunt also advised that it would be "reasonably expected" that those directors would receive "some recompense for the giving of their expertise".[25] Hunt & Hunt concluded that it had not been established that it was improper for the directors of RSL LifeCare to receive payments for their services as consultants.[26] However Hunt & Hunt was careful to point out that a review of the tax invoices under which the RSL LifeCare directors received the payments or other relevant information in respect of the payments might alter that view.[27] It appears that Hunt & Hunt was not provided with any further details or copies of relevant invoices; and not asked to consider the matter further.

2.20 On 20 October 2016 the law firm Henry Davis York advised RSL NSW that their preliminary view was that the State Councillors might have used their positions within RSL NSW and RSL LifeCare to obtain undeclared pecuniary benefits during the 2013 to 2015 financial years. They also advised that it was possible, but not certain, that in doing so the State Councillors had not met one or more of their duties and obligations or had contravened the law.[28]

2.21 The RSL LifeCare directors who were also State Councillors at the time they received consulting fees from RSL LifeCare were Messrs Garth Carlson, Robert Crosthwaite, William Hardman, William Humphreys, Rowe and White. The Chief Financial Officer (CFO) of RSL NSW, the late Ms Annette Mulliner, also received consulting fees from 2010 to 2016.

2.22 Mr White was apparently interviewed by a journalist in early October 2016 and asked about a perceived conflict of interest in receiving consultancy fees from RSL LifeCare. Mr White was recorded as having said that an understanding of the arrangement would clarify that there was no conflict of interest; and that he was put on the RSL LifeCare Board by the governing body of RSL NSW and was entitled to enter into a "commercial agreement" with RSL Lifecare. He was recorded as having claimed that he was very comfortable that he had dealt appropriately with good governance and effective management, principally because he had been consistently reappointed to the RSL LifeCare Board by RSL NSW.[29]

2.23 In October 2016 RSL NSW retained EY to review the use of credit cards by its officers and to report on matters of governance and risk.

2.24 In November 2016 RSL National retained forensic accountants, KordaMentha Forensic (KMF), to inquire into and report upon certain matters, including Mr Rowe's expenses and consultancy fees paid to directors of RSL LifeCare who were at the same time State Councillors of RSL NSW.

2.25 In December 2016 RSL NSW resolved to set up a Board of Enquiry to, amongst other things, hear submissions from certain identified persons and to make recommendations in respect of any further action that ought be taken. The Board of Enquiry was not constituted until March 2017.

2.26 On 17 January 2017 the Acting President of RSL National, Mr Robert Dick, signed an Order to Show Cause directed to the RSL NSW State Council ordering its members to show cause at a hearing on 3 February 2017 as to why RSL National should not undertake a vote of no confidence in RSL NSW State Council's ability to properly govern the RSL NSW State Branch.[30]

2.27 The Charge Sheet was directed to RSL NSW and its State Councillors at the time[31] and required the provision of a response to the RSL National Board within 14 days in respect of two charges. The first charge was that RSL NSW had engaged in conduct that was prejudicial to the interests of the League. This was particularised as a failure in December 2014 and the whole of the year 2015 to be transparent with the RSL National Board and the RSL Membership regarding irregularities, which were later defined as carelessness, in expenditures of former RSL NSW State President Mr Rowe and in respect of the reasons for his resignation. It was alleged that this was in violation of relevant Australian Charities and Not-for-profit Commission (ACNC) Governance Standards. The second charge was that the named members had brought the League into disrepute as a "proximate result" of negative media reports in December 2016 surrounding the irregularities in expenditures, maladministration and the reason for Mr Rowe's resignation.[32]

2.28 A decision was reached in early February 2017 (without a hearing) that the Order to Show Cause would not be proceeded with on the basis that the State Council would stand aside, although its members would still perform ceremonial duties. Between the time that the State Council stood aside and

the elections at State Congress in May 2017, a caretaker Management Committee was appointed to operate the business of State Council in the interim.[33]

2.29 In the meantime, the media coverage and commentary continued in respect of whether the State Councillors of RSL NSW, who had received consultancy fees as directors of RSL LifeCare, should be permitted to remain as State Councillors whilst the various matters were being investigated by the Board of Enquiry.

2.30 The ACNC commenced an Inquiry into the allegations that had surfaced in the media in late 2016. However the ACNC Inquiry was apparently suspended pending the outcome of other inquiries and investigations, one of which was an investigation commenced by the Department of Veterans' Affairs (DVA) into the payment of consulting fees to certain RSL LifeCare directors.

2.31 In April 2017 the Board of Enquiry that had been established by RSL NSW communicated with the Minister, noting, amongst other things, certain limitations to its investigative powers.

2.32 It was in this context that the Minister announced this Inquiry, external to and independent of the entities the subject of the Terms of Inquiry.

2.33 After the announcement of the Inquiry the two forensic reviews were suspended and the materials and information gathered were provided to this Inquiry. Although the reviews were in part incomplete, it is appropriate to refer to their findings as at 15 May 2017 in summary form.

KordaMentha Forensic Review 2016 - 2017

2.34 KMF was retained by RSL National on 8 November 2016 and received further instructions on 22 November 2016 and 20 December 2016.[34] KMF was instructed to inquire into three main areas of activity that had been the subject of concerns raised both publicly and within RSL NSW.

2.35 The first area of activity that was the subject of KMF's review related to the payment of consultancy fees by RSL LifeCare to Mr White who by this time was the RSL National President. It also included: the identification of those members of RSL NSW State Council who were simultaneously directors of RSL LifeCare; whether those who were so identified should be the subject of further investigation; and the identification of the nature and extent of all unauthorised or improper payments made to or received by current or former members of RSL NSW State Council and current or former members of RSL NSW staff in connection with their association with RSL LifeCare (the consulting fees review).[35]

2.36 The second area of activity that was the subject of KMF's review related to Mr White's involvement, alone or with others, over decisions to direct donations from RSL NSW sub-Branches to RSL LifeCare; the legitimacy of RSL WBI's donations to other institutions; and the influence each of the then

current or former members of RSL NSW State Council and of RSL NSW staff had over decisions for the payment of donations made by each entity, District Council and sub-Branch to RSL LifeCare or people associated with it (the donations review). [36]

2.37 The third area of activity that was the subject of KMF's review related to certain expense claims of Mr Rowe when he was the RSL NSW President (for a period of at least two years prior to 2013) and included: the circumstances surrounding Mr Rowe's resignation in November 2014, in particular relevant communications and RSL NSW State Council Minutes concerning Mr Rowe's resignation; Mr White's involvement in Mr Rowe's resignation; and instructions given to Grant Thornton Forensic Consulting (Grant Thornton Forensic) for its investigation into Mr Rowe's expenses and further steps taken in connection with that inquiry (Mr Rowe's expenses/resignation review).[37]

2.38 KMF was also asked to comment on whether and, if so, why any current or former members of the RSL NSW State Council or staff ought be the subject of further investigation; and on any matter or thing which became apparent during the course of the investigation which warranted further consideration of the financial affairs of RSL NSW or any person associated with it.[38]

2.39 KMF provided a number of draft reports to RSL National in late 2016[39] and early 2017[40] and also one to the Board of Enquiry in March 2017.[41]

2.40 The conclusions reached in each of the areas of review were necessarily constrained by a number of limitations, including a lack of willingness in some quarters to provide information and/or documentation[42] and a lack of time to complete their investigations before this Inquiry was established.[43] However KMF did make some key findings in each of the areas of review.

Consulting Fees Review Findings

2.41 KMF found that over the period 2007 to 2016 RSL LifeCare made payments totalling $2,552,751 (described as "consulting fees") to eight of the RSL NSW State Council members who were simultaneously directors of RSL LifeCare.[44] Three of those directors had retired from the RSL LifeCare Board prior to the period covered by the Terms of Inquiry. The number of directors of RSL LifeCare (both the RSL NSW State Council members and non-members) who were paid consulting fees over the years varied: 31% in 2006 (4 of 13); 45% in 2007 (5 of 11); 78% in 2008 (7 of 9); 80% in 2009 (8 of 10); 90% in 2012 and 2016 (9 of 10); and 100% in 2010, 2011, and 2013 to 2015 (10 of 10 in 2015; and 9 of 9 otherwise).[45]

2.42 KMF drew attention to the provisions of the RSL NSW Constitution that precluded the RSL NSW State Councillors from being remunerated, directly or indirectly from RSL NSW income or property, for services provided to RSL NSW (clause 19); and the provisions of the RSL LifeCare Constitution that precluded payment of directors' fees "in whatever form" (clause 12.2). KMF also drew attention to the provision in the RSL LifeCare Constitution

that permitted payment to its directors for services provided in "a professional or technical capacity" where such services had the prior approval of the directors and was on reasonably commercial terms (clause 3.2(d)).[46]

2.43 KMF also drew attention to section 48 of the Act, making the observation that there was a "need to obtain permission from the relevant Minister to be able to receive consultancy fee payments under clause 3.2(d) of the RSL LifeCare Constitution".[47] In fact section 48 of the Act provides for the relevant Minister to give prior approval to a person who receives remuneration to hold office as a director, rather than to give approval to receive consulting fees.

The Donations Review Findings

2.44 KMF found that having regard to their positions in RSL NSW, RSL WBI and RSL LifeCare, Messrs White and Rowe were both involved in the decision-making to direct donations from RSL NSW sub-Branches and the Women's Auxiliaries via RSL WBI to RSL LifeCare, which amounted to $1,065,593 over the period 2012 to 2016. KMF noted that the then Chief Executive Officer (CEO) of RSL NSW, Mr Kolomeitz, had described the use of RSL WBI in this process as a 'clearing house' and not a proper use of the RSL WBI account.[48]

2.45 KMF noted that time constraints had prevented the completion of investigation of the appropriateness of expense claims through RSL WBI.[49]

Mr Rowe's Expenses/Resignation Review Findings

2.46 KMF noted that as Honorary State Treasurer of RSL NSW, Mr White was responsible for authorising Mr Rowe's expenses as RSL NSW State President; and recorded that there was no evidence found to show that this had happened.[50] KMF recorded various items of expenditure on Mr Rowe's RSL NSW credit card including cash withdrawals totalling $214,050 over the period 16 December 2008 to 21 November 2014.[51]

2.47 KMF set out the chronology of the events leading to Mr Rowe's resignation in November 2014 and the subsequent "Forensic Audit" conducted by Grant Thornton Forensic[52] the terms of reference for which were developed by Mr Cannings. KMF noted that Grant Thornton Forensic had concluded that there was "potentially a prima facie case of fraud" and that after Mr Cannings reviewed the Grant Thornton Forensic report he provided a memorandum of advice to the RSL NSW Acting State President at the time, Mr Peter Stephenson. It was noted that Mr Cannings' memorandum included advice that: Mr Rowe should repay certain expenses; Mr Rowe's actions were "careless" and RSL NSW's processes were "poor"; and there was no evidence of criminal intent concerning Mr Rowe's behaviour.[53]

Ernst and Young Review 2016-2017

2.48 EY were retained by RSL NSW in 2016 to perform an Independent Forensic Accounting Assessment, the two components of which were an investigation

into credit card expenditure and accounts payable of key personnel of RSL NSW (the Investigation) and a preliminary fraud risk assessment of RSL NSW.[54]

2.49 On 6 April 2017 EY provided RSL NSW with a document entitled "Independent Forensic Accounting Assessment Observations and Recommendations" (the Report).[55] The Report included EY's findings in respect of the Investigation that: overall levels of expenditure were high; multiple processes for reimbursement were being used concurrently; blanket approval appeared to have been granted; and a "culture of entitlement amongst RSL NSW personnel" had thereby been created. EY also analysed Mr Rowe's expenses incurred on the RSL NSW credit card, noting that the amount of $213,641.82 in cash withdrawals had been reclaimed through RSL NSW as a "business expense" in the absence of any stated basis for this description. The Report also included reference to payments for the cost of the mobile telephones and an email account of Mr Rowe's family members as a "business expense" of RSL NSW.[56]

2.50 The fraud risk assessment included EY's findings that there were four categories of risk for RSL NSW, three of which were listed as high risk and the fourth listed as a medium risk. The three high risks were recorded as: systemic control failures relating to expenditure entitlement and approval process; the lack of segregation of duties creating the risk that conflicts of interest may arise; and the excessive level of expenditure when measured against policy expectations. The medium risk was the control gaps that were identified in finance processes (payments, accounts payable and vendor management).[57]

2.51 In the circumstances, EY recommended a review of the overarching controls framework with 55 recommendations to mitigate the risks that were identified.[58]

2.52 The Report included a section entitled "Donations Analysis". It recorded that RSL NSW received donations from many entities as well as from the RSL sub-Branches, which were banked by RSL NSW and "later largely forwarded on" to RSL LifeCare. The Report recorded that this practice was raised at RSL NSW Board level in 2016 and that it was not in compliance with RSL NSW's obligations to the ACNC. The EY Report included the following:[59]

> As such, it was explained that they have altered the practice such that whilst the RSL NSW continue to take possession of donation monies, such monies are no longer banked by the RSL, rather after taking possession, they forward such monies onto Lifecare and Lifecare issue a receipt to the Sub-Branch directly, thereby providing transparency of the charitable purpose for which the donations are used.

2.53 There was no reference in the Report to any compliance or non-compliance with the Act. Nor was there any particularisation of the many entities from which RSL NSW received donations or by whom receipts are issued to those entities for their donations. There was an accompanying table to the Report

entitled "Analysis of Donations", said to be a reflection of the transactions in the General Ledger accounts "which were represented by RSL NSW Management as being used to receive and forward on donations".[60] There was no identification of the bank accounts into which the donation monies were placed. Nor was there any indication that these monies were cocooned from the other funds of any of the entities who received the donations or to whom the donation monies were forwarded.

2.54 The Report also identified mismanagement of entity donations as a medium risk with the observation that entity "donations are being received by RSL NSW and disbursed onwards to RSL LifeCare rather than being directly issued to RSL LifeCare".[61] EY's recommendations in respect of this matter were as follows:[62]

> 53. Adopt formal processes for the receipt and disbursement of donations.
>
> 54. Implement appropriate oversight and governance to support the administration of donations.
>
> 55. Ensure that the framework requires adherence to ACNC requirements.

2.55 EY did not address the requirements under the Act, the Regulations or the conditions attached to the fundraising authorities issued to the entities under the Act. Nor did it make any recommendations in respect of any processes to be followed to ensure such compliance.

A CRISIS EXPOSED

2.56 In June 2017 each of the entities was served with Notices issued by the Public Inquirer (then acting as the Authorised Inspector) under section 27(1) of the Act, requiring the production of documents and the provision of answers to questions. Each entity made applications for extensions of time within which to respond to the Notices. The applications made by RSL NSW and RSL WBI were supported by a letter from EY (retained jointly by RSL NSW and RSL WBI) addressed to those entities dated 5 July 2017 (the EY letter) in respect of the nature of their task, the scope of their work and the time frame within which EY could complete the task.

2.57 The EY letter included a significant disclosure in respect of the manner in which RSL NSW and RSL WBI dealt with and recorded funds received from their various fundraising appeals. It was in the following terms:[63]

> We draw to your attention some inherent limitations to this exercise which are known to EY having previously examined RSL and WBI's financial records for the purpose of a separate engagement;
>
> - That the general ledger does not generally distinguish, on either the receipt or expenditure sides, between income and expenditure which

may be income from a "fundraising appeal" (or expenditure from a "fundraising appeal") within the meaning of s 5 of the Charitable Fundraising Act 1991 and other forms of charitable contribution and income raising.

- That the general ledger (and other financial records) do not disclose how, in respect to each discrete "fund raising appeal", proceeds from that appeal were expended, save potentially for limited exemptions. Rather, the general ledger shows all expenses incurred and all charitable contributions made for each period without seeking to link specific sums raised from a particular fundraising activity to specific charitable contributions for specific individuals – EY's report will therefore list all expenditure for each year including all charitable donations.

2.58 On 7 July 2017 letters from the Inquiry to RSL NSW and RSL WBI recorded the following:[64]

> As you are aware, subject to the conditions of any fundraising authority issued under the *Charitable Fundraising Act 1991* ("**the Act**"), appeal funds are to be paid into a separate account: s 20(6) of the Act. This ensures that they are not mixed with other funds and are easily identified and able to be traced.
>
> In the *Charitable Fundraising Regulation 2008* ("**2008 Regulation**") there was an exemption from the requirement to pay the appeal funds into a separate account only if those funds "can be clearly distinguished": Sch 1 cl 6(4) of the 2008 Regulation. The *Charitable Fundraising Regulation 2015* ("**2015 Regulation**") does not include such an exemption. However Condition 5(4) of your client's current fundraising authority reflects the exemption in the 2008 Regulation allowing it to deposit appeal funds into a general account if the appeal funds can be clearly distinguished.
>
> It appears that your client deposits what it refers to in the Scoping Document as "General Charitable Donations" (also referred to as "ad hoc charitable donations") into its general revenue account. It is probable that these funds (or at the very least, some of these funds) are received in the course of a "fundraising appeal": ss 5 and 6 of the Act. In those circumstances it is necessary that such funds can be clearly distinguished.
>
> It is also not clear whether the "Specific Trust Funds" referred to in the Scoping Document are paid into a separate account.
>
> Your client is also required to keep specific records in respect of the appeal funds including particulars of the application or dispositions of any income obtained from the appeal: s 22 of the Act; cl 10 of the 2008 Regulation; cl 11 of the 2015 Regulation.
>
> On the assumption that EY's advice is correct, it appears that the general ledger and your client's other financial documents do not enable the appeal funds to be clearly distinguished.
>
> It would also appear from EY's advice that it is not possible to identify or ascertain how the proceeds of any particular appeal were expended.

> These are of course only tentative observations based on EY's disclosure which may be the subject of further clarification and explanation. However the Authorised Inspector is concerned that if the position is as EY advises, urgent steps need to be taken to remedy these serious problems.
>
> Would you please advise urgently what steps your client intends to take in this regard.

2.59 On 17 July 2017 Ashurst Lawyers (Ashurst) responded to the Inquiry on behalf of their clients, the trustees of RSL WBI (the Trustees), indicating that the Trustees were taking immediate steps in relation to the management of RSL WBI's financial accounts. Ashurst advised that the Trustees were in the process of obtaining financial management software known as Microsoft Dynamics Navision (Version 2016) and that it was anticipated that this new financial accounting system would come into operation on 1 August 2017, with a new payroll system planned to commence operation on 1 September 2017.

2.60 Ashurst also advised that they had been instructed that the new financial accounting system would result in significantly better financial management outcomes, including: (a) enhancing RSL WBI's ability to record additional information concerning discrete transactions, including information concerning the authorisation of expenditure; (b) enhancing RSL WBI's ability to manage inventory, including in relation to RSL WBI's two most significant fundraising appeals, the Poppy Day Appeal and the ANZAC Day Appeal; and (c) enhancing the ease with which reports could be generated.

2.61 Importantly, Ashurst advised that the new financial management system would enable RSL WBI to effectively segregate the income raised from each discrete charitable fundraising appeal from other income and record all expenditure associated with such segregated income.

2.62 RSL WBI also engaged EY and Ashurst to advise and confirm that the new financial accounting system would enable RSL WBI to fully comply with the Trustees' obligations, most relevantly under the Act, the Regulations, the conditions attached to RSL WBI's charitable fundraising authority and any renewed authority; and the *Australian Charities and Not-for-Profits Commission Act* 2012 (Cth) (ACNC Act). Ashurst also advised that RSL WBI intended to seek specific confirmation from EY that this new system would enable RSL WBI to clearly identify and distinguish the funds received from each discrete appeal that is conducted and to clearly identify and distinguish how the funds from each discrete appeal were applied.[65]

2.63 In respect of the concerns raised in the Inquiry's letter of 7 July 2017, Ashurst responded as follows:[66]

> While EY's investigation is ongoing, it appears that, upon review of transaction level entries concerning particular income and expenses (including the use of specific income and expenditure codes), clearer links can be established between income derived from particular fundraising appeals (in particular, the annual Poppy Day and Anzac Day appeals) and

> particular expenditure than may have been suggested in EY's letter of 5 July 2017, referred to in your letter. To the extent possible, EY's report will make those linkages clear. In addition, it appears that WBI's accounts will allow a clearer distinction to be identified between income and expenditure subject to the *Charitable Fundraising Act* and other income and expenditure than may have been suggested in EY's letter of 5 July 2017. Our clients will seek to actively engage with the Inquiry to ensure that EY's report provides the most assistance possible to the Inquiry.

2.64 Ashurst also advised that RSL WBI had already employed two additional full-time accounting staff with a third approved by the Trustees, in addition to the appointment of a Fundraising Manager at the beginning of 2017 (separating this function from marketing).[67]

RSL NSW Fundraising suspended – 7 August 2017

2.65 On 7 August 2017 the President of RSL NSW, Mr Brown, issued a document entitled "RSL NSW Directive - Suspension of Charitable Fundraising". That Directive referred to this Inquiry and also to the investigation being conducted by the ACNC. It recorded that since the new State Council of RSL NSW had been elected on 24 May 2017, it had been reviewing the operations of "the League". The Directive included the following:[68]

> We have become aware that a number of technical procedures currently followed by RSL NSW, through its sub-branches and auxiliaries, do not comply with the requirements and obligations of the Charitable Fundraising Act 1991 (NSW). RSL NSW is treating this matter very seriously. It is vital that RSL NSW, and its sub-branches and auxiliaries, do everything possible to ensure that any non-compliance with these legal obligations cease immediately.
>
> To this end, at a meeting on Monday 31 July 2017, the RSL NSW State Council passed a resolution on this issue and now directs that:
>
> - **Until further notice all sub-branches and auxiliaries are to immediately cease, without exception, any fundraising activities and appeals being conducted now, or that might soon be conducted.**

2.66 The Directive recorded that the State Council had resolved to communicate any steps being taken by it to rectify the issues identified to this Inquiry, the ACNC and other relevant bodies. It included an attachment of "Frequently Asked Questions" providing guidance to the sub-Branches and auxiliaries in respect of the implementation of the suspension of fundraising for the time being.[69] It also recorded that the suspension was occurring because RSL NSW had determined that its "technical fundraising procedures are not compliant with the required standards".

2.67 On 8 August 2017, Mr Brown was interviewed on-air in which he stated that the problems were "systemic" and that the scale of the organisation had rapidly outgrown "its governance mechanisms, its systems, and in some cases the skill set of individual decision-makers". In the same program, Mrs Sandra Lambkin, a recently elected RSL NSW State Councillor based near Tamworth, said that the

suspension of fundraising was "absolutely necessary" and that the problems that the organisation was facing had been "going on for decades". Mr Brown confidently reported that with this Inquiry and the ACNC investigation and with the steps that RSL NSW was taking itself, including the suspension of all fundraising, he was confident that by the beginning of 2018, the organisation would be able to put all the "issues" behind it.[70]

2.68 In the "RSL NSW President Report: August 2017" published on 18 August 2017, Mr Brown reported to members that the State Council had recently been coming to grips with the complexity of the organisation and the scale of the challenges that it faced. One of the challenges was identified as "fundraising" with the reminder that the previous week the State Council had issued a directive to suspend fundraising in the knowledge of the difficulties and the "distress" that some of the smaller sub-Branches and auxiliaries would face. Mr Brown advised that the alternative to that suspension was to fundraise in a way that was not consistent with the legislation, which would be clearly unacceptable. The President's Report included the following:[71]

> It is hard for me to communicate with you the exact issues we have detected to do with fundraising. As you can appreciate, this has legal implications as well as flow on effects for our audits, insurance, and wider operations. We are working with our regulators to identify and address the issues, and I cannot get ahead of that process. What I can say is that the issue is systemic, and affects every sub-branch, auxiliary, youth club and day club. It has to do with the way we receive money raised through fundraising, account for it, and then report on how it is spent. We are working on a fix to this as fast as possible and will brief all of our members on what needs to be done so we can start fundraising again. This will take some time. Please be patient. We need to get this right so that the public can have full confidence in us.

RSL WBI Fundraising suspended - 9 August 2017

2.69 On 9 August 2017, RSL WBI advised the Inquiry that it had suspended fundraising activities until further notice. It also advised that it had disabled the donations function on its website and removed references to solicitation of donations from its website and from staff emails. This was said to be action taken voluntarily by RSL WBI as it reviewed its compliance practices and processes "to ensure they will comply with all relevant regulatory requirements".[72]

RSL LifeCare Fundraising suspended

2.70 On 25 August 2017 the newly elected Chair of RSL LifeCare, Mr Condon, wrote to the Inquiry in answer to the letter from the Inquiry dated 28 July 2017.[73] Mr Condon advised that the purpose of the letter was to provide RSL LifeCare's further response by acknowledging certain failures by RSL LifeCare to comply with the reporting requirements of the Act and the conditions of RSL LifeCare's fundraising authority with respect to donations and funds raised pursuant to fundraising appeals conducted by RSL LifeCare; and to set out the courses of

action RSL LifeCare was undertaking to strengthen its compliance with respect to these matters.

2.71 Mr Condon advised that in November 2016 RSL LifeCare's advisory sub-committee for its program known as Homes for Heroes Board met to consider its fundraising activities for Homes for Heroes. The Minutes of that sub-committee include a resolution passed on 17 November 2016 that all fundraising activities of Homes for Heroes needed to be endorsed by the committee with a note that there should be no fundraising activities on behalf of Homes for Heroes until clarification of certain matters.[74]

2.72 Mr Condon also advised that in December 2016, the donate button on the Homes for Heroes' webpage of the RSL LifeCare website was deactivated and that the page was deleted completely from RSL LifeCare's server early in 2017.

THIS REPORT

2.73 The following Chapters deal with the legal landscape for charitable fundraising in New South Wales;[75] the regulation of the regime;[76] and the identification of the individuals in leadership roles in the entities together with the management teams supporting them; the legal advisers and auditors throughout the period covered by the Terms of Inquiry.[77] There is then a series of Chapters dealing with the fundraising appeals conducted by each of the entities during the period covered by the Terms of Inquiry and their failures to comply with the legislative regime.[78]

2.74 Chapter 8 deals with the Presidential Expenses scandal, Mr Rowe's resignation and its aftermath. Chapter 9 deals with the payment of consulting fees to RSL LifeCare directors and the associated problems including the failures to identify and deal with numerous conflicts of interest and breaches of the Constitution.

2.75 The issue of political donations is discussed in Chapter 10. Chapters 11 and 12 deal with the steps that have been taken by the entities to rebuild their organisations and the question of whether they can now be trusted to engage in charitable fundraising.

2.76 The Inquiry's review of charitable fundraising systems in other parts of Australia and overseas, together with some proposals for reform for the system in New South Wales, are dealt with in Chapter 13.

2.77 The recommendations arising out of the investigations in the Inquiry that are made throughout the Report are gathered together in Chapter 14.

ENDNOTES

[1] Ex 40, Vol 1, p 49; RSL National Constitution (2016), cl 4.1(g).
[2] Ex 40, Vol 1, p 49; RSL National Constitution (2016), cl 4.1(j) - (k).
[3] Ex 40, Vol 1, p 49; RSL National Constitution (2016), cl 4.1(n).
[4] Ex 40, Vol 1, p 161; RSL NSW Constitution (2011), cl 1.
[5] Ex 40, Vol 1, pp 346 - 349; RSL NSW Constitution (2016), cl 3 - 5.
[6] Ex 47, p 1; *Rowe v Attorney General of New South Wales* [2012] NSWSC 371.
[7] Ex 25, Vol 1, p 252.
[8] Ex 25, Vol 1, p 252.
[9] Ex 25, Vol 1, p 358.
[10] Ex 3, Vol 4, p 788.
[11] Ex 3, Vol 3, pp 551 - 552.
[12] Ex 3, Vol 3, pp 565 - 566.
[13] Ex 3, Vol 3, pp 566 - 568.
[14] Ex 3, Vol 3, p 565.
[15] Ex 20, Vol 2, pp 476, 514, 548, 590, 637, 678, 710, 740, 769, 798.
[16] Ex 13, p 177; Tr 1730.
[17] Ex 20, Vol 2, pp 476, 514, 548, 590, 637, 678, 710, 740, 769, 798.
[18] Ex 1, Vol 1, p 37; Ex 20, Vol 2, p 476. In 2006 a total of $59,772 comprised of payments of $14,943 to each of Messrs Kells, Magee, Riddington and Dr Macri. In 2007 a total of $114,000 comprised of payments of $9,000 to Mr Magee; $15,000 to Mr Crosthwaite; and $18,000 to Messrs Kells, White, Riddington, Longley and Dr Macri.
[19] Ex 20, Vol 2, pp 514, 548, 590, 637, 678, 710, 740, 769, 798; 2008 - $182,000 to seven named directors; 2009 - $156,750 to eight named directors; 2010 - $238,125 to nine named directors; 2011 - $219,431 to nine named directors; 2012 - $231,903 to nine named directors; 2013 - $344,215 to nine named directors; 2014 - $322,687 to nine named directors; 2015 - $313,773 to ten named directors; and 2016 - $370,095 to nine named directors.
[20] Ex 1, Vol 1, p 388.
[21] Ex 1, Vol 1, p 388.
[22] Ex 18, pp 12 - 13.
[23] Ex 18, pp 16 - 18, 21 - 25.
[24] Ex 1, Vol 1, p 401.
[25] Ex 1, Vol 1, p 401.
[26] Ex 1, Vol 1, p 403.
[27] Ex 1, Vol 1, p 403.
[28] Ex 1, Vol 1, p 413.
[29] Ex 13, Vol 1, p 196.
[30] Ex 10, Vol 1, p 415.
[31] Ex 10, Vol 1, p 416 : Messrs Crosthwaite, Haines, Harrigan, Humphreys, Hutchings, McManus-Smith, Metcalfe, Stephenson and Toussaint.
[32] Ex 10, Vol 1, pp 416 - 417 and following.
[33] Tr 1720 - 1721.
[34] Ex 44, p 208.
[35] Ex 44, p 209.
[36] Ex 44, p 209.
[37] Ex 44, p 209.
[38] Ex 44, pp 209 - 210.
[39] Ex 44, pp 47, 57, 94.
[40] Ex 44, pp 134, 154.
[41] Ex 44, p 202.
[42] Ex 44, pp 212, 229, 257. (Mr White refused to provide any documentation or participate in a meeting; and RSL LifeCare declined to provide documents concerning the payments of the consultancy fees to directors).
[43] Ex 44, pp 213, 229, 258.
[44] Ex 44, p 212.
[45] Ex 44, pp 228, 230.
[46] Ex 44, pp 212, 226.

[47] Ex 44, pp 212, 227.
[48] Ex 44, p 213.
[49] Ex 44, p 213.
[50] Ex 44, p 215.
[51] Ex 44, p 215.
[52] Ex 44, p 214.
[53] Ex 44, p 214.
[54] Ex 10, Vol 2, p 521.
[55] Ex 10, Vol 2, p 518.
[56] Ex 10, Vol 2, p 521.
[57] Ex 10, Vol 2, p 521.
[58] Ex 10, Vol 2, pp 521, 540 - 545.
[59] Ex 10, Vol 2, p 538.
[60] Ex 10, Vol 2, p 538.
[61] Ex 10, Vol 2, p 545.
[62] Ex 10, Vol 2, p 545.
[63] Ex 15, p 6.12.
[64] Ex 15, pp 8 - 9; Ex 16, pp 23 - 24.
[65] Ex 16, pp 38 - 39.
[66] Ex 16, p 39.
[67] Ex 16, p 39.
[68] Ex 5, p 410.
[69] Ex 5, pp 411 - 412.
[70] Ex 18, pp 273 - 274.
[71] Ex 15, p 24.
[72] Ex 16, p 49.
[73] Ex 2, Vol 3, p 878.
[74] Ex 2, Vol 3, p 1170.
[75] Chapter 3.
[76] Chapter 4.
[77] Chapter 5.
[78] Chapters 6 - 7.4.

3. STATUTORY REGIME IN NEW SOUTH WALES

3.1 Prior to 1935 there was no statutory regulation of the operation of charitable bodies or the control of charitable funds that were collected in New South Wales.[1] Indeed prior to that time any group of persons in New South Wales could describe themselves as a "charitable body" and make appeals to the public for donations or contributions without any obligation to provide receipts, to keep proper accounts or to subject their operations to an accredited audit process.[2]

3.2 In the early 1930s the New South Wales Government was alerted to claims that "hundreds of appeals" had been conducted purely for the promoters' gain. The method of collection in those years was, in the main, by lotteries and art unions that were conducted by promoters under the *Lotteries and Art Unions Act* 1901. The Government's concern was that many promoters were handing "practically nothing" to the charitable organisation in whose name the lotteries and art unions were being promoted. An assessment of lotteries and art unions that was conducted in the two years prior to December 1934 suggested that the money contributed by the public in the belief that it was to be provided for a charitable purpose had been used "improperly for expenses that could not be justified under any circumstances".[3]

3.3 The Government of the day decided that "charitably-minded people" of New South Wales should be "protected" and given assurances that appeals for contributions made by charitable bodies were for genuine charitable purposes and that such appeals could not be conducted by people to obtain an advantage for themselves. It was thought that charitable bodies who were obliged to keep proper accounts would be more respected and more liberally endowed in the future.[4]

CHARITABLE COLLECTIONS ACT 1934

3.4 It was in this context that the *Charitable Collections Act* 1934 (Collections Act) was enacted. A regime was established pursuant to which a "Charity", defined as "any organisation or association established for or which has as one of its objects a charitable purpose", could make application to the Minister to be registered under the Collections Act.

3.5 A "charitable purpose" was defined in the Collections Act as including "any benevolent or philanthropic purpose". An "appeal for support" was defined as including "the taking of any collection and any invitation (expressed or implied) designed to obtain money for the Charity or charitable purpose".[5]

3.6 The Minister could only refuse registration of the Charity if the Minister was satisfied that: (a) the Charity was not established in good faith for charitable purposes; or (b) the Charity would not comply with the conditions imposed by or under the Collections Act; or (c) the Charity would not be properly administered; or (d) the proposed purpose of the Charity was already covered by existing charities.[6]

3.7 The Minister could also call upon the responsible persons of a registered Charity to show cause why the Charity should not be removed from the register if the Minister was satisfied that the Charity was not being carried out in good faith for charitable purposes; or was not being administered properly; or was not complying with conditions imposed under the Collections Act.[7] If the Minister removed the Charity from the register, it could appeal to the District Court. In such an appeal the District Court could require accounts, statements, written answers to inquiries, production of documents, examination of registers and the attendance of persons for examination on oath.[8]

3.8 The Minister was able to examine and inquire into any Charity in New South Wales or cause an inspector to carry out such an inquiry.[9] The powers of the Minister and the inspector in this regard included requiring written statements and accounts and answers to questions in writing from specified persons.[10] The inspector also had the power to require the specified persons to attend and be examined in relation to the Charity, to answer questions and/or produce documents.[11] It was an offence to fail or refuse to comply with the request of the Minister or the inspector.[12]

3.9 A Charity was prohibited from making any appeal for support unless: (a) it was registered (or exempted from registration) under the Collections Act; (b) the appeal for support was sanctioned by the relevant body or officer of the Charity; and (c) the Charity complied with any conditions of such sanction and the provisions of the Collections Act.[13] That prohibition did not apply to: (a) appeals to the public at a public meeting to establish a Charity or in furtherance of the objects of a Charity where the meeting was called with the prescribed approval; (b) collections in a place of public worship; and (c) appeals by trade or industrial unions or friendly societies on behalf of distressed members conducted in accordance with the Regulations.[14] It was an offence to conduct an unlawful appeal punishable by a penalty not exceeding fifty pounds for a first offence (one hundred pounds for subsequent offences) or a term of imprisonment not exceeding three months for a first offence (not exceeding six months for subsequent offences).[15]

3.10 The conditions with which the registered Charities had to comply under the Collections Act were that: (a) they had to be administered by a responsible committee or other body of not less than three people; (b) minutes of the committee meetings had to be kept; (c) proper books of account had to be kept and audited; (d) moneys received by the charities had to be paid into a separate bank account without any deduction for expenses or commissions; and (e) certain particulars with regard to the accounts and other records had to be furnished to the Minister and the books and accounts had to be open to

inspection by any person authorised by the Minister or the Auditor-General. These conditions were subject to modification by the Regulations.[16]

3.11 It was an offence to falsify books or records; or convert moneys raised from a collection for charitable purposes; or make false representations in an application for registration of a Charity.[17]

3.12 The Collections Act was described as "something in the nature of experimental legislation" with the inevitable subsequent exposure of perceived weaknesses in its operation. After the outbreak of the Second World War there was scope for opportunists to benefit extensively from war charities and there was concern that the Act might not deal with "racketeers" effectively. The Crown Law Department advised the Government that it was necessary to amend the Act to provide greater powers of supervision over charitable and patriotic funds.[18]

CHARITABLE COLLECTIONS AMENDMENT ACT 1941

3.13 The Collections Act was amended by the *Charitable Collections Amendment Act* 1941 (1941 Act). The definition of "appeal for support" was amended to include "articles" (in addition to money) as part of the collection or invitation. The definition of "Charity" was amended to include "auxiliaries, sub-branches and subsidiaries" of the relevant organisation or association. The definition of "charitable purpose" was amended to include "patriotic" purposes in addition to benevolent or philanthropic purposes.[19]

3.14 As a consequence of the concern that had been raised previously in respect of the perceived unjustified expenses incurred in appeals for support, the 1941 Act provided further powers to the Minister to enable the gathering of information by the service of Notices and a power to disallow any liability incurred or to be incurred by a Charity in connection with an appeal for support.[20] It also provided powers to the Minister to inquire into the *bona fides* of any Charity and introduced provisions in respect of proceedings for both summary and indictable offences.[21]

CHARITABLE COLLECTIONS (AMENDMENT) ACT 1985

3.15 In late 1984 the Government decided that a general overhaul of the Collections Act was necessary "to bring it into line with modern requirements". However, as it was expected that the overhaul would take some time, it was decided that in the interim provisions would be enacted to deal with some of the deficiencies that had been identified, including removing limitations on the powers to investigate the financial operation of Charities in a cost efficient and effective manner.[22]

3.16 One of the more important provisions in the *Charitable Collections (Amendment) Act* 1985 (1985 Amendment) was the Minister's power to appoint an

administrator to a Charity where there had been maladministration, but in particular where it was considered to be in the public interest that the Charity continue to operate.[23] The 1985 Amendment also broadened the Minister's powers to appoint inspectors from outside the public service and to recover the expenses and remuneration of the inspector from the Charity the subject of any inquiry.[24]

3.17 In consequence of concerns that had arisen that charitable funds were not being applied for the charitable purpose specified in the appeals for support, the 1985 Amendment included an express provision that such funds had to be so applied and applied within New South Wales unless application otherwise was approved by the Minister.[25] It also included provisions in respect of further offences and proceedings for those offences.[26]

CHARITABLE FUNDRAISING ACT 1991

3.18 In the late 1980s there were serious cases of directors of charitable organisations embezzling publicly raised funds. In September 1989 a discussion paper entitled "Fundraising Appeals for Charitable Purposes in New South Wales", released by the Chief Secretary's Department, was distributed to the community. The paper included proposals for reform which were canvassed widely with the "aim of simplifying the law, removing the duplication of bureaucratic controls and applying public resources more effectively".[27] One proposal was that when an auditor made a qualified report in respect of an authorised fundraiser, a copy of such report was to be provided to the Minister.[28]

3.19 The "key" to the new regime in the Act was seen to be the "abolition of the concept of registration as a Charity and its replacement with the notion of an authority to raise funds". It was anticipated that fundraising authorities would be issued on average for a period of five years with "well-known" Charities being issued with authorities of longer duration.[29]

3.20 One of the "primary controls" over the activities of fundraisers is the requirement that their accounts be independently audited,[30] with an obligation on the auditor to report on whether money received as a result of fundraising appeals conducted during the relevant year have been properly accounted for and applied in accordance with the Act and the Regulations.[31] The Act also imposed a requirement on the auditor, that if the auditor is satisfied that there has been a contravention of the Act or the Regulations and the matter would not be adequately dealt with by a note to the accounts or by bringing the matter to the notice of the directors or trustee of the relevant organisation, the matter must be immediately reported to the Minister.[32]

3.21 The Act defines "charitable purpose" to "include any benevolent, philanthropic or patriotic purpose".[33]

3.22 A "fundraising appeal" is defined as the "soliciting or receiving of money by any person of any money, property or other benefit" (the appeal), if before

or in the course of the appeal the person represents that the purpose of the appeal or any activity or enterprise of which the appeal is part, is or includes a charitable purpose. Certain activities that might otherwise fall within the definition are excluded, including relevantly: requests or receipts of fees for renewal of membership of an organisation (defined as including any board of trustees or other body of persons whether incorporated or unincorporated); and an appeal by an organisation to its members.[34]

3.23 A person "conducts" an appeal if the person organises the appeal alone or with others, or by an agent or employee, or on their own behalf or as an officer or member of the governing body of an organisation.[35]

3.24 A person "participates" in an appeal if the person solicits or receives any money, property or other benefit in the course of the appeal, or assists in organising the appeal.[36] However a person who participates in an appeal solely as the agent, employee or collector of or for another person who is conducting an appeal, does not conduct an appeal.[37]

3.25 The Act and the Regulations provide a regime for applications for and granting of authorities to conduct fundraising appeals and the imposition of conditions on such authorities by the Minister.[38] There are strict requirements in respect of the proceeds of the appeal, keeping of records and the provision of reports to the Minister.[39]

3.26 The Act also includes similar provisions to the previous legislation relating to the Minister's powers to inquire into any person who has conducted (or is conducting) or participated (or is participating) in an appeal with respect to any matter arising under the Act. The Act also provides for the Minister to cause such an inquiry to be conducted by an authorised inspector with the same powers as those provided to the Minister.[40] The inspector also has powers of entry and inspection and to obtain search warrants.[41]

3.27 The Minister may refuse an application for a fundraising authority if the Minister is not satisfied that: (a) the proposed appeal will be conducted in good faith for charitable purposes; (b) all persons proposing to conduct the appeal and those persons associated with the proposed appeal are fit and proper persons to administer, or be associated with a fundraising appeal for charitable purposes; (c) the proposed appeal will be administered in a proper manner; (d) the grant of a fundraising authority would not facilitate the contravention of any Act; (e) the applicant will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of the Act, the Regulations and the conditions of the authority; (f) the applicant has furnished all relevant information required in respect of the proposed appeal; (g) having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading; and (h) it is in the public interest to grant the authority.[42]

3.28 The Minister may revoke a fundraising authority if the Minister is satisfied that: (a) any fundraising appeal conducted by the holder of an authority has

not been conducted in good faith for charitable purposes; or (b) any of the persons who have conducted a fundraising appeal by virtue of the authority, or any persons associated with any such appeal, are not fit and proper persons to administer, or be associated with, a fundraising appeal for charitable purposes; or (c) any fundraising appeal conducted by virtue of the authority has been improperly administered; or (d) in connection with any fundraising appeal conducted by virtue of the authority, the provisions of the Act, the Regulations or the conditions of the authority were not complied with by any person conducting or participating in the appeal; or (e) the holder of an authority has not conducted a fundraising appeal within the previous 24 months; or (f) in the public interest, the authority should be revoked.[43]

3.29 The Act also provides that in certain circumstances the Minister may appoint an administrator to conduct the affairs and activities generally of a not-for-profit organisation that is conducting or has conducted a fundraising appeal or has as one of its objects a charitable purpose. The Minister may also appoint an administrator to conduct the affairs and activities of other organisations that relate to the administration, application and management of funds raised in an appeal. The pre-requisites to such an appointment are: (1) the organisation has been notified by the Minister of a contravention of a provision of the Act, the Regulations or any condition imposed on the organisation by or under the Act; and (2) the Minister believes on reasonable grounds that after such notification: (a) the organisation has failed to remedy the contravention to the extent that it is capable of remedy: or (b) the organisation has committed a further contravention of the provision or condition; or (c) the contravention of the provision or condition has continued: or (d) an examination after an inquiry in relation to the organisation under the Act has disclosed reasonable grounds to believe there has been: (i) a misappropriation of funds of the organisation; or (ii) mismanagement of the organisation; or (e) for other reasons it is in the public interest that an administrator be appointed.[44]

3.30 The Act also adjusts the previous prohibition on "paid directors" or persons receiving a "benefit" from a charitable organisation from serving on the governing body of that organisation. The Government was concerned that the lifting of such prohibition had to be taken with care so as to avoid creating conflicts of interest and "for this reason" it would only be lifted after prior approval of the Minister and in accordance with any conditions of such approval.[45] The provision enacted to reflect these concerns and aims is in the following terms:

48 Remuneration of board members of charitable organisations

(1) A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if:

(a) the Minister, by order published in the Gazette, has declared that this section applies to that office, or

(b) the Minister has given prior approval of a person who receives any such remuneration or benefit holding that office or acting in that capacity, or

(c) the person concerned holds that office or acts in that capacity by virtue of his or her office as a minister of religion or a member of a religious order.

(2) An approval under this section is subject to any conditions imposed by the Minister when giving the approval.

(3) An approval under this section is to be in writing. Applications for such approvals must be addressed in writing to the Minister by the organisation concerned.

(4) For the purposes of this section, every body, organisation or office referred to in section 7(1) is taken to be a non-profit organisation having among its objects one or more charitable purposes.

3.31 At the time of the Inquiry the Act remained unchanged, but for the amendments in August 2017 in relation to the Public Inquiry.

COMMONWEALTH REGULATION OF CHARITABLE FUNDRAISING

3.32 Although the concept of registration of Charities was abandoned in New South Wales in 1991, it was reintroduced by the Commonwealth Government with the enactment of the ACNC Act which established the ACNC.

3.33 The aim of the ACNC Act is to provide "a national regulatory system that promotes good governance, accountability and transparency for not-for-profit entities" in order to "maintain, protect and enhance public trust and confidence in the not-for-profit sector".[46]

3.34 The ACNC Act provides for a regime of registration of Charities with requirements for registered Charities to keep records and to report to the Commissioner.[47] The Commissioner has certain regulatory powers to gather information necessary to monitor the registered entities' compliance with the ACNC Act.[48]

3.35 The ACNC commenced operation on 3 December 2012.[49] Each of the entities the subject of the Terms of Inquiry is registered with the ACNC and is required to file reports and financial statements in accordance with the ACNC Act.

ENDNOTES

[1] Ex 45, p 376.2.
[2] Ex 45, p 379; GE Dal Pont, *Law of Charity,* (Lexis Nexis, 2nd ed, 2017), pp 101 - 103, par 5.11.
[3] Ex 45, p 379.
[4] Ex 45, pp 379 - 380.
[5] Collections Act, s 2.
[6] Collections Act, s 4(2).
[7] Collections Act, s 6(1).
[8] Collections Act, s 7(1).
[9] Collections Act, s 8.
[10] Collections Act, s 9(1).
[11] Collections Act, s 10.
[12] Collections Act, s 12.
[13] Collections Act, s 3(1).
[14] Collections Act, s 3(2).
[15] Collections Act, s 3(3).
[16] 1941 Act, s 5.
[17] 1941 Act, s 15 - 17.
[18] Ex 45, pp 411 - 419.
[19] 1941 Act, s 2.
[20] 1941 Act, s 4.
[21] 1941 Act, s 6.
[22] Ex 45, p 422.
[23] 1985 Amendment, Schedule 1, ss 13A - 13D.
[24] 1985 Amendment, Schedule 1, s 11A.
[25] 1985 Amendment, Schedule 1, s 16A.
[26] 1985 Amendment, Schedule 1, ss 16A - 19.
[27] Ex 45, p 425.
[28] Ex 47, p 44.
[29] Ex 45, p 426.
[30] The Act, s 24(1).
[31] The Act, s 24(2)(c).
[32] The Act, s 24(3).
[33] The Act, s 4.
[34] The Act, s 5.
[35] The Act, s 6(1).
[36] The Act, s 6(2).
[37] The Act, s 6(3).
[38] The Act, ss 13A - 19; 2015 Regulation, cl 17.
[39] The Act, ss 20 - 23.
[40] The Act, ss 4, 26, 27, 49.
[41] The Act, ss 28 - 29.
[42] The Act, s 16.
[43] The Act, s 31.
[44] The Act, s 33.
[45] Ex 45, p 431.
[46] ACNC Act, Preamble.
[47] ACNC Act, ss 55 - 60.
[48] ACNC Act, ss 70 - 75.
[49] ACNC Act, ss 5 - 10.

4. THE REGULATOR

4.1 This Chapter provides some history to the regulation of charitable fundraising in New South Wales.

4.2 The Department of Fair Trading was established in 1995, bringing together the Department of Consumer Affairs, the Building Services Corporation (formerly the Building Licensing Board), the Office of Real Estate Services and the Registry of Co-operatives.[1] The Department was abolished in 2003 and the Office of Fair Trading was established,[2] which was superseded in 2009 by NSW Fair Trading. On 1 July 2015 NSW Fair Trading became part of the Department of Finance Service and Innovation responsible to the Minister.

4.3 Since 1 July 2015, NSW Fair Trading has had responsibility for administering the Act, including issuing fundraising authorities.

ADMINISTRATION OF THE ACT

4.4 In April 1995, administration of the Act was transferred from the Chief Secretary's Department to the Department of Gaming and Racing,[3] which had established an Office of Charities at least by February 1997.[4]

4.5 The Department of Gaming and Racing was abolished in March 2006 and administration of the Act was transferred to the Department of the Arts, Sport and Recreation,[5] which established the NSW Office of Liquor, Gaming and Racing.[6]

4.6 In July 2009 the Office of Liquor, Gaming and Racing (and hence administration of the Act) was transferred to Communities NSW, which was established as a Division of the Government Service;[7] and then in April 2011 it was transferred to the Department of Trade and Investment, Regional Infrastructure and Services.[8]

4.7 On 1 July 2015 that Department was abolished and responsibility for the administration of the Act was transferred to the Department of Finance, Services and Innovation[9] and in particular to the Minister.[10] Since that time, the Act has been administered by NSW Fair Trading.

The Department of Gaming and Racing - Office of Charities: April 1995 to March 2006

4.8 URSF applied for a renewal of its fundraising authority on 27 March 1995[11] on a form the version of which was issued by the Chief Secretary's Department and dated 1 February 1995. The Chief Secretary's Department and then the Department of Gaming and Racing wrote to URSF requiring that it alter its Constitution to include clauses identical or similar to "the

Department's Suggested Rules".[12] It was only after those amendments had been made that the Department of Gaming and Racing renewed URSF's authority.[13]

4.9 The Department's letter of 22 May 1995 advised URSF that its authority had been renewed.[14] In that letter, it was noted that a copy of the Best Practice Guidelines for Charitable Organisations (the Guidelines) had been forwarded to URSF on 15 March 1995. The Guidelines were first published by the Chief Secretary's Department in 1993[15] and by December 2002 they were in their fourth edition.[16] The Guidelines were described in that letter as having "the two-fold objective of providing a source of general reference to authority holders, and to function as a manual of model prudent practices and procedures which should be complied with by authority holders".[17]

4.10 URSF was also advised in that letter that it was "essential" that it obtain a copy of the Act and the Regulations; and that the governing body and management "should peruse the legislation, the authority conditions and the best practice guidelines" and "ensure that persons involved in the conduct of and accounting for fundraising appeals are conversant with those requirements which impact upon them". Attention was also drawn to clause 12 of the *Charitable Fundraising Regulation* 1993 (1993 Regulation), dealing with notification of changes; condition 24, requiring a mechanism for resolving internal disputes; and condition 25, requiring a mechanism for dealing with complaints.

4.11 URSF's fundraising authority was in a format issued by the Chief Secretary's Department on 1 September 1993, even though responsibility had passed to the Department of Gaming and Racing.[18] Condition 1 provided:[19]

> As far as practicable, the holder of the authority should observe the relevant or appropriate best practice described in the Chief Secretary's Department's Guidelines. Alternative practices may be employed where they provide similar standards of accountability.

4.12 URSF's 1995 fundraising authority was sought and granted for a period of five years "so as to authorise an indefinite number of appeals".[20]

4.13 On 1 September 1998 the 1998 Regulation came into force,[21] replacing the 1993 Regulation. Clause 16 of the 1993 Regulation provided:

> For the assistance and guidance of persons conducting or intending to conduct fundraising appeals, the Minister may publish guidelines specifying recommended practices for conducting any such appeals in accordance with the Act and this Regulation.

That clause was not reproduced in the 1998 Regulation.

4.14 By clause 16 of the 1998 Regulation, where under section 16(6) of the Act, an authority was taken to have been granted by the effluxion of time, the conditions set out in the Schedules to the 1998 Regulation were taken to apply save insofar as they were varied by the Minister. Those default

conditions were in similar terms to those in the Schedules to the 1993 Regulation.

4.15 They were also in similar terms to those that had been issued by the Department of Gaming and Racing to URSF in 1995, save that condition 1 in the Schedule provided that unless otherwise provided "an authorised fundraiser is permitted to conduct an indefinite number of fundraising appeals within a maximum period of 12 months" (rather than the five years as in fact granted) and there was no condition in the Schedule that referred to, let alone required compliance with, the Guidelines.

4.16 On 18 February 2000, URSF applied to renew its fundraising authority.[22] The version of the application form was issued by the Office of Charities on 5 May 1999, although it was materially identical to the form issued by the Chief Secretary's Department that had been completed by URSF in 1995.[23] Approval was sought for a period of five years and in respect of certain specified appeals, being the ANZAC Day Appeal and the Poppy Day Appeal.[24]

4.17 It is apparent that the Office of Charities' 2000 letter of approval to URSF[25] was in similar terms to its 1995 letter of approval to URSF[26] and indeed to its 2001 letter of approval to RSL NSW.[27] The fundraising authority was granted to URSF for the period from 30 May 2000 to 29 December 2004 "so as to authorise the following appeals:" but without any appeals being specified.[28] The versions of the fundraising authority and the conditions were dated 1 September 1995 and 28 June 1999 respectively.[29] Condition 1 of URSF's 2000 fundraising authority required compliance with the Guidelines in similar terms to its 1995 fundraising authority.[30]

4.18 On 7 February 2001, the Office of Charities notified RSL NSW of the approval of an application to renew its fundraising authority.[31] The letter was in similar terms to its 1995[32] and 2000[33] letters of approval to URSF, stressing in particular the importance of the Guidelines and drawing attention to clause 12 of the 1998 Regulation (notification of changes), condition 24 (internal disputes mechanism) and condition 25 (complaints mechanism). Attention was also drawn to condition 7 "concerning the preparation of the annual audited financial statements" and the availability of "fact sheets on fundraising community gaming activities".[34]

4.19 Condition 1 of the RSL NSW's 2001 fundraising authority required compliance with the Guidelines in similar terms to URSF's 1995 and 2000 fundraising authorities.[35] It was for the period from 13 March 2001 to 12 August 2006 and for "an indefinite number of appeals".[36]

4.20 On 20 September 2002, URSF wrote to the Office of Charities complaining that although it had sold poppies in New South Wales each year since Remembrance Day 1925, Woolworths Ltd (Woolworths) was planning to do so that year.[37] This led to further correspondence in which the Office of Charities sought to ensure with the Victorian Branch of the RSL and

Woolworths (and with the involvement of RSL National) that there was no breach of the New South Wales legislation in relation to the sale of poppies.[38]

4.21 On 17 July 2003 the Office of Charities wrote to RSL NSW,[39] acknowledging receipt of its annual audited financial report for the year ending 31 December 2002. Although the letter is headed "Application for an authority to fundraise under the Charitable Fundraising Act", RSL NSW's fundraising authority had been renewed with effect from 13 March 2001.[40] It appears that RSL NSW provided (at least at that time) copies of its financial statements to the Office of Charities each year.[41]

4.22 In its letter of 17 July 2003, the Office of Charities noted that RSL NSW's 2002 financial statements were non-compliant with the legislative regime for fundraising in that they did not include an officer's declaration, a statement as to how the surplus had been applied, a list of appeals, comparisons of income with expenses, as required by condition 7; and an auditor's report in respect of fundraising as required by section 24 of the Act. The letter stressed that steps should be taken to ensure future compliance and included the following:[42]

> The amendments to the Organisation's Constitution that were adopted at its 2003 Annual State Congress have been examined and are acceptable to this Office.

4.23 RSL NSW responded to that letter on 1 August 2003 in the following terms:[43]

> I write in response to correspondence from your office, dated 17th July 2003 concerning the Application for Authority to Fund Raise under the Charitable Fund Raising (sic) Act.
>
> Each year, there is a matter of procedure of this State Branch, we deposit an Annual Report with your Office as a requirement of us being a Statutory Corporation. As the Branch did not conduct any fund raising activities in 2002 we were of the understanding that we had to take no action regarding Section 24 of the Charitable Fund Raising (sic) Act. If our interpretation has been incorrect, I apologise.
>
> As always your valued advice would be appreciated on this matter.

4.24 The Office of Charities responded on 8 August 2003, noting the response of RSL NSW and in terms that included the following:[44]

> A review of the annual audited financial report, submitted however detailed that the State Branch received donations $67,834. The soliciting or receiving of donations is a fundraising appeal for the purposes of the Charitable Fundraising Act 1991, if they are received from persons who are not members of the Organisation. It was not possible to determine whether the donations were received from members of the Organisation or members of the public. The review also disclosed that an amount of $36,051 was received in Sundry Income and the Department considered that part of this income may have included income from fundraising appeals.

> It should be noted that Organisations that have an authority to fundraise and that are incorporated or established under an Act of Parliament are only required to provide this Office with copies of their annual audited financial reports when they renew their authority to fundraise, if they wind up or if they are requested to do so by this Office.
>
> It should also be noted that where fundraising appeals for charitable purposes are carried out, the Audited Financial Reports must be in the format detailed in the Department's letter of 17 July 2003.

4.25 On 27 November 2003, the Office of Charities granted an exemption from receipting requirements that had been sought by URSF.[45]

4.26 On 6 April 2004, the Office of Charities wrote to URSF enclosing varied conditions of its fundraising authority, taking into account the "new standard authority conditions" and the exemption that had been granted in November 2003.[46]

4.27 On 15 December 2004, URSF applied to renew its fundraising authority on a version of the application form dated 11 November 2004,[47] although it was not materially different to the version dated 5 May 1999.[48]

4.28 The Office of Charities advised URSF of the approval of its fundraising authority on 17 January 2005[49] in similar terms to its 1995[50] and 2000[51] letters of approval; and condition 1 similarly required compliance with the Guidelines "as far as practicable".[52]

4.29 URSF's fundraising authority was sought and granted for a period of five years from 30 December 2004 "so as to authorise an indefinite number of appeals".[53]

4.30 Following discussions between an inspector from the Office of Charities and Mr Christopher Perrin as State Secretary of RSL NSW, the Office of Charities wrote to Mr Perrin on 30 May 2005 confirming that the standard SBA2 form required by the Constitution of RSL NSW to be submitted by sub-Branches to State Branch each year[54] was deficient in that it did not include provision for an auditor's certificate in compliance with section 24 of the Act and an officer's declaration in compliance with condition 7.[55] RSL NSW was instructed to attend to this, which it did.[56]

The Department of the Arts, Sport and Recreation – Office of Liquor, Gaming and Racing: March 2006 to July 2009

4.31 Following RSL NSW's application to renew its fundraising authority on 26 June 2006,[57] the Office of Liquor Gaming & Racing wrote to RSL NSW on 17 July 2006[58] in similar terms to the Office of Charities' letter to RSL NSW of 7 February 2001,[59] save that in addition it was noted that the financial statements that had been provided with the application were not compliant with the statutory regime in that there was neither an audit report in accordance with section 24 of the Act nor an officer's declaration in accordance with condition 7. RSL NSW was requested to ensure that there was compliance with these requirements in the future.

4.32 RSL NSW's fundraising authority was sought and granted for a period of five years from 13 August 2006 and "so as to authorise an indefinite number of appeals".[60] The versions of the application form and the fundraising authority conditions were those that had been issued by the Office of Charities at the Department of Gaming and Racing prior to responsibility passing to the Department of the Arts, Sports and Recreation.[61]

4.33 In 2007, when approving the renewal of RSL WBI's fundraising authority, the Office of Liquor, Gaming and Racing informed RSL WBI that the financial statements lodged with its application had not fulfilled the requirements of an auditor's report under section 24 of the Act and an officer's declaration under condition 7.[62]

Communities NSW - Office of Liquor, Gaming & Racing: July 2009 to April 2011

4.34 In response to its application for a fundraising authority in late 2009,[63] the Office of Liquor, Gaming and Racing advised URSF of the approval of its authority on 6 January 2010.[64] Although this letter referred to the availability of the Guidelines and certain Fact Sheets on the Office's website, the objectives of those Guidelines were no longer set out in the letter other than that they were "to assist your organisation to meet its obligations as the holder of a fundraising authority". Further, there was no longer any suggestion that copies of the Act, the Regulations and the Guidelines should be obtained and read; and the conditions of the authority no longer referred to required compliance with the Guidelines.[65]

4.35 The form that was in use in 2009 was a version prepared by the Department of the Arts, Sport and Recreation before responsibility was transferred to the Office of Liquor, Gaming and Racing.[66] It required URSF to specify whether the application was for a new fundraising authority or a renewal, but there was no longer any provision in which to specify the period for which approval was sought. The renewal was granted for a five year period to 29 December 2009,[67] although it appears that this was an error that was corrected to run for five years from 7 January 2010.[68] The form also no longer required provision of information as to whether the application was for specified or an indefinite number of appeals. There was a section for "Fundraising Appeal Name(s) (if applicable)" in response to which URSF specified ANZAC Day Appeal and Poppy Day Appeal.[69] However the authority did not specify whether it was for those specific appeals or for an indefinite number of appeals.[70]

Department of Trade and Investment, Regional Infrastructure and Services - Office of Liquor Gaming & Racing: April 2011 to July 2015

4.36 On 22 June 2011, RSL NSW applied to renew its fundraising authority[71] on a form that was issued by Communities NSW (dated December 2010), but was otherwise identical to the form that had been issued by the Department of the Arts, Sport and Recreation and used by URSF in 2009.[72]

4.37 The authority was granted by the Office of Liquor, Gaming & Racing in the name of Communities NSW on 11 August 2011 for a period of five years from 13 August 2011.[73] The approval letter, the fundraising authority and the terms were not materially different from those issued to URSF in 2010.[74]

4.38 In 2012, the Office of Liquor, Gaming & Racing renewed RSL WBI's fundraising authority in similar terms to those granted to RSL NSW in 2011,[75] although this time the documents were issued in the name of the Department of Trade & Investment.[76]

4.39 In June 2013, RSL WBI sought variations of its fundraising authority arising out of it entering into an online fundraising agreement that allowed third parties to carry out fundraising using RSL WBI's fundraising authority through the Everyday Hero web platform.[77] These related to the title of the bank account, the keeping of a register of receipts and the issuing of authorities or appeal badges. On 9 August 2013, the Office of Liquor, Gaming & Racing issued a variation to RSL WBI for the remainder of the term of its fundraising authority.[78]

4.40 RSL LifeCare's dealings with the Regulator were not materially different over this period of time. In January 2015, it sought the same variations as RSL WBI, arising out of it entering into an online fundraising agreement with Everyday Hero.[79] Revised conditions were issued on 13 February 2015, although the version of the conditions issued was dated November 2013.[80]

Department of Finance, Services and Innovation - NSW Fair Trading: July 2015 onwards

4.41 On 1 September 2015 the 2015 Regulation came into force.[81] Instead of the default conditions being contained in a Schedule to the Regulations, as had been the case up to that point, clause 17 of the Regulations specified that the default conditions were those dated 31 July 2015 and published in the NSW Government Gazette, which had occurred on 28 August 2015.[82]

4.42 On 30 November 2015 and 1 November 2016 NSW Fair Trading granted applications for renewal of the fundraising authorities of RSL LifeCare and RSL NSW respectively in what appears to have been a standard format without any covering letter.[83]

4.43 The application form used by each entity had been issued by NSW Fair Trading.[84] It was in similar terms to the form issued by Communities NSW in December 2010.[85] Once again there was no provision for any particular period to be sought or appeals to be specified. However the following questions were omitted:[86]

> Is it proposed to remunerate a director, office bearer or other person on the governing body of the organisation?
>
> Will all reasonable steps be taken to ensure that persons proposing to conduct appeals, and persons associated with proposed appeals, are fit and proper?

4.44 In the context of its renewal application, NSW Fair Trading sent an e-mail to RSL NSW on 1 November 2016, requesting a copy of "a signed auditor report for the period ending December 2015".[87] This was provided the same day, but it is apparent that the report provided referred only to the ACNC Act and did not purport to be a report in accordance with section 24(2) of the Act.[88]

4.45 On 29 May 2017, RSL WBI applied to renew its fundraising authority.[89] In subsequent correspondence, NSW Fair Trading responded, apologising for the delay, which it was noted was "due to awaiting some instructions from Senior Managers regarding this matter and in view of the fact there is an ongoing government Inquiry".[90] It was also noted that the application could not proceed until RSL WBI provided its 2016 financial statements. RSL WBI's attention was drawn to conditions 20 (conflicts of interest), 22 (complaint handling mechanism), 24 (soliciting from occupants of motor vehicles) and 27 (participation of children) of its 2012 fundraising authority and the potential need for an auditor's report in respect of fundraising.[91]

ANSWERS TO NOTICES SERVED BY THIS INQUIRY

4.46 On 30 August 2017 a Notice was served on the Department of Finance, Services and Innovation to provide answers to certain questions to this Inquiry in respect of authorities to conduct fundraising appeals issued to RSL NSW, RSL WBI and RSL LifeCare between 1 January 2007 and 30 June 2017.[92]

4.47 In relation to approvals granted prior to NSW Fair Trading assuming responsibility, the response was that there are no "file notes or other records that record the decision-making process" other than pro forma checklists from time to time.[93] Those checklists do not address any of the grounds set out in section 16(2) of the Act upon which the Minister may refuse an application (or indeed any of the grounds set out in section 31(1) of the Act upon which the Minister may revoke an authority).

4.48 It is apparent from those checklists that initial fundraising authorities were granted for a period of two years and renewals were granted for a period of five years, unless some different term was sought.[94]

4.49 As to the renewals processed by NSW Fair Trading, the following response was provided:[95]

> As there are no file notes or other records that reflect the decision-making process in relation to either of the applications [by RSL LifeCare and RSL NSW] that have been finalised, it is difficult to indicate the specific matters that were considered by the relevant delegate at the time each was approved.
>
> However, discussions with the relevant operational area indicate that the matters that were considered when assessing this type of application included:

i. All the required documentation (see Part H of the application form) accompanied the application form, including the latest audited financial statements;

ii. The auditor has indicated that the accounts have been properly kept in accordance with the Act and regulations, and that money received from fundraising appeals has been properly accounted for and applied in accordance with the Act and the regulations (see s24 of the Act);

iii. The declaration by the president or responsible member of the matters set out in clause 6(3) of the conditions attached to the authority to fundraise has been included;

iv. The ratio of expenses to receipts is in accordance with clause 7 of the conditions attached to the authority to fundraise.

4.50 However, the response continued:[96]

> In relation to the applications for renewal from RSL LifeCare and RSL NSW, the following inconsistencies with the above have been identified:
>
> i. The statement by the auditor regarding compliance refers to the Commonwealth legislation rather than the Act;
>
> ii. The declaration by the responsible entity also refers to the Commonwealth legislation rather than the Act;
>
> iii. The financial statements do not separate expenses relating to fundraising appeals from other general operating expenses of each entity so that a determination of whether the ratio of expenses to receipts complies with condition 7 cannot be made.

4.51 In response to a question as to whether there had been any requisitions of, or communications with, any of the three entities in relation to their applications or fundraising generally in the period from 1 January 2007 to 30 June 2017, the Department listed a request to RSL LifeCare in December 2010 for particulars of its auditor's qualifications, a request to RSL NSW in November 2016 for a signed auditor's report and a request to RSL WBI in 2017 for its audited 2016 accounts and in relation to certain other matters in the 2015 accounts.[97]

4.52 In that response, the Department also noted that on 10 April 2017 it had "commenced a review of its processes and documentation for Charitable Fundraising decisions".[98]

4.53 Documents in relation to that review were then produced by NSW Fair Trading on 20 October 2017 pursuant to a Summons served under the Act.[99] Those documents record a "realignment" and "amalgamation" of the "administration and processing of licences across Fair Trading and SafeWork NSW" and included the following:[100]

Current internal reviews

There are multiple projects being undertaken to improve and enhance the licence assessment process. This includes reviewing and documenting current 'as is' processes.

The most significant project underway is called the Authorisation Construct Project. The project aims to review and improve the administrative and decision making processes across all authorisations (including making recommendations, where appropriate, to legislation, policy and guidelines) to achieve consistency and standardisation across licence types. The three key components under review will be the administration of an authorisation, the application process and acceptance criteria and the assessment and determination of an application. The project is to deliver a new authorisation operating model that makes it easier for businesses to interact with government, reduce duplication and deliver high quality regulatory services in compliance with the legislative boundaries in which they operate.

4.54 As to the review of charitable fundraising the documents included the following:

The Charitable Fundraising project will review the administration of licensing for charitable fundraising and develop recommendations, where required, to enhance the efficiency, process and community protections in compliance with the *Charitable Fundraising Act 1991*.

4.55 In that regard, the review continued:[101]

What has been implemented

- Rebranding of forms from Office of Liquor Gaming & Racing to NSW Fair Trading (August 2015).
- Segregation of duties, from initial receipt and data entry to the processing of new and renewal applications (March 2017 to September 2017).
- The generation of 'acknowledgement letters' (otherwise known as a *receipt notice* as per Section 16(6) of the Act) on the receipt of an application, opposed to being issued during the vetting phase. This change is more in line with the intent of the Act, to provide the customer with an acknowledgement on the receipt of an application (or further information) and making a decision within a 60 day period (September 2017).
- Improved record management keeping, from hardcopy to electronic files. All new and renewal application documentation is now scanned and electronically stored on TRIM (as of September 2017). Previously, these applications were scanned and saved on the Government Licensing System, as well as printed/placed in a physical TRIM folder.
- Electronic allocation of work through TRIM (September 2017).

What is currently under review/investigation

- Commenced scoping/review of process documentation for Charitable Fundraising from April 2017 and is being reviewed for approval status.

- Process maps, a checklist and procedure guide for training and assessment of the applications have been created and are in draft format currently being reviewed and refined. The next step is to review the application form, along with the Best practice Guidelines for Charity Organisations, issued by Liquor and Gaming NSW. Part of this process will look at how Directors and/or members of the Governing body are determined to be fit and proper and if probity checks need to be undertaken.

2016 REVIEW

4.56 Although not mentioned in its response to this Inquiry, NSW Fair Trading also conducted a review of the operation of the Act in 2016.[102] The details of this review are dealt with in Chapter 13.2 of this Report.

SUBMISSIONS OF NSW FAIR TRADING

4.57 NSW Fair Trading was invited to make submissions to the Inquiry on various issues relating to charitable fundraising, including in particular in relation to the system for charitable fundraising authorisation.[103] Its response, which was dated 18 October 2017, included the following:[104]

> At this point it is considered premature to provide comment to the Inquirer on possible reforms. This is because it is intended that the findings of the Inquiry will directly inform the development of a reform pathway which appropriately balances consumer protections with a risked based proportionate regulatory framework that does not unduly burden compliant and well governed charities.

CONCLUSIONS

4.58 It is apparent that from at least 1995, when the Act was administered by the Department of Gaming and Racing and its Office of Charities, there was active supervision and inquiry in relation to charitable fundraising. That Department had rules by reference to which it assessed the constitution of applicants.[105] It had published Guidelines relating to charitable fundraising that it provided to applicants.[106] Its approval letters detailed the rationale for those Guidelines and stressed the importance of the governing body and management of applicants being familiar with the Act, the Regulations, the authority conditions and the Guidelines.[107] Condition 1 of its standard fundraising authority conditions required compliance with the Guidelines.[108] It entered into correspondence concerning non-compliance when put on notice by, for instance, receiving specific correspondence or apparently non-compliant financial statements and it utilised internal inspectors to investigate issues of potential non-compliance.[109]

4.59 On the other hand, although an applicant could apply for a fundraising authority for a specified period, the general practice was for initial fundraising authorities to be granted for two years and renewals for five years.[110] This practice did not change when a default one year-term was introduced by the 1998 Regulation.[111] Although an applicant could apply for a fundraising authority for specific appeals and the Act contemplates that fundraising authorities would be so limited, the general practice was for fundraising authorities to be granted for an indefinite number of appeals.

4.60 It appears that the Department of the Arts, Sport and Recreation and its Office of Liquor, Gaming & Racing continued the administration of the Act from 2006 in a broadly similar manner to the Department of Gaming and Racing.[112]

4.61 Once the Office of Liquor, Gaming & Racing was transferred to Communities NSW in 2009, there were changes to how the Act was administered. Although the Guidelines continued to be available and referred to in its approval letters, the rationale of the Guidelines was no longer detailed in those letters, nor was there any suggestion that copies of the Act, the Regulations and the Guidelines should be obtained and read.[113] Further, the standard fundraising authority conditions no longer referred to or required compliance with the Guidelines.[114] Although the fundraising authorities continued to be for a standard five year term for an indefinite number of appeals, the ability to specify otherwise was removed from the application form.[115] There is no evidence that any issues of potential non-compliance were raised by the Regulator during this period or that internal inspectors were available to conduct any investigations.

4.62 It appears that this practice continued when the Office of Liquor, Gaming & Racing was transferred to Department of Trade and Investment, Regional Infrastructure and Services in 2011.

4.63 Once NSW Fair Trading took over administration of the Act in 2015, it appears that the Guidelines ceased to be published or referenced in any document. Fundraising authorities were approved and sent to the applicants without any letter of approval.[116] The fundraising authorities continued to be granted for a standard five year term for an indefinite number of appeals and the application form did not include an ability to specify otherwise.[117] Questions in the application form concerning the remuneration of directors and the fitness and propriety of those to be involved in fundraising were removed. There is no evidence that any issues of possible non-compliance were raised by the Regulator with any of the three entities in this period, at least not until after this Inquiry had been established.[118]

4.64 The approach of NSW Fair Trading is summed up by the following statement in its Discussion Paper published in July 2016:[119]

> NSW does not undertake any specific compliance and enforcement under the Act because such an allocation of resources appears unjustified as there is no evidence of any particular problem in the sector. NSW has few complaints from persons donating to these appeals.

4.65 Having regard to the evidence before this Inquiry, it is clear that NSW Fair Trading misapprehended what was happening with these three organisations. However, it is clear that the three entities the subject of this Inquiry have, at least over the period covered by the Terms of Inquiry, failed to comply with the charitable fundraising legislative regime; that this was allowed to continue unchecked; and that fundraising authorities were renewed in spite of ongoing non-compliance. Such misapprehension in the face of such widespread non-compliance is of concern.

4.66 Although RSL NSW and RSL LifeCare did not disclose any fundraising in their financial statements, which were provided with each application for renewal of their fundraising authorities, the recorded sources of income, and in particular the donations, suggested that they were fundraising.

4.67 In relation to RSL NSW, that income prompted an enquiry and a suggestion of non-compliance from the Office of Charities in 2003,[120] which appears to have gone unresolved; and then there was a suggestion of non-compliance and an instruction for corrective action in 2006,[121] to which there appears to have been no response. Those matters do not appear to have been pursued or revisited.

4.68 Alternatively, if the position represented in their financial statements that RSL LifeCare and RSL NSW had not been engaged in fundraising was correct, then that might have been expected to prompt an enquiry from the Regulator as to why a fundraising authority was being sought (as represented in their applications) for an indefinite number of appeals. This is particularly so given that section 16 of the Act, which sets out how an application is to be dealt with, refers to "the proposed appeal" and clearly contemplates the actual holding of an appeal and one of the grounds for revoking an authority under section 31(1) of the Act is "that the holder has not conducted a fundraising appeal within the previous 24 months".

4.69 In 2007, after the Regulator drew RSL WBI's attention to the fact that its financial statements did not include an auditor's report and an officer's declaration in respect of fundraising,[122] they were subsequently included. However, it appears that no enquiry was made by the Regulator in respect of the absence from the financial statements of an income statement in respect of each fundraising appeal and a balance sheet in respect of all fundraising appeals (as required by the conditions of its fundraising authorities). The position seems to have been the same in respect of URSF.

4.70 It does not appear that the Regulator gave any attention as to whether the financial statements of the three entities were compliant with the charitable fundraising legislation in the period covered by the Terms of Inquiry, at least up until the Inquiry was established in May 2017; or indeed as to whether there was broader compliance with the legislative regime in that period.

4.71 These problems lead inevitably to consideration of the adequacy of the legislative regime, which is discussed later in this Report.[123]

ENDNOTES

[1] *New South Wales Government Gazette* No. 128, 18 October 1995, pp 7333 - 7334.
[2] *New South Wales Government Gazette* No. 67, 2 April 2003, p 4330.
[3] *Administrative Changes (Departments) Order* 1995, cl 5.
[4] See for example Ex 12, Vol 1, p 71.
[5] *Public Sector Employment and Management (General) Order* 2006, cl 6.
[6] See for example Ex 12, Vol 1, p 225.
[7] *Public Sector Employment and Management (Departmental Amalgamations) Order* 2009, cl 5(1) and cl 6(1)(a).
[8] *Public Sector Employment and Management (Departments) Order* 2011, cl 23(1)(b).
[9] *Administrative Arrangements (Administrative Changes – Public Service Agencies) Order (No 2)* 2015, cl 6(5).
[10] *Administrative Arrangements (Administrative Changes – Ministers) Order* 2015, cl 6.
[11] Ex 12, Vol 1, p 20.
[12] Ex 12, Vol 1, pp 26, 27.
[13] Ex 12, Vol 1, pp 28, 36.
[14] Ex 12, Vol 1, p 36.
[15] See: https://trove.nla.gov.au/work/11363690?selectedversion=NBD10668500
[16] Ex 9, p ii.
[17] Ex 12, Vol 1, p 37.
[18] Ex 12, Vol 1, p 47.
[19] Ex 12, Vol 1, p 48.
[20] Ex 12, Vol 1, pp 22, 47.
[21] 1998 Regulation, cl 2.
[22] Ex 12, Vol 1, pp 92, 93 - 96.
[23] Ex 12, Vol 1, p 47.
[24] Ex 12, Vol 1, p 95.
[25] Ex 12, Vol 1, p 100.
[26] Ex 12, Vol 1, p 36.
[27] Ex 4, Vol 1, p 1.
[28] Ex 12, Vol 1, p 101.
[29] Ex 12, Vol 1, pp 101, 102.
[30] Ex 12, Vol 1, p 102.
[31] Ex 4, Vol 1, p 1.
[32] Ex 12, Vol 1, p 47.
[33] Ex 12, Vol 1, p 100.
[34] Ex 4, Vol 1, p 2.
[35] Ex 4, Vol 1, p 3; cf Ex 12, Vol 1, pp 48, 102.
[36] Ex 4, Vol 1, p 3.
[37] Ex 12, Vol 1, p 118.
[38] Ex 12, Vol 1, pp 127 - 130, 131.
[39] Ex 5, p 1.
[40] Ex 4, Vol 1, p 3.
[41] Ex 5, pp 3, 4.
[42] Ex 5, p 2.
[43] Ex 5, p 3.
[44] Ex 5, p 4.
[45] Ex 12, Vol 1, pp 151 - 165.
[46] Ex 12, Vol 1, p 166.
[47] Ex 12, Vol 1, p 192.
[48] Ex 12, Vol 1, p 93.
[49] Ex 12, Vol 1, p 213.
[50] Ex 12, Vol 1, p 47.
[51] Ex 12, Vol 1, p 100.
[52] Ex 12, Vol 1, p 200.
[53] Ex 12, Vol 1, pp 195, 199.
[54] Ex 40, Vol 1, p 281; RSL (NSW) Constitution (2013), cl 37.1.

[55] Ex 5, p 11.
[56] Ex 5, pp 12 - 13; Ex 17, Vol 1, pp 181 - 184.
[57] Ex 4, Vol 1, pp 14 - 19.
[58] Ex 4, Vol 1, p 20.
[59] Ex 4, Vol 1, p 1.
[60] Ex 4, Vol 1, pp 17, 23.
[61] Ex 4, Vol 1, pp 14 (4 February 2005), 24 (1 March 2004).
[62] Ex 4, Vol 1, p 87.
[63] Ex 12, Vol 1, p 225.
[64] Ex 12, Vol 1, p 255.
[65] Ex 12, Vol 1, p 257.
[66] Ex 12, Vol 1, p 225 (dated February 2007).
[67] Ex 12, Vol 1, p 256.
[68] Ex 12, Vol 1, p 274.
[69] Ex 12, Vol 1, p 227.
[70] Ex 12, Vol 1, p 256.
[71] Ex 4, Vol 1, p 37.
[72] Ex 12, Vol 1, p 225 (February 2007).
[73] Ex 4, Vol 1, pp 41 - 54.
[74] Ex 12, Vol 1, p 255.
[75] Ex 4, Vol 1, pp 41 - 54.
[76] Ex 4, Vol 1, pp 131, 143.1.
[77] Ex 4, Vol 2, pp 411, 430, 432.
[78] Ex 4, Vol 1, p 144.
[79] Ex 4, Vol 2, pp 313, 334, 338.
[80] Ex 4, Vol 2, pp 341 - 342.
[81] 2015 Regulation, cl 2.
[82] *New South Wales Government Gazette* No 72, 28 August 2015, pp 2734 - 2745.
[83] Ex 4, Vol 1, pp 189, 61.
[84] Ex 4, Vol 1, pp 55 - 60, 173 - 178.
[85] Ex 4, Vol 1, p 37.
[86] Ex 4, Vol 1, p 40.
[87] Ex 4, Vol 2, p 383.
[88] Ex 20, Vol 1, pp 451 - 453.
[89] Ex 4, Vol 2, p 434.
[90] Ex 4, Vol 2, p 441.
[91] Ex 4, Vol 2, p 446.
[92] Ex 30, pp 1 - 3.
[93] Ex 30, p 5; see eg Ex 4, Vol 2, pp 397 - 401, Ex 30, p 12, both being versions dated 4 November 2004.
[94] Ex 4, Vol 2, p 399; Ex 30, p 14.
[95] Ex 30, p 5.
[96] Ex 30, pp 5 - 6.
[97] Ex 30, p 7.
[98] Ex 30, p 6.
[99] Ex 30, p 16.
[100] Ex 30, p 17.
[101] Ex 30, p 18.
[102] Ex 30, p 89.
[103] Ex 31, p 18.
[104] Ex 31, p 20.
[105] Ex 12, Vol 1, pp 26 - 27.
[106] Ex 9; Ex 12, Vol 1, p 36.
[107] Ex 12, Vol 1, p 37.
[108] Ex 12, Vol 1, p 102.
[109] Ex 5, pp 1, 4.
[110] Ex 12, Vol 1, p 43.
[111] Ex 12, Vol 1, p 114, Schedule 1, cl 1.
[112] See for example Ex 4, Vol 1, pp 20, 87.

[113] Ex 12, Vol 1, pp 255, 257.
[114] Ex 12, Vol 1, p 257.
[115] Ex 12, Vol 1, p 225.
[116] Ex 4, Vol 1, pp 61, 189.
[117] Ex 4, Vol 1, pp 61, 173, 189.
[118] Ex 4, Vol 2, p 441.
[119] Ex 30, p 100.
[120] Ex 5, p 4.
[121] Ex 4, Vol 1, p 20.
[122] Ex 4, Vol 1, p 87.
[123] Chapter 13.2.

5. LEADERSHIP ROLES

5.1 A very significant matter relevant to the consideration of the causes of the problems that beset these organisations is that the leadership of each of RSL NSW, RSL WBI and RSL LifeCare during the period covered by the Terms of Inquiry remained unchanged (from 1 July 2007 at least until Mr Rowe's resignation on 25 November 2014). Another matter of significance is that RSL NSW, RSL WBI and RSL LifeCare had the same lawyer, Mr Cannings (of PwC until November 2016) who provided advice to each of them throughout the whole of the period covered by the Terms of Inquiry. Each of the organisations also retained the same auditors, Grant Thornton and its earlier guises, for the whole of the period covered by the Terms of Inquiry.

5.2 Although there were numerous RSL NSW State Councillors and RSL LifeCare directors who served on the organisations during the period covered by the Terms of Inquiry, it is intended in this Chapter to provide some background of those who served as President and Honorary Treasurer of RSL NSW (and thus as Trustees of RSL WBI) and as Chairman of RSL LifeCare during the relevant periods of the investigations covered in the Inquiry.

5.3 It is also intended to provide some background on the individuals in the management teams that assisted these leaders as well as some background on Mr Cannings and the auditors.

PRESIDENT OF RSL NSW

5.4 Mr Rowe served as President of RSL NSW relevantly from 1 July 2007 to 25 November 2014.

5.5 Mr Stephenson served as Acting State President of RSL NSW from 12 December 2014 to 27 March 2015.

5.6 Mr White served as President of RSL NSW from 27 March 2015 to 7 June 2016.

5.7 Mr John Haines served as Acting State President of RSL NSW from 25 November 2014 to 12 December 2014 and from June 2016 to 29 September 2016. He then served as President of RSL NSW from 29 September 2016 to 24 May 2017.

HONORARY TREASURER OF RSL NSW

5.8 Mr White served as Honorary State Treasurer of RSL NSW relevantly from 1 July 2007 to 27 March 2015.

5.9 Mr Hardman was elected as Honorary Treasurer in July 2015 and served in that role until November 2016.

TRUSTEES OF RSL WBI

5.10 The RSL NSW State President, the Honorary Treasurer and the RSL NSW CEO by virtue of holding those positions, became Trustees of RSL WBI.

5.11 Messrs Rowe, White and Perrin served as Trustees of RSL WBI relevantly from 1 July 2007 to 25 November 2014. Mr Stephenson served as a trustee of RSL WBI from 12 December 2014 to 27 March 2015.

5.12 After Mr Rowe's resignation on 25 November 2014, Messrs White and Perrin continued as Trustees until Mr Perrin's resignation in May 2015. Thereafter Mr White continued in that role until 7 June 2016.

CHAIRMAN OF RSL LIFECARE

5.13 Mr White served as Chairman of RSL LifeCare relevantly from 1 July 2007 to 14 April 2015.

5.14 Mr William Riddington served as Chairman from 14 April 2015 to 27 October 2016.

5.15 Mr James Longley served as Chairman from 27 October 2016 to 24 August 2017.

BACKGROUNDS

5.16 The various investigations carried out during the Inquiry have necessitated other RSL NSW State Councillors and officers and the directors of RSL LifeCare and officers who served as such during the period covered by the Terms of Inquiry giving evidence during the public hearings. The relevant evidence given by each of those individuals is referred to in the Chapters that follow. The backgrounds of each of those Councillors and directors that the Inquiry has gleaned from their evidence and other identified sources are set out in an Appendix to this Report.[1]

5.17 At this point it is appropriate to refer to the backgrounds of the incumbents of the roles of President and Honorary Treasurer of RSL NSW, Trustees of RSL WBI and Chairman of RSL LifeCare.

Donald Rowe

5.18 Mr Rowe left school in 1963 at the age of 15, having completed his Intermediate Certificate. He then commenced work as a jackaroo. He was called up for national service in October 1968 and served in Vietnam. He returned home from service in the Army in 1970 and in civilian life has worked as a rural property manager.[2]

5.19 Mr Rowe joined the RSL NSW Armidale sub-Branch in 1971.[3] He became Vice President in 1975 and President in 1977, a position he retained until 2003.[4] He was also appointed as a New England District Council Delegate in 1975. Between 1981 and 1984, Mr Rowe was Vice President of the New England District Council. In 1984 he was elected to the RSL NSW State Council as a Northern Country State Councillor, representing the New England area. He served in that role from 1984 until 1994. From 1994 to November 2003, he served as RSL NSW State Vice President (Northern Country).[5]

5.20 Mr Rowe was elected as RSL NSW State President in November 2003.[6] During his time as State President, Mr Rowe was a member of a number of committees of RSL NSW, including the Budget Finance and Staff Committee, which was later known as the Finance, Audit & Risk Management Committee (FARM Committee).[7]

5.21 Mr Rowe was a member of the URSF Committee from at least 2008 until URSF was wound up in 2014.

5.22 As President of RSL NSW Mr Rowe became a trustee of RSL WBI and a director of RSL LifeCare. He was appointed as Deputy National President of RSL National from September 2005 until 2014.[8]

5.23 Mr Rowe resigned as President of RSL NSW on 25 November 2014. His resignation as a trustee of RSL WBI, a director of RSL LifeCare and Deputy National President of RSL National took effect the same day.[9]

5.24 Mr Rowe was awarded Life Membership of the RSL in 1990[10] and has received a number of awards and decorations, including the Medal of the Order of Australia in 1998 for service to the community and to veterans, particularly through the Armidale sub-Branch.[11]

5.25 On 19 October 2017 Mr Rowe was expelled from RSL NSW and his Life Membership was revoked.[12]

Peter Stephenson

5.26 Mr Stephenson served in the Royal Australian Navy as an Able Seaman Weapons Mechanic during the Vietnam War. After leaving the Navy, he worked in retail management for entities including GJ Coles & Co Ltd and Big W stores and later as an advertising manager.

5.27 Mr Stephenson joined the Toronto RSL NSW sub-Branch in 1985 and was elected as Vice President of that sub-Branch in 1988. After a time with the Dubbo sub-Branch, he returned to the Toronto sub-Branch and in 2007 he was elected as President of that sub-Branch, a position from which he retired in 2011 upon being elected to RSL NSW State Council.[13]

5.28 As a member of the RSL NSW State Council, Mr Stephenson served on a number of committees, including the FARM Committee for a period of about 12 months from June 2013.[14]

5.29 Mr Stephenson was elected as Vice President of RSL NSW in May 2014 and on 12 December 2014 he was elected as Acting President, a position he held until 27 March 2015. He then returned to serving as State Vice President Northern Country.[15] He resigned from State Council on 19 January 2017.[16]

5.30 Mr Stephenson is the recipient of a number of awards and decorations including the Order of Australia Medal in 2012 for service to veterans and their families through the Toronto sub-Branch.[17]

Roderick White

5.31 Mr White enlisted in the Army Reserve in 1964 and later volunteered for the Regular Army for three years as a National Serviceman. He served in the Vietnam War, after which he re-enlisted in the Army Reserve.[18] He retired from military service in 1993 with the rank of Major.[19]

5.32 Mr White's civilian career has been in the building industry. He has worked for BHP Lysaght, Babcock & Wilcox, and Monier and he was Logistics and Sales Executive for CSR Limited. He is also a former Chairman of the NSW Construction Industry Training Advisory Board. [20]

5.33 Mr White joined the Chatswood RSL NSW sub-Branch in 1971, transferring to the Hornsby sub-Branch in 1989. He served on the Northern Metropolitan District Council as Delegate, Secretary and Vice President. He was elected as a Northern Metropolitan State Councillor in 2001 and served in this position until 2004, when he was elected as RSL NSW State Treasurer.[21]

5.34 Mr White held the position of RSL NSW State Treasurer for the period 2004 to 27 March 2015, when he was elected as RSL NSW State President. He served in that role until he became the President of RSL National on 7 June 2016, a position which he held until 9 March 2017.[22]

5.35 During his time on the State Council of RSL NSW, Mr White was a member of the Hyde Park Inn Board, the Budget/Finance committees, including serving as the Chairman of the FARM Committee from 2009 to 2014.[23] He served as a trustee of RSL WBI from 2004 until 7 June 2016.

5.36 Mr White was a director of RSL LifeCare from 7 November 2002 until 7 June 2016[24] and he was Chairman from 2003 until 2015.[25]

5.37 Mr White was awarded Life Membership of the RSL in 2004.[26] He is the recipient of a number of awards and decorations including the National Medal in 1982;[27] Member of the Order of Australia (Military Division) in 1988 for his service to the Army Reserve;[28] and the Centenary Medal in 2001 for service to the ex-service community.[29]

John Haines

5.38 Mr Haines served in the Army in Vietnam, Malaysia and Singapore between 1966 and 1972.[30]

5.39 Mr Haines served as a Parramatta City Councillor for 24 years from 1980 including as the Lord Mayor of Parramatta for six years.[31]

5.40 Mr Haines became a member of the Auburn sub-Branch in 1967, before transferring to the Granville sub-Branch in the early 1980s. He served as a trustee and the President of the Granville RSL NSW sub-Branch and as the Honorary Secretary of the Western Metropolitan District Council.[32]

5.41 Mr Haines served as Vice President (Metropolitan) on the RSL NSW State Council between 1996 and 25 November 2014, when he was elected Acting State President. He resigned from that position on 12 December 2014 and resumed his position as Vice President (Metropolitan).[33] He served again as Acting President from June 2016 and then as President from 29 September 2016 to 24 May 2017. Mr Haines was not re-elected at the May 2017 election.[34]

5.42 During his time on the RSL NSW State Council, Mr Haines was a member of many committees, including the FARM Committee of which he was Chairman for a period in 2015.[35]

5.43 Mr Haines served on the Board of RSL LifeCare from 7 June 2016 until 20 December 2016.[36]

5.44 Mr Haines was awarded Life Membership of the RSL in 1994.[37] He is the recipient of a number of awards and decorations including the Medal of the Order of Australia in 1990 for service to veterans and to local government;[38] the Centenary Medal in 2001 for service to the Parramatta community including veterans;[39] and a Member of the Order of Australia in 2009 for service to veterans and their families and to local government in the community of Parramatta.[40]

William Riddington

5.45 Mr Riddington has over 30 years' experience in the aged care sector, particularly in the development, marketing and management of retirement villages. Mr Riddington is the former managing director of Retirement Living Services Pty Ltd. He has been engaged with the Retirement Village Association since 1988 and has served as its State and National President. He was also a member of the NSW Retirement Village Consultative Committee to the NSW State Government and has served on the Housing Committee of

the NSW Council on the Ageing. He is also a licensed Real Estate Agent and Strata Manager.

5.46 Mr Riddington was an advisor to the board of RSL LifeCare from October 1997 and its acting CEO from December 2000 to 30 April 2001.[41]

5.47 Mr Riddington was a director of the Board of RSL LifeCare from 1 July 2001 until 27 October 2016.[42] He was Deputy Chairman until he was appointed as Chairman on 14 April 2015.[43]

James Longley

5.48 Mr Longley's qualifications include a Bachelor of Economics from the University of Sydney and a Master of Economics from Macquarie University. Mr Longley is also a Fellow Certified Practising Accountant, Fellow of the Australian Institute of Company Directors and a Fellow of the Australian Institute of Management.

5.49 Mr Longley's career includes over 18 years in the banking industry in Australia, the United Kingdom and the United States of America including as the Executive Vice President of Government Banking for the Commonwealth Bank of Australia (CBA). He was the CEO of Anglican Retirement Villages. He has been on the board of Aged Care Standards and Accreditation Agency, the Aged Services Association of NSW & ACT and a number of government advisory groups.

5.50 Mr Longley was a member of the Legislative Assembly of the New South Wales Parliament for the electorate of Pittwater from 1986 to 1996, including serving as a Cabinet Minister from 1992 to 1995. He was also the Deputy Secretary of Ageing, Disability and Home Care in the NSW Department of Family and Community Services from July 2012 to November 2017.[44]

5.51 Mr Longley was a director of the Board of RSL LifeCare for two periods: from 1 July 2001 until 24 October 2006, and then from 23 October 2007 until he resigned on 24 August 2017.[45] He was Chairman of the Board from 27 October 2016 to 24 August 2017.[46]

William Hardman

5.52 Mr Hardman completed two years of National Service from 1965 to 1967 including Borneo and Malaysia and served in the Army Reserve from 1971 to 1978 as a Mortar Platoon Commander.[47]

5.53 Mr Hardman is a qualified accountant and is a Fellow of the Institute of Public Accountants and a member of the Australian Institute of Company Directors.[48] He has had an extensive career in the finance industry. He was the national credit manager and manager of joint venture operations for AGC, which involved joint ventures for the development of shopping centres, hotels and hospitals. He was a financial controller of a manufacturing company; and owner and the licensee of a number of hotels.[49]

5.54 Mr Hardman completed his Diploma of Law obtained through the Legal Practitioners Admission Board in 2016. He is a Councillor of HCF Limited and is semi-retired.[50]

5.55 Mr Hardman joined the Forestville RSL NSW sub-Branch in 1978. In 2002 he was elected to the Committee of the Forestville sub-Branch to the position of Secretary. He later served as President of the Forestville sub-Branch from 2004. He served as the Vice President of the Manly Warringah Pittwater Council from 2007 to 2008 and has been the President since 2014.[51]

5.56 Mr Hardman served as an RSL NSW State Councillor from 2008 to 2011. He was elected as RSL State Treasurer in July 2015 (taking up the position in August 2015) and served in that role until he resigned in November 2016.[52]

5.57 During the period 2008 to 2011 Mr Hardman was a member of the FARM Committee and between 2015 and 2016 whilst he was Treasurer, he was Chairman of the FARM Committee.[53]

5.58 Mr Hardman served on the Board of RSL LifeCare from 14 October 2008 until 27 October 2011.[54] He was a Trustee of RSL WBI from July 2015 to November 2016.[55]

5.59 Mr Hardman became a Life Member of the RSL in 2012.[56] He is the recipient of a number of awards and decorations including the Medal of the Order of Australia in 2016 for service to veterans and their families.[57]

MANAGEMENT TEAMS

5.60 The membership of the management teams who were assisting the leaders referred to above in RSL NSW, RSL WBI and RSL LifeCare also remained largely unchanged for the whole of the period covered by the Terms of Inquiry.

Christopher Perrin

5.61 Mr Perrin was the State Secretary/CEO of RSL NSW during the period covered by the Terms of Inquiry until May 2015.

5.62 Mr Perrin joined the Blacktown RSL NSW sub-Branch in 1991 and held a number of offices within that sub-Branch, including committee member, Vice President, Trustee and President. Mr Perrin later transferred to the Auburn RSL NSW sub-Branch, where he was elected to the committee and as a trustee. Mr Perrin is currently a member of the RSL NSW Cumberland sub-Branch (after it amalgamated with the Auburn sub-Branch).

5.63 Mr Perrin was appointed as Assistant State Secretary of RSL NSW in September 2004 and as State Secretary of RSL NSW in March 2005. He continued in that role until May 2015. At some stage during this period, the Constitution of RSL NSW was amended such that his title then included "Chief Executive Officer".

5.64 Mr Perrin served on the FARM Committee from 2006 until 2014.

5.65 Mr Perrin was a member of the committee of URSF from 2005 until URSF was wound up in 2014.[58]

5.66 As State Secretary and CEO of RSL NSW, Mr Perrin was automatically appointed as a trustee of RSL WBI.[59]

5.67 Mr Perrin's employment with RSL NSW terminated in May 2015.[60]

Annette Mulliner

5.68 Ms Mulliner commenced her employment with RSL NSW in 1976.[61] She held a Bachelor of Economics from the University of Sydney and a Graduate Diploma of Accounting from Monash University.[62]

5.69 She was appointed the Assistant State Secretary of RSL NSW in the late 1990s or early 2000s and served in that position until 2015. She was the CFO of RSL NSW from 2011 until her resignation in September 2016. She served on a number of RSL NSW Committees, including the FARM Committee from 2006 until 2014 and she was also a Board member of the Hyde Park Inn from the 1990s until 2016.

5.70 Ms Mulliner was the Honorary Secretary of URSF from 2006 until 2013 and the Administrative Support Coordinator of RSL WBI from the early 2000s until her resignation in September 2016.[63]

5.71 Ms Mulliner was a director of RSL LifeCare from 25 November 2003 until 10 October 2016.[64]

5.72 In 1996, Ms Mulliner was awarded the Certificate of Merit and Gold Badge, which is the highest honour bestowed upon a non-ex-service person by RSL NSW. Ms Mulliner was awarded a Medal of the Order of Australia in 2002 for service to the welfare of veterans and their families through the RSL NSW.[65]

5.73 Ms Mulliner passed away in September 2017.

Ronald Thompson

5.74 Mr Ronald Thompson is the CEO of RSL LifeCare, having been appointed in May 2001[66] and he has at times acted as the Company Secretary.[67] He holds a Bachelor of Economics from Macquarie University and a Master of Business Administration from Southern Cross University.[68] He is a Clinical Associate Professor at the Australian Catholic University.[69]

5.75 At the beginning of his career, Mr Thompson worked as a chartered accountant for EY for seven years, providing financial and consulting services.[70] Following this, he worked for a client of EY, Mayne Health, first in finance, and later as the CEO of private and public hospitals including a 400 bed tertiary public facility.[71] Mr Thomson worked for Mayne Health for over 10 years.[72]

5.76 Under Mr Thompson's leadership, RSL LifeCare won a number of awards, including two Commendable Accreditation results, two Minister for Aged Care Awards for Excellence and nine Better Practice in Aged Care Awards.[73]

LEGAL ADVISER

5.77 Throughout the whole of the period covered by the Terms of Inquiry, RSL NSW, RSL WBI and RSL LifeCare retained the same legal adviser, Mr Cannings.

John Cannings

5.78 Mr Cannings holds a Bachelor of Arts and Laws from the University of Sydney.[74] He worked for Abbott Tout Creer & Wilkinson before joining PwC in 2001. He retired on 30 November 2016.[75]

5.79 Mr Cannings specialised in corporate and securities law, mergers and acquisitions, corporate governance and board advice, particularly in the health and pharmaceutical sectors.

5.80 Mr Cannings was appointed the Honorary Legal Advisor to RSL NSW in 1997 and continued in this role until he retired from PwC on 30 November 2016.[76]

5.81 Mr Cannings was also the Honorary Legal Advisor for RSL LifeCare from at least 2001.[77]

5.82 Mr Cannings was appointed as a director of RSL LifeCare on 24 February 2017 and resigned on 29 August 2017.[78]

5.83 Mr Cannings was awarded Life Membership of the RSL in 2012.[79] He was awarded the Order of Australia Medal in 2010 for service to the community through volunteer and advisory roles with youth, social welfare and veteran organisations.[80]

AUDITORS

5.84 Throughout the period covered by the Terms of Inquiry, the three entities have been audited by the same firm, although by different auditors within those firms.

5.85 From at least 2005, BDO Kendalls audited the three entities. From the 2009/2010 financial year, auditing services were provided by BDO Audit (NSW-VIC) Pty Ltd. From the 2011/2012 financial year until October 2017, Grant Thornton Audit was engaged to provide services.

5.86 Ms Alison Sheridan was primarily responsible for the auditing services provided to RSL NSW and RSL WBI;[81] and Mr James Winter was primarily responsible for the audit services provided to RSL LifeCare.[82]

5.87 EY has been engaged to conduct the audit of the 2016 and first half of the 2017 accounts of RSL NSW and RSL WBI.[83]

ENDNOTES

[1] Appendix E.
[2] Ex 41, p 57; Tr 964 - 965.
[3] Tr 965.
[4] Ex 41, p 57.
[5] Ex 20, Vol 2, p 714; Ex 41, p 57.
[6] Ex 20, Vol 2, p 714.
[7] Ex 41, p 57.
[8] Ex 20, Vol 2, p 714.
[9] Ex 13, p 128.
[10] Ex 20, Vol 2, p 714.
[11] Ex 41, p 59.
[12] Ex 35, p 11.
[13] Ex 41, pp 60, 61.
[14] Ex 41, p 60; Tr 1972.
[15] Tr 1972.
[16] Tr 2037.
[17] Ex 41, pp 60 - 63.
[18] Ex 20, Vol 2, p 774.
[19] Ex 41, p 67.
[20] Ex 20, Vol 2, p 774; Ex 41, p 78.
[21] Ex 41, p 67; Tr 2131.
[22] Tr 2131 - 2132, Ex 47, pp 70, 78.
[23] Ex 37, Vol 2, pp 211, 342, 482, 540, 614, 690.
[24] Ex 1, Vol 4, p 778.
[25] Ex 20, Vol 2, pp 455, 481, 517, 551, 594, 641, 681, 713, 745.
[26] Ex 41, pp 67, 71.1.
[27] Ex 41, p 69.
[28] Ex 41, p 70.
[29] Ex 41, p 71.
[30] Ex 41, p 17.
[31] Ex 41, pp 18, 99.
[32] Tr 1749; Ex 41, pp 17, 19.
[33] Tr 1747 - 1748; Ex 41, pp 17, 19.
[34] Tr 1748.
[35] Ex 41, p 17, Tr 1750.
[36] Ex 1, Vol 4, p 777.
[37] Ex 41, p 20.
[38] Ex 41, p 21.1.
[39] Ex 41, p 21.2.
[40] Ex 41, p 21.
[41] Ex 41, pp 97, 107; Tr 312.
[42] Ex 1, Vol 4, p 777.
[43] Ex 41, p 97.
[44] Ex 20, Vol 2, p 773; Tr 439 - 441.
[45] Ex 1, Vol 4, pp 777, 779.
[46] Tr 440.
[47] Ex 41, p 22.
[48] Ex 20, Vol 2, p 643; Ex 41, p 22.
[49] Ex 8, Vol 2, Tab 5, pp 86 - 89.
[50] Ex 8, Vol 2, Tab 5, p 89; Tr 616.
[51] Ex 41, p 22.
[52] Tr 616 - 617.
[53] Ex 8, Vol 2, Tab 5, p 83.
[54] Ex 1, Vol 4, p 778.
[55] Ex 8, Vol 2, Tab 5, pp 83 - 84.
[56] Ex 41, p 22.

[57] Ex 41, p 23.
[58] Tr 1167 - 1169.
[59] Ex 40, Vol 3, pp 1134 - 1138.
[60] Tr 1167 - 1168.
[61] Ex 11, p 46.
[62] Ex 41, p 83.
[63] Ex 11, pp 3 - 6, 104.
[64] Ex 1, Vol 4, p 778.
[65] Ex 41, pp 83, 56.
[66] Tr 47.
[67] Ex 1, Vol 2, p 462 - 464.
[68] Ex 41, p 107.1
[69] Ex 37, Vol 3, p 1023.
[70] Ex 41, p 107.3; Ex 37, Vol 2, p 1023.
[71] Ex 41, p 107.3
[72] Ex 41, p 107.3.
[73] Ex 41, p 107.3.
[74] Ex 41, p 118.
[75] Tr 1266 - 1268.
[76] Tr 1270; Ex 41, p 122.
[77] See for example, Ex 19, Vol 1, p 3; Ex 19, Vol 2, p 251; Ex 41, p 122.
[78] Ex 1, Vol 4, p 776.
[79] Ex 41, p 118.
[80] Ex 41, p 121.
[81] Tr 1848.
[82] Tr 2493.
[83] Ex 35, p 9.

6. RSL WBI AND ITS PREDECESSOR

6.1 During the period 2007 to 2014, charitable fundraising for the benefit of RSL NSW and RSL WBI and their objects was, in the main, conducted by RSL NSW as a participant member of URSF, which held an authority under the Act. In 2014, URSF was wound up and its assets and operations, including in particular fundraising in connection with ANZAC Day and Remembrance Day, were transferred to RSL WBI.

URSF

6.2 In the early 1920s, the Returned Sailors, Soldiers and Airmen's Imperial League of Australia (NSW Branch) (the former name of RSL NSW), the Limbless Soldiers Association NSW and the TB Sailors and Soldiers' Association of New South Wales established an association known as URSF. At a general meeting on 22 November 1926, the Articles of Association of URSF were approved. The objects of the Association were: to raise funds for the three organisations by conducting and managing functions connected with "Soldiers' Day"; to conduct and control the sale of poppies on Armistice Day; and to promote and manage any other function unanimously agreed upon by the three organisations.[1] It was agreed that should one or more of the three members withdraw, the Association would automatically cease to function and its affairs would be wound up.

6.3 Originally, the officers of the Association were the Chairman, Vice Chairman, Honorary Treasurer, Honorary General Secretary, the Secretary and Honorary Solicitor and Auditor. A Director of Appeals was appointed to direct and conduct all appeals according to the policies authorised by the Association. An Appeal Committee was appointed from the Association's members to exercise any powers delegated to them by the Association in respect of fundraising.[2] The Articles of Association required the Director of Appeals to keep and maintain correct records that the Appeal Committee considered necessary.

6.4 In 1999, a Deed was executed in which the history of the establishment of the unincorporated association on 16 May 1995 known as URSF was recited as well as the intention of the parties to vary the terms of the unincorporated association in accordance with the provisions of the Deed.[3]

6.5 The Deed provided that the Association was to continue until terminated pursuant to the Deed, notwithstanding that any of the members might withdraw from the Association.[4] The objects were amended to provide for the conduct and management of functions connected with the ANZAC Day Appeal; the conduct and control of the sale of poppies connected with Remembrance Day, referred to as "the Poppy Day Appeal"; and the promotion and management of any other function unanimously agreed

upon by the members.[5] The provisions of the Deed were otherwise similar to those of the Articles of Association approved in 1995. Clause 5 of the Deed provided:

> The income and property of the Association, howsoever derived, shall be applied solely towards the objects as set out in clause 4 of this Deed, and no part thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to any person or persons. Provided that nothing herein contained shall prevent the payment in good faith or remuneration to any officers or servants of the Association or to an member or other person in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding ten dollars per centum per annum on money borrowed from any member, nor exclude any member from the benefit of any grant made in furtherance of any of the objects of the Association.

RSL WBI

6.6 RSL WBI was first established as a trust pursuant to a Deed dated 6 January 1964. It was, until 11 April 2012, known as the RSL Welfare and Benevolent Fund. In 2012 RSL WBI underwent a major restructure and the WBI Rules were approved by the Supreme Court of New South Wales on 11 April 2012.[6]

6.7 Clause 3 of the WBI Rules states the objects of WBI:

> 3.1 The Institution is established to provide complete welfare and pensions services for ex-Service personnel and their dependants who are in necessitous circumstances.
>
> 3.2 In furtherance of this object and without limiting its generalities to help meet sickness, and distress, suffering, ill health, destitution, helplessness, poverty, the care of War Widows and Widowed Mothers, housing for the Aged War Veterans and their dependants, in family welfare where help is needed, maintain a Health bureau, safe guard children's health and to handle problems associated with child welfare.
>
> 3.3 To establish Youth Clubs and to assist Organisations which are approved as Public Benevolent Institutions for Income Tax purposes.

6.8 Clause 5 of the WBI Rules governs restrictions on the use of income and property, providing that its income, property and assets shall be used and applied solely toward the promotion and pursuit of its objects.[7]

6.9 The Board, which is also referred to as the Trustees, is defined in clause 13.1 as consisting of the President, who will be the State President of RSL NSW; the Honorary Treasurer who will be the State Honorary Treasurer of RSL NSW; and the Secretary, who will be the State Secretary of RSL NSW.

6.10 The Trustees during the period of the Terms of Inquiry remained largely unchanged. Mr Rowe was a trustee from November 2003 until he resigned

in November 2014; Mr White was a trustee from 2004 until June 2016; and Mr Perrin was a trustee from March 2005 until May 2015.

6.11 During the period of the Terms of Inquiry the Trustees of RSL WBI outsourced RSL WBI's financial management to RSL NSW. Ms Mulliner was responsible for managing and reporting all financial transactions for RSL WBI as well as preparing RSL WBI's annual accounts. RSL NSW also fulfilled responsibility for RSL WBI's information technology requirements, human resources including payroll and Ms Mulliner also fulfilled the functions of a company secretary.[8]

6.12 Prior to 2012, RSL WBI had two primary divisions, being the community welfare support division and the defence service assistance centre.[9] In 2012 RSL WBI registered "DefenceCare" as a business name on the basis that RSL WBI would conduct its charitable operations under that name.[10] DefenceCare receives donations from sub-Branches and Women's Auxiliaries as well as from a wide range of sources including various trusts and foundations, Veteran and Community Grants from the DVA and numerous fundraisers and donors.[11]

6.13 DefenceCare provides community support and claims and advocacy services including assistance with DVA and entitlements; advocacy at the Veterans' Review Board; financial assistance; bereavement services; counselling and support; and transition to civilian life services and building family and community resilience.[12] The services provided by DefenceCare are essential services to the veteran community.

DISTRIBUTION OF FUNDS BY URSF

6.14 From 1994, the moneys received by URSF in relation to the fundraising appeals were identified in the financial statements as the total amount raised, but it was recorded that the "sub-branches of the Returned Services League and other Soldier organisation" had "retained" a certain amount of the moneys raised. For instance in 1994, the financial statements record a receipt from "city sub-branches and other soldier organisations" of $151,121 and an amount retained by the sub-Branches of the RSL and other soldier organisations of $79,471.[13] Similar entries were made in the URSF financial statements up to the late 1990s.

6.15 During this time, it was clear from the financial statements that the sub-Branches that had assisted in the fundraising appeals retained a large amount of the money within their organisation and the balance was paid to URSF. URSF paid amounts out of the funds received proportionally to RSL WBI (then known as the RSL Welfare and Benevolent Fund), the Limbless Soldiers of Australia (NSW Branch), and the TB Sailors, Soldiers and Airmens' Association of Australia (NSW Branch).[14]

6.16 By 1999, the reporting in URSF financial statements had changed to include a Note entitled "Statement showing how funds received were applied for

charitable purposes". That Note recorded that URSF had received income from fundraising appeals in 1999 in the amount of $426,315 and some other smaller amounts in respect of investment ($246) and from donations ($12,249). The Note recorded that of the amounts "received", the sum of $202,490 was "distributed to sub-branches, women's auxiliaries etc. for local welfare work" with small amounts distributed to the members of the Association.[15]

6.17 Notwithstanding this Note, it was the fact that the sub-Branches retained 50% of the moneys raised in the charitable fundraising appeals and only remitted the balance to URSF. This created a number of problems in that URSF was not in a position to know the purpose to which the funds in the sub-Branches were actually put, although the Note suggested that it was for "local welfare work". It appears that the donating public were not aware that a proportion of the funds raised for the Poppy Appeal and the ANZAC Day Appeal were destined to remain in the local sub-Branch as opposed to being paid to URSF for it to control the use to which the funds were put.

6.18 Funds were distributed to RSL WBI by URSF. For instance in 2009, of the approximate $1.4 million that was raised from the appeals, $250,000 was distributed to RSL WBI, although there is no recorded purpose for that distribution.[16] The State Secretary of RSL NSW Mr Perrin, who was an officer of URSF and also a trustee of RSL WBI at the time, accepted that the decision to allocate the funds to RSL WBI (or to a sub-Branch of which he was a member) whilst he was an officer of URSF placed him in a position of conflict of interest.[17]

URSF IS WOUND UP

6.19 Subsequent to the Limbless Soldiers' Association and the Tuberculosis Sailors, Soldiers and Airmen's Association NSW ceasing operation, on 30 June 2014 URSF was wound up and ceased its operations.[18]

6.20 Upon winding up, the assets and operations of URSF were transferred to RSL WBI on the basis that the Trustees of RSL WBI agreed to continue the objects of URSF, being to conduct and manage functions connected with the ANZAC Appeal; and to conduct and control the sale of poppies connected with Remembrance Day (the Poppy Appeal).[19]

6.21 The assets and operations of URSF were transferred to RSL WBI rather than to RSL NSW as RSL WBI had deductible gift recipient status and RSL NSW did not.[20]

6.22 As part of the transfer of URSF's assets and operations, RSL WBI resolved to establish a separate business unit within RSL WBI known as "RSL Appeals NSW" to conduct the appeals. It was treated as a separate entity and it had its own bank account.[21]

6.23 In accordance with the resolution, the Trustees of RSL WBI formed RSL Appeals NSW.[22] The name "RSL Appeals NSW" was registered with ASIC on 22 July 2014. The only asset transferred to RSL WBI was the sum of $428,318.[23]

6.24 Following the transfer, RSL WBI through RSL Appeals conducted the Poppy Appeal in 2014, 2015 and 2016 and the ANZAC Day Appeals in 2015, 2016 and 2017.

DEALINGS WITH THE FUNDRAISING REGULATOR

6.25 In response to its application for a fundraising authority on 27 March 1995,[24] the Department of Gaming and Racing required URSF to alter its Constitution to include clauses identical or similar to "the Department's Suggested Rules".[25] Once those amendments had been made, the Department renewed URSF's authority.

6.26 The Department advised URSF of the approval of its authority on 22 May 1995.[26] In that letter, it was noted that a copy of the Best Practice Guidelines had been forwarded to URSF on 15 March 1995. The Guidelines were described as having "the two-fold objective of providing a source of general reference to authority holders, and to function as a manual of model prudent practices and procedures which should be complied with by authority holders".

6.27 URSF was also advised in that letter that it was "essential" that URSF obtain a copy of the Act and the Regulations; and that the governing body and management should peruse the legislation, the authority conditions and the best practice guidelines" and "ensure that persons involved in the conduct of and accounting for fundraising appeals are conversant with those requirements which impact upon them".

6.28 Condition 1 of the authority provided:[27]

> As far as practicable, the holder of the authority should observe the relevant or appropriate best practice described in the Chief Secretary's Department's Guidelines. Alternative practices may be employed where they provide similar standards of accountability.

6.29 URSF's 1995 fundraising authority was sought and granted for a period of five years and "so as to authorise an indefinite number of appeals".[28]

6.30 When URSF applied to renew its application in February 2000,[29] the Department of Gaming and Racing's letter of approval[30] was in similar terms to its 1995 letter, stressing in particular the importance of the "Best Practice Guidelines for Charitable Organisations"; and that condition 1 of the authority required compliance with those Guidelines in similar terms to the 1995 authority.[31]

6.31 URSF's 2000 fundraising authority was sought for a period of five years and in respect of certain specified appeals, being the ANZAC Day Appeal and the Poppy Day Appeal.[32] It was granted for the period from 30 May 2000 to 29 December 2004 "so as to authorise the following appeals:" but without any appeals being specified.[33]

6.32 On 20 September 2002, URSF wrote to the Charities Administration of the Department of Gaming and Racing referring to the fact that it had sold poppies in New South Wales each year since Remembrance Day 1925. URSF advised that it had conducted these appeals in accordance with the Collections Act and then the Act and that the proceeds had always been "faithfully applied to the welfare" of the Limbless Soldiers' Association and the T.B. Sailors, Soldiers and Airman's Association. URSF also advised that these organisations relied on the appeals "as their sole source of income". The letter included the following:[34]

> We now find that Woolworths intend to saturate the market this Remembrance Day. We were advised that this had the Returned and Services League backing. However, on enquiring with the New South Wales Branch of the RSL we find that this is not correct.
>
> In fact, the New South Wales Returned and Services League is totally opposed to this proposition and have informed the National Executive and the Victorian Branch of the RSL of this opposition.
>
> This being the case we would request that you advise us which Charitable Fundraising Authority Woolworths will be acting under.

6.33 It is apparent that the Department of Gaming and Racing advised RSL National and the Victorian Branch of the RSL (RSL Vic) that neither had an authority to fundraise under the Act and that the proposal that Woolworths would be selling poppies in New South Wales was in breach of the New South Wales legislation.[35]

6.34 In response, on 30 September 2002 RSL Vic advised the Department that the money raised in New South Wales was for the benefit of New South Wales veterans and was not for RSL National or RSL Vic. That letter included the following:[36]

> This effort by Woolworths was purely to raise more money to assist the RSL in the work they do with Veterans and, in point of fact, if the exercise does not go ahead, the RSL country-wide could potentially lose somewhere in the vicinity of $712,000 of which NSW's share would be $192,000.

6.35 On 30 September 2002, RSL Vic also wrote to RSL National advising that if the appeal did not go ahead it would have a "major impact on the smaller States in particular as they are always struggling for money".[37] RSL Vic requested RSL National to see if it could obtain "a letter of authority" to allow Woolworths to sell the poppies.

6.36 On 30 September 2002, the Office of Charities in the Department of Gaming and Racing wrote to RSL Vic advising that the proposed fundraising appeal

relating to the sale of poppies by Woolworths supermarkets in New South Wales was unlawful in circumstances where neither RSL National nor RSL Vic held a fundraising authority in New South Wales. The Office advised RSL Vic that penalties existed under the Act for conducting or participating in unlawful fundraising appeals.[38] The Office also wrote to Woolworths in the same vein.[39]

6.37 This issue was complicated by the fact that RSL NSW had apparently entered into an agreement with TAB Ltd in New South Wales giving it commercial exclusivity on poppy sales for 2002.[40]

6.38 It is apparent that by the middle of October 2002, RSL National had decided to proceed with the involvement of Woolworths in the poppy appeal and that RSL NSW would not participate in the promotion for that year, but would be "involved in future years".[41] RSL NSW took the view that it would have "dialogue in the future" with Woolworths and any other trader that was to be involved in any fundraising appeal "to acquaint them of our requirements under the Act".[42]

6.39 In September 2003, URSF wrote to the Department of Gaming and Racing seeking an exemption from receipting requirements under the Act for the Poppy Day Appeal and also for the ANZAC Day Appeal. URSF advised that the basis of the application was that all poppies and badges were counted upon arrival from the supplier and entered on a stock card; they were counted when forwarded to sellers and entered on the stock card; each seller was invoiced for the number of poppies and badges issued; any unsold badges and poppies were counted on their return and marked back into stock; a reconciliation was carried out on the badges and poppies returned and the amount of money received from each seller; regular stock-takes were carried out by staff not involved in the issuing of poppies and badges; and a final stock-take was performed at 30 June 2004 prior to the audit of the fund.[43] On 27 November 2003, the Department of Gaming and Racing granted the exemption as requested.[44]

6.40 In response to its application for a fundraising authority in late 2004, the Department of Gaming and Racing advised URSF of the approval of its authority on 17 January 2005[45] in similar terms to its 1995 and 2000 letters of approval; and condition 1 similarly required compliance with the Guidelines "as far as practicable".[46]

6.41 URSF's fundraising authority was sought and granted for a period of five years from 30 December 2004 and "so as to authorise an indefinite number of appeals".[47]

6.42 In response to its application for a fundraising authority in late 2009,[48] the Office of Liquor, Gaming & Racing advised URSF of the approval of its authority on 6 January 2010.[49] Although this letter referred to the availability of the Guidelines and certain Fact Sheets on the Office's website, the objectives of those Guidelines were no longer set out in the letter other than that they were "to assist your organisation to meet its obligations as the

holder of a fundraising authority". Further, there was no longer any suggestion that copies of the Act, the Regulations and the Guidelines should be obtained, let alone that anyone should read them; and the conditions of the authority no longer required compliance with, or indeed referred to, the Guidelines.[50]

6.43 The form that was in use in 2009 required URSF to specify whether the application was for a new authority or a renewal, but there was no longer any ability to specify the period being sought.[51] The renewal was then granted for a five year period. The form also no longer inquired whether the application was for specified or an indefinite number of appeals. There was a request for "Fundraising Appeal Name(s) (if applicable)" in response to which URSF specified ANZAC Day Appeal and Poppy Day Appeal, but the authority did not specify whether it was for those specific appeals or for an indefinite number of appeals.[52]

FINANCIAL STATEMENTS OF URSF

6.44 Each time that URSF applied to renew its fundraising authority, it was required to provide its most recent audited financial statements. The 1994 Financial Statements[53] included financial statements specifically in relation to that year's Poppy Day Appeal and a report from the auditor that "the attached Receipts and Payments Account for the 1994 Appeal is properly drawn up so as to give a true and fair view of the results of the 1994 Appeal".

6.45 The 1999 Financial Statements[54] included a note that there had been two fundraising appeals (Poppy Day and ANZAC Day) and as to how the funds from those appeals had been applied for charitable purposes; an officer's declaration in respect of fundraising in accordance with condition 7 of the authority conditions;[55] and an auditor's report in respect of fundraising in accordance with section 24(2) of the Act. However that report included an express qualification to the effect that the audit had been carried out on a test basis and included the following:

> These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with Accounting Standards and other mandatory professional reporting requirements (Urgent Issues Group Consensus Views) and statutory requirements so as to present a view which is consistent with our understanding of the fund's financial position, the results of its operations and its cash flows.
>
> The audit opinion expressed in this report has been formed on the above basis.

6.46 The 2004 Financial Statements[56] were in similar form to the 1999 Financial Statements, save that the auditor's report, in addition to the previous qualification, included the following:

> Qualification

> The fund, in common with many other organisations of similar size and nature, derives a proportion of its income from donations and other fund raising activities. As it is not possible to establish effective controls over such transactions until they are entered into the accounting records, we have been unable to independently verify whether amounts receivable from this source have been completely accounted for.

6.47 Mr Rowe signed the officer's declaration in respect of fundraising as Chairman of URSF stating amongst other things that URSF had complied with the Act, the Regulations and the fundraising authority.[57]

6.48 The 2009 Financial Statements[58] were in similar form to the 2004 Financial Statements, save that in addition an Income Statement, Balance Sheet and Statement of Cash Flows were included in respect of each of the ANZAC Day Appeal and the Poppy Day Appeal.

6.49 Mr Rowe signed the officer's declaration in respect of fundraising in the same terms as the earlier declaration.[59]

6.50 It appears that the fundraising regulator did not at any time raise any issue about the form of URSF's financial statements and in particular as to whether they were compliant with the statutory regime for fundraising.

6.51 After 2009, although they were not provided to the fundraising regulator, the financial statements continued to be in a similar form, save that from 2010[60] no Statement of Cash Flow in respect of fundraising was included; and at least from 2012[61] no Balance Sheet in respect of fundraising was included. Each year, Mr Rowe signed the officer's declaration as to fundraising as Chairman of URSF.[62]

6.52 URSF's financial statements were prepared as at 30 June in each year. On 30 June 2014 it ceased its operations and its net assets were transferred to RSL WBI.[63] The fund was then dissolved.

6.53 URSF's financial statements had been almost compliant with the statutory regime for fundraising in at least 2009 and 2010 in that they included specifically in respect of fundraising: an auditor's report, an officer's declaration, a note as to how the appeal funds had been applied and an income statement and balance sheet for each appeal.

6.54 However instead of "a balance sheet that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year",[64] there was a balance sheet in respect of each appeal.

6.55 By 2012 and continuing to 2014, balance sheets in respect of fundraising were no longer included (as they ought to have been), although there is no indication why this occurred.

6.56 The 2014 Financial Statements of RSL WBI[65] (prepared as at 31 December) were audited by Grant Thornton and specifically by Ms Sheridan, who had had no involvement in auditing URSF's financial statements.

6.57 The 2014 RSL WBI Financial Statements included a note that there had been one fundraising appeal (Poppy Day) and as to how the funds from that appeal had been applied for charitable purposes; an auditor's report in respect of fundraising,[66] which was unqualified; an officer's declaration in respect of fundraising from Mr White,[67] since Mr Rowe had by this time resigned; but no income statement or balance sheet specifically in respect of fundraising.

6.58 Thus, when comparing compliance with the statutory regime for fundraising between URSF's 31 December 2014 Financial Statements and the RSL WBI's 30 June 2014 Financial Statements: (1) RSL WBI improved the position in that the auditor's report was unqualified; (2) both were non-compliant in that no balance sheet in respect of fundraising was included; (3) RSL WBI did not include any income statements in respect of fundraising, as it ought to have done.

6.59 Ms Sheridan's evidence was that Grant Thornton looked at URSF's financial statements "on the transition across" of its assets to RSL WBI in 2014, but that she did not recall noticing the inclusion of income statements and balance sheets and Grant Thornton did not speak to the auditor of URSF.[68]

RSL WBI IN BREACH OF ITS OBJECTS

6.60 RSL WBI is limited by its objects to providing for "ex-Service personnel and their dependants". However, it is apparent that, contrary to its objects, RSL WBI has extended support to current service personnel and their dependants.

6.61 It has done so openly, including in the context of the publicly stated purposes of its various appeals, such as the RSL Active Program/Adaptive Sports Fund,[69] the 2014 Poppy Appeal,[70] the 2015 ANZAC Appeal,[71] the Post War Survive to Thrive Program,[72] Operation K9,[73] the Cedars Equine Program,[74] the 2016 Poppy Appeal[75] and the 2017 ANZAC Appeal;[76] in its Annual Reports in 2012,[77] 2013,[78] 2014[79] and 2015;[80] on its website;[81] and in email footers.[82]

6.62 In late 2012, at one of the first trustee meetings she attended, Ms Collins (the newly appointed General Manager of RSL NSW and RSL WBI) raised with the Trustees (Messrs Rowe, White and Perrin), that it was her opinion that RSL WBI was potentially in breach of its trust objects by providing services to current service personnel. Ms Collins gave evidence that the Trustees assured her that they did not believe it was in breach. However, upon her request, they invited her to investigate the issue further.[83]

6.63 In an email dated 29 November 2012 Ms Collins informed the Trustees and Ms Mulliner that she had met with Mr Cannings informally on 21 November 2012. She recorded that Mr Cannings had indicated that the objects only allowed RSL WBI to provide services to ex-serving personnel and their dependents and that providing services to current serving

members was unlikely to be acceptable.[84] She also recorded that Mr Cannings had indicated that anyone in receipt of an income, such as a current serving member, was unlikely to meet the test of being in 'necessitous circumstances'. Ms Collins set out in detail how she perceived RSL WBI to be in breach of its trust objects and the actions required to address the breach, including a recommendation for the receipt of legal advice.[85]

6.64 Ms Collins set in place interim procedures which, in her opinion, allowed the Trustees to help veterans and others in crisis in the short term, but informed the Trustees that it would be best to set up a new company with expanded charitable objects, as set out in her email dated 29 November 2012.[86]

6.65 At a meeting of the Trustees on 12 December 2012 a resolution was passed to refer Ms Collins' email for legal advice from Senior Counsel.[87] There is no evidence that the Trustees followed through on obtaining such advice.

6.66 At the end of 2013 or early 2014 Ms Collins enquired of Mr Perrin what was happening in respect of the trust objects. Mr Perrin informed her that Mr Cannings was ill and that this would slow down any progress.[88] In 2014 and early 2015, which encompassed the departures of Messrs Rowe and Perrin, the issue appears not to have been progressed.[89]

6.67 In late 2015 Mr Kolomeitz, as the CEO of RSL NSW, became a trustee of RSL WBI. Ms Collins informed him of the issue she had identified with the trust objects. At the January 2016 Trustees meeting the issue was noted and the Trustees, by this time Messrs Hardman and Kolomeitz, resolved that Mr Cannings advise the Trustees of the action to be taken.[90]

6.68 A special meeting of the Trustees was held on 14 March 2016. Mr Cannings and Ms Collins were in attendance. Mr Cannings gave advice that approval should be sought for a cy-près scheme; and to incorporate RSL DefenceCare as a subsidiary of RSL WBI or to incorporate a new company. It was resolved that the Trustees would consider a brief to counsel for advice.[91]

6.69 It was noted at the 14 March 2016 meeting that the services provided by RSL DefenceCare to serving Defence members constituted in excess of 50% of the total outlay of RSL DefenceCare. [92]

6.70 At the Trustees meeting on 16 March 2016 the Trustees (Messrs White, Hardman and Kolomeitz) resolved that they instruct Mr Cannings to review and advise on options available and steps required to ensure that RSL WBI complied with its aims and objects and, if necessary, amend the objects through the applicable regulatory mechanisms. It was further resolved that the issue of ensuring compliance with the Trust objects remain a standing agenda item until the issue was resolved.[93] It appears that no advice was obtained from Mr Cannings.

6.71 In late 2016 RSL WBI sought advice from new legal representatives, Ashurst, as to whether it was acting in accordance with its trust objects by making payments to current service men and women. Ashurst gave two presentations on the issue in November and December 2016 respectively.[94]

6.72 On 28 March 2017 advice was provided by Ashurst addressing, *inter alia*, compliance with the trust objects.[95] Although that advice has not been provided to the Inquiry, Ms Collins gave evidence that the effect of the advice was that the objects of RSL WBI could not be changed and that the alternative was to set up a new legal entity with broader objects. At the time of her evidence, the Trustees were considering this advice.[96]

6.73 Pursuant to section 63(1) of the *Trustee Act* 1925 a trustee may apply to the Court for an opinion, advice or direction on any question in respect of the management or administration of the trust property or respecting the interpretation of the trust instrument. There has been no approach to the Court. Pursuant to section 85 of the same Act, where a trustee is or may be personally liable for any breach of trust the Court may relieve the trustee either wholly or partly from personal liability for the breach. There has been no approach to the Court for such relief.

6.74 This potential breach is of serious concern. RSL WBI has informed the Inquiry that it is currently considering ways to resolve the potential breach of the Trust Objects. The first option being considered is for charitable services to be performed by RSL NSW or RSL LifeCare. This may require amendments to RSL NSW or RSL LifeCare's constitutional purposes and objects.

6.75 The second option being considered is for RSL WBI to enter into a service agreement with RSL NSW or RSL LifeCare provided that any reimbursement by RSL WBI of costs incurred is to relate only to the provision of services within RSL WBI's Trust Objects and be in compliance with any applicable regulatory requirements and the requirements of trust law.

6.76 The third option being considered is for the Trustees of RSL WBI to continue to exercise the functions of trustees until all assets of the trust are lawfully dissipated and the trust terminates.

6.77 The final option being considered is for the Trustees, at their discretion and subject to satisfying legal requirements, to enter further service agreements with RSL NSW, RSL LifeCare or other entities to facilitate the discharge of their roles as trustees.

6.78 On 14 December 2017, RSL LifeCare advised the Inquiry that on 11 December 2017 its Board agreed in principle to fund services previously provided by RSL WBI to serving and ex-serving military personnel of the ADF and their families. It advised that it will fund those services until a more permanent re-structure is agreed and implemented by the RSL entities. The draft funding agreement that has been noted by the Board is to be finalised and implemented by the newly constituted Audit Risk Management and Compliance Committee. This is intended to resolve the problem of RSL WBI remaining in breach of its Trust Objects, even if only on a temporary basis.

ENDNOTES

[1] Ex 12, Vol 1, p 3.
[2] Ex 12, Vol 1, p 6, Art 24.
[3] Ex 12, Vol 1, p 281.
[4] Ex 12, Vol 1, p 284, cl 2.2.
[5] Ex 12, Vol 1, p 285, cl 4.
[6] Ex 47, p 1.
[7] Ex 40, Vol 3, p 1135; WBI Rules (2012), cl 3.
[8] Ex 25, Vol 1, p 4.
[9] Ex 37, Vol 3, pp 1092, 1096.
[10] Ex 37, Vol 2, p 533.
[11] Ex 37, Vol 3, pp 1167 - 1168, 1176 - 1179.
[12] Ex 25, Vol 1, pp 10 - 11, 299.
[13] Ex 12, Vol 1, p 18.
[14] Ex 12, Vol 1, p 18.
[15] Ex 12, Vol 1, p 79.
[16] Ex 12, Vol 1, p 243.
[17] Tr 1226 - 1227.
[18] Ex 12, Vol 1, p 434.
[19] Ex 12, Vol 1, p 434.
[20] Ex 12, Vol 1, p 434.
[21] Ex 12, Vol 1, p 434.
[22] Ex 25, Vol 1, p 345.
[23] Ex 20, Vol 2, p 944.
[24] Ex 12, Vol 1, p 20.
[25] Ex 12, Vol 1, pp 26 - 27.
[26] Ex 12, Vol 1, p 36.
[27] Ex 12, Vol 1, p 48.
[28] Ex 12, Vol 1, pp 22, 47.
[29] Ex 12, Vol 1, p 92.
[30] Ex 12, Vol 1, p 100.
[31] Ex 12, Vol 1, p 102.
[32] Ex 12, Vol 1, p 95.
[33] Ex 12, Vol 1, p 101.
[34] Ex 12, Vol 1, p 118.
[35] Ex 12, Vol 1, p 119.
[36] Ex 12, Vol 1, p 121.
[37] Ex 12, Vol 1, p 124.
[38] Ex 12, Vol 1, p 128.
[39] Ex 12, Vol 1, p 131.
[40] Ex 12, Vol 1, p 134.
[41] Ex 12, Vol 1, p 136.
[42] Ex 12, Vol 1, p 138.
[43] Ex 12, Vol 1, p 141.
[44] Ex 12, Vol 1, p 151.
[45] Ex 12, Vol 1, p 213.
[46] Ex 12, Vol 1, p 200.
[47] Ex 12, Vol 1, pp 195, 199.
[48] Ex 12, Vol 1, p 225.
[49] Ex 12, Vol 1, p 255.
[50] Ex 12, Vol 1, p 257.
[51] Ex 12, Vol 1, p 225.
[52] Ex 12, Vol 1, p 256.
[53] Ex 12, Vol 1, p 17.
[54] Ex 12, Vol 1, p 72.
[55] Ex 12, Vol 1, p 48.
[56] Ex 12, Vol 1, p 177.

[57] Ex 12, Vol 1, p 185.
[58] Ex 12, Vol 1, p 230.
[59] Ex 12, Vol 1, p 233.
[60] Ex 12, Vol 2, p 294.
[61] Ex 12, Vol 2, p 333.
[62] Ex 12, Vol 2, pp 298, 330, 337, 355, 388.
[63] Ex 20, Vol 2, p 948.
[64] Ex 12, Vol 1, p 258.
[65] Ex 20, Vol 2, p 939.
[66] Ex 20, Vol 2, p 940.
[67] Ex 20, Vol 2, p 959.
[68] Tr 1950 - 1951.
[69] Ex 16, p 30.
[70] Ex 16, p 27.
[71] Ex 16, p 25.
[72] Ex 16, p 29.
[73] Ex 16, p 29.
[74] Ex 16, p 29.
[75] Ex 16, p 27.
[76] Ex 16, p 26.
[77] Ex 25, Vol 1, p 298.
[78] Ex 25, Vol 1, p 314.
[79] Ex 25, Vol 1, p 334.
[80] Ex 25, Vol 1, p 358.
[81] Ex 5, pp 429 (2013), 436 (2014), 440 (2015), 442 (2016).
[82] Ex 5, pp 489, 490, 492, 495, 499.
[83] Ex 25, Vol 1, p 65.
[84] Tr 3195: Mr Cannings expressed the opinion that he does not believe he would have said these words in that way. He has, however, no specific recollection.
[85] Ex 25, Vol 3, p 994.
[86] Ex 25, Vol 1, p 66; Ex 25, Vol 3, p 997.
[87] Ex 25, Vol 1, p 66; Ex 25, Vol 3, p 1004.
[88] Ex 25, Vol 1, p 66.
[89] Ex 25, Vol 1, p 67.
[90] Ex 25, Vol 1, p 67; Ex 25, Vol 3, p 1007.
[91] Ex 25, Vol 3, p 1014. Tr 3198: Mr Cannings has no specific recollection but does recall that they discussed the reasons that would support a widening of the objects.
[92] Ex 25, Vol 3, p 1013.
[93] Ex 25, Vol 3, p 1014.
[94] Ex 25, Vol 1, p 52.
[95] Ex 25, Vol 1, p 55.
[96] Tr 2803.

7.1 FUNDRAISING

7.1.1 The Terms of Inquiry require an assessment of whether each of the three entities has, since 1 July 2007, complied with the current condition 20 (relating to dealing with conflicts of interest); or breached any other conditions of its respective fundraising authorities; and whether the management of any of the entities or the conduct of any fundraising appeal since that time, or any other matter, involves or indicates: (a) a breach of the Act; or (b) a ground upon which the Minister could be satisfied of a matter justifying the refusal or revocation of a fundraising authority.[1]

THE FUNDRAISING AUTHORITIES

7.1.2 RSL NSW was granted three fundraising authorities under the Act during the period covered by the Terms of Inquiry. The first was for five years between 13 August 2006 and 12 August 2011 granted by the Office of Charities within the NSW Office of Liquor, Gaming and Racing as the Minister's delegate.[2] The second was granted by the NSW Office of Liquor, Gaming and Racing as the Minister's delegate for the five year period from 13 August 2011 to 12 August 2016.[3] The third was granted by NSW Fair Trading as the Minister's delegate for the period 1 November 2016 to 31 October 2021.[4]

7.1.3 RSL WBI was granted two fundraising authorities during the period covered by the Terms of Inquiry. The first was granted by the Office of Charities within the NSW Office of Liquor, Gaming and Racing as the Minister's delegate, for the period 28 May 2007 to 27 May 2012.[5] The second was granted by the NSW Office of Liquor, Gaming and Racing as the Minister's delegate for the period 28 May 2012 to 27 May 2017.[6] There was a variation to the second fundraising authority on 9 August 2013.[7]

7.1.4 RSL WBI made an application to renew its fundraising authority, which is dated 26 May 2017[8] but was not in fact lodged until 29 May 2017,[9] being two days after the previous authority expired.[10]

7.1.5 RSL WBI has contended in correspondence to NSW Fair Trading that it is at least arguable that its fundraising authority has not in fact expired, but remains in force until its renewal application is determined,[11] whether by a decision of NSW Fair Trading on the application; or the effluxion of a period of 60 days after the date of a receipt notice for the application or the receipt of further information, if sought, in which event the application is taken to have been approved.[12]

7.1.6 Section 13A of the Act provides that Part 2 of the *Licensing and Registration (Uniform Procedure) Act* 2002 applies to applications for fundraising

authorities, subject to certain modifications and limitations prescribed by or under the Act. The effect of Part 2 is that RSL WBI was entitled to apply for its renewal at any time within eight weeks before the authority expired;[13] and in the event that it did so, the licence remains in force until the date on which the applicant is notified of the decision on the application,[14] at which time any renewed authority would come into operation.

7.1.7 By section 36(2) of the *Interpretation Act* 1987, where the last day of a period of time prescribed or allowed by an Act or instrument for the doing of anything falls on a Saturday or Sunday, the thing may be done on the first day following that is not a Saturday or Sunday or a public holiday or bank holiday. RSL WBI's fundraising authority expired on 27 May 2017, which was a Saturday, and it contends that the lodgement of its renewal application on 29 May 2017 was therefore in time, so that the authority remains in force until RSL WBI is notified of the decision of its renewal application.

7.1.8 NSW Fair Trading indicated that it would consider RSL WBI's contention that its authority remained in force,[15] but no response was put in evidence.

7.1.9 On 19 July 2017, which was within 60 days of the receipt of the renewal application, NSW Fair Trading sought further information from RSL WBI, including RSL WBI's 2016 annual financial accounts.[16] Those accounts have not been provided because they were not yet available. The automatic renewal of the authority under section 16(6) of the Act has therefore not been triggered and the renewal application remains to be determined.

7.1.10 In any event RSL WBI contends that in the interim its fundraising authority remains in force notwithstanding it has suspended all fundraising.[17] Irrespective of the correctness of that contention, the Terms of Inquiry require an assessment as to whether there are grounds for revocation of a fundraising authority and/or refusal to grant an authority.

7.1.11 RSL LifeCare was granted three fundraising authorities during the period covered by the Terms of Inquiry. The first was granted by the Office of Charities within the Department of Gaming and Racing as the Minister's delegate for the period 31 December 2005 to 30 December 2010.[18] The second was granted by the NSW Office of Liquor, Gaming and Racing as the Minister's delegate for the period 31 December 2010 to 30 December 2015.[19] The third was granted by NSW Fair Trading as the Minister's delegate for the period 31 December 2015 to 30 December 2020.[20]

FUNDRAISING AUTHORITY CONDITIONS

7.1.12 The Minister or the Minister's delegate may attach any condition to an authority "having regard to the objects and purposes" of the Act "and the public interest" that the Minister or the Minister's delegate "thinks ought to be imposed in the particular case".[21]

7.1.13 The Guidelines produced by the Department of Gaming and Racing included the following:[22]

> By possessing an authority to fundraise, a person or organisation is entitled to appeal to the public for funds. In return that person or organisation incurs a number of obligations which are set out in the Act, the regulations and in greater detail in the authority conditions.
>
> All these provisions operate to the benefit of the authority holder. It is essential that persons involved in the conduct of charitable fundraising activities are familiar with them.
>
> This publication has been designed to assist authority holders in complying with the legislation, the regulations and the authority conditions. They should be a source of general reference to authority holders, and a manual of model practices and procedures for prudent conduct for the administration of charities.

7.1.14 It was noted in the Guidelines that "standard conditions" applied to all authority holders and that, in certain circumstances, special conditions may be imposed; or holders of fundraising authorities may apply for modification or replacement of conditions where they are inappropriate to their particular circumstances.[23]

7.1.15 The standard conditions were developed by the Regulator and published in the Guidelines.[24] On 1 September 1998, the 1998 Regulation commenced. By clause 16 of the Regulation, the conditions set out in the Schedule applied to any authority taken to have been granted pursuant to section 16(6) of the Act, subject to any variation by the Regulator.[25] Thus the Regulation established default conditions that were varied and substituted by the standard conditions developed and maintained by the Regulator. Those standard conditions could be, and on occasion were, varied by the Regulator in respect of particular authorities. Although the default conditions and the standard conditions were similar, there were differences. For instance only the standard conditions included a clause requiring compliance "as far as practicable" with the Guidelines.

7.1.16 The default conditions were replaced by Schedules to the 2003 and 2008 Regulations. Then, clause 17 of the 2015 Regulation, which commenced on 1 September 2015, provided that the default conditions would be those dated 31 July 2015, which were prepared by NSW Fair Trading and published in the NSW Government Gazette. It is not clear when the Regulator ceased applying standard conditions that were different to the default conditions,

but this had occurred at least by 1 September 2015 when the 2015 Regulation came into force.

7.1.17 A copy of the conditions of the authorities to fundraise in respect of each of the entities for the period covered by the Terms of Inquiry is annexed to this Report as Appendix G.

OBLIGATIONS IN RELATION TO FUNDRAISING

7.1.18 It is appropriate to summarise the obligations that each of the entities had in the period covered by the Terms of Inquiry, and indeed continues to have, in relation to fundraising, particularly by reference to those matters in respect of which there has been non-compliance. These obligations cover not only the conduct of fundraising appeals, but also the management of the entities in relation to various matters relevant to fundraising.

7.1.19 As is apparent from a comparison of the authorities of the three entities and URSF, the Regulator's standard conditions changed at some point between 2007 and 2010, which resulted in condition 1 requiring compliance with the Guidelines being removed and the other conditions being renumbered;[26] and then further changed in 2015. References to dates of conditions or obligations are to dates of issue of relevant authorities to the entities.

Generally

7.1.20 Each entity was required to comply with the Guidelines, at least up to 2007 but not from 2010.[27]

7.1.21 Each entity must exercise proper and effective controls over fundraising appeals, including accountability for income and expenditure.[28] They are obliged to ensure all assets received from fundraising appeals are properly accounted for and safeguarded.[29] Any money or benefit that is received must be applied according to the objects or purposes represented.[30]

7.1.22 The gross proceeds from a fundraising appeal must be paid into a separate fundraising appeal bank account which must include the fundraiser's name.[31] However from 2010 appeal funds could be paid into a general account if the funds were clearly distinguished.[32] All payments must be properly authorised by the relevant organisation[33] and disbursements of $260 or more must be by cheque or, alternatively as from 2010, by electronic funds transfer.[34]

7.1.23 Lawful and proper expenses may be deducted from the proceeds of the appeal.[35] However commissions must not exceed one third of gross income[36] and all reasonable steps must be taken to ensure that expenses do not exceed 40% of gross income (to 2007) or 50% of gross income (from 2010)

where income is from donations only; and a "fair and reasonable proportion" otherwise.[37]

7.1.24 An expense is not a lawful and proper expense if it is prohibited by law; or is not supported by documentary evidence or is otherwise not verifiable as being properly incurred; or is not properly authorised by or on behalf of the organisation.[38]

7.1.25 Money that is not to be applied immediately may be invested (in a manner authorised for trust funds).[39]

7.1.26 A trader may only conduct an appeal jointly with an entity that holds an authority. Any advertisement, notice or information concerning the joint appeal must identify both the trader and the authority holder and must give details of the intended distribution of funds from the appeal.[40] A fundraising appeal conducted with a trader must be governed by a written agreement that includes certain particulars.[41]

7.1.27 Up to 1 September 2015, condition 20 (previously condition 23)[42] of the fundraising authorities provided as follows:

> 20 Conflicts of Interest
>
> If the authorised fundraiser is an organisation it must establish:
>
> (a) a register of pecuniary interests, and
>
> (b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

7.1.28 As from 1 September 2015 condition 20 dealing with conflicts of interest was amended and the following was added:

> Members of the governing body of the authorised fundraiser that are, or are to be remunerated, must be excluded from that part of a meeting of the governing body where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.
>
> Members of the governing body that are, or are to be remunerated, must not be counted in a quorum for that part of the meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.
>
> The appointment, conditions of service, remuneration of, or supply of goods or services by a member of the governing body of the authorised fundraiser must be subsequently ratified by a general meeting of the members of the authorised fundraiser (or a committee to which this function has been delegated).[43]

7.1.29 A person is not prohibited from being a member of the governing body of a not-for-profit organisation with a charitable purpose "merely because the person receives any remuneration or benefit from the organisation" if the Minister has given prior approval for that person to hold that position.[44]

7.1.30 A fundraising entity must be administered in relation to its fundraising activities by a governing body of not fewer than three persons and all business transacted by that body must be properly recorded in minutes; and, from 2015, the minimum quorum for meetings of the governing body is three.[45]

7.1.31 There must be a mechanism for resolving internal disputes within the membership of the organisation in relation to fundraising activities;[46] and there must be a mechanism for handling complaints from members of the public or employees in relation to fundraising activities.[47]

7.1.32 Certain changes in the organisation, including as to its objects and certain matters in its constitution, must be notified to the Minister.[48]

Books and Records

7.1.33 Each entity is obliged to maintain proper books of account and records to correctly record and explain its transactions, financial position and financial performance (including cash book, register of assets, register of receipt books, register of tickets, petty cash book, minute book and register of participants).[49]

7.1.34 Each entity is obliged to ensure that its records include particulars of all items of gross income, expenditure and of transactions. Each entity must retain all invoices, receipts, vouchers and other documents of prime entry relating to each fundraising appeal, and such working papers and other documents as are necessary to explain the methods and calculations by which accounts relating to the appeal are prepared.[50]

7.1.35 Receipts must be written or issued immediately for all money or other benefits received in a fundraising appeal;[51] there must be a record system of identification cards or badges, receipt books and collection boxes;[52] and accounting records must be kept for seven years and other records must be kept for five years (to 2007) or three years (from 2010) at the registered office of the fundraising entity.[53]

7.1.36 Where a person conducts or participates in a fundraising appeal on behalf of an authority holder, proper records must be kept.[54]

Accounting

7.1.37 An unincorporated association with a fundraising authority, such as RSL WBI, must lodge returns with the Minister from time to time, showing at least the gross sums received from any fundraising appeals and the net sums after expenses,[55] within prescribed time limits. These

returns were only required up to 2007 if the organisation had ceased to conduct appeals or if its annual gross income from fundraising appeals exceeded $20,000; and between 2010 and 2014 if the organisation had ceased to conduct appeals or if its annual gross income from fundraising appeals exceeded $100,000.[56]

7.1.38 The annual financial accounts of an organisation with an authority must include an income statement summarising the income and expenditure of each fundraising appeal; a balance sheet summarising all assets and liabilities resulting from the conduct of fundraising appeals; and if in the financial year aggregate gross income from fundraising appeals exceeded $20,000 (up to 2007) or $100,000 (from 2010), then as notes thereto: (a) details of the accounting principles and methods adopted; (b) information on any material matter or occurrence, including of an adverse nature such as an operating loss from fundraising appeals; (c) a statement describing the manner in which the net surplus or deficit from fundraising appeals was applied; (d) details of the aggregate gross income and aggregate direct expenditure incurred in the fundraising appeals; and (e) a list of the appeals and various comparisons of income and expenses (up to 2007).[57]

7.1.39 They must also include a declaration by the President or principal officer as to whether: (a) the income statement and balance sheet give a true and fair view of all income and expenditure in respect of fundraising appeals; (b) the provisions of the Act, the Regulations and the conditions of the fundraising authority have been complied with; and (c) the internal controls are appropriate and effective in accounting for all income received and applied from fundraising.[58] The annual financial accounts must be submitted to an annual general meeting within six months after the end of the financial year.[59]

7.1.40 The accounts of any organisation with a fundraising authority must be audited annually insofar as they relate to receipts and expenditure in connection with fundraising appeals.[60] However from 1 September 2015 this has not applied if gross receipts from fundraising in that year did not exceed $250,000.[61]

7.1.41 An auditor carrying out an audit under the Act is obliged to report on whether the accounts show a true and fair view of the financial result of fundraising appeals; whether the accounts and records have been properly kept during that year in accordance with the Act and the Regulations; whether fundraising money received has been properly accounted for and applied in accordance with the Act and the Regulations; and the solvency of the organisation.[62]

7.1.42 The auditor is obliged to report to the Minister any contravention of the Act or the Regulations if in his or her opinion "the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the trustees or

members of the governing body of the organisation concerned (as the case may be)".[63]

Consequences of Non-Compliance

7.1.43 Division 1 of Part 2 of the Act entitled "Offences" includes the following:

> **9. Conducting unlawful fundraising**
>
> (1) A person who conducts a fundraising appeal is guilty of an offence unless the person:
>
> (a) is the holder of an authority authorising the person to conduct the appeal, or
>
> (b) is a member of an organisation, or an employee or agent of a person or organisation, that holds such an authority and is authorised, by the person or organisation that holds the authority, to conduct the appeal, or
>
> (c) is authorised under subsection (3) to conduct the appeal without an authority.
>
> Maximum penalty: 50 penalty units.
>
> (2) A person who conducts a fundraising appeal in contravention of any condition attached to an authority authorising the appeal is guilty of an offence.
>
> Maximum penalty: 50 penalty units.
>
> (3) The following may conduct a fundraising appeal without being the holder of an authority:
>
> (a) an organisation or person, or one of a class of organisations or persons, authorised by the regulations,
>
> (b) an organisation established by an Act and subject to the control and direction of a Minister,
>
> (c) a member, employee or agent of any organisation or other person referred to in paragraph (a) or (b) who is authorised by the organisation or other person to conduct the appeal,
>
> (d) a person who, in accordance with section 11, conducts the appeal in conjunction with the holder of an authority.
>
> **10. Participating in unlawful fundraising**
>
> A person who participates in a fundraising appeal which the person knows, or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.
>
> Maximum penalty: 50 penalty units.

7.1.44 There are other provisions in the Act which create specific offences, that would apply to RSL NSW, RSL LifeCare and the Trustees of RSL WBI; and, by virtue of section 51 of the Act to any director or other person concerned in the management of RSL NSW or RSL LifeCare who knowingly authorised or permitted a contravention of the Act. Relevantly these include: dealing with traders (section 11 of the Act); maintaining proper records (section 22 and clause 8 of the 2003 Regulation, clause 9 of the 2008 Regulation and clause 10 of the 2015 Regulation); giving returns to the Minister (section 23) (on the part of the trustees of RSL WBI alone); and proper reporting in, and auditing of, the financial statements (section 24).

7.1.45 Section 20 of the Act creates an offence where monies raised from an appeal are not banked into a separate bank account (or at least where they can be clearly distinguished); or where those monies are applied other than in accordance with the represented purpose, but this is an accessorial provision only on the part of the members of the governing body.[64]

7.1.46 Failures to comply with provisions of the Act, the Regulations or the conditions of a fundraising authority are also matters that the Minister is specifically entitled to take into account in determining whether to revoke that authority under section 31(1)(d) of the Act.

7.1.47 Such failures may well also be matters that would be relevant in assessing the other grounds for revoking a fundraising authority under section 31(1) of the Act; or refusing an application for an authority (including an application for renewal) under section 16(2) of the Act.

FUNDRAISING APPEALS

7.1.48 The Act, the Regulations and the conditions of the fundraising authorities imposed certain obligations upon each entity irrespective of whether they actually engaged in fundraising. However, many of the obligations operated in respect of conducting or participating in fundraising appeals. It is therefore necessary to identify the extent to which each of the entities conducted or participated in fundraising appeals during the period covered by the Terms of Inquiry.

7.1.49 The entities have each provided answers to the Inquiry in response to Notices served on 16 June 2017 requiring them to identify the fundraising appeals they conducted or in which they participated during the period covered by the Terms of Inquiry; and they have also made certain admissions to the Inquiry. It is clear that each of the entities has been engaged in fundraising throughout the period covered by the Terms of Inquiry.

RSL NSW Fundraising Appeals

7.1.50 The Inquiry was initially informed that RSL NSW had not conducted any formal appeals as these were conducted on its behalf by URSF from 7 October 1999 to 30 June 2014 and by RSL WBI from 1 July 2014 onwards.[65]

7.1.51 The history and structure of URSF and the fundraising appeals it conducted is an important context from which to understand RSL NSW's involvement in fundraising appeals during the Terms of Inquiry period. This has been detailed above, but in brief URSF was established in 1926 by RSL NSW and two other entities[66] with the object of raising funds for those three organisations by conducting and managing functions connected with "Soldiers' Day"; to conduct and control the sale of poppies on Armistice Day; and to promote and manage any other function unanimously agreed upon by the three organisations.[67]

7.1.52 As discussed earlier, a Deed was executed in 1999 by which URSF's objects were amended to provide for the conduct and management of functions connected with the ANZAC Appeal; the conduct and control of the sale of poppies connected with Remembrance Day (referred to as "the Poppy Appeal"); and the promotion and management of any other function unanimously agreed upon by the members.[68]

7.1.53 RSL NSW subsequently accepted that it conducted and participated in a number of fundraising appeals during the period 2007 to 2014, including as a member of URSF, as follows:

ANZAC Appeal

7.1.54 RSL NSW participated in the fundraising appeal known as the ANZAC Appeal that URSF conducted in the week leading up to ANZAC Day (25 April) in each of the years 2007 to 2014. The publicly stated purpose of the ANZAC Appeal was to raise money to support the ex-service community. The method of raising funds was by circular notice to the RSL NSW sub-Branches to publish to the general public and by television advertising.[69]

Poppy Appeal

7.1.55 RSL NSW participated in the fundraising appeal known as the Poppy Appeal that URSF conducted in the week leading up to Remembrance Day (11 November) in each of the years 2007 to 2013. The publicly stated purpose of the Poppy Appeal was to raise money to support the ex-service community. The method of raising funds was by circular notice to the RSL NSW sub-Branches to publish to the general public and by television advertising.[70]

7.1.56 During the ANZAC Appeal and the Poppy Appeal volunteer members of the RSL NSW sub-Branches and Women's Auxiliaries encouraged members of the public to exchange tokens (badges/poppies) for donations to the Appeals. Although the tokens were valued at a set dollar

amount, members of the public would sometimes exchange the token for a higher amount. Unused tokens would be returned to Appeal organisers in order to reconcile accounts.[71]

7.1.57 The role of RSL NSW in the ANZAC Appeal and the Poppy Appeal was to provide administrative support and leadership on the various organising committees conducting the Appeals. The Appeals were managed by URSF and thereafter by the RSL Appeals NSW committee.[72] The stated purpose of both appeals was initially to "support the ex-service community"[73] and later "helping current and ex-serving members of the Australian Defence Force and their families in times of injury, illness and crisis."[74]

7.1.58 An arrangement was in place for each RSL NSW sub-Branch that participated in the ANZAC and Poppy Appeals to retain up to 50% of the proceeds of each Appeal to support local welfare services. Money not retained by sub-Branches would be deposited into the URSF account (prior to 2012) and the RSL Appeals NSW account (thereafter). All RSL NSW sub-Branches are required to show the amount raised and retained in their annual returns to RSL NSW through their Statement of Comprehensive Income.[75]

The Poppy Coin Appeal – 2012

7.1.59 RSL NSW conducted the Poppy Coin Appeal for the whole of 2012. The publicly stated purpose of this appeal was to raise funds for the Centenary of the League celebrations in 2016. The method of raising appeal funds was by circular notice to the RSL NSW sub-Branches to publish to the general public and through the RSL NSW website.[76]

Other Fundraising Appeals

7.1.60 Other fundraising appeals conducted by RSL NSW through its sub-Branches between 2007 and 2017 included: [77]

State President Shield – in which RSL NSW sub-Branches made donations to RSL NSW in exchange for the administrative support provided by RSL NSW. The donations, which have been made from 2007 to 2017, were not directed to a specific purpose but supported the ongoing activities of RSL NSW. The method of fundraising was by an internal circular notice between RSL NSW and the RSL NSW sub-Branches.

Drought Appeal - RSL NSW collected donations from RSL NSW sub-Branches between 2007 and 2010 to pass on to RSL members who were affected by drought conditions and demonstrated a genuine need. The method of fundraising was by an internal circular notice between RSL NSW and the RSL NSW sub-Branches.

Serving Member CV - RSL NSW collected donations from RSL NSW sub-Branches for the purpose of creating professional CVs for members separating from the ADF. RSL NSW has not been able to confirm the dates

of this fundraising activity but it is no longer conducted and the method of fundraising is unknown.

RSL NSW Support and Assistance Fund – since 2010, RSL NSW has collected donations from RSL NSW sub-Branches for the dual purpose of offsetting the increase in capitation fees due to RSL National and to provide financial assistance to RSL NSW sub-Branches in need (in particular with insurance and administration costs, IT and office equipment and attendance at State Congress).

Other

7.1.61 RSL NSW also receives charitable donations throughout the year from a variety of donors including the RSL NSW sub-Branches, the Women's Auxiliaries, District Councils, RSL National, Clubs, the Hyde Park Inn, RSL Appeals and various corporate and individual donors.[78]

7.1.62 RSL NSW has maintained a website since at least 2010 through which it has solicited donations to assist veterans and current Defence Force personnel and offered a facility to donate online.[79] These donations were deposited into the RSL NSW general revenue account and all funds receipted (other than separate trust monies) were allocated to expenditure.[80]

RSL WBI Fundraising Appeals

7.1.63 RSL WBI conducted fundraising appeals during the period 2012 to 2017 as follows:

Minute to Remember Appeal

7.1.64 RSL WBI conducted the Minute to Remember Appeal in the two weeks leading up to 11 November in each of the years 2012, 2013 and 2014. The publicly stated purpose was to fund activities associated with the promotion of the observance of Remembrance Day. The method of raising funds was by online donations via Facebook and the appeal website; by radio, television and social media advertisements; email and Short Message Service (SMS) notifications; and media release signs.[81]

Poppy Appeal

7.1.65 RSL WBI conducted the Poppy Appeal in the periods 3 November 2014 to 11 November 2014; 17 October 2015 to 15 November 2015; and 15 October 2016 to 12 November 2016.[82] The publicly stated purpose of the Poppy Appeal in 2014 was to assist veterans and current Defence Force Personnel who found themselves in difficult circumstances, with practical or financial support; in 2015 the publicly stated purpose was to conduct general fundraising to assist veterans; and in 2016 it was to help Australian service men and women returning from service with physical or mental illnesses and injuries.[83]

7.1.66 The method used to raise the funds in 2014 was by public appeal through mainstream media; in 2015 it was by the use of volunteers to encourage donations in exchange for tokens throughout New South Wales; and in 2016 it was by erecting a stall in Martin Place, Sydney to encourage donations in exchange for tokens in the week leading up to Remembrance Day each year.

ANZAC Appeal

7.1.67 RSL WBI conducted the ANZAC Appeal from 1 to 30 April 2015; from 1 to 30 April 2016; and from 27 March to 27 April 2017. The publicly stated purpose for the ANZAC Appeal in 2015 was to aid current and ex-serving members of the Australian Defence Force in injury, illness or other crises; in 2016 it was to conduct general fundraising for veterans; and in 2017 it was to raise funds critical to delivering essential services that directly assist current and ex-serving members of the Australian Defence Force.[84]

7.1.68 The method of raising funds in the ANZAC Appeal in 2015 was by way of a public appeal in mainstream media; using volunteers to encourage donations in exchange for tokens throughout New South Wales; and through a similar volunteer program from a stall erected in Martin Place, Sydney in the week 18 to 25 April 2015. In 2016 the same volunteer program throughout New South Wales and in the stall in Martin Place in the week leading up to 25 April was used as well as community service announcements; mainstream media and online appeals; and in appeals in partnership with the National Rugby League (NRL) ANZAC Round in New South Wales games. The same methods used in 2016 were adopted in the 2017 ANZAC Appeal.

Post War Survive to Thrive Program

7.1.69 Since 8 April 2016 RSL WBI has accepted donations to fund the program known as Post War Survive to Thrive, which is an online program designed to assist with post-traumatic stress disorder (PTSD) and other presentations and the transition to civilian life generally. It was developed by a veteran and is administered externally from RSL WBI.[85]

7.1.70 The publicly stated purpose of the fundraising appeal is to raise money to fund the participation of veterans and serving Defence Force personnel in the program.

7.1.71 The method of raising funds is through online donations via the RSL WBI website and though donations from RSL NSW sub-Branches and Women's Auxiliaries.

Cedars Equine Program

7.1.72 From 30 June 2016 to 24 April 2017, RSL WBI accepted donations to fund the Cedars Equine Program, in which the participants interact with horses over a three day residential program in Kangaroo Valley, New

South Wales. It is a program that is promoted as suitable for active and returned servicemen.[86]

7.1.73 The publicly stated purpose of the appeal was to raise money to fund the participation of veterans and serving Defence Force personnel in the Program.

7.1.74 The method of raising funds was through online donations via the RSL WBI website and though donations from RSL NSW sub-Branches and Women's Auxiliaries.

Operation K9

7.1.75 From 24 April 2016 RSL WBI has accepted donations to fund the purchase of companion dogs for veterans and serving Defence Force members. Operation K9 is a program conducted in partnership between RSL NSW, RSL DefenceCare and the Royal Society for the Blind.[87]

7.1.76 The publicly stated purpose of the appeal is to raise money to fund the participation of veterans and serving Defence Force personnel in the Program.

7.1.77 The method of raising funds is through online donations via the RSL WBI website and though donations from RSL NSW sub-Branches and Women's Auxiliaries.

RSL Active Program/Adaptive Sports Fund

7.1.78 RSL WBI accepts donations to fund participation in various sporting programs, including the Invictus Games.[88]

7.1.79 The publicly stated purpose of the appeal is to raise money to fund the participation of veterans and serving Defence Force personnel in appropriate sporting programs.

7.1.80 The method of raising funds is through online donations via the RSL WBI website and though donations from RSL NSW sub-Branches and Women's Auxiliaries.

Generally

7.1.81 Over the relevant period RSL WBI received charitable donations from members of the public by various means including *ad hoc* cash donations; donations via the RSL WBI website, through which it has solicited donations since at least 2013;[89] and from sales of books and other military related items.[90] RSL WBI also received donations by members of the public nominating it as their chosen charity at community fundraising events or by organisations directing donations to it.[91]

7.1.82 During the period covered by the Terms of Inquiry RSL WBI received cash donations and online donations via its website from various events including community challenges, raffles, golf days and other functions

conducted by individuals and groups within the community.[92] The funds were received on the basis that they would be used to promote RSL WBI's charitable objects, including helping veterans and their families in times of injury, illness and crisis and providing community support, financial assistance and advocacy services for veterans and their families.[93]

7.1.83 RSL WBI also purchased television advertisements in 2013 and 2016. The 2013 advertisement promoted RSL WBI as a charity that helped veterans and their families in times of injury, illness and crisis and invited the public to make an online donation via the RSL WBI website. The 2016 television advertisement featured some of the mental health issues suffered by veterans and advertised RSL WBI as a charity in a similar manner to the 2013 advertisement, once again inviting online donations via the RSL WBI website.[94]

7.1.84 RSL WBI has also solicited money through representations at the foot of its General Manager's emails in the following terms:[95]

> DefenceCare is a charity providing welfare and pension services for current and ex-serving defence force personnel and their families. It is the new name of the RSL Welfare & Benevolent Institution. Donations over $2 are tax-deductible and make a real difference. Your support is appreciated.

RSL LifeCare

7.1.85 In its initial response to the Inquiry on 16 June 2017, RSL LifeCare accepted that between 5 February 2015 and 30 June 2017, 34 fundraising appeals were conducted by it or on its behalf.[96]

Appeals

7.1.86 The Homes for Heroes Appeals have been conducted annually since the 2014/2015 financial year for the stated purpose of raising funds and awareness for the Homes for Heroes initiative, namely, a comprehensive rehabilitation service "intended to provide the young men and women returning from conflict, the stability, security, support and opportunity to get back on their feet".[97]

7.1.87 Facilities have been established at Narrabeen and Penrith and a further facility is being established at Picton. Following the establishment of the Homes for Heroes initiative in 2014, the RSL & Services Clubs Association decided to donate to certain expense-related elements of the initiative. To facilitate the application of these expense-related donations by the Clubs Association (and to support its Homes for Heroes initiative), RSL LifeCare established the Homeless Veterans Project. The Homeless Veterans Project commenced in 2014/2015 and fundraising by way of Homeless Veterans Appeals commenced in 2015/2016. The stated purpose of the Appeals was to raise funds for the Project.[98]

7.1.88 RSL LifeCare contended that all funds raised from Homes for Heroes Appeals have been applied to veterans' support by payment of wages of staff directly involved in the Homes for Heroes initiative (including labour, workers compensation, superannuation, travel, motor vehicles, training and clothing) and veteran resident support expenses (including medical supplies, therapy, groceries and household items).[99]

7.1.89 RSL LifeCare further contended that all funds raised from Homeless Veterans Appeals have been applied to veteran support by application to the expenses associated with the Homes for Heroes initiative and Homeless Veterans Project (including labour, workers compensation, superannuation, telephone, travel, motor vehicles, printing, medical supplies, food, web design and maintenance).[100]

7.1.90 However, as will be discussed in the next Chapter, the state of RSL LifeCare's records was such that it was not possible to track individual donations from receipt through to expenditure. Rather the position is that RSL LifeCare is able to demonstrate only that the amounts spent on each project for which it raised money exceeded the sums received from donations for that project.

7.1.91 The 34 appeals conducted during the period 5 February 2015 and 30 June 2017 are listed in Appendix F to this Report.

7.1.92 RSL LifeCare has suspended all fundraising for Homes for Heroes for the time being.

7.1.93 On 5 December 2017 RSL LifeCare's lawyers advised the Inquiry that in addition to those appeals, "certain" RSL LifeCare villages or nursing homes also undertook fundraising activities during the period covered by the Terms of Inquiry using RSL LifeCare's fundraising authority. The Dungog Village (also known as Lara Aged Care Home) and the North Coast Village undertook fundraising. The Dungog Village fundraising activities were reviewed by RSL LifeCare's lawyers and it appears that: fundraising is organised by volunteers but funds raised are held in an RSL LifeCare nominated bank account; all donations are identified and can be tracked with their specific purpose; and all fundraising appeals complied with the Act. The Dungog fundraising appeals were suspended when RSL LifeCare suspended its fundraising activities on 8 August 2017.[101]

7.1.94 RSL LifeCare's lawyers are still awaiting detail of the fundraising activities of the North Coast Village.[102]

Donations

7.1.95 In addition to the Homes for Heroes Appeals and the Homeless Veterans Appeals, RSL LifeCare has received *ad hoc* donations from fundraising from time to time throughout the period covered by the Terms of Inquiry from various donors. These were directed to the Homes for Heroes initiative, the Homeless Veterans Project and to RSL LifeCare generally.[103]

Donations were received by cash, cheque or Electronic Funds Transfer (EFT).[104] RSL LifeCare has also solicited donations through its website and offered the ability to donate online since at least 2015, although this facility has been disabled since about July 2017.[105]

7.1.96 Donations were received for the Homes for Heroes initiative each year between 2014/2015 and 2016/2017 and for the Homeless Veterans Project each year between 2014/2015 and 2016/2017 with the date of each recorded in the Homes for Heroes initiative and Homeless Veterans Project Register of Donations respectively. Donations were applied and recorded in the same manner as for the respective appeals.[106]

7.1.97 There were also non-monetary donations recorded as received in the form of three pre-owned Toyota Tarago vehicles (donated by C3 Church for use in the Homes for Heroes initiative) and a range of historical military artefacts that have been donated to RSL LifeCare's War Museum.[107]

7.1.98 The date of receipt of each general donation to RSL LifeCare was recorded in a Register of Donations by Donor Category and by Donation Category. Donors were classified into five categories: RSL NSW (including sub-Branches and Women's Auxiliaries), RSL WBI, Bequests, The Montgomery Resident Volunteers Committee and Others.[108] Donations were classified into three categories.[109] The first was specified donations in which the donor specifically nominated a particular application or item (e.g. a wheelchair bus or holiday for nursing home residents). The second was facility donations in which the donor specified a particular facility rather than item to which the funds were to be applied (e.g. the Thomas Eccles Nursing Home at Yass). The third was non-specified donations in which no use was specified and the funds were applied to resident well-being for the frail and elderly in RSL LifeCare's nursing homes, primarily through the purchase of furniture and fittings and plant and equipment to aid residential care. RSL LifeCare's investment in nursing home furniture and equipment is said to exceed the total amount of non-specified general donations each year by several million dollars. The expenditure has been recorded in RSL LifeCare's capital expense ledgers relevant to senior living services.[110]

ENDNOTES

[1] The Terms of Inquiry are in Appendix B. Each of the fundraising authorities for each of the entities during the period covered by the Terms of Inquiry is in Appendix G.
[2] Ex 4, Vol 1, p 23.
[3] Ex 4, Vol 1, p 42.
[4] Ex 4, Vol 1, p 61.
[5] Ex 4, Vol 1, p 88.
[6] Ex 4, Vol 1, p 143.1.
[7] Ex 4, Vol 1, p 144.
[8] Ex 25, Vol 3, p 944.
[9] Ex 25, Vol 1, p 57, par 223; see also Ex 4, Vol 2, pp 440, 434.
[10] This was pointed out to RSL WBI by NSW Fair Trading on 4 August 2017. See Ex 4, Vol 2, p 459.
[11] Ex 4, Vol 2, p 457.
[12] The Act, s 16(6).
[13] *Licensing and Registration (Uniform Procedures) Act* 2002, s 9(1).
[14] *Licensing and Registration (Uniform Procedures) Act* 2002, s 21(5).
[15] Ex 4, Vol 2, p 457.
[16] Ex 4, Vol 2, p 442.
[17] RSL WBI's Outline of Closing submissions, 6 November 2017, p 3, par 12.
[18] Ex 4, Vol 1, p 158.
[19] Ex 4, Vol 1, p 160.
[20] Ex 4, Vol 1, p 189.
[21] The Act, s 19(1.
[22] Ex 9, p iii.
[23] Ex 9, p 5.
[24] See for example Ex 9, pp 205 - 218.
[25] 1998 Regulation, cl 16.
[26] See for example Ex 4, Vol 1, p 89 (RSL WBI 2007); Ex 12, Vol 1, p 257 (URSF 2010).
[27] Condition 1 (to 2007).
[28] Condition 2 (to 2007) and condition 1 (from 2010).
[29] Condition 3 (to 2007) and condition 2 (from 2010).
[30] The Act, s 20(1).
[31] The Act, s 20(6).
[32] Condition 5 (from 2010).
[33] Condition 15 (to 2007) and condition 13 (from 2010).
[34] Condition 6 (to 2007) and condition 5(3) (from 2010).
[35] The Act, s 20(2).
[36] 2001 Regulation, cl 8(6); 2008 Regulation, cl 10(6); 2015 Regulation, cl 10(6).
[37] Condition 8 (to 2007) and condition 7 (from 2010).
[38] 2003 Regulation, cl 8(5); 2008 Regulation, cl 9(5); 2015 Regulation, cl 10(5).
[39] The Act, s 21.
[40] The Act, s 11.
[41] Condition 20 (to 2007) and condition 17 (from 2010).
[42] Condition 23 (to 2007) and condition 20 (from 2010).
[43] Condition 20 (from 2015).
[44] The Act, s 48.
[45] Condition 21 (to 2007) and condition 18 (from 2010).
[46] Condition 24 (to 2007) and condition 21 (from 2010).
[47] Condition 25 (to 2007) and condition 22 (from 2010).
[48] 2003 Regulation, cl 13; 2008 Regulation, cl 14; 2015 Regulation, cl 16.
[49] The Act, s 22; condition 4 (to 2007) and condition 3 (from 2010).
[50] 2003 Regulation, cl 19; 2008 Regulation, cl 10; 2015 Regulation, cl 11.
[51] Condition 9 (to 2007) and condition 8 (from 2010).
[52] Condition 10 (to 2007) and condition 9 (from 2010).
[53] The Act, s 22; condition 26 (to 2007) and condition 23 (from 2010).
[54] Condition 11 (to 2007) and condition 10 (from 2010).
[55] The Act, s 23.

[56] Condition 5 (to 2007) and condition 4 (from 2010).
[57] Condition 7 (to 2007) and condition 6(1) - (2) (from 2010).
[58] Condition 7 (to 2007) and condition 6(3) (from 2010).
[59] Condition 7 (to 2007) and condition 6(5) (from 2010).
[60] The Act, s 24(1).
[61] 2015 Regulation, cl 12.
[62] The Act, s 24(2).
[63] The Act, s 24(3).
[64] The Act, s 20(7).
[65] Ex 15, p 6.6.
[66] The Limbless Soldiers Association of NSW and the T.B. Sailors Soldiers and Airmens Association of NSW.
[67] URSF Articles of Association, Ex 12, p 3.
[68] Ex 12, p 285; cl 4 of the 1999 Deed.
[69] Ex 15, pp 10 - 14.
[70] Ex 15, pp 11, 14.
[71] Ex 15, p 20.
[72] Ex 15, p 19.
[73] Ex 15, p 11.
[74] Ex 15, p 20.
[75] Ex 15, p 20.
[76] Ex 15, pp 10, 14.
[77] Ex 15, pp 11 - 12, 14.
[78] Ex 15, p 6.7.
[79] Ex 5, pp 465 - 473, 413 - 427.
[80] Ex 15, p 6.7.
[81] Ex 16, p 28.
[82] Ex 16, pp 27 - 28.
[83] Ex 16, pp 27 - 29.
[84] Ex 16, pp 25 - 26.
[85] Ex 16, pp 28 - 29.
[86] Ex 16, p 29.
[87] Ex 16, p 29.
[88] Ex 16, p 29.
[89] Ex 5, pp 428 - 450, 474 - 486.
[90] Ex 16, p 30.
[91] Ex 16, p 30.
[92] Ex 16, pp 32 - 35.
[93] Ex 16, p 30.
[94] Ex 16, p 30.
[95] Ex 5, pp 487 - 499.
[96] Ex 2, Vol 1, p 4.
[97] Ex 2, Vol 1, pp 5 - 6.
[98] Ex 2, Vol 1, p 5.
[99] Ex 2, Vol 1, p 12.
[100] Ex 2, Vol 1, p 13.
[101] Ex 2 Vol 2, p 776.1.
[102] Ex 2 Vol 2, p 776.2.
[103] Ex 2, Vol 1, p 6; Ex 2, Vol 3, pp 878 - 879.
[104] Ex 2, Vol 1, p 8.
[105] Ex 5, pp 451 - 464; Ex 2, Vol 3, p 1229.
[106] Ex 2, Vol 1, pp 15 - 16.
[107] Ex 2, Vol 1, p 8.
[108] Ex 2, Vol 1, p 9.
[109] Ex 2, Vol 1, pp 6 - 7.
[110] Ex 2, Vol 1, p 14.

7.2 THE FINANCIAL STATEMENTS

INTRODUCTION

7.2.1 Over the period covered by the Terms of Inquiry, each of RSL NSW, RSL WBI and RSL LifeCare held a fundraising authority under the Act. Each entity was required to include in their annual financial accounts an auditor's report in relation to fundraising under section 24(2) of the Act; and certain financial information and an officer's declaration in relation to fundraising under the conditions of each of the fundraising authorities.[1]

7.2.2 Section 24(2) of the Act provides:

> The auditor must report on:
>
> (a) whether the accounts show a true and fair view of the financial result of fundraising appeals for the year to which they relate, and
>
> (b) whether the accounts and associated records have been properly kept during that year in accordance with this Act and the regulations, and
>
> (c) whether money received as a result of fundraising appeals conducted during that year has been properly accounted for and applied in accordance with this Act and the regulations, and
>
> (d) the solvency of the person or organisation.

7.2.3 The relevant condition of the fundraising authorities provides:

> (1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:
>
> (a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and
>
> (b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.
>
> (2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds [$20,000 or, in the case of an authority granted after 2009, $100,000]:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

7.2.4 Although perhaps burdensome for the reader, it is necessary in this Chapter to refer to the detail of the financial statements of each of RSL NSW, RSL WBI and RSL LifeCare during the period covered in the Terms of Inquiry: (a) to provide the context of the widespread failures of each of the organisations to comply with the Act, the Regulations and the respective fundraising authorities; and (b) to understand the analysis of the auditors' conduct referred to later in the Report.

7.2.5 What follows is the relevant detail in each of the financial statements of RSL NSW in the period 2007 to 2016 with a summary of observations drawn from that content in respect of RSL NSW. The same exercise is then performed in respect of RSL WBI and RSL LifeCare.

7.2.6 The financial reporting year of RSL NSW and RSL WBI is as at 31 December, whereas RSL LifeCare is as at 30 June.

7.2.7 The State Councillors of RSL NSW, the directors of RSL LifeCare and the auditors of both those organisations at the relevant times gave evidence that they did not understand that these organisations were fundraising. The detail extracted below includes entries in the financial statements that it has been suggested should have put those persons on notice that at the very least questions should have been asked about the source of the funds and whether the organisations were fundraising.

RSL NSW

2007

7.2.8 The 2007 Financial Statements of RSL NSW recorded a surplus of $1,926,633, net assets of $35,901,280 and accumulated funds of $24,460,454.[2] They included a list of 18 RSL sub-Branch donors to the State President's Shield, with those donations totalling $76,500.[3] There was no income statement, balance sheet or accompanying notes in respect of fundraising.

7.2.9 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 25 February 2008 provided an opinion that the 2007 Financial Statements presented fairly the organisation's financial position, results of operations and cash flows for the year and as to its solvency.[4] However, it is apparent that there was no officer's declaration in respect of fundraising.

7.2.10 There was an Independent Auditor's Report signed by Mr McLean, Partner of BDO Kendalls (NSW), dated 25 February 2008 in which was recorded an opinion that the 2007 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[5] However, there was no auditor's report in respect of fundraising.

7.2.11 The 2007 Annual Report of RSL NSW also included financial statements in respect of RSL WBI, the CCWA, the NSW RSL Youth Council, the Reginald William Coward Trust, St Mary's RSL Memorial Fund and the Anzac House Trust.[6] Each had a Statement of Trustees or Officers (as appropriate) providing an opinion that the 2007 Financial Statements presented fairly the organisation's financial position, results of operations and cash flows for the year and as to its solvency.[7]

7.2.12 Only RSL WBI had a Statement by Principal Officer (Mr Rowe) declaring the opinion that its accounts and balance sheet gave a true and fair view of the state of affairs and all income and expenditure with respect to fundraising appeals; the Act, Regulations and authority conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[8]

2008

7.2.13 The 2008 Financial Statements of RSL NSW recorded a deficit of $185,121, net assets of $34,222,629 and accumulated funds of $24,275,333.[9] The Income Statement included an amount under "Income" of $195,788 for "Donations Received"; amounts under "Expenditure" of $1,794 for "ANZAC Day" and $48,274 for "Donations";[10] and an amount for "Other Income" of $6,137 for the "Sale of ANZAC Day Appeal Badges".[11]

7.2.14 The Non Current Assets in the Balance Sheet included an item of "Other Financial Assets" the Note to which included "Sundry Trusts"[12] in the amount of $163,214. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $94,214 for the year.[13]

7.2.15 The Annual Report and Financial Statements also included a list of 23 donors to the State President's Shield, being largely sub-Branches, with those donations totalling $191,415.[14]

7.2.16 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.17 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 20 February 2009 provided an opinion that the 2008 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[15] However, there was no officer's declaration in respect of fundraising.

7.2.18 Ms Sheridan, then of BDO Kendalls Audit & Assurance (NSW-VIC) Pty Ltd, signed an Independent Auditor's Report dated 20 February 2009, in which she provided an opinion that the 2008 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[16] However, there was no auditor's report in respect of fundraising.

7.2.19 The 2008 Annual Report and Financial Statements of RSL NSW also included separate financial statements in respect of the following entities:[17]

- RSL WBI, which included a Statement of Trustees (Messrs Rowe, White and Perrin), dated 20 February 2009;[18] a Statement by Principal Officer (Mr Rowe) dated 20 February 2009;[19] and an Independent Auditor's Report dated 20 February 2009 and signed by Ms Sheridan.[20] The contents of RSL WBI's Financial Statements are addressed below.

- CCWA, which recorded "Donations from Auxiliaries" of $21,275 under "Income" and included a Statement of Officers and an Independent Auditor's Report (Ms Sheridan), both dated 20 February 2009.[21]

- The NSW RSL Youth Council, which recorded "Donations and Sundry Income" of $100 under "Income" and included a Statement of Officers (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 20 February 2009.[22]

- The St Mary's RSL Memorial Fund, which recorded "Donations Made" of $25,171 under "Expenditure" and included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 20 February 2009.[23]

- The Reginald William Coward Trust, which included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 20 February 2009.[24]

- The Anzac House Trust, which recorded "Contribution from Ex-Service Organisations" of $178,502 under "Income"[25] and included a Statement By Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 20 February 2009.[26]

7.2.20 The financial statements of those additional organisations did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.21 Each Statement of Trustees or Officers (as appropriate) of those additional organisations recorded an opinion that the 2008 Financial Statements of that organisation presented fairly its financial position, results of operations and cash flows for the year and as to its solvency.

7.2.22 Only RSL WBI had a Statement by Principal Officer, by which Mr Rowe declared the opinion that its accounts and balance sheet gave a true and fair view of the state of affairs and all income and expenditure with respect to fundraising appeals; the Act, Regulations and authority conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[27]

7.2.23 In each Independent Auditor's Report for those additional organisations, Ms Sheridan provided an opinion that the 2008 "financial report" of each organisation presented fairly its financial position, financial performance and cash flows for the year.

7.2.24 Only RSL WBI had an additional paragraph in the Independent Auditor's Report, dated 20 February 2009. Under the heading "Report on Other Legal and Regulatory Requirements", Ms Sheridan reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been properly kept

in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.[28]

2009

7.2.25 The 2009 Financial Statements of RSL NSW recorded a surplus of $1,328,699, net assets of $36,656,392 and accumulated funds of $25,604,032.[29] The Statement of Comprehensive Income included an amount for "Income" of $431,765 for "Donations Received" and amounts for "Administration Expenditure" of $11,581 for "ANZAC Day" and $26,309 for "Donations".[30] "Other income" included an amount of $2,909 for the "Sale of ANZAC Day Appeal Badges".[31]

7.2.26 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets", the Note to which included "Sundry Trusts"[32] in the amount of $156,904. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $22,237 for the year.[33] The Annual Report and Financial Statements included a list of 30 donors to the State President's Shield, being largely sub-Branches, with those donations totalling $171,860.[34]

7.2.27 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.28 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 19 February 2010 provided the opinion that the 2009 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[35] However, there was no officer's declaration in respect of fundraising.

7.2.29 Ms Sheridan, at the time of BDO Kendalls Audit & Assurance Pty Ltd, signed an Independent Auditor's Report dated 19 February 2010 providing an opinion that the 2009 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[36] However, there was no auditor's report in respect of fundraising.

7.2.30 The 2009 Annual Report and Financial Statements of RSL NSW also included financial statements in respect of the following entities:[37]

- RSL WBI, which included a Statement of Trustees (Messrs Rowe, White and Perrin), dated 19 February 2010;[38] a Statement by Principal Officer (Mr Rowe), dated 19 February 2010;[39] and an Independent Auditor's Report, dated 19 February 2010 and signed by Ms Sheridan.[40] The contents of RSL WBI's financial statements are addressed below.

- CCWA, which recorded "Donations from Auxiliaries" of $30,660 under "Income" and included a Statement of Officers and an Independent Auditor's Report (Ms Sheridan), both dated 19 February 2010.[41]

- The NSW RSL Youth Council, which recorded "Donations and Sundry Income" of $100 under "Income" and included a Statement of Officers (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 19 February 2010.[42]

- The St Mary's RSL Memorial Fund, which recorded "Donations Made" of $22,153 under "Expenditure" and included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 19 February 2010.[43]

- The Reginald William Coward Trust, which included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report, both dated 19 February 2010.[44]

- The Anzac House Trust, which recorded "Contribution from Ex-Service Organisations" of $181,048 under "Income"[45] and included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 19 February 2010.[46]

7.2.31 The financial statements of those additional organisations did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.32 Each Statement of Trustees or Officers (as appropriate) of those additional organisations provided an opinion that the 2009 Financial Statements of that organisation presented fairly its financial position, results of operations and cash flows for the year and as to its solvency.

7.2.33 Only RSL WBI had a Statement by Principal Officer, by which Mr Rowe declared the opinion that its 2009 accounts and balance sheet gave a true and fair view of the state of affairs and all income and expenditure with respect to fundraising appeals; the Act, Regulations and authority conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[47]

7.2.34 In each Independent Auditor's Report for those additional organisations, Ms Sheridan provided an opinion that the 2009 "financial report" of each organisation presented fairly its financial position, financial performance and cash flows for the year.

7.2.35 Only RSL WBI had an additional paragraph in the Independent Auditor's Report. Under the heading "Report on Other Legal and Regulatory

Requirements", Ms Sheridan reported that the 2009 "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been properly kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.[48]

2010

7.2.36 The 2010 Financial Statements of RSL NSW recorded a surplus of $2,359,691, net assets of $38,774,417 and accumulated funds of $27,963,723.[49] The Statement of Comprehensive Income included "Income" of $325,082 for "Donations Received" and $228,180 for the "RSL NSW Support and Assistance Fund", consisting of donations from various sub-Branches "to fund the increased cost of capitation fees to the National Headquarters and to provide assistance to sub-Branches".[50] "Administration Expenditure" included "ANZAC Day" of $19,169 and "Donations" of $24,640.[51] "Other income" included an amount of $2,116 for the "Sale of ANZAC Day Appeal Badges".[52]

7.2.37 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets" the Note to which included "Sundry Trusts"[53] in the amount of $1,337,836. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $233,414 for the year.[54] It also included a list of 29 donors to the State President's Shield, consisting largely of sub-Branches, with those donations totalling $149,389.97.[55]

7.2.38 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.39 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 26 February 2011 provided the opinion that the 2010 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[56] However, there was no officer's declaration in respect of fundraising.

7.2.40 Ms Sheridan, then of BDO Audit (NSW-VIC) Pty Ltd, signed an Independent Auditor's Report dated 26 February 2011, in which she provided an opinion that the 2010 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[57] However, there was no auditor's report in respect of fundraising.

7.2.41 The RSL NSW 2010 Annual Report and Financial Statements also included separate financial statements in respect to the following entities:[58]

- CCWA, which recorded "Donations from Auxiliaries" of $32,852 under "Income" and included a Statement of Officers

and an Independent Auditor's Report (Ms Sheridan), both dated 26 February 2011.[59]

- The NSW RSL Youth Council, which recorded no "Donations and Sundry Income" for the year and included a Statement of Officers (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 26 February 2011.[60]

- The St Mary's RSL Memorial Fund, which recorded "Donations Made" of $16,000 under "Expenditure" and included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 26 February 2011.[61]

- The Reginald William Coward Trust, which included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 26 February 2011.[62]

- The Anzac House Trust, which recorded "Contribution from Ex-Service Organisations" of $169,314 under "Income"[63] and included a Statement of Trustees (Messrs Rowe, White and Perrin) and an Independent Auditor's Report (Ms Sheridan), both dated 26 February 2011.[64]

7.2.42 The financial statements of those additional organisations did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.43 Each Statement of Trustees or Officers (as appropriate) of those additional organisations provided the opinion that the 2010 Financial Statements of that organisation presented fairly its financial position, results of operations and cash flows for the year and as to its solvency. However, none had an officer's declaration in respect of fundraising.

7.2.44 In each Independent Auditor's Report for those additional organisations, Ms Sheridan provided an opinion that the 2010 "financial report" of each organisation presented fairly its financial position, financial performance and cash flows for the year. However, none had an auditor's report in respect of fundraising.

2011

7.2.45 The 2011 Financial Statements of RSL NSW recorded a surplus of $1,092,080, net assets of $39,428,934 and accumulated funds of $29,055,803.[65] The Statement of Comprehensive Income included "Income" of $446,439 for "Donations Received" as well as an amount of $238,050 for the "RSL NSW Support and Assistance Fund".[66] "Administration Expenditure" included "ANZAC Day" of $90,357 and "Donations" of $37,326.[67] "Other income"

included an amount of $2,994 for the "Sale of ANZAC Day Appeal Badges".[68]

7.2.46 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets" the Note to which included "Sundry Trusts"[69] in the amount of $1,156,479. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $42,306 for the year.[70]

7.2.47 The Financial Statements not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.48 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 24 February 2012 provided the opinion that the 2011 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[71] However, there was no officer's declaration in respect of fundraising.

7.2.49 Mr Winter, then of BDO Audit (NSW-VIC) Pty Ltd, signed an Independent Auditor's Report dated 24 February 2012 in which he provided an opinion that the 2011 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[72] However, there was no auditor's report in respect of fundraising.

2012

7.2.50 The 2012 Financial Statements of RSL NSW recorded a deficit of $32,651, net assets of $38,612,593 and accumulated funds of $29,023,152.[73] The Statement of Comprehensive Income included "Income" of $512,351 for "Donations Received" and $129,450 for the "RSL NSW Support and Assistance Fund".[74] "Administration Expenditure" included "ANZAC Day" of $26,252 and "Donations" of $59,972.[75] "Other income" included an amount of $2,211 for the "Sale of ANZAC Day Appeal Badges".[76]

7.2.51 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets", the Note to which included "Sundry Trusts"[77] in the amount of $298,010. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $245,600 for the year.[78]

7.2.52 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.53 A Statement of Officers (Messrs Rowe, White and Perrin) dated 22 February 2013 provided an opinion that the 2012 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[79] However, there was no officer's declaration in respect of fundraising.

7.2.54 Ms Sheridan, by then of Grant Thornton, signed an Independent Auditor's Report dated 22 February 2013 in which she provided an opinion that the 2012 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[80] However, there was no auditor's report in respect of fundraising.

2013

7.2.55 The 2013 Financial Statements of RSL NSW recorded a surplus of $622,026, net assets of $39,702,658 and accumulated funds of $29,645,178.[81] "Income" under the Income Statement included an amount of $803,575 for "Donations Received" as well as an amount of $77,450 for the "RSL NSW Support and Assistance Fund".[82] "Donations" also appeared as an item under "Expenditure" in the amount of $61,737.[83] "Other income" included an amount of $2,813 for the "Sale of ANZAC Day Appeal Badges".[84]

7.2.56 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets", the Note to which included "Sundry Trusts"[85] in the amount of $296,676. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $518,397 for the year.[86]

7.2.57 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.58 A Statement of Officers (Mr Rowe – President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 28 February 2014 provided the opinion that the 2013 Financial Statements presented fairly RSL NSW's financial position, results of operations and cash flows for the year and as to its solvency.[87] However, there was no officer's declaration in respect of fundraising.

7.2.59 Mr Winter, of Grant Thornton, signed an Independent Auditor's Report dated 28 February 2014 in which he provided an opinion that the 2013 "financial report" of RSL NSW presented fairly its financial position, financial performance and cash flows for the year.[88] However, there was no auditor's report in respect of fundraising.

2014

7.2.60 The 2014 Financial Statements of RSL NSW recorded a surplus of $3,289,222, net assets of $42,571,610 and accumulated funds of $32,934,400.[89] The Statement of Comprehensive Income included "Income" of $1,043,719 for "Donations Received" and $148,526 for the "RSL NSW Support and Assistance Fund".[90] "Administration Expenditure" included "ANZAC Day" of $37,217 and "Donations" of $82,355.[91] "Other income" included an amount of $1,633 for the "Sale of ANZAC Day Appeal Badges".[92]

7.2.61 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets" the Note to which included "Sundry Trusts"[93] in the amount of $334,076. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $400,496 for the year.[94]

7.2.62 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.63 A Responsible Entities' Declaration (Mr Stephenson – Acting President, Mr White – Honorary Treasurer and Mr Perrin – Secretary) dated 27 February 2015 declared the opinion that the 2014 Financial Statements were in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL NSW and complying with the Australian Accounting Standards and the *Australian Charities and Not-for-Profits Commission Regulation* 2013 (ACNC Regulation))[95] and as to RSL NSW's solvency.[96] However, there was no officer's declaration in respect of fundraising.

7.2.64 On 27 February 2015 Ms Sheridan of Grant Thornton signed an Auditor's Independence Declaration;[97] and an Independent Auditor's Report[98] in which she provided an opinion that the 2014 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL NSW and complying with the Australian Accounting Standards and the ACNC Regulation). However, there was no auditor's report in respect of fundraising.

2015

7.2.65 The 2015 Financial Statements of RSL NSW recorded a surplus of $1,245,308, net assets of $48,236,752 and accumulated funds of $34,179,708.[99] The Statement of Comprehensive Income included "Income" of $834,677 for "Donations Received" as well as an amount of $88,300 for the "RSL NSW Support and Assistance Fund".[100] "Administration Expenditure" included "ANZAC Day" of $45,529 and "Donations" of $71,523.[101] "Other income" included an amount of $10,692 for the "Sale of ANZAC Day Appeal Badges".[102]

7.2.66 The Non Current Assets in the Statement of Financial Position included an item of "Other Financial Assets" the Note to which included "Sundry Trusts"[103] in the amount of $415,181. A table in the Notes to the Financial Statements showing the movement in those Sundry Trusts recorded donations, interest and funds received of $332,543 for the year.[104]

7.2.67 The financial statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.68 A Responsible Entities' Declaration (Mr White – President, Mr Hardman – Honorary Treasurer and Mr Kolomeitz – Secretary) dated 26 February 2016 declared the opinion that the 2015 Financial Statements were in accordance with the ACNC Act (including giving a true and fair view of

the financial position and performance of RSL NSW and complying with the Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation) and as to RSL NSW's solvency.[105] However, there was no officer's declaration in respect of fundraising.

7.2.69 On 26 February 2016 Ms Sheridan of Grant Thornton signed an Auditor's Independence Declaration;[106] and an Independent Auditor's Report[107] in which she provided an opinion that the 2015 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL NSW and complying with the Australian Accounting Standards and the ACNC Regulation). However, there was no auditor's report in respect of fundraising.

2016

7.2.70 The 2016 Financial Statements of RSL NSW were not available at the time this Report was prepared.

RSL NSW SUMMARY

7.2.71 It appears that from 2010, the Annual Reports of RSL NSW no longer included separate financial statements for RSL WBI, the St Mary's RSL Memorial Fund, the Reginald William Coward Trust, the Anzac House Trust, CCWA or the NSW RSL Youth Council.

7.2.72 Each year, RSL NSW's financial statements recorded income and expenditure relating to donations and to ANZAC day; and income from sub-Branches (and others) for the State President's Shield and the Support and Assistance Fund.

7.2.73 None of the financial statements of RSL NSW included an income statement or balance sheet (or accompanying notes) in respect of fundraising.

7.2.74 An Officer's Statement or a Responsible Entities' Declaration was provided each year verifying the finanicial statements of RSL NSW and confirming its solvency. However, no officer's declaration was ever provided in respect of fundraising.

7.2.75 Ms Sheridan was the auditor for RSL NSW over the relevant period other than in the years 2011 and 2013 when Mr Winter from the same firm conducted the audit whilst Ms Sheridan was on maternity leave. Each year Ms Sheridan (or Mr Winter) provided an opinion verifying the preparation of the financial statements. However, no auditor's report was ever prepared in respect of fundraising.

RSL WBI

2007

7.2.76 The 2007 Financial Statements of RSL WBI recorded a surplus of $457,674 and net assets of $6,648,645 as at 31 December.[108] The 2008 Income Statement included figures for 2007 as follows: "Income" including "Donations", consisting of CCWA ($271,466); sub-Branches ($201,010); Clubs ($5,500); Anzac Day ($180,000); Poppy Day ($150,000) and Sundry Donations ($6,711).[109] They recorded that $120,033 had been deducted for "Amounts to Outside Charities", being $33,180 to the CCWA and $86,853 to RSL LifeCare.[110] The Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $861,685.[111]

7.2.77 The Financial Statements contained did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.78 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 25 February 2008 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2007 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[112]

7.2.79 A Principal Officer's Statement by Mr Rowe dated 25 February 2008 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[113]

7.2.80 Although WBI's complete Financial Statements for 2007 have not been provided to the Inquiry, it is likely that there was also an Independent Auditor's Report confirming that the Financial Statements fairly represented the financial positition and in respect of fundraising.

2008

7.2.81 The 2008 Financial Statements of RSL WBI recorded a deficit of $253,547 and net assets of $6,028,954.[114] The Income Statement included as "Income" the following amounts for "Donations": CCWA ($256,676); sub-Branches ($202,260); Clubs ($2,000); Anzac Day ($200,000); Poppy Day ($50,000) and Sundry Donations ($25,254).[115] The sum of $105,131 is recorded as having been deducted for "Amounts to Outside Charities", being $18,150 to the CCWA and $86,981 to RSL LifeCare.[116] Further, the Statement of Cash Flows includes "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $822,720.[117]

7.2.82 Note 17 to the 2008 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[118]

7.2.83 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 20 February 2009 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2008 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[119]

7.2.84 A Principal Officer's Statement by Mr Rowe dated 20 February 2009 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[120]

7.2.85 Ms Sheridan, then of BDO Kendalls Audit & Assurance (NSW-VIC) Pty Ltd, signed an Independent Auditor's Report dated 20 February 2009 in which she provided an opinion that the 2008 "financial report" of RSL WBI presented fairly its financial position, financial performance and cash flows for the year.[121]

7.2.86 In that Report under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2009

7.2.87 The 2009 Financial Statements of RSL WBI recorded a surplus of $395,712, net assets of $6,872,050 and accumulated funds of $6,396,385.[122] The Statement of Comprehensive Income included as "Income": "Donations" from CCWA ($241,044), sub-Branches ($200,134), Clubs ($2,696), Anzac Day ($130,000), Poppy Day ($220,000) and Sundry Donations ($1,915).[123] They recorded that $99,752 had been deducted for "Amounts to Outside Charities", being $23,660 to the CCWA and $76,092 to RSL LifeCare.[124] The Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $868,079.[125]

7.2.88 Note 19 to the 2009 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[126]

7.2.89 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 19 February 2010 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2009 Financial Statements

presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[127]

7.2.90 A Principal Officer's Statement by Mr Rowe dated 19 February 2010 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[128]

7.2.91 Ms Sheridan, then of BDO Audit (NSW–VIC) Pty Ltd, signed an Independent Auditor's Report dated 19 February 2010 which recorded the opinion that the 2009 "financial report" of RSL WBI presented fairly its financial position, financial performance and cash flows for the year.[129] Under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2010

7.2.92 The 2010 Financial Statements of RSL WBI recorded a surplus of $366,141, net assets of $7,256,430 and accumulated funds of $6,762,526.[130] The Statement of Comprehensive Income included as "Income" amounts for "Donations" from CCWA ($248,035), sub-Branches ($233,955), Clubs ($2,000), Anzac Day ($155,000), Poppy Day ($100,000) and Sundry Donations ($11,583).[131] It recorded that $101,898 had been deducted for "Amounts to Outside Charities", being $30,350 to CCWA and $71,548 to RSL LifeCare.[132] Further, the Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $842,359.[133]

7.2.93 Note 19 to the 2010 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[134]

7.2.94 In RSL NSW's 2010 Annual Report and Financial Statements, a document entitled "RSL WBI Financial Results 2010 – Statement of Comprehensive Income" lists "donations" as an item under the heading "What We Received" with an amount of $748,675.[135]

7.2.95 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 26 February 2011 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2010 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[136]

7.2.96 A Principal Officer's Statement by Mr Rowe dated 26 February 2011 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[137]

7.2.97 Ms Sheridan, then of BDO Kendalls (NSW-VIC) Pty Ltd, signed an Independent Auditor's Report dated 26 February 2011 in which she provided an opinion that the 2010 "financial report" of RSL WBI presented fairly its financial position, financial performance and cash flows for the year.[138] In that Report under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2011

7.2.98 The 2011 Financial Statements of RSL WBI recorded a surplus of $372,536, net assets of $7,419,736 and accumulated funds of $7,135,062.[139] The Statement of Comprehensive Income included as "Income" "Donations" from CCWA ($281,417), sub-Branches ($239,639),[140] Clubs ($2,000), Anzac Day ($275,000), Poppy Day ($230,000) and Sundry Donations ($8,771).[141] $123,746 is recorded as having been deducted for "Amounts to Outside Charities", being $26,840 to the CCWA and $96,906 to RSL LifeCare.[142] Further, the Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $1,119,252.[143]

7.2.99 Note 19 to the 2011 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[144]

7.2.100 RSL WBI's 2011 Annual Report included a "Financial Report 2011 – Statement of Comprehensive Income" which listed "donations" as an item under the heading "What We Received" with an amount of $1,013,081.[145]

7.2.101 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 23 February 2012 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2011 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[146]

7.2.102 A Principal Officer's Statement by Mr Rowe dated 23 February 2012 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of

affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[147]

7.2.103 Mr Winter, then of BDO Audit (NSW–VIC) Pty Ltd, signed an Independent Auditor's Report dated 23 February 2012 in which he provided an opinion that the 2011 "financial report" of RSL WBI presented fairly its financial position, financial performance and cash flows for the year.[148] In that Report. Under the heading "Report on Other Legal and Regulatory Requirements" Mr Winter reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2012

7.2.104 The 2012 Financial Statements of RSL WBI recorded a deficit of $354,677, net assets of $7,229,545 and accumulated funds of $6,780,385.[149] The Statement of Comprehensive Income included as "Income "Donations" from CCWA ($288,302), sub-Branches ($254,356),[150] Clubs ($2,000), Anzac Day ($200,000), Poppy Day ($100,000) and Sundry Donations ($34,154).[151] It recorded that $116,140 had been deducted for "Amounts to Outside Charities", being $28,160 to the CCWA and $87,980 to RSL LifeCare.[152] The Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $1,016,475.[153]

7.2.105 Note 19 to the 2012 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[154]

7.2.106 RSL WBI's 2012 Annual Report included a "Financial Report 2012 – Statement of Comprehensive Income" which listed "donations" as an item under the heading "What We Received" with an amount of $887,672.[155]

7.2.107 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 21 February 2013 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2012 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[156]

7.2.108 A Principal Officer's Statement by Mr Rowe dated 21 February 2013 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[157]

7.2.109 Ms Sheridan of Grant Thornton signed an Independent Auditor's Report dated 21 February 2013 in which she provided an opinion that the 2012 "financial report" of WBI presented fairly its financial position, financial performance and cash flows for the year.[158] In that Report under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2013

7.2.110 The 2013 Financial Statements of RSL WBI recorded a deficit of $1,322,823, net assets of $6,186,001 and accumulated funds of $5,457,562.[159] The Statement of Comprehensive Income included as "Income" "Donations" from CCWA ($293,975), sub-Branches ($516,979),[160] Clubs ($6,600), Anzac Day ($250,000), Poppy Day ($100,000) and Sundry Donations ($56,894).[161] It recorded that $152,179 had been deducted for "Amounts to Outside Charities", being $39,980 to the CCWA and $112,199 to RSL LifeCare.[162] Further, the Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $1,386,460.[163]

7.2.111 Note 18 to the 2013 Financial Statements recorded: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."[164]

7.2.112 RSL WBI's 2013 Annual Report included a "Financial Report – Statement of Comprehensive Income" which listed "donations" as an item under the heading "What We Received" with an amount of $1,222,269.[165]

7.2.113 A Statement of Trustees (Messrs Rowe, White and Perrin) dated 27 February 2014 recorded the opinion that the affairs of RSL WBI had been administered in accordance with its rules; the 2013 Financial Statements presented fairly RSL WBI's financial position, results of operations and cash flows for the year; and as to its solvency.[166]

7.2.114 A Principal Officer's Statement by Mr Rowe dated 27 February 2014 declared the opinion that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[167]

7.2.115 Mr Winter, of Grant Thornton, signed an Independent Auditor's Report dated 28 February 2014 in which he provided an opinion that the 2013 "financial report" of RSL WBI presented fairly its financial position, financial performance and cash flows for the year.[168] In that Report under

the heading "Report on Other Legal and Regulatory Requirements" Mr Winter reported that the "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2014

7.2.116 The 2014 Financial Statements of RSL WBI recorded a deficit of $35,483, net assets of $6,181,410 and accumulated funds of $5,370,928.[169] The Statement of Comprehensive Income included as "Income" "Donations" from CCWA ($339,393), sub-Branches ($576,976),[170] Clubs ($21,462), Anzac Day ($100,000), Poppy Day ($100,000), Corporate Sponsorship and Donations ($22,355) and Sundry Donations ($87,142).[171] It recorded that $141,452 had been deducted for "Amounts to Outside Charities", being $46,645 to the CCWA and $94,807 to RSL LifeCare.[172] There was also "Other Income" of $108,846 for RSL Appeals NSW Surplus.[173] The Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $1,427,015.[174]

7.2.117 Note 20 to the 2014 Financial Statements recorded: "One fundraising appeal was held during the year - Poppy Day." There then followed a Statement Showing How Funds Received Were Applied For Charitable Purposes and Comparisons of Certain Monetary Figures and Percentages. It was recorded that URSF received income from: fundraising appeals ($718,557), investment of appeal monies ($15), donations ($49,437) and other ($391). It recorded that of those monies "received", $810,880 was "distributed" to sub-Branches and Women's Auxiliaries for local welfare work and $100,000 went to the RSL WBI Fund. The direct costs of the fundraising appeals were recorded as $76,979 and Administration Costs were rercorded as $171,695. A table of statistics in relation to fundraising monies was also set out. For example, the total cost of fundraising was around 10% of the total gross (fundraising) income.[175]

7.2.118 The Financial Statements of RSL WBI included a Statement of Comprehensive Income of "RSL Appeals NSW", which recorded the total income from the Poppy Day Appeal, donations, interest and sundries ($768,400) and the total expenditure ($248,674), from which $304,191 was distributed to "Sub-Branches, Women's Auxiliaries etc." and $106,689 was distributed to "Donations", yielding a surplus of $108,846.[176]

7.2.119 RSL WBI's 2014 Annual Report included a "Financial Report – Statement of Comprehensive Income" recording "donations" as an item under the heading "What We Received" with an amount of $1,255,876.[177]

7.2.120 A Responsible Entities' Declaration (Messrs White and Perrin) dated 27 February 2015 recorded the opinion that the 2014 Financial Statements

had been prepared in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL WBI and complying with the Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation) and as to RSL WBI's solvency.[178]

7.2.121 A Principal Officer's Statement by Mr White dated 27 February 2015 declared that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[179]

7.2.122 On 27 February 2015, Ms Sheridan of Grant Thornton signed an Auditor's Independence Declaration in accordance with the ACNC Act;[180] and an Independent Auditor's Report, providing an opinion that RSL WBI's 2014 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL WBI and complying with the Australian Accounting Standards and the ACNC Regulation).[181] In that Report under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the 2014 "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2015

7.2.123 The 2015 Financial Statements of RSL WBI recorded a surplus of $210,194, net assets of $6,237,870 and accumulated funds of $5,528,802.[182] The Statement of Comprehensive Income included as "Income" "Donations" from CCWA ($348,551),[183] sub-Branches ($558,858), District Councils ($500), Clubs ($146,653), Anzac Day ($450,000), Poppy Day ($200,000), Corporate Sponsorship and Donations ($69,200) and Sundry Donations ($95,058).[184] $175,043 is recorded as having been deducted for "Amounts to Outside Charities", being $53,273 to the CCWA and $121,770 to RSL LifeCare.[185] There was also "Other Income" of $309,519 for RSL Appeals NSW Surplus.[186] The Statement of Cash Flows included "Cash Flows from Operating Activities" under which an item for "Receipts from Donations" recorded $2,520,206 and from "Appeal Income" an amount of $2,448,096 was recorded.[187]

7.2.124 Note 17 to the 2015 Financial Statements recorded: "Two fundraising appeal [sic] was held during the year – ANZAC Day and Poppy Day." There then followed a "Statement Showing How Funds Received Were Applied For Charitable Purposes" and "Comparisons of Certain Monetary Figures and Percentages".[188] This Statememt recorded that RSL Appeals NSW "received" income from: fundraising appeals ($2,494,052), investment of appeal monies ($92), donations ($479,736) and other ($22,663). Of those

monies received, it was recorded that $1,014,016 was "distributed" to sub-Branches and Women's Auxiliaries for local welfare work; $650,000 to the RSL WBI; $20,000 to the RSL Adaptive Sports Fund; $55,000 to the RSL Australian Forces Overseas Fund (NSW); $125,000 to the Defence Deployment Fund; and $100,185 to RSL NSW. The direct costs of the fundraising appeals were recorded as $332,343 and Administration Costs were recorded as $390,480. A table of statistics in relation to fundraising monies was also included. For example, the total cost of fundraising was around 13% of the total gross (fundraising) income.

7.2.125 The Financial Statements of RSL WBI included a Statement of Comprehensive Income of "RSL Appeals NSW", which recorded the total income from the Poppy Day Appeal, ANZAC Day Appeal, Poppy Shop, donations, interest and sundries ($2,996,543) and the total expenditure ($722,823), from which $1,014,016 was distributed to "Sub-Branches, Women's Auxiliaries etc." and $950,185 was distributed to "Donations", yielding a surplus of $309,519.[189]

7.2.126 RSL WBI's 2015 Annual Report included a "Financial Report 2015 – Statement of Comprehensive Income" recorded "donations" as an item under the heading "What We Received" with an amount of $1,950,850.[190]

7.2.127 A Responsible Entities' Declaration (Messrs White, Hardman and Kolomeitz) dated 24 February 2016 recorded the opinion that the 2015 Financial Statements had been prepared in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL WBI and complying with the Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation) and as to RSL WBI's solvency.[191]

7.2.128 A Principal Officer's Statement by Mr White dated 24 February 2016 declared that the "accounts" and balance sheet of RSL WBI gave a true and fair view of all income and expenditure and the state of affairs with respect to fundraising appeals; the Act, Regulations and conditions had been complied with; and RSL WBI's internal controls were appropriate and effective in accounting for all income received.[192]

7.2.129 On 24 February 2016, Ms Sheridan of Grant Thornton signed an Auditor's Independence Declaration in accordance with the ACNC Act 2012;[193] and an Independent Auditor's Report, providing an opinion that RSL WBI's 2015 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL NSW and complying with the Australian Accounting Standards and the ACNC Regulation).[194] In that Report under the heading "Report on Other Legal and Regulatory Requirements" Ms Sheridan reported that the 2015 "financial report" of RSL WBI showed a true and fair view of the financial results of fundraising appeals; RSL WBI's records had been kept in accordance with the Act and the Regulations; moneys from RSL WBI's fundraising had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL WBI's solvency.

2016

7.2.130 The 2016 Financial Statements of RSL WBI were not available at the time of this Report was prepared.

RSL WBI SUMMARY

7.2.131 Each year, RSL WBI's financial statements recorded income and expenditure relating to donations of various types.

7.2.132 Up to 2014, none of the financial statements of RSL WBI contained an income statement or a balance sheet (or accompanying notes) in respect of fundraising; and each included a statement: "During the year and the previous year the Institution did not engage in any fundraising appeals or activities."

7.2.133 Each year from 2014 the financial statements included a Statement of Comprehensive Income for RSL Appeals NSW and accompanying notes in respect of the proceeds of fundraising. The financial statements did not include, as required by the relevant condition of RSL LifeCare's authority, an income statement in respect of each fundraising appeal and a balance sheet in respect of the conduct of all fundraising appeals; and the notes did not extend to all of the matters specified in the relevant condition.

7.2.134 Each year, the financial statements included an auditor's report in respect of fundraising and an officer's declaration in respect of fundraising, although the correctness of those will need to be considered in the light of the absence of the requisite income statements and balance sheet in respect of fundraising and the note (until 2014) as to the absence of fundraising.

RSL LIFECARE

2007

7.2.135 The 2007 RSL LifeCare Financial Statements recorded a net profit of $18,874,473 and net assets of $175,745,733.[195] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $759,247.[196] The same item and amount appeared in the Cash Flow Statement under the heading "Operating Activities".[197] Note 2(b) to the Financial Statements, setting out the 'significant accounting policies', recorded that "Grants and donations are included in the Income Statement as revenue."[198]

7.2.136 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.137 Mr White, as Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 18 September 2007 declaring that the 2007 Financial Statements were in accordance with the *Corporations Act* 2001 (Cth) (Corporations Act), gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards and the *Corporations Regulations* 2001 (Cth) (Corporations Regulations) and as to its solvency.[199] However, there was no officer's declaration in respect of fundraising.

7.2.138 On 18 September 2007 Mr McLean of BDO Kendalls signed a Declaration of Independence;[200] and an Independent Auditor's Report providing an opinion that RSL LifeCare's 2007 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[201] However, there was no auditor's report in respect of fundraising.

2008

7.2.139 The 2008 RSL LifeCare Financial Statements recorded a net profit of $24,630,309 and net assets of $200,376,042.[202] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $482,474.[203] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[204] Note 2(d) to the Financial Statements, setting out the 'significant accounting policies', recorded that "Grants and donations are included in the Income Statement as revenue."[205]

7.2.140 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.141 Mr Riddington, as Deputy Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 24 September 2008 declaring that the 2008 Financial Statements were in accordance with the Corporations Act, gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards and the Corporations Regulations and as to its solvency.[206] However, there was no officer's declaration in respect of fundraising.

7.2.142 On 24 September 2008 Mr McLean, of BDO Kendalls (NSW), signed a Declaration of Independence;[207] and an Independent Auditor's Report providing an opinion that RSL LifeCare's 2008 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Act).[208] However, there was no auditor's report in respect of fundraising.

2009

7.2.143 The 2009 RSL LifeCare Financial Statements recorded a net profit of $11,661,930 and net assets of $200,376,042.[209] The Income Statement included

the heading "Revenue", the Note to which recorded an amount for "Donations" of $297,965.[210] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[211] Note 2(d) to the Financial Statements, setting out the 'significant accounting policies', recorded that "Grants and donations are included in the Income Statement as revenue."[212]

7.2.144 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.145 Mr White, as Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 18 September 2009 declaring that the 2009 Financial Statements were in accordance with the Corporations Act, gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards and the Corporations Regulations and as to its solvency.[213] However, there was no officer's declaration in respect of fundraising.

7.2.146 On 18 September 2009, Mr McLean, of BDO Kendalls (NSW), signed a Declaration of Independence;[214] and an Independent Auditor's Report providing an opinion that RSL LifeCare's 2009 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[215] However, there was no auditor's report in respect of fundraising.

2010

7.2.147 The 2010 RSL LifeCare Financial Statements recorded a net profit of $13,817,473 and net assets of $225,855,445.[216] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $371,299.[217] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[218] Note 2(d) to the Financial Statements, setting out the 'significant accounting policies', recorded that "Grants and donations are included in the Statement of Comprehensive Income as revenue."[219]

7.2.148 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.149 Mr Kells, as Treasurer of the Board of RSL LifeCare, signed a Director's Declaration on 24 September 2010 declaring that the 2010 Financial Statements were in accordance with the Corporations Act, gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards and the Corporations Regulations and as to its solvency.[220] However, there was no officer's declaration in respect of fundraising.

7.2.150 On 24 September 2010 Mr McLean, of BDO Audit (NSW-VIC) Pty Ltd, signed a Declaration of Independence on 24 September 2010;[221] and an Independent Auditor's Report on 24 September 2010 providing an

opinion that RSL LifeCare's 2010 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[222] However, there was no auditor's report in respect of fundraising.

2011

7.2.151 The 2011 RSL LifeCare Financial Statements recorded a net profit of $18,139,260 and net assets of $225,855,445.[223] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $295,104.[224] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[225] Note 2(d) to the Financial Statements, setting out the 'significant accounting policies', recorded that "Grants and donations are included in the Statement of Comprehensive Income as revenue when received."[226]

7.2.152 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.153 Mr White, as Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 22 September 2011 declaring that the 2011 Financial Statements were in accordance with the Corporations Act, gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards and the Corporations Regulations and as to RSL LifeCare's solvency.[227] However, there was no officer's declaration in respect of fundraising.

7.2.154 On 24 September 2010 Mr Winter, of BDO Audit (NSW-VIC) Pty Ltd, signed a Declaration of Independence;[228] and an Independent Auditor's Report providing an opinion that RSL LifeCare's 2011 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[229] However, there was no auditor's report in respect of fundraising.

2012

7.2.155 The 2012 RSL LifeCare Financial Statements recorded a net profit of $21,423,266 and net assets of $265,417,971.[230] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $335,028.[231] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[232] Note 2(d) to the Financial Statements, setting out the 'significant accounting policies' relating to "Revenue", recorded the following: [233]

> Donations – The timing of the recognition of contributions from donations is determined when control of these contributions or right to receive these contributions is obtained, generally upon receipt of those funds.

7.2.156 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.157 Mr White, as Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 4 September 2012 declaring that the 2012 Financial Statements gave a true and fair view of the financial position and performance of RSL LifeCare, were in compliance with the Accounting Standards, Corporations Act and Corporations Regulations and as to its solvency.[234] However, there was no officer's declaration in respect of fundraising.

7.2.158 On 4 September 2012, Mr Winter, of Grant Thornton, signed an Auditor's Independence Declaration;[235] and an Independent Auditor's Report on 4 September 2012 providing an opinion that RSL LifeCare's 2012 "financial report" was in accordance with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[236] However, there was no auditor's report in respect of fundraising.

2013

7.2.159 The 2013 RSL LifeCare Financial Statements recorded a net profit of $17,633,459 and net assets of $283,081,430.[237] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $294,732.[238] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[239]

7.2.160 Note 2(d) to the Statements recorded the 'significant accounting policies' relating to "Revenue", including the following: [240]

> Donations – The timing of the recognition of contributions from donations is determined when control of these contributions or right to receive these contributions is obtained, generally upon receipt of those funds.

7.2.161 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.162 Mr White, as Chairman of the Board of RSL LifeCare, signed a Director's Declaration on 12 September 2013 recording the opinion that the 2013 Financial Statements were in accordance with the Corporations Act (including giving a true and fair view of the financial position and performance of RSL LifeCare and complying with the Australian Accounting Standards – Reduced Disclosure Requirements and the Corporations Regulations) and as to its solvency.[241] However, there was no officer's declaration in respect of fundraising.

7.2.163 On 12 September 2013, Mr Winter of Grant Thornton signed a Declaration of Inpendence;[242] and an Independent Auditor's Report, providing an opinion that RSL LifeCare's 2013 "financial report" was in accordance

with the Corporations Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards and the Corporations Regulations).[243] However, there was no auditor's report in respect of fundraising.

2014

7.2.164 The 2014 RSL LifeCare Financial Statements recorded a net profit of $36,628,280 and net assets of $319,709,710.[244] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $289,801.[245] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[246]

7.2.165 Note 2(d) to the Statements, recorded the 'significant accounting policies' relating to "Revenue", including the following: [247]

> Donations – The timing of the recognition of contributions from donations is determined when control of these contributions or right to receive these contributions is obtained, generally upon receipt of those funds.

7.2.166 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.167 Mr White signed a Responsible Entities' Declaration on 16 October 2014 recording the opinion that the 2014 Financial Statements were in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL LifeCare and complying with the Australian Accounting Standards and the ACNC Regulation) and as to RSL LifeCare's solvency.[248] However, there was no officer's declaration in respect of fundraising.

7.2.168 On 16 October 2014, Mr Winter signed an Auditor's Independence Declaration;[249] and an Independent Auditor's Report providing an opinion that the 2014 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation).[250] However, there was no auditor's report in respect of fundraising.

2015

7.2.169 RSL LifeCare's 2015 Financial Statements recorded a net profit of $42,455,153 and net assets of $362,164,863.251 The Income Statement included the heading "Revenue" the Note to which records an amount for "Donations" of $457,112.252 The same item and amount appears in the Cash Flow Statement, under the heading "Operating Activities".[253]

7.2.170 Note 2(d) to the Statements, recorded the 'significant accounting policies' relating to "Revenue", including the following: [254]

> Donations – The timing of the recognition of contributions from donations is determined when control of these contributions or right to receive these contributions is obtained, generally upon receipt of those funds."

7.2.171 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.172 Mr Riddington signed a Responsible Entities' Declaration on 17 September 2015 recording the opinion that the 2015 Financial Statements were in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL LifeCare and complying with the Australian Accounting Standards and the ACNC Regulation) and as to RSL LifeCare's solvency.[255] However, there was no officer's declaration in respect of fundraising.

7.2.173 On 17 September 2015, Mr Winter of Grant Thornton, signed an Auditor's Independence Declaration;[256] and an Independent Auditor's Report providing an opinion that the 2015 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation).[257] However, there was no auditor's report in respect of fundraising.

2016

7.2.174 The 2016 RSL LifeCare Financial Statements recorded a net profit of $41,226,001 ($42,799,665) and net assets of $385,442,938 ($404,964,528).[258] The Income Statement included the heading "Revenue", the Note to which recorded an amount for "Donations" of $1,083,877 ($1,088,024).[259] The same item and amount appeared in the Cash Flow Statement, under the heading "Operating Activities".[260]

7.2.175 Note 2(d) to the Statements, recorded the 'significant accounting policies' relating to "Revenue", including the following: [261]

> Donations – The timing of the recognition of contributions from donations is determined when control of these contributions or right to receive these contributions is obtained, generally upon receipt of those funds.

7.2.176 The Financial Statements did not include an income statement nor balance sheet (nor accompanying notes) in respect of fundraising.

7.2.177 Mr Riddington signed a Responsible Entities' Declaration on 15 September 2016 recording the opinion that the 2016 Financial Statements were in accordance with the ACNC Act (including giving a true and fair view of the financial position and performance of RSL LifeCare and complying with the Australian Accounting Standards and the ACNC Regulation) and as to RSL LifeCare's solvency.[262] However, there was no officer's declaration in respect of fundraising.

7.2.178 On 15 September 2016, Mr Winter of Grant Thornton, signed an Auditor's Independence Declaration;[263] and an Independent Auditor's Report providing an opinion that the 2016 "financial report" was in accordance with the ACNC Act (including giving a true and fair view of its financial position and performance and complying with Australian Accounting Standards – Reduced Disclosure Requirements and the ACNC Regulation).[264] However, there was no auditor's report in respect of fundraising.

RSL LIFECARE SUMMARY AND SPECIAL PURPOSE REPORTS

7.2.179 Each year, RSL LifeCare's financial statements recorded income from donations.

7.2.180 None of the financial statements of RSL NSW included an income statement or a balance sheet (or accompanying notes) in respect of fundraising.

7.2.181 An Officer's Statement or a Responsible Entities' Declaration was provided each year verifying the finanicial statements of RSL LifeCare and confirming its solvency. However, an officer's declaration was never provided in respect of fundraising.

7.2.182 Mr Winter was the auditor for RSL LifeCare over much of the relevant period. Each year he provided an opinion verifying the preparation of the financial statements. However, at no stage was an auditor's report prepared in respect of fundraising.

7.2.183 In the events that led up to this Inquiry, RSL LifeCare identified that there were deficiencies in its financial statements since it had a fundraising authority and had in fact been fundraising. Accordingly Special Purpose Financial Statements were prepared for the years ending 30 June 2014,[265] 2015[266] and 2016.[267]

7.2.184 These recorded "Fundraising Revenue", broken down into donations for specific goods or services, donations for specific goods or services at specific facilities and general donations not directed to specific facilities or services; and "Application of Fundraising Income", broken down into each of those three categories.

7.2.185 Those Special Purpose Finance Statements recorded income and expenditure in 2014 of $289,801; income of $763,079 and expenditure of $457,112 in 2015, yielding a surplus of $305,967; and income of $1,131,906 and expenditure of $1,088,024 in 2016, yielding a surplus of $43,882.

7.2.186 Mr Condon signed a Declaration by the Board dated 25 August 2017 in respect of each of the three years,[268] in which he declared his opinion that the Special Purpose Statement of Income and Expenditure of Fundraising presented a true and fair view of the financial result of fundraising

appeals for that year; the Statement of Financial Position gave a true and fair view of the state of affairs, including with respect to fundraising, for that period; RSL LifeCare had complied with the Act, the Regulations and the conditions of its authority; and RSL LifeCare's internal controls were appropriate and effective in accounting for all income received.

7.2.187 On 25 August 2017 Mr Winter signed an Independent Auditor's Report in respect of each of the three years,[269] by which he provided an opinion that the Special Purpose Income and Expenditure Report of Fundraising presented a true and fair view of the financial result of fundraising appeals for that year; the Report and associated records had been kept in accordance with the Act and the Regulations; money received as a result of fundraising appeals had been properly accounted for and applied in accordance with the Act and the Regulations; and as to RSL LifeCare's solvency.

7.2.188 However, the Special Purpose Financial Statements did not include, as required by the relevant condition of RSL LifeCare's authority, an income statement in respect of each fundraising appeal, a balance sheet in respect of the conduct of all fundraising appeals and the accompanying notes; and the officer's declaration in respect of those income statements and that balance sheet.

ENDNOTES

[1] See for example Ex 4, Vol 1, p 45, cl 6(3).
[2] Ex 20, Vol 1, p 3.
[3] Ex 20, Vol 1, p 5.
[4] Ex 20, Vol 1, p 10 (although only an unsigned version was provided to the Inquiry).
[5] Ex 4, Vol 1, pp 204 - 205.
[6] Ex 20, Vol 1, p 4.
[7] Ex 20, Vol 1, pp 11, 13 - 17.
[8] Ex 20, Vol 1, p 12.
[9] Ex 20, Vol 1, pp 23 - 27.
[10] Ex 20, Vol 1, p 24. The corresponding amounts shown in the 2008 Income Statement for the previous (2007) year are $106,615 under Income and $45,754 under Expenditure.
[11] Ex 20, Vol 1, p 25.
[12] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the F.S. Maher Scholarship, the Naval Beer Issue, Day Clubs, Cadet of the Year, and the Sir William Yeo Scholarship (Ex 20, Vol 1, p 36).
[13] Ex 20, Vol 1, pp 23, 36 - 37, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[14] Ex 20, Vol 1, p 118.
[15] Ex 20, Vol 1, p 22.
[16] Ex 20, Vol 1, p 46.
[17] Ex 20, Vol 1, p 21.
[18] Ex 20, Vol 1, p 48.
[19] Ex 20, Vol 1, p 49.
[20] Ex 20, Vol 1, p 68.
[21] Ex 20, Vol 1, pp 70 - 77. The corresponding amount recorded for 2007 under the 2008 Income Statement was $28,180.
[22] Ex 20, Vol 1, pp 78 - 86. There was no corresponding amount recorded for 2007 in the 2008 Income Statement.
[23] Ex 20, Vol 1, pp 87 - 93. The corresponding amount recorded for 2007 in the 2008 Income Statement was $3,954.
[24] Ex 20, Vol 1, pp 94 - 99.
[25] Ex 20, Vol 1, p 102. An identical amount was recorded for 2007 in the 2008 Income Statement.
[26] Ex 20, Vol 1, pp 100 - 117.
[27] Ex 20, Vol 1, p 49.
[28] Ex 20, Vol 1, pp 68 - 69.
[29] Ex 20, Vol 1, p 125.
[30] Ex 20, Vol 1, pp 128 - 132.
[31] Ex 20, Vol 1, p 130.
[32] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the F.S. Maher Scholarship, the Naval Beer Issue, Day Clubs, Cadet of the Year, and the Sir William Yeo Scholarship (Ex 20, Vol 1, p 141).
[33] Ex 20, Vol 1, pp 128, 141 - 142, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[34] Ex 20, Vol 1, p 224.
[35] Ex 20, Vol 1, p 127.
[36] Ex 20, Vol 1, pp 151 - 152.
[37] Ex 20, Vol 1, p 126.
[38] Ex 20, Vol 1, p 154.
[39] Ex 20, Vol 1, p 153.
[40] Ex 20, Vol 1, p 174.
[41] Ex 20, Vol 1, pp 176 - 183.
[42] Ex 20, Vol 1, pp 184 - 192.
[43] Ex 20, Vol 1, pp 193 - 199.
[44] Ex 20, Vol 1, pp 200 - 205.

[45] Note 1(g) to this item of Income in the RSL NSW Anzac House Trust Financial Statements records that "Rent from Ex-Service Organisations is recognised when it is due and payable". (Ex 20, Vol 1, pp 208, 213).
[46] Ex 20, Vol 1, pp 206 - 223.
[47] Ex 20, Vol 1, p 153.
[48] Ex 20, Vol 1, pp 174 - 175.
[49] Ex 20, Vol 1, pp 245, 248 - 252.
[50] Ex 20, Vol 1, pp 249, 264
[51] Ex 20, Vol 1, p 249.
[52] Ex 20, Vol 1, p 250.
[53] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the F.S. Maher Scholarship, the Naval Beer Issue, Day Clubs, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, Proposed New Class of Membership and Serving Members CVs (Ex 20, Vol 1, p 262).
[54] Ex 20, Vol 1, pp 248, 262 - 263, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[55] Ex 20, Vol 1, p 327.
[56] Ex 20, Vol 1, p 247.
[57] Ex 20, Vol 1, pp 274 - 275.
[58] Ex 20, Vol 1, p 246.
[59] Ex 20, Vol 1, pp 276 - 283.
[60] Ex 20, Vol 1, pp 284 - 292.
[61] Ex 20, Vol 1, pp 293 - 299.
[62] Ex 20, Vol 1, pp 300 - 205.
[63] Note 1(g) to this item of Income in the RSL NSW Anzac House Trust financial statements records that "Rent from Ex-Service Organisations is recognised when it is due and payable". (Ex 20, Vol 1, pp 308, 313).
[64] Ex 20, Vol 1, pp 306 - 324.
[65] Ex 20, Vol 1, pp 332 - 336.
[66] Ex 20, Vol 1, p 333. The donor sub-Branches that donated are listed (Ex 20, Vol 1, pp 347 - 348).
[67] Ex 20, Vol 1, p 333.
[68] Ex 20, Vol 1, p 334.
[69] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the F.S. Maher Scholarship, the Naval Beer Issue, Day Clubs, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, Proposed New Class of Membership and Serving Members CVs (Ex 20, Vol 1, p 346).
[70] Ex 20, Vol 1, pp 332, 346 - 347, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[71] Ex 24, Vol 2, p 533.
[72] Ex 20, Vol 1, pp 358 - 359. Ms Sheridan was on maternity leave at this time.
[73] Ex 20, Vol 1, pp 361 - 365.
[74] Ex 20, Vol 1, p 362. The donor sub-Branches that donated are listed (Ex 20, Vol 1, p 377).
[75] Ex 20, Vol 1, p 362.
[76] Ex 20, Vol 1, p 363.
[77] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the F.S. Maher Scholarship, the Naval Beer Issue, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, ANZAC Memorial Guards, Serving Members CVs, Bradleys Head Memorial Tree Walk and Centenary of the League (Ex 20, Vol 1, p 376).
[78] Ex 20, Vol 1, pp 361, 375 - 376, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[79] Ex 20, Vol 1, p 360.
[80] Ex 20, Vol 1, pp 387 - 388.
[81] Ex 20, Vol 1, pp 390, 392.
[82] Ex 20, Vol 1, p 391. The donor sub-Branches that donated are listed (Ex 20, Vol 1, p 405).
[83] Ex 20, Vol 1, p 391.
[84] Ex 20, Vol 1, p 392.

[85] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, the Naval Beer Issue, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, ANZAC Memorial Guards, Serving Members CVs, Bradleys Head Memorial Tree Walk and Centenary of the League (Ex 20, Vol 1, p 403).
[86] Ex 20, Vol 1, pp 390 and 403 - 404, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[87] Ex 20, Vol 1, p 389.
[88] Ex 20, Vol 1, pp 408 - 409. Ms Sheridan was on maternity leave at this time.
[89] Ex 20, Vol 1, pp 410 - 414.
[90] Ex 20, Vol 1, p 411. The donor sub-Branches that donated are listed (Ex 20, Vol 1, pp 424 - 425).
[91] Ex 20, Vol 1, p 411.
[92] Ex 20, Vol 1, p 412.
[93] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, Defence Deployment Support, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, ANZAC Memorial Guards, Serving Members CVs, Bradleys Head Memorial Tree Walk and Centenary of the League (Ex 20, Vol 1, p 423).
[94] Ex 20, Vol 1, pp 410, 423 - 424, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[95] See ACNC Act, s 60-15; ACNC Regulation, cl 60.5(c), 60.15.
[96] Ex 20, Vol 1, p 428.
[97] Ex 20, Vol 1, p 429 in accordance with ACNC Act, s 60-40.
[98] Ex 20, Vol 1, pp 430 - 431 in accordance with ACNC Act, s 60-45.
[99] Ex 20, Vol 1, pp 432 - 436.
[100] Ex 20, Vol 1, p 433. The donor sub-Branches that donated are listed (Ex 20, Vol 1, p 447).
[101] Ex 20, Vol 1, p 433.
[102] Ex 20, Vol 1, p 434.
[103] The Trusts included the State President's Drought Appeal, the Sir Colin Hines Scholarship, Defence Deployment Support, Cadet of the Year, the Sir William Yeo Scholarship, Volunteer Grants, ANZAC Memorial Guardians, Serving Members CVs, Bradleys Head Memorial Tree Walk, Centenary of the League, TB Association and Indigenous Ceremony (Ex 20, Vol 1, p 446).
[104] Ex 20, Vol 1, pp 432, 445 - 446, Note 8. Note 8(b) records that "Sundry Trusts are amounts allocated and donated for a specific purpose and the use of those funds is restricted to that specific purpose".
[105] Ex 20, Vol 1, p 450.
[106] Ex 20, Vol 1, p 451.
[107] Ex 20, Vol 1, pp 452 - 453.
[108] Ex 20, Vol 1, p 4; Ex 20, Vol 2, pp 804 - 807.
[109] Ex 20, Vol 2, p 805.
[110] Ex 20, Vol 2, pp 805, 814, Note 12.
[111] Ex 20, Vol 2, p 808.
[112] Ex 20, Vol 1, p 11 (although unsigned in the version provided to the Inquiry).
[113] Ex 20, Vol 1, p 12 (although unsigned in the version provided to the Inquiry).
[114] Ex 20, Vol 1, pp 50 - 53.
[115] Ex 20, Vol 1, p 51. The Anzac and Poppy Day donations are recorded in Note 1(i) to the financial statements as having been received from URSF (Ex 20, Vol 1, p 57).
[116] Ex 20, Vol 1, pp 51, 60, Note 12.
[117] Ex 20, Vol 2, p 54.
[118] Ex 20, Vol 1, p 67.
[119] Ex 20, Vol 1, p 48.
[120] Ex 20, Vol 1, p 49.
[121] Ex 20, Vol 1, pp 68 - 69.
[122] Ex 20, Vol 1, pp 155 - 158.
[123] Ex 20, Vol 1, p 156. The Anzac and Poppy Day donations are recorded in Note 1(i) to the financial statements as having been received from URSF (Ex 20, Vol 1, p 162).
[124] Ex 20, Vol 1, pp 156, 166, Note 12.
[125] Ex 20, Vol 1, p 159.
[126] Ex 20, Vol 1, p 173.

[127] Ex 20, Vol 1, p 154.
[128] Ex 20, Vol 1, p 153.
[129] Ex 20, Vol 1, pp 174 - 175.
[130] Ex 20, Vol 2, pp 853 - 856.
[131] Ex 20, Vol 2, p 854. The Anzac and Poppy Day donations are recorded in Note 1(h) to the financial statements as having been received from URSF (Ex 20, Vol 2, p 860).
[132] Ex 20, Vol 2, pp 854, 865, Note 12.
[133] Ex 20, Vol 2, p 857.
[134] Ex 20, Vol 2, p 872.
[135] Ex 20, Vol 1, p 325.
[136] Ex 20, Vol 2, p 852.
[137] Ex 20, Vol 2, p 851.
[138] Ex 20, Vol 2, pp 873 - 874.
[139] Ex 20, Vol 2, pp 875, 877.
[140] A list of donating Women's Auxiliaries and sub-Branches is included in the RSL WBI 2011 Annual Report (Ex 37, Vol 3, pp 1088, 1097).
[141] Ex 20, Vol 2, p 876. The Anzac and Poppy Day donations are recorded in Note 1(h) to the financial statements as having been received from URSF (Ex 20, Vol 2, p 882).
[142] Ex 20, Vol 2, pp 876, 887, Note 12.
[143] Ex 20, Vol 2, p 879.
[144] Ex 20, Vol 2, p 895.
[145] Ex 37, Vol 3, p 1094.
[146] Ex 24, Vol 2, p 560.
[147] Ex 24, Vol 2, p 559.
[148] Ex 20, Vol 2, pp 896 - 897.
[149] Ex 20, Vol 2, pp 900 - 903.
[150] A list of donating Women's Auxiliaries and sub-Branches is included in the RSL WBI 2012 Annual Report (Ex 37, Vol 3, pp 1100, 1113).
[151] Ex 20, Vol 2, p 901. The Anzac and Poppy Day donations are recorded in Note 1(h) to the financial statements as having been received from URSF (Ex 20, Vol 2, p 907).
[152] Ex 20, Vol 2, pp 901, 912, Note 12.
[153] Ex 20, Vol 2, p 904.
[154] Ex 20, Vol 2, p 920.
[155] RSL WBI 2011 Annual Report p 13 (Ex 37, Vol 3, p 1111).
[156] Ex 20, Vol 2, p 898.
[157] Ex 20, Vol 2, p 899.
[158] Ex 20, Vol 2, p 921 - 922.
[159] Ex 20, Vol 2, pp 925 - 928.
[160] A list of donating Women's Auxiliaries and sub-Branches is included in the RSL WBI 2013 Annual Report (Ex 37, Vol 3, pp 1116, 1133).
[161] Ex 20, Vol 2, p 926. The Anzac and Poppy Day donations are recorded in Note 1(h) to the Financial Statements as having been received from URSF (Ex 20, Vol 2, p 932).
[162] Ex 20, Vol 2, pp 926, 936, Note 12.
[163] Ex 20, Vol 2, p 929.
[164] Ex 20, Vol 2, p 938.
[165] Ex 37, Vol 3, p 1131.
[166] Ex 20, Vol 2, p 923.
[167] Ex 20, Vol 2, p 924.
[168] Ex 20, Vol 2, pp 939 - 941.
[169] Ex 20, Vol 2, pp 942, 944.
[170] A list of donating Women's Auxiliaries and sub-Branches is included in the RSL WBI 2014 Annual Report (Ex 37, Vol 3, pp 1138, 1156).
[171] Ex 20, Vol 2, p 943. The Anzac and Poppy Day donations are recorded in Note 1(i) to the financial statements as having been received from URSF (Ex 20, Vol 2, p 950).
[172] Ex 20, Vol 2, pp 943, 955, Note 13.
[173] Ex 20, Vol 2, p 944.
[174] Ex 20, Vol 2, p 947.
[175] Ex 20, Vol 2, p 957.
[176] Ex 20, Vol 2, p 945.

[177] Ex 37, Vol 3, p 1154.
[178] Ex 20, Vol 2, p 958.
[179] Ex 20, Vol 2, p 959.
[180] Ex 20, Vol 2, p 960.
[181] Ex 20, Vol 2, pp 961 - 963.
[182] Ex 22, pp 396 - 398.
[183] A list of donating Women's Auxiliaries, sub-Branches and corporate supporters is included in the RSL WBI 2015 Annual Report (Ex 37, Vol 3, pp 1176 - 1179).
[184] Ex 22, pp 397 - 398.
[185] Ex 22, p 408, Note 11.
[186] Ex 22, p 398.
[187] Ex 22, p 401.
[188] Ex 22, pp 409 - 410.
[189] Ex 20, Vol 2, p 945.
[190] Ex 37, Vol 3, p 1180.
[191] Ex 22, p 412.
[192] Ex 22, p 413.
[193] Ex 22, p 411.
[194] Ex 22, pp 414 - 416.
[195] Ex 20, Vol 2, pp 455, 462 - 463.
[196] Ex 20, Vol 2, pp 462, 469, Note 3. RSL LifeCare's 2007 Annual Report lists those entities who gave donations or bequests of over $500 (Ex 37 Vol 3, p 798).
[197] Ex 20, Vol 2, p 465.
[198] Ex 20, Vol 2, p 466.
[199] Ex 20, Vol 2, p 461.
[200] Ex 20, Vol 2, p 458.
[201] Ex 20, Vol 2, pp 459 - 460.
[202] Ex 20, Vol 2, pp 480, 487 - 488.
[203] Ex 20, Vol 2, pp 487, 498, Note 4. RSL LifeCare's 2008 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 825).
[204] Ex 20, Vol 2, p 490.
[205] Ex 20, Vol 2, p 492.
[206] Ex 20, Vol 2, p 486.
[207] Ex 20, Vol 2, p 483.
[208] Ex 20, Vol 2, pp 484 - 485.
[209] Ex 20, Vol 2, pp 517, 524 - 525.
[210] Ex 20, Vol 2, pp 524, 535, Note 4. RSL LifeCare's 2009 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 849).
[211] Ex 20, Vol 2, p 527.
[212] Ex 20, Vol 2, p 529.
[213] Ex 20, Vol 2, p 523.
[214] Ex 20, Vol 2, p 520.
[215] Ex 20, Vol 2, pp 521 - 522.
[216] Ex 20, Vol 2, pp 551, 560 - 561.
[217] Ex 20, Vol 2, pp 560, 574, Note 4. RSL LifeCare's 2010 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 875).
[218] Ex 20, Vol 2, p 563.
[219] Ex 20, Vol 2, p 566.
[220] Ex 20, Vol 2, p 559.
[221] Ex 20, Vol 2, p 556.
[222] Ex 20, Vol 2, pp 557 - 559.
[223] Ex 20, Vol 2, pp 593, 605 - 606.
[224] Ex 20, Vol 2, pp 605, 618, Note 4. RSL LifeCare's 2011 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 909).
[225] Ex 20, Vol 2, p 608.
[226] Ex 20, Vol 2, p 611.
[227] Ex 20, Vol 2, p 604.
[228] Ex 20, Vol 2, p 601.
[229] Ex 20, Vol 2, pp 602 - 603.

[230] Ex 20, Vol 2, pp 651 - 652.
[231] Ex 20, Vol 2, pp 651 and 666, Note 4. RSL LifeCare's 2012 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 929).
[232] Ex 20, Vol 2, p 654.
[233] Ex 20, Vol 2, p 658.
[234] Ex 20, Vol 2, p 650.
[235] Ex 20, Vol 2, p 647.
[236] Ex 20, Vol 2, pp 648 - 649.
[237] Ex 20, Vol 2, pp 689 - 690.
[238] Ex 20, Vol 2, pp 689, 701, Note 4. RSL LifeCare's 2013 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 956).
[239] Ex 20, Vol 2, p 692.
[240] Ex 20, Vol 2, p 695.
[241] Ex 24, Vol 1, p 204.
[242] Ex 24, Vol 1, p 201.
[243] Ex 24, Vol 1, pp 202 - 203.
[244] Ex 20, Vol 2, pp 721 - 722.
[245] Ex 20, Vol 2, pp 721, 733, Note 4. RSL LifeCare's 2014 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 983).
[246] Ex 20, Vol 2, p 724.
[247] Ex 20, Vol 2, p 728.
[248] Ex 24, Vol 1, p 288.
[249] Ex 24, Vol 1, p 285.
[250] Ex 24, Vol 1, pp 286 - 287.
[251] Ex 20, Vol 2, pp 751 - 752.
[252] Ex 20, Vol 2, pp 751, 763, Note 4. RSL LifeCare's 2015 Annual Report lists those entities who gave donations or bequests of over $2,000 (Ex 37, Vol 3, p 1020).
[253] Ex 20, Vol 2, p 754.
[254] Ex 20, Vol 2, p 757.
[255] Ex 20, Vol 2, p 750.
[256] Ex 20, Vol 2, p 747.
[257] Ex 20, Vol 2, pp 748 - 749.
[258] Ex 20, Vol 2, pp 780 - 781 (a different version is at Ex 24, Vol 2, pp 439 - 440).
[259] Ex 20, Vol 2, pp 780, 791, Note 4. RSL LifeCare's 2016 Annual Report lists those entities who gave donations or bequests of over $2000 (Ex 37, Vol 3, p 1056).
[260] Ex 20, Vol 2, p 783.
[261] Ex 20, Vol 2, p 787.
[262] Ex 20, Vol 2, p 779.
[263] Ex 20, Vol 2, p 776.
[264] Ex 20, Vol 2, pp 777 - 778.
[265] Ex 2, Vol 3, p 1057.
[266] Ex 2, Vol 3, p 1096.
[267] Ex 2, Vol 3, p 1134.
[268] Ex 2, Vol 3, pp 1060, 1099, 1137.
[269] Ex 2, Vol 3, pp 1062, 1101, 1139.

7.3 FUNDRAISING FAILURES

7.3.1 Each of the entities has admitted that during the period covered by the Terms of Inquiry, there were numerous instances of failures to comply with the Act, the Regulations and their fundraising authorities issued under the Act. Following a change in leadership roles within their respective organisations from May 2017, each entity undertook a major examination of their systems and processes. The newly elected President of RSL NSW and trustee of RSL WBI, Mr Brown, and the newly elected Chairman of RSL LifeCare, Mr Condon, provided most candid and helpful reviews of the organisations' failures.

7.3.2 Much of what follows has been taken in large measure from their evidence, the evidence of Ms Collins and formal statements of admission from each of the entities.[1]

RSL NSW

7.3.3 Although RSL NSW has conducted and participated in fundraising appeals, it failed to implement accounting systems that would accurately track how the proceeds of each of the appeals were applied. It deposited the remitted funds into the general revenue account, so that the funds raised in the appeal were mingled with funds from other sources. These co-mingled moneys were then used, without differentiation, to fund both charitable services and RSL NSW's operating and administrative costs.[2]

7.3.4 RSL NSW has admitted that it failed to implement any accounting or record keeping arrangements to clearly keep track of how the appeal moneys from these accounts were ultimately expended. This has resulted in an inability to track how the proceeds of each appeal were ultimately expended; and an inability to accurately report the actual expenses incurred by RSL NSW in respect of each appeal. These constituted failures to comply with section 20(6) of the Act (as to the banking of proceeds); section 22 of the Act (as to record keeping); clause 10 of the 2008 Regulation; and clause 11 of the 2015 Regulation (as to record keeping).[3]

7.3.5 The effect of the co-mingling of funds without proper record keeping has been that it is not possible to establish whether the proceeds of each fundraising appeal have been applied consistently with the purposes of that appeal (as required by section 20(1) of the Act); or whether the ratio of expenses to receipts exceeded that permitted by RSL NSW's authority.[4]

7.3.6 RSL NSW accepted that the state of its accounts and records[5] is such that "there would appear to be grounds for the Inquiry to make a general finding that historically RSL NSW has failed to comply with condition 1 [proper and effective controls], at least some aspects of condition 3

[maintenance of books and records]; and at least some aspects of condition 5 [clearly distinguishing gross proceeds upon receipt into a bank account]".[6] It is appropriate in the circumstances to make such a finding.

7.3.7 RSL NSW accepted that it did "not have complete certainty" as to how its sub-Branches and subsidiaries have dealt with or accounted for the proceeds of fundraising appeals.[7] Sub-Branches are established by Charter issued by RSL NSW,[8] which has the power to control and discipline them, including the power to revoke their Charters.[9] In particular, the RSL NSW Constitution imposes certain requirements on the sub-Branches as to the keeping of their accounts and providing annual returns to RSL NSW.[10]

7.3.8 It appears that many sub-Branches have conducted or participated in fundraising appeals using RSL WBI's authority. However, as RSL NSW has candidly accepted:[11]

> Whilst these matters may be relevant to non-compliance by the trustees of WBI with their fundraising obligations, RSL NSW accepts that any historical failings of the sub-branches to comply with relevant regulations is a matter of concern which needs to be rectified by RSL NSW to enable fundraising to re-commence.

7.3.9 In order to assess whether there had been non-compliance with the statutory regime in relation to fundraising by the sub-Branches, RSL NSW issued a survey to its sub-Branches in September 2017, seeking information in particular as to how the gross proceeds of fundraising appeals had been dealt with and whether there had been separation or co-mingling of those proceeds with other funds. On a preliminary review of the responses, there has been, as Mr Brown accepted, extensive non-compliance with the statutory regime for fundraising at the sub-Branch level.[12]

7.3.10 Although RSL NSW retained an auditor to ensure that its financial reports for the financial years 2007 to 2015 were subject to independent audit review, it accepted that an auditor's report in respect of fundraising was not included in its financial statements for those years as required by section 24(2) of the Act.[13]

7.3.11 RSL NSW also accepted[14] that its financial statements did not comply with condition 6 (condition 7 prior to 2011) of its fundraising authority[15] in that: they did not include an income statement summarising the income and expenditure of each fundraising appeal conducted during the relevant financial year, nor a balance sheet summarising all of the assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year; and they did not include a declaration by the President, principal officer or some other responsible member of RSL NSW verifying the income statement and balance sheet and stating whether in that officer's opinion, amongst other things, the organisation had complied with the

provisions of the Act, the Regulations and the conditions of its fundraising authority.

7.3.12 On 31 August 2017, RSL NSW resolved to remove Grant Thornton as its auditor and it has appointed a new auditor.[16]

7.3.13 Although condition 20 (condition 23 prior to 2011) of the RSL NSW fundraising authority required RSL NSW to establish a mechanism for dealing with any conflicts of interest, including the establishment of a register of pecuniary interests, this was not done.[17]

7.3.14 On 31 July 2017, the RSL NSW State Council resolved that a Conflicts of Interest Register was to be created with a regime for declarations to be filed with RSL NSW.[18]

7.3.15 A conflicts of interest policy was drafted, tabled at the RSL NSW State Council meeting on 31 August 2017 and subsequently adopted on 8 September 2017.[19]

RSL WBI

7.3.16 RSL WBI led the way in the Inquiry in promptly admitting in a formal Statement of Admissions dated 6 September 2017, its widespread non-compliance in respect of the following categories. [20]

Accounting systems and records[21]

7.3.17 As discussed elsewhere RSL WBI has been responsible for conducting the ANZAC Appeal and the Poppy Appeal from 1 July 2014 and it also conducted a number of smaller fundraising appeals prior to that time.

7.3.18 Although RSL WBI deposited the remitted funds from the ANZAC Appeal and the Poppy Appeal into a dedicated appeals account, the proceeds of the two appeals were not distinguished from each other and many of the direct expenses of each appeal were simply paid from the total funds in this account. It failed to implement accounting systems that would accurately track how the proceeds of each of the appeals were applied. It paid the balance in the appeals account variously into its general bank account; its fixed term and investment accounts; and its investment management accounts, so that the funds raised in the appeals were mingled with funds from other sources. These co-mingled moneys were then used to fund both charitable services and RSL WBI's operating and administrative costs.

7.3.19 The moneys raised in other appeals were paid into a general bank account where there were no clear accounting procedures to distinguish or segregate the funds donated by the public as the proceeds of any specific fundraising appeal. It was also not possible for RSL WBI to track how those moneys raised in each appeal were then expended.

7.3.20 RSL WBI admitted that it failed to implement any accounting or record keeping arrangements to clearly keep track of how the appeal moneys from these accounts were ultimately expended. This resulted in an inability to report accurately the actual expenses incurred by RSL WBI in respect of each appeal.

7.3.21 RSL WBI accepted that it did not comply with section 20(6) of the Act (as to the banking of proceeds); and section 22 of the Act, clause 10 of the 2008 Regulation and clause 11 of the 2015 Regulation (as to record keeping).

7.3.22 RSL WBI recognised that it is important that funds raised from the public in each fundraising appeal are clearly segregated from other funds, in order to ensure that they are in fact expended for the stated purpose for which they were raised. It also accepted that it is important that the public and the regulators are able to see clearly what amounts have been deducted as expenses and overheads.

7.3.23 The co-mingling of funds without proper record keeping meant that it was not possible to establish whether the proceeds of each fundraising appeal had been applied consistently with the purposes of that appeal (as required by section 20(1) of the Act); or whether the ratio of expenses to receipts exceeded that permitted by RSL WBI's authority.[22]

Management[23]

7.3.24 RSL WBI recognised that the process of formal ratification and approval is an important control for the management of the fundraising appeals. However, the trustees of RSL WBI did not implement a regime pursuant to which there was ratification or approval of the decisions to allocate the net proceeds of the appeals to various entities, for instance, to RSL WBI itself, RSL NSW, the sub-Branches and Women's Auxiliaries, the Australian Forces Overseas Fund (AFOF) and the Defence Deployment Fund. RSL WBI accepted that this was not in compliance with condition 1 of RSL WBI's 2013 authority. It also follows that there was non-compliance with clause 9(5) of the 2008 Regulation and clause 10(5) of the 2015 Regulation.

7.3.25 RSL WBI acknowledged that it has been in breach of the conditions of its fundraising authority in failing to have in place a register of pecuniary interests (until 15 December 2016) or a mechanism for dealing with any conflicts of interest.[24] It accepted that it needed to implement policies and proper conflicts of interest registers to comply with its obligations under condition 20 of its fundraising authority.

7.3.26 RSL WBI also acknowledged that it was administered by fewer than the requisite three trustees[25] between 24 November 2014 and approximately 15 September 2015; and from approximately 28 April 2017 to 18 October 2017.[26] It also accepted that the quorum for the meeting of its trustees was

fewer than the requisite three persons on 27 dates between 21 February 2013 and 22 August 2017.[27]

Annual reporting[28]

7.3.27 RSL WBI admitted that its financial statements in each financial year from 2012 to 2015 were non-compliant and it is probable that they were also non-compliant from 2008 to 2011.[29] Those financial statements did not include an income statement summarising the income and expenditure of each fundraising appeal conducted during the relevant financial year, nor a balance sheet summarising all of the assets and liabilities resulting from the fundraising appeals as at the end of the financial years. They also failed to include details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

7.3.28 RSL WBI accepted that it failed to send the requisite annual returns to the Minister in the financial years 2015, 2016 and 2017, giving details of the application of the proceeds of any fundraising appeals.[30]

Sub-Branches and Women's Auxiliaries[31]

7.3.29 RSL NSW sub-Branches and their associated Women's Auxiliaries provide a major pool of potential RSL WBI clients and a very important referral network to link RSL WBI and its services with veterans and their families who need support. The sub-Branches and the Women's Auxiliaries have in the past been a major source of RSL WBI's fundraising volunteers for both the ANZAC Appeal and the Poppy Appeal since the responsibility of conducting those two appeals was transferred to RSL WBI from URSF in mid-2014.

7.3.30 RSL WBI admitted that RSL NSW sub-Branches and Women's Auxiliaries have raised money from the public during the ANZAC Appeal and the Poppy Appeal and have not remitted the full gross proceeds back to RSL WBI. Only a portion of the moneys that was raised has been remitted to RSL WBI and the sub-Branches and the Women's Auxiliaries have retained the balance of the proceeds to fund local welfare work.

7.3.31 This practice has prevented RSL WBI from knowing how much money was actually donated by members of the public in the course of each appeal. It has also prevented RSL WBI from knowing where and how those funds were banked or secured, receipted or recorded and how much money (if any) was deducted to fund administrative expenses of fundraising activity. This practice also meant that RSL WBI has not had the capacity to exercise controls over how the sub-Branches or the Women's Auxiliaries expended the donated funds that they retained on charitable services consistently with the publicly stated purpose of each appeal.

7.3.32 It was in those circumstances that RSL WBI made an estimation of the value of the donations that had been made to the sub-Branches and Women's Auxiliaries by taking the number of tokens provided by

RSL WBI to the sub-Branches and Women's Auxiliaries and assuming the recommended level of donation (at say $2.00 per token) was raised from the public for that token. RSL WBI recognised that a problem with that approach was that it has always been open to members of the public to donate more or less than the recommended donation and thus it did not have any capacity to know the level of the exact proceeds that were raised from the public. Nor was it in the position to record in its annual financial statements a fully accurate value of the amount raised in each ANZAC Appeal and Poppy Appeal.

7.3.33 RSL WBI accepted that in relation to the involvement of the sub-Branches and Women's Auxiliaries in the ANZAC Appeal and Poppy Appeal since July 2014, there has been non-compliance in relation to: section 20(6) of the Act (the banking of gross proceeds); section 22 of the Act, clause 10 of the 2008 Regulation and clause 11 of the 2015 Regulation (record keeping); condition 1 (internal controls); condition 2 (the security of gross proceeds); condition 8 (receipting requirements); condition 10 (the authorisation and identification of third persons conducting or participating in an appeal); and condition 12 (the use of collection boxes) of its fundraising authority.

7.3.34 As discussed above the co-mingling of funds without proper record keeping meant that it was not possible to establish whether the proceeds of each fundraising appeal had been applied consistently with the purposes of that appeal (as required by section 20(1) of the Act); or whether the ratio of expenses to receipts had exceeded that permitted by RSL WBI's authority.[32]

Officeworks Ltd and Woolworths Ltd[33]

7.3.35 Officeworks Ltd (Officeworks) participated in the Poppy Appeal in 2015 and 2016 and in the ANZAC Appeal in 2016 and 2017. Woolworths participated in the Poppy Appeal in 2016 and in the ANZAC Appeal in 2016 and 2017. The arrangements that were implemented for this participation did not comply with RSL WBI's fundraising authority.

7.3.36 Any arrangement in respect of a fundraising appeal that involved a "trader", a category into which Officeworks and Woolworths fitted for these purposes, required RSL WBI to keep direct contractual control over the fundraising activities undertaken by the traders to ensure that its own fundraising obligations were met. However, there was no written agreement in respect of Officeworks' involvement in the 2015 Poppy Appeal and the 2016 ANZAC Appeal; or with Woolworths in relation to the Poppy Appeal in 2016 and the ANZAC Appeal in 2016 and 2017.[34]

7.3.37 The written agreement which existed in respect of Officeworks' involvement in the 2016 Poppy Appeal and the 2017 ANZAC Appeal did not include a requirement for Officeworks to comply with the conditions of RSL WBI's charitable fundraising authority and did not include

various other prescribed matters, as RSL WBI accepted it ought to have done.[35]

7.3.38 RSL WBI recognised the importance of advising the relevant regulator of the circumstances of when and how a third party is involved in charitable collections, particularly where that third party retains moneys raised from the public in the third party's accounts before passing them on to the authorised fundraiser. Although URSF did communicate with the regulator in relation to Woolworths' involvement in the Poppy Appeal in earlier years,[36] RSL WBI did not notify NSW Fair Trading or its predecessor, the Office of Liquor, Gambling and Racing, of the existence of the trader agreements with Woolworths and Officeworks, as RSL WBI acknowledged it was obliged to do.[37]

7.3.39 It seems that RSL National entered into an agreement with Woolworths in respect of the ANZAC Appeal in 2016 and 2017 and the Poppy Appeal in 2016 and day-to-day administration was delegated to RSL Vic. Under that agreement, RSL Vic provided tokens to Woolworths, which were exchanged with members of the public in appreciation of their donations. Woolworths would then remit the full national proceeds of each appeal to RSL Vic, which would then remit the amounts raised within New South Wales to RSL WBI. It would do this after it deducted its own expenses associated with supplying Woolworths with tokens and any other support provided for the appeal.

7.3.40 The deductions of RSL Vic's expenses were not reviewed or formally approved by RSL WBI and the expenses were not recorded as expenses of the appeals in RSL WBI's annual financial statements, as ought to have occurred.

7.3.41 RSL WBI accepted that in relation to the arrangements with Woolworths, there was non-compliance as to section 20(1)-(3) of the Act (proceeds of appeal), section 20(6) of the Act (the banking of gross proceeds), section 22 of the Act (record keeping) and section 11 of the Act (identifying RSL WBI as the authorised fundraiser in any relevant advertisements, notices or information); clause 10(5) (lawful and proper expenses) and clause 11 (record keeping) of the 2015 Regulation; and condition 1 of RSL WBI's 2012/2013 fundraising authority in relation to the deduction and payment of expenses.

7.3.42 As discussed above the co-mingling of funds without proper record keeping meant that it was not possible to establish whether the proceeds of each fundraising appeal had been applied consistently with the purposes of that appeal (as required by section 20(1) of the Act); or whether the ratio of expenses to receipts had exceeded that permitted by RSL WBI's authority.[38]

RSL LIFECARE

7.3.43 On 25 August 2017 Mr Condon, as the Chairman of the Board of RSL LifeCare, wrote to the Inquiry, acknowledging non-compliance in relation to certain reporting requirements and that the non-compliance was a "serious matter". He set out the courses of action RSL LifeCare was undertaking "to strengthen RSL LifeCare's compliance with respect to those matters".[39]

7.3.44 In that letter, Mr Condon advised that RSL LifeCare's financial statements had been non-compliant in that they did not contain: an income statement that summarised the income and expenditure of each fundraising appeal conducted during the financial year; a balance sheet that summarised all assets and liabilities resulting "only" from the conduct of fundraising appeals as at the end of the financial year; a statement that described the manner in which the net surplus obtained from fundraising appeals for the period was applied; or details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.[40]

7.3.45 Mr Condon also advised that RSL LifeCare's financial statements failed to include the required declaration from RSL LifeCare's principal officer stating whether in that officer's opinion: (a) the income statement gave a true and fair view of all income and expenditure with respect to fundraising appeals; (b) the balance sheet gave a true and fair view of the state of affairs of the organisation with respect to fundraising appeals; (c) the provisions of the Act, the Regulations and the conditions attached to the fundraising authority had been complied with; and (d) the internal controls exercised by the organisation were appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.[41]

7.3.46 Mr Condon also advised that RSL LifeCare's financial statements did not include a report from the auditor as to: (a) whether the accounts showed a true and fair view of the financial result of fundraising appeals for the year to which they related; (b) whether the accounts and associated records had been properly kept during that year in accordance with the Act and the Regulations; or (c) whether money received as a result of fundraising appeals conducted during that year had been properly accounted for and applied in accordance with the Act and the Regulations.[42]

7.3.47 RSL LifeCare initially limited its admissions to certain financial years, relying upon an exemption where the gross proceeds of fundraising do not exceed $250,000. That exemption only extended to the requirement for an audit and therefore only to the need for an auditor's report. The exemption was only introduced by clause 12 of the 2015 Regulation and could therefore only apply in respect of the 30 June 2016 and 2017 Financial Statements, in which years RSL LifeCare did not contend that the gross proceeds of fundraising did not exceed $250,000.[43]

7.3.48 These omissions and matters of non-compliance were repeated throughout RSL LifeCare's audit and reporting processes in the decade covered by the Terms of Inquiry between 2007 and 2017, as RSL LifeCare appears to have accepted in its Schedule of Consolidated Admissions.[44]

7.3.49 In its letter to the Inquiry dated 1 September 2017, RSL LifeCare admitted non-compliance with condition 20 of its fundraising authorities (condition 23 of its 2005 authority) in that up until November 2016, it did not have a mechanism for dealing with conflicts of interest involving a director or an employee and it did not have a register of pecuniary interests. It also admitted non-compliance with condition 20 of its 2015 authority in that as from 31 December 2015, the fees that were paid to directors (and the terms upon which they were paid) were not ratified by a general meeting of its members. It also admitted non-compliance with section 48 of the Act in that the Minister's approval was not obtained for directors to be appointed notwithstanding payment of consulting fees to them.[45]

7.3.50 By its letter to the Inquiry dated 27 October 2017 and the attached Schedule of Consolidated Admissions, RSL LifeCare made further admissions of non-compliance (including likely non-compliance) in respect of section 20(6) of the Act[46] in that, in the period between 7 November 2014 and 3 January 2017, donations were not paid immediately into a dedicated bank account or at least one where they could be clearly identified; section 22 of the Act together with condition 26 of LifeCare's 2005 authority and condition 23 of its 2010 and 2015 authorities in that accounting records were only maintained for 5 years rather than seven years as required; internal controls, up until the suspension of fundraising on 11 August 2017;[47] the safeguarding of assets, up until the suspension of fundraising on 11 August 2017;[48] the maintenance of proper books and accounts, up until the suspension of fundraising on 11 August 2017;[49] establishing a mechanism for resolving internal disputes within the membership of the organisation in relation to fundraising activities;[50] and establishing a mechanism for handling complaints from members of the public or employees in relation to fundraising activities.[51]

7.3.51 RSL LifeCare accepted that by virtue of the failure to ensure that the proceeds of fundraising could be clearly identified, as required by section 20(6) of the Act, and the absence of proper record keeping, it was not possible to establish whether the proceeds of each fundraising appeal had been applied consistently with the stated purposes of that appeal (as required by section 20(1) of the Act).[52]

KNOWLEDGE OF THE ACT

7.3.52 It is clear that one of the main failings in each of the entities was a lack of knowledge and/or understanding of the Act, the Regulations and the

conditions of the fundraising authorities. This was wide-spread throughout the leadership roles in each of the entities. It is appropriate at this juncture to refer to the evidence of those RSL NSW State Councillors and RSL WBI Trustees in respect of these failings.

RSL NSW/RSL WBI

7.3.53 The State Councillors that served during the period covered by the Terms of Inquiry were not advised by either Ms Mulliner or Mr Perrin that RSL NSW held a fundraising authority throughout that period. Each of the State Councillors should have been made aware not only that RSL NSW held a fundraising authority but also that it was conducting fundraising appeals both as a member of URSF and in its own right.

7.3.54 Dr Bain gave evidence that he was not aware that RSL NSW had a fundraising authority, although he was aware that RSL WBI did have a fundraising authority.[53] He had no recollection of ever discussing the fundraising authority or the Act at a State Council meeting. He did not receive any training or instruction in respect of charitable fundraising and accepted that he had no knowledge of the area and, it follows, no knowledge of the Act.[54] Dr Bain accepted in his evidence that he ought to have had knowledge of these matters at least in general terms. He gave the following evidence:[55]

> Q. In that context, you ought to have sought some form of advice or instruction as to what the requirements of that statutory scheme were?
> A. In principle, yes, but the organisation, as in State Branch had a councillor who was also an accountant and we also had a finance system with a very highly qualified accountant leading it. I was under the impression that the staff in the finance department, plus the experience of the FARM Committee was sufficient to keep us complying with the requirements. It never occurred to me that we weren't.

7.3.55 Mr Carlson gave evidence that in the period June 2004 to October 2008, during which he was an RSL NSW State Councillor and a director of RSL LifeCare, he was aware of the existence of the Act. That awareness was through his work with RSL NSW sub-Branches and District Council, and also through his employment with Legacy.[56] Mr Carlson knew that RSL LifeCare had a fundraising authority but there was not much discussion about it. He gave the following evidence:[57]

> Q. In your time as a director of LifeCare – so 2004 to 2008 – were you aware whether or not LifeCare was in compliance with the regime put in place by the Charitable Fundraising Act?
> A. Well, yes, I'm sure they were compliant.
>
> Q. What's the basis on which you say that, that you are sure they were compliant?
> A. Back to the CEO, Mr Ron Thompson, again – I mean, he didn't miss much, that I knew of, but I'm sure he did the right thing there.

Q. Is it the case that whether or not RSL LifeCare was compliant with the Charitable Fundraising Act, you were relying on the competency, or otherwise, of Mr Ron Thompson?
A. Yes.

7.3.56 Mr Carlson also said that he was "sure" that RSL NSW was compliant with the Act because he never heard anything to the contrary. He did not ever ask anyone whether either entity was compliant with the Act. However he was "sure" he was told by Ms Mulliner that RSL NSW was compliant. He was reliant on Ms Mulliner to form the view that RSL NSW was compliant with the Act.[58]

7.3.57 Mr Crosthwaite gave evidence that he was "always aware" of the Act from the time he was first on State Council in 1991. He said that he had read sections of it to make sure that his sub-Branch and Women's Auxiliary were abiding by the Act in how they banked and treated their money from fundraising. He was aware that moneys that were raised from fundraising appeals had to be placed into a bank account where they could be easily identified and were traceable, to ensure that they were applied for the purpose for which they were collected. Mr Crosthwaite also gave evidence that he was aware that there were requirements imposed upon the financial statements of organisations that conducted fundraising appeals and that it was necessary to have a fundraising authority.[59]

7.3.58 Mr Crosthwaite was not aware that RSL NSW had a fundraising authority and was only aware that charitable fundraising was conducted by what he described as RSL NSW's "charitable arm", RSL WBI and later RSL Appeals NSW. He never turned his mind to the question of whether RSL NSW may have been fundraising. His understanding of the Act was that fundraising had to be by way of "formal appeal". However he accepted that the website which invited donations to help veterans would constitute fundraising under the Act. Mr Crosthwaite was aware that RSL NSW had such a website for a number of years and gave the following evidence: [60]

Q. If that's right, it looks then as if RSL NSW has been fundraising for a number of years; correct?
A. Into what arm of the RSL NSW, I cannot confirm.

Q. No, but on what I put to you, if RSL NSW has its own website and it is inviting people to donate, it looks then as if RSL NSW was fundraising; correct?
A. Yes. Yes.

Q. Is it the case that, in fact, now you accept that it may well be the case that RSL NSW was fundraising, but that at the time it just never occurred to you that it might be?
A. Correct.

Q. If it had occurred to you that it might be fundraising, you would have wanted to ensure that it had the appropriate authority; correct?

A. Correct.

Q. And that it did the sorts of things with its accounts that you mentioned earlier?
A. Correct.

Q. But because you didn't appreciate that it might be fundraising, you never made enquiries into those issues?
A. No.

Q. You agree with me?
A. Yes.

Q. Would it be right to say that, to your recollection, the issue of the Charitable Fundraising Act and its requirements was never discussed at any State Council meeting?
A. No.

Q. As in it would not be right or it would be right?
A. It would be right, there would be no discussion within State Council.

Q. And no presentations that you had from management or external consultants about the Act and its requirements; correct?
A. The requirements relied on the fundraising arm called Appeals, of which we allowed them to fundraise and carry out the appropriate legislation for that.

Q. And by Appeals, that is what was URSF; correct?
A. Correct.

Q. And is now WBI?
A. No, it is now called Appeals, but it was an arm of the WBI or DefenceCare, as it's now known.

Q. Yes, but am I right that management or external consultants, nobody of that type ever came to RSL NSW and talked about the requirements of the Act in the context of NSW fundraising; correct?
A. Correct.

7.3.59 Mr Haines had some involvement in signing SBAs for his sub-Branch.[61] He gave evidence that he was aware that the SBAs referred to the Act but that his sub-Branch conducted fundraising only through the State Branch. He was aware that State Branch had an authority to fundraise and when he became Vice-President in the late 1990s there was an occasion when he had reason to look at the Act and the Regulations. Mr Haines gave evidence that he was aware that the Act and the Regulations and the conditions of the fundraising authority impose certain requirements and obligations on State Branch. He gave the following evidence: [62]

Q. You are aware today that, in fact, a number of those requirements were not complied with; correct?
A. Were not met, yes.

Q. Were you ever aware that that was not being done at the time?

A. No. Once again, those issues were the domain of the Chief Financial Officer and the State Treasurer, and also the State Secretary.

Q. Is it right that those issues, or any issues under the Act and the regulation and the authority were not ever discussed at State Council?
A. Not that I can recall. We signed – what they put before us, we signed off.

Q. You assumed that they had done what needed to be done; correct?
A. Correct.

Q. It's right, isn't it, that you never received from State Council any instruction as to the various obligations and requirements; correct?
A. Obligations or changes, no, we never received that.

Q. You would accept that, in your position as State Councillor, you did have an obligation to ensure that there was compliance; correct?
A. Yes.

Q. But I think you would say you relied upon others?
A. Yes, and their expertise, yes.

Q. But you accept that that does not absolve you of all responsibility?
A. That's correct.

Q. But you would say that others had a greater responsibility; correct?
A. True.

7.3.60 Mr Harrigan became aware of the Act when he was the Secretary of the Bondi Junction–Waverley RSL NSW sub-Branch. That awareness arose in the context of the sub-Branch applying for a renewal of its fundraising authority every three to five years.[63] He was aware that certain statements or declarations had to be included in the financial statements and gave the following evidence:

Q. Are you able to explain why RSL NSW did not have those statements in its financial statements?
A. Well, I believed they would have been submitted by the administration and all we were involved in was the presentation of the annual report each year.

…

Q. Would I be right in saying that at no time did you actually turn your mind to whether the obligations under the Charitable Fundraising Act and the regulations were in fact being complied with?
A. With regards to - -

Q. RSL NSW.
A. The State Branch?

Q. Yes.
A. Other than the various reports and everything were being submitted every year and signed off by the State Secretary, I thought that was –

and the financial reports to Congress every year, I thought that was a requirement.

7.3.61 Mr Harrigan said that he just assumed that the State Branch would be complying with the requirements. He could not recall any discussion at State Council other than in 2012 when the ACNC was established and it was necessary to "change the way certain things were done".[64]

7.3.62 Mr Henderson was aware of the Act prior to the Inquiry because he had served on URSF when it was fundraising for ANZAC Day and Remembrance Day.[65] He was aware that an entity that wished to conduct fundraising had to obtain a fundraising authority and gave the following evidence:

Q. Were you aware that the Act and the associated regulations and, indeed, the conditions of the authority, imposed other requirements?
A. Not to the extent I'm now aware.

Q. Would it be fair to say that beyond the fact that one needed an authority to fundraise, you, yourself, did not give any consideration to the other requirements?
A. No, not to the financial – not the recording and the disbursement requirements, no.

Q. And, indeed, as to how the bank accounts were set up; correct?
A. That's correct.

Q. So, in effect, you relied on other people to make sure that whatever needed to be complied with was complied with?
A. Correct.

Q. You accept now, do you not, that that system did not work; correct?
A. Correct.

…

Q. You would accept, would you not, that in your position as State Councillor, you had a responsibility to ensure that RSL NSW did comply; correct?
A. Yes, yes, a lot of responsibilities, but you rely on certain members that you think are protecting your interest.

Q. Would it be fair to say that sitting here today, you accept that you failed in your duties, but you would say that other people failed more and you relied upon those other people?
A. Yes, yes, I failed.

7.3.63 Mr Humphreys was alerted to the Act when he was at the Kiama sub-Branch.[66] He was not aware that RSL NSW held an authority to fundraise and gave the following evidence:

Q. But before the last couple of months, had you read anything in the Act?
A. Only vaguely.

Q. Would it be right to say that at least until the last couple of months, beyond the fact that an organisation was required to have an authority to fundraise, you did not know what any of the additional obligations might have been?
A. No.

Q. You agree with me?
A. I agree with you, yes.

Q. In relation to RSL NSW, you thought that it did not have an authority; is that correct?
A. That's my understanding, yes. My understanding was that the charitable fundraising number was held by the WBI, and at that stage it was the URS – United Returned Soldiers and Airmens, whatever it was, Fund and they ran the annual Anzac Day Badge Appeal and Remembrance Day Appeal, and any other appeals were done through them and that was wound up I think about 18 months ago and they formed the Anzac Appeals, which is part of the WBI. So it was my understanding that the CFN number was held by the WBI, not State Branch.

Q. Did you ever seek any advice from anybody as to whether the State Branch was fundraising?
A. I did ask questions of the Chief Financial Officer and the answer was that all the fundraising was done by the WBI.

Q. Was that with Ms Mulliner.
A. Yes.

Q. When did you raise that?
A. When I first went on the FARM Committee in 2011.

Q. What caused you to ask her that?
A. Well, because I knew that all the sub-branches had a fundraising number, and the question was did the State Branch have one and the answer was, no, it was held with the WBI. All the fundraising was done with them.

7.3.64 Mr Humphreys accepted that the donate button on the RSL NSW website would amount to fundraising. He had seen the website but had never noticed this fundraising facility.[67]

7.3.65 Mr Hutchings conceded that it was only in the last three or four months that he had made himself familiar with the Act.[68] He agreed that over the years that he had been involved with the RSL at State Branch level and also at District Council level, there had been really no focus on the Act.[69]

7.3.66 In 2011 when Mr Ronald James became the President of his sub-Branch at Ingleburn he was given a briefing on the Act.[70] He did not have an understanding that RSL NSW was fundraising and it was only recently that he learnt that RSL NSW was raising money through its website.[71]

7.3.67 Mr McManus-Smith was aware that RSL NSW had an authority to fundraise and he gave the following evidence:[72]

Q. So you understood that RSL NSW was fundraising; correct?
A. That is only something that has come to my attention very, very recently, because prior to that I did not believe that NSW State Branch was fundraising.

…

Q. When you joined RSL NSW, the State Branch, did you at any time ask to see the authority?
A. I think it was presented whenever it was renewed.

Q. Did you see the conditions that were attached to it?
A. I believe they were the same conditions. I read the amended version, so - -

Q. Did you read that at the time?
A. I read the – when the amendment happened, not - -

Q. So you were aware that the Act and the - -
A. 2013, I think it was.

Q. You were aware that the Act and the regulation and the conditions of the authority imposed many obligations upon fundraising; correct?
A. Yes.

Q. Did you ever make any inquiries as to whether RSL NSW was complying with those obligations?
A. Absolutely.

Q. Who did you ask?
A. Whenever the annual report would come out, the executive would make the statement that we are compliant in all areas. The State Treasurer, in particular, between 2011 and 2016, would regularly identify item 8 of the RSL NSW Strategic Plan stating that we are compliant.

Q. That was, effectively, saying "We are compliant with what we need to be"; correct?
A. Correct.

Q. There was never any explicit discussion about the Charitable Fundraising Act; correct?
A. Or legislative requirements. I think that was the term that was actually used.

Q. So the term "Charitable Fundraising Act" was never used; correct?
A. I can't recall that, Mr Cheshire.

Q. But may we take it from your answers that you never asked explicitly, "Are we complying with the Charitable Fundraising Act"?
A. Not explicitly, no.

7.3.68 Mr McManus-Smith gave evidence that he understood that certain declarations were to be included in the financial statements from the principal officer and from the auditor, but gave the following evidence on this topic:[73]

Q. Would it be fair to say that you just never turned your mind as to whether RSL NSW was in fact complying with the Charitable Fundraising Act?
A. No, Mr Cheshire, I assumed – clearly, not a good assumption – that the declaration that was being made by the auditor and executive officers was compliant in that.

Q. It would be right, then, that when you looked through the financial statements, you never looked through to check whether there were the declarations that were needed under the Charitable Fundraising Act?
A. No, I didn't, Mr Cheshire.

Q. You never asked the question beyond "Are we complying with everything we need to comply with?"; correct?
A. That is correct.

Q. Was there - -
A. Can I – as a volunteer, Mr Cheshire, I rely on expert opinion and people that we pay quite a lot of money to to make sure that we are complying with all our legislation.

Q. You would accept from what you now know that one of the matters – if you were looking at the financial statements of RSL NSW going forward, you would be flicking through those financial statements now to see if, in fact, they did have those - -
A. Absolutely.

Q. And you would accept now that your reliance upon others appears to have been misplaced; correct?
A. It appears to have been a big mistake.

7.3.69 Mr Metcalfe knew that RSL NSW was fundraising during the time that he was a State Councillor from 2008.[74] He gave the following evidence:

Q. Did you take any steps to ensure that RSL NSW was complying with its obligations under the Charitable Fundraising Act?
A. No, the Chief Financial Officer reported to us and she never brought up any problems.

Q. Did you ever make any inquiries yourself as to whether or not there was compliance with the Act?
A. No.

Q. Do you appreciate now that you ought to have made such inquiry.
A. Yes. You shouldn't have to.

Q. Why do you say you shouldn't have to?
A. Well, the Chief Financial Officer was the employed person and she had staff available to her and she reported to the FARM Committee and to State Council regularly and never brought up any problems.

7.3.70 Mr Stephenson had some awareness of the existence of the Act and he knew that it was necessary to have an authority to fundraise. He did not have any discussions with anyone at RSL NSW about the Act and the associated Regulations although he was aware that RSL NSW had a fundraising authority. It was only in late 2016 that there was any discussion within State Council about the Act or the Regulations or the authority to fundraise.[75] In this regard Mr Stephenson gave the following evidence:

> Q. Was that in the context of the inquiries that were on foot?
> A. No. It came about because our manager of DefenceCare, being Robyn Collins, was the only one that really came forward that understood the Act, and she started to explain areas where we had not been compliant.
>
> Q. Would it be fair to say that, at least from that time, you came to realise that there had been non-compliance on the part of RSL NSW.
> A. Most certainly.
>
> Q. Would it be fair to say that you had simply never turned your mind, prior to that time, to the issue of whether RSL NSW was compliant?
> A. That would be fair to say.
>
> Q. Do you accept that you as a State Councillor had that responsibility?
> A. I accept that.
>
> Q. Are you able to explain why you did not comply and why you did not turn your mind to it?
> A. Because, as a State Councillor, I assumed – and wrongly assumed – that the people we had employed to look after legislation were looking after the legislation and regulations, and I didn't turn my mind to it.

7.3.71 Mr Toussaint gave evidence that his understanding was that RSL NSW was not directly involved in fundraising but he subsequently found out that it had a fundraising authority when the Inquiry was announced during the middle of 2017.[76] He gave the following evidence:

> Q. It's right, isn't it, that at least after 2001, you didn't at any stage ask for clarification as to whether it was fundraising; correct?
> A. I didn't feel that it was necessary. We seemed to have had a lot of paid employees. We had an organisation that had financial officers, we had CEOs, we had auditors; you name it, we had it. I presumed that was under their control.
>
> Q. Just to be clear, you didn't make any specific inquiries?
> A. No, I didn't make any specific – I didn't feel the need for it.
>
> …
>
> Q. I think I'm right that in the context of RSL NSW, you never turned your mind because, to your understanding, it wasn't fundraising; correct?
> A. Correct.

7.3.72 Ms Mulliner gave evidence that she was aware of the Act; that it imposed various obligations in respect of charitable fundraising; and that there were serious consequences for any breaches of the Act.[77] She gave the following evidence in relation to her understanding of fundraising:[78]

> In terms - my understanding of "fundraising" is seeking donations from the public, not internally raised donations, and so there was no fundraising, as such, for WBI as well. The donations - sorry. … The donations in RSL State Branch were from sub-Branches, so they were internally generated, so there was no fundraising.
>
> …
>
> Q. And that WBI did not fundraise?
> A. It did not fundraise from the public. It fundraised internally. Sometimes a member of the public might send a $50 donation, but there was no specific appeal. The appeal for fundraising was done through the United Returned Soldiers Fund, which I was on. They did the Anzac Day and the Poppy Day Appeal, and if you look at those financial statements you will see that there is the President's declaration and the other declaration on those accounts as well.

7.3.73 Ms Mulliner was asked about the declaration under the Act that was included in the RSL WBI financial statements, notwithstanding her claimed understanding that RSL WBI was not fundraising. She gave the following evidence:[79]

> Q. But why, then, was WBI including a statement by principal officer?
> A. I can't answer that off the top of my head. I can't answer that question.
>
> Q. Who prepared these documents?
> A. These would have been prepared by my personal assistant.
>
> Q. At your direction?
> A. At my direction.
>
> Q. So would you have told her to include a Charitable Fundraising certificate for WBI?
> A. I suppose I must have.
>
> Q. What I'm wondering, then, is why the distinction between the two, that WBI has one and RSL NSW doesn't?
> A. I can't answer that one, because WBI really didn't raise any money from the public. It was all internal as well. Maybe – the only thing is covering in case there was any appeals to the public. But there wasn't. It was done through URSF.
>
> Q. And what about LifeCare? Did that fundraise, to your understanding?
> A. No.
>
> Q. If none of these organisations fundraised, why did they have fundraising authorities?

A. I can't answer that question.

7.3.74 When Ms Mulliner was shown an historical search of the RSL NSW website with the facility for donations with the statement "Help us out. Donate", she accepted that it looked as though RSL NSW was in fact fundraising. However she had not been aware of this and had not reviewed the website at that time. She gave the following evidence:[80]

Q. But in determining whether these organisations needed to have, for instance, the officer's certificate - -
A. Yes.

Q. - - somebody needed to assess whether it was, in fact, fundraising?
A. Fundraising, yes.

Q. Which meant somebody had to look at all the activities that were being done and, therefore, it meant, didn't it, that somebody ought to have picked up that this rather looks like fundraising?
A. Yes.

Q. And if there was any doubt, somebody ought to have sought legal advice?
A. Yes.

Q. And who in the organisation had that responsibility?
A. It would have been the CEO.

Q. Being Mr Perrin?
A. Yes.

Q. And why is that his responsibility?
A. Because he's responsible for the operations of the branch.

7.3.75 Ms Mulliner was also shown the donation facility on the RSL WBI website and accepted that it looked as though RSL WBI was also fundraising. In respect of RSL LifeCare, Ms Mulliner agreed that nobody ever thought about the Act at Board level.[81]

7.3.76 Mr Perrin was Assistant State Secretary of RSL NSW from September 2004 to March 2005 when he became State Secretary. He continued in that role until May 2015. Mr Perrin was also the CEO of RSL NSW. He served on URSF and was a Trustee of RSL WBI. His evidence was that his understanding was that neither RSL NSW nor RSL WBI was fundraising. However he accepted later in his evidence that RSL NSW conducted the Poppy Coin Appeal and was fundraising.[82] Mr Perrin was asked about the oddity of RSL NSW not including any declaration under the Act in its financial statements whilst at the same time RSL WBI included such a declaration and auditor's report. He gave the following evidence:[83]

Q. Even if neither were doing any fundraising, you then understood that still one of them had to say that it had complied with fundraising that it had not been doing; is that right?
A. Yes.

Q. Did that not seem odd to you?
A. Yes, sir, lots of thing seemed odd.

Q. If it seemed odd, presumably you sought some legal advice about it?
A. No, sir.

Q. Or you sought some advice from the auditor about it?
A. No, sir.

Q. You ought to have done, ought you not?
A. Yes, sir.

7.3.77 Mr Perrin held the view that donations or receipts of funds from the public in circumstances where there was not an "appeal" was not fundraising under the Act. However when he was asked about the donation facility on the RSL WBI website he accepted that this was fundraising.[84] The explanation for Mr Perrin's misunderstanding about the organisations of which he was CEO and Trustee respectively was exposed in the following evidence:[85]

Q. Did you ever ask anybody as to whether those matters constituted fundraising?
A. From the moment I got there, I understood that that didn't constitute fundraising.

Q. Did you ever ask anybody?
A. I don't recall specifically.

Q. Sitting here today would you accept that it appears that that matter, at the very least, may not have been straightforward?
A. Yes.

7.3.78 Mr Perrin said that by the time he got to State Branch it was a "well-oiled machine" on how things happened.[86] He also said that Ms Mulliner was "in charge of the finances and she was very particular to ensure that we weren't in breach of any Act".[87] He also gave the following evidence:[88]

Q. But it is right, isn't it, that the level of focus upon compliance in the sub-branch was never applied to the issue of compliance at the State Branch; correct?
A. Yes.

Q. You would accept, sitting here today, that that was a significant deficiency; correct?
A. It could be improved, sir, yes. I don't know about significant deficiency. I don't know what the processes are in State Branch now.

PUBLIC INQUIRER: Q. When you were there?
A. It could be improved, ma'am, yes.

Q. Was it a deficiency? Do you think you can address the question? What you were being asked is do you accept it was a deficiency?
A. Deficiency, yes.

Q. And a significant one?
A. It could be, ma'am, yes.

Q. Do you mean it could be, or it was?
A. I'd need to understand what the deficiency is, ma'am. It could be significant. There's definitely a deficiency, Madam Inquirer.

MR CHESHIRE: Q Do you accept it from me there was a significant focus on compliance at the sub-branch level, but there was not the same level of focus on the State Branch level? You accepted that from me?
A. Yes.

Q. I'm suggesting to you that that lack of focus at the State Branch level was a deficiency, do you accept that?
A. Yes.

Q. Do you accept that it was a significant deficiency?
A. Yes.

7.3.79 Mr Rowe accepted that he had a responsibility to ensure that each of RSL NSW, RSL WBI and RSL LifeCare complied with the Act. His evidence was that he recognised that he did not do enough to ensure that RSL WBI complied with its obligations under the Act, including the conditions of its charitable fundraising authority. He also admitted that he failed to recognise that each of RSL NSW and RSL LifeCare was not complying with the Act and in each case he relied upon professional advisers. However he recognised that he had an independent obligation as State President, as a Trustee of RSL WBI and as a director of RSL LifeCare to ensure that each of those organisations complied with their obligations under the Act.[89]

7.3.80 Mr White admitted that at the time he signed the certificates or declarations in relation to fundraising under the Act in the financial statements for RSL WBI, he was not familiar with the provisions of the Act or the Regulations or the conditions of the fundraising authority.[90] He gave the following evidence:

Q. Do you accept that those are matters that you ought to have been aware of and familiar with before you sign the certificate?
A. I believe that I should say that I was, in a sense, aware, but not of the detail within it.

Q. But do you accept that in order to be able to sign a declaration, as you have signed there in 2015, you ought to have familiarised yourself with the provisions and the regulations and the conditions attached to the authority?
A. Well, I believed that under the appointment that I was holding and the support and resources that I was provided, that I was capable of doing this, given the appointment I held and the knowledge I had that time.

Q. But, Mr White, my question was do you accept that, prior to signing this certificate, you ought to have familiarised yourself with the provisions of the Charitable Fundraising Act, the regulations under that Act and the conditions of the authority?

A. Well, I believe I – yes, but I believe I had up till that point in time, and to now, acquainted myself sufficiently enough in my mind, but given I was not of the experience or, in a sense, capable of understanding even more, but I believe when I signed this I was doing it with the proper intent on behalf of the appointment that I held.

Q. It may have been with the proper intent, Mr White, but what I'm asking you now is, at least sitting here today, you would accept, would you not, that prior to signing this certificate you ought to have familiarised yourself with the provisions of the Act, the regulations and the conditions of the authority?

A. Yes.

7.3.81 Mr White did not notice the oddity of RSL NSW holding a fundraising authority but having no fundraising declaration included in its financial statements whilst at the same time RSL WBI included such a declaration in its financial statements. His understanding was that whatever needed to be done would be done. He had never received any instruction in relation to the Act and agreed that the training for the State Councillors and staff, particularly in relation to the Act, was not adequate.[91]

RSL LifeCare

7.3.82 The evidence referred to above from Messrs Carlson, Crosthwaite, Haines, Rowe and White and also from Ms Mulliner is of relevance in this section because they were also directors of RSL LifeCare.

7.3.83 It is appropriate then to deal with the evidence of the other directors of RSL LifeCare and of its CEO.

7.3.84 Prior to the time that Mr Condon became a director of RSL LifeCare he was an adviser to RSL LifeCare. In this role he attended a committee meeting of the Homes for Heroes Advisory Committee in May 2016. At that meeting Mr Thompson and the CFO Mr Broadhead were also present.

7.3.85 During that meeting Mr Condon queried what RSL LifeCare's fundraising status was in terms of a charitable fundraising authority. He also asked questions about third party fundraisers who were being issued an authority to fundraise by RSL LifeCare. At the end of the meeting Mr Condon asked Mr Broadhead why RSL LifeCare was not reporting fundraising in the annual financial statements. Mr Broadhead advised Mr Condon that the auditors had advised that RSL LifeCare "did not fundraise enough to go above the reporting threshold"[92] and that they did not require the reporting of fundraising to be included in the annual financial statements.[93] At the same time the Committee received a brief from management stating that the

organisation was in compliance with the appropriate requirements of fundraising.[94]

7.3.86 Mr Hardman was aware that RSL LifeCare had an authority to fundraise under the Act. He conceded that he had not read the Act until 2016 and in those circumstances had not turned his mind to how fundraising occurred in detail prior to that time.[95]

7.3.87 Mr Kells did not read the Act. He was aware of it only in the context of Mr Cannings referring to it in his advice in 2006/2007 with reference to section 48 of the Act and notification to the Minister. He accepted that it was "remiss" of him not to have read it. He gave evidence that it was never discussed at Board level.[96]

7.3.88 Mr Longley accepted that RSL LifeCare had an authority to fundraise from time to time and gave the following evidence:[97]

Q. When did you first become aware that LifeCare had an authority to fundraise?
A. I don't recollect when I would have first become aware.

Q. You've given some evidence about when you first became aware of the conditions, being in the last month or so. Was it about the same time that you first became aware that LifeCare had an authority to fundraise?
A. It is not a matter which I turned my mind specifically to, so my awareness would have been very limited prior to that.

Q. So may we take it from that answer that, really, you had not turned your mind to the issue of whether LifeCare had or did not have an authority to fundraise until about the time about a month ago?
A. Or if it did have one, that it was being dealt with administratively within the organisation.

Q. When you say "dealt with", before about a month ago, did you have any understanding of what an authority to fundraise meant?
A. Not specifically.

Q. So may we take it from that that before about a month ago, you did not appreciate that the Charitable Fundraising Act imposed various obligations upon LifeCare; is that correct?
A. Yes. Correct. I'm just – the month, I'm thinking a little bit earlier than that I will have become aware, but it's certainly in this more recent period.

…

Q. So at least then, before about last year, it would be right to say that you did not appreciate that the Charitable Fundraising Act imposed any obligations upon LifeCare; is that correct?
A. At least not obligations that required specific Board attention.

Q. Did you appreciate that the Act imposed any obligations upon LifeCare?

A. Not specifically.

…

Q. Did you, until about a year ago, even know that there was such a statute as the Charitable Fundraising Act of 1991?
A. I will have had a general awareness, but not specifically.

7.3.89 Mr Longley accepted that throughout his period as a director of RSL LifeCare he ought to have had knowledge of the requirements of the Act, the associated Regulations and the conditions of the fundraising authorities.[98]

7.3.90 Dr Macri conceded that it was only when this Inquiry commenced that she became aware of the Act. Prior to that time she was also not aware that RSL LifeCare held a fundraising authority. Her evidence was that there was no mention of the Act at any time during her role as a director of RSL LifeCare and indeed she thought that the only Act that was applicable was the ACNC Act.[99]

7.3.91 When Mr Murray joined the RSL LifeCare Board he was not made aware that RSL LifeCare held a fundraising authority.[100] It was when he and others set up the Homes for Heroes Committee that there was a lot of discussion about fundraising during which Mr Condon assisted Mr Murray to understand the regime under the Act.[101] He gave the following evidence:[102]

Q. May I take it that a least between around the time when you started to discuss the matter with Mr Condon on the one hand, and when it became a media issue and you received a full briefing, you yourself did not consider whether LifeCare was in fact complying with all of its obligations under the Act, the regulation and its authority?
A. That's correct, and that was remiss of me.

7.3.92 Mr Riddington gave evidence that he was aware of the Act "in general terms" having read the RSL LifeCare Handbook. He said that he knew that RSL LifeCare had obligations but expected that the administration would comply with the Regulations that were in place. He did not know in detail what the obligations were under the Act.[103] He gave the following evidence:

Q. Do you accept that you ought to have been aware of those obligations?
A. Probably.

Q. When you said that you relied upon, I think you said, staff, who were you relying upon?
A. I said administration.

Q. I beg your pardon, administration. Who were you relying upon?
A. CEO, CFO.

Q. Anybody else?

A. The company secretary, if there was one. It happened to be Ron Thompson, so that's the same person.

7.3.93 Mr Thompson admitted that he did not read the Act until 2016. He was prompted to do so by the issues coming up in the press. Prior to the end of December 2016 Mr Thompson did not appreciate that the Act imposed various requirements upon RSL LifeCare, in particular how it kept its records and carried out its fundraising.[104]

7.3.94 In December 2010 Mr Broadhead wrote to Mr Thompson advising him that every five years RSL LifeCare needed to renew its fundraising authority with the then Regulator, NSW Office of Liquor, Gaming and Racing. The renewal was due on 31 December 2010. Mr Broadhead's questions of Mr Thompson referred to the particular part of the application dealing with remuneration of directors and the need for "approval" from the Department.[105] Mr Thompson wrote to Mr Cannings requesting him to review and to confirm that RSL LifeCare directors did not receive "directors" remuneration for the purpose of completion of this documentation".[106]

7.3.95 Mr Cannings responded by asking whether RSL LifeCare held a fundraising authority and whether it carried out public fundraising activities. He advised that if it held an authority or carried out those activities then there was a need to look at the conditions more closely because under the Constitution directors "do not receive any remuneration for their roles as directors" and the only payments (other than for reimbursement of expenses) they were able to receive is for "consultancy services".[107]

7.3.96 Mr Thompson advised Mr Cannings that RSL LifeCare did hold a fundraising authority and in respect of the public fundraising activities he advised as follows:[108]

> I don't think so, public fundraising activities is a specific fundraising activity for untied funds. For example, a mail campaign to people to donate or going out into Martin Place and rattling a tin to the public. We do accept donations but we don't go to the general public to get them – I think. I will check the exact meaning of a public fundraising, but as we have answered affirmative to point 1, I think this requires further work.

7.3.97 Mr Thompson advised Mr Cannings that this was a "grey" area as RSL LifeCare did not do "mailouts" but did note on the letterhead that donations were tax deductible and publicly thanked and acknowledged donors.[109]

7.3.98 Mr Cannings advised that it would depend on what activities RSL LifeCare undertook and what its current practice was in collecting donations. His advice included the following:[110]

> If LifeCare makes appeals to the public at all for donations/fundraisers (examples of which are given below) you will need a licence.

> If you just issue receipts for donations which are voluntarily given to LifeCare (and no representation whether express or implied) is made in your dealings with the public that you are running an appeal for a charitable purpose (and the funds donated are not solicited from the public by way of fundraising appeals whether by LifeCare or others on your behalf), then my view is that you don't need a licence.
>
> If there is any doubt however, a licence should be obtained.

7.3.99 Mr Thompson advised Mr Cannings that "Well let's get the licence then".

7.3.100 RSL LifeCare's fundraising authority was renewed in December 2010 for a further five years. Mr Broadhead advised Mr Cannings of this renewal and asked him to consider the nature of the specialist consulting fees in the context of that new authority.[111] Mr Cannings advised as follows:[112]

> I will review the current arrangements as requested having regard to the Regulations under the Fundraising Authority. The principal question remains however, does LifeCare conduct public fundraisings? If not then we can dispense with the licence and simply ignore the regulations, if we do then my advice will be relevant as to how LifeCare rewards directors in compliance with the Regulations.

7.3.101 Nothing further appears to have happened in this regard.

CONCLUSIONS

7.3.102 The State Councillors of RSL NSW, the Trustees of RSL WBI and the directors of RSL LifeCare failed to ensure that their respective organisations complied with the Act, the Regulations and the fundraising authorities during the period covered by the Terms of Inquiry. The causes of these failures were multifaceted.

RSL NSW

7.3.103 In respect of RSL NSW, the CFO, Ms Mulliner, believed that RSL NSW was not conducting or participating in fundraising appeals within the meaning of that expression in the Act. Ms Mulliner also informed the CEO Mr Perrin that RSL NSW was not fundraising within the meaning of the Act. Although RSL NSW held a fundraising authority throughout the whole of the period covered by the Terms of Inquiry, this was not the subject of advice or communication to the State Councillors at any of their State Council meetings during the whole of that period.

7.3.104 This misconceived approach was exacerbated by Ms Mulliner's failure to advise the auditors that RSL NSW held a fundraising authority under the Act. Not surprisingly in the circumstances Ms Mulliner did not advise the auditors that RSL NSW was fundraising.

7.3.105 It is apparent that none of the State Councillors asked any relevant questions about the source of the donations in the financial statements throughout the whole of the period covered by the Terms of Inquiry. Nor were they advised that donations were being received through a donate facility on RSL NSW's website. The sad reality is that having regard to the views held by Ms Mulliner and Mr Perrin (by reason of Ms Mulliner's advice) that RSL NSW was not fundraising, if appropriate questions had been asked by the State Councillors about the source of the donations they would probably have been advised that these donations were outside the statutory regime.

7.3.106 One significant matter that contributed to these failures was that there were no fresh eyes looking into the practices and procedures governing the operations of RSL NSW. The leadership roles did not change for a decade, nor did the positions of the CEO or the CFO or the Honorary Legal Advisor or the auditors. The resulting stultification of the procedures of the organisation left the State Councillors in their unsatisfactory state of ignorance of the Act (in some quarters), its application to RSL NSW and RSL NSW's fundraising status for the whole of the period covered by the Terms of Inquiry.

7.3.107 It appears that the State Councillors, who had experience with the Act, either by reason of their role as Trustees of RSL WBI, other charity work or in their roles at their sub-Branches, gave no thought until very recently as to whether the Act applied to RSL NSW. Much dependence was placed on the CEO, the CFO, the relevant finance committee and the auditors to

ensure that RSL NSW operated within the confines of the law. Notwithstanding this dependence, the State Councillors had their own obligations to be aware that the organisation was subject to statutory requirements when raising funds from the public and to ensure that it complied with those requirements. Their failures to comply with their obligations for over a decade contributed to the cause of RSL NSW's non-compliance.

RSL WBI

7.3.108 The same problems existed in RSL WBI. Mr Perrin was a trustee of RSL WBI for over a decade serving during that period with Mr Rowe and Mr White. Ms Mulliner provided financial services to RSL WBI similar to those that she provided as CFO to RSL NSW.

7.3.109 Ms Mulliner was of the view that although RSL WBI held a fundraising authority through the whole of the period covered by the Terms of Inquiry, it did not conduct any fundraising appeals under the Act until URSF was wound up in 2014. Ms Mulliner made a positive statement to the auditors that prior to this time RSL WBI was not fundraising.

7.3.110 The failures by RSL WBI are even more confounding because Mr Rowe[113] and Mr White[114] signed a Principal Officer's statement declaring the opinion that RSL WBI had complied with the Act, the Regulations and the conditions in the fundraising authority issued under the Act and that the accounts and balance sheet gave a true and fair view in respect of the "state of affairs with respect of fundraising appeals".

7.3.111 Even after the Trustees became aware that RSL WBI was conducting fundraising appeals, they signed financial statements in which a Note appeared that no fundraising activities had occurred in the relevant year. No proper explanation was ever provided for how this could have occurred. However it appears that this may have occurred because of the auditor's view that the Note could be justified.[115]

7.3.112 After 2014 the auditors attempted to apply the provisions of the Act to the financial statements. However once again the financial statements failed to comply with the statutory regime.[116]

7.3.113 The Trustees, Ms Mulliner and the auditors continued with this flawed approach for over a decade. As with RSL NSW there were no fresh eyes on the practices and procedures of RSL WBI which was a significant factor that contributed to these failures.

7.3.114 Counsel Assisting the Inquiry did not submit that these failures of RSL NSW and RSL WBI alone should be the subject of a separate recommendation to the Minister to refer the RSL NSW State Councillors or the Trustees of RSL WBI who were State Councillors to ASIC and the ACNC. Rather this conduct will be taken into account in conjunction with the conduct of the RSL NSW State Councillors in dealing with Mr Rowe's conduct in relation to his expenses and credit card and the aftermath of

his resignation when considering the submission that a recommendation should be made to the Minister to refer them to ASIC and the ACNC.

RSL LifeCare

7.3.115 It is clear that the CEO and the CFO of RSL LifeCare depended on the auditors and on Mr Cannings to assist them in ensuring that RSL LifeCare was compliant with its financial reporting obligations and that its financial statements also complied with the various requirements of the legislation governing RSL LifeCare.

7.3.116 There is no doubt that RSL LifeCare's business was in a far more regulated environment than that of RSL NSW and RSL WBI. The statutory requirements, both Commonwealth and State, imposed on RSL LifeCare in the provision of care in retirement villages and aged care facilities were constant and during the period covered by the Terms of Inquiry were changing. It is obvious that much focus was on those requirements to ensure that RSL LifeCare maintained its accreditation under those statutes to enable it to continue to operate its business.

7.3.117 Notwithstanding these matters, it is clear that the failures of RSL LifeCare to comply with the Act, the Regulations and the charitable fundraising authority over the Terms of Inquiry were caused by ignorance of the fact that RSL LifeCare was fundraising, by ignorance of the Act in some quarters, by incorrect information being provided to the auditors and by a misconception of the Act by the auditors.[117]

7.3.118 Although the Act was not discussed at Board level until the controversies arose in late 2016, it is all the more inexplicable having regard to communications between Messrs Thompson and Cannings in 2010 referred to earlier.

7.3.119 It is extraordinary that having considered the questions in relation to RSL LifeCare's fundraising authority with Mr Cannings in 2010 that no further consideration was given to the donations received by RSL LifeCare or to the donate facility on RSL LifeCare's website. It is apparent that the focus was on making sure that the payments that were being made to the directors as consulting fees were recorded appropriately in the application form for the renewal of the fundraising authority. It also appears that no one was alerted to the need to carefully consider the regime of receiving the donations from the public and working out whether they were funds that required compliance with the Act, the Regulations and the conditions of the fundraising authority.

7.3.120 A further cause of the failures of RSL LifeCare was that notwithstanding these communications with Mr Cannings in 2010, neither Messrs Thompson nor Broadhead advised the auditors that RSL LifeCare held a fundraising authority.

7.3.121 Throughout the whole of the period covered by the Terms of Inquiry until the Special Purpose Financial Statements were produced, there was no reporting under the Act by RSL LifeCare.

7.3.122 Counsel Assisting the Inquiry did not submit that these failures alone should be the subject of separate recommendation to the Minister to refer the directors of RSL LifeCare and Mr Thompson to ASIC and the ACNC. However this conduct will be taken into account in conjunction with the conduct of the RSL LifeCare directors and Mr Thompson in respect of the payment of consulting fees when considering the submission that a recommendation should be made to the Minister to refer them to ASIC and the ACNC.

Offences under the Act

7.3.123 There have been numerous admissions made by each of the entities in respect of their fundraising failures, some of which may expose the enities to prosecution. These are matters that may be considered by the relevant authorities in due course.

7.3.124 If the members of the governing bodies or the officers of each of RSL NSW or RSL LifeCare were knowingly involved in the entities' offences under the Act they may also be exposed to prosecution. These too are matters that may be considered by the relevant authorities in due course.

ENDNOTES

[1] RSL NSW dated 4 September 2017 (Ex 15, p 28); RSL WBI dated 6 September 2017 (Ex 16, p 51); RSL LifeCare dated 25 August 2017 (Ex 2, Vol 3, p 878), 1 September 2017 (Ex 2, Vol 3 p 1182), 27 October 2017 (Ex 2, Vol 3, p 1231).
[2] Ex 15, pp 28, 6.12.
[3] Ex 15, pp 30 - 31.
[4] Condition 8 of RSL NSW's 2006 authority and condition 7 of RSL NSW's 2011 and 2016 authorities.
[5] As set out in the EY letter of 5 July 2017 (Ex 15, p 6.10).
[6] RSL NSW's Outline of Closing Submissions, 6 November 2017, pp 14 - 16, par 86, 89, 93.
[7] Ex 15, p 31.
[8] Ex 40, Vol 1, p 131; RSL (NSW) Constitution (2009), cl 45.1.
[9] Ex 40, Vol 1, pp 111, 144; RSL (NSW) Constitution (2009), cl 27, 58.
[10] Ex 40, Vol 1, pp 140 - 142; RSL (NSW) Constitution (2009), cl 52 - 55.
[11] RSL NSW's Outline of Closing Submissions, 6 November 2017, p 16, par 94 - 96.
[12] Ex 35, p 17; Tr 3347 - 3350.
[13] Ex 15, p 32.
[14] RSL NSW's Outline of Closing Submissions, 6 November 2017, p 17, par 101.
[15] Ex 4, Vol 1, pp 26, 44, 63.
[16] Ex 34, p 27; Ex 35, pp 7 - 8.
[17] Ex 4, Vol 1, pp 32, 51, 70; Ex 34, p 27; RSL NSW's Outline of Closing Submissions, 6 November 2017, p 10, par 53 - 57.
[18] Ex 34, p 27.
[19] Ex 34, p 27.
[20] Ex 16, p 51.
[21] Ex 16, pp 60 - 65.
[22] Condition 8 of RSL WBI's 2007 authority and condition 7 of RSL WBI's 2012/2013 authority.
[23] Ex 16, pp 64, 66 - 68.
[24] Contrary to condition 23 of RSL WBI's 2007 authority and condition 20 of RSL WBI's 2012/2013 authority.
[25] Contrary to condition 18 of RSL WBI's 2012/2013 authority.
[26] Ex 25, Vol 1, p 60, Tr 3359.
[27] Contrary to condition 18 of RSL WBI's 2012/2013 authority.
[28] Ex 16, pp 66, 67.
[29] Condition 7 of its 2007 authority and condition 6 of RSL WBI's 2012/2013 authority. RSL WBI's 2016 Financial Statements have not yet been finalised.
[30] Contrary to the Act, s 23 and condition 4 of the 2012/2013 authority.
[31] Ex 16, pp 54 - 57.
[32] As required by condition 7 of RSL WBI's 2012/2013 authority.
[33] Ex 16, pp 57 - 60.
[34] Contrary to condition 17(1) of RSL WBI's 2012/2013 authority.
[35] Contrary to condition 17(2) of RSL WBI's 2012/2013 authority.
[36] See for example Ex 12, Vol 1, p 138.
[37] Contrary to condition 16(1) of RSL WBI's 2012/2013 authority.
[38] Condition 7 of RSL WBI's 2012/2013 authority.
[39] Ex 2, Vol 3, p 878.
[40] As required by condition 7 of RSL LifeCare's 2005 authority and condition 6 of RSL LifeCare's 2010 and 2015 authorities.
[41] As required by condition 7 of RSL LifeCare's 2005 authority and condition 6 of RSL LifeCare's 2010 and 2015 authorities.
[42] As required by the Act, s 24(2).
[43] Ex 2, Vol 3, p 879.
[44] Ex 2, Vol 3, p 1232.
[45] Ex 2, Vol 3, p 1182.
[46] Together with condition 6 of RSL LifeCare's 2005 authority and condition 5 of RSL LifeCare's 2010 and 2015 authorities.

[47] As required by condition 2 of RSL LifeCare's 2005 authority and condition 1 of RSL LifeCare's 2010 and 2015 authorities.
[48] As required by condition 3 of RSL LifeCare's 2005 authority and condition 2 of RSL LifeCare's 2010 and 2015 authorities.
[49] As required by condition 4 of RSL LifeCare's 2005 authority and condition 3 of RSL LifeCare's 2010 and 2015 authorities.
[50] As required by condition 24 of RSL LifeCare's 2005 authority and condition 21 of RSL LifeCare's 2010 and 2015 authorities.
[51] As required by condition 25 of RSL LifeCare's 2005 authority and condition 22 of RSL LifeCare's 2010 and 2015 authorities.
[52] Ex 2, Vol 3, p 1232.
[53] Tr 1381.
[54] Tr 1382.
[55] Tr 1382.
[56] Tr 596.
[57] Tr 601 - 602.
[58] Tr 601 - 602.
[59] Tr 681 - 682.
[60] Tr 683 - 685.
[61] Tr 1834. These are standard RSL NSW forms by which the RSL NSW sub-Branches are required to provide annual financial returns to RSL NSW under cl 37 of the RSL NSW Constitution (see for example Ex 40, Vol 1, p 373). Examples of these forms are at Ex 17, Vol 1, pp 180 - 187. SBA2 requires information specifically in respect of fundraising.
[62] Tr 1835 - 1836.
[63] Tr 1157.
[64] Tr 1158.
[65] Tr 1551.
[66] Tr 797.
[67] Tr 798.
[68] Tr 2666 - 2667.
[69] Tr 2670.
[70] Tr 1661.
[71] Tr 1662 - 1663.
[72] Tr 861 - 863.
[73] Tr 864.
[74] Tr 1598 - 1599.
[75] Tr 2042 - 2044.
[76] Tr 1736 - 1737.
[77] Ex 11, p 39.
[78] Ex 11, pp 43 - 44.
[79] Ex 11, p 45.
[80] Ex 11, pp 53 - 54.
[81] Ex 11, pp 54 - 56.
[82] Tr 1209.
[83] Tr 1206 - 1207.
[84] Tr 1191.
[85] Tr 1186 - 1187.
[86] Tr 1185.
[87] Tr 1215 - 1216.
[88] Tr 1220 - 1221.
[89] Tr 958 - 959.
[90] Tr 2289.
[91] Tr 2291 - 2292.
[92] Ex 32, Vol 1, p 9 - 10, par 44 - 45.
[93] Tr 3257.
[94] Tr 3258.
[95] Tr 632 - 633.
[96] Tr 3142 - 3145.
[97] Tr 532 - 536.

[98] Tr 537 - 538.
[99] Tr 418 - 419.
[100] Tr 2113.
[101] Tr 2114.
[102] Tr 2114.
[103] Tr 375 - 377.
[104] Tr 270.
[105] Ex 19, Vol 1, p 54.
[106] Ex 19, Vol 1, p 54.
[107] Ex 19, Vol 1, p 53.
[108] Ex 19, Vol 1, p 53.
[109] Ex 19, Vol 1, p 52.
[110] Ex 19, Vol 1, pp 50 - 51.
[111] Ex 19, Vol 1, p 50.
[112] Ex 19, Vol 1, p 49.
[113] For the years 2007 - 2013.
[114] For the years 2014 and 2015.
[115] See Chapter 7.4
[116] See Chapter 7.2.
[117] See Chapter 7.4.

7.4 THE AUDITORS

INTRODUCTION

7.4.1 The accounts of an organisation that for the time being holds an authority to conduct a fundraising appeal under the Act (a fundraising organisation), insofar as its accounts relate to receipt and expenditure in connection with any such appeal, must be audited annually.[1]

7.4.2 An auditor who is engaged to audit the financial statements of a fundraising organisation has the significant obligation to report on: whether the accounts and associated records have been properly kept in accordance with the Act and the Regulations during the relevant year;[2] and whether money received as a result of fundraising appeals conducted during the relevant year has been properly accounted for and applied in accordance with the Act and the Regulations.[3]

7.4.3 The auditor's obligation is to review the accounts and associated records that are required under the Act and the Regulations to enable such a report to be made. It also includes a requirement to assess whether the funds raised from the public in the fundraising appeals have been properly accounted for and applied in accordance with the Act and the Regulations. This must be done before the auditor can be in a position to provide a report under the Act.

7.4.4 Compliance with these obligations will not be satisfied by the mere acceptance of management's claims that these things have occurred. Rather the auditor is required to make an assessment of the existence of the entity's accounts and associated records to be satisfied that they have been kept in accordance with the Act; and to make a proper assessment of whether funds raised from the public in a fundraising appeal have been properly accounted for in accordance with the Act and the Regulations; before providing a report.

7.4.5 If an entity has not conducted any fundraising appeals during the relevant year, the auditor's report should reflect that reality.

7.4.6 The financial statements of a fundraising organisation that is registered as a charity with the ACNC, as is each of the entities the subject of this Inquiry, will be published on the ACNC website. Additionally, the financial statements will be produced by the entity to the State Regulator[4] in support of any application for a renewal of its fundraising authority.

7.4.7 The auditor's role is pivotal to the effective operation of the fundraising activities of a fundraising organisation under the Act. There is a reliance on the auditor to form an opinion as to whether a breach of the Act or the Regulations identified by the auditor will be adequately dealt with by a Note in the accounts or by raising it with the governing body of the

fundraising organisation; and if not, there is the statutory obligation on the auditor to report the matter "immediately" to the Minister.[5]

NON-COMPLIANCE

7.4.8 As has been discussed, the financial statements of each of the entities during the period covered by the Terms of Inquiry did not comply with the provisions of the Act, the Regulations and the conditions of the respective fundraising authorities.

7.4.9 It has been submitted on the auditors' behalf that they were misled by RSL NSW and RSL LifeCare and, to a lesser extent, RSL WBI, into believing on reasonable grounds that the entities were not conducting fundraising appeals within the meaning of the Act. It was submitted that Ms Mulliner informed Ms Sheridan that RSL NSW was not fundraising and that no-one at RSL LifeCare advised Mr Winter that RSL LifeCare had a fundraising authority or was fundraising.[6]

7.4.10 It appears that there were no discussions between the auditors and RSL NSW and the auditors and RSL LifeCare prior to the controversies in respect of the organisations being raised in the media in the latter part of 2016 about the applicability or otherwise of the provisions of the Act to any of the activities of RSL NSW and RSL LifeCare.

7.4.11 The lead auditors at Grant Thornton, Mr Winter and Ms Sheridan, who conducted the audits on the entities during the period covered by the Terms of Inquiry, gave evidence in the Inquiry. The concept of "materiality" featured heavily in their evidence and it is therefore convenient at this point to refer to that concept.

MATERIALITY

7.4.12 "Materiality" has been defined as follows:[7]

> "Materiality" means in relation to information, that information which if omitted, misstated or not disclosed has the potential to adversely affect decisions about the allocation of scarce resources made by users of the financial report or the discharge of accountability by the management or the governing body of the entity.

7.4.13 In Auditing Guidance Statement AGS 1054, *Auditing Revenue of Charitable Entities*, in force during the early part of the period covered by the Terms of Inquiry, the nature of "Voluntary Revenue" was described with the warning of the difficulty that may be encountered in accurately estimating the level of revenue from donations, contributions or grants.[8] The guidance in AGS 1054 included reference to the auditor forming an opinion on management's assertions about whether voluntary revenue was properly stated and developing strategies based on an assessment of

matters including "the materiality of voluntary revenue".[9] That guidance included the following:

> In determining the materiality of voluntary revenue, qualitative materiality considerations may be significant, given the characteristics of charitable entities, and the nature of and sources from which voluntary revenue is derived. For example, public awareness or perception of any misappropriation of funds donated to a charity, due to lack of controls over the collection or recording of donations, or misuse of funds by a charitable entity, even if of a seemingly immaterial amount, may nonetheless result in a breach of donors' trust, and possibly result in their decision not to make further donations to a particular charity. Such events may severely damage the public reputation of the entity, and its ability to undertake current and future operations.

7.4.14 The Auditing Standard ASA 320 *Materiality in Planning and Performing an Audit*, issued in June 2011, recorded that although financial reporting frameworks may discuss "materiality" in different terms they generally explain that:[10]

- Misstatements, including omissions, are considered to be material if they, individually or in aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report;

- Judgements about materiality and made in light of surrounding circumstances, and are affected by the size or nature of a misstatement, or a combination of both; and

- Judgements about matters that are material to users of the financial report are based on a consideration of the common financial information needs of users as a group. The possible effect of misstatements on specific individual users, whose needs may vary widely, is not considered.

7.4.15 The determination of materiality is said to be a matter of professional judgment by the auditor affected by the auditor's perception of the financial information needs of users of the financial report.[11]

7.4.16 In this regard the Guidance Statement issued by the Auditing and Assurance Standards Board in April 2011, GS 019, *Auditing Fundraising Revenue of Not-for-Profit Entities,* is of relevance.[12] The Guidance Statement refers specifically to the Act and records that it may impose "specific financial reporting and auditing requirements".[13] It also refers to the prospect of governance by specific regulations that "may prescribe compliance and reporting obligations by the entity's governing body and the auditor" in connection with fundraising events.[14] It includes the following:

> Any material non-compliance with these regulations could have a significant financial impact should any limitation be placed on the not-for-profit entity undertaking similar activities in the future.

7.4.17 The Guidance Statement records that in respect of materiality of fundraising revenue, "qualitative materiality considerations may be significant" given the nature of the entity and the sources from which fundraising revenue is derived.[15] One of the qualitative factors to which the Guidance Statement refers is whether law, regulation, or the financial reporting framework affects users' expectations regarding the measurement or the disclosure of certain items.[16] It includes the following:[17]

> Sufficient appropriate audit evidence needs to be obtained to provide a basis on which to conclude whether the cash donations portion of fundraising revenue included in a not-for-profit entity's financial report is, in all material respects, complete.

7.4.18 It suggests that the auditor should consider the various sources of fundraising revenue; the loss of incoming resources through fraud and the effectiveness of controls that are applied; and the materiality of each source of fundraising revenue in relation to all of the not-for-profit entity's revenue.[18]

7.4.19 The definition of "materiality" in the relevant Standards focuses attention on at least two aspects of the commercial community who may rely on the financial statements. The first is those who may be allocating scarce resources to invest in an organisation or make donations to an organisation. The second is the internal management of the entity. In the first, the auditor has the obligation to ensure that there is no endorsement of any material misstatements or omissions which might adversely affect an investment decision to be made by the reader of the financial statements. In the second, the auditor has the obligation to ensure that there is no endorsement of any material misstatements which would adversely affect management's capacity to comply with its obligations of accountability in the operation of the entity the subject of the audit.

7.4.20 The objective of an audit of a financial report is to enable the auditor to express an opinion as to whether that report is prepared, in all material respects, in accordance with an identified financial reporting framework.[19] When planning an audit, the auditor considers what would make the financial report "materially misstated". There is a relationship between materiality and the level of audit risk; being that the higher the audit risk, the lower the materiality level.

7.4.21 There are two types of factors to be addressed in respect of materiality. They are "quantitative" factors and "qualitative" factors. However the various Standards caution that an evaluation of materiality based on profit impact may not be appropriate when the entity is a not-for-profit organisation.[20]

7.4.22 Auditing Standard ASA 560, *Subsequent Events*, issued in December 2015 deals with the auditor's responsibilities relating to subsequent events in an audit of a financial report.[21] That Standard includes the following:[22]

> After the financial report has been issued, the auditor has no obligations to perform any audit procedures regarding such financial report. However, if, after the financial report has been issued, a fact becomes known to the auditor that, had it been known to the auditor at the date of the auditor's report, may have caused the auditor to amend the auditor's report, the auditor shall:
>
> (a) Discuss the matter with management and, where appropriate, those charged with governance;
>
> (b) Determine whether the financial report needs amendment and; if so
>
> (c) Enquire how management intends to address the matter in the financial report.

7.4.23 Auditors are entitled to fix a realistic level of materiality to be satisfied that there are no material misstatements in the financial accounts of the audited entity. However when it comes to the provision of a report under section 24 of the Act, the auditor has an obligation to report on the reality, rather than fixing a level below which publicly donated funds need not be considered. The statutory duty under section 24(2) of the Act imposes a requirement on the auditor that before providing a report stating that the audited entity has complied with the Act, the auditor must check whether publicly donated funds (irrespective of the level) have been dealt with in accordance with the Act.

7.4.24 It is appropriate at this point to refer to the evidence given by the auditors at the Inquiry.

JAMES WINTER

7.4.25 Mr Winter is a partner of GT Audit, a separate legal entity controlled by Grant Thornton. GT Audit has a service agreement with the GT National Partnership to utilise their partners. Partners of GT Audit are partners with the Grant Thornton National Partnership.

7.4.26 Mr Winter was admitted as a member of The Institute of Chartered Accountants in Australia on 8 October 1990. Thereafter he worked for a period as an audit principal at EY and then as a partner of Deloitte from 2006 to 2010. He joined the firm BDO Australia as a partner in August 2010 and became a partner of Grant Thornton in April 2012.

7.4.27 In his written statement of evidence Mr Winter expressed the view that the auditor's role for any audit, whether or not conducted under the Act, is to confirm the reliability of the financial report of the entity the subject of the audit, and to provide an opinion as to whether the information,

presented as a whole, presents fairly in all material respects.[23] Mr Winter also addressed the requirements of section 24 of the Act as follows:[24]

> It is my understanding that this overarching principal (sic) of confirming the reliability of financial reports applied to the way that an audit for the purposes of section 24 of the CFA was to be conducted. That is, in providing the report required by section 24, the auditor is confirming compliance by the entity in all material respects with the CFA, rather than conducting a detailed investigation of the entity in an attempt to uncover non-compliance.

7.4.28 Mr Winter expressed the view that although there is a level of reliance upon the information provided by the management of the entity that is being audited, the auditor approaches the audit with "professional scepticism" whilst reviewing the audit evidence to make sure there is no material misstatement in the financial report or the declarations made by the responsible officers of the audited entity. However Mr Winter emphasised that the auditor would not disregard the information that is provided by management or make an assumption that the information is incorrect and then proceed to conduct their own investigation into those matters.[25]

7.4.29 There is of course a difference between disregarding the information provided by management and reviewing it in circumstances where it appears to be at odds with other information that is available for review by the auditor.

RSL LifeCare

7.4.30 Mr Winter became the lead audit partner for RSL LifeCare in 2011, assuming it from the former lead audit partner, Mr McLean. He has conducted the audit and signed the audit report for RSL LifeCare for the years 2011 to 2016 inclusive. None of those included reports required under section 24 of the Act. His written statement of evidence included the following:[26]

> At no stage prior to the time when the matters which are the subject of this Inquiry were made public in October 2016, was I made aware that RSL LifeCare held an authority under the CFA or that they otherwise had a requirement to comply with the CFA.

7.4.31 Mr Winter explained that his focus with respect to statutory and regulatory compliance by RSL LifeCare "largely centred" on compliance with the Corporations Act and the *Aged Care Act* 1997. This focus expanded in 2013 to include the ACNC Act after the Commission was established in December 2012. He claimed that there was "nothing" that alerted him to whether or not RSL LifeCare should be complying with the Act, emphasising that when the scope of the work was agreed with RSL LifeCare each year, the Act was never discussed.[27]

7.4.32 Mr Winter was aware that in any given year RSL LifeCare received donations. However he claimed that he was not informed that RSL LifeCare held an authority to conduct fundraising under the Act nor that

RSL LifeCare was in fact conducting "fundraising appeals" under the Act. He claimed that in those circumstances he did not turn his mind to whether the Act needed to be considered with respect to the donations of which he was aware.[28]

7.4.33 Another factor in Mr Winter's explanation as to why he did not consider compliance with the Act, was the level of the donations. He noted that in the period 2011 to 2016 the level of donations was less than 0.05% of the total revenue of RSL LifeCare of between $92.8 million and $226.2 million. He claimed that he did not consider the amount of donations to be "material" and therefore he did not consider that they could have given rise to any material misstatement in the financial statements of RSL LifeCare for those years.[29]

7.4.34 The focus of this evidence was on a general audit of financial statements rather than on the statutory obligation to make a particular report about an entity's compliance with the Act. In this regard Mr Winter claimed that while he knew that RSL LifeCare was providing the significant retirement accommodation and aged care business for benevolent purposes, he did not believe that it was a "fundraising organisation" and did not turn his mind to whether or not it was, or needed to be, complying with the Act.[30]

7.4.35 Mr Winter gave the following evidence in relation to his claim that he did not regard the donations to be "material":[31]

> Q. But you see, do you not, from the Act, that there is nothing in the Act which permits a donation to be ignored if it's not material; correct?
>
> A. Well, I'm not so sure that's correct because I - I guess I'm informed by section 20 (sic), where it talks about truth and fairness, and as an auditor we represent and discuss with the clients and it's part of general accepted principles of auditing that we provide a reasonable assurance or an absolute assurance, and the concept of truth and fairness is one which applies in the Corporations Act, in the ACNC Act, and that is the principle upon which we operate and, therefore, we form a view in the sense of truth and fairness and truth and fairness is one of the principles behind that, is materiality. I accept that the Act - it doesn't - it doesn't - it's silent on it and it's unclear, but in the absence of clarity, you would, under normal circumstances, apply the concept of materiality to the forming of your own truth and fairness.
>
> Q. In the context of, as I understand it, LifeCare, your view is that the value of the donations have, effectively, always been not material?
>
> A. Correct.
>
> …
>
> Q. In the current year, if the amount of donations are not material, does that mean that you do nothing to satisfy yourself as to whether those donations have, in fact, been applied even in accordance with the intended purpose?
>
> A. In the context of the audit which we were undertaking, in terms of the ACNC Act and the accounting standards and the auditing standards, then that's correct.

…

Q. Am I right, then, that effectively, your view is that you carry out your ordinary audit and it's only if something crops up in the middle of that that suggests some non-compliance, that you will consider whether you need to do anything about section 24(3)?

A. Well, for a start, the scope of our audits have been, in LifeCare have been restricted to initially the Corporations Act and, secondly, the ACNC Act, and we also made reference, I think, in the engagement letters and in our reports to the Aged Care Act. The scoping is quite deliberate, and agreed with the organisation, and that is the context of our appointment. So, when we were appointed, we were appointed under the terms of the Corporations Act, so our appointment didn't extend to the Charitable Fundraising Act until such times as an engagement letter had been entered into and arrangement – and that's by us and the client.

Q. What then is the position that, in fact, if LifeCare, as you know, had a fundraising authority, is it your evidence then that unless and until your engagement letter explicitly referred to the Charitable Fundraising Act, you didn't have to consider any of the parts of the section?

A. Well, to the extent that that was material to sum up the financial statements, that's correct.

PUBLIC INQUIRER: Q. What does that mean?

A. The extent to which the impact of the laws and regulations therefore might impact the context of the financial statements, then that's true. In the context of these numbers, as RSL LifeCare stands at that time, from 2016, the numbers themselves for charitable fundraising were not material and, therefore, the impact of the laws and regulations themselves would not lead to a material misstatement in the financial statements.

…

Q. But if there is an obligation to report in accordance with the condition imposed by the Minister or his or her delegate, then you just have to comply with the obligation irrespective of whether the number is material; isn't that right?

A. On the basis that you would accept that we were the – we had been engaged and the auditor under the Charitable Fundraising Act, which we hadn't been.

…

Q. If one has to report under the Charitable Fundraising Act, materiality is irrelevant, isn't it?

A. In the context of the reporting under the Charitable Fundraising Act, yes.

7.4.36 At this point Mr Winter accepted that materiality was irrelevant for the purposes of providing a report under section 24 of the Act. However

Mr Winter changed his position on this matter during his evidence. For instance, he gave the following evidence:[32]

Q. Sitting here today, at least, do you accept that there was no concept of materiality for the obligations under the Charitable Fundraising Act as to what needed to go in the financial statements; correct?
A. No, I don't accept that.

Q. You don't accept that?
A. No.

Q. You say that all of the requirements in the Act were subject to materiality; is that right?
A. Well, that's what I understood, in the context of signing a report, yes.

7.4.37 At a later point Mr Winter gave the following further evidence:[33]

PUBLIC INQUIRER: Q. Mr Winter, you see, one of the purposes, as I discussed with you a little earlier, is for there to be the capacity for transparency where public money is concerned.
A. Yes.

Q. You know that?
A. Yes.

Q. So if you decide, as a matter of materiality, the regulator's not going to be informed that the $155,000 came in from the public, then no-one will know that it came from the public, will they?
A. Yes.

Q. You surely understand that whatever money comes from the public needs to be reported upon under the Charitable Fundraising Act, do you not?
A. Yes.

Q. So, materiality under this Act does not feature, does it?
A. Well, as we were discussing today, that appears to be the case.

Q. But, look when you did this audit and you reported, effectively to the Minister's delegate, the regulator, that there had been no fundraising, then the regulator would be entitled to assume that none of the public's money was gathered; correct?
A. Yes.

Q. That's quite wrong, isn't it – quite a wrong impression?
A. On its own, yes. There's no – yes, that's correct.

Q. On its own or with anything else?
A. Okay, anything else.

…

Q. … Your audit endorses a report that says there was no charitable fundraising during the year; correct?
A. Yes.

Q. You accept that there was; correct?
A. There was – as I understand it, yes.

Q. So when you tell the regulator – that is, when the client tells the regulator that – and you sign a report endorsing that as an auditor, you're giving the regulator the wrong impression, are you not?
A. Yes.

Q. Because there was money that came in from the public, wasn't there?
A. There was a very small amount, as I understood it.

Q. How much?
A. A few thousand, is my recollection.

Q. Whatever it was, the regulator wasn't informed that it had been gathered from the public?
A. No.

Q. Materiality, you say, would have the consequence of the regulator being misinformed; correct?
A. That's the risk.

Q. But that's the fact, isn't it?
A. Yes.

7.4.38 Mr Winter accepted that the financial statements of RSL WBI for 2011 included a reference to a grant to RSL LifeCare. When asked whether this would suggest that RSL LifeCare might have in fact been fundraising, Mr Winter said "It might do".[34] He was tested further as follows:

Q. Therefore, that would be a matter that, in your 2012 audit of LifeCare, you would need to consider; correct?
A. Again, I would have considered it in the sense that, and what I have described before in terms of my understanding of whether there was a fundraising appeal from LifeCare to WBI, or involving WBI, of which WBI was aware, and so I was aware that there were - there was a regular, again, as I have described before, WBI almost passing on because - within RSL, RSL LifeCare being owned by RSL NSW, that there likely was not a formal communication or fundraising appeal, as I've described it previously, so I didn't think at the time that there was a fundraising appeal which necessarily gave rise to the transfer of those funds from WBI to LifeCare.

Q. The way to find out would have been to ask the question; correct?
A. It may have been, yes.

Q. Do you accept that you ought to have asked the question of LifeCare "Well, what's this donation from WBI? Did you solicit it?"?
A. Except, again, I don't want to harp on the point, but we would have considered that, obviously, in a separate audit process, but from the context of when we got to LifeCare, that we would have looked at LifeCare's donations in the context of income and then considered it in terms of the financial statements. So did it occur to me? No.

…

Q. Would it be right that you did not consider whether in fact the donation from WBI to LifeCare was or was not part of fundraising because it was not material?
A. And because I hadn't been engaged to and I wasn't aware that they were actually fundraising.

7.4.39 Mr Winter was asked about the consulting fees that were paid to the directors of RSL LifeCare. He accepted that the Board would have approved the increase in the fees for the consultant directors and accepted that such a process placed the directors in a position of conflict of interest.[35] He gave the following evidence:

Q. As an auditor, if you see a conflict of interest in a vote for fees which are being included in the financial statements, do you not have a duty to say to LifeCare, "Well, this vote happened, wasn't there a conflict of interest when you voted for it?"
A. Well, I think they would have known that as well.

Q. You say as well, so is the answer to my question, yes, that was part of your duty?
A. Well, I took it that they clearly were aware of that conflict. They voted on it.

Q. I go back to my question, Mr Winter. Do you accept that in the absence of them having told you that they knew about their conflict, you had a duty to bring it up with them?
A. Well, I would have thought that was obvious [to] them.

Q. Mr Winter, whether it was obvious, unless they had explicitly told you, it was your duty to tell them about this conflict of interest?
A. It may have been something we could have reported on, yes, yes.

7.4.40 Mr Winter continued to suggest that the RSL LifeCare Board members were aware of their conflict of interest and persisted in his disagreement with the proposition that unless he actually informed the Board members or asked them whether they were aware of their conflict of interest, he could have no confidence that they were aware of it.[36]

7.4.41 Mr Winter was referred to the Auditing Standard ASA 560 *Subsequent Events* and in particular the portion extracted above. It was suggested to Mr Winter that in late 2016 when he became aware of the fact that RSL LifeCare had been fundraising for a number of years, he had a duty to bring this to the directors' attention in the context of revisiting the previous audits. Mr Winter suggested that as Grant Thornton had not been engaged at that point to provide any advice or any audit work in respect of the Act, it was not necessary to bring this to their attention. Mr Winter was shown the provisions of Auditing Standard ASA 560, and gave the following further evidence:[37]

Q. Would that not require you to bring it to their attention?
A. The audit we had signed off in respect of '16 and prior years was scoped under the ACNC Act and under the Corporations Act. We had not been engaged as auditors under the Charitable Fundraising Act and, therefore, the audit opinion we issued in respect of those

prior year accounts, to which this standard would apply, was in respect of those other financial statements.

Q. But you accepted that in respect of the 2016 accounts, given that LifeCare was fundraising and had a fundraising authority, you accept that there were deficiencies; correct?
A. There weren't deficiencies in the accounts, as they were signed off, in respect of the framework that applied in those accounts.

Q. But you were aware, were you not, that the Act required that the financial statements include certain certificates; correct?
A. The Charitable Fundraising Act.

Q. Yes.
A. Yes.

Q. Required that the financial statements include certain certificates; correct?
A. Yes.

Q. And therefore, if, in fact, as you found out LifeCare had been fundraising, the financial statements were deficient; correct?
A. They were not materially deficient. In fact, they were correct as to the framework with which they had been signed off. The audit reports and the accounts themselves were satisfactory at that point, so there was no – and, in event, the materiality of those matters to the - -

…

Q. What I'm suggesting to you is you accept, do you not, that the 2016 financial statements ought to have included certain certificates under the Charitable Fundraising Act; correct?
A. I do now.

Q. All right. Therefore, you accept that, at least in that respect, those financial statements were deficient, correct?
A. They were, yes.

…

Q. If you had been aware during the audit, and before you had signed off, that, in fact, LifeCare was fundraising and that, therefore, certificates were required, you would not have signed off the audit; correct?
A. Correct.

…

Q. Do you not accept that the standard required you to bring that to the attention of LifeCare?
A. Well, two points: as I said before, I interpreted the standard in applying to the opinion which we'd issued; secondly, the conversations we had with LifeCare were clear that they were aware of – again, I can't remember exactly when that conversation occurred or how that occurred in terms of becoming aware of their licensing

under the Charitable Fundraising Act. So, therefore, it was reasonable for me to be – given that we had conversations with management, that they are aware that the Charitable Fundraising Act is in existence and they have certain obligations, but they had not engaged us at that point to conduct any activities in respect of that Act.

Q. In relation to the standard, though, you accept that, as you can see, (a) requires you to discuss the matter with management, and then over the page, (b): Determine whether the financial report needs amendment and; if so (d) Enquire how management intends to address the matter …

So those were matters that you need to discuss with management; correct?

A. Yes.

…

Q. At the point where you found out that there were deficiencies in the 2016 financial statements, do you accept that you had a duty to bring that to the attention of LifeCare?

A. I understood that they were aware of the – that they had a Charitable Fundraising Act – they had a licence and the Act was in application, so - -

Q. So is the answer to my question that you accept that you had a duty to bring it to their attention unless they already knew?

A. Correct.

7.4.42 Mr Winter accepted that the 2016 RSL LifeCare financial statements did not include an audit report under the Act.[38] He gave the following evidence in this regard:

Q. Was it then your view that LifeCare was not carrying out any fundraising, or carrying out some fundraising but it was not material?

A. Both. Sorry, fundraising – no, it wasn't – whatever donations it received were not material, so not fundraising.

7.4.43 This answer suggested that in Mr Winter's mind an entity will only be fundraising under the Act if the funds received are above a particular level; that is the level of materiality fixed for the audit generally.

7.4.44 His evidence continued:[39]

Q. Was it your view that LifeCare was fundraising and the amounts were not material, or it was not fundraising, or you didn't know either way?

A. Well, we weren't engaged to report on fundraising.

Q. As I understand your evidence, at least for the 2016 year, LifeCare may in fact have been fundraising, but it was below materiality; is that right?

A. Yes.

Q. Was that your view for every year with LifeCare?
A. My view was that I wasn't aware they were fundraising, and the amount of donations was not material.

…

Q. Because the amount of donations were not material, you did not feel that you needed to ask the question as to whether in fact they came from fundraising; correct?
A. No.

Q. But it's right, Mr Winter, isn't it, that you did not ask the question for this year as to whether it was in fact fundraising; correct?
A. I don't recall that I asked that it was fundraising.

Q. In the context of this concept of materiality, it's likely that you did not ask the question because the size of the donations was below materiality; correct?
A. That's possible.

Q. For LifeCare, for the 2016 financial year, what would the level of materiality have been?
A. Quite – significantly above that level of - -

Q. I would like, if I may, to have a figure for 2016, as to what the level of materiality would have been, even in just approximate terms?
A. Okay. My recollection is that we based our materiality on total assets, which were $1.2 billion, and we had a materiality of around about $12 million.

7.4.45 Mr Winter was asked if a materiality level of $12 million was fixed, would donations of $11 million from the public therefore not be reported under the Act. It was at this stage that Mr Winter suggested that there were "certainly thresholds within that materiality" and that there were "different layers". He said that one of the reasons he did not ask where the donations came from was because the donations were not material. However he accepted that it was "possible" that RSL LifeCare was in fact fundraising.[40]

7.4.46 In late 2016 when Mr Winter became aware that RSL LifeCare had in fact been fundraising he said that it did not occur to him that he might need to revisit the 2016 financial statements.[41] He would not accept the proposition that at some stage he "ought to have mentioned" the Act to the RSL LifeCare Board. Rather he said that they had their own obligations.[42] However he gave the following evidence:[43]

Q. Therefore, whilst for the purpose of your audit you say that that was subject to materiality, you understood didn't you, that an organisation, if it wished to fundraise at all, had to have an authority; correct?
A. Yes.

Q. And that wasn't subject to materiality; correct?
A. Yes.

Q. You agree with me?
A. I agree with you.

…

Q. You understood that these organisations were charities; correct?
A. Yes.

Q. And, therefore, in seeking to determine the legislation that might apply to charities, one of the obvious places would be the ACNC; correct?
A. Yes.

Q. But also the Charitable Fundraising Act; correct?
A. If they were fundraising.

…

Q. In the context of giving advice to these organisations, do you accept that the two obvious Acts that you ought to have mentioned, or somebody from Grant Thornton ought to have mentioned, were the ACNC Act and the Charitable Fundraising Act?
A. Not necessarily.

7.4.47 When Mr Winter was taken to the 2016 Annual Report for RSL LifeCare and its reference to the section on Homes for Heroes, he accepted that if he had read it it would suggest that RSL LifeCare had been fundraising within the meaning of the Act in the 2016 financial year. He also accepted that the donations that were recorded in the 2016 financial statements for RSL LifeCare suggested that, if the source had been reviewed, it would have been clear that RSL LifeCare was fundraising. He gave the following evidence: [44]

Q. It follows from that, doesn't it, that it is likely that nobody, yourself included, from Grant Thornton looked at the source of the donations; correct?
A. Again, it was not a material balance, as I said before, in terms of the numbers. We weren't aware they were fundraising, we didn't understand they had a charitable fundraising licence, and therefore we didn't need to go back to the source of the document to test in detail those balances.

Q. It's not even testing in detail the balances; it is just looking at the source of the donations, isn't it?
A. You may not do that, no.

Q. What I'm suggesting to you just the very force of the donations, as is recorded on this page, would have suggested to you that LifeCare was fundraising in the 2016 financial year; correct?
A. Yes.

Q. And, therefore, it follows that you didn't even look at the source of the donations; correct?
A. I'm not sure we actually had that list, so I don't know – that's not part of the financial statements.

…

Q. Is it likely then that you never went beyond having the total amount for donations to actually look at how it was made up; is that correct?
A. That's possible.

Q. Do you accept that you ought to have looked at the source of those donations?
A. In the context of the audit as we saw it at the time, the balance was immaterial. We had a general understanding – we had discussions with management around the nature of those activities and that there was no reason to believe that the balance would be materially misstated, so, no.

7.4.48 Mr Winter accepted that the previous financial statements were deficient in respect of the disclosures under the Act and the lack of income statements and balance sheet. He said that he "may not have" informed RSL LifeCare of this because "on their own the financial statements were materially correct". He then said that he was not sure that he did not inform RSL LifeCare that the 2015 and 2016 financial statements ought to have had an audit report within them.[45] However he gave the following evidence:[46]

Q. As soon as you found out that they were fundraising and had an authority, do you accept that you should have informed them straight away that their financial statements for a number of years were likely to have been deficient?
A. Yes.

7.4.49 In his later evidence, Mr Winter accepted that if he thought that RSL LifeCare were not doing anything about the deficiencies in its previous accounts he ought to have explicitly advised RSL LifeCare that it needed to do something about them.[47] He explained that his actions were based on his interpretation of the Act and he accepted that he may have misinterpreted it, but he was considering the RSL LifeCare accounts on the basis of materiality "rightly or wrongly".[48]

7.4.50 Mr Winter could not recall how he came to the understanding that fundraising required a formal appeal outside of "the RSL family" involving solicitation. He accepted from a reading of the Best Practice Guidelines published by the Office of Liquor and Gaming it was obvious that fundraising was not limited solely to solicitation.[49]

7.4.51 On 6 September 2017 the solicitors for RSL LifeCare wrote to Grant Thornton asking for an explanation in respect of the non-compliant audited financial statements of RSL LifeCare.[50] Mr Winter accepted that he wrote to Mr Mark Broadhead at about the same time posing the

question as to why NSW Fair Trading, or the "department" as he put it, did not raise the issues of the disclosures and statements and audit report and the consulting fees in 2010 and 2015 stating: "[a]ssume this angle had been considered".[51] Mr Winter said that he did not intend his email to Mr Broadhead to be in response to RSL LifeCare's solicitor's letter.[52]

7.4.52 Part of Mr Winter's explanation as to how the problems with RSL LifeCare's financial statements occurred was that he was not engaged to provide an audit report under the Act. In this regard he relied upon the engagement letter which made no reference to the Act. However Mr Winter adjusted this position when shown the engagement letter in respect of RSL WBI which made no reference to the Act, notwithstanding that an audit report under the Act was produced in respect of that entity. Mr Winter's subsequent evidence was that it was not "solely dependent" on the terms of the engagement letter.[53]

7.4.53 Mr Winter provided a report dated 25 August 2017 to RSL LifeCare which included the following audit opinion:[54]

> (c) money received by RSL LifeCare as a result of fundraising appeals conducted during that year [year ended 30 June 2016] has been properly accounted for and applied in accordance with this Charitable Fundraising Act 1991 and the Charitable Fundraising Regulations 2015.

7.4.54 Mr Winter was examined in respect of this opinion as follows:[55]

> Q. Is that to be read as subject to materiality?
> A. Yes.
>
> …
>
> Q. Under the approach to materiality that you have given evidence about in respect of (c), that means that even under this audit, LifeCare may have misapplied $30,000 worth of the public's money; correct?
> A. It's possible, yes.
>
> Q. Your evidence is that, as the auditor, you have no obligation to consider whether that is the case, is that right, because of materiality?
> A. Yes.
>
> Q. You are aware now that at least in respect of LifeCare, its obligations are not subject to materiality; correct?
> A. That its obligations – no, its obligations are – no, that's right. Yes.
>
> Q. Therefore, LifeCare is obliged to apply all of its fundraising appeals consistently with the representations made; correct?
> A. Correct.
>
> Q. It can't, as it were, skim off $30,000 and put it to other use; correct?
> A. No.
>
> Q. You agree with me?

A. I agree with you.

7.4.55 Mr Winter accepted that this opinion in paragraph (c) did not indicate that it was subject to any materiality. However he suggested that it was "inferred" from the sentence in the report that the auditor's responsibilities included ensuring that the statements were free from material misstatement.[56]

7.4.56 Mr Winter accepted that when he signed such an audit report the pivotal role of the auditor comes into play because he knows it is going to be used by the regulators.[57]

7.4.57 He accepted that the RSL LifeCare Special Purpose accounts for 2016 did not have a balance sheet relating to fundraising.[58] He gave the following evidence:[59]

Q. You are aware that the issue of materiality of fundraising revenue is something that needs to be determined on a qualitative basis; correct?
A. Yes.

Q. In looking at a qualitative basis, you are aware that, for instance, fundraising without an authority does not depend upon the magnitude of the fundraising; correct?
A. Correct.

Q. So, on a qualitative basis, the significant difference is between no fundraising and fundraising; correct?
A. Yes.

Q. And, therefore, in assessing the income of these three organisations from the perspective of whether any of them were fundraising or not, what you needed to look at was the difference between no fundraising and fundraising; correct?
A. Yes.

Q. And that required, did it not, specific inquiry of each of the organisations?
A. Yes.

7.4.58 Mr Winter was aware that RSL LifeCare had established Homes for Heroes and that donations were received for Homes for Heroes. He accepted that the reconciliation of donations in the financial statements ought to have been presented with the gross figure of the donations rather than the net figure. He also accepted that to represent it as the net figure was on its own misleading but he was not able to explain how that came about or why it was recorded in that fashion.[60]

7.4.59 Mr Winter was shown a series of Minutes of committees of RSL LifeCare and accepted that they appeared to indicate that RSL LifeCare was probably fundraising.[61] He gave the following evidence:[62]

Q. Yes. If there were fundraising activities, there was, presumably, then, fundraising within the meaning of the Charitable Fundraising Act; correct?
A. There may have been, yes.

Q. And, therefore, in the context of carrying out that review and becoming aware that there was fundraising, somebody ought to have said to LifeCare, "You are fundraising. Do you have an authority?" Correct?
A. We may have.

…

Q. Right. In the light of the documents I've just shown you, you would accept, would you not, that somebody ought to have said to LifeCare, "You are fundraising. Do you have an authority?"
A. Yes.

Q. When I say "somebody", just to be clear, I mean someone from Grant Thornton. You understood that, didn't you?
A. If they were aware there was fundraising, yes, and if they understood that, yes.

Q. From those minutes, anybody reading those minutes would have been aware that LifeCare was fundraising; correct?
A. Fundraising under the Charitable Fundraising Act or fundraising in a general sense?

Q. First of all, they would have been aware that they were fundraising; correct?
A. Yes.

Q. And that then necessitated raising with LifeCare whether it was fundraising within the meaning of the Charitable Fundraising Act; correct?
A. Yes.

Q. And, if it was, whether it had an authority to do so; correct?
A. Yes.

7.4.60 Although he was aware of the Act, Mr Winter accepted that he did not actually apply his mind to the requirements of the Act and the Regulations until he was instructed to audit the special purpose accounts in 2017 and it was at this time that he actually looked at what had to be done to enable the company to comply with its obligations under the Act.[63]

RSL WBI

7.4.61 Mr Winter audited the financial statements for RSL WBI for the years 2011 and 2013 when Ms Sheridan was on leave.

2011 Audit

7.4.62 In the 2011 year Mr Winter signed the auditor's report as required by section 24 of the Act because he understood RSL WBI had a fundraising authority. He said that he noted that the audit for the previous year included disclosure under the Act.[64] Although he did not recall any specific conversation, he claimed that he was informed at some stage during the audit planning process for 2011 that RSL WBI held a fundraising authority under the Act but that it had not conducted any fundraising appeals in the 2011 reporting year.[65]

7.4.63 Note 19 in the Notes to the financial statements for RSL WBI for 2011 was in the following terms:[66]

> **FUNDRAISING ACTIVITIES**
>
> During the year and the previous year the Institution did not engage in any fundraising appeals or activities.

7.4.64 The financial statements recorded donations relating to ANZAC Day and Poppy Day and the Notes to the financial statements recorded that donations were received from URSF.

7.4.65 Mr Winter's understanding was that URSF was an entity that was related to RSL WBI. He claimed that he understood that the URSF Trust Deed required URSF to distribute money that it raised from fundraising appeals to RSL entities such as RSL WBI, in circumstances where RSL WBI had not "expressly requested those funds". He claimed that based on this understanding of the URSF Trust Deed and his observation of the way that money was generally transferred between the related RSL entities by way of donations, he formed the view that the donations to WBI were not "solicited" and therefore the receipt by RSL WBI of these funds from URSF did not constitute a fundraising appeal by RSL WBI under the Act.[67]

7.4.66 Mr Winter's understanding in this regard depended upon his interpretation of the URSF Trust Deed that URSF was required to distribute the money to RSL WBI and in those circumstances there was no request or no solicitation and therefore the transaction did not fall within the Act.

7.4.67 Mr Winter's evidence in this regard was tested during his oral evidence. He was shown the URSF Trust Deed and gave the following evidence:[68]

> Q. Where do you say in that clause 5, or indeed anywhere else, that there was a requirement that URSF distribute money it raised from fundraising appeals to RSL entities such as WBI?
> A. To WBI?
>
> Q. No, where does it say that URSF was required to distribute money it raised from fundraising appeals to RSL entities such as WBI?
> A. Without reading it in full, I don't – I'd have to reread the deed.

…

MR CHESHIRE: Q. It is not in clause 5, is it?
A. No. So it's in accordance with the objects at 4, yes.

Q. It is not in 4, is it?
A. "The income and property of the Association, however derived, shall be applied solely towards the objects set out in Clause 4 …"

Q. That did not require the money it raised from fundraising appeals to be distributed to RSL entities such as WBI, did it?
A. That appears not be the case.

Q. Right. So why in your statement did you say that that was the case?
A. I guess that was my understanding.

Q. You say you guess that was your understanding.
A. I'm sorry, it was my – it was my understanding.

Q. Mr Winter, I want to suggest to you that you simply made that up.
A. I mean, there was a pattern of distributions we were discussing with management.

…

MR CHESHIRE: Q. I am suggesting to you that you made that up, that statement that you made?
A. No.

Q. The reality is that you did not give any thought as to the donations passing between the three organisations; that's right, isn't it?
A. That I gave no thought - -

Q. As to whether they were fundraising; that's right, isn't it?
A. No – well, no, I wasn't aware they were undertaking fundraising appeals as I understood the definition to be at the time.

Q. And it is right, isn't it, that you never asked LifeCare or RSL NSW whether they were fundraising; that's right, isn't it?
A. That may be correct.

7.4.68 At the conclusion of his evidence Mr Winter was provided with the opportunity to explain the understanding of the URSF Trust Deed that he had expressed in his written statement of evidence. His evidence in this regard was as follows:[69]

PUBLIC INQUIRER: Q. I got the impression that, from the position that you're in as the senior auditor, reviewing your deed or reviewing the deed, you couldn't have reached that conclusion. Now that's the view that I - -
A. Okay, that's probably an overstatement –

Q. Just wait, please. Please be careful. I got the impression that a senior auditor such as yourself, if you'd actually looked at the deed when you wrote this statement you couldn't have reasonably reached the

view that you express in paragraph 34. What I'm suggesting, or what I'm asking you is did you look at the deed before you signed this statement?

A. Yes, I think so.

Q. All right. You have agreed with Mr Cheshire that the deed does not have a provision within it that requires URSF to distribute money to WBI?

A. I think that's – yes, as I read that today.

Q. You used that as a basis for telling me, on your oath, that it was on that basis that you formed the view, together with your general understanding - -

A. Yes, yes, yes, yes.

Q. -- that there was no fundraising appeal. Do you remember saying that?

A. I think I do, yes, yes, yes.

Q. It's in here (indicating witness's statement)?

A. Yes, yes, yes.

Q. Once the basis of the review of the deed has gone, the premise that you had for forming the conclusion disappears, doesn't it?

A. Well, I guess it was part of a broad understanding, general understanding of the relationship between the RSL - -

Q. No, no, no, I am talking to you about the deed.

A. Yes.

Q. That's the premise and once that has gone then how can I be satisfied of what you've told me? I want to give you the opportunity - -

A. No, no, absolutely, sorry. Well, can I just explain my understanding?

Q. Of the deed.

A. Well, I may have misunderstood the deed, I grant that.

Q. Just pause there then.

A. Yes.

Q. Once the basis of your understanding of the deed falls away then all you have left is that observation of the way the money flows between what you've referred to as the members of the family; correct?

A. Correct.

Q. I am suggesting to you that you had no proper basis to tell me what you did in paragraphs 34 and 36 and I want to give you the opportunity to see if you can explain how on earth you could have reached that conclusion?

A. I guess the only other additional piece would have been the discussions with management at the time and that my assessment or understanding of that overall administrative function that existed between the entities which were operating, essentially, not as one, but there was that administrative oversight and almost control,

essentially, between the entities such that the funds had been transferred from one to the other, that was my understanding.

7.4.69 It is difficult to understand how an auditor of such seniority would sign a written statement of evidence suggesting a basis for concluding that certain donations were not solicited based on an understanding of a Deed, when clearly there was no justifiable basis for such an understanding.

7.4.70 Mr Winter's audit report in respect of the RSL WBI financial statements for 2011 included the following:[70]

(a) The financial report shows a true and fair view of the financial results of fundraising appeals conducting (sic) during the year;

(b) The accounting and associated records have been properly kept during the year in accordance with the Charitable Fundraising Act 1991 and the Regulations;

(c) Money received as a result of fundraising appeals conducted during the year has been properly accounted for and applied in accordance with the Charitable Fundraising Act 1991 and the Regulations; and

(d) At the date of this report, there are reasonable grounds to believe that the institution will be able to pay its debts as and when they fall due.

7.4.71 The signing of this report by Mr Winter in circumstances where he claimed he believed there had been no fundraising appeals conducted during the relevant year, was tested in evidence as follows:[71]

Q. What then did you understand, if they were not fundraising, that, for instance, paragraph (b) of your report meant?
A. Well, the Act requires you to make that declaration and, therefore, the accounting records and associated records would still have been properly kept, which would have meant that they are properly kept, but in the absence of fundraising appeals, there's nothing to - there is no non-compliance, if you will.

Q. So what you're saying, effectively, there didn't need to be any records kept; is that right?
A. Well, if there was no fundraising activity, that's correct.

Q. And so your certificate didn't really mean very much, is that right, if it wasn't fundraising? Was that your understanding?
A. I wouldn't say it doesn't mean anything very much, but it was compliant with the requirements of the Act, given the understanding that they weren't fundraising.

Q. Did you think that, really, what was there in your report, at least in (a), (b) and (c), didn't make very much sense, but your view was that it had to be included; is that right?

A. No, not that it didn't make sense, but in substance it was correct and therefore we had to make the disclosure because we were required to.

…

PUBLIC INQUIRER: Q. What did you understand the purpose of the declaration was, or the report, on page 564?
A. That was required under the Charitable Fundraising Act.

Q. What's the purpose of it, did you understand?
A. That it was, effectively, a licensing arrangement in respect of the charitable fundraising.

Q. But the purpose of you, as the auditor, informing the regulator, what was the purpose? Did you understand what that was?
A. Well, yes, I guess in the sense that the accounts were – the Act required that the accounts made certain things disclosed and if there were activities, then the Act also said that the auditors should make this statement.

Q. But the purpose, you understand, was so that someone could be satisfied that your client could receive public funds?
A. Mmm-hmm.

Q. Do you not understand that?
A. No, I'm not saying I didn't understand that, no.

Q. I see. So you did understand that?
A. Yes.

Q. So if you were going to represent in your report that the client had done something in accordance with the Act, it was for the purpose of representing to the regulator, as you understood it, that your client was an entity that could be trusted to receive public funds?
A. Which I believed it was.

Q. Is that what you understood the report was for?
A. Yes.

7.4.72 Mr Winter was asked whether he accepted that the financial statements were in fact non-compliant with the Act for that year. He said "you could interpret that to be the case, yes". He said that if one took the view that there needed to be "more disclosure" in the financial statements around fundraising activities then it would be true that the financial statements for that year were non-compliant.[72] He gave the following evidence:

Q. Is it your view now that they ought to have included further detail in the financial statements?
A. I guess I haven't considered exactly that point, but it's likely to be the case, yes.

Q. At the time, did you consider whether that was in fact the case?
A. I get back to the fact I didn't believe they were undertaking fundraising activities and, therefore, they had to sign off in

accordance with the Act and, therefore, that was true on the basis of that view, that they weren't fundraising.

7.4.73 Mr Winter accepted that clause 7(1) of the 2008 Regulation required an income statement and a balance sheet in respect of fundraising to be included in the financial statements of RSL WBI for the 2011 year. However he claimed that because Note 19 recording that there were no fundraising appeals was included in the financial statements, there was no need for an income statement and a balance sheet. He claimed it was not misleading because there were no additional balances to be disclosed. However he accepted that, as at the date he gave his evidence, he understood that an income statement summarising the income and expenditure had to be included even if it was to be recorded as zero.[73]

7.4.74 Mr Winter accepted that in the context of having to prepare the auditor's statement, he did have to turn his mind to whether RSL WBI was in fact fundraising and to apply professional scepticism. He accepted that in applying his professional scepticism in this regard one place to look was RSL WBI's website. However he resisted the suggestion that this was an "obvious" place to look. In any event Mr Winter did not review the website during the audit process.[74]

7.4.75 Mr Winter accepted that entries in the accounts for "donations" would suggest that RSL WBI may well have been fundraising and that he would need, at least on his understanding today, to raise these matters with RSL WBI explicitly in order to determine whether in fact it was fundraising. However when he audited RSL WBI's accounts in 2011 Mr Winter did not raise this matter with RSL WBI. He said that he was comfortable with what he did at the time based on his interpretation of the Act that donations had to be "solicited".

7.4.76 He did not ask the pertinent question as to whether RSL WBI was fundraising because he saw it like a "clearing house or the recipient, the passer-on of funds received".[75] He gave the following evidence:[76]

Q. When you say "clearing house", how then did you understand that, for instance, the sub-branches came to donate money to WBI?
A. Well, the sub-branches are part of the RSL. The sub-branches have a knowledge of WBI and they – there was almost like an expectation, if you will, "Oh, well, we'll raise money at the sub-branch level and we'll give it to WBI and WBI's going to send it on to so and so". I mean, again, that's the way the RSL operates.

Q. When you say "the RSL operates", that doesn't answer the question as to whether, in addition to it making those donations to the clearing house, WBI had actually solicited the money; correct?
A. Well, I didn't understand that it had.

7.4.77 Mr Winter claimed that his understanding was that there had to be solicitation in the context of some form of formal appeal.[77] He gave the following evidence:

Q. Do you now accept that that understanding was wrong?
A. Well, I accept it is a different interpretation now, yes.

Q. Do you accept that your interpretation was wrong?
A. No, I don't accept it's wrong. I accept it needs to be further clarified and get an advice, and that's what I'd advise the client. I'm not the lawyer, so I would say to them, "You need to get advice to say whether or not that is fundraising appeal".

7.4.78 Mr Winter accepted that irrespective of whether the entity that he was auditing had conducted any fundraising in the particular financial year, he would need to satisfy himself as to whether it had ever conducted fundraising, because there might still be something to be included in the balance sheet in the following year when it did not conduct fundraising but had done so the previous year.[78]

7.4.79 In respect of the requirement under section 23 of the Act for an unincorporated organisation to provide returns to the Minister giving details of the application of the proceeds of any fundraising appeals, Mr Winter said that he understood that because RSL WBI was not conducting fundraising appeals, he did not believe there was anything for it to disclose.[79] Mr Winter gave the following evidence in respect of that view:[80]

Q. It doesn't depend upon whether it is actually conducting a fundraising appeal; correct?
A. Yes.

Q. And WBI was an unincorporated organisation and it had an authority; correct?
A. Correct.

Q. Therefore, on that, you needed to turn your mind to whether, in fact, it needed to send a return to the Minister; correct?
A. Yes, that's correct.

…

Q. Did you turn your mind, if WBI wasn't fundraising, to whether it had, in fact, ceased to fundraise?
A. Given that my understanding was from the prior year, that they hadn't been fundraising in the prior year, then that wouldn't have been a matter for 2011.

Q. It rather looked, didn't it, as if WBI had ever fundraised, it had at some stage ceased?
A. Well, I know organisations who get a fundraising licence who never undertake fundraising. They get it almost in the sense of, "We might do this in the future". They don't really understand, I guess – maybe they plan to undertake some fundraising activities in the future, but I wouldn't have thought it was abnormal for them to have a licence and not do fundraising.

Q. Did you ever ask the question as to why they had an authority if they weren't fundraising?
A. I can't say that I can remember asking that specific question.

7.4.80 Mr Winter was questioned about the flow of money between the Women's Auxiliaries at sub-Branch level and the CCWA.[81] He accepted that he was aware that moneys that passed through sub-Branches were obtained from the public and gave the following evidence:[82]

Q. Did you ever make any inquiries as to the ultimate source of the moneys that ended up with WBI?
A. Did I make inquiries? Well, I may have – we would have had, I guess, some discussion at the time to get – to confirm the understanding of how that money was flowing through to - -

PUBLIC INQUIRER: Q. No, not flowing through - -
A. Or being received by WBI.

Q. No, just a moment. Where did it emanate from? Who gave it to whom? Where did it start from? What's its source?
A. I think from the women's auxiliaries.

Q. Who did they get it from? Surely they got it from the public?
A. The sub-branches and the public.

Q. And the public, isn't it?
A. And sub-branches.

Q. Well, the sub-branches got it from the public, didn't they?
A. Probably, yes.

MR CHESHIRE: Q. On that basis, would you understand that, ultimately, there was a fair chance that if they got it from the public, that someone was fundraising; correct?
A. Oh, yes.

Q. Therefore, you needed to, didn't you, find out who it was who fundraised to get the money from the public?
A. Not necessarily. We were, I guess, reporting on WBI and WBI receiving that. We were looking to make sure that money flowed from the Central Women's Auxiliaries to WBI and that that money was – that what they were receiving and reporting as being received represented what they were supposed to receive from the Central Women's Auxiliary.

…

Q. You would accept, would you not, that with these moneys that ended up with WBI, somewhere at some point it was likely to have been fundraising; correct?
A. Probably, yes, yes.

Q. In order to assess whether it was one of the entities that you were auditing, you needed to find out that it wasn't one of those; correct?

A. Well, yes, but that would have been discussed upfront, because we set the terms and the scope of the audit, so yes.

Q. It required an explicit question as to whether, in fact, the source of any of these funds was fundraising by either WBI or RSL NSW; correct?
A. Yes. Yes.

Q. You never made that explicit enquiry, did you?
A. No, I can't say that I didn't make that enquiry.

Q. But you can't say that you did, can you?
A. No, that's not what you were asking. I can't give you a yes or no because I don't recall whether I asked that question or not. I had a general understanding.

2013 Audit

7.4.81 In the audited statements of RSL WBI for the year ending 31 December 2013, Note 18 was in the following terms:[83]

FUNDRAISING ACTIVITIES

During the year and the previous year the Institution did not engage in any fundraising appeals or activities.

7.4.82 Mr Winter gave the following evidence about this Note:[84]

Q. That was false wasn't it?
A. Well, it was – false is not the right word, because the accounts were signed off on the basis of materiality. My only understanding at that time was that there was a very minor, in terms of – very small amount, and that wasn't material. Therefore in terms of them conducting fundraising activities, a failed campaign, effectively.

Q. Do you say now that note 18 is to be read as being subject to materiality?
A. That's how I assessed it.

…

Q. So note 18 is not to be read as subject to materiality, is it?
A. Well, I guess no.

Q. So note 18 is false, isn't it?
A. On its own, it is not factually correct.

7.4.83 Note 18 did not reflect the reality. RSL WBI had been conducting fundraising activities, of which Mr Winter was aware and which should have been a subject of a report under the Act.

7.4.84 Mr Winter accepted that the RSL WBI 2013 accounts should have had within them, but did not, an income statement summarising the income and expenditure of each fundraising appeal and a balance sheet

summarising the assets and liabilities resulting from the conduct of fundraising appeals.[85]

7.4.85 In Mr Winter's written statement of evidence he recalled that he was advised that RSL WBI had set up an internet fundraising portal known as "Minute to Remember". He claimed that he understood that this "campaign" had not been successful and that the costs were more than the amount ultimately received by way of donations.[86] Mr Winter sought to justify Note 18 on the basis that because it was a failed campaign the Note was not false.[87] The fact that an entity conducts a fundraising appeal that is unsuccessful does not mean that it did not conduct a fundraising appeal. It just means that it ran at a loss.

7.4.86 The Supplementary Report that Mr Winter prepared in respect of the audit that he conducted for RSL NSW for the year ended 31 December 2013 referred not only to RSL NSW but also to RSL WBI. The Supplementary Report made no reference to the Act.[88] Mr Winter gave the following evidence:[89]

Q. Do you not accept you needed to look at it specifically from the point of view of the Charitable Fundraising Act?
A. Yes.

Q. So you needed to look at such issues such as how the bank accounts were kept; do you accept that?
A. If they were undertaking fundraising activities, yes.

Q. And you knew that they were?
A. Well, I knew they'd had one.

Q. Yes, but that means they are conducting fundraising activities, doesn't it?
A. Okay.

7.4.87 Mr Winter's evidence in respect of Note 18 was most unimpressive.

RSL NSW

7.4.88 Mr Winter audited the financial statements for RSL NSW for 2011 and 2013 and claimed that at no stage was he informed that RSL NSW held a fundraising authority under the Act or that it was required to comply with the Act or have an audit conducted pursuant to the Act. He also claimed that there was nothing that alerted him that RSL NSW was required to comply with the Act. He said that while he was aware that donations were recorded in the revenue of RSL NSW, his discussions with management led him to believe that the donations were received from related RSL entities and that, on his understanding, this did not constitute a fundraising appeal under the Act.[90]

7.4.89 Mr Winter claimed that nothing sparked the question in his mind as to whether RSL NSW was fundraising.[91] After being shown the entries in RSL NSW's financial statements in relation to donations and expenses for ANZAC Day, Mr Winter accepted that these items "might" suggest that

it looked as though RSL NSW may well have been fundraising.[92] He accepted that he therefore needed to ask the question whether RSL NSW was fundraising. He said that he could not recall asking that question. [93]

7.4.90 When Mr Winter was taken to the entry in the Notes to RSL NSW's Financial Statements for 2011 relating to the "Support and Assistance Fund",[94] he accepted that the advice to sub-Branches about the existence of the Fund would likely amount to RSL NSW having solicited money and that this would be fundraising, as he understood it today. When it was suggested to him that he understood it in 2011, he said that because there was an ongoing "administrative communication function which would have gone within the RSL" he did not see it as a "public style of fundraising appeal" and therefore, as he understood it then, it did not constitute fundraising under the Act.[95] He claimed that because it was within the RSL "family" or a related entity, he did not consider it to be fundraising.[96]

7.4.91 The Supplementary Report to the State Council for the year ended 31 December 2013 referred to item 4.3 "Books and records, and conduct of review" in which it was recorded that Grant Thornton had been presented with "all the necessary books and records and explanations requested of management to support the amounts and disclosures contained in the financial statements in a timely and efficient manner".[97] It also included item 4.4 "Compliance with laws and regulations" in which the following was recorded:

- In performing out (sic) audit procedures we have not become aware of any non-compliance with any applicable laws or regulations that would have an impact on the determination of material amounts and disclosures in the financial report.

- We will also receive representations confirming that the League is in compliance with all laws and regulations that impact the organisation.

7.4.92 The Supplementary Report also referred to the ACNC Act.[98] Mr Winter was examined about this aspect of the Supplementary Report as follows:[99]

Q. In the context of an organisation which had an authority to fundraise and which was actually fundraising, was the Charitable Fundraising Act not something with which WBI should have been told to become familiar?
A. Well, I wasn't aware that they were unfamiliar with it.

…

Q. Right. So in this supplementary report, do you accept that you ought to have included some reference to the Charitable Fundraising Act for the purposes of preparing this report?
A. You may do.

…

> Q. What I'm asking is do you accept that you ought to have put some reference to the Charitable Fundraising Act in that supplementary report?
> A. I wasn't required to.

7.4.93 Mr Winter said that he did not consider it was necessary to make any observations around the Act at that time.[100]

ALISON SHERIDAN

7.4.94 Ms Sheridan qualified as a chartered accountant and attained membership of the Institute of Chartered Accountants in England and Wales in 2003. In January 2003 Ms Sheridan joined the accounting firm BDO Australia working as a qualified accountant in the audit division. She became an audit director in 2008 and obtained membership of the Institute of Chartered Accountants in Australia (now the Institute of Chartered Accountants Australia & New Zealand). In May 2012 Ms Sheridan became a partner at Grant Thornton.

7.4.95 Ms Sheridan holds a Bachelor of Arts (Hons) Accounting Studies from the University of Huddersfield (UK). She is a registered company auditor and in addition to the above membership she is a Fellow of the Institute of Chartered Accountants in England and Wales.

7.4.96 Ms Sheridan became the Audit Director for RSL NSW and RSL WBI in 2008.[101] She conducted the audit for each of those entities during the period 2008 to 2015 except for the years 2011 and 2013 when she was on leave.

7.4.97 In respect of RSL NSW, Ms Sheridan gave evidence by way of written statement that at no stage during the period 2007 up until the commencement of this Inquiry, did anyone from RSL NSW inform her that the entity held a fundraising authority or that it was in fact conducting fundraising appeals. She also gave evidence that prior to the commencement of the Inquiry, nothing came to her attention during her planning and enquiries of management that would have indicated to her that the approach to the audit or the audit plan for RSL NSW needed to be amended. [102]

7.4.98 In dealing with the audit of RSL WBI in 2014, after it took over the ANZAC Appeal and Poppy Day Appeal when URSF was wound up, Ms Sheridan reviewed the statement in the Note to the Financial Statement relating to appeal funds. Her written statement of evidence included the following:[103]

> 64. Having reviewed the statement showing how funds received were applied for charitable purposes, I observed that the funds had been distributed to RSL sub-branches and also to the Women's Auxiliaries. I was aware that these entities promoted the aims of current and former serving members of the Australian Defence Force

and was therefore satisfied that distributing appeal funds to these entities was in accordance with the object of the appeal.

65 Similarly, some of the appeal funds were transferred from the RSL Appeals NSW balance sheet to the WBI balance sheet. I knew that the aims of WBI was (sic) to care for former serving members of the Australian Defence Force who needed assistance. I was also aware from having audited the accounts of WBI that its expenditure only related to its core business of providing welfare and assistance to Defence members and I was therefore satisfied that the allocation of the appeal fund to WBI was in accordance with the object of the appeal.

7.4.99 The Note to which Ms Sheridan referred was in the following terms:[104]

20. FUNDRAISING ACTIVITIES*
One fundraising appeal was held during the year – Poppy Day.

Statement Showing How Funds Received Were Applied For Charitable Purposes

During the year the United Returned Soldiers' Fund received income from:

* fundraising appeals of $718,557;
* investment of appeal monies $15;
* donations of $49,437;
* other $391;

Of this,

* $810,880 distributed to sub-Branches, Women's Auxiliaries for local welfare work and
* $100,000 to RSL Welfare and Benevolent Institution Fund;

Direct costs of the fundraising appeals were $76,979 and Administration Costs were $171, 695.

7.4.100 Ms Sheridan was asked about a similar note in respect of the 2015 year (in which $1,014,016 was recorded as having been "distributed" to sub-Branches and Women's Auxiliaries),[105] and gave the following evidence:[106]

PUBLIC INQUIRIER: …

Q. What I have been told is that this money, that is the $1 million-odd that was "distributed", didn't come in in the first place, so that what they did was that the sub-branches obtained the donations and kept 50 per cent of them and sent 50 per cent of the gross proceeds to WBI. Does that ring bells?
A. Yes.

Q. So this word "distributed", what is it, a term of art, is it? It didn't really happen that way; did it?
A. No, but as part of an audit would look at the - -

Q. Just tell me, did it happen that way or not?
A. It did happen that way and we looked at the substance of that transaction.

Q. So it wasn't distributed?
A. They didn't receive the cash in and pay the direct cash back out again.

Q. I'll ask it again. It wasn't distributed?
A. Under a legal definition, no, it wouldn't have been.

Q. Under any definition?
A. No.

Q. Yes. So why present it this way if it didn't happen this way?
A. This is where accounting – you look at the substance as well as the form of the transaction.

Q. In accounting you look at fair and true?
A. Yes.

Q. It is not true, it wasn't distributed at all, was it? It was kept back and it looks as though, it sounds as though, you might have known about that?
A. We did look at that as part of our audit process. We didn't - -

Q. Does that mean you knew about it?
A. Yes, we did know that that was the way that they accounted for it.

Q. How would the Minister, looking at this and looking at the fundraising, know that the sub-branches out there kept 50 per cent of the public's money? How would he know, or she, reading this report that that's what had happened to the public's money? They couldn't know, could they?
A. I would argue that the substance of the transaction is those proceeds have come in and the money has gone out, and that's what's been represented, or they retained 50 per cent paid and paid back 50 per cent. The substance of that still shows the same position, and we looked at that - -

Q. Just think about that Ms Sheridan. Are you wanting to maintain that this document here is a true representation of what happened?
A. I represented that they – looking at the substance over form of that transaction, that that is a true and fair position.

Q. I see. The fact that it wasn't distributed, even though you've said it was distributed, you think it is true?
A. I think it represents, as I said, the substance of what the intent was.

7.4.101 Ms Sheridan said that there was no advantage to RSL WBI in reporting the receipt or distribution of the money in this manner.[107] She gave the following evidence:[108]

> PUBLIC INQUIRER: …
>
> Q. You could put it as money coming in but 50 per cent of the money that was gathered in the sub-branch stayed with the sub-branch?
> A. That is one alternative, yes.
>
> Q. That's the reality, isn't it? That's what happened?
> A. Yes, but when we - -
>
> Q. No, no buts, that's what happened, isn't it?
> A. Yes, 50 per cent was retained.
>
> Q. If it is 50 per cent retained, then why on earth wasn't it put in there? Just tell me that?
> A. I don't know how to explain it differently, but what we understood, what we inquired about when we discussed it with management around the purpose and the reason for doing it the way they did, versus the way they presented it, we looked at the substance – again, the form is one thing, the substance is another – and we were comfortable that the presentation, as it stood, presented a true and fair view of the substance of that transaction. Management will have represented that to us as well as part of the letter of representation.
>
> Q. The fact of the matter is, it doesn't represent the reality; correct?
> A. It doesn't represent the form of the transaction, correct.
>
> Q. It doesn't represent the reality, does it?
> A. No.

7.4.102 When Ms Sheridan became the lead auditor for RSL NSW and RSL WBI she had a discussion with Ms Mulliner in relation to RSL WBI's fundraising authority. Ms Mulliner forwarded documents from the Office of Charities of the NSW Office of Liquor, Gaming and Racing to Ms Sheridan together with a Fact Sheet entitled "The Audit", a copy of section 24 of the Act and extracts from the Guidelines produced by the Department.[109]

7.4.103 The Fact Sheet recorded that the audit was to ensure that the authority holder was keeping proper financial accounts in connection with fundraising appeals. It referred specifically to AGS 1054 as providing guidance to auditors "on the factors to be considered when determining whether sufficient audit evidence can be obtained to provide an objective basis for forming an opinion about the completeness of fundraising revenue".[110]

7.4.104 The Fact Sheet included the following:[111]

> **Audit objectives**

For purposes of the *Charitable Fundraising Act* [section 24(2)] the objectives of the audit would be to examine the records of the authority holder in order to form an opinion as to:

- whether the accounts show a true and fair view of the financial result of fundraising appeals for which they relate
- whether the accounts and associated records have been properly kept in accordance with the legislation
- whether money received as a result of fundraising appeals conducted during that year has been properly accounted for
- the solvency of the authority holder.

7.4.105 The Fact Sheet also noted that the auditor would have wider responsibilities to the client, the authority holder, in addition to the objectives under section 24 of the Act.[112]

7.4.106 Ms Sheridan made a number of file notes on the documentation that was forwarded to her by Ms Mulliner, in particular that Ms Mulliner had confirmed that RSL WBI did not engage in any fundraising activities during the current or previous financial years.[113] Ms Sheridan clearly considered the various records that were required under the Act and Regulations in circumstances where an organisation was fundraising, noting again that they did not apply to RSL WBI as it did not engage in any fundraising activities during 2006 or 2007 financial years.[114] However she noted that the declaration by the President or Principal Officer needed to be made.[115]

7.4.107 In her written statement of evidence Ms Sheridan described her review of the Act and the conclusions that she reached therefrom, which included the following:[116]

> 46. On my review of the CFA and Part 3 and 4 of the Best Practice Guide for Charitable Entities, I formed the view that not all donations received by an entity would be caught by the Act. So far as I could tell, the CFA governed entities that were conducting a fundraising appeal and that the entity would be required to obtain an authority to conduct such appeals.
>
> 47. I formed the view that a fundraising appeal only related to donations solicited or received by an entity that represented that it would use those funds for a charitable purpose.

7.4.108 Notwithstanding this clear statement in paragraph 47 of her written statement of evidence, Ms Sheridan claimed in her oral evidence that the receipt of money did not "necessarily" constitute a fundraising appeal. She said that her interpretation of the Act was that "money that is received as part of a general donation would not necessarily constitute a fundraising appeal".[117] Her evidence included the following:[118]

> My interpretation of fundraising is that they were specifically seeking to go out there and solicit and receive information or receive funding from others. If an organisation that is under the same umbrella chooses to give a donation, then I did not interpret that as being a fundraising event.

7.4.109 Ms Sheridan took the view that there were numerous entities under "the RSL umbrella" including the CCWA, the sub-Branches and the clubs. She gave the following evidence:[119]

> Q. But isn't the key to section 5, as you can see on its face on that page, the representation? If money is going from A to B, what makes it into a fundraising appeal is a representation that it will be put to charitable purposes; correct?
> A. Yes, it does state that.
>
> Q. And it's right, isn't it, that you never asked the question of WBI as to whether it had made any representation relevant to the receipt of that money; correct?
> A. Whether I specifically made that – whether I specifically asked it?
>
> Q. Yes.
> A. No, I don't recall specifically asking that question.

7.4.110 The money to which this question related was the list of donations in the 2007 financial statements of RSL WBI which included $271,466 from CCWA and $201,010 from sub-Branches.[120]

7.4.111 Ms Sheridan accepted that she needed to address, at least by category, each of the donations from CCWA and the sub-Branches for the purpose of ascertaining whether RSL WBI solicited those moneys.[121]

7.4.112 For the years from 2007 to 2014 (excluding those years in which she was on leave) Ms Sheridan understood that RSL WBI was not fundraising. Each year the donations from CCWA and the sub-Branches were listed in the accounts together with the figures for ANZAC Day and Poppy Day, but no questions would have been raised with Ms Mulliner because there was an understanding that RSL WBI was not conducting fundraising appeals. Notwithstanding Ms Sheridan's understanding that there was no fundraising, she took the view that it was still necessary for the principal officer of RSL WBI to sign the certificate under the Act because it held a fundraising authority.[122]

7.4.113 Ms Sheridan completed the statement of comprehensive income for RSL WBI for the year ending 31 December 2014 in respect of the Poppy Day Appeal.[123] She was aware of condition 6 to the RSL WBI fundraising authority but did not appreciate that it required a separate statement in respect of each Appeal.[124] In this regard Ms Sheridan accepted that neither the 2014 or 2015 statement of comprehensive income complied with condition 6(b) of RSL WBI's fundraising authority.[125]

7.4.114 Ms Sheridan was shown a snapshot of the web page of RSL WBI trading as RSL DefenceCare for 2013.[126] That document contained the words

"Donate" and "Find out more". On reviewing the content of that document, Ms Sheridan accepted that this appeared to be fundraising.[127] Ms Sheridan was also shown a footer to Ms Collins' email which referred to RSL DefenceCare as a charity with reference to donations over $2.00 being tax deductible.[128] Ms Sheridan accepted that this too was fundraising.[129] She gave the following evidence:[130]

Q. In signing the certificate for those years prior to 2014, really, the only matter for you to address yourself to was, "Is WBI actually fundraising"; correct?
A. Yes.

Q. And therefore, given what I've shown you, it would have been very easy to find out that in fact it was fundraising; correct?
A. There is information that shows that, yes.

Q. In the most obvious place to look, isn't that right, on the website?
A. It is one of the places to look, yes.

Q. One of the most obvious places to look; correct?
A. Yes.

Q. That suggests, doesn't it, that either you or your staff collectively failed because you did not find out that it was in fact fundraising?
A. From the work we had undertaken, we did not identify that it had been fundraising.

Q. I'm suggesting to you that that was a failure on the part of you and your organisation in those investigations. Do you accept that?
A. If it was fundraising in those periods, yes.

7.4.115 Ms Sheridan was also asked about the statement of comprehensive income of RSL NSW for the year ending 31 December 2010, in particular in relation to the entry "Donations Received" of $228,180 and the administration expenditure relating to ANZAC Day of $19,169 and donations of $24,640.[131] In addition, Note 11 of those financial statements referred to the RSL NSW Support and Assistance Fund established by the State Council in 2010 to fund the increased cost of capitation fees to the National Headquarters and to provide assistance to sub-Branches.[132] That Note listed the sub-Branches that had "donated to the Fund" totalling $228,180.[133] Ms Sheridan gave the following evidence in relation to that Note:[134]

Q. Sitting here today, looking at what is described in that note 11, you would expect that the sub-branches had made donations because they were encouraged to do so; correct?
A. Yes.

Q. And they were encouraged to do so by RSL NSW; correct?
A. Yes.

Q. If that's right, on the face of it, this would look like fundraising; correct?

A. On the face of it, yes.

Q. Do you accept that in the context of this note 11, that's something where you ought to have asked the question?
A. Yes.

7.4.116 Ms Sheridan was also shown a snapshot of the RSL NSW website in 2010 with the entries "HELP US OUT – DONATE",[135] and "Would you like to help out a digger doing it tough?" Ms Sheridan accepted that from those entries, she would understand that RSL NSW would be fundraising.[136] She gave the following evidence:[137]

Q. As part of applying that scepticism in the context of RSL NSW, I want to suggest to you that it would have been equally obvious to look on the website. Do you accept that?
A. Yes, I accept that.

Q. If you had done, you would have realised that RSL NSW was fundraising; correct?
A. Yes, it would have come to our attention.

7.4.117 Another aspect of Ms Sheridan's work was a report dated 19 February 2016 to the trustees of RSL WBI for the year ended 31 December 2015.[138] In that report, in a section entitled "Communication of audit matters with those charged with governance", it was noted that there was "non-compliance with laws and regulations" in the following manner:[139]

> We note from discussions with Glenn and Annette a review of the Trust Deed is occurring as a result of a change in the client base of WBI. We understand that John Cannings has been engaged to assist with this matter including the possible amendment to the Trust Deed.
>
> We have not become aware of any other material non-compliance with laws and regulations.

7.4.118 Ms Sheridan gave evidence that prior to this time, she was not aware that RSL WBI was in potential breach of its Trust Deed.[140] She was then shown the Minutes of RSL WBI[141] and email of Ms Collins in which it is clear that the Trustees of RSL WBI were made aware of the potential breach in 2012. Ms Sheridan accepted that her staff on the audit team would have had access to the Minutes and gave the following evidence:[142]

Q. It appears, then, that whoever reviewed the minutes that I took you to did not appreciate the potential significance of that issue; correct?
A. Potentially, yes.

Q. In the context of a potential breach of the trust objects, that would be a matter that you would need to consider in the context of your judgments of materiality; correct?
A. Potentially, yes

Q. Because potentially where an organisation is, for instance, registered with the ACNC and having a charitable status, a breach of its trust deeds might lead to its ability to continue being removed; correct?

A. I believe that's a possibility, yes.

Q. The 2015 financial year for WBI, you audited those financial statements, correct?
A. Yes, I did.

Q. Given the significance of the issue of which you were then aware, why was no note included in the financial statements about this issue?
A. I don't know.

Q. Do you accept that you ought to have insisted that a note concerning this issue was included?
A. I don't know whether you would need to do that. I'd need to check. Sorry, I can't recollect whether it would be a requirement to include that in a set of financials.

Q. Something of such significance as a breach of the trust deed, which could have catastrophic consequences for the organisation, isn't that precisely the sort of matter that should be included in a note to the financial statements?
A. Potentially, yes.

Q. I suggest to you again: it is right, isn't it, that there should have been some note included in the 2015 financial statements about this issue?
A. Yes.

7.4.119 Ms Sheridan's evidence was that she gave consideration as to whether the matter should have been reported to the Minister under section 24 of the Act but felt that she had adequately addressed the matter through the audit findings report, referred to above.[143]

7.4.120 During the Inquiry Grant Thornton, as the auditor of RSL NSW and RSL WBI, received an ethical clearance letter from EY from which Ms Sheridan understood that RSL NSW and RSL WBI would like to terminate their relationship with Grant Thornton.[144]

CONCLUSIONS

7.4.121 The role of the auditor under the Act is pivotal to the proper administration of charitable fundraising in New South Wales. The auditor's role under section 24 of the Act was introduced to restore public confidence in charitable organisations that are authorised to raise funds from the public. It provides an additional layer of satisfaction for the Minister and the public that an independent specialist has made an assessment so as to be in a position to report that money that has been solicited or received from the public has been properly accounted for and applied in accordance with the Act and the Regulations.

7.4.122 The financial statements of each of the entities for each of the financial years covered by the Terms of Inquiry failed to comply with the Act, the

Regulations and the conditions of the fundraising authorities. The causes for these failures are also multifaceted.

7.4.123 Each of the entities had the responsibility to be fully cognisant of the provisions of the Act and to engage the auditors on the basis that they were receiving funds from the public and that such activity was charitable fundraising under the Act. This did not occur.

7.4.124 Each of RSL NSW and RSL WBI (up to 2013) made statements that misled the auditors into believing that they were not conducting fundraising appeals within the meaning of the Act. Ms Mulliner made a positive statement to Ms Sheridan that RSL WBI was not conducting fundraising appeals and failed to advise her that RSL NSW held a fundraising authority.

7.4.125 Neither Mr Thompson nor any officer of RSL LifeCare informed Mr Winter that the company held a fundraising authority. Nor did they advise him that RSL LifeCare was conducting fundraising appeals within the meaning of the Act.

7.4.126 These were significant failures by each of the entities which had very serious consequences not only for the entities but also for the auditors.

A PRELIMINARY MATTER

7.4.127 Before discussing these consequences it is necessary to deal with some submissions that have been made by the auditors in which criticisms were made of those assisting the Inquiry. This is made necessary by the fact that the submissions will be accessible and therefore should not go unanswered.

7.4.128 Written submissions were made on behalf of the auditors that they had been dealt with unfairly in circumstances where "the auditors and the manner in which the audits were conducted were not the subject of this Inquiry".[145] Before dealing with the allegation of unfairness, it is appropriate to deal with the submission that the auditors "were not the subject of this Inquiry". Although the main focus of the Terms of Inquiry is on the three entities, it has been necessary to inquire into the causes of their significant failures to comply with the legislative regime. This inevitably required an assessment of the processes by which the financial statements were audited and how it came about that there was such widespread non-compliance. Clearly the pivotal involvement of the auditors in the process in which the non-compliance occurred was a highly relevant and important line of investigation in the Inquiry. During oral closing submissions, Senior Counsel for the auditors accepted that the auditors were in a vital role in terms of the regime under section 24 the Act and that their conduct was necessary to review in terms of the causation of the non-compliance.[146] In the circumstances the auditors' written submission in this regard does not have force.

7.4.129 It was submitted that one aspect of the alleged unfairness to the auditors was the failure by those assisting the Inquiry to lead evidence "to assist with explaining and understanding the auditing process generally and relevant auditing concepts".[147] It was submitted that this was a failure to "explore these issues in an open and transparent manner".[148]

7.4.130 First, those assisting the Inquiry tendered relevant Auditing Standards and Guidance Statements in respect of audits, in particular in relation to not-for-profit organisations.[149]

7.4.131 Secondly, the auditing concepts were neither complex nor in issue. Mr Winter and to a lesser extent Ms Sheridan, gave evidence explaining the concept of materiality. Their evidence of their understanding of the concept was not challenged.

7.4.132 Thirdly, the fact that the concept of materiality is applied by auditors to determine whether the financial statements of an audited entity show a true and fair view of the entity's financial position was not in issue. Rather it is the extent of the auditors' obligations to provide the specified reports under section 24(2) of the Act irrespective of that concept that was in issue.

7.4.133 The other aspect of alleged unfairness was made in the rather extraordinary submission that at times the auditors were driven to a "preconceived concession (whether well founded or not)" by the manner in which questions were posed by those assisting the Inquiry.[150] The auditors did not provide any examples of such "preconceived concessions" and in those circumstances the basis for the submission that they were treated unfairly falls away. However it is appropriate to record that the questioning of the auditors was forensically appropriate and fair and the auditors were given every opportunity to provide answers in the manner they saw fit.

7.4.134 The auditors were represented by Senior Counsel who had the opportunity to examine the auditors at the conclusion of the evidence elicited by Senior Counsel Assisting the Inquiry. That opportunity was taken up with Ms Sheridan, but not with Mr Winter.

7.4.135 The auditors' submissions in this regard have no force.

THE CONSEQUENCES

7.4.136 The consequences of such widespread non-compliance with the law by the entities include the obvious reputational damage and the inevitable financial losses caused by the self-imposed suspension of all charitable fundraising.

7.4.137 The consequences for the auditors include the requirements to revisit their audits of the financial statements of each of the entities; the public

and critical analysis during this Inquiry of the auditing services they provided to the entities; and the exposure to claims that they have failed to fulfil their obligations to the clients and have been responsible, or partly responsible, for the entities' failure to comply with the legislative regime.

7.4.138 The factors that impacted on the auditors' performance included a misapprehension of the meaning of "fundraising appeal" under the Act.[151] Both Mr Winter and Ms Sheridan claimed that they understood that funds or a benefit had to be solicited from the public to qualify as a fundraising appeal under the Act. They approached the audits of the entities on the basis that if there was no soliciting of funds from the public, there was no fundraising appeal. Therefore receipts of donations outside what they regarded as formal appeals were not regarded as fundraising.

7.4.139 Neither Mr Winter nor Ms Sheridan was aware that any of the entities had a "Donate" facility on their website, which clearly would have fallen within even their interpretation of fundraising appeal under the Act. Each took the view that funds that were transferred between RSL WBI, RSL NSW and RSL LifeCare could not be treated as fundraising appeals, notwithstanding that funds raised from the public and provided to RSL NSW sub-Branches was transferred on to RSL NSW and then on to RSL WBI and/or RSL LifeCare. It appears that the auditors took the view that because these public funds had travelled between entities in the RSL "family" this meant that the entities were not conducting or participating in a fundraising appeal within the meaning of the Act.

7.4.140 All of these factors affected the manner in which the auditors provided their services. They were also affected by the misleading statements made by RSL NSW and RSL WBI that they were not fundraising and RSL LifeCare's silence in respect of the fact that it held a fundraising authority and had been fundraising.

RSL WBI

7.4.141 Whatever might have been the case prior to 2013 the auditors knew that RSL WBI conducted a fundraising appeal under the Act in 2013. In their jointly signed representation letter to Mr Winter/Grant Thornton dated 28 February 2014 in respect of the audit of the 2013 financial statements, Ms Mulliner and Mr Perrin wrote:[152]

> **Fundraising Appeals**
>
> 50. During the year and the previous year, Welfare and Benevolent Institution did not engage in any fundraising appeals or activities apart from the "Minute to Remember" campaign in November.

7.4.142 The 2013 RSL WBI financial statements included Note 18 recording that RSL WBI did not engage in any fundraising appeals or activities during 2013.[153] That statement was false and was inconsistent with the

representation provided to Mr Winter by Ms Mulliner and Mr Perrin in the letter dated 28 February 2014.

7.4.143 The representation letter from which it was clear that RSL WBI had conducted a fundraising appeal was dated the same day as Mr Winter's Independent Auditor's Report. Although that might have suggested the possibility that Mr Winter may not have been aware of its contents before he signed his Report in respect of the accounts which included the false Note 18, such a conclusion is not available. That is because Mr Winter's written statement of evidence in the Inquiry included reference to a discussion with management in which he informed them that they should include something in the representation letter referring to the fact that the fundraising appeal had been conducted.[154]

7.4.144 Mr Winter's written statement of evidence included claims that he understood that the Minute to Remember fundraising appeal "had not been successful" and that the costs of the appeal "were more than what was ultimately received by way of donations". He claimed that based on "audit sample testing conducted during the audit" he was satisfied that RSL WBI's records provided particulars of all items of gross income received and all items of expenditure incurred.[155] That is quite a different matter from whether there had been a fundraising appeal conducted during the year.

7.4.145 Although Mr Winter's written statement of evidence referred to the content of Note 18 in which it was recorded that there were no fundraising appeals and to the fact that he considered the Minute to Remember campaign to be a fundraising appeal, there was no attempt in the written statement of evidence to reconcile these two matters.

7.4.146 Mr Winter's review of the 2013 RSL WBI Financial Statements which contained the Note that recorded that RSL WBI did not engage in any fundraising appeals or activities in that year permitted the false statement to remain uncorrected. Mr Winter's explanation in his evidence as to how this Note could have been left within the audited financial statements was most unimpressive. He initially attempted to suggest that the Note was not false because it was subject to materiality, in that the appeal was a failed campaign. Ultimately he conceded it was "not factually correct".[156] It is one thing to overlook something or perhaps fail to properly assess the situation. It is an entirely different matter, particularly for a senior auditor, to try and explain away a false Note with evidence that was without any rational justification. The statement in the Note was that RSL WBI did not "engage in any fundraising appeals or activities" during the year. It clearly had engaged in such an appeal or activity. Mr Winter's evidence that the Note may not have been false because of the application of the concept of materiality and that the campaign ran at a loss is indicative of how he approached the provision of his services. Clearly this was a cause of RSL WBI's failure to comply with its obligations.

7.4.147 The Act was introduced at a time when there were real concerns that public funds were ending up in the hands of promoters paying for their exorbitant expenses. The auditors' report required under section 24 of the Act as to whether the money raised in fundraising appeals has been properly accounted for and applied in accordance with the Act is an important step to combat such conduct. It is therefore very important to report on fundraising appeals that run at a loss so that there is transparency as to the use to which public funds have been put.

7.4.148 There is no reference at all to the Minute to Remember fundraising appeal in the financial statements for RSL WBI for the year ended 31 December 2013. On a reasonable reading of the RSL WBI Financial Statements for that year a reader would be led to believe that there were no fundraising appeals conducted under the Act. That was a totally false impression to have conveyed to the reader.

7.4.149 The auditors were on notice that the Minute to Remember fundraising appeal had occurred. It was their obligation not to endorse statements about the fundraising appeals in the financial statements that they knew to be false. The statement that there was no fundraising in that particular year had nothing to do with materiality and cannot be justified on that basis. The Note was false and should never have been endorsed by the auditor. Equally it should never have been included in the financial statements by RSL WBI as it was obviously cognisant of the fact that it had engaged in charitable fundraising during 2013. Once again the conduct of the auditors contributed to RSL WBI's failure to comply with its obligations.

7.4.150 Mr Winter's Independent Auditor's Report in respect of the 2013 financial statements of RSL WBI dated 28 February 2014 included the following:[157]

> (b) The accounting and associated records have been properly kept during the year in accordance with the Charitable Fundraising Act 1991 and the Regulations;
>
> (c) Money received as a result of fundraising appeals conducted during the year has been properly accounted for and applied in accordance with the Charitable Fundraising Act 1991 and the Regulations.

7.4.151 These paragraphs suggest that there were fundraising appeals conducted during the year and that moneys received were properly applied in accordance with the legislative regime. These statements do not sit well with Note 18.

7.4.152 Notwithstanding that the revenue referred to as "Donations" was recorded in Note 1(h) of the Financial Statements as donations received from URSF in respect of the ANZAC Day and Poppy Day donations, Mr Winter took the view that this was not fundraising under the Act. Accordingly, subparagraphs (b) and (c) in the Independent Auditor's Report did not relate to those items.

7.4.153 The Independent Auditor's Report referred to the auditor's obligation to obtain reasonable assurance whether the financial reports are free from material misstatement.[158] Mr Winter accepted that when he signed the Report endorsing the financial statements that contained a Note that there were no fundraising appeals during the year, it would give any recipient of the report the wrong impression.[159]

7.4.154 When Ms Sheridan became aware that RSL WBI was to take over the fundraising appeals formerly conducted by URSF, she made efforts to ensure that RSL WBI's financial statements complied with the Act. These efforts were not successful. Ms Sheridan's failure to achieve that outcome was caused in part by her misapprehension of the meaning of the expression "fundraising appeal" under the Act.

7.4.155 Ms Sheridan attempted in her evidence to maintain that the Notes in RSL WBI's 2014 and 2015 Financial Statements in relation to receipts and distribution of funds from the sub-Branches and the Women's Auxiliaries were accurate. This was based on her view that it was permissible to present the accounts in such a fashion because it represented "the substance over the form" of the transaction. However Ms Sheridan was driven to accept that this did not reflect the reality and the notes did not record what had actually happened to the funds which had been donated by the public.

RSL NSW

7.4.156 The auditors were clearly misled by RSL NSW into believing that it had not conducted any fundraising appeals under the Act.

7.4.157 It is clear that Ms Sheridan made efforts to apply her mind to the provisions of the Act when she was first retained by RSL NSW. However she ultimately formed the view that the donations that were recorded in the financial statements of RSL NSW were not funds received from charitable fundraising appeals under the Act.

7.4.158 Ms Sheridan presented as an extremely nervous witness and became visibly upset when challenged about the adequacy of the services that she had provided to RSL NSW (and RSL WBI). There is no doubt that Ms Sheridan honestly believed that neither RSL NSW nor RSL WBI were fundraising under the Act and had difficulty coming to grips with the fact that they were fundraising during the period when she thought they were not fundraising.

7.4.159 It is true that if the auditors had exercised "professional scepticism" and judgment in respect of RSL NSW's claims that it was not fundraising and observed the "Donate" facility on the website, they would probably have formed the view that RSL NSW was conducting a fundraising appeal. They did not make those observations and it is obvious that they accepted the word of the CFO who had been in control of the financial affairs of RSL NSW for many years – and certainly throughout the period during

which Ms Sheridan and Mr Winter were auditing the RSL NSW financial statements from 2008 to 2016.

RSL Lifecare

7.4.160 Mr Winter and his audit team failed to identify obvious circumstances, such as the "Donate" facility on the RSL LifeCare website and details in the Minutes dealing with fundraising for Homes for Heroes that indicated that RSL LifeCare was fundraising within the meaning of the Act. This was clearly a failure to apply professional scepticism and judgment in respect of the donations listed in RSL LifeCare's financial statements.

7.4.161 The other aspect of Mr Winter's conduct in relation to the auditing of the financial statements of RSL LifeCare relates to the period from late 2016 when he became aware that RSL LifeCare held a fundraising authority. Mr Winter did not make contact with RSL LifeCare to suggest that the completed financial statements needed to be revisited. He only acted when prompted to do so by RSL LifeCare. Special Purpose Statements of Income and Expenditure of Fundraising for the years ending 2014 to 2016 were then prepared. In each of those Special Purpose Statements, Mr Winter provided an Independent Auditor's Report that expressed an "opinion" as opposed to providing a "report" specifically under section 24 of the Act. Notwithstanding the difference in expression, it is clear that the statements in the Independent Auditor's Report in each of those years addressed the matters in section 24 of the Act.

7.4.162 In each of the Special Purpose Statements, Mr Winter expressed the "opinion" that the Special Purpose Income and Expenditure Report of Fundraising and the associated records had been properly kept during the relevant year in accordance with the Act and the relevant Regulations, when he could not reasonably have been so satisfied. It also included the opinion that money received by RSL LifeCare as a result of fundraising appeals during the relevant year was properly accounted for and applied in accordance with the Act and the relevant Regulations, when he could not reasonably have been so satisfied.

7.4.163 The assessment of Mr Winter's evidence was complicated by his nonchalant presentation in the witness box. It appeared very difficult for Mr Winter to accept that his interpretation of the Act was incorrect or wrong.

7.4.164 The complexity of the assessment of Mr Winter's evidence was compounded by the fact that he provided a written statement of evidence suggesting a particular understanding of the URSF Trust Deed, when there was no justifiable basis for such an interpretation. However when challenged in respect of that understanding Mr Winter accepted that as he read the Deed in the witness box such an understanding was not available. Although Mr Winter was given the opportunity to explain how that may have happened, the irresistible conclusion is that he did not read

the Deed either at all or certainly properly at the time he prepared his written statement of evidence for this Inquiry. That is not only regrettable but is also a matter of real concern that a senior auditor would propound such an interpretation to explain his conduct in auditing these entities.

7.4.165 In closing oral submissions Counsel Assisting the Inquiry contended that the fact that Mr Winter maintained his understanding of the Act which was "obviously flawed",[160] demonstrated that he had never read the Act and the Guidelines other than in a most cursory manner. Reliance was placed on Mr Winter's evidence that his understanding that appeals were limited to solicitation outside the RSL "family" in a formal appeal sense was based on what he described as the "heading" to section 5 of the Act entitled "fundraising appeal" and his interpretation of what he had read. Certainly Mr Winter denied that he did not read the Act, the Regulations, the conditions or the Guidelines.[161] However it certainly appears that Mr Winter's reading of the Act and the Guidelines was not thorough.

7.4.166 Mr Winter accepted in evidence that a reading of the Guidelines which referred to the "wide meaning" of "fundraising appeal" made it obvious that it was not limited solely to solicitation.[162] He accepted that it was obvious to him as he sat in the witness box but claimed it was not obvious to him previously.[163] When it was suggested to him that this meant that he could not have read the Guidelines when he came to his understanding he gave the following evidence:[164]

> No, and I'll tell you why, because I had – it was in my mind that the reference to an appeal was significant to that definition. That's the way I interpreted it and that's what was in my mind at the time. So my understanding was that a general – an appeal was what was crucial to that definition.

7.4.167 Mr Winter did not accept that his interpretation was wrong. Rather he suggested it needed further clarification and advice and that is what he would advise a client to do.[165] Mr Winter would not brook any movement from his own interpretation of the Act. Indeed when Mr Winter was approached in mid-2017 by the lawyers for RSL LifeCare in respect of the problems that had been exposed with its financial statements, he wrote to Mr Broadhead suggesting that the "angle" that the Regulator should have stepped in earlier should be adopted. He was clearly advocating for RSL LifeCare to go on the attack whilst it was clear that it should have been making the admissions that it ultimately made and trying to bring itself into a compliant state.

7.4.168 Mr Winter was held out as the leader of a "specialist" not-for-profit team in Grant Thornton which had been extensively engaged in the not-for-profit reform processes and providing "detailed relevant advice" to clients in respect of their "compliance obligations".[166] Mr Winter's resistance to an acceptance that his interpretation was incorrect needs to be assessed in light of a further development during final submissions

made of behalf of the auditors. In the auditor's closing written submissions dated 6 November 2017 the following was included:[167]

> Grant Thornton wishes to express its regret with respect of the limited interpretation given to the definition of 'fundraising' under the Act. Grant Thornton also wishes to inform the Inquiry that it is implementing further targeted training to ensure that auditors fully comprehend the issues relating to the interpretation of fundraising under the Act and to make it clear that the Act as drafted is not restricted to solicitation or actual fundraising events alone.

7.4.169 The Inquiry was advised by letter dated 7 November 2017 that the reference to "Grant Thornton" in this submission included Mr Winter and Ms Sheridan "in their personal capacities".[168] It is reasonable to conclude that this statement is an acceptance that Mr Winter's and Ms Sheridan's limited interpretation of the Act is not one that Grant Thornton will permit its auditors to propound in the future.

7.4.170 Grant Thornton and the individual auditors were, in various guises, the auditors of each of the entities through the whole of the period covered by the Terms of Inquiry. In stark contrast to each of the entities, Grant Thornton's attitude and that of the individual auditors to accepting any responsibility for the deficiencies in any of the financial statements over those years was tardy.

7.4.171 Mr Winter was driven to accepting that a review of the Minutes of the RSL LifeCare committees to which the audit team was provided access, led to the conclusion that RSL LifeCare was fundraising. He accepted that someone from Grant Thornton should have discussed with RSL LifeCare the fact that they appeared to be fundraising and asked if RSL LifeCare had an authority to fundraise.[169] This was not done and there was no proper explanation as to how these Minutes were not reviewed or brought to Mr Winter's attention by his team during the audit so that Grant Thornton would have been alerted to the problems that were exposed in 2016 and 2017 and in this Inquiry. This oversight or failure was of course not dependent upon Mr Winter's misapprehension of the interpretation of the Act because, even based on his interpretation of the Act, RSL LifeCare was obviously fundraising.

7.4.172 There were serious deficiencies in the audits of the financial statements with very far reaching consequences for the entities in circumstances that are in the main quite inexplicable.

AMBIT OF TERMS OF INQUIRY

7.4.173 Counsel Assisting the Inquiry submitted that a recommendation should be made to the Minister to refer the auditors, Mr Winter and Ms Sheridan, to Chartered Accountants Australia & New Zealand and to ASIC as the

regulator of auditors under the Corporations Act in respect of their conduct outlined in this Report.

7.4.174 It was submitted on behalf of the auditors that this step is outside the scope of this Inquiry.[170]

7.4.175 The Terms of Inquiry must be read as a whole. This is an Inquiry with specific powers under the Act. The ambit of any "subject matter"[171] of the Inquiry must be within the confines of those Terms of Inquiry. The powers that are exercised by a Public Inquirer are also constrained by the Terms of Inquiry.[172]

7.4.176 The Minister required investigation into the three entities with respect to what was described as the "following matters arising under the Act". Those "matters" are outlined in paragraphs 1 to 4 of the Terms of Inquiry and refer to specific conduct in each of the entities.

7.4.177 Paragraph 4 of the Terms of Inquiry includes reference to "any other matter that comes to the attention" of the Inquiry but it is limited to a matter that "involves or indicates" a breach of the Act by the entities or a ground upon which the Minister could be satisfied of a matter listed in sections 16(2) or 31(1) of the Act in respect of the entities. Paragraph 4 also requests a report and any "appropriate" recommendations.

7.4.178 The question arises as to whether it is "appropriate" in the circumstances and within the confines of the Terms of Inquiry to make recommendations to the Minister in respect of persons whose conduct was relevant to investigate in determining the causes of the conduct by the entities named in the Terms of Inquiry but who were not members of the governing body or officers of those entities.

7.4.179 The Terms of Inquiry do not explicitly, or indeed impliedly, provide for recommendations in respect of the conduct of persons who are not members of the governing body or officers of each of the entities. It is true that the conduct of the auditors was an essential part of the investigations in the Inquiry to establish the causes of the failures by each of the entities in respect of the "matters arising under the Act" within the Terms of Inquiry. In investigating the failures by the entities the Inquiry identified causative failures by the auditors. These were matters that involved or indicated breaches of the Act by the entities. They were matters that explained how it was that the entities had conducted themselves in breach of the Act, the Regulations and the fundraising authorities.

7.4.180 This was not an Inquiry with powers to investigate whether persons other than those within the three entities named in the Terms of Inquiry had breached the Act and was not an Inquiry with powers to investigate whether other persons breached other statutes or obligations generally.

7.4.181 The fact that the investigation of the causes of the breaches by the entities and persons named in the Terms of Inquiry uncovered conduct by others involved in those causes does not convert the Inquiry into an

investigation into their conduct generally. It is one thing to make a recommendation consequent upon the findings of the causes, for instance, the need for refreshment of the appointment of auditors. It is quite a different thing to make recommendations that there should be investigative steps and possible sanctions imposed outside the confines of the Act and the Terms of Inquiry.

7.4.182 A recommendation made pursuant to the Terms of Inquiry is "appropriate" if it can reasonably be described as within the "matters arising under the Act" as defined in the Terms of Inquiry.

7.4.183 On balance the submissions made on behalf of the auditors in respect of the recommendation for a referral have force. In those circumstances it is not intended to make such a recommendation within the confines of these Terms of Inquiry. It will be a matter for the Minister separately from any recommendation to take any further steps in respect of the conduct of the auditors referred to in this Report that are deemed appropriate.

ENDNOTES

[1] The Act, s 24(1), unless (from 1 September 2015) the gross receipts from fundraising in that year did not exceed $250,000.
[2] The Act, s 24(2)(b).
[3] The Act, s 24(2)(c).
[4] NSW Fair Trading.
[5] The Act, s 24(3).
[6] Tr 3515 - 3516; 3519 - 3520.
[7] Ex 39, Vol 1, p 25, par 6.
[8] Ex 39, Vol 2, p 735, par .09 - .10.
[9] Ex 39, Vol 2, p 737, par 13(b).
[10] Ex 39, Vol 1, pp 59 - 60, par 2.
[11] Ex 39, Vol 1, p 60, par 4.
[12] Ex 17, Vol 2, pp 466 - 497.
[13] Ex 17, Vol 2, p 471, par 7.
[14] Ex 17, Vol 2, p 472, par 9.
[15] Ex 17, Vol 2, p 475, par 15(c).
[16] Ex 17, Vol 2, p 475, par 15(c)(ii).
[17] Ex 17, Vol 2, p 476, par 16.
[18] Ex 17, Vol 2, pp 476 - 477, par 19.
[19] Ex 39, Vol 1, p 190, par 3.
[20] Ex 39, Vol 1, p 7, par 13.
[21] Ex 17, Vol 3, p 608, par 1.
[22] Ex 17, Vol 3, pp 611 - 612, par 14.
[23] Ex 24, Vol 1, p 2, par 10.
[24] Ex 24, Vol 1, p 2, par 11.
[25] Ex 24, Vol 1, p 2, par 12.
[26] Ex 24, Vol 1, p 3, par 21.
[27] Ex 24, Vol 1, p 3, par 22 - 23.
[28] Ex 24, Vol 1, p 3, par 25.
[29] Ex 24, Vol 1, p 3, par 26.
[30] Ex 24, Vol 1, p 3, par 27.
[31] Tr 2509 - 2512.
[32] Tr 2557.
[33] Tr 2559 - 2561.
[34] Tr 2523 - 2524.
[35] Tr 2594 - 2595.
[36] Tr 2596.
[37] Tr 2892 - 2898.
[38] Tr 2570.
[39] Tr 2570 - 2571.
[40] Tr 2572 - 2573.
[41] Tr 2574.
[42] Tr 2577.
[43] Tr 2579 - 2581.
[44] Tr 2620 - 2622.
[45] Tr 2627.
[46] Tr 2628.
[47] Tr 2900.
[48] Tr 2925.
[49] Tr 2932 - 2933.
[50] Ex 17, Vol 3, p 798; Tr 2946.
[51] Ex 17, Vol 3, p 801; Tr 2947.
[52] Tr 2950.
[53] Tr 2952 - 2953.
[54] Ex 2, Vol 3, p 1140.
[55] Tr 2962.

[56] Tr 2963 - 2964.
[57] Tr 2968.
[58] Ex 2, Vol 3, p 1134; Tr 2971 - 2972.
[59] Tr 2976.
[60] Tr 2977 - 2978.
[61] Tr 3002, 3005.
[62] Tr 3005 - 3006.
[63] Tr 3024.
[64] Tr 2526.
[65] Ex 24, Vol 1, p 4.
[66] Ex 24, Vol 2, p 557.
[67] Ex 24, Vol 1, p 4, par 34.
[68] Tr 2983 - 2984.
[69] Tr 3021 - 3022.
[70] Ex 24, Vol 2, p 564.
[71] Tr 2525 - 2528.
[72] Tr 2525.
[73] Tr 2530 - 2531.
[74] Tr 2622 - 2625.
[75] Tr 2517.
[76] Tr 2518.
[77] Tr 2516 - 2520.
[78] Tr 2532.
[79] Tr 2534.
[80] Tr 2534 - 2536.
[81] Tr 2539 - 2541.
[82] Tr 2540 - 2541.
[83] Ex 24, Vol 12, p 630.
[84] Tr 2554 - 2555.
[85] Tr 2555.
[86] Ex 24, Vol 1, p 5, par 42.
[87] Tr 2554.
[88] Ex 24, Vol 2, p 644.
[89] Tr 2567 - 2568.
[90] Ex 24, Vol 1, p 5, par 37.
[91] Tr 2546.
[92] Ex 24, Vol 2, p 509; Tr 2546 - 2547.
[93] Tr 2547.
[94] Ex 24, Vol 2, p 522.
[95] Tr 2548.
[96] Tr 2549 - 2550.
[97] Ex 24, Vol 2, p 657.
[98] Ex 24, Vol 2, p 659.
[99] Tr 2566, 2568 - 2569.
[100] Tr 2570.
[101] Ex 22, Tab 1, pp 1 - 2, par 5 - 9.
[102] Ex 22, Tab 1, p 6, par 44.
[103] Ex 22, Tab 1, p 8, par 64 - 65.
[104] Ex 22, Tab 2, p 296.
[105] Ex 22, Tab 2, p 410.
[106] Tr 1925 - 1926.
[107] Tr 1928 - 1929.
[108] Tr 1929 - 1930.
[109] Ex 22, Tab 1, p 5, par 39.
[110] Ex 22, Tab 2, p 4.
[111] Ex 22, Tab 2, pp 4 - 5.
[112] Ex 22, Tab 2, p 5.
[113] Ex 22, Tab 2, p 8.
[114] Ex 22, Tab 2, p 31.

[115] Ex 22, Tab 2, p 38.
[116] Ex 22, Tab 1, p 6, par 46 - 47.
[117] Tr 1871 - 1872.
[118] Tr 1872.
[119] Tr 1873.
[120] Ex 22, Tab 2, p 16.
[121] Tr 1897.
[122] Tr 1901.
[123] Ex 22, Tab 2, p 284.
[124] Tr 1915 - 1917.
[125] Ex 22, Tab 2, p 399; Tr 1918 - 1919.
[126] Ex 5, p 428.
[127] Tr 1953.
[128] Ex 5, p 489.
[129] Tr 1954.
[130] Tr 1956 - 1957.
[131] Ex 22, Tab 2, p 77.
[132] Ex 22, Tab 2, p 93.
[133] Ex 22, Tab 2, p 93.
[134] Tr 1905 - 1906.
[135] Ex 5, p 413.
[136] Tr 1952.
[137] Tr 1958.
[138] Ex 22, Tab 2, p 463.
[139] Ex 22, Tab 2, p 476.
[140] Tr 3074.
[141] Ex 25, Vol 3, pp 1004, 994 - 995.
[142] Tr 3078 - 3079.
[143] Tr 3079.
[144] Tr 3090 - 3092.
[145] Outline of Closing Submissions on behalf of Grant Thornton, Ms Sheridan & Mr Winter, 6 November 2017 (Auditors' Closing Submissions), p 5, par 22.
[146] Tr 3510.
[147] Auditors' Closing Submissions, p 3, par 13.
[148] Auditors' Closing Submissions, p 3, par 13.
[149] Ex 17, Vol 2, pp 466, 602, 802; Ex 39.
[150] Auditors' Closing Submissions, p 3, par 15.
[151] The Act, ss 4, 6.
[152] Ex 24, Vol 2, p 642.
[153] Ex 24, Vol 2, p 630.
[154] Ex 24, Vol 1, p 5, par 43.
[155] Ex 24, Vol 1, p 5, par 42, 44.
[156] Tr 2555.
[157] Ex 24, Vol 2, p 634.
[158] Ex 24, Vol 2, p 633.
[159] Tr 2561.
[160] Tr 3395.
[161] Tr 2937.
[162] Tr 2933.
[163] Tr 2934.
[164] Tr 2934 - 2935.
[165] Tr 2519 - 2520.
[166] Ex 17, Vol 1, p 87.
[167] Auditor's Closing Submissions, p 15, par 62.
[168] Tr 3479 - 3480.
[169] Tr 3005 - 3006.
[170] Tr 3523.
[171] The Act, s 41H(2).
[172] The Act, ss 26(2), 41O.

8.1 RSL NSW

8.1.1 There are currently approximately 40,000 members of RSL NSW throughout New South Wales. The members each belong to one of 352 RSL NSW sub-Branches, which are grouped into 23 District Councils. The majority of the members are located outside of the Sydney Metropolitan Area.[1]

8.1.2 RSL NSW has the responsibility for the activities of the District Councils and the sub-Branches and, in addition, oversees a number of subsidiaries including the CCWA; 135 Women's Auxiliaries; 65 RSL Day Clubs; 39 RSL Youth Clubs; and various other entities formed from time to time by RSL NSW. RSL NSW manages interests in approximately 150 properties including the Hyde Park Inn which is a 97 room, four star hotel in Sydney owned and directly operated by RSL NSW. RSL NSW has responsibility for managing financial assets of approximately $400 million. It also has a substantial interest in RSL LifeCare.

8.1.3 RSL NSW, by its State Council, also oversees or has direct responsibilities for RSL WBI; the ANZAC House Trust; the AFOF; the Anzac Memorial Trust; RSL Custodian Pty Limited; and RSL Australia Limited.[2]

8.1.4 RSL NSW State Branch headquarters is located at ANZAC House in the Sydney CBD. Its employees perform functions in property, operations, welfare, membership, finance, compliance and records. The staff of RSL WBI and RSL DefenceCare are co-located at ANZAC House.

8.1.5 RSL NSW is a statutory corporation incorporated under the *Returned and Services League of Australia (New South Wales Branch) Incorporation Act* 1935. Its governing documents include the RSL NSW Constitution, By-Laws and Governance Regulations. The State Council is the governing body of RSL NSW; the State Council meets between the annual State Congress; and the State Executive meets between the meetings of State Council. RSL NSW operates primarily through its sub-Branches and subsidiaries.[3]

8.1.6 The State Congress has functioned as the annual general meeting of RSL NSW and it is held once a year. The sub-Branches that have complied with the requirements of the Constitution by submission of annual returns are entitled to send a delegate to State Congress. State Congress is responsible for the approval of the amendments to RSL NSW's Constitution or policies as required. It also formulates and debates motions relating to public policy and conducts the election for State Council, State Treasurer and State President on a three year basis or otherwise as required.[4]

8.1.7 The State Council consists of the State President, State Vice-President Metropolitan, State Vice-President Northern Country and State Vice-President Southern Country, the State Honorary Treasurer, five State

Councillors from the metropolitan area, two State Councillors from Southern Country and two State Councillors from Northern Country.[5]

8.1.8 The most recent State Council elections were held in May 2017 and the current members of the State Council and their backgrounds are included in Appendix E to this Report.

8.1.9 The role of the State Executive is to conduct RSL NSW business under the direction and control of State Council and State Congress. It consists of the State President, Mr Brown elected on 24 May 2017, the Senior Vice-President, Mr James elected on 24 May 2017, and Mr Michael Bainbridge, State Vice-President elected on 24 May 2017.[6]

ENDNOTES

[1] Ex 34, p 3, par 16.
[2] Ex 34, p 3, par 18 - 19.
[3] Ex 35, pp 3 - 6, par 15, 21.
[4] Ex 35, p 6, par 24.
[5] Ex 34, p 6, par 25.
[6] Ex 34, p 7, par 27 - 28.

8.2 STATE PRESIDENT EXPENSES GUIDELINES

8.2.1 During the time that Mr Godfrey (Rusty) Priest was State President of RSL NSW, he and the then State Treasurer signed a document, which was dated 23 August 1993 and contained the following:[1]

> State President's allowance as arranged between State Secretary, Hon. State Treasurer and State President on Monday 25th June, 1993 and confirmed by Budget Finance and Staff Committee, Wednesday 28th July, 1993.
>
> State President's allowance $10,000 per annum, payable $833.33 per month; together with a Cabcharge and all transport to various Country Sub-Branches & District Councils to be met by State Branch (either rail or air transport).
>
> A telephone is to be installed in his residence to be used for all R.S.L. calls and account submitted monthly for payment.
>
> State President's Suite to be amply set up at all times for the necessary entertaining.
>
> Where visiting outside Sydney Metropolitan area, accommodation to be left to his discretion.

8.2.2 When Mr Rowe became State President in 2003, no similar document was signed.[2] Up until 2010, there was no written Policy or Guideline in respect of Mr Rowe's expenses as State President. As Mr Rowe acknowledged, the matter of his expenses was left to his "honesty and good practice".[3]

8.2.3 In 2010, a State Presidential Expenses Guidelines document was developed by the FARM Committee. On 16 June 2010, Messrs White and Hardman and Ms Mulliner were tasked with developing a "Policy for the State President's expenses" to be considered at the next FARM Committee.[4] On 21 July 2010 the FARM Committee resolved that the "State President's Expense Policy research be continued.[5] On 17 August 2010 the "matter" was deferred to the October Meeting.[6] On 20 October 2010 it was again deferred to the next FARM Committee Meeting.[7] On 17 November 2010, the FARM Committee resolved that the Policy should be presented to the December Meeting of the Committee.[8]

8.2.4 On 19 November 2010, the State Council of RSL NSW resolved that the "State President's Expenses document is adopted as the conditions of incumbency for the office of State President".[9]

8.2.5 On 15 December 2010, the FARM Committee resolved that "the policy document as amended, be approved".[10] It is probable that the document entitled "State Presidential Expenses Guidelines" with the Note under the

heading "(As approved by State Council on 19th November 2010)" is the document that the FARM Committee approved on 15 December 2010; and was the policy that governed Mr Rowe's expenses as State President (the SP Guidelines).[11]

8.2.6 The SP Guidelines included the following:[12]

> **ACCOUNTABILITY**
>
> The State President is responsible for any reasonable expenditure of State Branch funds, specifically incurred and associated with the necessary carrying out of the duties in accordance with the Position Description, and required to be performed as a result of the appointment to the position. An RSL Corporate MasterCard is provided and is to be responsibly used in the payment of these expenses.
>
> The State President will complete a monthly reconciliation of expenditure incurred in the performance of duties on the appropriate Expense Claim Form, with receipts attached, for approval by the State Honorary Treasurer, otherwise by the Chair/Deputy Chair of the Finance, Audit and Risk Management Committee (FARM).
>
> The State President's expenses are to be shown as a separate line item within the (monthly) State Branch Income Statement, which is reviewed and considered initially by the FARM Committee, and subsequent adoption by State Executive/State Council.
>
> …
>
> **SUPPORTING DOCUMENTATION**
>
> The State President must at all times make every effort to provide supporting documentation by way of invoices and receipts when submitting the monthly claim for reimbursement of expenses. State Branch must be provided with this information in order to claim any GST component within the claims.
>
> In order to comply with the Australian Taxation Office requirements, supporting documentation must be provided. Failure to comply could result in the potential treatment of reimbursement of expenses as personal income in the hands of the State President.

8.2.7 The SP Guidelines provided that the State President was entitled to domestic air travel and international air travel in accordance with the Domestic Travel Policy and the International Travel Policy respectively.[13] All reward points gained through air travel and hotel accommodation were to be retained by the State President personally.[14] The State President was also to be provided with corporate club membership for Qantas and Virgin Blue airlines.[15]

8.2.8 The motor vehicle expenses to which the State President was entitled under the SP Guidelines were as follows:[16]

> **Motor Vehicle Travel**

> Personal Vehicle – State Branch will provide $20,000 per annum (in accordance with a previous resolution) towards the administration of a motor vehicle, including insurance.
>
> The cost of other motor vehicle expenses including, fuel, tyres, ongoing service requirements and the provision and cost of an "E-Tag" will be an RSL expense, charged against the RSL MasterCard and reimbursed via the Monthly Expense claim.
>
> As all running costs are to be paid as described above, the RSL mileage rate of 70 cents/km is not to be claimed.
>
> Car parking facilities for the personal vehicle will be provided at ANZAC House and the Hyde Park Inn.

8.2.9 The SP Guidelines included the following provision for a credit card to be issued to the State President:[17]

> **Credit Card**
>
> The State President will be provided with a Commonwealth Bank Corporate MasterCard for the payment of RSL related expenditure.
>
> The State President is to reconcile monthly, all credit card expenses for payment by RSL State Branch.

8.2.10 The SP Guidelines included the following in respect of accommodation:[18]

> **Accommodation**
>
> An elected State President who is a member of a country sub Branch and resides in the country, is to be provided with access to permanent accommodation if required, at the Hyde Park Inn. This accommodation is known as the State President Suite.

8.2.11 The SP Guidelines also recorded that RSL NSW would provide to the State President by way of Business Support Resources, the reasonable cost of provision of one mobile phone with plan; one laptop computer with appropriate programs; one home telephone with fax facilities; one home telephone and fax facilities at the State President Suite; and one internet service as and when required.[19]

8.2.12 The SP Guidelines also provided for meals:[20]

> **Meals**
>
> The reimbursement of the cost of daily meals, in line within (sic) State Branch Policy will be made if claimed.

8.2.13 The SP Guidelines also recorded that the State President would be required to entertain guests for both planned and unexpected occasions from time to time and that the reasonable cost of entertainment expenses would be reimbursed by State Branch.[21]

8.2.14 Mr Rowe was not required to sign the SP Guidelines or otherwise acknowledge in writing that he was bound by them. This appears to have given rise to some confusion as to their status after Mr Rowe resigned.[22] However in his evidence Mr Rowe accepted that they were in force and that they applied to him from November 2010.[23]

8.2.15 Over time, policies were also developed for State Councillors, including a Credit Card Policy and a General Policy of Expenses.[24] It was not suggested to the Inquiry that the SP Guidelines were in any way amended or modified by those State Councillor policies.

8.2.16 Following Mr Rowe's resignation, Mr Cannings provided advice on 30 March 2015 and 17 June 2015 in which he recommended amendments to the SP Guidelines and the State Councillor policies.[25] He described the amendments to the SP Guidelines in the following terms: [26]

> RSL NSW now has the opportunity to put in place a transparent set of checks and balances for reviewing and authorising State President expenses which meets contemporary good governance.

8.2.17 On 19 June 2015, the FARM Committee adopted the revised version of the SP Guidelines as drafted by Mr Cannings for inclusion in the State Council Charter.[27]

8.2.18 Mr White became State President in March 2015 and on 3 February 2016 he signed a State President's Expenses Contract, which was also signed by Mr Hardman as State Treasurer.[28] That Contract had as attachments: a Domestic Travel Policy, an Overseas Travel Policy, an Accommodation Policy, an Out-Of-Pocket Expenses Policy and a General Policy on Expenses.[29]

8.2.19 The Contract largely replicated the format of the SP Guidelines that had been adopted in November 2010, save that it incorporated most of Mr Cannings' proposed amendments.[30]

8.2.20 In relation to use of an RSL NSW credit card, it provided as follows:[31]

> The State President will be provided with the Commonwealth Bank Corporate Credit Card for the payment of RSL related expenditure. The State President is to reconcile each month all credit card expenses for payment by State Branch.
>
> Corporate credit cards are not permitted to be used for personal items. If for whatever reason the corporate credit card includes any personal items, payment of those items will not be approved and will be the responsibility of the State President.
>
> No cash advances are available from automatic teller machine or over the counter and BPay facilities are also not available. If for whatever reason a cash advance is made using the corporate credit card this will be the personal responsibility of the State President.

8.2.21 In accordance with Mr Cannings' advice, new clauses were included which addressed the process for the submission of supporting

documentation; the requesting of further information and supporting documentation; the reconciliation and approval of payment for the reimbursement of expenses; the pursuing of rejected expenses; and the tabling of presidential expenses with "full transparency".[32]

8.2.22 When Mr Haines became State President in September 2016, he received a contract however he did not sign it because he was uncomfortable with a number of the items. He raised this with RSL NSW staff, but the matter appears not to have been taken any further before he stepped down in February 2017.[33]

8.2.23 Mr Brown became State President in May 2017. He has a State Council credit card, although he has not activated it and claims his expenses through reimbursement.[34] He gave evidence that RSL NSW was reviewing relevant Charters and Guidelines for the purpose of creating a consolidated and clearer document

ENDNOTES

[1] Ex 38, p 1.
[2] Ex 10, Vol 1, p 180.
[3] Tr 960.
[4] Ex 10, Vol 1, p 10.
[5] Ex 10, Vol 1, p 11.
[6] Ex 10, Vol 1, p 12.
[7] Ex 10, Vol 1, p 13.
[8] Ex 10, Vol 1, p 14.
[9] Ex 10, Vol 1, p 17.
[10] Ex 10, Vol 1, p 18.
[11] Ex 10, Vol 1, pp 19 - 22.
[12] Ex 10, Vol 1, pp 19, 22.
[13] Ex 10, Vol 1, p 19.
[14] Ex 10, Vol 1, p 20.
[15] Ex 10, Vol 1, p 20.
[16] Ex 10, Vol 1, p 20.
[17] Ex 10, Vol 1, p 20.
[18] Ex 10, Vol 1, pp 20 - 21.
[19] Ex 10, Vol 1, p 21.
[20] Ex 10, Vol 1, p 21.
[21] Ex 10, Vol 1, pp 21 - 22.
[22] See for example Ex 29, pp 49 - 50, 56.
[23] Tr 960, 982 - 983.
[24] See for example Ex 10, Vol 1, pp 35, 272, 275 - 276, 283 - 293; Tr 793.
[25] Ex 10, Vol 1, pp 239, 272.
[26] Ex 10, Vol 1, p 239.
[27] Ex 10, Vol 1, p 302.
[28] Tr 2131; Ex 38, pp 31 - 42.
[29] Ex 38, pp 31 - 42.
[30] Ex 10, Vol 2, pp 19 - 22, 272 - 293; Ex 38, pp 31 - 42.
[31] Ex 10, Vol 1, pp 32 - 33.
[32] Ex 10, Vol 1, pp 274 - 275; Ex 38, p 34.
[33] Tr 1754 - 1755.
[34] Tr 3341 - 3342.

8.3 THE PRESIDENT RESIGNS

Exposure of the problem

8.3.1 In August 2014, Mr Rowe initiated a Monthly President's Newsletter for RSL members, the news media and the general public. It included reference to various events that Mr Rowe was to attend in that month, including a visit to Cowra for a series of commemorative events and a visit to East Timor to represent Australia at ceremonies marking National Veterans' Day.[1]

8.3.2 On 28 August 2014 Mr Rowe underwent surgery to his left leg in Sydney. He was discharged the following day.[2] His evidence was that following his surgery, he was recuperating at his home in Armidale until 28 September 2014, although he did attend to some RSL NSW business from his home[3]

8.3.3 In Mr Rowe's September 2014 newsletter, he thanked everyone for their response to the inaugural newsletter, which he described as a "first of a series of regular bulletins to keep everyone informed on what's happening".[4]

8.3.4 In the October 2014 newsletter, Mr Rowe advised that he was to be in Wagga Wagga on 12 October 2014 when the local sub-Branch was to sponsor a Younger Veterans Family Fun and Information Day.[5] He then referred to events in Sydney on 13 October 2014 and the meeting of the National Executive and the National Conference in Perth on 27 and 28 October 2014.[6] Mr Rowe attended all of these events, as well as the Special Olympics in Melbourne between 20 and 25 October 2014.[7]

8.3.5 Mr Rowe also made day-trips from Sydney to Canberra on RSL NSW business on 5 and 14 November 2014[8] and otherwise appeared to have a full calendar of RSL NSW business that month and diarised to continue at least to the end of November 2014.[9]

8.3.6 In mid-November 2014, Ms Mulliner was preparing the RSL NSW monthly financial statements when the RSL NSW internal accountant, Ms Renata Terranova, provided details to her in respect of Mr Rowe's accounts for his RSL NSW corporate credit card[10] that had been issued to him when he was elected as President of RSL NSW in 2003.[11]

8.3.7 Ms Mulliner questioned the figure in the September account because she understood that Mr Rowe had been out of the office that month recovering from an operation.[12] She then inspected the credit card accounts and noticed "large sums" paid to Optus in September ($717.24) and October ($542.93). Ms Mulliner then obtained the Optus accounts that were available and found that in an account due on 12 May 2014 (May account), there were charges for services for mobile numbers other

than Mr Rowe's mobile number. On seeing these items in the Optus account Ms Mulliner concluded that RSL NSW was paying for mobile phones for persons other than Mr Rowe.[13] At this time Ms Mulliner believed that Mr Rowe had been misusing the credit card.[14]

8.3.8 Ms Mulliner raised her concerns with Mr Perrin, who advised that further evidence should be gathered before the matter was raised with the State Treasurer, Mr White.[15] Ms Mulliner then extracted the figures from the credit card that were paid to Optus from February to October 2014.[16] There was only one additional Optus account available to Ms Mulliner, which had a due date of 11 April 2014 (April account). It also listed the same additional services. The amounts attributable to the additional services in the two accounts were $365.34 (out of a total of $516.18) (April account) and $413.69 (out of a total of $558.17) (May account), which totalled $779.03 (out of a total of $1,074.35) for the period 27 February 2014 to 26 April 2014.[17]

8.3.9 The following day Ms Mulliner was at a meeting on the New South Wales South Coast at which Mr White was also present. She advised Mr White that she had "concerns" with the State President's credit card statement that she would like to discuss with him when they returned to Sydney.[18]

8.3.10 Ms Mulliner met with Mr White in Sydney the following Monday, 24 November 2014. She provided him with the list of figures extracted from the credit card account and the Optus April account and May account and expressed her concerns about these amounts.[19] Ms Mulliner gave evidence that Mr White responded that he was disappointed in Mr Rowe and that he would handle the matter.[20]

The President's resignation

8.3.11 On 25 November 2014 Mr White attended Ms Mulliner's office and informed her that he had just spoken with Mr Rowe and had showed him the Optus invoices. According to Ms Mulliner, Mr White informed her that he had given Mr Rowe "a choice – for his credit card transactions to be forensically examined or resign immediately".[21] He also advised Ms Mulliner that he had given Mr Rowe some time to consider the position and to discuss it with his family.[22] Mr White waited in Ms Mulliner's office until he was called back to Mr Rowe's office. Mr White subsequently advised Ms Mulliner that Mr Rowe was resigning immediately. Ms Mulliner went to see Mr Rowe in his office and he informed her that he did not blame her.[23]

8.3.12 Mr Perrin accepted the correctness of Ms Mulliner's claim that she had approached him about the problem with Mr Rowe's telephone accounts. He also accepted that he knew before 25 November 2014 that there was at least an issue with Mr Rowe's expenses.[24]

8.3.13 In an interview with EY, Mr White agreed that Ms Mulliner raised her concerns with him about the additional telephone services on Mr Rowe's Optus accounts and that he went to see Mr Rowe about the charges. Mr White's version in this interview of his meeting with Mr Rowe did not include any suggestion that he gave him a "choice" to resign or have a forensic review of his credit card transactions. Rather he claimed that when he asked Mr Rowe about the additional services on the Optus accounts, Mr Rowe advised him that they were for his dependent children with whom he needed to keep in touch. Mr White claimed that he then suggested that Mr Rowe should go "on immediate sick leave" because he looked "quite unwell" and his leg "was purple".[25] He advised Mr Rowe that he would inform Ms Mulliner that he had discussed the accounts with him and suggested that Mr Rowe should ring his wife and that he would return in "half an hour". When Mr White returned to Mr Rowe's office he asked him whether he was going on leave and Mr Rowe advised him that he was resigning that day.[26]

8.3.14 On the first day on which he gave evidence at the Inquiry, Mr White gave a similar account.[27] The following day, he first maintained that version,[28] but audio recording was then played of a State Council meeting on 27 January 2015 in which he had not mentioned any issue with Mr Rowe's health but instead had given the following account:[29]

> I said Don what's this about, and I said no, I said look, I've got an envelope here Don and in this envelope is some matters relating to your expenses do you want me to open it? And that's when he said, and I've told you this recently and Don said, please don't open it, and I said well you know what's in here, and I said this is about phones and a few other things and I said Don, I think we've got to start going back through your expenses and he looked at me with tears in his eyes and said please don't. At that point, I said well Don, I've had enough, well either you go today or I go today and if I go today, I've got to go and let state council know, I'll go and see Chris, and I'll go and see Annette, but by Jeez I aint going to let this go under the carpet. At that point he said I'll leave today.

8.3.15 Mr White then conceded that he had presented Mr Rowe with an ultimatum and that he told him "You go or I go" and that if he went, he, Mr White, would have to tell State Council why.[30] Mr White also eventually accepted that this ultimatum had been at least an important factor in Mr Rowe leaving that day, together with his health.[31]

8.3.16 Mr Rowe gave the following evidence on this issue:[32]

> Q. What is your recollection here? Mr White came in?
> A. Mr White came in and said I had a problem with my credit card, and he said the ultimatum, either I resign or he would forensic audit me.
>
> …
>
> Q. Did he say words to the effect of, "Either you go or I will go"?
> A. No, he said for me to resign, otherwise he would do a forensic audit on me, which was not a problem.

Q. Did he tell you about what the issue of the expenses was?
A. He did.

Q. What did he tell you?
A. He said I had a problem with my payment of the telephones.

Q. Did he identify what that problem was?
A. He did, yes.

Q. So what did he say?
A. He said there were a number of telephone calls there, presumably my family.

Q. Telephone calls or –
A. Beg your pardon, telephone accounts, yes.

Q. Did he mention anything else about your expenses?
A. No, he didn't, no.

Q. So, at that stage, you realised that you had a problem; correct?
A. Correct.

…

A. At the stage I said to Mr White that I would resign. Mr White informed me, "Well, you've had all these health issues, resign because of your health issues".

…

Q. Did, effectively, that meeting proceed where Mr White came in, told you you had a problem, gave you an ultimatum, you agreed to resign and he said that it should be on the basis of ill-health?
A. That's correct.

8.3.17 Mr Rowe gave the following evidence in respect of the reason why he resigned that day:[33]

Q. So, it was the threat of the audit that you decided to leave?
A. And his attitude as well, because he had been knifing me from behind, dare I say it that way, and when I was – as the diary says, we were in Timor, I missed a State Council meeting, and Mr White was out to get me. A number of the State Councillors said he was very derogatory in his comments about me, and also Mr Perrin, because in May we had the State elections and I beat Mr White by a handful of votes and Mr White thought he had the God given right to be the State President, so he was out to get me, I believe.

…

Q. Mr Rowe, I just wanted to try to understand something. As I understand your evidence, on 25 November you received an ultimatum from Mr White that unless you resigned, there was going to be an audit of your expenses?
A. Correct.

Q. And consequent upon that, you decided to go that day; correct?
A. Correct.

Q. And not to give any notice; correct?
A. Correct.

Q. It was the case, was it not, you understood that if there was an audit, it would be likely to reveal that you had been doing the wrong thing; correct?
A. Probably not. I wasn't concerned about the audit, anyway, because I knew very well there would be one.

Q. When you say you weren't worried about the audit, is what you mean by that that you knew that there was going to be an audit sooner or later; correct?
A. Correct.

Q. And when that audit was done, it would reveal that you had been doing the wrong thing; is that correct?
A. That's probably correct.

Q. That is why you then decided to go that day; correct?
A. Correct.

8.3.18 Mr Rowe telephoned one of the State Councillors, Dr Bain, on the afternoon of 25 November 2014 and invited him to his office. Dr Bain was informed by Mr Rowe that he was "going to give it away".[34] The discussion related to Mr Rowe's work to have Dr Bain recognised by nominating him for an award about which Dr Bain knew nothing until Mr Rowe mentioned it.[35] After the meeting Dr Bain wrote to Mr Rowe thanking him for his efforts in relation to his award nomination and extending his best wishes to him and his family and for all the years of "very hard work" that he and his wife had put in.[36]

8.3.19 Mr Rowe prepared a handwritten resignation letter that was amended and typed up by Mr Perrin.[37] Mr White had left the premises by that time and was not involved in that process.[38]

8.3.20 Mr Rowe's typed letter of resignation was addressed to Mr Perrin, dated 25 November 2014 and signed by Mr Rowe that afternoon. It included the following:[39]

> It is with deep regret that I inform State Council that due to ill health I must resign from State Council, effective immediately. I also resign from all Boards, Trusts and Committees that I have been appointed to as a consequence of my appointment as State President.
>
> …
>
> I will take the next period of time to concentrate on my health. I wish State Council and my successor all the very best for the future and I believe that I leave this wonderful organisation in good shape to deal with the challenges that will confront it from here on.

8.3.21 Mr Rowe accepted that this did not tell the whole truth, in that it did not refer to the issue of his expenses and Mr White's ultimatum, and that as a result it was misleading. However he claimed that he did not believe that he told Mr Perrin the real reason why he was leaving or that Mr Perrin knew the true position.[40]

8.3.22 Mr Perrin accepted that it seemed strange that Mr Rowe left suddenly and without notice. He claimed he understood at the time that he had resigned due to ill health and not being able to "take Rod [White] any more". Mr Perrin initially gave evidence that he first became aware of the issue with Mr Rowe's telephone bills that night and Mr White having given him an ultimatum "days later". He then claimed that he did not know when he found that out.[41] He then accepted that he "might have known that night".[42] He accepted that he did know at least by February 2015.[43]

8.3.23 Mr White saw Mr Rowe's resignation letter that evening or the following day.[44]

8.3.24 On 26 November 2014 Mr Perrin published a Circular entitled "State President Resignation" to all State Councillors, Honorary Secretaries and Secretaries of RSL NSW sub-Branches and District Councils in the following terms:[45]

> It is my duty to inform you that due to ill health, Mr Don Rowe OAM, has resigned from the position of State President, effective immediately.
>
> Mr John Haines AM will act in the position of Acting State President until a By-Election can be organised.
>
> Please find Mr Rowe's resignation letter on the reverse of this circular.

8.3.25 On 26 November 2014 Mr Perrin wrote a Memorandum to the State Council advising on options to fill the casual vacancy of State President.[46]

8.3.26 In late November 2014 Mr Rowe telephoned the RSL National President at that time, Mr Kenneth Doolan and informed him that he had "just been to the medical practitioner" who had advised him that if he did not "go now", he was likely to have "serious medical consequences". Mr Rowe advised Mr Doolan that he was resigning immediately "from everything", including as Deputy National President. Mr Doolan advised Mr Rowe to "just go" and informed him that he had his sympathy.[47]

8.3.27 Mr Perrin wrote to PwC by email on 29 November 2014 seeking advice in respect of the process to fill the vacancy upon Mr Rowe's resignation. That email was forwarded to Mr Cannings and it included a reference to Mr Rowe's resignation "due to ill-health". Mr Cannings responded to Mr Perrin in the following terms:[48]

> Hi Chris, first how is Don, is it serious, would it be OK for me to contact him? Secondly Steve and I will speak on Monday, I am currently in Singapore back on Wednesday. Speak soon.

8.3.28 Mr Perrin responded to Mr Cannings in the following terms:[49]

> Don is at home resting and is Okay. Yes, please contact him, he would like that. Thank you for responding. It is a little confusing now, but we can navigate our way through the issues.

8.3.29 Mr Cannings' evidence was that in spite of this exchange with Mr Perrin, he did not contact Mr Rowe.[50]

8.3.30 On 10 December 2014 Mr Cannings wrote to Mr Perrin referring to his understanding that Mr Rowe had resigned "due to ill-health". He confirmed that he had been asked for advice on three topics. The first was who would chair the State Council Meetings; the second was the impact of Mr Rowe's resignation on committees, trusts and boards; and the third was the timing for the election of a replacement President/State Councillor. Mr Cannings also requested that Mr Perrin advise him if his understanding or his instructions or assumptions were incorrect because if they were, this might affect his advice.[51]

8.3.31 On 11 December 2014 the FARM Committee of RSL NSW ratified the action that had been taken to pay for Mr Rowe's airfare ($242.00) for his trip home to Armidale after his resignation and his continued use of the President's suite at the Hyde Park Inn until mid to late January 2015.[52]

State Council Meeting 11 and 12 December 2014

8.3.32 A State Council meeting occurred on 11 and 12 December 2014. The minutes record that Mr Rowe's resignation letter of 25 November 2014 was noted together with Mr Cannings' letter and the memorandum from Mr Perrin relating to the manner in which the vacancy in the office of State President should be filled.[53] The minutes also record that Mr White was absent on 12 December 2014.[54]

8.3.33 The State Council met "in committee" on 12 December 2014. The in committee minutes noted that Mr Haines stood aside as Acting State President "due to conflicting commitments, particularly at the Kokoda Track Memorial Walkway and other responsibilities, excessive travel time and his strong desire to allow continuity of the Executive".[55] The true position was that Mr Haines had a contretemps with Mr White during the meeting on 11 December 2014 in which Mr White proposed that Mr Haines should stand aside because he had allegedly been receiving an honorarium from Granville RSL sub-Branch inconsistently with the Constitution.[56] The Minutes of the in committee meeting of the State Council include the resolution that Mr Haines' offer to stand aside was accepted "with regret". A ballot was then held for the Acting State President's position and Mr Stephenson was elected as the Acting State President. At this meeting an extraordinary State Council meeting was fixed for 27 January 2015.[57]

8.3.34 At the meeting on 11 December 2014 Mr White informed State Council that there had been issues with Mr Rowe's expenses and in particular his

telephone bills, but there is some uncertainty as to whether Mr White also told them that Mr Rowe resigned as a result of an ultimatum concerning his expenses.[58]

8.3.35 Messrs Toussaint,[59] Haines,[60] McManus-Smith,[61] Henderson[62] and Stephenson[63] gave evidence that Mr White did inform them of the ultimatum at that meeting in December 2014. Mr Harrigan gave evidence that he thought this had occurred at the State Council meeting on 27 January 2015.[64] Messrs Hutchings,[65] Metcalfe,[66] and Dr Bain[67] were unsure whether this was at the December 2014 or January 2015 meeting. Mr James[68] gave evidence that the ultimatum was being discussed between all State Councillors at the time of the December 2014 meeting, but they were not informed by Mr White until the January 2015 meeting. Mr White gave evidence that at the December 2014 meeting, he informed State Council that Mr Rowe had left as a result of an ultimatum about his expenses, albeit that it was "linked to the health issue".[69]

8.3.36 Mr Crosthwaite denied that Mr White ever informed State Council that Mr Rowe had left after he had given him an ultimatum concerning his expenses and maintained that he had never heard that suggestion.[70]

8.3.37 On 12 December 2014 Mr Harrigan, wrote to the State Secretary in the following terms:[71]

> Dependent upon the outcomes of the two issues concerning the President of the Granville sub-branch Mr John Haines and the issues raised by the Treasurer Mr White concerning the former State President Mr Don Rowe, being deliberated "in Committee" I want the matters and findings to be recorded out of Committee as I and any other State Councillor <u>may</u> seek Legal Advice and consider further action with regard to these matters.

8.3.38 Mr Stephenson's recollection of the meeting on 11 December 2014 at which he was elected as Acting State President included the following:[72]

> At that meeting the State Honorary Treasurer Rod White boasted that he had confronted Don Rowe over alleged irregularities in his Presidential expenses claims and that Don Rowe had immediately resigned. Up to that disclosure all members of State Council were of the belief that Mr Rowe had resigned stating ill health as the reason.

8.3.39 It is probable that at the meeting on 11 December 2014, Mr White informed State Council not only that there was a problem with Mr Rowe's expenses and in particular his telephone bills, but also that Mr Rowe had resigned after being given an ultimatum about his expenses.

<u>December 2014 Newsletter</u>

8.3.40 There was no Monthly Newsletter for November 2014 and Mr Stephenson issued the December 2014 Newsletter as Acting State President of RSL NSW on 15 or 16 December 2014.[73] That Newsletter included the following:[74]

> As every member should be aware of by now, Don's immediate and severe health issues led to medical advice to stand down immediately. As a colleague and friend of Don I have been as shocked and saddened as many of you will have been on hearing this news.
>
> We all wish Don, his wife Sally and his family all the very best for the future and we hope and pray that Don has an early restoration to good health and may he enjoy a long and happy retirement.
>
> On Don's retirement it fell upon the Senior Vice President, John Haines AM to step into that role. However with many and varied commitments, such as Chair of the Kokoda Walkway and others and with no warning of the upcoming responsibilities to be thrust upon him, John decided that the burden of travel and twelve to fourteen hour days at ANZAC house amongst other things was too large a burden to carry at this time and decided to step down from the role of Acting State President.
>
> John, however, will retain the position of Senior Vice President and I will personally be reliant on his counsel and guidance through the transition until the results of a by-election are known.

Legal advice

8.3.41 The RSL NSW Christmas party was held in "mid-December". At this party Ms Mulliner had a discussion with Mr Cannings during which she advised him of the "issues" concerning Mr Rowe's expenses.[75]

8.3.42 On 17 December 2014, Mr Cannings contacted Mr Stephenson by telephone, asked him what he knew about Mr Rowe's expenses and suggested that he attend a meeting with the Honourable Dennis Cowdroy QC (who had been the RSL NSW Honorary Senior Counsel) in the following day or so.[76]

8.3.43 On 19 December 2014, there was a meeting between Mr Cannings, Mr Stephenson, Mr White and Mr Cowdroy in Mr Cowdroy's chambers in Phillip Street, Sydney. At this meeting, Mr Stephenson was advised to commence a forensic audit into Mr Rowe's expenses immediately. Later that afternoon, Mr Stephenson had a meeting with Mr Perrin and Ms Mulliner and discussed the process for the audit. [77]

Contact with the National President

8.3.44 Mr Doolan gave evidence confirming that Mr Rowe had telephoned him on the day that he resigned and told him that he was leaving due to ill health.[78]

8.3.45 When Mr Stephenson left the meeting on 19 December 2014 with Mr Cowdroy he telephoned Mr Doolan and left a message for him to return his call, which he did the following day.[79]

8.3.46 Mr Stephenson's evidence was that when Mr Doolan returned the call, he asked Mr Stephenson "how bad the situation was". Mr Stephenson was of the belief that Mr Doolan already knew that Mr Rowe had resigned

because of his expenses. This belief was held on the basis that he did not have to explain to Mr Doolan everything that had happened.

8.3.47 Mr Stephenson informed Mr Doolan that he had "no idea what the situation is, particularly with Don" and that he did not know "whether we're talking about $1,000 or $100,000." Mr Stephenson's evidence was that he was "overwhelmed by what I had been confronted with and that I felt that I was out of my depth with the situation, and Ken Doolan reassured me." They then organised to meet in Canberra after Christmas.[80]

8.3.48 However Mr Doolan gave evidence that he did not know that issues had been raised about Mr Rowe's expenses prior to this telephone call and the conversation with Mr Stephenson was the first he heard of it. Mr Doolan's evidence was that they discussed Mr Stephenson's appointment as Acting State President, the allegation concerning Mr Haines' honorarium and Mr Rowe's expenses. His evidence included the following:[81]

> Q. That was all part of the discussion on 20 December; is that right?
> A. Correct. And the third issue, which I mentioned a moment ago, was that they had discovered some problems with Mr Rowe's credit card use. He went on to say, "We're going to conduct an Inquiry about that", and that was the extent of it.

Engagement for the review

8.3.49 On 21 December 2014, Mr Cannings wrote to Mr Stephenson, with a copy to Mr Cowdroy, in relation to the "Expenses Review".[82] Mr Cannings referred to the meeting the previous Friday in Mr Cowdroy's chambers and set out some recommendations on the terms of the engagement of a forensic accountant. That email included the following:

> One matter which Dennis [Cowdroy] and I discussed separately, is that this matter should be treated as "Confidential" whilst the review is undertaken and that State Councillors' should be advised that if information is sought from them that their response should be that on legal advice no comment can be made at this time.

8.3.50 Mr Cannings then described what the issue was for review and wrote:

> I suggest that the Reviewer be asked to:
>
> a) review and provide a written report on the appropriateness of all expense claims and allowances made by State President for the period 24 November, 2013 to 25th November, 2014, having regard to any and all service agreements, documentary evidence by way of supporting materials and approvals given by State Council/State Executive for the incurring of such expenses,
>
> b) review the processes and procedures for the oversight and approval of State President expenses and make recommendations (if any) for improvement, and

c) for the purposes of carrying out the review engage with NSW RSL employees, Acting State President, the immediate past State President, the current State Treasurer and RSL NSW appointed auditor as the Reviewer determines.

8.3.51 Mr Cannings also suggested that the key stakeholders to engage with should include "as a minimum" Messrs Rowe, White, Perrin and Ms Mulliner, the compliance officer of RSL NSW, persons dealing with expense claims and the auditor. That email included the following:

> It should be noted to the Reviewer that he/she:
>
> a) is not being engaged to carry out an investigation to determine whether a disciplinary offence has occurred
>
> b) should provide Mr Rowe OAM with every opportunity reasonably necessary to respond to questions by the Reviewer or to provide supporting materials in respect to any matters raised by the Reviewer
>
> c) is not required to take formal witness statements.

8.3.52 Although a number of firms tendered for the work, the forensic arm of Grant Thornton, Grant Thornton Forensic was chosen and engaged.

Extraordinary State Executive Meeting 22 December 2014

8.3.53 On 22 December 2014 an Extraordinary Meeting of RSL NSW State Executive "in committee" noted Mr Cannings' email of 21 December 2014 and it was resolved as follows:[83]

> That the following Terms of Review be adopted:
>
> Confidential Terms of Review
>
> a) review and provide a written report on the appropriateness of all expense claims and allowances made by [the] State President for the period 24 November, 2013 and 25th November, 2014, having regard to any and all service agreements, documentary evidence by way of supporting materials and approvals given by State Council/State Executive for the incurring of such expenses,
>
> b) review the processes and procedures for the oversight and approval of State President expenses and make recommendations (if any) for improvement, and
>
> c) for the purposes of carrying out the review engage with NSW RSL employees, Acting State President, the immediate past State President, the current Honorary State Treasurer and other State Councillors as required and RSL NSW appointed auditor, as the Reviewer.

8.3.54 On 22 December 2014 Ms Mulliner provided instructions to Ms Sheridan for Grant Thornton Forensic to carry out the review.[84]

A meeting with the National President

8.3.55 In December 2014 Mr Doolan issued the National President's Newsletter for that month, which included the following:[85]

> The recent resignation of Mr Don Rowe as Deputy National President, NSW Branch State President and many other positions for health reasons brings to an end an exemplary period of service from which all in the RSL have benefitted…
>
> On behalf of all RSL members I wish Don and his family all the best for the future and for him personally a return to robust good health.

8.3.56 On 7 January 2015 Mr Stephenson travelled to Canberra and met with Mr Doolan. The meeting lasted for around four hours and covered a wide range of topics.[86] Mr Doolan's evidence was that Mr Stephenson "gave me to understand that he was ill-prepared, ill-experienced and he was desperately in need of support", which he said he "tried to provide".[87]

8.3.57 There was general discussion at the meeting about the investigation into Mr Rowe's expenses.[88] Mr Stephenson gave the following evidence:[89]

Q. In the context, then, of Mr Rowe, did you discuss at that time the issue of why Mr Rowe had resigned?
A. Yes.

Q. What did you discuss in relation to that? What did you tell him or what did he say to you?
A. Well, I can't remember who said what, but we certainly discussed the confrontation by Rod White. I also told him that I was aware that Don had been particularly sick and in a lot of pain with certain things. I think that was basically what we talked about, the allegations from Rod White. I also remember complaining to Rear-Admiral Doolan about the role that Rod White had had in this leading up to it.

Q. In what context?
A. In that I thought that Rod White was after the State Presidency and that he was ready to assassinate anybody who got in his way.

Q. You said that, effectively, to Mr Doolan; is that right?
A. I believe I did, yes.

Q. In that context, did you say to Mr Doolan that Rod White was out to get him, Don Rowe was sick?
A. Yes.

Q. And Rod White gave him an ultimatum about his expenses?
A. Yes.

Q. And that caused Don to go?
A. Yes.

Q. Just to be clear, you would have no doubt that Mr Doolan knew the real reason for Mr Rowe's departure at the end of that meeting; correct?
A. I would have to say that's correct.

8.3.58 Mr Doolan's evidence on this issue was as follows:[90]

Q. You discussed then the progress of the investigation into Mr Rowe's expenses; correct?
A. Mr Stephenson gave me a broad briefing but provided no details and, as I recall, he said that the investigation had been set up, it was under way. At that stage, as far as I was concerned, two things stood out in my mind: one, the investigation was the matter for the New South Wales Branch and they were doing that as far as their acting leader was concerned correctly; and, secondly, and very importantly, at that stage I still believed - and in fact I continue to understand right through until 2016 – that the reason for Mr Rowe's resignation was ill-health.

8.3.59 Mr Doolan denied that he knew that Mr White wanted to be State President but accepted that he knew there "was considerable jockeying for the position."[91] He denied that Mr Stephenson informed him that Mr White had given Mr Rowe an ultimatum, maintaining he learnt about this through the media in 2016.

8.3.60 Mr Doolan also expressed concern to Mr Stephenson about the allegations Mr White had made in relation to Mr Haines and advised Mr Stephenson that he should ask Mr Haines to resign. Mr Stephenson understood that this advice was on the basis of the allegations being made and the damage that they could do to "the RSL brand".[92]

8.3.61 Although Mr Doolan did not recall discussing Mr Haines with Mr Stephenson, he accepted they probably did so.[93]

8.3.62 Mr Stephenson invited Mr Doolan to attend an extraordinary State Council meeting on 27 January 2015. He said "Look, I'm concerned about this. Would you like to come up and speak to us?"[94]

8.3.63 In an email at a later date to Mr Haines and others, Mr Stephenson claimed that at his meeting in Canberra he had given Mr Doolan "a full briefing of the events to date orally" in relation to Mr Rowe's expenses.[95]

Reveille – January 2015

8.3.64 In early January 2015,[96] the January-February 2015 edition of the Reveille magazine was published, which included the following in Mr Stephenson's State President's Report:[97]

> It is with an extreme sense of sorrow that I sit to write this the first of my reports as the Acting State President of RSL NSW, sorrow because all of the members of State Council and the staff at ANZAC House were shocked to learn of the sudden resignation of our long term State President Don Rowe due to ill health.

A possible article

8.3.65 After Mr Rowe's resignation, the Minutes of the Reveille Committee recorded that the then Acting President, Mr Stephenson, was to meet with Mr Rowe to provide an article on his "commendable service with the RSL and his retirement".[98]

8.3.66 On 23 January 2015, Mr White wrote by email to Mr Stephenson in respect of this proposed meeting and article in terms that included the following:[99]

> Given the current Audit and review of State Presidential expenses which may have only looked at a limited period, various matters which may be referred for further investigation as a result of that investigation, and the manner of his resignation having been presented with certain information resulting in his immediate resignation, may I suggest that this article be held over until these matters have been resolved.
>
> The forensic audit may not necessarily be the end of the matter as there may be several areas of further enquiry and resolution.

A "prima facie case of Fraud"

8.3.67 On 23 January 2015, the Senior Manager at Grant Thornton Forensic, Mr Wayne Gladman, wrote to Mr Stephenson in the following terms:[100]

> Please find attached our report in the relation to the Review of the State President expenses.
>
> The report is issued as a "Draft for Discussion Purpose" to ensure that the information we have referred to in the report is accurate prior to the issue of the final report.
>
> If there are any matters you believe require amending please advise following the meeting with the State Executive.
>
> Whilst we acknowledge that we were not engaged to undertake an investigation to determine whether the action of Mr Rowe amounted to misconduct, given the admission by Mr Rowe of continued payment of the mobile phone usage of five mobile phones not connected with RSL, there is potentially a prima facie case of Fraud contrary to Section 192E of the NSW Crimes Act 1900.

Grant Thornton Forensic Draft Report – 23 January 2015

8.3.68 The Grant Thornton Forensic draft Expense Payment Review (the Report), dated 23 January 2015 and signed by Mr Shane MacDonald (a partner), was attached to Mr Gladman's email of the same date.[101] The investigations, including the interviews, had been primarily conducted by Mr Gladman.[102]

8.3.69 Grant Thornton Forensic interviewed Mr Rowe as well as Messrs Stephenson, White, Perrin and Ms Mulliner and Ms Terranova.[103] The

Report recorded that RSL NSW was concerned as to whether or not all of Mr Rowe's expenses and allowance claims in the period 24 November 2013 to 25 November 2014 had been in accordance with approved policy and procedures and/or otherwise appropriate.[104] Grant Thornton Forensic reviewed a number of documents including the SP Guidelines (as approved by State Council on 19 November 2010).[105] The Report recorded that no process had been established to ensure compliance with the SP Guidelines or Mr Rowe's accountability for the expenses that he incurred. In addition, the SP Guidelines were not well-known by Messrs Stephenson and White and Rowe appeared not to recognise them. However it was noted that Mr Rowe was aware of "most elements" of the SP Guidelines.[106]

8.3.70 Grant Thornton Forensic also investigated the process (or lack thereof) in relation to the ratification of the State President's expenses and the budgeting for those expenses.[107] It was recorded that the expenses incurred on Mr Rowe's credit card were provided to State Council as a "single line item" in the accounts of RSL NSW tabled at each monthly meeting of the State Council; that there was generally no discussion about those expenses; and that they were ratified without question. In conclusion, it appeared to Grant Thornton Forensic that there had been no verification on a monthly basis that the expenses incurred by Mr Rowe complied with the SP Guidelines.[108]

8.3.71 Grant Thornton Forensic also recorded that the budgets for the State President's expenses were proposed by the FARM Committee; ratified by the State Council; and no analysis was undertaken of the categories of expenses incurred by the State President in the preparation of those budgets.[109]

8.3.72 The Report included reference to Mr Rowe withdrawing cash from banks and other outlets over the 12 month review period in the amount of $32,785.[110] In respect of this matter it recorded:[111]

> Given that no record of expenditure was maintained by Mr Rowe it is not possible to verify whether the expenditure in excess of the $20,000 allowance was justified in accordance with the SP Guidelines.

8.3.73 The Report recorded that a number of transactions on Mr Rowe's credit card appeared to be "outside the SP Guidelines and not appropriate in the circumstances". These included the payment of the Optus accounts for the telephones of the members of Mr Rowe's family.[112]

8.3.74 Grant Thornton Forensic made a number of recommendations. The first was in relation to the SP Guidelines that had not been reviewed for over four years. It was recommended that a review of the SP Guidelines occur to determine appropriateness with current needs and circumstances; that they be reviewed at least every two years or more frequently if circumstances required; and that each incoming State President should acknowledge in writing their adherence to the SP Guidelines.[113]

8.3.75 The second area of recommendation related to the policy on expenses of the State President. It was recommended that RSL NSW develop such a policy either as an inclusion in the "General Policy on Expenses" or as separate policy to ensure that there was no ambiguity in the application of the policy.[114]

8.3.76 The third area in respect of which Grant Thornton Forensic made recommendations was in relation to the authorisation of expenses of the State President. It was noted that there was then no authorisation process and therefore there was a "lack of accountability" of the State President to adhere to the SP Guidelines. It was observed that if there had been a process to scrutinise and authorise the expenses, the lack of adherence to the SP Guidelines would have been identified at a much earlier date.[115]

8.3.77 Grant Thornton Forensic recommended the State President's expenses should be reconciled on a monthly basis; authorised in accordance with the SP Guidelines; and that itemised details of the State President expenditure should be provided to and ratified by the State Council. Finally, Grant Thornton Forensic recommended that any payments deemed not to be in accordance with the State President's Guidelines should be repaid personally by the State President in accordance with the Staff Credit Card Policy.[116]

8.3.78 The Report was provided to the State Councillors for discussion at the Extraordinary State Council meeting on 27 January 2015.

Extraordinary State Council Meeting – 27 January 2015

8.3.79 The Extraordinary State Council Meeting held on 27 January 2015 commenced at 9.10am.[117]

8.3.80 At the beginning of the meeting, Mr Doolan addressed the State Councillors in relation to numerous matters including problems with moneys being retained within RSL NSW sub-Branches and the proceedings in relation to the indexation of veterans' entitlements. At the conclusion of his address to the State Councillors, Mr Doolan said:[118]

> But I go back to one point, and this is a very, very important point to what you are about to determine. Around Australia in the RSL, myself included, are lots of people trying hard as volunteers, you all are trying hard as volunteers and one of the things every now and again is that people make mistakes. My aim as your National President whilst I'm in that job is to try to get people to say well OK, move on, accept that people make mistakes. If it's criminality, it's criminality, and then I've had sub branch, branch presidents ring me up by saying it should go to the DPP, a criminal matter, simple as that. But if it's an honest error of judgement something that people shouldn't have done, I ask people to look at it in the context of what people have done over the years, around this table sitting here, God knows how many years of volunteer service by all of you not only around this table but in your Sub-Branches and other places as well. I think we owe it to ourselves and the good name of the RSL to think in those terms. If I was to make any issue about people,

> and I have been in …, the poisonous atmosphere at one state where I sat beside what was clearly a [unintelligible] for a State President. It was about the most uncomfortable thing I've had to go through as National President. It happens every now and again. That was corrected in time because the State authority came in and took over. We are self-corrected. But be generous please in looking at those who put a lot of work into something over the years. It's too big, it's bigger and more important than anyone in this room. And that's where I should stop.

8.3.81 The open parts of the meeting were tape recorded. Mr Doolan's written Statement at the Inquiry included evidence that he suggested that they go "off the record" so as to allow a less inhibited exchange of views.[119] Mr Metcalfe confirmed that Mr Doolan asked for the recording to be turned off.[120] Mr Doolan's evidence was that when the tape was turned off he referred to Mr Rowe by name and suggested that the State Councillors should look at the "big picture in this instance".[121]

8.3.82 Mr Doolan said that the reason that he addressed the State Council meeting in respect of Mr Rowe was because he was of the view that the State Council was dealing with the matter as a "separate entity" and he was trying to influence them to look at it from a national perspective. He also gave evidence that he felt that the State Councillors were not dealing with the matter "appropriately", a conclusion he reached from the Councillors' "body language". His recollection was that the State Councillors "seemed not seized of the need" to thoroughly investigate the matter.[122]

8.3.83 Mr Doolan stayed at the meeting until the Councillors went "in committee" at 12 noon.[123]

8.3.84 An audio recording of the first part of the in committee meeting was available to the Inquiry and was transcribed.[124] During the in committee discussions Mr Stephenson asked each of the State Councillors to address the Grant Thornton Forensic report that had been provided to them.

8.3.85 Mr Harrigan advised that he had "actually reviewed the report" and made a number of points in relation to the SP Guidelines. [125] He suggested that Mr Rowe did not appear to recognise "or didn't wish to recognise" the SP Guidelines. He analysed the cash withdrawals that were referred to in the Report highlighting the fact that Mr Rowe had withdrawn $800 twice in the one day on a number of days.[126] He complained that although there were rumours in the previous two years in respect of Mr Rowe's expenses, it was never brought to the State Council's attention at a State Council meeting. He suggested that a number of people including Mr Perrin (the CEO), Ms Mulliner (the CFO) and the State Treasurer at the time, Mr White, needed to address the problems.

8.3.86 Mr Toussaint reiterated the views expressed by Mr Harrigan in relation to the accountability of Messrs Perrin and White and Ms Mulliner and he also referred to the FARM Committee.

8.3.87 Dr Bain made a short statement that whatever happened, the State Council had to make a decision that day so that they did not walk out of the room with a "non-result". He emphasised that even if they did not like the result they must have one.

8.3.88 Mr James observed that the review showed that there had been a serious indictable offence and referred to the offence of concealing a serious indictable offence.[127] He referred to the lack of any authorisation process for Mr Rowe's credit cards and the absence of any checks on his expenditure.[128] Mr James suggested options that were available to the State Council. The first option was to have a five year review of all expenses of all State Councillors. The second option was to forward the review findings to the fraud section of the NSW Police.[129]

8.3.89 Mr McManus-Smith emphasised the culpability of the State Council suggesting that it had "no-one to blame but itself" and that at all times they left matters, including expenditure, for the President to decide.[130]

8.3.90 Mr Metcalfe referred to his "shock" at some of the figures that were recorded in the Report and said that he agreed that the State Council would be in trouble and it would be an indictable offence if they did not do anything because they were witness to it.[131]

8.3.91 Mr Humphreys said that he was sure that Mr Rowe had done the wrong thing but did not think there was anything to gain by chasing him and taking him to Court. He suggested that if anything was to be done, the expenses needed to be repaid where there was a clear breach of the SP Guidelines. He said that he believed that the State Council should "burn the bridges" and "accept that this has happened and make sure that in future we put into the State Council charter a schedule for the President and his expenses". He suggested that the President should "sign off" on all of that and submit expenses each month for approval. Mr Humphreys also said that if the police were involved and Mr Rowe was charged "can you imagine the headlines which will appear in the newspapers and on the TV and what will happen out in sub-branch land".[132] He suggested that if the matter got into the Courts the State Council would be in "sticky heat" and "for a long time". He said:

> I think we've got to look at it – bearing in mind [what] the National President said this morning that we should take into account the service that people have given to the League.

8.3.92 Mr Hutchings, who had only joined the State Council in May 2014, referred to Mr James' discussion about the indictable offence and suggested that everyone in the room was guilty to some degree because they had allowed the situation to happen. He suggested that if the State Council could get the matter resolved, whether through the Director of Public Prosecutions or otherwise, then it needed to create a very tight policy so that there could not be any mistakes in the future.[133] He said:[134]

> You can't just sweep it under the table. You cannot. Because it means that if it comes up in 2 years' time or 3 years' time anybody that's not currently implicated to a large degree (and that's very few of us I might add) will then be implicated.

8.3.93 Mr Crosthwaite suggested that if the State Council were to "open up the back door to all the other issues" it was going to cause "greater harm to us". He said that he knew that if it was not taken further, the Council could be "in breach" but that they did not have a policy in place and they were in breach of their fiduciary duties "from the word go". He concluded that he really did not know how the Council should proceed. [135]

8.3.94 Mr White then addressed the meeting at length, at the conclusion of which he said:[136]

> It all starts and finishes here, you can ponder over individuals if you wish. I take note of what the national president here this morning said, when he said consider about the good service of Don, Chris Perrin wrote Don's resignation letter, some of you have written glowing reports about all this and I think in hindsight we should have handled that a bit more discreetly … I'm happy to sit down with Don Rowe with anyone else, go through these expenses, and get him to pay back some more money and call it quits. I know there is an obligation as some have said that from legal a perspective but by jeez when you go home and you know that you've done something for someone and not to others, but by jeez.
>
> …
>
> Yes, look I tell you now. Unless you want to, we are looking forward to some of you guys coming to the review panel because we are going to need something to square off for congress on this matter alone.

8.3.95 Mr Haines suggested that everyone was as much to blame as anyone else. He suggested that the "real catch" was that it would wake them up to the fact that things need to be tightened up. He warned that if the matter was to proceed, the Councillors would not be able to stop it and that everyone would be under "some scrutiny". He suggested that the Councillors needed to be very careful which path they took. [137]

8.3.96 In conclusion, after further debate, Mr James suggested that the State Council should obtain legal advice because he was concerned that if they did not do the "right thing" they could be in serious problems relating to the concealment of an indictable offence.[138]

8.3.97 Ultimately, as was recorded in the in committee minutes, the State Council resolved as follows:[139]

> 1. "That the Senior Legal Adviser to State Branch, Mr John Cannings OAM, be forwarded a copy of the report."

2. That Mr Cannings be invited to meet State Council to discuss the Grant Thornton Audit Report and to provide advice on the State Council legal position."

3. "That the Grant Thornton report be noted and the invoice paid."

Mr Cannings' inquiry of Mr Gladman

8.3.98 It is apparent that Ms Mulliner spoke to Mr Cannings about this resolution and that Mr Cannings asked to speak to Mr Gladman about the contents of the Report.[140] That conversation occurred on 5 February 2015. On the same day Mr Gladman wrote by email to Mr MacDonald in the following terms:[141]

> Just to bring you up to speed on this. In response to Annette's request (below) I spoke to John Cannings from PriceWaterhouse Legal this morning.
>
> He wanted to know my thoughts on whether there was any evidence of criminality on the part of Don Rowe.
>
> I indicated that in my opinion he was aware of what he was entitled to claim, it was clear from the Optus bill what was being paid for and that there was an option for him to identify the mobile costs applicable to RSL NSW.
>
> He also wanted to know whether the amount was significant. I indicated that I estimate, based on the 2 bills we had seen it would amount to about $500 per month but because of the limited information provided by Rowe and the fact that we were only looking at twelve months it was not possible to estimate the totality.
>
> He has been asked to provide a recommendation to a Special Executive meeting on 27 February 2015. He indicated that he would not require anything more done before that meeting but may be in contact after the meeting depending on the decision that is made.

8.3.99 As to the conversation with Mr Cannings, Mr Gladman gave the following evidence:[142]

Q. In relation to this, you were then asked by Mr Cannings whether there was any evidence of criminality; correct?
A. Correct.

Q. And, as you say, given your opinion that he was aware of what he was entitled to claim, and he's then claimed more than he was entitled to, your view was that this suggested that there was evidence of criminality; correct?
A. Correct, although I can't recall whether I answered his question in the affirmative. I believe that I've just explained to him what we had found in our review.

Q. When you say, "what we had found", as you say, you found that he knew what he could claim and it was clear from the bill that he claimed things that he wasn't entitled to; correct?

A. Correct.

Q. That, really, could be consistent only with evidence of criminality; correct?
A. Correct.

8.3.100 Mr Cannings had no recollection of the conversation with Mr Gladman and no file note.[143] When shown the email from Mr Gladman to Mr MacDonald referring to their conversation, Mr Cannings gave the following evidence:[144]

Q. What I'm suggesting to you is, in the light of this email, either Mr Gladman did raise it and say to you that Mr Rowe was fraudulent, or he was simply silent on that issue; correct?
A. I would accept that, yes.

Grant Thornton Forensic Final report 9 February 2015

8.3.101 On 9 February 2015, Mr Gladman provided RSL NSW with a final form of the Report, which had not changed from the draft that had been provided on 23 January 2015.[145]

Further advice in February 2015

8.3.102 On 10 February 2015 Mr Perrin spoke to an RSL NSW member about RSL NSW's obligations to the ACNC. That member wrote to Mr Perrin that evening directing him to the relevant section of the ACNC website with references to the ACNC Act and advising as follows:[146]

> If Mr Cannings from PWC is looking into the matter for State Council you may wish to consult him.
>
> The way I read and understand Section 65.5 is that the RSL NSW is indeed a "registered entity" with the definition of such ("***registered entity***" means an entity that is registered under the Act) and thus section 65(1)(e) applies as there would appear to be a circumstance described in section 65.5(2). The RSL NSW would have 28 days to report it from when it "*first becomes aware* of the circumstances" (emphasis added on "first becomes aware").

8.3.103 It is apparent that Mr Perrin consulted Mr Cannings about this communication. On 15 February 2015, Mr Cannings wrote to Mr Perrin with a copy to Mr Stephenson in the following terms:[147]

1. [M]y understanding is that the review (incorrectly referred to as an investigation) that was conducted at the direction of State Council was "Confidential" and as such without the express direction of State Council no correspondence should be entered into with persons outside of State Council whether to respond or deny matters the subject of the review,

2. 65.5(1)(e) of the ACNC Act would only apply where the registered entity (in this instance RSL NSW) had itself contravened or failed to comply with a circumstance set out in 65.5(2) of the Act. There is no

suggestion or circumstance that I am aware of in respect to RSL NSW that would satisfy this section and as such no notification is required.

3. It is vitally important for the reputation of the League and in particular that of RSL NSW that discussion of the review and matters associated with the review be kept within State Council.

8.3.104 Mr Cannings clearly went further than the contents of Mr Perrin's communication in giving advice that it was "vitally important" that the review be kept within the State Council. During his evidence at the Inquiry, Mr Cannings suggested that he and Mr Cowdroy had discussed the need that the matter should be "contained within State Council whilst the review was undertaken".[148] However, by the time Mr Cannings wrote to Mr Perrin on 15 February 2015, the review had been completed and the State Council had asked Mr Cannings to provide legal advice in respect of that review. Mr Cannings said that by the time he wrote the email to Mr Perrin on 15 February 2015, he could not recall what his state of mind was so he was unable to say whether it was his view that the matter should or should not be disclosed.[149]

RSL National Board meeting

8.3.105 Mr Stephenson gave the following evidence in respect of an RSL National Board Meeting on 13 February 2015:[150]

Q. … Did you attend that National Board meeting?
A. Yes, I did.

Q. What occurred at that meeting concerning Mr Rowe's expenses?
A. The other members of the National Board dispute that I had said anything, but I do recall mentioning that there had been some problems and that we were looking into areas with Mr Rowe.

Q. Did you go beyond that at the National Board meeting?
A. No, I didn't.

State Council Meeting – 27 February 2015

8.3.106 On 27 February 2015 Mr Cannings attended the meeting of the State Council and provided oral advice that was later confirmed in a memorandum dated 30 March 2015.[151]

8.3.107 There is no contemporaneous written record of the discussion at this meeting nor is there in existence any tape recording of the proceedings. The only contemporaneous written record of the proceedings as it related to Mr Rowe's expenses is the resolution that was passed as recorded in the Minutes as follows: [152]

a. That the verbal report from the Senior Legal Adviser to State Branch, Mr John Cannings OAM, be accepted.

b. That it be noted that Mr Cannings will provide a written 'Memorandum of Advice'.

c. That the Grant Thornton Expense Payment Review be accepted and the recommendations contained within be adopted.

d. That the former State President be advised that specific expenses outside of the State President's expense guidelines be repaid to RSL NSW.

8.3.108 Mr Cannings gave evidence that he did not have any recollection of the verbal advice that he gave to the State Council at its meeting on 27 February 2015. That evidence included the following:[153]

Q. Do you have any recollection of it?
A. No, I don't.

PUBLIC INQUIRER: Q None at all?
A. No, Madam Inquirer.

Q. You don't have any recollection of being with them?
A. No.

Q. Just - -
A. No, I have a general recollection of being – of giving advice.

Q. Oral advice?
A. Oral advice, and having spoken to Mr Gladman from Grant Thornton, but I not have any specific recollection of the meeting.

Q. Of addressing the whole of the State Council of the RSL NSW, giving them legal advice?
A. Correct. That's correct. This is in - -

Q. Is it a blank?
A. It is like a fog.

Q. But is it a blank?
A. As I say, I have a general recollection, but I cannot recall detail.

Q. I understand the difference between general and detail. I'm trying to explore the status of your memory today. I think you've said that you can't recollect this, but do you have a recollection of being with all of State Council - -
A. Yes.

Q. - - of RSL NSW, giving them oral advice?
A. Yes, yes.

8.3.109 Mr Cannings claimed that he did not keep any file notes of any of the meetings in respect of the issue of Mr Rowe's resignation between December 2014 and February 2015.[154] He had been diagnosed with what he understood was a terminal illness in mid-2014 and had taken leave from PwC until 1 April 2015. When asked why he did not keep a file note of the legal advice he was giving at the meeting on 27 February 2015 he gave the following evidence:

> At that time, I was at home recovering and dealing with my health, my illness. I wasn't actually working. In fact, you know, I don't recall how this came to my attention. I do not recall having a conversation with Dennis Cowdroy QC. I do not remember attending any of those meetings. It is a fog.
>
> …
>
> I was recovering at home. I was not actively engaged in client work or giving advice to RSL State Branch or RSL LifeCare at that time. That was the furthest thing from my mind. I can't recall why I did not keep a file note.

8.3.110 Mr Cannings gave evidence that having reviewed the Report and speaking to Mr Gladman, he "honestly came to the view that what Mr Rowe had done had been careless, not fraudulent".[155] He accepted that when he provided his written memorandum dated 30 March 2015 to RSL NSW, which is discussed below, there was no factual basis exposed upon which he reached the conclusion that Mr Rowe did not have the requisite intent to amount to "fraudulent" or "criminal" behaviour.[156]

8.3.111 At the time that Mr Cannings had been advised of Mr Rowe's resignation he was overseas in Singapore. Between the date of the State Council meeting on 27 February 2015 and the date of his written memorandum of 30 March 2015, Mr Cannings had travelled to Japan to attend conferences as the Asia-Pacific Pharma and Life Sciences Leader of PwC.[157]

8.3.112 Mr Cannings repeatedly said that he had no specific recollection of the oral advice that he gave to the State Councillors at their meeting on 27 February 2015. On numerous occasions throughout his evidence he referred to his written memorandum of 30 March 2015 and said that he did not have "any more to add than that".[158]

8.3.113 Mr Cannings was asked about his discussion with Mr Gladman on 5 February 2015 which was the subject of Mr Gladman's email of the same date. Although on one view of the email it is clear that Mr Gladman was at least suggesting that Mr Rowe knew what he was doing and therefore understood that what he was doing was wrong, it was suggested to Mr Cannings that the email was silent as to whether Mr Rowe had any criminal intent. He gave the following evidence:[159]

> Q. But my point is, Mr Cannings, that you have evidence which, as you've accepted, was silent on the issue of whether Mr Rowe was fraudulent; correct? It doesn't say he was; it doesn't say he wasn't?
>
> A. I accept that.
>
> Q. Yet, you, in your memorandum of advice, express a positive opinion that he was not fraudulent. What I'm asking you is how could you express a positive view when the only evidence you had was silent on the issue?

A. With the conversation I had with Mr Gladman. There must have been something in that conversation that gave me that comfort of that opinion.

Q. Yet you don't have a record of that?
A. No, I don't.

Q. Do you accept that if he did say that Mr Rowe was not fraudulent or criminal, it would seem inconsistent with that email that I showed you?
A. Yes, it would be very inconsistent with the email.

8.3.114 Each of the State Councillors was asked about the oral advice that Mr Cannings provided at the meeting on 27 February 2015.

8.3.115 Dr Bain recalled, although without being "exact", that Mr Cannings' advice was that the President had been less than wise, or a little careless, in his expenditures and/or his presentation of accounting for the expenditure and that the Optus payments for his family "were really wrong" and that there should be an amount repaid.[160] Dr Bain recalled that Mr Cannings spoke for approximately five to seven minutes; he did not mention the police; but he did say that there was no "criminality".[161]

8.3.116 Dr Bain understood that Mr Cannings had been asked to provide his professional opinion on whether the State Council should "pursue it further" and whether there was anything that "needed to be done". The two things that Dr Bain came away from the meeting with were that the money was to be repaid and that there was no criminality in Mr Rowe's conduct.[162]

8.3.117 Mr Crosthwaite remembered that Mr Cannings had said that Mr Rowe was "careless".[163]

8.3.118 Mr Haines recalled that Mr Cannings' advice was that it was not "as serious as what we were led to believe, that, in actual fact, Mr Rowe had been careless in keeping an itemised account of the moneys that he spent".[164]

8.3.119 Mr Harrigan recalled Mr Cannings indicated that Mr Rowe had been "careless".[165] He agreed that the written advice in which Mr Cannings recorded that Mr Rowe did not act with the requisite intent to amount to fraudulent or criminal behaviour reflected what Mr Cannings had said at the meeting on 27 February 2015.[166]

8.3.120 Mr Henderson recalled that Mr Cannings attended the meeting in February but did not give evidence of the detail of any advice that he provided.[167]

8.3.121 Mr Humphreys gave evidence that Mr Cannings' advice was that the only thing Mr Rowe had been guilty of was being "careless" and that State Council was also guilty of being careless because they allowed it to

happen; and that the proper procedures in "nailing things down" had not occurred in the finance department.[168]

8.3.122 Mr Hutchings gave evidence that Mr Cannings' advice was that Mr Rowe was careless rather than reckless.[169] He could not recall Mr Cannings explaining the basis for his opinion but recalled that Mr James and Mr Harrigan made comments in relation to a more substantial review being conducted of Mr Rowe's expenses.[170] Mr Hutchings said that Mr Cannings' written advice of 30 March 2015 was consistent with what he had said at the meeting on 27 February 2015.[171]

8.3.123 Mr James gave evidence that Mr Cannings spoke only for a "short period of time", about three to five minutes. He recalled that Mr Cannings had said that Mr Rowe had been "more or less careless in the way that he managed his expenditure" within State Council. He understood that Mr Cannings had reached that conclusion from the Grant Thornton Forensic audit. Mr James questioned Mr Cannings indicating that although Mr Cannings had said it was careless, he suggested it was "reckless". However Mr Cannings "stuck to his guns" and said that as far as he was concerned "looking through the document, he was careless". Mr James also had a discussion with Mr Cannings in relation to this lack of criminal expertise and asked him whether he had consulted anybody else about his advice. He claimed that Mr Cannings said that he had colleagues in PwC that he could source advice from, but he could not recall whether he said that he had sourced any from them. Mr James also recalled that Mr Cannings was in the room when he, Mr James, suggested that there should be a seven year audit, but that Mr Cannings did not say anything about that proposal.[172] He thought that Mr Cannings had said that the matter did not need to go to the police, but that he could not "clarify" that. He thought that there was something "along that line" said by Mr Cannings.[173]

8.3.124 Mr McManus-Smith recalled that the advice from Mr Cannings at the meeting on 27 February 2015 was that there was "no criminality" and that Mr Rowe had acted carelessly.[174]

8.3.125 Mr Metcalfe recalled that Mr Cannings had said that Mr Rowe was "careless" and that he thought that after some argument with Mr James, Mr Cannings said that the police "shouldn't be involved" because Mr Rowe was "just careless".[175]

8.3.126 Mr Stephenson recalled that the advice that Mr Cannings gave was "exactly the same" as his memorandum of advice dated 30 March 2015.[176] However he then gave evidence that Mr James had asked Mr Cannings whether "we take this to the police" and Mr Cannings said "no, it doesn't need to go to the police, we don't need to go any further".[177] Mr Stephenson was challenged in respect of this evidence as follows:

> Q. Mr Stephenson I asked you about the content of Mr Cannings' oral advice?

A. Yes.

Q. You said it reflected what was in his written advice?
A. Yes.

Q. In his written advice Mr Cannings did not say, "You don't need to go to the police"?
A. No. No, he did not.

Q. On that basis, do you say that, in fact, Mr Cannings' oral advice was different to the written advice?
A. No, I'm not saying that at all.

Q. Right. Mr Cannings did not actually say to you, "You don't need to go to the police", did he?
A. Not directly, no.

Q. Therefore, that was a matter that you still needed to consider; correct?
A. Correct.

8.3.127 Mr Toussaint recalled that Mr Cannings indicated that the system had failed Mr Rowe as much as Mr Rowe had failed the system and that there was no criminal activity involved. Mr Toussaint thought that Mr Cannings went into "a bit of an explanation" but he could not recall it.[178] He said that Mr Cannings did not say that the State Council did not need to go to the police and he did not say that they did not need to tell State Congress.[179]

8.3.128 Mr White recalled that Mr Cannings said that he had looked into the issue of Mr Rowe's expenses with a focus on the telephones and believed that although there had been irregularities it appeared not to be a "serious breach", that it was more "untidiness or tardiness" and that a request should be made for him to repay some funds.[180]

Mr Harrigan's further email

8.3.129 On 18 March 2015 Mr Harrigan sent an email to Mr James:[181]

> The matter of the resignation of the state president has not been completely resolved and there are some serious issues:
>
> A. On the 27th January at the special state council meeting the Treasurer Mr. White finally told state council in committee about what really happened the day Don resigned allegedly due to health reasons.
>
> B. On that day he told state council he spoke to Don about expenses and said either you go or I will resign (the implication in my view being he would resign and reveal all otherwise why did [D]on resign).
>
> C. Don rang the metropolitan Vice President and advised him he was resigning immediately due to his failing health and [J]ohn Haines was to take over as the acting state president.

D. Once this took place the state treasurer surely should have told John what has occurred and State Council should have been advised and held a meeting.

Written advice from Mr Cannings

8.3.130 On 30 March 2015, Mr Cannings provided a Memorandum of Advice to Mr White for the State Council, referring to Mr Stephenson's request dated 23 March 2015 in which written confirmation of his verbal advice on 27 February 2015 was sought. The Memorandum of Advice included the following: [182]

> In providing my advice I have had regard to:
>
> 1. Report prepared by Grant Thornton dated 23 January, 2015 (the Report),
>
> 2. State Presidential Expense Guidelines (the SP Guidelines), and
>
> 3. Discussion with Mr Wayne Gladman of Grant Thornton.
>
> In reviewing the Report and following my discussion with Mr Gladman (the principal author of the Report) I am of the opinion that:
>
> 1. Notwithstanding the fact that the immediate Past President of RSL NSW, Mr Don Rowe, OAM (Mr Rowe) had made expense claims (during the review period) outside the SP Guidelines, he did not do so with the requisite intent to amount to "fraudulent" or "criminal" behaviour.
>
> 2. The breaches were at worse "careless" founded on years of relying on others to process his expenses and more recently in having such expenses ratified each month by State Council.
>
> 3. The system in place for the provision of supporting material and information for expenses claimed and the review of the State Presidents expenses failed Mr Rowe as much as Mr Rowe failed the system.
>
> 4. The recommendations made in the Report should be adopted by State Council.
>
> 5. The new State President be required as part of their appointment to enter into an agreement, inter-alia, acknowledging the SP Guidelines, setting out the rules surrounding authorised expenses and the process for claiming reimbursement and review of State President expense claims.
>
> 6. In respect of specific expenses incurred by Mr Rowe and set out in the Report, that Mr Rowe be requested to reimburse those personal expenses related to his Accor Advantage membership and Optus telephone account not related to his position as State President.

8.3.131 When shown this advice, Mr Gladman gave the following evidence:[183]

Q. It would be right, wouldn't it, that the opinions expressed there in 1 and 2 would not have been consistent with your view; correct?
A. Correct.

Q. Would I be right in saying that, having seen the email of the conversation with Mr Cannings, these were not views that you would have expressed to Mr Cannings in that telephone conversation?
A. No.

PUBLIC INQUIRER: Q. Is that correct?
A. Sorry, that is correct. No, I wouldn't have expressed those views to Mr Cannings.

8.3.132 Mr Cannings' advice continued:[184]

> As I verbally advised, RSL NSW now has the opportunity to put in place a transparent set of checks and balances for reviewing and authorising State President expenses which meets contemporary good governance. There needs to be a clear set of rules and procedures around:
>
> 1. Limits on monthly expenses/cash withdrawals,
>
> 2. Prior approvals and documentary evidence to support expense claims,
>
> 3. Review and authorisation, and
>
> 4. Frequency of reviewing such rules and procedures.
>
> As previously advised I would be happy to assist in the preparation of such rules and procedures for consideration by State Council.

8.3.133 The resolution for Mr Rowe to make repayment did not specify which items were to be repaid or the total amount involved.[185] Mr Rowe's evidence was that Mr Stephenson told him to repay the telephone bills that had been paid and that Mr Rowe calculated and repaid $2,500.[186]

8.3.134 Mr Crosthwaite thought it was left to the FARM Committee or the accounts department but then gave evidence that he told Mr Rowe to repay the amount that had been fixed by State Council, which he believed was between $2,500 and $3,000.[187] Mr Haines understood it was left for Messrs Stephenson, Cannings and the late Ms Mulliner to negotiate with Mr Rowe and that the figure was "$7,000, working its way down to $4,000".[188] Mr Harrigan thought that he saw somewhere that Mr Rowe was asked to repay $7,000 odd.[189] Mr Henderson thought Mr Rowe was to repay $4,000, although he had no idea how this was calculated.[190] Mr Humphreys' evidence was that State Council required Mr Rowe to repay $4,000.[191] Mr Hutchings thought that the motion was that Mr Rowe "only repay a percentage of his phones" and that this was "somewhere in the vicinity of $4,000 to $5,000".[192] Mr James thought that it was all of the telephone bills and $12,000 that had been taken in cash withdrawals, but that whilst Mr Rowe paid back some amount, Mr Rowe then claimed

hardship.[193] Mr Metcalfe thought that Mr Rowe only had to repay the expenses from the telephone bills.[194] Mr Stephenson's evidence was that he discussed it with Ms Mulliner and Mr White and they "came up with the figure of $4,000" as a round figure and that he told Mr Rowe to repay this sum.[195] Mr Toussaint's evidence was that it was left to the finance department; Mr Rowe "came up with a figure" in discussions with Mr Stephenson and it was somewhere around $2,400 to $2,500 for the telephones and something for a membership.[196] Mr White believed that Mr Rowe had repaid what he had to, but did not know what the figure was.[197]

Annual Report 2014 – March 2015

8.3.135 In about March 2015,[198] the RSL NSW Annual Report 2014 was published, which included the following in Mr Stephenson's Acting President's Report:[199]

> On 15th December 2014, I found myself unexpectedly in the position of Acting State President RSL NSW, following the resignation of Don Rowe OAM, and also following John Haines AM, stepping down from that position due to other commitments.
>
> …
>
> Don achieved much during his tenure and will be sorely missed by all. I'm sure we all wish Don a long happy retirement with an early restoration to good health.

8.3.136 Mr Perrin's Chief Executive Officer's Report included the following:[200]

> Finally, late in 2014 the longest serving member of State Council and former State President, Mr Don Rowe OAM resigned after 33 years of service to the League. I wish him all the best for the future and I trust he will achieve a return to good health as quickly as possible.

Further legal advice

8.3.137 On 17 June 2015, Mr Cannings provided a further written Memorandum of Advice to Mr White relating to the RSL NSW Expenses Policy and the proposed amendments to it. Amongst other things, Mr Cannings suggested that monetary maximum thresholds, where relevant, should be considered by RSL NSW and included where appropriate. He also suggested that maximum item numbers for particular purchases should also be considered and if appropriate included in the State President's Guidelines. Mr Cannings noted that the Policy was very broad and did not set out any threshold requirements.[201]

8.3.138 The suggestions for amendment made by Mr Cannings were adopted by the Finance Committee on 15 July 2015. [202]

ENDNOTES

[1] Ex 14, p 124.
[2] Ex 14, pp 227 - 228.
[3] Tr 1018 - 1019.
[4] Ex 14, p 126.
[5] Ex 14, p 129.
[6] Ex 14, p 130.
[7] Ex 14, p 182.
[8] Ex 14, pp 223 - 224.
[9] Ex 14, pp 183 - 187.
[10] Ex 10, Vol 1, p 68; Ex 11, p 23.
[11] Tr 960.
[12] Ex 10, Vol 1, p 68; Ex 11, p 23.
[13] Ex 10, Vol 1, p 68.
[14] Ex 11, p 24.
[15] Ex 10, Vol 1, pp 68 - 69; Ex 11, pp 23 - 24.
[16] February $687.48; March $514.07; April $516.18; May $558.17; June $599.63; July $557.39; August $543.58; September $716.24; October $542.93 - Ex 10, Vol 1, p 69.
[17] Ex 36, pp 174 - 175.
[18] Ex 10, Vol 1, p 69.
[19] Ex 10, Vol 1, p 69.
[20] Ex 11, p 24.
[21] Ex 10, Vol 1, p 69; Ex 11, p 25.
[22] Ms Mulliner suggested that Mr White said he had given Mr Rowe "an hour" (Ex 10, Vol 1, p 69) and then "15 minutes" (Ex 11, p 25).
[23] Ex 10, Vol 1, p 69; Ex 11, p 26.
[24] Tr 1233.
[25] Ex 8, Vol 3, Tab 12, pp 287, A98; 288, A99.
[26] Ex 8, Vol 3, Tab 12, p 289, A100.
[27] Tr 2278 - 2281.
[28] Tr 2299 - 2303.
[29] Ex 29, p 62.
[30] Tr 2361.
[31] Tr 2369 - 2370.
[32] Tr 1021 - 1023.
[33] Tr 1034 - 1035.
[34] Tr 1358 - 1359. Dr Bain understood this to mean resign and presumed the cause was Mr Rowe's ill health. Mr Rowe also said: "I'm exhausted, I've had it".
[35] Tr 1358.
[36] Tr 1360 - 1361; Ex 10, Vol 1, p 73.
[37] Tr 1024.
[38] Tr 2308.
[39] Ex 10, Vol 1, p 72.
[40] Tr 1025.
[41] Tr 1235 - 1237.
[42] Tr 1240.
[43] Tr 1242.
[44] Tr 2310.
[45] Ex 10, Vol 1, p 81.
[46] Ex 10, Vol 1, p 82.
[47] Tr 2449.
[48] Ex 19, Vol 2, p 640.
[49] Ex 19, Vol 2, p 640.
[50] Tr 1488 - 1489.
[51] Ex 10, Vol 1, p 88.
[52] Ex 10, Vol 1, p 93.
[53] Ex 10, Vol 1, p 96.

[54] Ex 10, Vol 1, p 94.
[55] Ex 10, Vol 1, p 97.
[56] See for example Tr 1683, 1768 - 1770.
[57] Ex 10, Vol 1, p 97.
[58] Tr 2319, 2356.
[59] Tr 1682 - 1684.
[60] Tr 1766 - 1770.
[61] Tr 848 - 849.
[62] Tr 1540.
[63] Tr 1978 - 1979.
[64] Tr 1137 - 1138; Ex 13, p 217.
[65] Tr 2641.
[66] Tr 1573.
[67] Tr 1361.
[68] Tr 1622.
[69] Tr 2319, 2356.
[70] Tr 664 - 665.
[71] Ex 10, Vol 1, p 99.
[72] Ex 10, Vol 1, p 424.1.
[73] Tr 2003.
[74] Ex 10, Vol 1, p 100.
[75] Ex 14, p 138 (states 20 December); Ex 44, p 140.
[76] Ex 10, Vol 1, p 424.1.
[77] Ex 10, Vol 1, p 424.1.
[78] Tr 2448 - 2449.
[79] Tr 1997 - 1998, 2448.
[80] Tr 1998 - 1999.
[81] Tr 2449 - 2450.
[82] Ex 10, Vol 1, p 104.
[83] Ex 10, Vol 1, p 108.
[84] Ex 10, Vol 1, p 106.
[85] Ex 10, Vol 1, p 113.
[86] Tr 2000, 2454.
[87] Tr 2453.
[88] Tr 2000, 2455; Ex 23, p 21.
[89] Tr 2001.
[90] Tr 2455.
[91] Tr 2455 - 2456.
[92] Tr 2000.
[93] Tr 2454.
[94] Ex 10, Vol 1, p 424.1; Tr 2002, 2457.
[95] Ex 10, Vol 1, p 424.1; email dated 17 January 2017.
[96] Ex 10, Vol 1, p 424.1.
[97] Ex 10, Vol 1, pp 114 - 115.
[98] Ex 10, Vol 1, p 171.
[99] Ex 10, Vol 1, p 171.
[100] Ex 10, Vol 1, p 124.
[101] Ex 10, Vol 1, p 125.
[102] Tr 3167.
[103] Ex 10, Vol 1, p 129, par 15.
[104] Ex 10, Vol 1, p 127, par 5.
[105] Ex 10, Vol 1, p 128, par 12.
[106] Ex 10, Vol 1, p 131, par 28 - 30.
[107] Ex 10, Vol 1, p 134, par 60 - 68.
[108] Ex 10, Vol 1, p 134, par 60 - 64.
[109] Ex 10, Vol 1, p 134, par 65 - 68.
[110] Ex 10, Vol 1, p 136, par 83.
[111] Ex 10, Vol 1, p 136, par 88.
[112] Ex 10, Vol 1, p 143, par 164.

[113] Ex 10, Vol 1, p 144, par 168 - 171.
[114] Ex 10, Vol 1, p 144, par 171 - 174.
[115] Ex 10, Vol 1, p 144, par 175 - 176.
[116] Ex 10, Vol 1, p 145, par 177 - 179.
[117] Ex 10, Vol 1, p 172.
[118] Ex 29, pp 16 - 17.
[119] Ex 23, p 22.
[120] Tr 1583.
[121] Tr 2461, 2464.
[122] Tr 2481.
[123] Ex 10, Vol 1, p 173.
[124] Ex 29, p 47.
[125] Ex 29, p 48.
[126] Ex 29, p 51.
[127] Ex 29, p 52.
[128] Ex 29, p 53.
[129] Ex 29, p 54.
[130] Ex 29, p 55.
[131] Ex 29, p 56.
[132] Ex 29, p 56.
[133] Ex 29, p 57.
[134] Ex 29, p 58.
[135] Ex 29, p 58.
[136] Ex 29, p 66.
[137] Ex 29, p 69.
[138] Ex 29, p 72.
[139] Ex 10, Vol 1, p 174.
[140] Ex 10, Vol 1, p 174.1.
[141] Ex 10, Vol 2, p 564.1.
[142] Tr 3176.
[143] Tr 1400.
[144] Tr 1401 - 1402.
[145] Ex 10, Vol 1, pp 220.1, 175.
[146] Ex 10, Vol 1, p 221.
[147] Ex 19, Vol 2, p 642.
[148] Tr 1490.
[149] Tr 1492.
[150] Tr 2032 - 2033.
[151] Ex 10, Vol 1, p 238.
[152] Ex 10, Vol 1, p 227.
[153] Tr 1335.
[154] Tr 1336 - 1337.
[155] Tr 1339.
[156] Tr 1402.
[157] Tr 1395 - 1396.
[158] Tr 1402.
[159] Tr 1403.
[160] Tr 1366.
[161] Tr 1380.
[162] Tr 1379 - 1380.
[163] Tr 679.
[164] Tr 1795.
[165] Tr 1143.
[166] Tr 1147; 1149.
[167] Tr 1540.
[168] Tr 784.
[169] Tr 2653.
[170] Tr 2654.
[171] Tr 2661.

[172] Tr 1649 - 1651.
[173] Tr 1654.
[174] Tr 858.
[175] Tr 1585; 1587.
[176] Tr 2020.
[177] Tr 2024 - 2025.
[178] Tr 1704.
[179] Tr 1707.
[180] Tr 2329.
[181] Ex 10, Vol 1, p 232.
[182] Ex 10, Vol 1, pp 238 - 239.
[183] Tr 3177 - 3178.
[184] Ex 10, Vol 1, p 239.
[185] Ex 10, Vol 1, p 227.
[186] Tr 1027 - 1028.
[187] Tr 678 - 679, 694.
[188] Tr 1833 - 1834.
[189] Tr 1155 - 1156.
[190] Tr 1541.
[191] Tr 784, 789.
[192] Tr 2659, 2655.
[193] Tr 1654 - 1655.
[194] Tr 1591.
[195] Tr 2021 - 2022.
[196] Tr 1710 - 1712.
[197] Tr 2344.
[198] Tr 1243.
[199] Ex 10, Vol 1, pp 229 - 230.
[200] Ex 10, Vol 1, p 231.
[201] Ex 10, Vol 1, p 272.
[202] Ex 10, Vol 1, p 302.

8.4 THE FORMER PRESIDENT'S EXPLANATION

8.4.1 At the commencement of his evidence at the Inquiry, Mr Rowe's counsel, Mr A McInerney SC, sought leave for Mr Rowe to make a "statement of contrition".[1] Mr Rowe commenced by explaining that those who know him would appreciate that he had received some assistance from his lawyers in the preparation of his statement. However, he wanted to "publicly acknowledge" that he stood by every word of the statement.[2]

"STATEMENT OF CONTRITION"

8.4.2 Mr Rowe explained that he was making the statement having had the benefit of hearing the evidence before the Inquiry and having reflected upon the period of his Presidency of RSL NSW from November 2003 to November 2014.[3]

8.4.3 In addressing the question of the alleged abuse of his expenses, Mr Rowe admitted that during the period of his Presidency, Ms Terranova, Ms Mulliner and Mr Perrin had raised concerns that he was not keeping adequate receipts and invoices of expenditure incurred on the State President's credit card. He gave evidence that he recognised that he should have "done more to maintain better documentation" in this regard.

8.4.4 Mr Rowe acknowledged that certain expenditure on the State President's credit card was not in accordance with the SP Guidelines and was not in accordance with good practice and was "wrong".[4] Those expenses included the purchase of meals for State Councillors; the purchase of meals for his immediate family members; accommodation for an immediate family member; the membership of Accor Advantage; and a set of headphones.

8.4.5 Mr Rowe's evidence included the following:[5]

> I recognise that I should not have made cash withdrawals on the State President's card in respect to the annual motor vehicle allowance of $20,000 provided in the State President's expenses guidelines and I accept that, by doing so, I acted in a way which was not expressly permitted by the State President's expenses guidelines and that it was not good practice for me to have done so. It was wrong for me to take such cash withdrawals.

8.4.6 Mr Rowe referred to the State President's Suite at the Hyde Park Inn and gave evidence that members of his immediate family "from time to time" stayed with him at the Suite. Mr Rowe also admitted that one member of

his immediate family "stayed at the State President's suite when I was not there". He accepted that the State President's Guidelines made no express provision for such an arrangement and that permitting the members of his family to stay at the Suite was "not good practice" and was "wrong".[6]

8.4.7 Mr Rowe also dealt with a number of situations which he accepted placed him in a position of a conflict of interest. He admitted that he should not have had a role in approving the expenditure of the State Treasurer and that the State Treasurer should not have had a role in approving the State President's expenditure. He accepted that he should not have sat on the FARM Committee when it considered his own expenditure as State President and he should not have presided as Chairman of the State Council in respect of motions approving that expenditure. He also accepted that he should not have entered into a Consultancy Agreement, nor accepted consultancy payments from RSL LifeCare. He recognised that he should have brought to the attention of the RSL NSW State Council the fact that State Councillors of RSL NSW, who were also directors of RSL LifeCare, had accepted consultancy payments. He expressed the view that the directors of RSL LifeCare should not have accepted payments from RSL LifeCare and that they should not have entered into Consultancy Agreements with RSL LifeCare.

8.4.8 Mr Rowe explained, although not by way of an excuse, that he had taken advice from professional advisers including Messrs Cannings, Thompson and Broadhead. He recognised that he placed too much reliance on this advice and that he should have done more to independently exercise his own judgment in his position as a director of RSL LifeCare to make a better informed independent assessment of the advice that he received from them.

8.4.9 Mr Rowe accepted that prior to 19 November 2010, when the SP Guidelines were approved by RSL NSW State Council, there should have been a written policy or some guidelines in respect of the use of the State President's credit card. He accepted that when the State Council approved the SP Guidelines on 19 November 2010, he should not have participated in the resolution to approve them and recognised that he was placed in a position of conflict of interest in doing so.[7]

8.4.10 Mr Rowe read the file note prepared by Ms Mulliner in which she recorded that Mr White had advised her that he had given Mr Rowe an ultimatum to resign or to have his expenses forensically audited.[8] Mr Rowe agreed with Ms Mulliner's characterisation of what had occurred on 25 November 2014 in this regard relating to the expenses on the credit card in respect of mobile telephone services. Mr Rowe's evidence included the following:[9]

> I resigned from my position as State President of the RSL (NSW) after Mr White gave me the ultimatum on 25 November. At the time I was suffering from a number of health concerns which, after discussion with my wife, confirmed in my mind that I should resign at that point in time. Having said that, I accept that had Mr White not given me the ultimatum on

> 25 November 2014, I would have sought to have continued in my role as State President of RSL (NSW) until the Anzac Centenary on 25 November 2015.
>
> Mr White suggested to me that the reason I should give for my resignation was ill-health. I agreed to this, as I was suffering ill-health at the time. I drafted a letter of resignation in accordance with Mr White's suggestion and presented it to Mr Perrin. Mr Perrin amended the resignation letter which I signed. I accept that my resignation letter did not tell the full story and that it ought have done so.

8.4.11 Mr Rowe recognised and accepted that as a trustee of RSL WBI, he had failed to ensure that it met its legal obligations, including its obligations under the Act and the conditions of its charitable fundraising authority. He also accepted that as State President he failed to recognise that each of RSL NSW, RSL WBI and RSL LifeCare was not complying with the Act. He also accepted that as State President he failed to recognise conflicts of interest in various structures within the entities and therefore failed to address them.[10]

AN APOLOGY

8.4.12 During his statement of contrition Mr Rowe apologised to RSL NSW, RSL LifeCare, RSL WBI, the members of the RSL "family" and to the public who had donated money to each of the entities for his failings as State President of RSL NSW, as a director of RSL LifeCare and as a trustee of RSL WBI.[11]

8.4.13 Mr Rowe acknowledged that responsibility for the shortcomings exposed by the Inquiry in RSL NSW, RSL LifeCare and RSL WBI, rested with the leaders of those entities; and as State President during the relevant years of the period covered by the Terms of Inquiry, he accepted that the responsibility for these shortcomings rested with him.

8.4.14 Mr Rowe apologised unreservedly for the failings of each of the entities during the period of his tenure as State President and for his own failings as State President, as a trustee of RSL WBI and as a director of RSL LifeCare.[12]

FURTHER ADMISSIONS

8.4.15 When he was examined by Senior Counsel Assisting the Inquiry, Mr Rowe accepted that he had not made such admissions in respect of his conduct until the commencement of his evidence to the Inquiry.[13] During the course of his examination, he made further admissions.

8.4.16 He accepted that he withdrew in cash the full car allowance of $20,000 per annum, even though he did not spend $20,000 on the capital cost of a car each year. He accepted then that to the extent to which the sums that

he took exceeded his actual costs, it amounted to income rather than the repayment of expenses and it ought not to have been taken.[14]

8.4.17 Mr Rowe accepted that it was not appropriate for him to allow his family to use the Presidential Suite in the Hyde Park Inn as their home away from home. Mr Rowe gave the following evidence:[15]

Q. Isn't it the case that your son stayed there for a prolonged period of time without a break, isn't that right?
A. That's correct.

Q. So when he was staying there for that prolonged – when was that?
A. I believe he came down about 2007. He was here about seven years, sir.

Q. So he stayed between 2007 and 2014?
A. Correct.

Q. And what was he doing at the time, was he at college?
A. No, he was working.

Q. In Sydney?
A. Yes.

Q. So, effectively, he used the room at the Hyde Park Inn as his accommodation whilst he was working?
A. Correct.

Q. So it would be right, then, that he would have been in that room for periods when you were away; correct?
A. That would be correct.

8.4.18 Mr Rowe also accepted that on one occasion he had used the RSL NSW credit card to pay for one of his daughters to stay at the Hyde Park Inn, which was not appropriate.[16]

8.4.19 The State Councillor meal allowances, which applied to Mr Rowe as State President, were $15, $15 and $30 (later rising to $50) for breakfast, lunch and dinner respectively.[17] Mr Rowe accepted that he was aware of these figures and yet used the RSL NSW credit card to pay for meals for State Councillors at rates in excess of the approved figures; and that he knew at the time that this was wrong.[18]

8.4.20 The State Branch domestic travel policy permitted State Council to pass a specific resolution to allow for payment for "partner travel". Mr Rowe accepted that on occasion he paid for flights for his wife when there was not such a resolution; and for his children, which was "completely wrong".[19]

8.4.21 Mr Rowe was also questioned in respect of his admissions of misuse of his expenses. He said that he understood that he was entitled to reimbursement of expenses incurred while serving in the role of State President; that this was for the expenses of the State President and so did

not extend to his family; and that this was limited to expenses specifically for RSL NSW business and so did not extend to all expenses of living in Sydney, or to all expenses whilst he was in Armidale, for instance for his food at home.[20]

8.4.22 However, Mr Rowe accepted that he used the RSL NSW credit card to pay for all of his expenses of daily living while he was in Sydney[21]; and when shown the list of expenses in December 2013 to January 2014 in which expenses were incurred in Armidale, he gave the following evidence:[22]

Q. Therefore, again, all of the expenses over that time that you spent in Armidale, withdrew in cash, were for your personal living; correct?
A. That probably is correct, sir.

8.4.23 Mr Rowe was also questioned in respect of his admissions of wrongdoing. He gave the following evidence:[23]

Q. In relation to the procedures for dealing with your expenses, you would accept that it depended upon your good practice; correct?
A. Correct.

Q. And your good judgment?
A. Correct.

Q. And your honesty?
A. Correct.

Q. I think you accept that in relation to at least good practice, you let the RSL down; correct?
A. Correct.

Q. Do you accept also that you were not honest in relation to at least some of your expenses?
A. No, I would not say that.

8.4.24 Mr Rowe also gave the following evidence:[24]

Q. Do you accept, however, that in the way that you dealt with your expenses and documentation, there was a complete disregard for your duties and obligations towards RSL?
A. I would have to agree with that.

Q. Do you still maintain it was not deliberate?
A. I do, most definitely.

8.4.25 After Mr Rowe was taken to an analysis of the expenses that he incurred whilst in Armidale during the Christmas 2013/New Year 2014 period, he was tested further as follows:[25]

Q. You used the RSL NSW credit card to support that income; correct?
A. It would appear so, sir, yes.

Q. At the time you knew that you were doing this; correct?

A. On reflection, yes.

Q. Not just on reflection, you must have known at the time; correct?
A. Correct.

Q. So you knew, didn't you, at the time that what you were doing was dishonest?

8.4.26 There was an objection to this question which was overruled and the evidence continued:[26]

Q. Mr Rowe, at the time you were being dishonest, correct?
A. I don't [know] how to answer that, sir, to be quite honest.

Q. With a truthful answer, Mr Rowe.
A. Yes.

…

Q. At the time you knew that what you were doing was wrong; correct?
A. Yes.

…

Q. I put to you, Mr Rowe, that you were using this credit card to pay for your own personal expenses, and have you accepted that. I put to you that - -

PUBLIC INQUIRER: Q. Do you accept that?
A. I'd have to accept that, Madam Inquirer, yes.

MR CHESHIRE: Q. Do you accept that that was wrong, correct?
A. Correct.

Q. And do you accept that you knew that was wrong; correct?
A. Probably not at the time, I can't say.

Q. Mr Rowe?
A. Okay, I accept it was wrong, yes.

PUBLIC INQUIRER: Q. No just pause there. You're just being asked whether you knew at the time it was wrong?
A. I can't recall, Madam Inquirer. I didn't believe it was.

Q. You didn't believe it was?
A. No.

MR CHESHIRE: Q. Mr Rowe, you would have known that paying for your personal expenses on the RSL NSW credit card was wrong; correct?
A. Correct.

Q. You would have known that at the time; correct?
A. Correct.

Q. So, in doing that, knowing that it was wrong, I want to suggest to you that you were dishonest; correct?
A. Correct.

EXTENT OF MISUSE

8.4.27 It is not necessary or possible for this Inquiry to make findings as to the totality of the funds that were misused by Mr Rowe over the years. However, there are some observations that can be made.

8.4.28 In the period between 24 November 2013 and 25 November 2014, Grant Thornton Forensic identified the payment of 12 telephone bills, totalling $7,455.25.[27] The Inquiry has been provided with further telephone bills covering the period from November 2008 to November 2013 and totalling $31,970.12 (with one month missing).[28] Thus in the six years from November 2008 to November 2014, approximately $40,000 of RSL NSW funds were used to pay for telephone bills for Mr Rowe and his family. This included his own telephone that was a valid State President expense.

8.4.29 Grant Thornton Forensic also identified miscellaneous items incurred outside of the SP Guidelines in the period 24 November 2013 to 25 November 2014, such as hairdressing and headphones, which totalled nearly $1,500.[29]

8.4.30 Between December 2009 and November 2014, KMF's analysis demonstrated that Mr Rowe's expenses on his RSL NSW credit card totalled $465,376. That sum included $214,050 in cash withdrawals, of which (in addition to the car allowance and the telephone bills) there was $57,064 without supporting documentation or outside of the SP Guidelines; and $251,326 in other credit card expenditure (not cash withdrawals), of which there was $92,679 without supporting documentation or outside of the SP Guidelines.

8.4.31 Grant Thornton Forensic also calculated the car allowance during that period of $116,220, representing $20,000 per annum less an insurance payment of $3,780.[30]

8.4.32 Mr Rowe used the RSL NSW credit card to pay for one of his daughters to stay at the Hyde Park Inn for three nights in April 2010 at a total cost of $363;[31] and permitted his son to stay there rent free for seven years.

8.4.33 It is not possible otherwise to identify the extent to which expenses paid for by Mr Rowe using RSL NSW funds, including the cost of meals, either exceeded any sum permitted by the SP Guidelines or were wholly outside them; or were otherwise improperly incurred.

SUBMISSIONS

8.4.34 It was submitted on Mr Rowe's behalf that there was a systemic failure in RSL NSW with respect to the State President's credit card expenditure. The system involved Mr Rowe submitting his credit card statements to the Finance Department;[32] the review of the statements by the Finance Department; and making them available for review by the State Treasurer.[33] The State President's credit card expenditure was considered and then approved by the FARM Committee of which the State Treasurer was the Chairman.[34] That expenditure for each financial year was included as a separate line item within the profit and loss statements for RSL NSW which were approved at the annual meeting of State Congress.[35]

8.4.35 It was submitted on Mr Rowe's behalf that he never sought to conceal, or hide in any way, the nature and extent of the expenses he was incurring on the credit card for each financial year during which he was State President. It was also submitted that each of Messrs Perrin, White and Ms Mulliner knew, or ought to have known, the nature and extent of the expenditure being incurred by Mr Rowe on that credit card. It was submitted that each therefore acquiesced in Mr Rowe using the credit card to incur such expenditure.[36]

8.4.36 It should be observed, however, that much, if not all, of Mr Rowe's wrongdoing would not have been immediately apparent from the credit card statements. It would have required at least some analysis of the supporting documentation, which it is apparent was often lacking. Further, there was no indication given to RSL NSW staff of the use to which the cash withdrawals had actually been put, in particular that Mr Rowe was using them to support his daily living needs not only in Sydney but also at home in Armidale.

8.4.37 It was also submitted that it can reasonably be inferred from the circumstances where this practice continued with no prohibition on Mr Rowe using his credit card in this manner, that each of Messrs Perrin and White relevantly held the belief that it was appropriate for the State President to incur the expenditure on the credit card in respect of the ordinary expenses of living away from home. This submission is supported in part by a comment made by Mr Perrin, when an RSL NSW staff member suggested the expenditure was very high he responded "a man's got to live".[37]

8.4.38 It was submitted on Mr Rowe's behalf that there should be no finding that he incurred his expenses "improperly" or "dishonestly".[38] It was contended that Counsel Assisting's Outline of Closing Submissions did not refer to any alleged contravention of the civil, or criminal law by Mr Rowe and that the use of pejorative labels such as "improperly" and "dishonestly" could only connote a moral judgment and not a breach of any legal standard found in the civil or criminal law. It was contended

that such a finding would be in excess of jurisdiction and beyond the power of this Inquiry.[39]

8.4.39 In support of these contentions it was submitted that section 26(1) of the Act confers a power on the Minister "with respect of any matter arising under this Act" to inquire into any person or organisation and that this power does not enable such a finding.

8.4.40 Paragraph 1 of the Terms of Inquiry requires an investigation of whether since 1 July 2007 funds of RSL NSW have been used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to RSL NSW and/or who had in respect of any such decision a conflict of interest.

8.4.41 This requires a determination as to whether the funds of RSL NSW have been expended pursuant to a decision made by Mr Rowe inconsistently with his obligations to RSL NSW. Those obligations included acting honestly and in the best interests of RSL NSW. A finding that Mr Rowe acted improperly or dishonestly is not outside and does not exceed the scope of the power conferred by the Minister under the Act.

8.4.42 It was submitted on Mr Rowe's behalf that it is appropriate to have regard to the voluntary work that he performed between 2006 and 2014. On average Mr Rowe might have had 20 weekends off each year where he did no work in respect of RSL NSW. However on other weekends he was undertaking work for RSL NSW. Each year on average he spent somewhere between 230 and 280 days away from his home near Armidale. He also worked remotely from his home undertaking work in his role as State President. His work in Sydney at ANZAC House included an average day between 8.30am and 6.30pm chairing and attending meetings; meeting with visitors, guests and Ministers of the Crown; reviewing reports; attending to correspondence; and dealing with matters that had been sent to him for his attention, which might involve issues concerning sub-Branches.[40]

8.4.43 There were also many occasions where Mr Rowe had to attend functions outside of normal business hours and this might mean that he would provide voluntary services up to 14 hours in that particular day. Mr Rowe travelled interstate to attend functions from time to time and also travelled overseas. The details of these trips were highlighted in the Outline of Closing Submissions on behalf of Mr Rowe.[41]

8.4.44 The emphasis on the nature of Mr Rowe's commitment to his work as the President of RSL NSW is to be taken into account in attending to the answers to the questions posed by the Minister in the Terms of Inquiry.

8.4.45 It is all very well to admit, as Mr Rowe did, that the use of RSL NSW funds in this manner was "wrong". However his attempt to maintain that such conduct was not "deliberate" was an unimpressive episode in his evidence which exposed his failure to come to grips with the gravamen

of his conduct. However Mr Rowe ultimately accepted that his conduct was "dishonest".

8.4.46 A person who leads an organisation entrusted with the privilege to raise funds from the public must be vigilant to ensure that those funds are protected from misuse and are used only for the purpose for which they were donated. It has been particularly difficult for the members of the entities to accept that the former President of RSL NSW, an organisation charged with looking after needy and/or homeless veterans, would use its money to fund his personal lifestyle and that of his family. It has been a great shame for the organisation.

8.4.47 It is clear that the answer to the question posed by the Minister in the Terms of Inquiry in paragraph 1(c) in respect of Mr Rowe's use of RSL NSW funds, must be in the affirmative.

CONCLUSION

8.4.48 A police investigation was commenced after the matters relating to Mr Rowe's resignation and alleged misuse of RSL NSW funds was made public. The Inquiry is not aware of the present status of that investigation. It is recommended that the Minister refer all evidence relating to Mr Rowe's expenses gathered in the Inquiry to the NSW Police for consideration in their investigation. However any such referral to the NSW Police should include an indication that Mr Rowe took an objection under section 41N of the Act at the time of giving his evidence before the Inquiry.

ENDNOTES

[1] Tr 957.
[2] Tr 958.
[3] Tr 958.
[4] Tr 961.
[5] Tr 963.
[6] Tr 963 - 964.
[7] Tr 959 - 961.
[8] Ex 10, Vol 1, p 68.
[9] Tr 964.
[10] Tr 958 - 959.
[11] Tr 958.
[12] Tr 965.
[13] Tr 1032 - 1033.
[14] Tr 990 - 995.
[15] Tr 997.
[16] Tr 998.
[17] Ex 10, Vol 1, pp 2, 285.
[18] Tr 998 - 999.
[19] Tr 1002 - 1003.
[20] Tr 970 - 972.
[21] Tr 1000 - 1001.
[22] Tr 1016.
[23] Tr 981 - 982.
[24] Tr 989.
[25] Tr 1010.
[26] Tr 1011 - 1013.
[27] Ex 10, Vol 1, p 191.
[28] Ex 36.
[29] Ex 10, Vol 1, p 193, hairdressing p 212, insurance p 213, membership p 216, retail p 218 and stationery (headphones) p 218.
[30] Ex 10, Vol 2, p 494.
[31] Ex 14, p 17.
[32] Tr 2268 - 2269.
[33] Tr 2269, 2275.
[34] Tr 2268, 1543.
[35] Tr 610, 639, 770, 975.
[36] Outline of Closing Submissions on behalf of Mr Rowe, 6 November 2017, pp 3-4, par 5.
[37] Tr 1229 - 1230.
[38] Outline of Closing Submissions on behalf of Mr Rowe, 6 November 2017, p 4, par 6.
[39] Outline of Closing Submissions on behalf of Mr Rowe, 6 November 2017, p 4, par 6.
[40] Tr 1056 - 1057.
[41] Outline of Closing Submissions on behalf of Mr Rowe, 6 November 2017, p 4, par 4.

8.5 A COVER UP

8.5.1 The expression "cover up" is apt to describe circumstances where a concerted effort has been made to conceal events, usually illegal or unethical, from public gaze. This may be achieved by various mechanisms, including making misleading or false statements to divert attention from the reality; remaining silent when an explanation is warranted; and/or a combination of both. Certainly the conduct described in this Chapter fits easily within this description.

PUBLIC STATEMENTS

8.5.2 The version of events in relation to the resignation of the State President of RSL NSW that was put forward to the members of RSL NSW and the public in 2014 and 2015 was that Mr Rowe had resigned from the role as State President because of ill health. That was false, or at least misleading. There was no reference to any issue with his expenses, nor to Mr White having given him an ultimatum to resign in connection with those expenses.

8.5.3 Similarly, the results of the Report from Grant Thornton Forensic regarding Mr Rowe's expenses and the resolution that was passed requiring Mr Rowe to pay back certain items were not published to the members or to the public.

8.5.4 The picture that was presented was that Mr Rowe had simply left due to ill health and with an unblemished record. Whereas the true position was that there were significant issues surrounding misuse of his RSL NSW credit card; he had resigned because he had been challenged about those expenses; and he had subsequently been required to repay some of those expenses.

8.5.5 Although some of the State Councillors reported the true position to some of the members individually and informally, no formal statements were made or steps taken by RSL NSW to correct the misleading impression that had been given and to properly inform the members of RSL NSW and the public.

8.5.6 It appears to have been a common practice of State Council to debate matters that might be controversial "in-committee" since only ordinary meeting Minutes were made generally available on the website. Even where there was debate, it was usually not recorded in the Minutes. The result of any vote was recorded without identifying whether anyone voted differently or abstained.

8.5.7 In the Minutes of the meeting of 11 and 12 December 2014 there was no reference in either the ordinary or in committee Minutes to the issue of Mr Rowe's expenses (and the in committee Minutes recorded that Mr Haines had stood aside due to commitments on his time, which was not true).[1] In the Minutes of the meeting on 27 January 2015 there was no mention in the ordinary Minutes of the issue of Mr Rowe's expenses and the in committee Minutes simply noted the Grant Thornton Forensic Report and that advice would be sought from Mr Cannings.[2] In the Minutes of the meeting of 27 February 2015, the only reference to the issue of Mr Rowe's expenses was the resolution recorded in the in committee Minutes accepting the Report and the advice from Mr Cannings and requiring Mr Rowe to repay certain (unspecified) expenses.[3]

8.5.8 The audio recording of State Council meetings was inconsistent. There was no recording (or indeed written record other than the Minutes) of the meetings on 11 and 12 December 2014 or 27 February 2015. Nor was there any recording of the parts of the meeting on 27 January 2015 where Mr Doolan addressed the State Council "off the record" and where the resolutions were debated and passed in committee.

8.5.9 This practice of secrecy lent itself to covering up difficult or embarrassing issues,[4] which is precisely what happened in relation to Mr Rowe's expenses.

8.5.10 Mr Rowe's resignation letter of 25 November 2014 to Mr Perrin[5] was at best misleading and Mr Rowe knew that to be the case.

8.5.11 Mr Perrin's Circular the following day with the resignation letter attached[6] was at best misleading. Mr White knew that to be the case when he received it, which was most likely that day; the other State Councillors knew that to be the case most likely by 11 December 2014 and in any event by 27 January 2015; and Mr Perrin knew that to be the case most likely within a day or so at the latest but in any event by February 2015.

8.5.12 The statements in Mr Stephenson's December 2014 State President's Newsletter on 15 or 16 December 2014 concerning Mr Rowe[7] were at best misleading; and to his knowledge, at least quite possibly untrue and therefore something that should not have been said.[8] The other State Councillors knew that to be the case most likely by that time and in any event by 27 January 2015; and Mr Perrin knew that to be the case most likely by then and in any event by February 2015.

8.5.13 The statements in Mr Stephenson's report in early January 2015 in the January-February 2015 Reveille magazine concerning Mr Rowe[9] were at best misleading. Mr Stephenson knew that to be the case since he accepted in his email communication to Mr Haines and others that he was aware of the true reason for Mr Rowe's resignation, which was related to his expenses;[10] the other State Councillors knew that to be the case most likely by that time and in any event by 27 January 2015; and Mr Perrin

knew that to be the case most likely by then and in any event by February 2015.

8.5.14 The statements in the reports of Messrs Stephenson and Perrin in the RSL NSW 2014 Annual Report in March 2015[11] were at best misleading. Messrs Stephenson and Perrin knew that to be the case at the time as did the other State Councillors who read it.

8.5.15 None of those statements should have been made; and, once made, they should have been corrected.

8.5.16 In the context of the misleading statements in the January-February 2015 edition of Reveille, Mr Stephenson wrote:[12]

> While I acknowledge that I had some knowledge of the true reason for Don Rowe's resignation and being aware that Don did in fact suffer some serious illnesses I felt I could not report this in Reveille while an audit was being conducted.

8.5.17 It is understandable that State Council would have wanted to keep the allegations concerning Mr Rowe's expenses confidential during the investigative review process. However there was no justification for the making of misleading statements.

8.5.18 The resolution of State Council on 27 February 2015 was for Mr Rowe to pay back certain sums to which he had not been entitled. There was no valid reason for not disclosing this to the membership of RSL NSW.

8.5.19 There were two potential reasons why this was not done. First, due to a concern that criticisms would be levelled at the State Councillors for having allowed a system to develop whereby Mr Rowe could freely pay for personal expenses to which he was not entitled. Secondly, due to a concern that disclosure would cause damage to the RSL brand. However, neither of those was a valid reason. The organisation is constituted by the members and they were entitled to be informed about an important issue such as this.

8.5.20 The Grant Thornton Forensic Report covered only one year. The conclusion was that there were miscellaneous purchases outside of the SP Guidelines, which totalled $1,493.25;[13] there were telephone charges totalling $7,455.25 for six mobile telephones of which one was for Mr Rowe;[14] and there were cash withdrawals of $12,785 in excess of the car allowance withdrawals and which were not supported by documentation other than five dry cleaning receipts.[15]

8.5.21 The resolution on 27 February 2015 was for Mr Rowe to "be advised that specific expenses outside of the State President's expense guidelines be repaid to RSL NSW". It is apparent that State Council did not establish any mechanism for determining which expenses were to be repaid and did not specify a figure to be repaid. That appears to have been left to Mr Stephenson in conjunction with Mr Rowe and possibly others; and

approached in a broad brush manner without reference to the sums actually recorded in the Report or indeed in RSL NSW's records. It seems most likely from the evidence of Messrs Rowe and Stephenson that this was between $2,500 and $4,000.

8.5.22 It is significant that State Council did not investigate the matter further. Not only were there cash withdrawals that were unexplained, but there were unauthorised payments that appeared to have continued over the one year review period. There was therefore a real and obvious possibility, if not indeed a likelihood, that this had been going on for longer than the one year review period.

8.5.23 The State Councillors owed a duty to RSL NSW to safeguard its assets and therefore to attempt to recover any unauthorised expenditure, even if Mr Rowe had only been careless and not fraudulent. Once the Report became available, they ought to have put in train further investigations.

8.5.24 It is likely that had a wider investigation been instigated in 2015, it would have discovered, as the subsequent investigations carried out by EY and KMF in 2016/2017 and this Inquiry have demonstrated, that Mr Rowe's unauthorised spending extended beyond the matters that had been uncovered in the Grant Thornton Forensic Report. Not only were significant amounts of RSL NSW's assets misused by Mr Rowe, but given that RSL NSW did not keep its records so as to distinguish the proceeds of fundraising, moneys raised from the public may well have been used to pay for Mr Rowe's personal living expenses. The actions in failing to disclose the real reason for Mr Rowe's departure, his unauthorised use of his credit card and the resolution for him to repay certain unauthorised items; maintaining the position that Mr Rowe had provided exemplary service and resigned due to ill health; making misleading statements to the members and the public at large and then failing to correct them; and failing to further and fully investigate Mr Rowe's expenses can only be seen as a cover up, which represented a serious dereliction of duty on the part of each of the State Councillors.

STATE COUNCILLORS' ADMISSIONS

8.5.25 A number of State Councillors admitted that the way State Council dealt with the issue of Mr Rowe's expenses, by not making further inquiries into his expenses, by not correcting public statements made as to the reason for his resignation and by not informing State Congress as to the real reason for his departure, amounted to a "cover up" of the issue.

8.5.26 Dr Bain's evidence was that it wasn't intended as a cover up (although it did look that way) and that it was done in order to prevent damage to the RSL brand. He accepted that it was wrong not to inform the members of RSL NSW of the real circumstances surrounding Mr Rowe's departure.[16]

8.5.27 Mr Crosthwaite gave the following evidence as to the reason behind Mr Rowe's resignation:[17]

> Q. At that meeting 20 December, did Mr White say then that he had told Mr Rowe that he needed to go or else there would be an audit of his expenses?
> A. It was evident from the request for the forensic audit of Mr Rowe, that there had been some pesky discussions between Mr White and Mr Rowe and what you're saying now is gradually coming to light, what was going on.
>
> …
>
> Q. After you had the meeting in December, did you think that he had gone because of ill-health or did you think that he had gone because he was pushed because of an issue with his expenses?
> A. At this time I started to realise there was ill-health and there was a question on his expenditure which was a rumour at that time.
>
> Q. When you say it was a rumour, that's what Mr White was telling you; correct?
> A. Correct.
>
> …
>
> Q. So in the middle of 2015, was it your view that Mr Rowe had resigned because of ill-health?
> A. No.
>
> Q. You were aware that statements had been made to the community at large that Mr Rowe had resigned due to ill-health; correct?
> A. Yes.
>
> Q. As at the middle of 2015, did you not at least have some concern that that might not be true?
> A. Yes.

8.5.28 Mr Crosthwaite's view was that the matter required further investigation, although he accepted that this was never done and that instead it was decided that there would just be a request to pay some money back in connection with the mobile telephones.[18] He regarded the payment by Mr Rowe of his family's telephone expenses as being potentially justifiable and saw Mr Rowe being requested to repay anything as being "in goodwill and in good faith".[19]

8.5.29 Mr Crosthwaite did not accept that the reason why the issues with Mr Rowe's expenses were not disclosed was to avoid damage to RSL NSW and criticisms of the State Councillors,[20] although his view was that State Council had also been to blame for a lack of oversight of Mr Rowe's expenses.[21]

8.5.30 Mr Haines accepted that the issue concerning Mr Rowe was not reported to the Police or State Congress because it suited State Council not to do so and that the "next step" ought to have been taken.[22] He also accepted that the misleading statements that had been made about Mr Rowe ought to

have been corrected[23] and that the true reason for Mr Rowe's departure (and indeed his own resignation in December 2014 as Acting State President) ought to have been disclosed.[24]

8.5.31 He did not accept a characterisation of what had occurred in relation to Mr Rowe's departure as a cover up. He expressed the view that a number of the State Councillors felt that there would be further investigation and further information would come out. However he accepted that once the matter was not taken any further, it might appear to some as a cover up.[25]

8.5.32 In December 2016, Mr Haines made a statement to the media in which he maintained that he had believed at the time that Mr Rowe resigned due to ill health and only later heard "rumours" about "something other than that".[26] In his evidence to the Inquiry, he accepted that this did not tell the whole story and was misleading.[27]

8.5.33 Mr Hardman was not a State Councillor at the time of Mr Rowe's resignation or at the time that the State Council considered the Grant Thornton Forensic Report and received Mr Cannings' advice at the meeting on 25 February 2015. He was re-elected to State Council in mid-2015 and took up the role of Honorary Treasurer in August 2015.

8.5.34 After he took up his appointment as Treasurer, Mr Hardman was advised of the existence of the Grant Thornton Forensic Report and Mr White suggested that he read it to assist him in the work that he was doing to modernise the manner in which State Councillors' expenses were to be approved.

8.5.35 When Mr Hardman read the Report he was "a little surprised" but took the view that there were no proper controls in place during the time Mr Rowe was President. It was not suggested to Mr Hardman that he was aware that Mr Rowe had resigned because his improper conduct had been exposed. Nor was it suggested to him that he was party to any cover up.

8.5.36 Mr Harrigan's view at the time was that Mr Rowe had been dishonest. He was concerned that there was a cover up, but he felt bound by the decision of the State Council.[28] In the February 2017 Bondi Junction sub-Branch Newsletter, Mr Harrigan maintained that he had done nothing wrong.[29] However, in his evidence to the Inquiry, he accepted that not only were State Council's steps an attempt to cover up what had happened, but it was a cover up to which he had been a party.[30]

8.5.37 Mr Henderson accepted that the resolution that was passed on 27 February 2015 in respect of Mr Rowe was an attempt to sweep the issue under the carpet and hide the fact that proper procedures had not been followed. He accepted that the failure to report matters to the members was a cover up and was improper, although he felt that he was bound by the resolution at the time.[31]

8.5.38 Mr Humphreys accepted that Mr White informed State Council that Mr Rowe had left because he had confronted him about his expenses.[32] He then gave the following evidence:[33]

> Q. You were aware that it was presented in each of those documents that Mr Rowe left because of ill-health; correct?
> A. Yes.
>
> Q. If that was not true, it needed to be corrected; that's right, isn't it?
> A. If it wasn't true, yes.
>
> Q. If Mr White was telling the truth, then the statements that were being made were not true; that's right, isn't it?
> A. If he was telling the truth, yes.
>
> Q. What steps did you take to satisfy yourself as to whether Mr White was telling the truth or not?
> A. I didn't take any steps.
>
> Q. So you allowed statements to be made that were potentially untrue; is that right?
> A. To my knowledge, there was no untruth in it. All I knew was that Mr Rowe had resigned through ill-health and that there was a statement made by Mr White that he had confronted Mr Rowe and Mr Rowe had resigned because of the confrontation, but there was no evidence, to my mind, that that had taken place. All I had was Mr White's word and there was nothing from Mr Rowe.

8.5.39 However, Mr Humphreys did not make any inquiries of Mr White or Mr Rowe.[34]

8.5.40 Mr Humphreys' view was that Mr Rowe had not done anything wrong, although he accepted that it was not appropriate for him to have paid for the telephone bills of his family with RSL NSW funds.[35] In relation to the February 2015 resolution, he gave the following evidence:[36]

> Q. And there was criticism that was made of him for being careless?
> A. Yes.
>
> Q. And there was criticism that was made of State Council for being careless?
> A. Yes.
>
> Q. Did you not think that those are matters that ought to have been disclosed to State Congress?
> A. I don't think so, no.

8.5.41 Mr Humphreys gave the following further evidence on this issue:[37]

> Q. In circumstances where Mr Rowe had been, as you understood it, careless, and where State Council had been careless, don't you think that you ought to have informed the members of RSL NSW, the State Branch, what had happened?
> A. Inform them of what?

Q. That Mr Rowe had been careless and taken expenses that he should not have done and that State Council had been careless in allowing that to occur?
A. I can't see the point in telling them.

Q. Wasn't it the case that you wanted to keep it quiet because you didn't want to be subject to that criticism?
A. No, it didn't worry me.

Q. Wasn't it the fact that given what Mr White had said about confronting Mr Rowe, you didn't want that pursued because you didn't want it to be aired in public; that's right, isn't it?
A. No, it didn't worry me whether it was aired in public or not.

8.5.42 Mr Hutchings' evidence was that, although he was aware of the issue of Mr Rowe's mobile telephone bills, the amounts involved were small and it "did not open up a huge explosion".[38] He was concerned at the meeting on 27 January 2015 that the matter should not be swept under the carpet.[39] He gave the following evidence:[40]

Q. By the passing of this resolution, do you agree that, essentially, it was sweeping the issue under the table?
A. I'd prefer some other terminology, but given that is the terminology being used, I would accept that, yes.

8.5.43 Mr Hutchings accepted that by passing the resolution on 27 February 2015, State Council "was essentially trying to stop the expenses scandal proceeding any further"; and that it would have been better to have informed State Congress.[41] He also accepted that the statements concerning Mr Rowe resigning for ill health were misleading (to the members and the public) and that by State Council not having made a formal public statement acknowledging this, which it ought to have done, he was part of the cover up.[42]

8.5.44 Mr James' evidence was that State Council should have "let the membership know" about the true reason for Mr Rowe's resignation, being misuse of his credit card. In fact he informed members with whom he had contact, in particular at the 2015 State Congress.[43] He accepted that it would have been better to move a motion in State Council to inform the members, but he believed that he did not have the numbers.[44] He did not think of raising a resolution at State Congress through his sub-Branch.[45]

8.5.45 Mr James did not believe there was "an intentional cover up" and gave the following evidence:[46]

Q. There were discussions in the 27 January meeting about keeping it in-house and covering up Mr Rowe's expenses by State Councillors; weren't there?
A. There was conversations in there, yes.

Q. To your knowledge, based on your attendance at that meeting, at least some of the State Councillors held the view that there should be a cover up of Mr Rowe's expenses; is that correct?

A. Correct.

8.5.46 Mr James' evidence was that he thought Mr Doolan was trying to influence the decision of State Council, but he denied that he was of the opinion that Mr Doolan was suggesting that State Council cover up Mr Rowe's expenses scandal.[47]

8.5.47 Mr James accepted that the statements that had been published concerning Mr Rowe resigning due to ill health were misleading and that he did not take any steps to have those statements corrected.[48] He gave the following evidence:[49]

Q. You accept, don't you, that you could have taken more action to correct the misleading statements that had been made?

A. I think I've done over and above what you're saying there because I did take it to the members personally. It is common knowledge out there. It was common knowledge in State Branch right back then with all the paid staff as well as everything else. It was all out there. We did put an official policy to Mr Glenn Kolomeitz. We worked on that in the new Council after the previous Council terminated his contract. So there was a lot done.

8.5.48 Mr McManus-Smith gave evidence that he believed that Mr Rowe resigned due to ill health and also due to intimidation and bullying by Mr White.[50] However, he accepted that in December 2014 he became aware that there were issues that had been raised about Mr Rowe's expenses;[51] and by March 2015, he was aware that an ultimatum from Mr White about his expenses had at least been a factor in Mr Rowe's resignation.[52] As to a question on whether it was appropriate for Mr Rowe to pay for the expenses of his family using RSL NSW funds, he found that "very hard" to answer.[53]

8.5.49 Mr McManus-Smith agreed that by at least March 2015, he knew that the statement concerning Mr Rowe having resigned due to ill health "didn't tell the entire story". He accepted that some form of corrective statement ought to have been issued, but that it did not occur to him at the time.[54]

8.5.50 Mr McManus-Smith agreed that it was a consideration for him that State Councillors would be criticised if information about Mr Rowe's expenses became public,[55] but that in retrospect they should have been published to the members.[56] He gave the following evidence: [57]

Q. So the State President has acted carelessly. The State President has left because he was given an ultimatum about his expenses. The State President has been told that he has to pay money back from his expenses. Aren't they matters that ought to have been disclosed to the members of RSL NSW?

A. Yes.

Q. And isn't the reason that they weren't disclosed because the State Councillors did not want this getting out because they didn't want to be criticised?

A. I don't think it was – well, I know for me personally it was not that I didn't want to be criticised.

Q. Was it that you wanted to protect Mr Rowe?
A. I believe it was to protect Mr Rowe's good name, the good name of the RSL.

8.5.51 Mr Metcalfe acknowledged that in passing the resolutions on 27 February 2015 the major concern was the protection of the reputation of RSL NSW. He appreciated at the time that State Councillors were taking positive steps to cover up the issue of Mr Rowe's expenses and doing so in accordance with what he understood to be a direction from Mr Doolan.[58] He accepted that he knew at the time that they were not acting in the best interests of RSL NSW.[59]

8.5.52 In 2017 Mr Metcalfe published a document to the sub-Branches in Northern New South Wales in support of his candidacy for State Council, in which he maintained that his conduct "had no conflicts with the Councillors Code of Conduct".[60] In his evidence to the Inquiry, he accepted that in the light of his conduct surrounding Mr Rowe's expenses, that statement was wrong.[61] He accepted as follows:[62]

PUBLIC INQUIRER: Q. Just before Ms Single leaves that, what you did was to dig in; that's right, isn't it?
A. Correct.

Q. And you dug in in the face of the National President calling for you to step aside, in the circumstances of the press exposing what you've now agreed to was a cover up; you'd agree with that?
A. Yes.

Q. If it had ended there and the Minister hadn't acted, no-one would be any the wiser; would you agree with that?
A. Yes.

Q. For the future, as I said to you before, what hope would the Minister have if people are going to dig in like you did? Very little, wouldn't he?
A. Yes, yes, Madam Inquirer.

8.5.53 In the context of a statement on his published document "Mates Helping Mates", Mr Metcalfe gave the following evidence:[63]

Q. If we don't take it literally, Mr Metcalfe, as you and Mr Rowe being friends, but essentially within the context of RSL NSW, the State Councillors who voted on the resolution were mates helping mates trying to ensure the reputation of RSL NSW stayed intact - that's correct, isn't it?
A. Yes.

Q. And trying to ensure that Mr Rowe's reputation stayed intact; that's correct?
A. No.

Q. What other benefit would there be than covering up Mr Rowe's expenses scandal?
A. The League in Australia.

PUBLIC INQUIRER: Q. The bigger picture?

A. The bigger picture, Madam Inquirer, the bigger picture.

8.5.54 Mr Stephenson gave the following evidence:[64]

Q. But it suited State Council and you as a member, didn't it, not to take the issue of Mr Rowe's expenses any further; correct?
A. I don't know that the term "it suited us" would be correct.

Q. It suited you because if you went further, then you would probably need to disclose that; correct?
A. Correct.

Q. Therefore, that would get out and damage the RSL brand and damage State Council and RSL (NSW); correct?
A. Correct.

Q. Therefore, it suited you for this not to go any further; correct?
A. Yes.

Q. This was sweeping it under the carpet, wasn't it?
A. It was never intended to be swept under the carpet.

Q. What other possible reason was there for not going back any further with Mr Rowe's expenses?
A. I find that hard to answer, Mr Cheshire.

Q. It was a cover-up, wasn't it, Mr Stephenson?
A. On reflection it was a cover-up. It was never intended to be a cover-up.

Q. Well, if it wasn't intended to be a cover-up, there would be no reason why this resolution for Mr Rowe to have to pay back a small amount of his expenses couldn't be disclosed to State Congress; correct?
A: That's correct.

Q. Indeed, it ought to have been disclosed to State Congress, correct?
A. I accept that.

Q. What other explanation is there for the fact that even this resolution was not disclosed to State Congress, other than the fact that it was a cover-up?
A. I have no explanation.

8.5.55 Mr Stephenson agreed that the misleading statements about Mr Rowe's resignation ought not to have been made and that they ought to have been corrected.[65] He also accepted that the email in which Mr Gladman expressed the view that there had been "potentially a prima facie case of fraud" ought to have been disclosed to State Council and he could not provide any explanation as to why it was not disclosed.[66]

8.5.56 When Mr Stephenson resigned in January 2017, he published a letter in which he recorded that he accepted "no culpability for the actions taken". He accepted that perhaps he should have acknowledged that he had made serious errors and that the first time that he had admitted publicly that he had got anything wrong was in his evidence to the Inquiry.[67]

8.5.57 Mr Toussaint gave evidence that he reported to the Monaro and Far South Coast District Council that Mr Rowe had resigned because he had been pushed out rather than due to ill health.[68] He accepted that the matter of Mr Rowe's expenses ought to have been pursued further and that it ought to have been reported to the members.[69] He also accepted that the statements concerning Mr Rowe leaving for ill health were misleading, ought not to have been made and ought to have been corrected.[70]

8.5.58 As to the reason for those omissions, Mr Toussaint gave the following evidence:[71]

> Q. Indeed, the position was, was it not, that RSL NSW was sweeping this under the carpet; correct?
> A. No, I wouldn't – I don't believe they were at the time. I mean, on the evidence now, I would say yes, but at the time, I was not aware of that.
>
> Q. It was a cover up, wasn't it?
> A. Not that I was aware of at the time.
>
> Q. But not even disclosing to State Congress this resolution that has been passed for Mr Rowe to repay certain expenses, what possible reason could there be for that other than to cover it up?
> A. Well, that's what the finance department handled, so it was up to them.
>
> Q. No, Mr Toussaint, State Council passed a resolution in-committee for Mr Rowe to repay certain expenses; correct? What possible reason was there for not telling State Congress about this resolution other than to cover it up?
> A. No, don't know. Should have done, I suppose.

8.5.59 Mr Toussaint also gave evidence that he had been concerned about the issue of Mr Rowe's expenses entering the public domain.[72] He gave the following evidence:[73]

> Q. Sitting here today, you have accepted, I think, that in light of what you know today, it appears that there was a cover up of the circumstances surrounding Mr Rowe's departure and the issue of his expenses? You would agree with me on that?
> A. On the information that's come out now, yes.
>
> …
>
> Q. But you've accepted that at no time was State Congress informed about the resolution for Mr Rowe to repay certain expenses; correct?
> A. Correct.

Q. You've accepted that misleading statements were made about the circumstances surrounding Mr Rowe's departure; correct?
A. Now I do know, yes, correct.

Q. And that they were never corrected; that's right, isn't it?
A. That's right.

Q. You've accepted that the issues revealed by the Grant Thornton report were never disclosed to State Congress; that's right, isn't it?
A. That's right.

Q. All of those matters, they are a cover up, aren't they?
A. They would be a cover up, if you put it that way, but I was not aware of any cover up, no.

Q. Sitting here today, you accept that that was a cover up, don't you?
A. Well, on the information you've supplied to me, yes.

Q. You accept that you were involved in that; correct?
A. No, I was not involved in any cover up.

Q. Well, you were aware that the statements had been made that were misleading and you made no effort to correct them. That's you being involved in a cover up, isn't it?
A. I refuse to answer.

8.5.60 Mr White's evidence to the Inquiry was that it was appropriate for the funds of RSL NSW to be used by Mr Rowe to pay for his expenses of living in Sydney and at least some of the expenses of his children while they were in Sydney.[74] He informed EY that Mr Rowe could pay for his children's lifestyle at home in Armidale while he was in Sydney;[75] and he informed State Council on 27 January 2015 that in his opinion Mr Rowe had "on a continuous basis conducted acts of fraud knowing what he was doing".[76]

8.5.61 Mr White's evidence included the following:[77]

Q. You owed a duty to the public, not only to your State Councillors, to make sure that the moneys that they had donated to your organisation were not misused or spent inappropriately, didn't you?
A. Yes.

Q. Do you accept that, in failing to follow up this matter of Mr Rowe's expenses, you completely failed in respect of those duties?
A. No, sir, I believe I did the best I could under the appointments I held and the skills and experience that I brought to the role, and the ability that I had. In hindsight, I think I had too many jobs, I wore too many hats.

Q. Do you now accept that, even with the benefit of hindsight, you should have done more?
A. Yes, I should have done more, and I should have been better briefed and resourced.

8.5.62 In relation to the resolution on 27 February 2015, Mr White gave the following evidence:[78]

> Q. Why did State Congress not have a right to know that their State President had taken some funds that he ought not to have done?
> A. They had a right to know.
>
> Q. Why did you not tell them?
> A. It wasn't - it wasn't any intention other than that we were dealing with that at State Branch.
>
> Q. Because you wanted to cover it up; that's right, isn't it?
> A. No, because those inquiries, investigations are all there. They are on the record. There's nothing that can be covered up.
>
> Q. The resolution in respect of Mr Rowe was made in-committee; correct?
> A. Yes.
>
> Q. So that resolution would not be published on the internet; correct?
> A. No, but any sub-branch and any member could access those records.
>
> Q. But it's different from putting it on the internet, isn't it?
> A. Yes.
>
> Q. So that having been delivered in-committee and State Congress never being told, I'm suggesting to you, was because you wanted to keep it quiet; do you accept that?
> A. No, sir. I'd be quite happy for it to be broadcast as wide and far as possible.
>
> Q. Well, why didn't you, then?
> A. Well, I wasn't aware of the process or the means of doing it at the time. You know, I thought we were dealing with it ethically and professionally, with good advice and within the capabilities of what we were deliberating on.

8.5.63 Mr White accepted that the statements that were made about Mr Rowe's departure were misleading and that they ought to have been corrected, including during the time that he was State President.[79]

8.5.64 He also accepted that State Congress and the members had a right to know about this issue, but maintained that they were "following a process that would ultimately delve into the issue". He accepted that there should have been a comprehensive audit of Mr Rowe's expenses, but denied that the failure to pursue the matter after the February 2015 resolution was because he wanted it covered up.[80]

MR PERRIN

8.5.65 Mr Perrin accepted that his statement in the RSL NSW Annual Report concerning Mr Rowe in which he wished him "a return to good health as

quickly as possible" was misleading.[81] He denied that he did this as part of a cover up the fact that Mr Rowe had resigned due to a problem with his expenses and he gave the following explanation:[82]

> Q. Then why did you give a misleading statement in the annual report?
> A. Because State Council were dealing with the issue and I was not aware of what were the circumstances or where they were up to with that at the time I wrote this report.

8.5.66 Mr Perrin accepted that the other public statements about Mr Rowe's departure were also misleading[83] and gave the following evidence:[84]

> Q. Did you take any action to have them corrected?
> A. My understanding was State Council was dealing with it. I was not invited to any of the State Council meetings.
>
> Q. But you accept that within your role as Chief Executive Officer and State Secretary, you accept that you could have approached State Council and said, "Hang on a minute, what you said was misleading, that needs to be corrected"?
> A. My understanding was they were dealing with that.
>
> Q. With correcting the misstatements?
> A. With their whole issue; I wasn't aware of what was going on.
>
> Q. But once you became aware that statements had been made which you then knew were at least misleading, is it right that you did not take any steps to find out whether any corrective action was going to be taken?
> A. Yes.

8.5.67 From the information gathered in the Inquiry it is clear that during the period December 2014 to April 2015 Mr Perrin was experiencing a very difficult relationship with Mr White which included uncertainties as to whether his employment contract would be renewed after May 2015. His contract was not renewed and his employment with RSL NSW terminated in May 2015.

ENDNOTES

[1] Ex 10, Vol 1, pp 94, 97.
[2] Ex 10, Vol 1, pp 172, 174.
[3] Ex 10, Vol 1, p 227.
[4] See for example Tr 2010 - 2015, 2025.
[5] Ex 10, Vol 1, p 72.
[6] Ex 10, Vol 1, p 81.
[7] Ex 10, Vol 1, p 100.
[8] Tr 2003.
[9] Ex 10, Vol 1, pp 114 - 115.
[10] Ex 10, Vol 1, p 424.1.
[11] Ex 10, Vol 1, pp 229 - 231.
[12] Ex 10, Vol 1, p 424.1.
[13] Ex 10, Vol 1, p 143.
[14] Ex 10, Vol 1, pp 141, 143.
[15] Ex 10, Vol 1, pp 135 - 136.
[16] Tr 1369 - 1370.
[17] Tr 664 - 667.
[18] Tr 669 - 671.
[19] Tr 679 - 680.
[20] Tr 676, 680 - 681, 701 - 702.
[21] Tr 700.
[22] Tr 1801 - 1802.
[23] Tr 1805.
[24] Tr 1812.
[25] Tr 1808 - 1809.
[26] Ex 13, p 204.
[27] Tr 1816 - 1817.
[28] Tr 1136, 1147, 1150.
[29] Ex 13, p 258.
[30] Tr 1150 - 1151, 1155.
[31] Tr 1543 - 1544.
[32] Tr 779.
[33] Tr 781 - 782.
[34] Tr 782 - 783.
[35] Tr 784.
[36] Tr 790.
[37] Tr 791.
[38] Tr 2646.
[39] Tr 2649 - 2651.
[40] Tr 2656.
[41] Tr 2659 - 2660.
[42] Tr 2663 - 2665.
[43] Tr 1641, 1642.
[44] Tr 1642.
[45] Tr 1646.
[46] Tr 1648.
[47] Tr 1652.
[48] Tr 1657 - 1658.
[49] Tr 1659.
[50] Tr 844.
[51] Tr 843, 847.
[52] Tr 850 - 851.
[53] Tr 848.
[54] Tr 852.
[55] Tr 857.
[56] Tr 859.

[57] Tr 858 - 859.
[58] Tr 1592.
[59] Tr 1584 - 1585.
[60] Ex 13, p 280.
[61] Tr 1605.
[62] Tr 1603 - 1604.
[63] Tr 1605 - 1606.
[64] Tr 2025 - 2026.
[65] Tr 2031, 2036.
[66] Tr 2027 - 2031.
[67] Tr 2038 - 2039.
[68] Tr 1698 - 1701.
[69] Tr 1708.
[70] Tr 1709 - 1710.
[71] Tr 1710.
[72] Tr 1719.
[73] Tr 1721 - 1723.
[74] Tr 2331 - 2335.
[75] Tr 2335.
[76] Ex 29, p 65.
[77] Tr 2341 - 2342.
[78] Tr 2342 - 2343.
[79] Tr 2370 - 2372.
[80] Tr 2379 - 2381.
[81] Tr 1244.
[82] Tr 1244 - 1246.
[83] Tr 1242 - 1243.
[84] Tr 1243.

8.6 CONCLUSIONS

8.6.1 It might well be asked how it could possibly happen that the President of this formerly well-respected organisation could misuse its funds and then resign from the Presidential role with accolades and well-wishes that ignored the reality and misled the members and the public.

8.6.2 The misuse of funds occurred because the President failed to honour his obligations to the organisation and to the public. There were numerous factors that contributed to the misuse of funds not being detected before the end of 2014.

8.6.3 In the decade prior to 2014, there had been no refreshment of the State Executive that was responsible for the management of the organisation. As discussed earlier the same group, Messrs Rowe, White, Perrin (and Ms Mulliner), managed, or more accurately mismanaged, the affairs of RSL NSW, using the same processes and systems that had been in place for many years. During the same decade RSL NSW had the same legal adviser and the same auditors.

8.6.4 Ms Mulliner had been at the financial helm of RSL NSW for many years, having commenced employment with RSL NSW 38 years prior to 2014. She had risen through the ranks in the Finance Department reaching the position of CFO. It is now clear from the recent external assessments and the evidence at this Inquiry that the financial systems and records that were in place were quite inadequate and there was a complete lack of rigour at the Finance Department level when it came to checking the Presidential spending.

8.6.5 Those who were courageous enough to ask quite proper questions about the level of the President's expenses were inappropriately rebuffed by the CEO with the rather glib retort that "a man's got to live". This approach was consistent with the culture that existed of not questioning superiors and in this instance, delayed the exposure of the problems that led to Mr Rowe's resignation. If the culture had been different and the concern about the level of spending had been dealt with earlier when it was raised, at least some of the awful consequences of what has now happened may have been avoided and/or may not have been so grave. However, the reality is that the culture was so ingrained that it has taken the scorching events of the last twelve months, including this Inquiry, to shift its crust to make way for the refreshment and rebuilding of the organisation.

8.6.6 There was also the totally inadequate regime at State Council level of checking and/or approving the President's expenses. No-one appears to have recognised the absurdity of having the President approve his own expenses on the FARM Committee and on the State Council. Apart from the serious conflict of interest to which they were all oblivious, the

process hardly engendered open and comfortable questioning of the level of the President's expenditure. It fostered and further entrenched the culture which ripened the opportunity for improper conduct.

8.6.7 There was also a wide-spread belief that the President would do the right thing. Many State Councillors found it difficult to believe that Mr Rowe would misuse RSL NSW funds. As so many saw it, he was a hardworking well-liked, good RSL NSW President. Many State Councillors knew that Mr Rowe had some personal difficulties which probably made it harder for them to be true to their own obligations to act in the best interests of the organisation they were leading in dealing with his conduct.

8.6.8 The intervention of the RSL National President in the process was a most regrettable event that should not have occurred.

8.6.9 Mr Doolan admitted in his oral evidence before the Inquiry that he knew that there were "serious allegations" against Mr Rowe in respect of misuse of his RSL NSW credit card;[1] that the investigation into Mr Rowe's expenses must have "borne some fruit" although he did not see the Report;[2] that the State Councillors were going to consider "what to do about Mr Rowe" at the meeting on 27 January 2015;[3] that he had "suspicions" (rather than knowledge) that Mr Rowe had done "something wrong";[4] and that he was concerned that if these allegations got out it would "damage the RSL brand".[5]

8.6.10 This was the context in which Mr Doolan advised the State Councillors of "a very, very important point" for what they were "about to determine". He referred to himself as "your National President" and advised them that whilst he was in that job his "aim" was "to try to get people to say well OK, move on, accept that people make mistakes". Mr Doolan said that if "it's criminality, it's criminality" and referred to an instance that he had encountered elsewhere which resulted in matters going to the "DPP". He then distinguished this from where it is "an honest error of judgement something that people shouldn't have done, I ask people to look at it in the context of what people have done over the years". He emphasised the "many years of volunteer service" that all the people "sitting here" had given and then made the inclusive declaration "I think we owe it to ourselves and the good name of the RSL to think in those terms". He urged the State Councillors to "be generous please in looking at those who put a lot of work into something over the years. It's too big, it's bigger and more important than anyone in this room".[6]

8.6.11 The State Councillors did not need anyone, let alone the RSL National President, to tell them that if the serious allegations against the State President about misuse of RSL NSW funds were to be made public, there would be damage to the RSL reputation. That much was obvious.

8.6.12 A moment's reflection should have enabled the retired Rear Admiral to understand how highly inappropriate his intervention was in the circumstances. When the tribunal of fact, or the decision-makers, as the

State Councillors were, are urged by a person with significant clout in the RSL structure to "be generous" and to think of "the good name of the RSL" and the "bigger picture", the irresistible message that is conveyed in the context of this urging is that this structure requires protection from scandal.

8.6.13 The evidence of the State Councillors' reactions to Mr Doolan's intervention varied. Some understood that he was advocating that they take the matter no further;[7] whilst others understood they were being asked to take Mr Rowe's long service into consideration;[8] and to think of the bigger picture and the RSL Brand.[9]

8.6.14 The obvious outcome that Mr Doolan was urging was to keep the matter in-house and not to let the allegations become public. The outcome was that the State Councillors were torn between referring Mr Rowe's conduct to the police and protecting the RSL Brand by keeping the matter in-house. That is why they called for help from the Honorary Legal Advisor, Mr Cannings.

8.6.15 Mr Stephenson had received Mr Gladman's email in which he expressed the opinion that "potentially" there was a *prima facie* case of fraud by the former President. However it appears that Mr Stephenson did not publish that email to the State Councillors or to Mr Doolan. No proper explanation was proffered as to why this did not happen.

8.6.16 There is an issue as to whether Mr Cannings was provided with a copy of the email. Mr Stephenson gave evidence about that email as follows:[10]

Q. Did you disclose this to your fellow State Councillors?
A. I can't recall. I know that I discussed it with John Cannings.

Q. When did you discuss it with Mr Cannings?
A. I can't give you an exact date, but it would have been within a day or two of receiving this email.

Q. So then on 27 February, when Mr Cannings attended the meeting and said that in his view Mr Rowe was not fraudulent, did that not raise with you some concern, the fact that Mr Cannings was saying something contrary to what the auditor had told you?
A. I was concerned about it, yes.

Q. You didn't raise it with Mr Cannings at that time, did you?
A. No.

Q. You didn't raise it with your State Councillors?
A. No.

Q. Why not?
A. I just accepted Mr Cannings' advice.

8.6.17 Mr Cannings gave evidence that to his recollection he had never seen Mr Gladman's email prior to the Inquiry disclosing it to him and that nobody had raised it with him. He also gave evidence that if Mr Gladman

had told him that in his opinion there was a *prima facie* case of fraud, he would have dealt with it in the written advice and the oral advice that he gave.[11]

8.6.18 The communications between Mr Gladman and Mr Cannings were referred to in Mr Gladman's email to his superior, Mr MacDonald on 5 February 2015. In that email Mr Gladman recorded that Mr Cannings had asked him whether "there was any evidence of criminality on the part of Don Rowe".[12] There was no mention in this email of any discussion about Mr Gladman's previously expressed opinion of the potential *prima facie* case of fraud. If Mr Cannings had read Mr Gladman's email of 23 January 2015 or had been advised that Mr Gladman had expressed this opinion, it is reasonable to expect that Mr Cannings would have asked Mr Gladman about his opinion and the basis upon which he had reached that opinion, rather than the question that was posed as to whether there was any evidence of criminality.

8.6.19 On balance, Mr Cannings' evidence that he did not see Mr Gladman's email of 23 January 2015 should be accepted.

8.6.20 The terms of the email on 5 February 2015 referring to the discussion between Messrs Cannings and Gladman that day suggest that Mr Gladman did not answer Mr Cannings' question directly. Rather, as recorded in his email, Mr Gladman indicated to Mr Cannings that in his opinion Mr Rowe was aware of what he was entitled to claim; it was clear from the Optus bill what was being paid for; and Mr Rowe had the option to identify the mobile costs. Mr Gladman's oral evidence at the Inquiry was that he could not recall if he answered Mr Cannings' question in the affirmative.[13] It is reasonable to conclude that if he had done so he would have recorded it in his email when he was recounting his conversation with Mr Cannings to his superior. If all that Mr Gladman said was what was recorded in the email (irrespective of what his private thoughts may have been), it did not convey affirmatively that he was of the opinion that Mr Rowe was fraudulent or criminal.

8.6.21 Although a person has knowledge of the nature of the expenses in respect of which there is an entitlement to reimbursement, claims for expenses may be made negligently or mistakenly or carelessly, without intending to defraud the person or entity paying for those expenses. It is odd that Mr Gladman did not inform Mr Cannings that he thought that potentially there was a *prima facie* case of fraud, if that was still his view. Mr Cannings claimed that he had no recollection of the detail of the conversation with Mr Gladman and Mr Cannings did not have a file note of this conversation.[14]

8.6.22 Another relevant matter is the limited instructions that were given to Grant Thornton Forensic. They were required to restrict the review of Mr Rowe's expenses to the previous 12 months and were not engaged to carry out an investigation to determine whether a disciplinary offence had occurred. They were also required to complete their review in time for the State Council meeting that had been fixed for 27 January 2015. Their instructions also required them to review the practices and procedures for approval of the State President's expenses and to make recommendations for the improvement of those processes. Clearly from the outset there was in those who drafted the instructions, mainly Mr Cannings, the perception that the "system" needed improvement.

8.6.23 Between the State Council meeting on 27 January 2015 and the State Council meeting on 27 February 2015, Mr Cannings had provided additional advice to Mr Perrin in respect of whether RSL NSW was required to report itself to the ACNC in respect of the misuse of the RSL NSW funds by Mr Rowe. That email exposes Mr Cannings' state of mind just 12 days prior to addressing the State Council on 27 February 2015. In that advice, Mr Cannings emphasised that it was "vitally important for the reputation of the League and in particular that of RSL NSW" not only that discussion of the Grant Thornton review but also that "matters associated with the review" should be kept "within State Council".[15]

8.6.24 One of the "matters associated with the review" was the State Council consideration of what to do about Mr Rowe's improper use of RSL NSW funds. Clearly by the time that Mr Cannings attended the State Council meeting on 27 February 2015 he held the view that the confidentiality of his advice to or discussions with State Council was "vitally important" to the reputations of both RSL National and RSL NSW.

8.6.25 The proceedings at the State Council meeting on 27 February 2015 were of pivotal importance to both Mr Rowe and RSL NSW. Although the audio tape recording of the 27 January 2015 meeting of the State Council was made available to the Inquiry, no such recording of the meeting on 27 February 2015 was available. The lawyers for RSL NSW made a number of searches and advised the Inquiry that no recording could be found. If the meeting was recorded, the audio recording no longer exists.

8.6.26 RSL NSW was beset by practices that fostered secrecy generally but particularly around the issue of Mr Rowe's conduct. Any minutes of "in-committee" parts of State Council meetings were not easily accessible to members. Some meetings were audio recorded whilst others were not. The Honorary Legal Advisor, Mr Cannings, and the RSL National President, Mr Doolan, apparently had a practice of not taking any file notes at all and particularly in respect of the vitally important meetings dealing with Mr Rowe's conduct.[16]

8.6.27 One of the more extraordinary aspects of Mr Cannings' evidence of his involvement between November/December 2014 and 30 March 2015 in advising RSL NSW in relation to Mr Rowe's misuse of his credit card, was

his claim that he did not take any notes of any of these important meetings or events. His explanation for this conduct was that he was unwell and was convalescing or recuperating after the diagnosis of his terminal disease in mid-2014; and had taken leave from PwC until April 2015. If Mr Cannings was not well enough to take notes, then it is difficult to understand how he thought it was appropriate to be advising RSL NSW at this time at all. It is extraordinary that a senior lawyer in Mr Cannings' position would not take notes of these vitally important meetings and events.

8.6.28 Mr Cannings' explanation that it was his illness that was the cause of the absence of file notes has to be viewed in light of his international travels during the same period. He had been in Singapore in November 2014 when Mr Perrin made contact to seek advice. He travelled to Japan in March 2015 in a leading role of a department or section of his firm's work at an international conference. In the circumstances Mr Cannings' explanation is just not credible. Without further investigation it is not possible to know why there are no files notes of conversations and discussions that Mr Cannings engaged in at the various meetings during this period.

8.6.29 Similarly, Mr Doolan claimed that his practice was not to take notes of meetings. Accordingly, he did not take any notes of his four-hour meeting with Mr Stephenson in Canberra in early January 2015; nor of his attendance at the State Council meeting on 27 January 2015. The January 2015 meeting with Mr Stephenson was important from a number of points of view. Mr Stephenson claimed that he provided a "full" briefing to Mr Doolan about the allegations against Mr Rowe. Mr Doolan challenged the extent to which he was briefed and had to do so in the absence of any notes. Additionally, in January 2017 (by which time Mr Doolan had retired from the role of RSL National President) RSL National issued a Show Cause Notice against RSL NSW, one basis of which was that it had not properly notified RSL National of the allegations against Mr Rowe. Had Mr Doolan kept notes of his meeting and discussions with Mr Stephenson and his attendance at the 27 January 2015 State Council meeting within the RSL National files, those who succeeded him would have been aware that their former President was very well aware of the allegations and had discussed them with the State Councillors.

8.6.30 In exploring what had occurred at the 27 February 2015 meeting, witnesses at the Inquiry had to try to remember two and a half years later what was said by reference only to their memories, the resolution that was recorded in the Minutes and Mr Cannings' Memorandum of Advice that was provided five weeks after the meeting on 30 March 2015.

8.6.31 In his Memorandum of Advice of 30 March 2015 Mr Cannings recorded that his opinion was based in particular on his review of the Report and his discussion with Mr Gladman.[17] His opinion that Mr Rowe did not have the requisite intent to amount to "fraudulent" or "criminal" behaviour but was "careless" was not supported by any reasoning. These were but bald

statements of his opinion. Mr Cannings simply recorded that Mr Rowe had made expense claims outside the SP Guidelines. There was no analysis of what these expenses were, when they occurred or why, at the time they occurred, it was carelessness rather than fraudulent or criminal conduct on Mr Rowe's part. Without such an analysis it is difficult to see how Mr Cannings could conclude that Mr Rowe's behaviour was merely "careless".

8.6.32 The reference to the "system" failing Mr Rowe and Mr Rowe failing the system does not expose Mr Cannings' reasons why or how he concluded that Mr Rowe did not have the requisite fraudulent or criminal intent. It is one thing to have a poor system. It is quite another for a President to be paying his personal expenses (and those of his family) with RSL NSW funds.

8.6.33 The three words "fraudulent", "criminal" and "careless" were in inverted commas in the Memorandum of Advice. The use of the inverted commas in the context of the preamble that Mr Cannings had relied on his conversation with Mr Gladman may have suggested to the reader that it was an opinion expressed by Mr Gladman. However, such a conclusion does not sit comfortably with the content of Mr Gladman's record of the conversation in his email of 5 February 2015.

8.6.34 The problems caused by the lack of contemporaneous notes and the absence of any reasons as to the basis upon which he reached his conclusions were exacerbated by Mr Cannings oral evidence at the Inquiry. Mr Cannings' evidence was that he accepted that he was at the meeting on 27 February 2015 and that he gave verbal advice but he claimed that he did not have "any recollection" of the meeting.[18] When pressed as to whether he had any recollection he said "none at all".[19] He said that he had a "general recollection" of giving advice but that he did not have "any specific recollection of the meeting".[20] He said it was "like a fog" but then conceded that he did have a recollection of being with the State Council giving them oral advice.[21] His evidence was that without the Memorandum of Advice of 30 March 2015, he had "no recollection" of the verbal advice that he gave at the meeting.[22]

8.6.35 It is appropriate to record that Mr Cannings was undergoing medical treatment at the time of his oral evidence at the Inquiry and that this may have affected his capacity to recall events or certain aspects of past events. However, irrespective of Mr Cannings current capacity to recall past events, the opinion he expressed was in the face of the State Councillors seeking assistance as to what their obligations were in the light of the Grant Thornton Forensic review.

8.6.36 Rather than advising the State Councillors of their obligations to carefully consider and analyse the Report; and discussing the steps that needed to be taken to decide whether there were grounds to refer the matter to the police; Mr Cannings took it upon himself to decide that Mr Rowe was merely careless.

8.6.37 Mr Cannings should have advised the State Councillors that whatever they did, they needed to be mindful of their obligations to RSL NSW (including such matters as investigating the matter thoroughly and taking steps to recover all unauthorised spending) and not engage in a cover up, but he also needed to advise the State Councillors of their reporting obligations under the criminal law.

8.6.38 Section 316(1) of the *Crimes Act* 1900 provided relevantly:

> If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.

8.6.39 The facts as known to each of the State Councillors at the time raised a potential fraud contrary to section 192E of the *Crimes Act* 1900, which was a serious indictable offence. Advice needed to be given to each of the State Councillors in respect of their obligations in the context of section 316 of the *Crimes Act*.

8.6.40 It is difficult to understand how Mr Cannings could have provided the advice that he did to the State Councillors and not have any recollection as to how he reached the conclusions that he expressed in his Memorandum of Advice of 30 March 2015. It is clear that Mr Cannings felt some concern for Mr Rowe. In his email from Singapore to Mr Perrin in November 2014 he asked whether Mr Rowe's illness was "serious" and whether it would be "OK" to make contact with Mr Rowe. Notwithstanding Mr Perrin's response that Mr Rowe would like to hear from him, Mr Cannings' evidence was that he made no contact with Mr Rowe between November 2014 and 30 March 2015. If that is to be accepted it is clear that Mr Cannings did not explore Mr Rowe's conduct with him directly.

8.6.41 As Mr Cannings stated in his Memorandum of Advice the only two matters upon which he relied to express his opinion were the Report and the conversation with Mr Gladman. Although Mr Cannings claimed in evidence that there must have been "something" in the conversation that gave him some "comfort" for the opinions he expressed, the evidence established that there was nothing in it that could justify the positive conclusion that Mr Rowe was not fraudulent or criminal but merely careless.

8.6.42 The Grant Thornton Forensic Report listed the cash withdrawals in Armidale during the Christmas 2013 – New Year 2014 period. Between 20 December 2013 and 20 January 2014, Mr Rowe withdrew $3,350 at various ATMs in Armidale. Questions had been raised during the meeting on 27 January 2015 in respect of the cash withdrawals in Armidale. If Mr Cannings and/or the State Councillors had conducted a

proper review of the expenses that were listed in the Report for the previous 12 months and sought detail from Grant Thornton Forensic in respect of the expenditure during this period, the credit card statement disclosed withdrawals, including at the Coles Express Armidale. This raised a serious issue in respect of Mr Rowe's use of RSL NSW's funds. [23]

8.6.43 The contents of the Grant Thornton Forensic Report could not have been a reasonable basis for Mr Cannings positively concluding that Mr Rowe was not fraudulent or criminal but merely careless.

8.6.44 Those who railed against Mr Cannings' approach did not have the numbers to prod the State Council into proper action. It appears that Mr Cannings' opinion was a welcome relief to those wanting to protect the RSL brand.

8.6.45 The State Councillors wanted guidance from Mr Cannings as to what their obligations were and were very badly let down by him. The former President that they protected from police investigation had been in office for 11 years. Mr Cannings had been advising the RSL NSW State Council for about 19 years. It was a recipe for disaster.

8.6.46 There is a current police investigation into Mr Rowe's conduct. Clearly the time that it takes to conclude that investigation will depend in part upon whether Mr Rowe is willing to co-operate with that investigation. Irrespective of that, there is a public interest in ensuring that any investigation is far broader and more detailed than that which Grant Thornton Forensic was able to conduct in the urgent environment in which they were engaged and with their limited retainer over two to three weeks in January 2015. It will not be possible to know the full extent of the misuse of RSL NSW funds and the culpability of those dealing with the process of approval of those expenses unless a broad and detailed police investigation is conducted.

8.6.47 The State Council has now been refreshed. The only State Councillor who was involved in this sorry saga and remains on State Council is Mr James, who tried valiantly but sadly unsuccessfully to make the State Councillors aware that Mr Rowe's conduct may have been criminal and to seek a proper, more detailed investigation of Mr Rowe's expenses over a longer period of time.

8.6.48 In the period covered by the Terms of Inquiry relevant statutes governing conduct of the State Councillors included the Corporations Act and the ACNC Act. The duties of a director under sections 180 to 183 and section 185 (to the extent that it related to sections 180 to 183) and sections 190 to 194 became inapplicable to RSL NSW once it became registered under the ACNC Act after 1 July 2013. These obligations were partly subsumed into paragraph 45.20 Governance standard 4 – Suitability of responsible entities and paragraph 45.25 Governance standard 5 – Duties of responsible entities of the ACNC Regulation.

8.6.49 The conduct the subject of this Chapter occurred from late 2014 onwards. The State Council was obliged under Governance Standard 5 to ensure that each of the State Councillors conducted themselves so as to comply with minimum standards of behaviour consistent with their fiduciary relationships with RSL NSW.[24] This included conducting themselves with the requisite care and diligence, acting in good faith in RSL NSW's best interests and not misusing information obtained in the performance of their duties.

8.6.50 Section 1309 of the Corporations Act remained applicable to RSL NSW throughout the period covered by the Terms of Inquiry. It provides that it is an offence for an officer of a corporation to make available or give information or permit the making available or giving of information in relation to the affairs of the corporation to, amongst others, a member that, to the officer's knowledge, is false or misleading in a material particular; or which has omitted from it a matter or thing, the omission of which renders the information misleading in a material respect.[25] It also provides that it is an offence for an officer to provide such information to a member without having taken reasonable steps to ensure that it was not false or misleading in a material particular; and did not have omitted from it a matter or thing, the omission of which rendered the information misleading in a material respect.[26]

8.6.51 It is reasonably arguable that the State Councillors were officers of a corporation and that they provided or permitted the provision of false and misleading information to their members in respect of Mr Rowe's resignation.

8.6.52 Counsel Assisting the Inquiry submitted that a recommendation should be made to the Minister to refer the State Councillors to ASIC and the ACNC for investigation as deemed appropriate by those organisations.

8.6.53 Each of the State Councillors knew that Mr Rowe had resigned because he had been confronted about his misuse of his credit card. Each of them knew that this was the case by no later than 27 February 2015. Each of those State Councillors knew, or ought to have known, that the 2014 Annual Report of RSL NSW contained misleading statements that Mr Rowe had resigned due to ill health. None of the State Councillors required any of their officers to put in train a correction of that misleading statement. Irrespective of their decision to accept Mr Cannings' advice and ultimately not to refer Mr Rowe's conduct to the police for investigation, each of them engaged in a cover up of a situation that should never have remained unrevealed. Some of the State Councillors spoke about the issue at their sub-Branch level. For instance, Mr James gave evidence that he made it his business to disclose the real reason for Mr Rowe's departure at the sub-Branch level and to those with whom he spoke who were members of RSL NSW.

8.6.54 Making individual stands in this manner did not cure the real problem that had been caused by the State Councillors of a positive cover up of Mr Rowe's conduct.

8.6.55 Where a director of a company (in this case a State Councillor) does not agree with the conduct of a company in covering up improper conduct of its Chairman (in this case its President) it ill behoves the director to then claim that there was little that could be done because majority opinion rules. A director has choices particularly where there are misleading and/or false statements made to the members and the public about the person who has committed or perpetrated improper conduct. The director can resign and make known the circumstances of their own resignation. That is an effective way of bringing a company to its senses to cease covering up improper and possibly criminal conduct.

8.6.56 It must also be remembered that each of the State Councillors was in a leadership role of an organisation that had for years been in breach of its statutory obligations in relation to its charitable fundraising. That ignorance combined with the conduct referred to above are proper grounds upon which it is appropriate to make a recommendation to the Minister to consider referring each of the State Councillors involved in the process by which Mr Rowe's conduct was covered up to ASIC and to the ACNC.

8.6.57 Counsel Assisting the Inquiry did not submit that a recommendation should be made that the Minister consider referring Mr Perrin to ASIC and the ACNC. It is understood that this position was adopted having regard to the fact that there was no submission that a separate recommendation should be made to the Minister for referral of the State Councillors or Trustees of RSL WBI to ASIC and the ACNC in respect of the fundraising failures alone.

8.6.58 Notwithstanding that Mr Perrin was the CEO of RSL NSW and a Trustee of RSL WBI, his role in the fundraising failures was, perhaps peculiarly, subordinate to Ms Mulliner's role. It was Ms Mulliner who advised Mr Perrin (and others) that RSL NSW was not fundraising. It was also Ms Mulliner who propounded an interpretation of the Act that was a misapprehension which led to the misunderstanding of RSL NSW's fundraising status. Although it is not an acceptable position, it was the fact that Ms Mulliner took the lead in this area.

8.6.59 Mr Perrin's role in respect of the cover up of the real reason for Mr Rowe's departure was also limited. He assisted with typing up Mr Rowe's handwritten resignation. He also wrote a report in the Annual Report published just a few weeks before the termination of his employment. Mr Perrin was not present at the in committee meeting of State Council on 27 February 2015. He understood that all matters relating to Mr Rowe's conduct were to be dealt with by State Council with which he had no further dealings after late April/early May 2015 when his employment terminated.

8.6.60 Mr Cannings' conduct in providing advice to a client when he was allegedly not well enough to keep file notes; in failing to keep any file notes and providing the advice to the State Councillors without any reasoning or proper basis for the advice in the circumstances described above is conduct that would no doubt be taken into account in considering the recommendation in respect of the State Councillors.

8.6.61 Counsel Assisting the Inquiry submitted that a recommendation should be made to the Minister to refer Mr Cannings to the Legal Services Commissioner in respect of the conduct outlined in this Chapter. It was submitted on Mr Cannings' behalf that although the Terms of Inquiry are a very "broad remit", such a recommendation would be beyond that remit.[27]

8.6.62 Having regard to the discussion in Chapter 7.4 in relation to the ambit of the Terms of Inquiry and although Mr Cannings' conduct over the years as described in this Chapter may warrant investigation by the Legal Services Commissioner, it is not intended to make such a recommendation to the Minister. It will be a matter for the Minister separately from any recommendation to take any further steps that are deemed appropriate in respect of Mr Cannings' conduct.

RECOMMENDATION

8.6.63 It is recommended that the Minister consider referring Messrs Crosthwaite, Haines, Harrigan, Henderson, Humphreys, Hutchings, James, McManus-Smith, Metcalfe, Stephenson, Toussaint, White and Dr Bain to ASIC and the ACNC for appropriate investigation in respect of their involvement in covering up Mr Rowe's misuse of RSL NSW funds as outlined in this Report.

8.6.64 It is recommended that the Minister refer this Report and all evidence relating to Mr Rowe's expenses, his resignation and its aftermath gathered in the Inquiry to the NSW Police. Such a referral should include an indication that Mr Rowe and other relevant witnesses took an objection under section 41N of the Act at the time of giving evidence before the Inquiry.

ENDNOTES

[1] Tr 2472 - 2473.
[2] Tr 2458.
[3] Tr 2458.
[4] Tr 2467.
[5] Tr 2473.
[6] Ex 29, pp 16 - 17.
[7] Tr 1789; 1652; 1582 - 1584; 1592.
[8] Tr 1551.
[9] Tr 1788, 2015 - 2016, 2646.
[10] Tr 2028.
[11] Tr 1401.
[12] Ex 10, Vol 2, p 564.1.
[13] Tr 3176.
[14] Tr 1400.
[15] Ex 19, Vol 2, p 642.
[16] Mr Doolan understood his status at the meeting on 27 February 2017 was that of "an advisor" - Ex 23, p 21.
[17] Ex 10, Vol 1, p 238.
[18] Tr 1335.
[19] Tr 1335.
[20] Tr 1335.
[21] Tr 1335 - 1336.
[22] Tr 1336.
[23] Ex 10, Vol 1, p 210; Ex 14, p 82.
[24] Paragraph 45.25(1).
[25] Corporations Act, s 1309(1).
[26] Corporations Act, s 1309(2).
[27] Tr 3491.

9.1 RSL LIFECARE

9.1.1 The only members of RSL LifeCare are RSL NSW and each serving director while holding that office.[1] Under its current Constitution, RSL LifeCare is to have a minimum of five and a maximum of nine directors.[2] There must be not less than 50% of directors, excluding the President of RSL NSW, who have relevant professional experience – namely aged care, retirement living, property management, property development, finance/business and law.[3] The President of RSL NSW, with his or her consent, holds office as a director *ex officio* and thereby becomes a member.[4] Other than the RSL NSW President, directors are appointed for cyclical terms of three years.[5]

9.1.2 RSL NSW has the power to appoint the directors of the company (after considering the Board's recommendation) and the power to remove directors in accordance with the Constitution.[6] As such RSL NSW has effective control of the company.[7] The directors may also appoint a CEO, define his or her duties and powers and fix his or her remuneration.[8]

9.1.3 RSL LifeCare was formed in 1911 to provide care and service to war veterans.[9] On 2 July 1912, the Veterans' Home was opened on Bare Island near La Perouse, Botany Bay. There were seven initial residents, who were war veterans of good character and who faced hardship and poverty in their old age. They were expected to help maintain the residence and to contribute financially.[10] With no direct funding from the Commonwealth government, the income of the Veterans' Home was made up from pension payments, voluntary subscriptions and other fundraising efforts.[11]

9.1.4 The First World War gave rise to a significantly increased need for the rehabilitation of returning ex-service personnel as well as the support of the dependants of those who had not returned. Although the government had taken over the direction of repatriation after 1917, it still relied heavily on charities to provide welfare and support to ex-servicemen and their families; the Red Cross operated an extensive hospital system and provided other services for returned servicemen into the 1920s; Legacy groups, including Sydney Legacy, were formed in the 1920s to care for the widows and orphans of soldiers; and there were many others.[12]

9.1.5 The Returned Soldiers' and Sailors' Imperial League of Australia,[13] which became the Returned Services League in 1940, was formed in 1916 as a lobby group to pressure the government to take care of the increasing numbers of returning wounded soldiers. In the mid 1930s, it approached Sydney Legacy about creating a new war veterans' home.[14] A large fundraising appeal involving both organisations followed, including the first of its art unions or lotteries, and the foundation stone of a new home

for war veterans, called Legacy House, was laid at Narrabeen on 23 April 1938 with the site officially opened on ANZAC day 1939.[15]

9.1.6 Services were operated at Narrabeen by both Sydney Legacy and the RSL for many years under the War Veterans' Board of Management. It remains the largest of RSL LifeCare's facilities and its headquarters.

9.1.7 On 19 August 1942, the War Veterans' Home Limited was registered and incorporated under the *Companies Act* 1936 in order to run the facility at Narrabeen. It was, and remains, a not-for-profit, unlisted public company, limited by guarantee.[16] Around the same time, it expanded to a site known as Linton Village in Yass and, after the closure of Bare Island in 1963, its operations were limited to the sites at Narrabeen and Yass until after 2001, when organisational and management reform of the organisation took place.[17]

9.1.8 After its registration in 1942, there have been several name changes:[18] the War Veterans' Home Limited (19 August 1942 to 17 November 1980); the War Veterans' Home (18 November 1980 to 13 September 1983); RSL Veterans' Retirement Villages (14 September 1983 to 2 May 1994); RSL Veterans' Retirement Villages Limited (3 May 1994 to 5 March 2006); and RSL LifeCare Limited (since 6 March 2006).

9.1.9 RSL LifeCare has had a number of governing instruments over its lifetime. Its Memorandum and Articles of Association were dated 15 July 1942;[19] and updated on 29 March 1966,[20] on 14 September 1983[21] and in June 1999.[22] It was then governed by a Constitution dated 1 March 2012[23] and amended on 28 April 2016.[24]

9.1.10 By article 3(c) of the original 1942 Memorandum and Articles of Association, the objects of the company were limited to the provision of accommodation and services to those who had served in the armed forces, merchant navy or marines in any war for His Majesty or His Majesty's allies.[25] In March 1966 this was amended so as to allow RSL LifeCare to provide accommodation and services to those who had served in the armed forces, merchant navy or marines in any war for Australia or the British Commonwealth or any allied or associated power as well as the dependants of any such persons. Where there were insufficient numbers of such veterans and their dependants then (under the amended Constitution) the directors were entitled, in their absolute discretion, to offer the facilities and services to any such "deserving persons" they might choose until such time as veterans or their dependants apply.[26]

9.1.11 In June 1999, this was further amended to the current form of its objects, as set out in clause 2:[27]

> (a) to make retirement village accommodation and amenities available to persons selected from time to time in the absolute discretion of the directors of the Company, each such person being:
>
> (i) a member of the body corporate known as RSL NSW;

(ii) a person eligible to become a member of RSL NSW;

(iii) a dependant of a person referred to in clause 2(a)(i) or (ii); or

(iv) some other deserving person, but in that case the directors must have full regard to the level and nature of demand by persons within the categories referred to in clauses 2(a)(i) and (ii);

(b) to make other facilities and services available to persons selected from time to time by the directors;

(c) to obtain funds to support the objectives of the Company;

(d) to obtain legislation supportive of the objectives of the Company;

(e) to educate and inform in relation to the objectives of the Company;

(f) to promote, join, affiliate with or enter into working arrangements with anybody having objectives not incompatible with those of the Company or the League; and

(g) to do all things as may be incidental or ancillary to the attainment of the objects in clauses 2(a) to (f), including but not limited to providing senior living services, residential care, community care and services.

9.1.12 Further work was carried out to the home on Bare Island, which was expanded such that by 1942 there were 26 residents.[28] However, by August 1963 with the cost of upkeep becoming increasingly prohibitive, a decision was made to close it and the remaining 16 veterans were transferred to the facility at Narrabeen.[29]

9.1.13 In 1952 women were accommodated at The War Veterans' Home for the first time, with two cottages opened for that purpose on the Narrabeen site. By this time residents who could afford to contribute were paying 25-30 shillings a week, with hardship cases receiving free accommodation.[30]

9.1.14 Without any major government funding in its early years, the War Veterans' Home relied heavily on profits from lotteries conducted by the Revenue Committee. These were its largest single source of income for many decades, earning between £50,000-80,000 a year in the 1940s and 1950s, rising to over $250,000 a year by the 1970s. This income allowed the Home to meet its operating costs and plan for the future. Increased Commonwealth funding for building and subsidising institutional aged care in the 1960s and 1970s was of great assistance to the Home at a time of increasing numbers of World War One veterans needing care as well as rising running costs.[31]

9.1.15 Sydney Legacy ceased to be involved in the lotteries at an early stage and then in the early 1960s it withdrew entirely from the War Veterans' Home due to the cost and complexity involved and also the fact that the project

was focussed on ex-service men and women whereas its main function was providing for the widows and children of ex-servicemen.[32]

9.1.16 Economic surplus and significant accumulated funds from the mid-1960s allowed RSL LifeCare to plan an extensive building program, which resulted in the older focus on rehabilitation being replaced by new priorities associated with the provision of retirement and aged care services. The 1967 financial year showed a surplus of over $164,000 and accumulated funds exceeding $2 million.[33]

9.1.17 However, by the late 1990s RSL LifeCare was performing poorly both financially and in the quality of care services it provided.[34] It suffered a loss in the 2000 financial year of $1.6 million[35] and a Strategic Plan prepared in May 2001 described "historic losses" that were "not sustainable".[36] Further:[37]

> Resident service, quality issues and general compliance become problematic to such an extent that in 2000 the Narrabeen site performed poorly during the Aged Care Accreditation resulting in several non-compliances and only one year's accreditation being given (three years being the general accreditation period for 99% of aged care homes).

9.1.18 As RSL LifeCare later described, its Board at that time "operated more as a board of management rather than governance" with directors "drawn from the RSL NSW State Council or the RSL Ladies Auxiliary". Further, none of those directors "had specific skills in aged care, retirement living or property development and few had relevant skills in finance or business".[38]

9.1.19 Health Solutions (NSW) was then engaged by RSL LifeCare to carry out a study and report to a steering committee. It was funded in part by a grant from the DVA under the Hostel Development Scheme. The report, dated July 1997, was titled "Site Strategic Plan & Veterans Aged Care Study" in respect of the villages at Narrabeen and Yass and it described the study as follows:[39]

- Development of a site strategic plan to assist RSL Veterans' Retirement Villages (RSLVRV) to best meet the needs of its current and future residents over the next 5 to 10 years;
- A NSW and ACT wide study of the needs of ageing veterans for aged care services over the next 5 to 10 years.

9.1.20 As well as highlighting the need for a "major refurbishment or replacement" of the Narrabeen site, the study showed that the veteran population was beginning to decline in absolute numbers and that the village was "in a rapid transition from a charity style of business approach to more commercial decision making." This was demonstrated by developments that had recently been undertaken: "resident funded contracts have been tightened, entry contributions/accommodation bonds re-considered, some user pays situations introduced and management has been refocussed". RSL

LifeCare's social and charitable charter and a necessity to optimise financial performance had given rise to a "conflict between benevolence and business". The report recommended the implementation of various "management and business practices" so that RSL LifeCare could "operate within budget and generate the reserves necessary". These included for the composition of the Board to be changed to include people with aged care business expertise and experience.[40]

9.1.21 In September 1999, Retirement Living Services prepared a Policy Development and Organisational Review for RSL LifeCare, which included recommendations for the recruitment of external directors with relevant industry experience and the setting up of various Board committees.[41]

9.1.22 These suggestions were adopted with five external specialists, who were not RSL NSW State Councillors, being recruited to the Board of RSL LifeCare and the establishment of new Board committees. A new CEO was also recruited.[42] These developments at the end of the 1990s and the early 2000s are discussed in further detail in this Chapter.

9.1.23 Over 2004/2005 RSL LifeCare added two more sites to the existing Anzac Village at Narrabeen and Linton Village at Yass: Rowland Village in Galston and The Lakes of Cherrybrook in Cherrybrook.[43]

9.1.24 By that time the Narrabeen facility accommodated approximately 450 people in the Aged Care Facility (nursing home) and 750 people in the Retirement Village. The Retirement Village was entirely occupied by veterans or their spouses (and in two cases, their dependants) and 90% of residents in the Aged Care Facility were veterans and/or their spouses, with the remaining 10% being people from the general community needing care.[44]

9.1.25 Residents of the Retirement Village who could afford to pay paid an ingoing contribution fee of between $50,000 for a bedsitter to $1,500,000 for a 4-bedroom apartment, with the greater of 10% of that contribution fee or $40,000 being non-refundable. Residents were also charged a weekly fee of approximately $100 to cover operational costs and a further 2% of the contribution fee per year for 10 years. The balance of the fee was then returned to residents upon leaving. Residents of the aged care facility paid fees dependent on the type and level of care required in accordance with the *Aged Care Act* 1997 (Cth) and low care residents who could afford to paid a bond.[45]

9.1.26 In 2005 RSL LifeCare applied to the Supreme Court of New South Wales seeking declarations as to the basis upon which it held the land on which the village was situated at Narrabeen and various other forms of relief. Palmer J held that the land was held on a trust that was subject to the original 1942 objects of the company, being therefore limited to providing for veterans.[46]

9.1.27 RSL LifeCare contended that because of declining veteran numbers, if the categories of persons entitled to take up accommodation at Narrabeen was not expanded beyond veterans, insufficient resident numbers would mean the Village would not be able to continue to operate economically and would eventually become insolvent.

9.1.28 His Honour then accepted a cy-près scheme, which altered the terms of the charitable trust on which the Narrabeen land was held so as to ensure the ongoing economic viability of RSL LifeCare. The approved scheme was broadly similar to the current objects of RSL LifeCare under its Constitution, extending the permitted objects to persons: (i) for those who had served Australia or its allies in the war (as per the original trust and clause 3(c) of the 1 July 1942 Memorandum of Association); (ii) for current and former members of the armed forces and their dependants; and (iii) for such persons as the RSL LifeCare directors determine in their absolute discretion pursuant to RSL LifeCare's objects as amended from time to time. In relation to categories (i) and (ii) priority is to be given (in respect of aged care accommodation) to those suffering financial hardship, homelessness or ill health; and in respect of retirement village accommodation, 135 apartments are to be set aside for those who are unable to pay for that accommodation. RSL LifeCare is also required to provide the Attorney General with annual reports showing the provision of accommodation and facilities within each of the three categories within three months of the end of each financial year.[47]

9.1.29 In 2009 PwC provided advice as to the breadth of the "deserving persons" category in clause 2 of RSL LifeCare's Constitution (and incorporated into category (iii) of the cy-pres scheme in force in respect of the land at Narrabeen) and in particular to it extending beyond members of the RSL or their dependants.[48]

9.1.30 Although clause 2(a)(iv) requires "deserving persons" to be determined in the absolute discretion of the directors, it is apparent that in practice this decision has not been taken at Board level, but has been left to the discretion of the manager at each retirement home.[49]

9.1.31 In the decade from 2006 to 2016, RSL LifeCare grew from operating four villages to 32 villages and it expanded to caring for over 7,000 people.[50] RSL LifeCare's 2016 Financial Statements recorded a fifteenth year of increasing profitability with a $42.5 million surplus, total assets of $1.3 billion, net equity of $405 million and no material external debt.[51] RSL LifeCare is as an Income Tax Exempt Charity, a Deductible Gift Recipient and registered for Goods and Services Tax (GST);[52] and it is an unrestricted Approved Provider pursuant to the *Aged Care Act* 1997 (Cth).[53] It has a fundraising authority under the Act,[54] although donations make up only a very small part of RSL LifeCare's overall income, being for instance $1,083,877 out of a total revenue of $217,762,142 in 2016.

9.1.32 RSL LifeCare has predicted a further 20% of growth over the next three years with nine further developments, including nursing homes and

retirement living homes, planned in the Australian Capital Territory and across New South Wales.[55]

9.1.33 Changing demographics have meant that there is proportionately less demand for veteran care as opposed to general aged care services. Approximately 36% of RSL LifeCare's accommodation services are now utilised by veterans and/or their dependants.[56] The Directors' Report to the 2016 Financial Statements included the following:[57]

> Short and long term objectives and strategy
>
> RSL LifeCare is a charitable organisation that was formed in 1911 to provide care and service to war veterans. Services were initially provided at Bare Island, Botany Bay, until moving to Narrabeen in 1939. The organisation has grown to be one of the largest retirement accommodation and aged care services in Australia. Caring for 7,000 across independent living, community care, assisted living, dementia and nursing home[s], it has developed an extensive range of services that fosters independence and provides social, clinical, emotional and spiritual support.
>
> …
>
> Principal Activities
>
> The principal activity of the Company is to provide accommodation, care and service to Senior Australians…

9.1.34 To similar effect is a description of RSL LifeCare in its Director's Handbook in 2016 as "a large, charitable organisation committed to providing for the needs of veterans and all Senior Australians."[58]

9.1.35 RSL LifeCare fulfils its charitable purposes by operating in two industry segments: residential care and independent/other living services.[59] RSL LifeCare retirement living and residential aged care services, as well as in-home care services, are widely available throughout the Australian Capital Territory and New South Wales. In support of these services RSL LifeCare has a team of nurses, allied health professionals and other clinicians working in the areas of mental health, dementia, challenging behaviours, palliative care and wound care.[60]

9.1.36 RSL LifeCare provides concessional fee rates to 40% of residents; an allocation of places to those suffering social or financial disadvantage to 20% of residents; support to younger homeless veterans; research funding; and museum restoration works as well as holidays for residents, recreation and wellness programs, and transport services.[61]

9.1.37 Apart from the nursing and retirement homes, RSL LifeCare has also established specific programs. In 2014 RSL LifeCare commenced a service, the Contemporary Veterans Homelessness and Assistance Program, known as "Homes for Heroes" at Narrabeen. The program is available to veterans of contemporary conflicts (such as Afghanistan, East Timor and Iraq) and

post-1991 ex-servicemen and women, including their families, provided they are genuinely homeless. In addition to permanent residents, RSL LifeCare periodically provides accommodation to families and veterans on a short stay basis. The program is a comprehensive rehabilitation service and is said to have helped more than 100 veterans so far, primarily suffering the effects of Post-Traumatic Stress Disorder.[62] An additional Homes for Heroes rehabilitation program was made available to ten young veterans at Penrith in 2016.[63]

9.1.38 RSL LifeCare expanded its reach by offering aged care services for the elderly in their own homes, known as LifeCare At Home. This service is currently being provided at several locations around New South Wales and the Australian Capital Territory.[64]

9.1.39 RSL LifeCare has also established the Little Diggers Pre-School at the Narrabeen facility.[65]

ENDNOTES

[1] Ex 40, Vol 3, p 1096, RSL LifeCare Constitution (2016), cl 4.1.
[2] Ex 40, Vol 3, p 1110, RSL LifeCare Constitution (2016), cl 9.1.
[3] Ex 40, Vol 3, p 1110, RSL LifeCare Constitution (2016), cl 9.2.
[4] Ex 40, Vol 3, p 1110, RSL LifeCare Constitution (2016), cl 9.3.
[5] Ex 40, Vol 3, p 1112, RSL LifeCare Constitution (2016), cl 9.5.
[6] Ex 40, Vol 3, pp 1110 - 1114; RSL LifeCare Constitution (2016), cl 9.
[7] See for example Note 18 to RSL LifeCare Financial Statements to 30 June 2007 (Ex 20, Vol 2, p 476).
[8] Ex 40, Vol 3, pp 1117 - 1118, RSL LifeCare Constitution (2016), cl 11.
[9] Ex 37, Vol 3, p 1025.
[10] Ex 1, Vol 3, p 372; Peter Bastian and Tracey McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years* (UNSW Press, 2001), pp 13 - 19.
[11] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, p 19.
[12] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, p 37.
[13] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 30, 42.
[14] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 44 - 51.
[15] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 58 - 61, 107.
[16] Ex 1, Vol 4, p 772; Ex 3, Vol 2, p 513.
[17] Ex 1, Vol 1, p 2.
[18] Ex 1, Vol 4, p 772.
[19] *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* [2006] NSWSC 1161 at [8] and [35] (Ex 1, Vol 3, pp 69; 74).
[20] *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* at [9] (Ex 1, Vol 3, pp 69 - 70).
[21] Referred to in Affidavit of Mr Thompson, sworn 16 November 2005 (Ex 6, pp 32 - 34).
[22] Ex 40, Vol 3, p 1013; Ex 1, Vol 1, p 171; and see *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* [2006] NSWSC 1161 at [11] (Ex 1, Vol 3, pp 70 - 71).
[23] Ex 40, Vol 3, p 1042; RSL LifeCare Constitution (2012).
[24] Ex 40, Vol 3, p 1086, RSL LifeCare Constitution (2016).
[25] *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* at [8] and [35] (Ex 1, Vol 3, pp 69; 74).
[26] *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* at [9]; (Ex 1, Vol 3, pp 69 - 70).
[27] Ex 40, Vol 3, pp 1014 (1991), 1051 (2012), 1095 (2016).
[28] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 70 - 72.
[29] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 109 - 113.
[30] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 90, 97 - 98.
[31] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 118 - 119.
[32] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, pp 113 - 115.
[33] Bastian and McDonald, *Celebration of a Century: RSL LifeCare – The first 100 years*, p 122.
[34] Ex 1, Vol 1, p 4.
[35] Ex 1, Vol 3, p 383.
[36] Ex 1, Vol 3, pp 350, 363.
[37] Ex 1, Vol 1, p 4.
[38] Ex 1, Vol 1, p 4.
[39] Ex 8, Vol 1, Tab 1, p 100.
[40] Ex 8, Vol 1, Tab 1, pp 103, 109 - 110.
[41] Ex 8, Vol 1, Tab 1, pp 88 - 89.
[42] Ex 1, Vol 1, p 4.
[43] Ex 37, p 887.
[44] Affidavit of Mr Thompson, sworn 16 November 2005 (Ex 6, pp 32 - 36).
[45] Ex 6, pp 32 - 36.
[46] *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands & Anor* [2006] NSWSC 1161 at [32] - [37]; (Ex 1, Vol 3, p 74).
[47] Ex 1, Vol 3, pp 80 - 82.
[48] Ex 1, Vol 3, p 47.

[49] Tr 281 (Mr Thompson) and Tr 3145 - 3146 (Mr Kells).
[50] RSL LifeCare Annual Report 2016, p 2 (Ex 37, Vol 3, p 1030).
[51] Briefing document in letter from Mr Longley to Mr Brown dated 24 May 2017 (Ex 1, Vol 3, p 39), "RSL LifeCare Report: Specialist Consultants" November 2016 (Ex 1, Vol 1, p 2) and Ex 20, Vol 2, p 772.
[52] Ex 20, Vol 2, p 784, Note 1.
[53] Ex 1, Vol 3, p 38.
[54] Ex 4, Vol 1, p 189.
[55] Ex 1, Vol 3, p 40.
[56] Notice to Answer Questions dated 16 August 2017 (Ex 2, pp 857; 864).
[57] Ex 20, Vol 2, p 775.
[58] Ex 3, Vol 2, p 513.
[59] See for example Ex 20, Vol 2, p 638.
[60] Ex 1, Vol 3, p 38.
[61] Ex 1, Vol 1, p 3.
[62] Ex 1, Vol 3, p 39.
[63] Ex 1, Vol 3, p 39.
[64] Ex 37, Vol 3, pp 1028, 1050.
[65] Ex 37, Vol 3, p 1054.

9.2 RSL LIFECARE CONSULTING FEES

9.2.1 As discussed earlier, the payment of consulting fees to the directors of RSL LifeCare who were at the same time serving as State Councillors of RSL NSW was the subject of controversy and extensive commentary in the media in late 2016 and early 2017. These payments were also the subject of the KMF and EY forensic reviews.

9.2.2 In the period covered by the Terms of Inquiry the directors of RSL LifeCare who were paid consulting fees were Mr Kells (2007 to 2016); Mr White (State Councillor, Honorary Treasurer and State President of RSL NSW) (2007 to 2015); Mr Carlson (State Councillor of RSL NSW) (2008); Mr Riddington (2007 to 2016); Mr Longley (2007 to 2016); Mr Rowe (State President of RSL NSW) (2010 to 2014); Dr Macri (2007 to 2016); Ms Mulliner (State Councillor and CFO of RSL NSW) (2009 to 2016); Mr Hardman (State Councillor RSL NSW) (2008 to 2011); Mr Crosthwaite (State Councillor of RSL NSW) (2007 to 2016); Mr Humphreys (State Councillor RSL NSW) (2011 to 2016); and Mr Murray (2015-2016).[1]

9.2.3 It is appropriate at this juncture to outline some history to RSL LifeCare's use of specialist consultants and the decisions that led to the appointment of the whole of the Board as specialist consultants with the consequent payment of the consulting fees to all of the directors.

SOME HISTORY

External Consultants Appointed to the Board

9.2.4 In July 1997, Health Solutions (NSW) prepared a report entitled "Site Strategic Plan & Veterans Aged Care Study for a Steering Committee of RSL LifeCare" (at that time known as RSL Veterans' Retirement Villages Limited) in order to assess the needs of ageing veterans over the following five to ten years and to develop a plan to assist RSL LifeCare "to best meet the needs of its current and future residents over the next 5 to 10 years".[2] That report identified a significant need for capital to upgrade existing facilities and purchase new sites. The report recommended various "management and business practices" that needed to be implemented if RSL LifeCare was to "operate within budget and generate the reserves necessary". It also included the following:[3]

> The single most difficult issue confronting the Board and management of organisations such as RSL [LifeCare], which have a social and charitable charter, is the conflict that now exists between these goals and the necessity for optimal financial performance – the conflict between benevolence and business.

> [With respect to the composition of the Board] it may well be that a blend of RSL representation with people selected for their aged care business expertise and experience would bring new perspectives to the business of the Board. This approach has taken place in other similar organisations with good results…

9.2.5 As discussed elsewhere, the Board of RSL LifeCare consists of the RSL NSW State President as an *ex officio* member and other persons appointed by RSL NSW. At that time, the directors were generally appointed from the ranks of State Councillors. Following the report from Health Solutions (NSW), RSL LifeCare appointed Mr Riddington in 1997 and Dr Macri in 1998 to be external advisers to the Board, for which role they were paid.[4] Neither were members of the RSL NSW State Council.

9.2.6 Mr Riddington and Dr Macri were both said to be skilled in aged care management and were engaged to guide RSL LifeCare in "stabilising the business and putting it on a sustainable footing". Both Mr Riddington and Dr Macri attended RSL LifeCare Board meetings and advised on "matters of operation and governance".[5]

9.2.7 In September 1999, Retirement Living Services prepared a Policy Development and Organisational Review for RSL LifeCare, which included the following:[6]

> The current Board has 8 Directors. All Directors are RSL members and are appointed by the RSL State Branch.
>
> The current Board is lacking in many of the skills expected in the Boards of larger organisations today. Again this matter was raised previously by the Health Solutions Report.
>
> RLS has worked with a number of other Community groups that have had the same problem. One model that has worked well is to appoint a certain number of Directors from within the organisation and a lesser number of Directors with board relevant business experience.
>
> The internal appointees focus on the organisation's mission and objectives while the professional Directors focus on the commercial aspects of the operations. The balance of numbers needs to be weighted towards the organisation's mission.
>
> The professional members would have experience in retirement village and/or aged care management, finance, legal, nursing or marketing.
>
> The advantage of professionals being members of the Board rather than advisers is that they become liable for the performance of the organisation with other Directors.

9.2.8 The Review also made recommendations for setting up new committees as follows:[7]

> The Board needs to use Committees to ensure that the mission and objectives are being attained. These Committees should cover all aspects

> of the organisation's activities. It is recommended that the Board Committees be:
>
> - Strategic Planning Committee…
> - Finance and Administration Committee…
> - Resident Services Committee…
> - Property and Safety Committee…
>
> Each Committee should be comprised of two Board representatives with relevant experience and the senior executive responsible for each operational area. Each Committee should be comprised of 5 to 7 members with any 3 including 1 Director forming a quorum. A Director should chair each Committee and would have the power to invite attendees to participate as required. It may also prove successful to appoint a consultant with relevant skills to assist each Committee…

9.2.9 Advice was sought from Mr Cannings, who was then practising at Abbott Tout Solicitors. On 3 January 2001 Mr Cannings provided a letter of advice to the President of RSL LifeCare, Mr Priest, on the topic of "Directors Remuneration".[8]

9.2.10 Mr Cannings drew attention to Article 9.1 of the RSL LifeCare Constitution which provided:

> The directors may not be paid any fees for their ordinary services as directors.[9]

9.2.11 Mr Cannings advised that it was "certainly open to argument" that the directors were entitled to be paid "fees for 'extraordinary' services, whatever that expression itself means".[10] In attempting to delineate between ordinary services and extraordinary services, Mr Cannings advised that ordinary services would include activities such as: attendance at directors' meetings; time spent reviewing and raising questions in relation to the company's accounts; and time and effort spent in ensuring that directors did not breach their duties and responsibilities to the company. He advised that the ordinary services of a director would not extend to activities such as managing or overseeing specific projects of a commercial nature for the company or providing professional services such as legal or accounting services. Mr Cannings' advice included the following:[11]

> Unfortunately I can find no clear delineation other than to advise that if it is intended to remunerate a director as a director for undertaking specific work on behalf of the company that it be reviewed on a case by case basis to ensure that it falls into the extraordinary services category.

9.2.12 Mr Cannings also drew attention to Article 11 of the RSL LifeCare Constitution which permitted directors "under certain circumstances" to enter into contracts with the company for profit. Once again Mr Cannings advised that any contract would necessarily have regard to the words in

Article 9.1 of the Constitution and be for services other than for "ordinary" services as a director.[12] Mr Cannings also referred to Article 13 of the Constitution which enabled the Board to delegate some of its powers to committees which could consist of one or more directors as the Board thought fit. He advised that it was common practice within the business community to appoint persons other than directors to such committees to provide specialised services and to remunerate them for such services. His advice concluded as follows:[13]

> **Recommendations**
>
> It appears to me that the Board of RSL [LifeCare] are able to contract for profit prominent business leaders to assist the Board either by way of:
>
> (a) contracting direct with those individuals as directors pursuant to article 11, provided that the services to be rendered under such contract are not ordinary services to be provided by a director; or
>
> (b) to contract direct with those individuals by way of the establishment of advisory committees pursuant to Article 13.1. In either case it will be of paramount importance for the Board to comply with the requirements set out in articles 11 and/or 13 in appointing and contracting the services of such outside business leaders and to ensure that the services for which they are being remunerated do not include any ordinary services which they would otherwise be expected to provide as directors of the company.

9.2.13 On 27 March 2001, the Board of RSL LifeCare considered a report from Mr Riddington, who by then had been appointed as acting CEO.[14] Mr Riddington provided a copy of the executive summary of the Health Solutions report and a copy of Mr Cannings' advice to the Board and noted that since the Retirement Living Services report, "not enough" had been done to implement the recommendations.

9.2.14 At that time, RSL LifeCare's financial results were "poor" with a loss in that financial year of in the order of $1.6 million.[15] As was noted in a Strategic Plan prepared in May 2001, its "historic losses" were "not sustainable".[16]

9.2.15 The report noted the recommendations and advantages of external specialists becoming members of the Board; and the Retirement Living Services recommendations as to establishing new committees. It included the following observations in relation to the advice from Mr Cannings:[17]

> In December last year legal advice was sought regarding Directors being remunerated, that advice is enclosed for your attention. In brief it says it can be done in accordance with sections of [the] Constitution. So as a result of this advice some suitable people were contacted regarding their availability to join the Board if invited. So far, the answers have been positive.

9.2.16 Mr Riddington's report included a recommendation that Mr Kells, Mr Longley and the late Mr Owen Magee (together with Dr Macri and himself) be appointed to the Board of RSL LifeCare and noted:[18]

> All are involved in various charitable projects and felt some remuneration appropriate. Advice has been given that a fee of $12,500 per annum could be considered for attendance at Committee Meetings in line with the legal advice given.

The 2001 Contracts

9.2.17 In July 2001, Messrs Riddington, Kells, Longley, Magee and Dr Macri were appointed as directors of RSL LifeCare and each entered into a contract entitled Appointment to the Board of Directors for a term as a director of 12 months from July 2001.[19] Each of those directors also entered into a Contract for Specialist Consultancy Services.[20] The appointment of Mr Kells, Mr Longley and Dr Macri was said to be in recognition of their "specific aged care, retirement living, financial management and property development expertise".[21]

9.2.18 Each of the five Contracts for Specialist Consultancy Services commenced in July 2001 and each director was to be paid a total fee of $12,500 per annum. The contracts were in identical form, but for the details of the parties. They included the following:

> **3. Duties**
>
> The Contractor will:
>
> (a) Attend and commit to specific Committees of the Organisation (one or more of the following committees – Strategic Planning, Finance and Administration Resident Services, Property and Safety).
>
> (b) Provide specialist industry advice and input to the committees.
>
> (c) Provide written reports as required on subject matters relating to those committees.

9.2.19 Each of the contracts was entitled "Contract for Specialist Consultancy Services". Each of the directors, or the director's company, was referred to as the "Contractor" and RSL LifeCare was referred to as the "Organisation". Each of the contracts contained the following provision:

> **7 Ending the agreement**
>
> 7.1 The organisation may end the directorship without notice in the following circumstances:
>
> (a) If the Contractor has committed a serious or repeated breach of any of his/her obligations as a Director under this Agreement; or
>
> (b) If the contractor becomes bankrupt or makes any composition with/her creditors.

> 7.2 The Contractor may end his/her directorship providing reasonable notice in writing to the Organisation.

9.2.20 Although each of the contracts was for a fixed term of 12 months from July 2001, none was renewed after the expiration of the twelve month period. There was no express provision for the continuation of the contract after the completion of the term. However, each of the Contractors continued to receive the annual fee paid on a quarterly basis, although Mr Longley took a leave of absence between July 2005 and July 2006.[22]

9.2.21 It appears that the two existing committees (Forward Planning and Building; and Admissions and Welfare) were then replaced by four committees,[23] as had been recommended by Retirement Living Services. However, by 2004 these had been consolidated into two committees (the Strategy, Property and Administration Committee and the Resident Services Committee).[24] A number of directors served on each of the committees, including both State Councillors (who were not being paid) and non-State Councillors (who were receiving consulting fees).[25]

Proposal to pay all the directors

9.2.22 It is apparent that it was suggested by one or more of the State Councillor directors that the State Councillor directors should also be entitled to be paid in the same way as the non-State Councillor directors. The Minutes of the Meeting of the RSL LifeCare Board on 18 October 2005 included the following (Item 5.11):[26]

> Specialist Consultant's – Fee Proposal
>
> Discussion took place in relation to a proposed increase in Specialist Consultant's fees payable to the relevant directors who provide specific industry experience to the Board. The Board also discussed future renumeration (*sic*) for the other members of the board also appointed by RSL State Council.
>
> It was agreed by the Board that the Specialist Consultant fees be increased by ten per cent (10%).
>
> The Board requested Chief Executive Officer Ron Thompson to make enquiries with the Institute of Company Directors for director pre-requisite status and to prepare a report on remuneration and fee structure options.

9.2.23 On 21 February 2006, the RSL LifeCare Board deferred to the April Board Meeting the item identified as "Specialist Consultants – Fee Research to date" for further discussion.[27] At the RSL LifeCare Board Meeting on 4 April 2006, the Board once again deferred the same item to the June board meeting for further discussion.[28]

9.2.24 On 6 March 2006 RSL Retirement Villages Limited changed its name to RSL LifeCare Limited.

9.2.25 On 20 June 2006, the RSL LifeCare Board considered the following matter under business arising from the previous meeting:[29]

> 3.1 Specialist Consultants – proposal from Mercer
>
> There was general discussion regarding the proposal from Mercer to provide information regarding consultants and directors fees. It was unanimously agreed to accept the proposal.

Financial Statements – 2006

9.2.26 In its financial statements for the year ending 30 June 2006, RSL LifeCare reported on the directors that had been in office since the commencement of the financial year and listed their "special qualifications and experience".[30] The Report also included details of the committees of which each of the directors was a member. In respect of the five specialist consultants (non-State Councillors), it was recorded that Dr Macri was a member of the Resident Services Committee; and Messrs Riddington, Longley, Kells and Magee were members of the Strategy, Property & Administration Committee. The Chairman, Mr White, and Mr Crosthwaite were recorded as members of the Strategy, Property & Administration Committee; and Ms Mulliner, Messrs Durbin and Bushby were recorded as members of the Resident Services Committee. Neither Mr Rowe nor Mr Carlson were recorded as members of any committees.

9.2.27 The Report also identified the number of Board meetings and Board sub-committee meetings that each of the directors attended. The meetings that were recorded were for the Strategy, Property and Administration Committee and the Resident Services Committee. Neither Messrs Rowe nor Carlson was listed as having attended any committee meetings.[31] The other directors (who were not specialist consultants at that time) who attended the committee meetings were; Messrs White, Crosthwaite, Durbin and Ms Mulliner. Two of the directors, Messrs Harrigan and Bushby, retired during that financial year leaving a board of ten, of which five were the Specialist Consultants. The financial statements recorded that Messrs Kells, Magee, Riddington and Dr Macri each received consulting fees of $14,943 during that year. It was noted that Mr Longley had been granted extended leave of absence between July 2005 and July 2006.[32]

Advice on directors' fees – July 2006

9.2.28 On 14 July 2006, RSL LifeCare received a letter from Mercer Human Resource Consulting Pty Ltd (Mercer) in which advice was provided in relation to "fee levels for directors". Mercer advised that, in their experience, many not-for-profit organisations did not pay any remuneration to board members as they were happy to donate their time and gain the experience of contributing to the Board. Mercer also advised that it was only where organisations were more "commercial" and/or the Board were active in advising on the assets of the organisation that fees were paid to the Board members.[33]

9.2.29 Notwithstanding this advice, Mercer included remuneration figures for a Chairman ($35,000) and Non-Executive Directors ($15,000) of not-for-profit organisations that had been sourced from the remuneration ranges disclosed in annual reports of such organisations. It included the following:

> Based on the data presented in this report and on our experience, we believe appropriate Base Fee remuneration ranges that LifeCare may wish to consider for it's (*sic*) Board are as follows:

	Range
Chairman	$20,000 to $30,000
Deputy Chairman	$12,500 to $22,500
Non-Executive Directors	$10,000 to $20,000

Meetings – August and September 2006

9.2.30 The Minutes of the meeting of the Board of Directors of RSL LifeCare on 22 August 2006 included the following:[34]

> 5.5 Mercer Report on Specialist Consulting Fees
>
> The report as prepared by Mercer Human Resource Consulting was discussed and reviewed by the Board.
>
> **Res. 12175 – it was resolved by the Board that as from 1 July 2006 there will be an increase in the renumeration (*sic*) for Specialist Consulting fees to $18,000 per annum. It was requested that Mr John Cannings review the Constitution of RSL LifeCare Limited in order to suggest amendments to allow for Directors fees to be paid.**

9.2.31 On 11 September 2006, Mr Thompson wrote by email to Mr Cannings in respect of the subject "Constitution amendments" in the following terms:[35]

> At the last Board meeting I was requested to make contact with you to seek your advice as to how to amend the constitution of the organisation to allow for Directors to be paid for their services. I would be grateful if you could provide some suggestions.

Legal advice on directors' fees – October 2006

9.2.32 On 13 October 2006, Mr Cannings provided a written advice to Mr Thompson in which he advised that he had reviewed the issue and referred to the fact that RSL LifeCare was a Public Benevolent Institution. He advised that the raising of money for charitable purposes was governed by the Act, pursuant to which approval is obtained from the relevant Minister (at that time the Minister of the NSW Office of Liquor, Gaming and Racing) to hold office as a director, notwithstanding that the person receives any remuneration or benefit from the organisation.[36]

9.2.33 Mr Cannings identified the circumstances in which approval by the Minister might be granted, including where the organisation's Constitution provides that members of the governing body may be remunerated or otherwise receive the benefit. Mr Cannings noted that the RSL LifeCare Constitution prohibited the payment of directors for their ordinary services as directors and therefore the Constitution would need to be amended.[37]

9.2.34 Mr Cannings advised that the amendments to the Constitution had to be passed by special resolution of the members of RSL LifeCare in a general meeting; that any member who is remunerated or receives a benefit was not entitled to vote in respect of such resolution or be present at the meeting, when the details of the remuneration would be considered; and a quorum could not be properly constituted if the number of members of the governing body who were proposed to be remunerated exceeded one-third.

9.2.35 Mr Cannings' advice included the following:

> The number of persons who are to be remunerated would generally be limited to one unless there is a convincing argument to the contrary.
>
> The appointment, conditions of service or remuneration of or supply of goods or services by or in respect of a member of the governing body of an organisation must subsequently ratified by a general meeting of the members.
>
> Once the Constitution has been amended by special resolution an application to the Minister will need to be made.

9.2.36 Mr Cannings then provided advice on the type of information that would be necessary to provide to the Minister in making an application for approval of the applicant acting as a director, notwithstanding receipt of remuneration from the organisation. Mr Cannings also advised that RSL LifeCare would need to convene a general meeting of members in order to pass the special resolution to modify the Constitution with the agreement of 75% of the votes of members present and entitled to vote on the special resolution.

A change in approach – October 2006

9.2.37 On 24 October 2006 the RSL LifeCare Board resolved unanimously to appoint Mr Longley as a specialist consultant and invite him to be in attendance at Board Meetings and Board sub-committee meetings.[38] The Board also resolved as follows:[39]

> 3.4 Remuneration of Directors
>
> The letter forwarded by our legal representative, Mr John Cannings, in relation to Director's remuneration was reviewed and discussed by the Board. It was agreed not to further investigate the payment of fees to Directors.

3.5 Specialist Consulting Fees

Res. 12181 - It was unanimously resolved by the Board that payments to people (including Directors) for specialist consulting services be confirmed, subject to review and advice from John Cannings.

9.2.38 On 31 October 2006, Mr Thompson wrote by email to Mr Cannings in respect of the subject "Specialist Consulting Fees" in the following terms:[40]

> This is a follow-up from the telephone message I left yesterday.
>
> Subsequent to your letter to the Board advising the process involved in remunerating directors, the Board have decided not to further pursue this matter.
>
> The Board would now like to review the potential to pay specialist consulting fees to consultants, some of whom are directors. As you are aware, this is currently in place for 'non-RSL' directors. The Board would like to extend this potential to all directors.
>
> I request your advice on this matter including the way that this can be instigated and monitored.
>
> I am faxing the current specialist consultant 'contract'. I would appreciate, your review and re-vamping of the document if required.

9.2.39 A copy of a Contract for Specialist Consultancy Services was sent to Mr Cannings on the same day.[41]

Legal advice on consulting fees – November 2006

9.2.40 On 22 November 2006 RSL LifeCare received further legal advice from Mr Cannings regarding the "potential for RSL LifeCare to pay specialist consulting fees to the directors of RSL LifeCare".[42] Mr Cannings emphasised the importance of distinguishing consultancy services from day to day ordinary services expected of directors by virtue of their position as directors.

9.2.41 Mr Cannings referred to Article 11 of the RSL LifeCare Constitution which "provides a mechanism for dealing with circumstances in which a conflict of interest may arise where a director has a contract for services with RSL Lifecare".[43] He advised that "relevantly" that Article 11 provided that a director was not disqualified from contracting with the RSL LifeCare or from profiting by reason of any such contract. Mr Cannings pointed out that "the nature of the director's interest" had to be disclosed at the meeting of directors at which the relevant contract was determined; and the director could not vote in respect of any contract or arrangement in which the director was interested.

9.2.42 Mr Cannings concluded that the presence of these provisions meant that there was the ability for a director to enter into a contract or other arrangement with RSL LifeCare while holding office as a director. He advised that the RSL LifeCare Board could extend the payment of

specialist consultancy fees to all directors, provided that the contract pursuant to which the services were provided clearly identified and distinguished the consultancy services from the ordinary duties of a director of RSL LifeCare.

9.2.43 Mr Cannings also advised that the mechanism by which the consultancy services could be provided was through advisory committees on which the directors who possessed the relevant specialist skills could serve; and that such advisory committees could be established by resolution of the directors identifying the particular purpose of the advisory committee and specifying the general tasks to be carried out by those committees.

9.2.44 Mr Cannings also advised that the directors could resolve to nominate the proposed remuneration of the members of the advisory committees.

9.2.45 Mr Cannings reviewed the Contract for Specialist Consultancy Services that Mr Thompson had provided to him and advised that each contract should be "tailored to the specific skills and services to be provided by each individual" as opposed to "a standard set of terms". He also advised that this would ensure that RSL LifeCare could clearly distinguish the consultancy services from the ordinary services of a director.

Consultancy fees for all directors – February 2007

9.2.46 The Minutes of the Meeting of the RSL LifeCare Board on 20 February 2007 included the following (item 3.2):[44]

> Specialist Consulting Fees
>
> The advice of John Cannings, PWC Legal was reviewed, noted and approved. It was agreed
>
> ⇨ that the current persons receiving specialist consulting fees would receive new and revised contracts
>
> ⇨ that other persons interested in receiving specialist consulting fees would contact Mr Thompson
>
> ⇨ that going forward, the specialist consulting contracts would be for one year duration

The 2007 Contracts

9.2.47 Thereafter each of the Board Members who approached Mr Thompson in response to the resolution was provided with a Contract for Specialist Consultancy Services.

9.2.48 Dr Macri and Mr Kells signed their agreements on 17 and 20 April 2007 respectively,[45] but both were backdated to 24 October 2006, being when the Board resolved "that payments to people (including Directors) for specialist consulting services be confirmed, subject to review and advice

from John Cannings".[46] Mr Longley signed his agreement on 30 April 2007, but it was backdated to 1 September 2006.[47]

9.2.49 On 23 April 2007 Mr Thompson informed Mr White by email that he had a signed agreement from Mr Crosthwaite and asked him:[48]

> When do you want to start paying him from? 23 April or earlier in this year?

9.2.50 Mr White responded:

> Bob [Crosthwaite] has advised me he believes he would like to have it back dated to when the Board resolved to adopt this matter, he and I think it was at Cherrybrook in August 06?[49]

9.2.51 It appears that this was a reference to the Board meeting on 22 August 2006, when the Board resolved to increase the then existing consulting fees and to instruct Mr Cannings "to review the Constitution of RSL LifeCare Limited in order to suggest amendments to allow for Directors fees to be paid".[50]

9.2.52 Mr Thompson then forwarded this exchange with Mr White to Mr Ham with the following instruction:[51]

> Please arrange to pay Bob specialist fees dating back to September 1 2007.

9.2.53 This was clearly intended to refer to 1 September 2006 rather than 2007. MrCrosthwaite then signed a further agreement on 7 May 2007, but backdated to 1 September 2006.

9.2.54 Mr White signed an agreement on 7 August 2007, which was also backdated to 1 September 2006.[52] In the documents produced by Mr White to the Inquiry, there was a copy of this contract that was filed in his 2008 documents. That copy is identical to the 2007 contract except that the commencement date has been changed in hand to 1 September 2007.[53] Mr White gave evidence that he "might have" changed the date "years ago when all this occurred" but he did not recall doing so.[54]

9.2.55 On 19 June 2007 Mr White received a payment of $18,000, which was the annual fee under his agreement, from Mr Ham "for the year ending 30 June 2007".[55] This meant that Mr White was in fact paid consulting fees backdated to 1 July 2006, which was before the Board of RSL LifeCare had even considered the issue of consulting fees being extended to the State Councillor directors, including Mr White.

9.2.56 Each of these contracts contained the same provisions in clauses 3(a) and 3(c) as in the 2001 contracts. However, clause 3(b) was different: in each of the contracts it required the Contractors to "provide specialist advice and input to the committee commensurate with your background" and listed what was identified as the "Specialist Advice" for the particular Contractor. Dr Macri's contract included: residential care; retirement village living; and liaison with government departments.[56] Mr Kells'

contract included: finance; banking; and property management.[57] Mr Longley's contract, through his company, Imbasa Pty Ltd, included: residential care; retirement village living; finance; banking; property management; and liaison with government departments.[58] Mr Crosthwaite's contract included: ex-service; and welfare and benevolence.[59] Mr White's contract included ex-service; welfare and benevolence and general management experience.[60]

9.2.57 From when the possibility of paying fees to directors was first raised on 18 October 2005 and continuing after the resolutions to pay consulting fees to directors on 24 October 2006 and 20 February 2007, there were no changes to the existing Strategy, Property and Administration Committee and the Resident Services Committee and no new committees were set up in the 2006/07 financial year or indeed in the following financial year 2007/2008.[61]

The 2007 Increases

9.2.58 The Minutes of the Meeting of the Board of RSL LifeCare on 21 August 2007 included the following resolution in the business arising from the Minutes of the previous meeting held on 19 June 2007 (item 3.5):[62]

> Resolution 1299 - it was resolved:
>
> - The base fee for specialist consultants be reviewed on an annual basis in August every year with any increase to take effect from 1 October of that year.
> - That the 2006/2007 specialist consulting fee of $18,000 per annum be reviewed to $19,000 per annum, effective 1 October 2007.
> - That the Board have discretion to pay certain approved specialist consultants an additional fee over and above the base specialist consultant fee.
> - That Mr Rod White receive an additional specialist consultant fee of $10,000 per annum, effective 1 October 2007.
> - That Mr Bill Riddington receive an additional specialist consultant fee for additional services provided of $5,000 per annum, effective 1 October 2007.
> - That Dr Sue Macri receive an additional specialist consultant fee for additional services provided of $5,000 per annum, effective 1 October 2007.

Further legal advice

9.2.59 On 28 November 2007, the CFO of RSL LifeCare at the time, Mr Ham, wrote to Mr Cannings at PwC informing him that there had been "a number of conflicting views expressed in regard to Directors' remuneration" and seeking Mr Cannings' advice in "clarifying a number of issues" that had arisen. The first matter upon which Mr Ham sought

Mr Cannings' advice was the fees paid to directors for specialist services. On this matter, Mr Ham wrote:[63]

> ❖ You would be aware of the Service Agreements that are in place for Directors.
>
> ❖ I understand that payments made for Directors' 'specialist' services are:
>
> - specifically quarantined away from any connection to them being a 'Directors Fee' as such;
>
> - made in the context of Directors' **non executive** status.
>
> ❖ The question now being asked is whether Directors can participate in the Company's Salary Packaging Plan which is specifically designed to increase employees' take home pay to include a tax free component of $16,050 per annum. Note the emphasis on this Plan being applicable to **employees**. This appears as a grossed up figure on the Group Certificates as an FBT payment of $30,000. It is not taxed as income. A brochure on how the Plan works is attached.
>
> ❖ Some Directors have asked if they could be paid via the Payroll and participate in this tax free Salary Packaging Plan.
>
> ❖ My concerns are:
>
> - this would conflict with their non executive status and could deem them as employees;
>
> - our payments up to the present point in time have been made by cheque or direct credit on a quarterly basis clearly defining the payment as Specialist Fees and not Directors Fees.
>
> ❖ As one or two Directors are claiming they have participated in the Salary Packaging Plan in other Organisations their question is, why doesn't that apply to them at RSL LifeCare? For this to be answered consideration has to be given to their:
>
> - current Agreements;
>
> - independent status and possible impact;
>
> - how other Directors bill for their fees (probably a Tax Invoice?);
>
> - a need to change current Agreements?
>
> - anything else.

9.2.60 Mr Ham also sought Mr Cannings' advice in respect of directors' out of pocket expenses because a motion had been put by a director at the last Board meeting that directors be supplied with computer hardware at RSL LifeCare's expense.

9.2.61 On 8 January 2008, Mr Cannings advised that non-executive directors "cannot at the same time be employees of the Company and therefore participate in the Company's Salary Packaging Plan".[64] His advice included the following:[65]

> As you are aware the Company's constitution prohibits the payment of Directors fees for their ordinary services as Directors.
>
> Under the Contract for Specialist Consultancy Services the duties for which non-executive Directors may be contractually engaged to provide for the Company, are specialist services outside the day-to-day services expected of a Director by virtue of their position as a director. In this regard I refer you to our advice on this specific issue dated 22 November 2006 (a copy of that advice is attached for your convenience).
>
> …
>
> I have intentionally kept this advice general in nature as it has been my experience that with similar charitable bodies such as RSL LifeCare, non-executive Directors do not participate in salary packaging or employee benefit arrangements. However, if requested I am more than happy to provide a more detailed advice specifically referring to relevant legislation and case law (if available) to support this opinion.
>
> Finally, I note that we have previously advised that if the Company were to resolve to pay directors, that in addition to amending the Company's Constitution, application would need to be made under the Charitable Fund Raising (sic) Act 1991 seeking Ministerial approval for the purposes of enabling a person to be remunerated or to receive a benefit whilst holding office of a non profit organisation.

The 2008 to 2011 Contracts

9.2.62 In 2008 the Contracts for Specialist Consultancy Services were amended to particularise the committees in clause 3(a) as the SPPDC (Strategy Planning & Property Development Committee); the Resident Services Committee; and the ARMAC (Audit, Risk Management & Compliance) Committee.

9.2.63 Mr Carlson's contract was signed on 4 March 2008 and backdated to 1 January 2008.[66] It included specialist advice in the areas of: ex-service; welfare and benevolence and general management experience. Mr Hardman's contract, through his company Bensari Pty Ltd (Bensari), was signed on 1 October 2008 and commenced on that date.[67] It included specialist advice in the areas of: property development; construction; marketing of apartments; and general management experience. Ms Mulliner's contract was signed on 17 March 2010 and backdated to 1 October 2009.[68] It included specialist advice on financial management; general management experience; and ex-service knowledge and experience.

9.2.64 Mr Rowe's contract, entered into on 17 March 2010, although backdated to 1 October 2009, was in different terms.[69] There was no mention of

service on any specific committees. Rather his contract provided that from 1 October 2009, he would:

(a) Attend and commit to advising the organisation on specific matters of policy and practice.

(b) Provide specialist advice and input to the organisation commensurate with your background:

- General management experience
- ex-service knowledge

(c) Provide written reports as required to subject matters relating to those committees.

9.2.65 Although clause 3(c) referred to "those committees", there was no mention of any committee in Mr Rowe's contract.

9.2.66 From that point, all of the directors were in receipt of consulting fees.

9.2.67 Mr Humphreys subsequently became a director. His contract, dated 1 October 2011 and commencing on that date, was also in different terms.[70] It included the following:

(a) Provide specialist advice and input to the Chief Executive in the areas of aged care, aged planning and government relations.

(b) On invitation, attend specific Executive, board or board sub-Committee meetings of RSL LifeCare.

(c) Provide general advice and oversight in areas such as ACAR, bed licensing, community care packages, management of compliance with aged care standards, management of significant external complaints, strategies for improving relation, etc.

(d) Provide written reports as required.

9.2.68 Although the 2008 to 2011 Specialist Consultancy Contracts were once again for a period of only 12 months, none was ever formally extended. However RSL LifeCare continued to pay the annual retainer on a quarterly basis.

The 2008 Director's Handbook

9.2.69 An RSL LifeCare Director's Handbook was produced in 2008,[71] which amongst other things detailed the various Committees of the Board. The membership of each of those Committees was listed to include a certain number of directors.[72]

The Payments

9.2.70 After the directors entered into their Specialist Consultancy Contracts, their retainers were to be paid on a quarterly basis on the submission of a tax

invoice. This was the subject of some debate between the directors and Mr Ham.

9.2.71 On 9 April 2008 Mr Ham wrote to Messrs Kells, Longley, Crosthwaite, White, Riddington and Dr Macri in respect to the consulting fees and "related GST issues". He advised that he had been discussing fees and home office expenses with Mr Cannings, including the correct method of dealing specifically with the payment of the specialist fees to directors. He advised that the correct method for payment was for the directors to submit a tax invoice which meant that they were required to be registered for ABN purposes and, in some cases, GST. He advised that if there was no ABN registration "the rule of Law" required RSL LifeCare to withhold the maximum tax rate of 46.5 cents in the dollar until the directors submitted their annual personal tax return and claimed an adjustment rebate for the corrected tax payable.

9.2.72 Mr Ham also advised that if the directors' income from other activities of employment or contracting was less than $75,000 per annum they only needed to submit a tax invoice with their ABN registration quoting "no GST payable". He advised that where their income exceeded $75,000 per annum, the directors were, as consultants, required to submit a tax invoice which included 10% GST which they would then remit to the tax office via a Business Activity Statement (BAS) return. He also advised that RSL LifeCare would declare the GST tax component on its own BAS statement.

9.2.73 Subsequently, Messrs Crosthwaite,[73] White,[74] Rowe,[75] Humphreys,[76] Kells[77] and Ms Mulliner[78] provided Statement of Supplier forms in which they made a declaration as to why they did not have an ABN and so why 46.5% did not need to be withheld. One of more of the following were cited as the reason:

(a) The payer is not making the payment in the course of carrying on an enterprise in Australia.

(b) The supplier is an individual and has given the payer a written statement to the effect that the supply is…made in the course or furtherance of an activity done as a private recreational pursuit or hobby…

(c) The supply is made by an individual or partnership without a reasonable expectation of profit or gain.

(d) The supplier is not entitled to an ABN as they are not carrying on an enterprise in Australia.

The 2009 Increases

9.2.74 A document entitled "Specialist Consulting Fees" prepared by the CEO, Mr Thompson dated February 2010 was provided to the RSL LifeCare Board for its consideration at its meeting of directors on 25 February 2010. The proposal within the document was that the Specialist Consulting Fees be set for the year 2010, effective from 1 October 2009, at $19,000 to

$20,500. It was proposed that Mr White be paid an "Additional" specialist consulting fee of $10,000 to $10,800 and that Dr Macri, Mr Riddington and Mr Kells also be paid an additional specialist consulting fee of $5,000 to $5,400.[79]

9.2.75 The proposal also included the following:

- ❖ It is proposed that consideration be given to Specialist Consultants being provided with an allowance of up to $5,000 over three years to be utilised for provision of 'tools of trade' and general office expenses.
- ❖ It is proposed that the CEO, under the guidance of the Chairman, review the level of fees for Specialist Consultants, including seeking appropriate external assistance (eg John Cannings PWC Legal), to provide the Board with assistance when determining the rates for Specialist Consultants for 2011.

9.2.76 The proposal was considered at the RSL LifeCare Board meeting on 25 February 2010, the Minutes of which include the following:[80]

6.7 Specialist Consulting Fees

The proposal was reviewed and it was resolved to adopt the recommendations with the following addition:

Board resolution 2010-02-08: It was resolved that the Specialist Consulting Fees be considered and fees be set as follows for the 2010 year (effective 1 October 2009):

- ✓ Specialist Consulting Fees of $20,500 per annum
- ✓ Additional Specialist Consulting Fee – R White of $10,800 per annum
- ✓ Additional Specialist Consulting Fee – S Macri, W Riddington, G Kells of $5,400 per annum
- ✓ General allowance over 3 years for 'tools of trade' of $5,000
- ✓ Annual fees for membership of the Australian Institute of Company Directors will be reimbursed by RSL LifeCare
- ✓ Travel expenses incurred by RSL LifeCare travel outside the metropolitan area will be covered by RSL Life Care

It was agreed that the CEO, under the guidance of the Chairman, will review the level of fees for Specialist Consultants, including seeking appropriate external assistance (eg John Cannings, PWC Legal), to provide the Board with assistance when determining the rates for Specialist Consultants for 2011.

Recipient Created Tax Invoices

9.2.77 Due to the recalcitrance of some of the directors in providing invoices for their consulting fees, in early 2010 Mr Broadhead introduced Recipient Created Tax Invoices,[81] even though (as he accepted)[82] this was not permissible in the circumstances (ATO GST ruling 2000/10).[83]

The 2010 Increases

9.2.78 Notwithstanding the agreement that was noted at the conclusion of Item 6.7 of the Minutes of the Board meeting on 25 February 2010, the directors once again considered their Specialist Consulting Fees at the Board Meeting on 28 October 2010. The Minutes of that meeting include the following:[84]

> **5.3 Specialist Consulting Fee**
>
> Board resolution 2010-10-03: It was resolved that the Specialist Consulting fees be considered and fees be set as follows for the 2011 year (effective 1 October 2010):
>
> - ✓ Specialist Consulting Fee of $21,525 per annum
> - ✓ Additional Specialist Consulting Fee – R White of $11,340 per annum
> - ✓ Additional Specialist Consulting Fee – S Macri, W Riddington, G Kells of $5,670 per annum
> - ✓ General allowance over three years for 'tools of trade' of $5,000
> - ✓ Annual fees for membership of the Australian Institute of Company Directors will be reimbursed by RSL LifeCare
> - ✓ Travel expenses incurred for RSL LifeCare travel outside the metropolitan area will be covered by RSL LifeCare.

Directors' obligations and requirements

9.2.79 On 26 May 2011, Mr White, as Chairman of RSL LifeCare, wrote to Mr Perrin, with a copy to Mr Thompson, in respect of the appointment of the directors of RSL LifeCare. Mr White referred to the RSL NSW State Council meeting on 28 May 2011 at which he wanted to propose that certain persons be appointed to the Board of Directors of RSL LifeCare. After identifying those persons, including himself, Mr White referred to his discussion the previous year with the State Council at which it was proposed that the directors of RSL LifeCare would be appointed for a term of three years, in line with the State Councillors' terms, with effect from the Annual General Meeting (AGM) of RSL LifeCare to be held in October 2011.[85] Mr White's letter included the following:[86]

> It is noted that at any time, the Board of Directors can recommend to RSL State Council, that any director be removed and/or other directors be appointed. RSL State Council retains the ultimate authority of appointment or removal and the board appoints advisors/consultants to the Board.
>
> Together with other responsibilities, all Directors are required to:-
>
> - Be a member of the Institute of Company Directors and undertake corporate training in various fields as directed by the Board
> - Demonstrate experience and skills as required by the Board to be appointed as a Director
> - Attend all Board meetings and effectively contribute to policy and other business as a Director
> - Be a member of Board sub committees as appointed and attend those meetings as scheduled
> - Attend appropriate industry Conferences and Seminars
> - Attend appropriate RSL LifeCare activities, such as commemorations, functions, resident and staff events, at various facilities
> - Be available for offsite activities including facilities conducted by other operators
> - Complete a State and Federal Police Check
> - Maintain an awareness and comply with all corporate governance regulations and best practice principles.

Delegation – 2012

9.2.80 There were no further resolutions of the RSL Lifecare Board in relation to Specialist Consulting Fees minuted until the meeting of 1 March 2012.[87] At that meeting under the Item 5.9 "Delegations" the following was recorded:[88]

> *Previously not in place and now ratified:*
>
> 1. Any transaction involving a director other than payment of specialist consulting fees or out-of-pocket expenses must be considered by the Board.
>
> 2. Out-of-pocket expenses of Directors are to be reviewed by the Chairman.
>
> 3. Specialist consulting fees will be determined by the CEO in conjunction with review and advice from appropriate external organisations such as PWC.

Amending the Constitution

9.2.81 On 2 February 2012 Mr Thompson advised Mr Perrin that at the RSL LifeCare Board meeting on 31 January 2012 the Board resolved to seek member approval to replace the then current Constitution with a new Constitution and to seek the consent of RSL NSW to the new Constitution.[89] The new Constitution retained the prohibition on directors receiving any payment for their "ordinary services as directors" and also retained the directors' entitlement to expenses in connection with the attendance at Board meetings and general meetings and otherwise in connection with the business of RSL LifeCare.[90]

9.2.82 The proposed amendments included provisions that RSL LifeCare's property and income could only be used to pursue its objects and could not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any member or director.[91] However the amendments permitted RSL LifeCare to use its income to make payments in good faith for "services" provided to RSL LifeCare "including services provided in the professional or technical capacity" where the provision of those services had the prior approval of the directors and was on reasonable commercial terms, even if the recipient of the payments was a director of RSL LifeCare.[92]

9.2.83 Another amendment proposed at this time was the condition that not less than 50% of the directors were to have relevant "professional experience".[93] In response to that proposal, Mr Thompson commented to Mr Perrin:[94]

> It is the desire to maintain at least 50% with professional experience and expertise. It is not the desire to move to a Board with 100% professional experience and 0% veteran and RSL NSW knowledge.

Mr Thompson's Proposal

9.2.84 In 2012 Mr Longley commenced employment with a NSW government department and understood that he was required to provide details of the number of paid hours he worked elsewhere. On 22 June 2012, Mr Longley had an exchange of emails with Mr Thompson in which, relevantly, the following exchange took place:[95]

Mr Longley:	Does RSL LifeCare have any interaction with [the Ageing Disability and Home Care] Agency which I am about to become CE or? (This goes to conflict of interest). I will have to declare my private paid work i.e. consultancy to RSL LifeCare. How many hours per week is this?! 0 or 2 (= 1 day per month) or other?
Mr Thompson:	I am sure the answer is no. Carolyn [Kwok] please confirm.
Mr Longley:	Thanks Ron – Carolyn has confirmed. Do you have any thoughts on the hours question??
Mr Thompson:	Oh you would have as good a guess as me. Perhaps one hour per week???
Mr Longley:	The interesting question is that it is not the directorship which is private work but the consultancy? If you are happy with 1 that will do me.
Mr Thompson:	Groovy.

9.2.85 In July 2012 Mr Thompson, prepared a "Proposal" with a recommendation to the Board of RSL LifeCare that the directors be paid fees as "specialist consultants".[96]

9.2.86 The consultancy services that were to be provided by the directors were defined in the Proposal as: (a) upon invitation, attendance at specific Executive or Board sub-committee meetings of RSL LifeCare; (b) the provision of written reports as required; and (c) specific consultancy services in one or more of the areas of: (i) Aged Care; (ii) Retirement Living; (iii) Finance and Administration; (iv) Property Development; and (v) Veterans Culture.

9.2.87 The "Aged Care" area was defined in the Proposal as: (a) the provision of specialist advice and input to RSL LifeCare in the area of aged care, aged care planning and government relations; and (b) the provision of advice and oversight in areas such as the Aged Care Approvals Round, bed licensing, community care packages, management of compliance with aged care standards, management of significant external complaints, strategies for improving relations.

9.2.88 The "Retirement Living" area was defined in the Proposal as: (a) the provision of specialist advice and input to RSL LifeCare in the area of retirement living and government relations; and (b) the provision of advice and oversight in areas such as marketing of retirement living homes, compliance with accreditation standards, management of significant external complaints and strategies for improving relations.

9.2.89 The "Finance and Administration" area was defined in the Proposal as: (a) the provision of specialist advice and input to RSL LifeCare in the area of finance, insurance, and general administration; and (b) the provision of advice and oversight in areas such as financial reporting, management accounts, key performance indicators, budgeting, benchmarking, cash flow management, cash investments, insurance and information technology.

9.2.90 The "Property Development" area was defined in the Proposal as: (a) the provision of specialist advice and input to RSL LifeCare in the area of property development and construction; and (b) the provision of advice and oversight in areas such as identifying projects, planning developments, assistance with architectural oversight, property contracts, builder contracts, building contract management, building certification and building design.

9.2.91 The "Veterans Culture" area was defined in the Proposal as: (a) the provision of specialist advice and input to RSL LifeCare in the area of Veterans Culture; (b) the provision of advice and oversight in areas such as the RSL other ex-service entities, the Australian Defence Force, and the culture and ethos of war veterans.[97]

9.2.92 The Proposal included a statement that the fees were "benchmarked" against the consulting fees for other consultants and contractors used by RSL LifeCare and those used by PwC. It included a notation that it was "not unreasonable to assume a rate of $250 [per hour] for the consulting services". It also included a table in which each director was allocated a particular area of specialist services with an estimate of the time that the director would spend over the following year providing those services. The total hours were then multiplied by $250 and, if necessary, rounded to the nearest thousand.

9.2.93 At the conclusion of the Proposal Messrs Crosthwaite, Humphreys, Longley and Rowe were listed at $27,000; Mr Kells, Dr Macri and Ms Mulliner were listed at $34,000; Mr Riddington was listed at $37,000; and Mr White was listed at $45,000. In contrast to the 1 hour per week (at most 52 hours per annum) referred to in the email exchange between Mr Longley and Mr Thompson referred to earlier, Mr Longley's hours were calculated as 108 per annum.

9.2.94 On 8 July 2012, Mr Thompson sent the Proposal to Mr Cannings at PwC for his "review and comment". Mr Thompson asked Mr Cannings to consider whether he was "comfortable" to endorse it; and if not to

provide advice as to what was needed to place him in a better position to be able to endorse it.[98]

9.2.95 On 20 July 2012 Mr Cannings replied to Mr Thompson:[99]

> I have now had the opportunity to review the attached proposal and confirm my agreement to the contents as written and as such I endorse the Proposal for submission to the Board.

9.2.96 Thereafter, Mr Thompson made adjustments to the Proposal in terms of the calculation of the hours for each director, which resulted in the same overall fee recommendations save that Ms Mulliner was reduced from $34,000 to $27,000.[100] Mr Longley's hours remained at 108 hours per week. Mr Thompson included the following in his summary:

Consultant	*Fees 2011/12*	*Rounded fee 2012/13*
Mr Crosthwaite	$22,601	$27,000
Mr Humphreys	$22,601	$27,000
Mr Kells	$28,555	$34,000
Mr Longley	$22,601	$27,000
Dr Macri	$28,555	$34,000
Ms Mulliner	$22,601	$27,000
Mr Riddington	$28,555	$37,000
Mr Rowe	$22,601	$27,000
Mr White	$34,508	$45,000

9.2.97 Mr Thompson's revised proposal retained the existing fee structure as between the directors with an increase of approximately 20% across the board. When asked about this calculation, Mr Thompson gave the following evidence:[101]

> Q. So this document, in trying to work out the hours they were providing, had nothing to do with actually trying to calculate proper fees; it was trying to justify a fee structure that was already in place; that's right, isn't it?
> A. I think I've already said it was retaining - continuing the current retainer arrangement and trying to put some maths around it.
>
> …
>
> Q. It had always been your intention for Ms Mulliner not to receive an additional fee; correct?
> A. Correct, because the additional fees were for being chairs of committees and she wasn't a chair of a committee.
>
> Q. If, in fact, this was all about simply being chair of a committee, what was then the point of doing all these calculations, if they weren't going to make any difference at the end of the day?

A. Overall, the fees - as I said, the maths and the mathematical construct around this was to support the continuance of a retainer arrangement. There may have been individual inconsistencies, but overall the quantum could be justified through this exercise, in my opinion.

9.2.98 On 31 July 2012 Mr Thompson wrote to each of the directors enclosing the Proposal, which he described as detailing the "rationale behind fees paid to specialist consultants and draft rates for the 2012/2013 year commencing on 1 October 2012". The email included the following:[102]

> Please also note that this document has been prepared by the CEO and reviewed by John Cannings and will NOT be considered at a future Board meeting. It is noted that John Cannings makes the following comment "I have now had the opportunity to review the attached proposal and confirm my agreement to the contents as written an, as such, I endorse the Proposal".

9.2.99 That email included advice to the directors that the enclosed "document" supported the payments for specialist consultants for the year commencing October 2013 in the various amounts listed for each of the directors for the following year. The email continued:[103]

> Whilst this document will not be reviewed at a board meeting you are more than welcome to discuss the contents with me individually, or as a group of consultants who wish to meet with me. Please do not hesitate to contact me if you have any questions or require any clarification.

The Advisory Agreements – 2012

9.2.100 It is clear that a meeting with some of the directors took place and Mr Thompson wrote to the directors again on 21 August 2012, thanking those who had attended the meeting the previous week "to discuss specialist consultants". [104] That communication included the following:

> I confirm the following:
>
> 1. John will revise the proposed contract, changing the term "consultant" to "advisor", including clauses regarding ATO issues, etc and also preparing a second contract for corporate entities.
>
> 2. If John agrees, RSL LifeCare will offer to fund PI for specialist consultants/advisors.
>
> 3. I am requesting John to contact each specialist consultant individually and offer to discuss any individual aspect of the contract, including providing some basic advice regarding personal tax and pension issues as well as other options such as a reduced rate of service fees. Please note that this is an optional service only and at your discretion.
>
> You all have the draft document detailing the basis of the calculation of your individual specialist fees. … If any specialist has an issue with how

their fees are proposed to be calculated as detailed in this report, please let me know together with an alternative calculation.

Hopefully this can all be wrapped up over the next few weeks.

9.2.101 Following the revision of the proposed contracts, Mr Thompson wrote to the directors on 25 August 2012:[105]

> Further to our meeting two Thursdays ago, PWC have amended the agreements in line with the discussions held. Please review the agreement and advise me of any concerns you may have. Hopefully all or most will now be comfortable to move to signing the agreement – I would like to achieve this by eth (*sic*) end of September if possible. To this end, as previously flagged, John Cannings will be contacting you individually over the next few weeks to provide assistance.

9.2.102 On 5 September 2012 Mr Thompson again wrote to the directors, which included:[106]

> Please find attached the next version of the Specialist Advisor Agreement, subsequent to discussions John Cannings has had with Graham Kells.
>
> …
>
> It is my plan that as soon as John has contacted you each personally and discussed any issues, to then move to issuing an executable version of the contract and having this in place by 1 October.

9.2.103 The contracts that were executed at this time were all in the same form, except for formal parts and were entitled "Advisory Agreement". The definition of the "Services" was the same as the services that Mr Thompson identified in the July 2012 Proposal. These Agreements were for a 12 month term.

9.2.104 The Agreements defined "Retainer" as "a fixed fee payable on a pre-negotiated rate for the agreed period of the arrangement between RSL LifeCare and the Adviser for the provision of the Services in the future set out in Schedule B". [107] Schedule B to each of the Agreements was headed "Schedule B – Retainer" and recorded "The services fee is $[included] exclusive of GST".[108] Although the expression "services fee" in Schedule B was not capitalised, the Agreements included the definition: "Services Fees means the Retainer".[109] Although this definition referred to "fees", the only references within the body of the Agreement and the Schedule were in the singular "fee".[110]

9.2.105 In this regard the Agreements provided that to receive payment for providing the Services, the Adviser had to issue an invoice to RSL LifeCare setting out the "amount of the Services Fee claimed for the period of the Retainer" and that in "addition to the payment of the Retainer" RSL LifeCare would "reimburse any Reimbursable Expenses" (defined as "reasonable out of pocket expenses properly incurred" in providing the Services).[111] RSL Lifcare agreed to pay the Services Fee in equal quarterly payments "during the period of the Retainer".[112]

9.2.106 Each of the Advisory Agreements included the following:

1. Conflicts of interest

1.1. The Advisor warrants that as at the date of this Agreement no conflict of interests exists or is likely to arise in respect of the Advisor providing the Services, and that if such a conflict does arise during the term of this Agreement, the Advisor will notify RSL LifeCare immediately and comply with any reasonable directions or instructions of RSL LifeCare regarding the conflict.

1.2. During the term of this Agreement, this Advisor may provide services to any other entities which do not conflict with the provision of the Services to RSL LifeCare, with RSL LifeCare's prior written consent.

9.2.107 Dr Macri executed her Advisory Agreement on 24 September 2012 and it had a commencement date of 1 October 2012.[113] Mr Longley executed his Advisory Agreement (on behalf of his company) on 19 October 2012 with a commencement date of 1 October 2012.[114] It seems clear that the other Advisory Agreements were executed around this time and were intended to commence on 1 October 2012. However Mr Riddington's Agreement[115] had only a commencement date; Ms Mulliner's Agreement[116] had only an execution date; and the Agreements of Mr Kells,[117] Mr Crosthwaite,[118] Mr White,[119] Mr Rowe[120] and Mr Humphreys[121] had neither an execution date nor a commencement date.

9.2.108 On 14 November 2012, Mr Thompson wrote to Mr Cannings, with a copy to Mr Rowe:

> Don has signed his agreement for the full amount. Please confirm that is what he really wants.[122]

2012 Director's Handbook

9.2.109 An RSL LifeCare Director's Handbook was produced as at 1 November 2012[123], which amongst other things detailed the various Committees of the Board. The membership of each of those Committees was listed to include a certain number of directors.[124]

The 2013 and 2014 Increases

9.2.110 On 1 October 2013 Mr Thompson wrote again to the directors, referring back to the paper that had been prepared the previous year in respect of the "rationale for fees paid to specialist consultants", once again enclosing a copy for their information. That email included the following:[125]

> Given the detailed work completed last year I am not proposing to review the fees in-depth for this year, or probably next year. I am proposing an increase in specialist fees of 5%, effective for the year commencing 1 October 2014.

9.2.111 The email then listed Messrs Crosthwaite, Humphreys, Longley, Rowe and Ms Mulliner at $28,350; Mr Kells and Dr Macri at $35,700; Mr Riddington at $38,850 and Mr White at $47,250. Mr Thompson also advised the directors that the document would not be reviewed at a Board meeting but that the directors were welcome to discuss its contents with him individually or "as a group of consultants who wish to meet" with him.

9.2.112 In November 2014 Mr Thompson wrote again to the directors, this time individually, proposing a 10% increase in the consultancy fees,[126] which was then adopted from 1 October 2014.[127] Accordingly, from that time Messrs Crosthwaite, Humphreys, Longley, Rowe and Ms Mulliner were paid at $31,185 per annum; Mr Kells and Dr Macri at $39,270 per annum; Mr Riddington at $42,735 per annum and Mr White at $51,975 per annum.

9.2.113 In September 2013, Murson holdings Pty Ltd (Murson Holdings), entered into an Advisory Agreement with RSL LifeCare, to provide the services of Mr Murray to RSL LifeCare as an advisor. Murson Holdings terminated its agreement with RSL LifeCare by notice in November 2016 effective 31 December 2016. Mr Murray was instrumental is setting up Homes for Heroes and served as an advisor on the Homes for Heroes Advisory Committee. Mr Murray became a director of RSL LifeCare on 17 April 2015 and served in that role until his retirement in accordance with the Constitution on 30 November 2017. As a director, Mr Murray did not take part in any RSL LifeCare Board decision in respect of the approval of Advisory Agreements or consulting fees paid thereunder. However he gave evidence that he approved the payment of a tools of trade allowance at some stage during the period in which he served as a director.

The PwC Review 2015

9.2.114 On 14 June 2015 Mr Thompson wrote to Mr Cannings in terms that included the following:[128]

> I think it is time we externally reviewed the fees being paid to consultants. I would like to engage PWC to complete a review and make recommendations as to the quantum of payments to individual consultants. Please find attached a paper written in 2012 and please find below a list of current annual fee

9.2.115 On 26 August 2015, Mr O'Callaghan, a consultant at PwC, provided a draft report to Mr Thompson, copied to Mr Cannings, entitled "Remuneration benchmarking - Specialist Consultants".[129] The draft report used estimates of time commitments provided by Mr Broadhead and applied an hourly rate of $230.[130] The draft report recorded that no comment could be made in respect of the estimates for the time commitments since the basis for the figures had not been provided. It made recommendations for the capturing of the hours actually spent, including by the keeping of a log of hours.[131]

9.2.116 On the same day, Mr Thompson responded to Mr O'Callaghan and Mr Cannings in the following terms:[132]

> This is not hitting the brief and is not providing what is required. I have requested you to review our fees and to give us fees for the specialist advisors going forward. You have merely taken estimates of time commitments estimated some time ago and completed no assessment of the reasonableness of those hours. These has been no comparison to what other companies pay for specialist fees – albeit you have attempted to compare them to external consultants on an hourly rate basis. The log book recommended is not going to work and in conflict with what was previously advised by John Cannings.
>
> And there is no recommendation as to what we should be paying specialist consultants in the coming year.
>
> We actually need something that works in the real world.
>
> I requested and still require a document that is prepared by PWC that stands alone and is resilient. This document does not do this. You either have to deliver this or withdraw.

9.2.117 Following further discussions, Mr Thompson wrote to Mr O'Callaghan and Mr Cannings on 31 August 2015 in relation to the subject "Specialist Consulting Fees".[133] That email included the following:

> One matter that continues to concern me however, is the recommendation regarding keeping a record of hours worked as a specialist consultant. I am concerned that it is essentially impossible for the hours worked to meet up with the amount paid from the information you provide.
>
> - The document I prepared in 2012 struggled to estimate consultant hours at over 100 per year – and I firmly believe my hour estimates were very optimistic.
>
> …
>
> So therefore I am concerned that the scenario you are suggesting whereby diary records are kept and submitted will be "setting the specialist consultants up to fail".

9.2.118 On 25 September 2015 PwC provided a further draft report to Mr Thompson.[134] In this report, PwC removed any reference to the individual directors of RSL LifeCare and instead analysed the "time commitment" to be expected of individuals serving on sub-committees generally based upon "market observations"; and the hourly rate by reference to "market hourly rates".

9.2.119 It is apparent that by this time there had been no recording of the actual hours spent by any of the directors of RSL LifeCare during the provision of their consulting services. This much is obvious from PwC's revised draft report in which, although they removed the recommendation for

the keeping of a log, they maintained a recommendation in relation to estimating the appropriate time commitment as follows:[135]

> …we recommend implementing a process to capture the number of hours spent by the consultants that can be used to estimate the total annual hours of service provided. This process would not need to be done every year but once in every 2 - 3 years or if there is a significant change in the responsibilities of the committees. This would provide management with a sound basis on which remuneration can be determined.

9.2.120 Mr Thompson gave the following evidence:[136]

> Q. Mr Thompson, am I right that in 2012 you carried out an estimate of the hours; correct?
> A. Yes.
>
> …
>
> Q. So when in 2015, you asked PwC to produce a reasonable figure, you anticipated that they would at least estimate the hours provided and multiply it by an hourly rate; correct?
> A. That's what they did and it didn't surprise me.
>
> …
>
> Q. In 2015 PwC didn't talk to any of the Directors, correct?
> A. No. As I said, they completed a benchmarking exercise.
>
> Q. Yes but a benchmarking exercise not based upon anything that was actually happening within LifeCare, correct?
> A. Correct, but based on other organisations.

9.2.121 On 6 October 2015 Mr Thompson wrote to the directors:[137]

> As you are aware, RSL LifeCare engages a range of specialist consultants/advisors, to assist with the management of the organisation. Some of these advisors are also directors. The ability to engage directors and remunerate them for services other than as a director has previously been given clearance by John Cannings of PWC.
>
> While the payment of advisors who are also directors has been given legal clearance, there is a conflict of interest when it comes to determining the fees to be paid. The directors who are also advisors are conflicted as they are the recipients of fees for specialist advisory services. The CEO is conflicted as he reports to the Board of Directors.
>
> Therefore every 3-5 years RSL LifeCare seeks external advice as to what rates should be paid for the specialist advisory services. In the interim years we provide an increase based on movement in general remuneration in the workforce. My thanks to PWC for preparing a report which I have attached for your information. I have used this report, with minor variations, to establish the current market rate for payment of fees to each specialist advisor who is also a director. For your information, each specialist advisor receives

> a similar fee with some advisors receiving uplifts for additional workload, such as being chair of committees.
>
> …Based on the overall results, I am proposing a 10% increase in fees payable to specialist advisors for the 2015-2016 year commencing 1 October.
>
> Please review and consider this email plus the one I will send each of you separately, and contact me if you have any concerns or have questions concerning the methodology…

2016 Director's Handbook

9.2.122 An RSL LifeCare Director's Handbook was produced as at February 2016,[138] which amongst other things detailed the various Committees of the Board. The membership of each of those Committees was listed to include a certain number of directors, save for the three Advisory Committees (Homes For Heroes, Dungog Shire and Morshead Canberra Advisory Committees).[139]

The PwC Review 2016

9.2.123 On 31 March 2016, Mr Thompson wrote to Mr O'Callaghan referring to the assistance that had been provided the previous year by PwC in relation to specialist consultant fees. Mr Thompson advised Mr O'Callaghan as follows:[140]

> I have been heavily involved in this as the directors themselves have a significant conflict of interest. I also have a (smaller) conflict of interest.
>
> Going forward to mitigate my conflict of interest I am seeking ways in which perhaps PwC could make the determination on an annual basis – or be the primary people that make the determination with perhaps some limited assistance from me.

9.2.124 Mr Thompson advised Mr O'Callaghan that he would forward the email that he had previously sent to all the directors the previous year together with their individual emails where their fee as a specialist consultant was outlined. He requested Mr O'Callaghan to advise whether PwC would be able to become involved for 2016.[141]

9.2.125 Later in the morning of 31 March 2016, Mr O'Callaghan responded advising Mr Thompson that he was "happy to assist."[142] Mr O'Callaghan's email included the following:

> I think what would be key to the success of this arrangement would be to spend time with the Consultants to agree and standard methodology for capturing the services they are providing and the value of those services. If we can get agreement on this methodology and how it is done and get buy-in for the process from the consultants and the company then it should be a relatively straight forward annual exercise.

9.2.126 Mr Thompson responded on the evening of 31 March 2016 in the following terms:[143]

> Daryl let's talk but the issue with what you are proposing is that they probably do not spend the time to justify the remuneration … There is a need to be creative and hence how it has been done to date.

9.2.127 When Mr Cannings was shown this email at the Inquiry, he gave the following evidence:[144]

Q. That email, on the face of it, appears to be describing a process that was wholly inappropriate, correct?
A. It would seem on the face of it, yes.

9.2.128 Mr Cannings gave evidence that Mr O'Callaghan did not discuss the email with him at any time.[145]

9.2.129 Mr Thompson gave the following evidence in relation to the email:[146]

Q. Is that right, that it was your view that there was a need to be creative?
A. There was a need to be creative as I define it, yes.

Q. Is it right that that is how it had been done to date?
A. Yes.

Q. Right. Let's take it in stages. How do you say that your statement "They probably do not spend the time to justify the remuneration", is untrue?
A. It was written at 10 o'clock at night after having been up at 4.30, and I missed one critical word in that. So – -

Q. Yes. What is the critical word?
A. Between "not" and "spend", there should be the word "all". If I restate it like that:

Daryl, let's talk, but the issue with what you are proposing is that they probably do not all spend the time to justify the remuneration.

Q. So your view, then, was that at least some of the Directors were receiving consulting fees that were not justified by the hours they were spending; correct? Correct?
A. Correct.

...

Q. When you say "there is a need to be creative", you're intending to imply there, are you not, to make something up? Correct?
A. Incorrect.

Q. What do you mean, then, by "creative"?
A. It goes back to the way it has been calculated in terms of we have a retainer, a general retainer arrangement; we are back-ending in a maths equation into that, to try to assess the reasonableness; and then we are also trying to have a standardisation of rates across all the

> Director consultants. There is a need to understand that, rather than, as I read Darryl's email, sit down and just do a spread sheet.

9.2.130 On 22 April 2016, Mr Thompson sent an email to Mr O'Callaghan that included:[147]

> …you were getting a paper ready re specialist consultants that I could issue prior to this meeting. Where is that at?

9.2.131 Mr O'Callaghan responded the same day:[148]

> My understanding was it was a letter to confirm to the Board the process for 2016 review, basically CPI adjustments and the need for an independent external process for a further review of the advisor fees going forward.
>
> See attached letter to the Board prepared on the above basis.

August 2016 Proposal

9.2.132 In August 2016 Mr Thompson prepared a proposal in respect of Specialist Consultant fees which also attached the PwC reports for 2015 and 2016.[149] That proposal was for specialist advisors' fees to be revised upwards by 3% as of 1 October 2016 and that PwC be engaged to review the fees for 2017 and report to the CEO regarding the amount to pay the specialist advisors "based on the advisor's experience, time commitment and professional consulting rates of pay". That document included the following in respect of the history of the payment of the fees up to 2016:[150]

> While the payment of advisors who are also directors has been given legal clearance, there is a conflict of interest when it comes to determining the fees to be paid. The directors who are advisors are conflicted, as they are the recipients of fees for specialist advisory services. The CEO is conflicted as he reports to the Board of Directors. Therefore every 3-5 years RSL LifeCare seeks external advice as to what rates should be paid for the specialist advisory services. In the interim years we provide an increase based on movement in general remuneration in the workforce. In 2014 PWC prepared a report which is attached. The CEO used this report, with minor variations, to establish the current market rate for payment of fees to each specialist advisor who is also a director. For your information, each specialist advisor receives a similar fee with some advisors receiving uplifts for additional workload, such as being Chair of committees.

9.2.133 Mr Thompson then set out the details of each of the director/Advisor's membership of committees, the estimated hours per committee, the total hours per annum, the hours at the particular hourly rate and the actual 2016 fee. The document also included a proposed change to the system from 2017 as follows:[151]

> It has been suggested that the CEO not be involved in the setting of Advisor fees. In reality this has been the case in the past as the CEO has relied on external advice for fee-setting. Nevertheless the CEO is happy

> with not to be involved, but wishes to remind the directors that they should not set fees or be remotely involved in fee-setting as they have a conflict of interest.

Suspension of Payments October 2016

9.2.134 When the controversy in relation to the payment of consultancy fees arose in the media in October 2016,[152] there was a decision made within RSL LifeCare, not at Board level and not minuted, to suspend all payment of consulting fees. Between October 2016 and June 2017, a number of the Advisory Agreements that had been entered into between RSL LifeCare and the directors were either terminated by the directors or RSL LifeCare.[153]

Board Meeting 22 June 2017

9.2.135 On 22 June 2017, a Board meeting of RSL LifeCare, at which the newly elected President of RSL NSW, Mr Brown, attended as *ex officio* director, considered the question of consulting fees in the context of what was referred to as an "update on investigations".[154] In the minutes relating to those investigations, the following was recorded:

> Mr Kells raised his concerns in respect of the Company's decision to suspend payment of fees due under consultancy agreements, stating that contractual requirements are not being met and that the decision to suspend payments was not the subject of a formal board resolution.
>
> Mr Kells requested that his strong objection to the decision to suspend payments of consultancy fees be minuted.
>
> Mr Kells indicated the need for clarity as to the status of amounts due to him under his consultancy agreement, noting his planned retirement as a director and as a consultant when his term as a director expired in October and the need to ensure that his affairs are in order ahead of this time. In this regard, Mr Kells noted his intention to resign as Chairman of ARMAC at the next meeting, indicating that he would remain as a member of ARMAC until October.

9.2.136 The Minutes recorded that the suspension of payments had been in effect since October 2016 and that such suspension was not an admission of error, but rather a prudent measure pending the outcome of the ACNC Inquiry. After further discussion and noting the prospect of Mr Kells receiving a letter from RSL LifeCare stating with clarity the position, Mr Kells was asked to recuse himself. The following resolutions were then passed:

> **Board resolution 2017-06-05:** The Board affirms the decision by the Company to suspend payment of fees due under consultancy agreements entered into by the company and any director on and from 1 October 2016 until such time as such agreements are terminated.

Board resolution 2017-06-06: The Board notes the re-constitution of its sub-committees to focus on governance and stewardship, with the support of an enlarged management team and resolved that:

a) there is no longer a need for Directors to be asked to undertake additional work as consultants;

b) extant consultancy agreements entered into with Directors are to be terminated by company without prejudice to any accrued rights; and

c) the CEO as the signatory to those agreements on behalf of the Company, contact Directors or their associated corporate entity to effect termination of those agreements at the expiry of the requisite period of notice or at such earlier time as may be negotiated.

Board resolution 2017-06-07: The Board resolved that a letter be issued by the company to any director retiring from the Board and having had a payment suspended under a Consultancy Agreement confirming that:

a) the Company considers such Consultancy Agreement to be validly entered into and legally binding;

b) payments suspended in respect of services rendered will be accrued by the Company in its accounts; and

c) the Company intends to pay amounts accrued following the conclusion of the ACNC and Bergin inquiries subject to there being no legal impediment to doing so.

Accrued fees

9.2.137 Mr Condon gave evidence that on 11 October 2017 the Board of RSL LifeCare resolved to reverse the accrual of consulting fees since October 2016 with the intention that those fees would not be paid save in the event of a successful legal challenge.[155]

RSL NSW'S KNOWLEDGE OF CONSULTING FEES

9.2.138 A proposition has been advanced during the Inquiry that RSL NSW must have known of the consulting fees because RSL NSW State Council, through their representative at the RSL LifeCare AGM, was provided with the financial statements in which the Related Party Transactions Note referred to those fees.

9.2.139 The Agendas for each of the RSL LifeCare AGMs of 23 October 2007, 14 October 2008 and 29 October 2009 do not support that proposition. The only material that was presented to those meetings appears to have been the Annual Reports for those years.[156]

9.2.140 The first AGM at which the financial statements appear in the Agenda is the meeting on 28 October 2010.[157] This was also the position for 2011,[158] 2012,[159] 2013,[160] 2014,[161] 2015[162] and 2016.[163]

9.2.141 On 19 September 2012, RSL NSW issued a Certificate of Appointment of Corporate Representative pursuant to section 250D of the Corporations Act in favour of Mr Haines as its appointee to act at meetings of members of RSL LifeCare.[164]

9.2.142 On 22 October 2012, Mr Thompson wrote to Mr Haines congratulating him on his appointment as the RSL NSW corporate representative.[165] Mr Thompson provided Mr Haines with a copy of the Agenda for the AGM, advising that the meeting generally ran for 15 minutes, and thereafter there would be the directors' regular Board meeting followed by the annual thank you luncheon. Mr Thompson confirmed his advice that Mr Haines was then on annual leave, but expressed the hope that he would be able to attend the luncheon. He also informed him that he could provide an office in which he could wait for the period between the end of the AGM and the commencement of luncheon.

9.2.143 The AGM was held on 1 November 2012 and Mr Haines is recorded in the Minutes as having been present. The only general business recorded in the minutes was the adoption of the Minutes of the previous AGM on 27 October 2011; the review, notation and agreement with the 2012 financial statements and the annual report; and that further to the adoption of the new Constitution, the corporate representative appointment of Mr Haines was noted and recorded.[166] Business without notice at the AGM on 1 November 2012 was the recording of the agreement that Mr Thompson would seek advice from Mr Cannings regarding the appointment of members and directors on a three year "rolling period".

9.2.144 The Agenda for the AGM on 24 October 2013 was distributed including to Mr Haines, in which the general business included the 2013 financial statements. Mr Haines was recorded as present at the meeting on 24 October 2013 at which the financial statements for 2013 were accepted.[167]

9.2.145 The AGM for 2014 was attended by Mr Henderson.[168] The Inquiry has not been provided with a certificate of appointment under s 250D of the Corporations Act. However, it appears that he was present in his capacity as State Councillor and representative under the Corporations Act for RSL NSW. At the AGM the 2014 financial statements were accepted.

9.2.146 The agenda for the AGM on 29 October 2015 was distributed to Mr Henderson.[169] He is recorded as having been present at the meeting at which the 2015 Financial Statements were accepted.[170] He was also present at the 2016 AGM on 27 October 2016 at which the 2016 Financial Statements were accepted.[171]

9.2.147 Mr Haines gave evidence that there was no discussion about the financial statements, and in particular the consulting fees, at the RSL LifeCare AGMs that he attended; and that he was not aware that the directors were receiving such fees until Mr Toussaint raised this issue in May 2015.[172]

9.2.148 Mr Toussaint gave evidence that he became aware of a suggestion in late 2014 that RSL LifeCare directors were being paid.[173] He then raised it in early 2015, which led to Mr White, who had become RSL NSW State President on 27 March 2015, demanding that he withdraw the allegation and then sending an email to Mr Toussaint on 21 May 2015 (copied to the other State Councillors), demanding that he refrain from repeating the allegations unless he could provide supporting evidence; and threatening him with "every possible action".[174] This was an inappropriate response from Mr White, as he eventually accepted[175] particularly given his position as RSL NSW State President.

9.2.149 In any event, the result was other than some discussion at a State Council meeting in June 2015, the matter was not taken any further until it broke in the press in about October 2016.[176]

9.2.150 Indeed, Mr Cannings of PwC had provided advice to RSL NSW in July 2016 on the issue of whether the receipt of fees by directors of RSL LifeCare affected the position that a number of them held as State Councillors.[177] By the time consulting fees were raised specifically with Mr Haines by Mr Thompson shortly after his appointment as State President in September 2016, Mr Haines' evidence was that issue was already being discussed widely.[178]

9.2.151 Mr Henderson's evidence was that he became aware that the directors of RSL LifeCare were receiving fees after the 2015 AGM. He raised it at State Council where Mr White "vehemently proclaimed that it was perfectly legal". Although he initially was told that the fees were expenses, it was only later on that "it became obvious that it was being called a consulting fee".[179]

ISSUES FOR DETERMINATION

9.2.152 The issues that arise in the context of the Terms of Inquiry include whether RSL LifeCare and the directors of RSL LifeCare were in breach of condition 20 of RSL LifeCare's fundraising authority and/or their obligations to RSL LifeCare in: (i) entering into the Consultancy Contracts and/or Advisory Agreements; and/or (ii) approving the remuneration under the Contracts and/or the Agreements; and, if so, what led to this.

9.2.153 These issues will be discussed in the next Chapter.

ENDNOTES

[1] See Ex 17, Vol 3, pp 688 - 747.
[2] Ex 8, Vol 1, Tab 1, pp 99 - 100.
[3] Ex 8, Vol 1, Tab 1, p 110.
[4] Ex 8, Vol 1, Tab 1, p 85 (Mr Riddington) and Tr 385 (Dr Macri).
[5] Ex 1, Vol 1, p 4.
[6] Ex 8, Vol 1, Tab 1, pp 88 - 89.
[7] Ex 8, Vol 1, Tab 1, p 89.
[8] Ex 19, Vol 1, p 1.
[9] Ex 1, Vol 3, p 278.
[10] Ex 19, Vol 1, p 1.
[11] Ex 19, Vol 1, p 2.
[12] Ex 19, Vol 1, p 2.
[13] Ex 19, Vol 1, p 2.
[14] Ex 8, Vol 1, Tab 1, pp 87 - 88.
[15] Ex 1, Vol 3, p 383.
[16] Ex 1, Vol 3, pp 289, 304, 350, 363; Ex 1, Vol 1, p 4.
[17] Ex 8, Vol 1, Tab 1, p 90.
[18] Ex 8, Vol 1, Tab 1, p 90.
[19] Ex 8, Vol 1, Tab 1, p 0.1; Ex 8, Vol 4, Tab 13, p 0.1; Ex 1, Vol 3, pp 125, 128; Ex 1, Vol 3, p 369; Ex 8, Vol 1, Tab 2, p 0.1.
[20] Ex 8, Vol 1, Tab 1, p 1.1; Ex 8, Vol 4, Tab 13, p 0.2; Ex 8, Vol 1, Tab 3, p 0.2; Ex 1, Vol 3, p 366; Ex 8, Vol 1, Tab 2, p 0.2.
[21] Ex 1, Vol 1, p 4.
[22] Ex 1, Vol 3, p 171; Ex 1, Vol 1, p 36.
[23] Ex 1, Vol 3, pp 379 - 380.
[24] See for example Ex 1, Vol 3, pp 137, 166.
[25] See for example Ex 1, Vol 1, pp 31, 34, 36.
[26] Ex 1, Vol 1, p 31.
[27] Ex 8, Vol 3, p 1, item 3.3.
[28] Ex 1, Vol 4, p 742, item 3.2.
[29] Ex 1, Vol 3, p 2, item 3.1.
[30] Ex 1, Vol 1, p 34.
[31] Ex 1, Vol 1, p 36.
[32] Ex 1, Vol 1, p 36.
[33] Ex 1, Vol 3, p 256.
[34] Ex 1, Vol 3, p 5, item 5.5.
[35] Ex 1, Vol 1, p 40.
[36] Ex 1, Vol 1, p 46.
[37] Article 9.
[38] Ex 1, Vol 1, p 51.
[39] Ex 1, Vol 1, p 52.
[40] Ex 1, Vol 1, p 54.
[41] Ex 1, Vol 1, p 55.
[42] Ex 1, Vol 1, p 58.
[43] Ex 40, Vol 3, p 1034; RSL LifeCare Constitution (1999), cl 11.
[44] Ex 1, Vol 1, p 63.
[45] Ex 8, Vol 1, Tab 2, p 1; Ex 8, Vol 4, Tab 13, p 1.
[46] Ex 1, Vol 1, p 52.
[47] Ex 8, Vol 1, Tab 3, p 1.
[48] Ex 1, Vol 1, p 69.
[49] Ex 1, Vol 1, p 69.
[50] Ex 1, Vol 3, pp 3, 5.
[51] Ex 1, Vol 1, p 69.
[52] Ex 8, Vol 3, Tab 12, p 1.
[53] Ex 8, Vol 3, Tab 12, p 175.
[54] Tr 2232 - 2233.

[55] Ex 8, Vol 3, Tab 12, p 172.
[56] Ex 8, Vol 1, Tab 2, p 1.
[57] Ex 8, Vol 4, Tab 13, p 1.
[58] Ex 8, Vol 1, Tab 3, p 1.
[59] Ex 8, Vol 2, Tab 6, p 12.
[60] Ex 8, Vol 3, Tab 12, p 1.
[61] Ex 20, Vol 2, pp 457, 482.
[62] Ex 1, Vol 1, pp 80-81.
[63] Ex 1, Vol 1, p 84.
[64] Ex 1, Vol 1, p 86.
[65] Ex 1, Vol 1, pp 86 - 87.
[66] Ex 8, Vol 2, Tab 4, p 1.
[67] Ex 8, Vol 2, Tab 5, p 1.
[68] Ex 8, Vol 3, Tab 9, p 2.
[69] Ex 8, Vol 3, Tab 8, p 1.
[70] Ex 8, Vol 3, Tab 7, p 1.
[71] Ex 3, Vol 1, p 1.
[72] Ex 3, Vol 1, pp 10 - 16.
[73] 30 September 2008, Ex 8, Vol 2, Tab 6, p 17.
[74] 30 June 2009, Ex 8, Vol 3, Tab 12, p 184.
[75] 1 January 2010, see for example Ex 8, Vol 3, Tab 8, p 4.
[76] 26 October 2011, see for example Ex 8, Vol 2, Tab 7, p 6.
[77] 20 September 2012, Ex 8, Vol 4, Tab 13, p 46.
[78] 23 March 2010, see for example Ex 8, Vol 3, Tab 9, p 6.
[79] Ex 1, Vol 1, p 112.
[80] Ex 1, Vol 1, p 116.
[81] See for example Ex 8, Vol 3, Tab 12, p 16.
[82] Tr 901 - 904.
[83] Ex 33, pp 178, 180 - 183.
[84] Ex 1, Vol 1, p 132.
[85] Ex 1, Vol 1, p 134.
[86] Ex 1, Vol 1, pp 134 - 135.
[87] Ex 1, Vol 1, p 251.
[88] Ex 1, Vol 1, p 253.
[89] Ex 1, Vol 1, pp 165, 204.
[90] Ex1, Vol 1, p 235, cl 12.
[91] Ex 1, Vol 1, pp 213 - 214, cl 3.1.
[92] Ex 1, Vol 1, p 214, cl 3.2.
[93] Ex 1, Vol 1, p 228, cl 9.2.
[94] Ex 1, Vol 1, pp 165, 168.
[95] Ex 6, p 97.
[96] Ex 1, Vol 1, p 267.
[97] Ex 1, Vol 1, pp 267 - 268.
[98] Ex 1, Vol 1, p 274.
[99] Ex 1, Vol 1, p 274.
[100] Ex 19, Vol 2, p 168.
[101] Tr 149 - 151.
[102] Ex 1, Vol 3, p 103.
[103] Ex 1, Vol 3, p 103.
[104] Ex 1, Vol 3, pp 104 - 106.
[105] Ex 1, Vol 3, p 105.
[106] Ex 1, Vol 3, p 106.
[107] Ex 1, Vol 1, p 282.
[108] Ex 1, Vol 1, p 285.
[109] Ex 1, Vol 1, p 283
[110] Ex 1, Vol 1, pp 278; 285.
[111] Ex 1, Vol 1, pp 278; 281.
[112] Ex 1, Vol 1, p 278
[113] Ex 8, Vol 1, Tab 2, p 33.

[114] Ex 8, Vol 1, Tab 3, p 25.
[115] Ex 8, Vol 1, Tab 1, p 27.
[116] Ex 8, Vol 3, Tab 9, p 18.
[117] Ex 8, Vol 4, Tab 13, p 32.
[118] Ex 8, Vol 2, Tab 6, p 51.
[119] Ex 8, Vol 3, Tab 12, p 27.
[120] Ex 8, Vol 3, Tab 8, p 15.
[121] Ex 8, Vol 2, Tab 7, p 1.
[122] Ex 19, Vol 1, p 74.
[123] Ex 3, Vol 1, p 243.
[124] Ex 3, Vol 1, pp 253 - 259.
[125] Ex 1, Vol 3, p 107.
[126] See for example Ex 1, Vol 3, p 115.
[127] See for example Ex 17, Vol 3, p 705.
[128] Ex 19, Vol 2, p 161.
[129] Ex 19, Vol 2, pp 169, 170.
[130] Ex 19, Vol 2, pp 177, 178, 191.
[131] Ex 19, Vol 2, p 186.
[132] Ex 19, Vol 2, p 194.
[133] Ex 19, Vol 2, p 196.
[134] Ex 19, Vol 2, pp 200, 202, which appears to have been adopted as the final form of the report – see Ex 1, Vol 2, pp 447, 489, 490.
[135] Ex 19, Vol 2, p 214.
[136] Tr 2717, 2721 - 2722.
[137] Ex 19, Vol 2, p 247.
[138] Ex 3, Vol 2, p 511.
[139] Ex 3, Vol 2, pp 521 - 530.
[140] Ex 19, Vol 2, p 255.
[141] Ex 19, Vol 2, p 255.
[142] Ex 19, Vol 2, p 257.
[143] Ex 19, Vol 2, p 257.
[144] Tr 1475.
[145] Tr 1475.
[146] Tr 2734 - 2735, 2738 - 2739.
[147] Ex 19, Vol 2, p 259.
[148] Ex 19, Vol 2, pp 259, 261.
[149] Ex 1, Vol 3, p 124.
[150] Ex 1, Vol 3, p 122.
[151] Ex 1, Vol 3, p 123.
[152] Ex 18, p 16.
[153] Mr Murray terminated his company's agreement on 30 November 2016 (Ex 8, Vol 3, Tab 11, p 25); Mr Longley terminated his company's agreement on 21 June 2017 (Ex 8, Vol 1, Tab 3, p 68); and on 3 July 2017 RSL LifeCare terminated the agreements of Mr Crosthwaite (Ex 8, Vol 2, Tab 6, pp 127, 128), Mr Humphreys (Ex 8, Vol 2, Tab 7, pp 74 - 76) and Mr Kells (Ex 8, Vol 4, Tab 13, p 65).
[154] Ex 1, Vol 2, p 581.
[155] Tr 3293, 3295.
[156] Ex 1, Vol 4, pp 748, 749, 750.
[157] Ex 1, Vol 4, p 751.
[158] Ex 1, Vol 4, p 752.
[159] Ex 1, Vol 3, p 13.
[160] Ex 1, Vol 4, p 753.
[161] Ex 1, Vol 4, p 756.
[162] Ex 1, Vol 4, p 759.
[163] Ex 1, Vol 4, p 762.
[164] Ex 1, Vol 3, p 12.
[165] Ex 1, Vol 3, p 11.
[166] Ex 1, Vol 3, pp 14 - 15.
[167] Ex 1, Vol 4, pp 754 - 755.

[168] Ex 1, Vol 4, p 757.
[169] Ex 1, Vol 4, p 759.
[170] Ex 1, Vol 4, pp 760 - 761.
[171] Ex 1, Vol 4, p 762; Tr 1556.
[172] Tr 1823 - 1827.
[173] Tr 1726 - 1734.
[174] Ex 10, Vol 1, p 268.
[175] Tr 2256 - 2257.
[176] Tr 1732 - 1734; Ex 18, p 16.
[177] Ex 1, Vol 1, p 388.
[178] Tr 1829 - 1833.
[179] Tr 1556 - 1557.

9.3 RSL LIFECARE CONFLICTS

9.3.1 The Terms of Inquiry require consideration of: (a) whether RSL LifeCare complied with condition 20 (entitled "Conflicts of Interest") in its fundraising authorities during the period covered by the Terms of Inquiry; and (b) whether funds of RSL LifeCare have during the period covered by the Terms of Inquiry been used or expended pursuant to decisions made by a person, or a group including a person, inconsistently with their obligations to RSL LifeCare and/or who had in respect of any such decision a conflict of interest.

9.3.2 As discussed in the previous Chapter, the directors of RSL LifeCare were involved in decisions relating to their own consulting contracts and their own consulting fees. This raises a potential breach of condition 20 of RSL LifeCare's fundraising authority; and the expenditure of money pursuant to decisions of persons who were in a position of conflict of interest. The expenditure of funds in such circumstances also raises the potential breach of the directors' obligations to RSL LifeCare.

9.3.3 The directors of RSL LifeCare also had a duty to act in the best interests of the company and to ensure that it complied with its statutory and other legal obligations.

9.3.4 These matters are of particular relevance to fundraising because the Minister and the community are entitled to have confidence that a recipient of funds raised from the public will operate consistently with its legal obligations; and will apply those funds in accordance with the represented purpose for which they were raised.

RSL LifeCare Constitution

9.3.5 The Constitution of LifeCare in force from 1999 (at that time known as RSL Veterans' Retirement Villages Limited) and continuing into the period covered by the Terms of Inquiry provided relevantly as follows:[1]

> **9.1 No directors' fees**
>
> The directors may not be paid any fees for their ordinary services as directors.
>
> **9.2 Expenses**
>
> Each director is entitled to be paid for all expenses incurred, or to be incurred, by him or her in carrying out the duties of a director but the payments must not exceed an amount previously approved by the directors.

10.2 Quorum

A quorum for a meeting of the directors is 5 directors.

11.1 Director's contracts and conflicts of interest

In relation to director's *(sic)* contracts and conflicts of interest:

(a) despite any rule of law or equity to the contrary, no director is disqualified by that office from contracting with or holding any other office under the Company;

(b) any such contract, or any contract entered into by or on behalf of the Company in which any director is in any way interested, is not avoided;

(c) any director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such director holding that office or of the fiduciary relationship thereby established;

(d) the nature of the director's interests must be disclosed by that director at the meeting of the directors at which the contract is determined on if that interest then exists and has not been disclosed or in any other case at the first meeting of the directors after the acquisition of those interests; and

(e) a director may not vote in that capacity in respect of any contract or arrangements in which the director is interested but may be counted, for the purpose of any resolution regarding it, in the quorum present at the meeting and may, despite that interest, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing it or otherwise.

13.1 Delegation to committee

The directors may:

(f) delegate any of their powers to committees consisting of such one or more directors, as they think fit; and

(g) establish advisory committees (or other committees not having delegated power of directors) consisting of such person or persons as they think fit.

9.3.6 The Constitution of RSL LifeCare in force from 1 March 2012 provided relevantly as follows: [2]

3.1 Application of income and property

The income and property of the Company must:

(a) only be used to pursue its objects as set out in clause 2 of this Constitution; and

(b) not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any member or director.

3.2 Payments in good faith

For clarity, this clause 3 does not prevent the Company from using its income to pay in good faith:

(a) remuneration for services to the Company;

…

(d) for services provided to the Company, including services provided in a professional or technical capacity, where the provision of such services has the prior approval of the directors;

…

(g) out of pocket expenses incurred by a director, a member, an employee or contractor of the Company, on official business of the Company, which has been previously approved by the directors,

even if the recipient of the remuneration or the reimbursement is a member or director.

9.2 Qualification

There must be not less than 50% of directors of the Company (excluding the President for the time being of RSL NSW holding office pursuant to clause 9.3) who have relevant professional experience on the board at any time.

[1.1(m) "professional experience" means having knowledge and skills gained in a professional capacity in one or more of the following:

(i) residential and/or community aged care;

(ii) retirement living;

(iii) property management or development;

(iv) finance;

(v) law; or

(vi) has at least 3 years experience, gained in the last 5 years, as a director of an organisation of comparable size operating in a similar industry as the Company,

and who is able to demonstrate an understanding and empathy with the values of the League and the aims and objectives of RSL NSW as set out in its constitution]

12.2 No directors' fees

The directors may not be paid any fees for their ordinary services as directors. The payment of directors' fees in whatever form is prohibited to directors for serving in that capacity, except for any reasonable payment in respect of an indemnity, exemption, insurance premium or legal costs in respect of an indemnity, exemption, insurance premium or legal costs in respect of liability incurred in the director's capacity as an officer of the Company.

12.3 Expenses of Directors

Each director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at meetings of the directors and general meetings or otherwise in connection with the business of the Company.

13.3 Quorum

A quorum for a meeting of the directors is 5 directors or such other number that is fixed by the directors.

14.1 Director's contracts and conflicts of interest

In relation to director's *(sic)* contracts and conflicts of interest:

(a) despite any rule of law or equity to the contrary, no director is disqualified by that office from contracting with or holding any other office under the Company;

(b) any such contract, or any contract entered into by or on behalf of the Company in which any director is in any way interested, is not avoided;

(c) any director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such director holding that office or of the fiduciary relationship thereby established;

(d) the nature of the director's interests must be disclosed by that director at the meeting of the directors at which the contract is determined on if that interest then exists and has not been disclosed or in any other case at the first meeting of the directors after the acquisition of those interests; and

(e) a director may not vote in that capacity in respect of any contract or arrangements in which the director is interested but may be counted, for the purpose of any resolution regarding it, in the quorum present at the meeting and may, despite that interest, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing it or otherwise.

14.2 Requirement to leave the meeting

Despite anything in the preceding clause, a director's entitlement to vote, or be present, at a meeting of the directors of any director who has a material

personal interest in a matter that is being considered at the meeting is restricted in accordance with section 195 of the Corporations Act as it may apply from time to time to the Company.

16.1 Delegation to committee

The directors may:

(a) delegate any of their powers to committees consisting of such one or more directors, as they think fit; and

(b) establish advisory committees (or other committees not having delegated power of directors) consisting of such person or persons as they think fit.

Conflict of Interest Conditions

9.3.7 There were three fundraising authorities granted to RSL LifeCare (initially RSL Veterans' Retirement Villages Limited) in respect of the period covered by the Terms of Inquiry. The first was for the period 31 December 2005 to 30 December 2010.[3] The second was for the period 31 December 2010 to 30 December 2015.[4] The third and current authority is for the period 31 December 2015 to 30 December 2020.[5]

9.3.8 The 2005 fundraising authority granted to RSL LifeCare included condition 23 which was in the following terms:[6]

23. **Conflicts of interest**

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

9.3.9 RSL LifeCare's 2010 fundraising authority included an almost identical condition, but on this occasion as condition 20. The only change in wording in the condition in the second authority was that the word "occur" in subparagraph (b) was replaced by the word "arise".[7]

9.3.10 RSL LifeCare's 2015 fundraising authority included the following:[8]

20. Conflicts of Interest

(1) The authorised fundraiser must establish a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the authorised fundraiser. This includes the establishment of a register of pecuniary interests.

(2) Members of the governing body of the authorised fundraiser that are, or are to be remunerated, must be excluded from that part of a

meeting of the governing body where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(3) Members of the governing body that are, or are to be remunerated, must not be counted in a quorum for that part of the meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(4) The appointment, conditions of service, remuneration of, or supply of goods or services by a member of the governing body of the authorised fundraiser must be subsequently ratified by a general meeting of the members of the authorised fundraiser (or a committee to which this function has been delegated).

The conflict of interest rule

9.3.11 The conflict of interest rule applies when a director is in a position in which personal interests conflict with a duty to the company. It arises when a reasonable person looking at the relevant facts and circumstances would think there was a real or sensible possibility of conflict.[9]

9.3.12 A very good example of the circumstances in which the rule applies is where a director of a company is a contracting party, either directly or indirectly, with the company of which he is a director pursuant to which the director obtains a benefit.

9.3.13 One of the reasons for the imposition of the conflicts of interest conditions in the fundraising authorities is to enable the Minister to be confident that organisations that handle publicly donated funds have in place a governance structure to ensure that directors are cognisant of the need to avoid being placed in a position of a conflict of interest. The conditions are not and should not be seen as a prohibition on directors being remunerated by the company. Rather they recognise that there will be occasions when directors may provide services to the company and they seek to impose a regime to ensure that directors do not participate in decisions from which they obtain benefit.

9.3.14 The conditions that were imposed in the fundraising authorities between 1 July 2007 and 30 December 2015 included the requirements to establish a register of pecuniary interests and a mechanism for dealing with conflicts of interest. Such steps enable: (a) a transparent assessment of the personal positions and interests held by those who are making decisions on behalf of the company; and (b) a check to be kept on the decision making by the Board members by reminding them which of their number may need to withdraw from involvement in any particular transaction or vote.

9.3.15 The mechanism for "dealing with any conflicts of interest" was not particularised in the conditions that were in place in the period 1 July 2007 to 30 December 2015. However, at the very least the company should have

had a practice pursuant to which directors who were to be remunerated were excluded from those parts of any meeting at which their agreement and/or remuneration were to be considered and determined. The conditions imposed in the fundraising authority from 31 December 2015 to date expressly provide for the exclusion of the directors in such circumstances; the prohibition on directors being counted in a quorum in respect of such a decision; and the requirement for the decision to be ratified in general meeting.

9.3.16 RSL LifeCare (and indeed RSL NSW and RSL WBI) did not comply with the conflict of interest conditions in the fundraising authorities, at least until recently.

THE CONFLICTS OF INTEREST

9.3.17 On 24 October 2006 the RSL LifeCare Board decided not to pursue the option of amending the Constitution in accordance with the advice they had received from Mr Cannings to permit directors to be paid for their services. The Board resolved unanimously that "payments to people (including Directors) for specialist consulting services be confirmed, subject to review and advice from John Cannings".[10]

9.3.18 All of the directors present (Messrs Carlson, Crosthwaite, Kells, Magee, Riddington, Rowe, White, Dr Macri and Ms Mulliner,) voted in respect of that resolution in spite of the fact that it was intended to extend the consultancy contract and payments "to people (including Directors)". Although those "Directors" were not identified in that resolution and the regime was subject to Mr Cannings' advice, there was a real potential conflict of interest in those "Directors" who were seeking to have an agreement pursuant to which they would be paid consulting fees.

9.3.19 Mr Thompson's email to Mr Cannings after this resolution recorded that the Board had decided not to pursue the process that Mr Cannings had already advised upon for "remunerating directors" by the mechanism of amending the Constitution. Mr Thompson informed Mr Cannings that the Board "would like to extend" the "potential to pay specialist consulting fees to consultants" (as was then in place for 'non-RSL' directors) "to all directors"; and requested his advice on "this matter including the way that this can be instigated and monitored".[11] It appears that "all" the directors were interested in taking up the opportunity if the legal advice was positive.

9.3.20 Mr Cannings' advice of 22 November 2006 was "reviewed, noted and approved" at the Board meeting on 20 February 2007. The Minutes recorded that it was "agreed" that "the current persons receiving specialist consulting fees would receive new and revised contracts" and that "other persons interested in receiving specialist consulting fees would contact Mr Thompson".[12] All of the directors present (Messrs

Carlson, Crosthwaite, Kells, Riddington, White, Dr Macri and Ms Mulliner) were party to this formal agreement of the Board.

9.3.21 Clearly the "current persons" (Messrs Kells, Riddington and Dr Macri) should not have been party to the agreement as they were placed in a position of conflict of interest. There is nothing in the Minutes identifying the "other persons" who were "interested in receiving specialist consulting fees". However, from the evidence of the taking up of the contracts in 2007, it is probable those who were interested at the time of this agreement, were Messrs Carlson, Crosthwaite and White. Their involvement in the agreement as noted placed them in a position of conflict of interest. Ms Mulliner was in a different position as she did not take up a contract for consulting services for some years. However in being party to this formal agreement at Board level Ms Mulliner gave herself the option of taking up such a contract should she become "interested".

9.3.22 Thereafter, the Board considered the consulting fees that were to apply to all directors who were either already receiving consulting fees or, pursuant to the resolution on 20 February 2007, were entitled to receive them. All of the directors present voted on each occasion in spite of an obvious conflict of interest and in breach of clause 11.1(e) of the Constitution.

9.3.23 This was the case in respect of Board meetings on 21 August 2007 (Messrs Crosthwaite, Kells, Riddington, White and Dr Macri, who were already receiving fees); and Mr Carlson and Ms Mulliner, who subsequently received fees) 25 February 2010 (Messrs Crosthwaite, Hardman, Kells, Longley, Riddington, Rowe, White, Dr Macri and Ms Mulliner); and 28 October 2010 (Messrs Crosthwaite, Hardman, Kells, Longley, Riddington, Rowe, White, Dr Macri and Ms Mulliner).

9.3.24 Although the setting of the consulting fees was delegated to Mr Thompson on 1 March 2012, this created a different conflict of interest, as Mr Thompson acknowledged.[13] Mr Thompson was delegated the task of determining the consulting fees of the directors upon whom he relied for the continuation of his own employment. That conflict of interest continued until Mr Thompson suspended the payment of the consulting fees in October 2016.

9.3.25 During the period 2012 to 2014 in which Mr Thompson determined the fees, the directors received detail of not only their own increased fee but also those of their fellow directors/consultants. The emails that Mr Thompson forwarded to the directors listed the fees payable to each director and invited discussion if the directors alone "or as a group of consultants" wished to meet with Mr Thompson. This practice continued until 2014, after which Mr Thompson wrote to the directors individually "proposing" increases in the fee.[14]

9.3.26 The failure to have a mechanism for dealing with these conflicts of interest, as required by condition 20 of RSL LifeCare authority (condition 23 prior to 2010) permitted this situation of consulting fees being paid to directors, in spite of ongoing conflicts of interest and ongoing breaches of its Constitution, to continue.

9.3.27 As also recognised by RSL LifeCare, the failure, from 31 December 2015 to have the consulting fees ratified by a general meeting of the members of RSL LifeCare represented a breach of condition 20(4) of the 2015 fundraising authority. RSL LifeCare also failed to obtain the approval of the Minister for the directors to serve as directors notwithstanding the receipt of consulting fees, was in breach of section 48 of the Act.

The Directors' Evidence

9.3.28 It is appropriate to refer to the evidence given by each of the directors of RSL LifeCare in relation to their respective positions when the consulting contracts and the increases in the consulting fees were approved by the Board during the relevant period.

Mr Carlson

9.3.29 Mr Carlson was a director of RSL LifeCare from October 2004 until October 2008.[15]

9.3.30 Mr Carlson was present at the RSL LifeCare Board meeting on 18 October 2005 when it was agreed that the Specialist Consultant fees paid to the external Specialist Consultants were increased by 10%. That was a meeting at which discussion took place about the future remuneration for other members of the Board appointed by RSL NSW State Council. Mr Carlson gave evidence that he recalled that Mr Crosthwaite raised the topic that there should be enquiries made as to whether State Councillor directors should receive remuneration. He recalled that Mr White spoke affirmatively about the idea of RSL directors who were State Councillors receiving remuneration.[16]

9.3.31 Mr Carlson was present at an RSL LifeCare Board meeting on 22 August 2006 when it resolved that as from 1 July 2006 there would be an increase in the Specialist Consulting fees to $18,000 per annum for those directors who were contracted to the company.[17] Mr Carlson gave the following evidence in respect of this resolution:[18]

> Q. Again, it is the case that none of the outside directors, if I can call them that, recused themselves from voting on that resolution; is that right?
> A. No, they didn't recuse them.
>
> Q. They didn't. Did you see it as a conflict of interest them voting on their own fee increase?
> A. Yes, it is a conflict, yes.
>
> Q. You understand - -
> A. Yes.

Q. Can I just clarify that for you. Is it the case you understand now that that was a conflict of interest with them voting of their own fee increase?
A. Yes.

Q. Did you appreciate in 2006 that it was a conflict of interest, them voting on their own fee increases?
A. Yes. Yes.

Q. You appreciated it then. Did you say anything, that it was a conflict of interest?
A. No, I did not, but it upset me.

Q. Why didn't you say anything?
A. Well, I hadn't been a Board member for very long at that time and it was – not many people did say anything. It was sort of a – the CEO and Chairman, they, in my opinion, handled everything and I thought they handled everything reasonably well.

Q. The CEO being Mr Thompson?
A. Yes.

Q. And the Chairman being Mr Rod White?
A. Yes.

Q. Is there anything else you wanted to add?
A Just that it upset me at the time.

Q. Why did it upset you?
A. Well, I didn't think it was right, and later on the same thing.

Q. When you say "later on" what are you referring to?
A. Oh, for the - I'll call them - inside directors getting remuneration.

9.3.32 Mr Carlson was asked about the unanimous resolution on 24 October 2006 referred to earlier that payments "to people (including Directors) in respect of consulting fees was confirmed". He gave the following evidence:[19]

Q. Was it essentially the case that the RSL NSW Directors wanted to be paid and it was simply a case of trying to figure out a mechanism by which that could happen?
A. Yes.

Q. Irrespective of whether they were being paid as directors or consultants; is that right?
A. It seems that way, yes.

Q. Again, it was unanimously resolved and was it the case that nobody recused themselves from voting on that resolution?
A. No.

Q. Again, was that a conflict of interest?
A. Yes.

9.3.33 Mr Carlson was also asked about the resolution on 20 February 2007 when the RSL LifeCare Board agreed that the current persons receiving Specialist Consulting fees would receive new and revised contracts and other persons interested in receiving Specialist Consulting fees would contact Mr Thompson. He gave the following evidence:[20]

Q. And again, do you agree, as of today, that that was a conflict of interest?
A. Yes.

Q. And as of February 2007, was it your opinion that the Directors voting on those resolutions was a conflict of interest?
A. Yes.

…

Q. Did you give consideration as to whether or not it was in the best interests of LifeCare as a company to pay directors for work that they were already doing?
A. Yes, I thought about it, yes.

Q. And, that is, you thought about as of 2007?
A. Yes.

Q. What were your thoughts at the time?
A. Well, you know, I didn't participate; I didn't think it was right, that was all.

…

Q. You did not take up the offer at this stage - -
A No.

Q. - - to receive a specialist consulting fee, did you?
A. No.

Q. Why is that you decided not to take up this offer of accepting a specialist consulting fee as of February 2007?
A. Well, when I joined the Board I just wanted to do something for the RSL and LifeCare. I mean, I never expected to get any remuneration, never.

9.3.34 Mr Carlson was also asked about the resolution at the Board meeting on 21 August 2007 at which Specialist Consulting fees were increased.[21] He gave the following evidence in respect of that resolution:[22]

Q. And as of 2007, did you consider that a conflict of interest?
A. Yes.

Q. You said earlier that it upset you that this conflict of interest existed. What was your understanding in relation to conflicts of interest and directors on board at that time?
A. Well, the first thing that I thought they should have left the room, for a start.

…

Q. So that was based on your prior experience as a director?
A. Yes. Yes.

…

Q. I stopped you just to clarify the source of your knowledge. You said that, first of all, they should have removed themselves. Were there any other aspects you thought they should have done?
A. Oh, declare any interest, but no.

9.3.35 Mr Carlson signed a Specialist Consulting Services Contract dated 4 March 2008. Mr Carlson was motivated to enter into the Contract because the expenses that he was able to claim were capped and although he was out of pocket about $6,000 per year and the retainer fee under the Contract that he entered into was about $19,000 a year, he did not think about the difference. However he had already been out of pocket for three years by the time he entered into the Contract which was only in place until October 2008 when he ceased being a director. He said he did not know how long he was going to be on the RSL LifeCare Board and he had entered into the Contract on "an impulse".[23]

9.3.36 Mr Carlson also gave the following evidence in relation to the question of conflict of interest.[24]

Q. You've given evidence that you were aware at the time – so 2004 to 2008 – that on the LifeCare Board as a Director, voting in relation to consulting fees and increasing consulting fees amounted to a conflict of interest?
A. Yes.

Q. Did you see it as your duty as a Director to raise that issue with other Board members?
A. Yes, I see it as my duty, yes.

Q. Did you comply with that duty as a Director of LifeCare, to raise your concerns about conflicts of interest with other Board members?
A. I can't specifically recall.

Q. Is it that you may have and don't recall, or it's possible, or unlikely?
A. Outside the Boardroom, it's a possibility, yes.

Q. Inside the Boardroom?
A. I'm not sure.

Q. If you had raised such a concern, would you expect it to be included in the minutes of LifeCare.
A. Of course it should be.

Mr Crosthwaite

9.3.37 Mr Crosthwaite was a director of RSL LifeCare from 2004. He gave the following evidence in relation to the payment of the external consultants and the members of State Council who were directors:[25]

Q. So it is right, isn't it, that around about 2005-2006, the position was that those five were receiving fees; correct?
A. Correct.

Q. None of those were State Councillors; correct?
A. Correct.

Q. The other people on the Board were State Councillors; correct?
A. Correct.

Q. And they were not being paid; correct?
A. Correct.

Q. And you didn't think that that was right; correct?
A. Correct.

Q. So you suggested that all of the directors should be paid; correct?
A. I brought to the Board for an open discussion that all directors should be treated equally, because it was in a growth period of RSL LifeCare.

Q. Your view was that this was a multi-million dollar enterprise in which your input should be rewarded in the same way as the others; correct?
A. Talking for myself, I brought professional skills to that Board.

Q. You thought that that should be rewarded with payments; correct?
A. If I went outside the Board and the committee, yes, I should be rewarded.

9.3.38 Mr Crosthwaite gave the following evidence in relation to why he stood down from the Board of RSL LifeCare in late 2016:[26]

Q. Why did you stand down from LifeCare?
A. I stood down because the end of my tenure was close and to make sure there was no conflict of interest with me, myself and others, attending Board meetings and the issues involved between RSL NSW and LifeCare.

Q. You understood that those issues involved consulting fees?
A. Yes.

Q. You recognised, did you, that attending Board meetings or State Council meetings where your consulting fees were to be discussed, represented a conflict of interest?
A. Correct.

Q. Can you then explain why you had not appreciated that earlier, in all of the discussions at the Board of LifeCare about your consulting fees?

A. It was not until 2012 when the issue became apparent. In 2016, it became clear in my mind there was an issue of conflict, the Board and the members approving consulting fees, and that was my decision that I should stand down as a result.

Q. What happened in 2016 to alert to this more clearly?
A. The open discussion by many and my review of many other issues which had formulated up to that period of time.

Q. You gave evidence earlier that after 2012 when the CEO became involved, you accepted that there was still an ongoing problem with conflicts of interest?
A. Consulting fees, no. Conflicts of interest of approval and how it was done, yes.

Q. Yes. Given that there was a conflict of interest that was ongoing, why didn't you do something about it?
A. I accepted legal opinion at that time to continue on.

Q. What legal opinion was that?
A. If I recall, it was from PwC and the initial document and the discussion with PwC within their own building.

Q. So you say that you were aware that there was a conflict of interest, but you had legal opinion expressly saying that that didn't matter; is that right?
A. The legal opinion was the issue between the Board and the public members approving consulting fees, that's where I had the conflict.

Q. Was this Mr Cannings that the advice was from?
A. Yes.

Q. Did you ever speak to him yourself?
A. No. I have spoken to him on numerous occasions, but I can't recall what issues.

Q. This must have been a very important issue to you?
A. Yes.

Q. Why didn't you speak to him one to one and say, "I'm very concerned about this. Can you please explain why there isn't a conflict of interest"?
A. The CEO and – the CEO advised us accordingly and that's what we accepted.

Q. Wasn't the CEO advising you that there is still a conflict of interest, but it seems to be a lesser conflict of interest?
A. What do you mean by "latter", sir.

PUBLIC INQUIRER: "A lesser conflict".

MR CHESHIRE: Q. What I'm suggesting to you is that the CEO Mr Thompson said to you that there was still a conflict of interest, but it was lesser than it had been before?
A. He resolved, to my knowledge, a conflict of interest; lesser, I would

say yes.

Q. Would I be right to say that something was done by getting the CEO involved, but you didn't really give it any thought as to whether that resolved the issue?
A. I thought it resolved the issue at that time.

Mr Hardman

9.3.39 When Mr Hardman was invited to join the Board of RSL LifeCare and became aware that he may be entitled to be paid consulting fees, he asked to see a legal opinion in respect of the validity of such payments. He was provided with Mr Cannings' advice of 22 November 2006 and was satisfied that he was able to cause his company, Bensari to enter into a consultancy agreement with RSL LifeCare.

9.3.40 Mr Hardman provided consultancy services on behalf of Bensari which was paid consulting fees from 2008 to 2011. Mr Hardman was present at the meetings of the Board of RSL LifeCare on 25 February 2010 and 28 October 2010 at which increases in his company's consulting fees were approved.[27] He gave the following evidence:[28]

Q. At the time, in [2010], did you consider it was a conflict of interest for you to vote on whether or not the specialist consulting fee should be increased?
A. No, I didn't consider it, really, because it was a consultancy payment – it was a system that was in place. So the problem we had, of course, is that the only people that could vote were the directors, plus RSL NSW. If nobody could vote, nothing would happen, so I didn't think it was an issue at that time.

Q. Well, did it ever occur to you, or was it ever discussed, that the issue of payment of consulting fees should actually go to a general meeting of the company rather than being voted on by the directors?
A. It wasn't, no.

Q. It wasn't discussed?
A. It wasn't discussed.

Q. Did it occur to you that perhaps that should occur?
A. It occurred to me that what should have happened was that these things – these matters were brought up at the annual general meeting, where RSL NSW would be represented.

…
Q. Looking back at it now, do you consider that it was a conflict of interest, you voting on the increase in the specialist consulting fees?
A. That's correct.

Q. What is the basis of your understanding now that it was a conflict of interest?
A. Because of clause 11 in the memorandum and articles of association at that time.

…

Q. Considering it now, do you consider it was a conflict of interest for you to vote on the fee increases?
A. That's correct.

9.3.41 Mr Hardman gave the following evidence as to when he became aware of the position of conflict of interest into which he was placed in voting in respect of his company's consulting fees:[29]

Q. When did you become aware, to your understanding, that voting in the February 2010 and October 2010 Board meetings could constitute a breach of 11.1(e)?
A. It didn't occur to me at that time.

Q. When did it occur to you?
A. Really, when – when this Inquiry began.

Mr Harrigan

9.3.42 Mr Harrigan was a director of RSL LifeCare from October 2003 to October 2005. He was an RSL NSW State Councillor throughout that period.

9.3.43 Mr Harrigan was asked about the Board meeting on 18 October 2005 at which there was discussion in respect of Specialist Consultant fees.[30] He gave the following evidence:[31]

Q. You understood that was discussion about those five who were already getting their fees; correct?
A. I can't recall that, but yes.

Q. Just going forward to the second paragraph, do you see that it was agreed by the Board that the specialist consultant fees be increased by 10 per cent; do you see that?
A. Yes, I see that. Yes

Q. Do you see there that all of the Directors have voted for an increase in specialist consultant fees; correct?
A. Correct, yes.

Q. You recognise that the five Directors who were receiving fees were, effectively, voting for them to be awarded an increase; correct?
A. Yes.

Q. Sitting here today, you would recognise that as being a conflict of interest for them; correct?
A. Yes.

Q. Is that a matter that occurred to you at the time?
A. There was one occasion when I was on the Board of Directors at LifeCare where we left the room for a conflict of interest; that's the only thing I can recall. I'm not sure what the conflict of interest was, but what had actually happened was there was only those members that were being paid left in the room and the six or seven of us were

outside the room. And I distinctly remember that because we went outside and I had raised the question of what the conflict of interest was about and I went and got a legal opinion about conflicts of interest later on.

…

Q. As you say from 5.11, there is no reference there to anybody having left the room? Do you see that?
A. Correct.

Q. It appears from that that all of the Directors have voted; correct?
A. Yes.

Q. As I put to you and you accepted, those Directors who were receiving fees have voted for an increase in their fees of 10 per cent?
A. Yes.

Q. You recognise that as a conflict of interest. What I then asked you was did you recognise that at the time?
A. No, if I was there, no.

Mr Humphreys

9.3.44 Mr Humphreys provided a written Statement of Evidence to the Inquiry in which he dealt with the topic "Conflict of interest". It included the following:[32]

89. Whenever I perceived a conflict of interest at RSL NSW State Council meetings or RSL LifeCare board meetings, I informed the chairman and the Board of my concern.

90. They then adjudicated and decided whether I had a true conflict and, if so, I left the meeting while discussions took place.

91. As an example, at the last RSL LifeCare meeting I attended, I informed the board that I was considering to stand down from the RSL NSW State Council. I asked the board whether they thought, in the circumstances, that I should stand down as a director of RSL LifeCare. I stepped out from the meeting while the board debated. In my absence it was resolved that I apply for leave of absence. I subsequently applied for leave of absence and this was granted.

92. I am not sure whether the minutes of RSL LifeCare board meetings or RSL NSW State Council meetings recorded each time I raised concerns with respect to conflicts of interest.

9.3.45 Mr Humphreys served as a director of RSL LifeCare from October 2011 until July 2017.

9.3.46 Mr Humphreys gave evidence that he understood that when he received the Consulting Agreement, the retainer figure of $21,525 had been set by the Board. He gave the following evidence in this regard:[33]

Q. So you understood that the Board were setting the consulting fees of each of the Board members?
A. At that stage, yes.

Q. Sitting here today, you would recognise that that represented a conflict of interest; correct?
A. Of course it was. Of course it was.

Q. Is that a matter that you appreciated straightaway?
A What, now or then?

Q. Then ...
A. No – well, as I say, I didn't see it as a conflict of interest because I was never asked to vote at a Board meeting on any of the remunerations that the consultants were getting, because the first Board meeting I attended in 2012, which was at Penrith, the resolution was passed, along with a number of others, that the delegation of the remuneration fees was handed over to the CEO.

Q. At that time, did you appreciate that a system whereby Directors voted for their own fees represented a conflict of interest?
A. Yes.

Q. Did you discuss that with the rest of the Board?
A. No.

Q. Why not?
A. Well, it didn't occur to me at that stage, and after the resolution was passed I saw no need to talk to them about it.

9.3.47 Mr Humphreys was asked about the emails that Mr Thompson circulated to the members of the Board in relation to his proposals for increases in their fees. He gave the following evidence in respect of this matter:[34]

Q. The reality was that Mr Thompson was making a proposal to the Directors for them to say whether they agreed with it or not; correct?
A. I suppose you could read it that way, yes.

Q. That represented, didn't it – that reintroduced the conflict of interest for the Directors; correct?
A. I can see that, yes.

…

Q. You accept, then, that what had happened in March of 2012, the delegation to Mr Thompson, appeared not to have resolved the problem; correct?
A. In what respect? I'm sorry, I'm not with you.

Q. That the conflict of interest of the Directors being involved in relation to their own fees appears still to be there when Mr Thompson is sending an email to you in October 2013; correct?
A. I think so, yes.

Q. You agree with me?
A. I can see that, yes, on this document, yes.

Q. So that meant, did it not, that there was an ongoing conflict of interest that the Directors had because of their involvement in relation to their consulting fees; correct?
A. I don't know how many of the consultants actually spoke – or this list of Directors here who actually spoke to Mr Thompson. I know I didn't. I didn't take his offer up on it. I accepted what was there, because I didn't want to – as I said, I saw the conflict of interest and I knew that it was there.

Q. But even Mr Thompson having written this email to you as a proposal, suggested that the conflict had not been resolved; correct?
A. You could draw that analogy, yes.

Q. You recognise that today, don't you?
A. I do, yes.

Q. Did you recognise that at the time?
A. No.

Mr Kells

9.3.48 At the commencement of his evidence, Mr Kells was granted leave to make a statement that included the following:[35]

> Along the way, lines of roles and responsibilities became blurred, resulting in a lack of adherence to important principles of conflict of interest, full knowledge of some legislation and acceptance of payments.

9.3.49 Mr Kells was asked about the agreement recorded in the Minutes of the RSL LifeCare Board meeting on 20 February 2007 in respect of "other persons interested in receiving specialist consulting fees" contacting Mr Thompson.[36] Mr Kells gave the following evidence in relation to that matter:[37]

Q. May I take it from the tone of your voice, that you recognise that that was not a resolution which ought to have been made in the interests of the company?

A. Correct.

Q. It appears, indeed, that no real consideration was given as to whether, in fact, this was in the interests of the company; correct?

A. It would appear that way.

Q. And, indeed, given that all of the Directors were, effectively, voting for them to receive consulting fees, they were in a position of conflict of interest; correct?
A. Yes.

Q. And it appears that nobody recognised that at the time; is that correct?
A. Yes, as I remember.

Q. May I ask you, you had some concerns about this; correct?
A. When Mr Crosthwaite proposed this, I mentioned, as he was talking, I believe, that I don't agree with this, or I think it's wrong that I – for one who is accused of being forthright, I wasn't forthright enough to register that at the end because it went on to discussions with Mr Crosthwaite about obtaining laptops and this sort of thing.

Q. Am I right, then, that in the context of this resolution on 20 February 2007, you went along with it, but at least in retrospect, you wish that you had been more vocal in resisting it?
A. Absolutely. I've been vocal outside, I wish I had have, but as it progressed, this is my responsibility, I don't resile from it. There was obviously nobody else objecting and I suffered weakness in not expressing my strong view.

9.3.50 Mr Kells was also asked about the resolution in February 2010 at which the consulting fees were increased. He gave the following evidence:[38]

Q. Again, sitting here today, you recognise that whenever the Directors voted in respect of their own fees, that was a position of conflict of interest; correct?
A. Yes, I did, but, if I may, I'd always had a question, and I still do, that when there was an agreement, that the Directors would approve the consultancy fees, because it was my understanding that the consultancy fees, which is a term I also disagree with, and it wasn't rectified until some time later, that the consultancy fees, as expressed, were for advising the company which was represented at that stage by this advice to the Chief Executive to the management of the company.

Q. Yes.
A. That was, certainly, my understanding for all those years.

Q. But in terms of setting the fees when you voted for increases –
A. Yes.

Q. - - in your own fees –
A. Yes, it was wrong.

9.3.51 Mr Kells was also asked about the delegation of the determination of the consulting fees to Mr Thompson. He gave the following evidence:[39]

Q. Do you remember that in 2012 the setting of the fees was delegated to Mr Thompson?
A. I do. Yes, I'm not denying it happened, but I'm more aware of it now with this stuff coming out.

Q. Do you recall any discussion as to why that was being delegated to Mr Thompson?
A. No, I don't. I'm not saying it wasn't, but I don't recall it.

Q. Do you remember any discussion to the effect of a recognition that the Directors did have a conflict of interest in voting for their own fees, and so it should be delegated to Mr Thompson?
A. Not a full recognition, no, because it should have been done, to my mind. I thought it was already being done, but he was setting the fees and always had.

Q. Just dealing with that proposition, Mr Thompson, as Chief Executive Officer, reported to the Board; correct?
A. Yes, indeed.

Q. So he depended for his salary and his ongoing employment upon the Board; correct?
A. I had many discussions with Mr Thompson about this. He reported to the Board, not to RSL State Council.

Q. So delegating the setting of the Directors' fees to Mr Thompson put him in a position of conflict of interest, didn't it?
A. Totally.

9.3.52 Mr Kells recollected raising the problem of Mr Thompson determining the consulting fees at a meeting some years later in about 2013 or 2014. Although he was not sure, he thought that Messrs Riddington and Longley were present. He said that when he raised it, those present "looked a bit confused" and when he pressed the issue Mr Longley said that he saw what he meant: "paying the piper". Mr Kells was asked whether anything had happened and he gave the following evidence:

> No. Look it's my fault because I didn't – I didn't think I had enough people telling me I was, you know, forthright. I just felt, well, I raised it, I'm not happy with it, but if I may add, please Mr Cheshire, Madam Inquirer, this was an extremely difficult situation: (a), you've got Directors paying their own fees – approving the payment of their own fees; you've then got the Chief Executive approving them as well, and always had. I didn't know – I couldn't work out how this could be resolved. There was a suggestion later on, when it all hit the fan in 2017, which I thought was a damn good idea, and that was to appoint an eminent person to evaluate external consultants', remuneration consultants' advice

9.3.53 Mr Kells concluded that this proposal had been overtaken by the appointment of a number of Inquiries.[40]

Mr Longley

9.3.54 Mr Longley was asked about the February 2007 Board meeting at which it was agreed that the current directors receiving consulting fees were to receive new and revised contracts. He gave the following evidence in respect of this matter:[41]

Q. In effect, that meant that the specialist consultants who were directors and receiving fees, were voting for themselves to receive new and revised contracts; correct?
A. Yes.

Q. Sitting here today, you would recognise that that represented a conflict of interest?
A. Yes.

Q. At the time, did it occur to you that that was a conflict of interest?
A. I don't recollect that being the case.

Q. You were present during the discussions. If you had realised or thought there was a problem with conflict of interest, you would have said something; correct?
A. Yes.

Q. The fact that you are not recorded as saying anything would suggest that you did not appreciate that there was a conflict of interest; correct?
A. Correct.

9.3.55 Mr Longley was also asked about the agreement noted in the Minutes of that Board meeting that other persons interested in receiving Specialist Consulting fees should contact Mr Thompson. He accepted that it would appear that it did not occur to him at the time that this might not be in the best interests of RSL LifeCare.[42]

9.3.56 Mr Longley was present at the meeting on 21 August 2007 at which the consulting fees were increased. At that time, he was not a director of the company but gave evidence that he appreciated "now" that the directors voting on that resolution were placed in a position of conflict of interest.[43]

9.3.57 Mr Longley also gave evidence in relation to the resolution on 25 February 2010 approving increases in consulting fees. That evidence included the following:[44]

Q. You will recognise today that that represented a conflict of interest for those who voted; correct?
A. Yes.

Q. Given that you were then a director, you would recognise that that represented a conflict of interest for you; correct?
A. Correct.

…

Q. You recognise today that that was a conflict of interest in you voting on that resolution; correct?
A. Today, yes.

Q. May we take it from that answer that you did not appreciate at the time that there was a conflict of interest; correct?
A. I don't recollect.

PUBLIC INQUIRER: Q. Sorry?
A. I don't recollect. I presume not. If I had, I would have, yes, correct.

MR CHESHIRE: Q. If you had, you would have - -
A. Made a comment about it, absolutely.

Q. Would you have proceeded with the vote if you had realised there was a conflict of interest in you voting?
A. I would have moved – I would have engaged in such a fashion to make sure that it was resolved, or I was satisfied that there was not a problem.

Q How could that have been done?
A. Well, legal advice and so on, but you've been through those elements.

Q. I am asking you. Surely the answer to that is, well, you could not vote in respect of your own fees; isn't that right?
A. Correct.

9.3.58 Mr Longley was then asked about clause 11.1(e) of the RSL LifeCare Constitution prohibiting a director from voting in respect of any contract or arrangement in which the director is interested.[45] His evidence included the following:

Q. Relevantly, a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested; do you see that?
A. Yes.

Q. Do you accept that that meant that you were prohibited by the Constitution in voting in respect of any contract concerning your consulting fees?
A. Yes.

Q. And that that also applied to all the other directors who were voting in respect of their consulting fees; correct?
A. Yes.

Q. Would it be right to say that you did not appreciate that you did not appreciate at the time, that the vote was contrary to that provision in

the Constitution?
A. Correct.

…

Q. I have been asking about a directors meeting on 26 February 2010.
A. Yes.

Q. I'm asking you now whether, thinking back, whether now is it possible that you had not in fact read the Constitution by this time?
A. Possible, yes.

Q. What about likely? Do you think it more likely that you had not read it or that you had read it but not taken in this clause?
A. I think it more likely that I read it and had not taken in that clause.

9.3.59 Mr Longley accepted that the resolutions in respect of further increases in consulting fees on which he voted placed him in a position of conflict of interest and was in breach of the Constitution.[46] He was also asked about the position in which Mr Thompson was placed in setting the consulting fees for the directors and in particular in 2015 when Mr Thompson raised the issue of conflict of interest.[47] Mr Longley gave the following evidence in relation to that aspect of the process:

Q. Mr Thompson, in effect, said "Well I think it is conflict of interest me doing this and I don't want to be involved any further". You don't disagree with that?
A. No.

Q. That's in 2015. Mr Thompson raising an issue of a conflict of interest; correct?
A. Yes.

Q. Was that the first time that you ever considered or heard an issue about conflicts of interest being raised in respect of the setting of consulting fees?
A. I don't know.

PUBLIC INQUIRER: Q. When was the first time you heard of it?
A. Madam Inquirer, I don't – I know the issue was raised, I know it progressively came to awareness. I couldn't say – I don't – I don't recollect when that might have occurred.

MR CHESHIRE: Q. How can a conflict of interest progressively come to mind? Surely you either appreciate it or you don't?
A. That may have been the first occasion, it may have been raised earlier, it may have been raised – obviously it wasn't raised later, the first time it wasn't raised - -

PUBLIC INQUIRER: Q. Just pause. Start again.
A. Yes.

Q. It is an important issue.
A. Yes.

Q. Can you tell me when the conflict of interest in relation to directors voting on the payment to themselves of directors' fees or consultants' fees first came to your knowledge?
A. No, I can't. I don't remember the date or the time – the date.

9.3.60 Mr Longley gave the following additional evidence:[48]

PUBLIC INQUIRER: …

Q. You've given me an indication that you accept that you have committed multiple breaches of your duties to LifeCare – you understand that; correct?
A. Yes.

Q. Both in respect of your obligations not to place yourself in a conflict of interest, and also in respect of the breaches of the Constitution, you understand that?
A. Yes.

Q. This is an organisation that seems to have numerous directors in your position – you understand that?
A. Yes.

Q. Can you tell me how on earth this could happen?
A. I have asked myself that same question. When I came on to the organisation, that was the arrangement and understanding. That's not an excuse, I readily understand that. When, from time to time, the issue was raised in one form or another, at one degree or another, advice is sought. The advice is yes, this is a way to resolve this issue, we accept that advice and we move on.

I don't want to make that an excuse, Madam Inquirer. I look back and I try and see how was this not more apparent to us. I am – you know, I see that, and even up to very late, the main issue of conflict was understood as being principally around those directors who are also State Councillors, not around those who are specialists. Even that awareness occurs very late. Why is that? I don't know. The alarm bells, the signals, something, just – my apologies.

9.3.61 Mr Longley was also questioned about the request made of Mr Kells to recuse himself at the Board Meeting of 22 June 2017. Ultimately, he accepted that he also had a conflict of interest in relation to the subject matter of the discussion at that Board Meeting.[49] He accepted that he too should have recused himself.[50]

Dr Macri

9.3.62 Dr Macri was asked about the Minutes of the RSL LifeCare Board meeting on 20 February 2007 in which it was noted that the current persons receiving Specialist Consulting fees would receive new and revised contracts. She gave the following evidence:[51]

Q. You would accept then that you were voting in relation to a matter that concerned your own consulting fees; correct?
A. Correct.

Q. Knowing what you know today, you would recognise that as being a conflict of interest, that position that you were in; correct?
A. Correct.

Q. Would I be right to say that that was something that did not occur to you at the time?
A. That's right.

Q. Do you now accept that it ought to have done?
A. Absolutely.

Q. When was the first time that you became aware that there was any possibility of there being a conflict of interest in directors voting in respect of contracts concerning their own consulting fees?
A. When the Inquiry started.

Q. So in May of this year?
A. That's right.

9.3.63 Dr Macri accepted that her involvement on voting on the resolution for an increase in fees on 21 August 2007 placed her in a position of conflict of interest.[52] She had "no idea" how the determination of the consulting fees passed from the Board to Mr Thompson in March 2012.[53]

9.3.64 Dr Macri accepted that she was placed in a position of conflict of interest in voting on her own contract for consulting fees and on the increases in consulting fees.[54]

Ms Mulliner

9.3.65 Ms Mulliner gave evidence in respect of the resolutions in relation to the increase in consultancy fees as follows:[55]

Q. From time to time, there were board meetings of LifeCare where issues of consulting fees were discussed; correct?
A. Yes.

Q. And votes were taken and motions passed about consulting fees?
A. Yes.

Q. And the people to whom the consulting fees related were members of the board; correct?
A. Yes.

Q. And so the vote in relation to the consulting fees for directors was carried out and involved the very directors who were going to get those fees?
A. Yes.

Q. Sitting here today, that immediately would make one think conflict of interest?
A. Yes, conflict of interest. That's why that process changed.

…

Q. In any event, up until – whether it is 2010 or 2012 – the fact is that directors were voting in respect of motions where there was a clear conflict of interest?
A. Yes.

Q. Did that ever occur to you at the time?
A. No.

9.3.66 Although Ms Mulliner was a director of RSL LifeCare from approximately 2003, she did not take up the opportunity of entering into a Consultancy Agreement with RSL LifeCare until 17 March 2010 which was backdated to 1 October 2009.

9.3.67 Ms Mulliner's evidence was that the reason she did not take up a Consultancy Agreement until 2010 was that she thought it was not "an automatic right to receive consulting fees" and that one had to be providing some extra services to the organisation.[56] She felt that at the time that she took consulting fees up, it was partly due to her knowledge that she had developed in relation to residents' services and that she had extra knowledge and expertise. She expressed the view that the consulting fees were for the extra knowledge that she brought to the Board in relation to the aged care area.[57]

Mr Riddington

9.3.68 Mr Riddington was present at the Board Meeting of RSL LifeCare on 18 October 2005 when it was agreed that the Specialist Consultants' fees be increased by 10%. He was Deputy Chairman of the Board relevantly from 2007 to 2015. He gave the following evidence in respect of that resolution:[58]

Q. It is not recorded on this document that anybody excused themselves for this part of the meeting. Do you see that?
A. Correct.

Q. So we may take it from that that all of the directors voted in respect

of this agreement to increase the fees by 10 per cent; correct?
A. Correct.

Q. Do you accept now that voting in respect of an increase to your own fees represented a conflict of interest?
A. That's been pointed out to me, yes.

Q. When did you first become aware of that conflict or potential conflict of interest in you voting on your own fees?
A. Certainly not in 2005.

Q. Right. When was it for the first time?
A. I'm not sure that we - well, I ever quite came to grips with the fact that we approved our own remuneration. Certainly later that became uncomfortable.

Q. When you say "came to grips", do you mean by that that it did not occur to you that there was any problem until much later; is that right?
A. Correct.

Q. And nobody raised the fact that there might be a problem at least until much later; is that right?
A. I would say so, yes. It's not recorded, so I'm assuming that didn't come up.

9.3.69 Mr Riddington accepted that he was placed in a position of conflict of interest when he voted at the Board Meeting on 23 February 2007 for the resolution that those persons receiving Specialist Consulting fees (of which he was one) would receive new and revised contracts.[59] However he said he doubted whether he understood or realised the enormity of the situation at the time.[60]

9.3.70 Mr Riddington also accepted that he was placed in a position of conflict of interest in voting on the resolution on 25 February 2010 in respect of the consulting fees and the tools of trade allowance. He also accepted that he was placed in a position of conflict of interest when he voted on the resolution at the Board Meeting on 28 October 2010 in respect of the fees and the tools of trade allowance and travel expenses.[61] He gave the following evidence:[62]

Q. In 2012 the matter is delegated to Mr Thompson, whereas before, as I've shown you from the Board minutes, the Board had been voting for its increases?
A. Mmm.

Q. It would seem strange to delegate it to Mr Thompson if, in fact, he was uncomfortable about it?
A. I just said I can't recall why it was done.

…

Q. When I asked you earlier about your conflicts of interest that you recognise now in directors voting for their own fees, are you now able to assist when did you first become aware of that conflict, or even a possible conflict, of directors voting for their own fees?
A. I'm not sure that I ever put it down as a major conflict of interest.

Q. But you're aware of that now?
A. Oh, certainly now, yes.

Q. When did you first become aware of it being a, as you say, major conflict of interest?
A. Now, when you - when I had to appear for this.

Q. Today?
A. No, not today, no. The preparation for appearing for today.

Q. So in the last month or so?
A. Yes.

…

Q. Just going back to my question – and the answer may be in the last month or so – when did you first become aware that directors voting for their own fees in respect of their own contracts was a possible conflict of interest?
A. Only recently.

Q. In the last month or so?
A. Yes.

9.3.71 Mr Riddington gave evidence that Mr Thompson had raised the issue of being uncomfortable in 2015. He gave the following evidence:[63]

Q. You said that Mr Thompson in 2015 raised him being uncomfortable with being involved in the directors' fees. Did it occur to you in 2012 that delegating the setting of fees to Mr Thompson put him in a position of conflict of interest?
A. No, I didn't see that.

Q. Looking back now, can you see that that did present difficulties for Mr Thompson, giving that he relied upon the Board of Directors for his employment?
A. No, that hadn't occurred to me.

Q. But do you now, sitting here today, recognise that issue?
A. Well, now that you've pointed it out, I suppose that's correct.

Mr Rowe

9.3.72 At the commencement of his evidence Mr Rowe made a statement in which he said that he recognised that during his period of tenure as State

President he failed to recognise conflicts of interest in various structures and as a result he failed to address them. Although in that statement Mr Rowe said that he recognised that the directors of RSL LifeCare should not have accepted payments from the company or entered into Consultancy Agreements, he did not address the conflicts of interest in respect of the resolutions relating to increases in consulting fees.[64] However Mr Rowe gave the following evidence in relation to the agreement noted in the Minutes of the RSL LifeCare Board on 20 February 2007:[65]

Q. You may recall that in February 2007, there was a Board resolution that anybody interested in receiving consultancy fees could approach Mr Thompson; do you recall that?
A. I can recall that, yes.

Q. You understand that that invitation extended to all of the Directors; correct?
A. Correct.

Q. You understand that all of the Directors voting on that resolution was a conflict of interest?
A. Yes.

Q. It should not have happened?
A. True. Agreed.

Q. But at that stage, you, yourself, did not approach Mr Thompson for a contract; is that correct?
A. That's correct.

9.3.73 Mr Rowe also gave the following evidence:[66]

Q. Is it correct that when you left LifeCare in 2014, you, at that stage, did not have an understanding that what you had been doing with LifeCare represented a conflict of interest?
A. That's correct.

Q. When did you first become aware that what you had done in relation to LifeCare was a conflict of interest?
A. When I saw the details of this Inquiry.

Mr White

9.3.74 Mr White gave the following evidence in respect of the resolution of the RSL LifeCare Board on 18 October 2005 at which there was approval of an increase of 10% in the consultancy fees for the Specialist Consultants:[67]

Q. Would you, sitting here today, recognise that as being a conflict of interest?
A. I thought the Board would have to, you know, given my experience – that the Board was the authority for approving any increases.

Q. Yes.
A. I don't know who else would have done it.

Q. Are you aware Mr White, that if you as an individual Director have a conflict of interest, you have certain duties to declare that and withdraw yourself from the meeting; isn't that right?
A. But there would be no-one left to - -

Q. Wait a moment, Mr White.
A. Yes.

Q. You are aware of that aren't you?
A. I am now.

Q. Were you not at the time aware of that?
A. No, my experience at the time didn't alert me that we were not compliant.

Q. Do you accept, at least today, that this was not appropriate for them to vote on their own fees; correct?
A. Well, I accept – yes, I accept that in hindsight, but - -

PUBLIC INQUIRER: Q. Sorry, I missed that?
A. But I didn't at the time. I thought that the Board being the Board, had to address any of these proposals, and I understand now the conflict element.

MR CHESHIRE: Q. Yes, you accept now that this should not have occurred; correct?
A. Yes.

Q. Indeed, if only a number of those present were receiving consulting fees, they could have absented themselves from the meeting, couldn't they, at that point?
A. Yes.

Q. But that didn't occur; correct?
A. No, because either the advice or lack of advice influenced that.

9.3.75 Mr White accepted that there was never a formal resolution of the members of RSL LifeCare ratifying the consulting fees. He accepted that this was a matter that ought to have been taken formally to a general meeting of RSL LifeCare.[68]

9.3.76 Mr White was asked about the agreement noted in the Minutes of the Board meeting on 20 February 2007 that other persons interested in receiving Specialist Consulting fees could contact Mr Thompson.[69] He gave the following evidence in relation to this matter:[70]

Q. You accept it is a Board decision whether to enter into a consulting agreement; correct?

A. The Board approves the consulting agreements.

Q. Right. This was the Board approving the principle, wasn't it, of you entering into an agreement?
A. Yes.

Q. Therefore, you are voting on a contract ultimately with yourself; correct?
A. Yes. Yes.

Q. Sitting here today, you would recognise that conflict of interest, wouldn't you?
A. Yes, but at the time the advice, either legal advice and management expertise advice to the Board, indicated that we were not in conflict with what we see here now.

9.3.77 However Mr White's position waivered and he then gave the following evidence:[71]

Q. Therefore, I'm asking you in the context of voting for an increase in your fees. You recognise today that the Board, voting for an increase in their own fees, put them in a position of conflict of interest; correct?
A. Yes, but it was within the authority we believed we had.

Q. What authority? Do you mean that the Board - -
A. The Board was going to do it.

Q. The general meeting, the members?
A. Well, the general meeting – the members aren't there. I'm saying – I don't know, I'm trying to remember back.

…

Q. Right. Do you accept that sitting here today, you did not deal with that issue correctly?
A. Yes, but I believe at the time I did.

Q. You believe now at the time that you dealt with it properly then, or you believed at the time?
A. I believed at the time I dealt with it correctly.

Q. Right. But you now recognise that you did not; correct?
A. Yes.

9.3.78 Ultimately, Mr White accepted that all of the directors who voted in relation to the resolution for the increase in their consulting fees had a conflict of interest.[72]

9.3.79 Mr White gave the following evidence in respect of his role as Chairman of RSL LifeCare:[73]

PUBLIC INQUIRER …

Q. Did you understand that you had an obligation to set up appropriate mechanisms to deal with conflicts of interest?
A. Yes.

Q. Did you understand you had a fundraising authority?
A. Yes.

Q. You understand that, under the Charitable Fundraising Act, you had to comply with the conditions of the authority?
A. Yes.

Q. And did you also understand that in circumstances where you do take the public's money, that you do have to make sure that the governance of the Board is consistent with the conditions that are imposed upon you by the Minister and/or his delegate or her delegate?
A. Yes.

Q. One of those was to make sure you had mechanism for dealing with conflicts of interest?
A. Yes.

Q. So the public can be satisfied that when they pay you their money, you are operating honestly, openly and transparently and consistently with your conditions.
A. Yes.

Q. You understand that didn't happen?
A. Yes, but I think we did as much as we could.

Q. You tried hard, you told me that, but you got it wrong, didn't you?
A. Yes.

9.3.80 Mr White said that he relied significantly upon advice that he received from Mr Cannings and other sources.[74]

Mr Thompson's position

9.3.81 When the Specialist Consultant Agreements were first established in 2001, the Board decided on which committees the consultants would serve. Mr Thompson gave the following evidence in respect of this process:[75]

Q. Did you understand that the five specialists who had consulting fees were sitting on the Board to determine which committees they should sit on?
A. They were on the Board and the Board determined who sat on the committees, yes.

Q. Did it occur to you that that might be a conflict of interest?

PUBLIC INQUIRER: For the directors?

MR CHESHIRE: Q. For the directors.
A. At that point in time, no.

Q. It occurs to you now, though, doesn't it?
A. I can see your point.

…
Q. Again, sitting here today, you would appreciate that that represented a conflict of interest for those five directors; correct?
A. Sitting here today, yes.

Q. Did that not occur to you at the time?
A. No.

Q. Did Mr Cannings not raise that with you?
A. No.

9.3.82 Mr Thompson accepted that in his role as CEO, he provided advice to the directors on various matters, including if he thought that there was a situation in which the directors might be in breach of their duties.[76] He gave the following evidence in respect of the directors voting on a 10% increase of the consulting fees for specialist consultants on 18 October 2005:[77]

Q. At this meeting all of the directors who were noted at the start as being present, may we take it, may we not, they were all present and agreed as set out in the second paragraph of 5.11?
A. Yes.

Q. That means that in those board directors, that included a number of the specialist consultants who were getting consulting fees, correct?
A. Yes.

Q. Those persons were voting for themselves to get a 10 per cent increase; correct?
A. Yes.

Q. Sitting here today, that doesn't sound right, does it?
A. Not at all.

…

Q. You were present at the meeting, correct?
A. Yes.

Q. Did that not occur to you at the time?
A. At the time no.

9.3.83 The Minutes of the Board meeting at which the 10% increase was approved on 18 October 2015 included the following:[78]

> Discussion took place in relation to a proposed increase in Specialist Consultant's fees payable to the relevant directors who provide specific industry experience to the Board.

9.3.84 Mr Thompson gave the following evidence in respect of this aspect of the Board minutes:[79]

> Q. What is being recorded in that first sentence is that discussions were about the fees being payable to directors who provided specific industry experience to the Board?
> A. Yes.
>
> Q. That is different, isn't it, from providing services on a committee?
> A. Yes. I think it is a wording issue, but what you're saying is correct.
>
> Q. I want to suggest to you that that is how the Board were discussing it, but they were discussing it in terms of their perception which is that they were being paid, those specialists, for what they did on the board with their experience; do you accept that?
> A. That's what the words say.
>
> …
>
> Q. Then it is recorded that the Board also discussed future remuneration for the other members of the board also appointed by the RSL State Council. What was being suggested there is that it wouldn't just be the five specialist directors that would be paid, but it would be all Board members; correct?
> A. Correct.
>
> Q. Those other Board members, as you understood it, wanted to be paid for being on the board; correct?
> A. I can't recall the conversation, but that's certainly what the words say.

9.3.85 As discussed earlier, the Board obtained advice from Mr Cannings in October 2006 in respect of the possible amendment to the Constitution to enable directors' fees to be paid to RSL LifeCare directors. However the Board decided not to proceed in accordance with this advice. Mr Thompson's evidence was that the directors did not do so because of the "requirements to seek ministerial approval" and in particular Mr Cannings' advice that approval would be unlikely, and that if it were obtained, "it would be for one director only". Whereas the Board wanted all directors to be paid and accordingly instructed Mr Thompson to seek advice from Mr Cannings on RSL LifeCare's ability to pay specialist consultant's fees to all the directors.[80]

9.3.86 When Mr Thompson sought advice from Mr Cannings in respect of the consulting fees, he informed him that the Board would like to extend the potential of consulting fees to "all directors".[81] He gave the following evidence in relation to this step:

Q. You understood, didn't you, that back in 2001 the reason why the five specialists were being paid for committees whereas the other RSL directors were not being paid, was because the five were specialists; correct?
A. Correct.

Q. What then did you understand could be the justification for the non-specialists then being paid consulting fees for being on these committees?
A. I was not sure that there would be justification when I sent this email.

9.3.87 Mr Thompson accepted that to justify the payment of the consulting fees to all directors, it was necessary that they possessed "specialist skills".[82] Mr Thompson gave the following evidence:[83]

> With regard to the specialist skills I had a concern regarding the potential to offer contracts to all directors on the board, so I emailed John Cannings, I think on 27 November, asking his advice as to the specialist skills that would be – sorry, asking about, "RSL directors", what specialist skills they could have for RSL LifeCare, particularly those without aged care or retirement village experience.
>
> I had a concern, I sought legal advice, and the response was that they could have experience in other areas, such as property, banking – sorry, property finance, veterans culture.

9.3.88 Mr Cannings advised that the directors "should be able to demonstrate at a basic level some special and unique knowledge or understanding" from which LifeCare would benefit.[84]

9.3.89 Mr Thompson understood that the directors needed to perform duties outside of their ordinary directors' duties to receive payment of consulting fees. He gave the following evidence:[85]

Q. Mr Thompson, at that time, some of the RSL directors, the non-specialists who were not getting consulting fees, they were sitting on committees, weren't they?
A. Yes.

Q. They weren't being paid; correct?
A. Correct.

Q. They didn't have consulting contracts, correct?
A. Correct.

Q. In serving on those committees, they were serving as part of their role as directors; correct?
A. They were serving on those committees. Whether they were serving in that role as directors as defined in the letter from – the legal advice, it's not covered.

Q. What other capacity could they have been serving on those

committees other than as directors?

A. Volunteers.

Q. Volunteers? Did you understand that the directors who sat on committees were sitting as volunteers; is that your evidence?

A. No, but you're trying to connect the role of director extending into a committee, and this advice states that you can – there were three hurdles to go through: one being sitting on a committee; the committee's role is different to a Board; and that they have a specialist skill. That's as I understood the advice.

…

Q. In effect, you read this, did you, as being, "Well, anybody who serves on any committee can be paid for that because being on a committee is not part of being a director"; is that right?

A. That's as I read the advice, yes.

9.3.90 When these matters became the subject of adverse media comment, Mr Thompson published an "Open Letter to Residents, Clients, Relatives, Staff and Supporters of RSL LifeCare" on 10 October 2016 that included the following:[86]

> LFC's directors do not receive remuneration for their role as a director. They spend many, many unpaid hours assisting in the direction and broad oversight of the company, on your behalf. Some are paid, however, to assist the CEO and the executive team on projects that typically fall outside the responsibility of unpaid directors. This consultancy work includes detailed review and analysis of LFC's programs, care and quality of services provided, veteran and welfare initiatives, and detailed financial analysis. Being compensated for this work is entirely appropriate, as it is for other consultants who advise us from time to time.

9.3.91 When asked about this, he gave the following evidence:[87]

Q. Really, what you were simply trying to justify is duties that the directors did that you understood was outside their role as directors; correct?

A. Yes.

9.3.92 Mr Thompson's evidence was that he had understood from 2006 that consulting fees were paid for service on committees. Although the Open Letter did not mention "committees", the reference to the nature of the work including "detailed review and analysis" of various aspects of RSL LifeCare's work would have been performed at least in part on committees.

9.3.93 Mr Thompson understood that the Board resolution in February 2007 for consulting fees to be paid to all directors applied to future directors who joined the Board of RSL LifeCare and served on a committee.[88] Although he turned his mind to whether the arrangement was legal and sought

legal advice about it, he agreed that neither he nor, to his knowledge, anyone else at RSL LifeCare gave any thought as to whether the company should be making these payments.[89]

9.3.94 Mr Thompson accepted that the RSL LifeCare Director's Handbooks give the impression that part of the ordinary services of a director was service on sub-committees and in those circumstances payment for such services would be for a director's ordinary role as a director. He observed that this appeared to be in conflict with Mr Cannings' advice. However he said he relied on Mr Cannings' advice and was "comfortable that directors could be paid for being on committees."[90]

9.3.95 Mr Thompson was concerned that payment of consulting fees to Mr Rowe was not consistent with Mr Cannings' advice because Mr Rowe was not to serve on any committees. He raised his concern in a meeting with Mr White and in a telephone conversation with Mr Cannings. He asked each of them whether in light of the fact that Mr Rowe was not to serve on any committees, it was "appropriate" for him to receive a consultancy agreement. Both Mr Cannings and Mr White advised Mr Thompson that Mr Rowe would be bringing significant veterans' experience to RSL LifeCare and he should have a consultancy agreement. Mr Thompson did not in those circumstances "see that it necessarily flowed that payments were directly for him being a director".[91]

9.3.96 Although the agreements were redrafted in 2012 with a revised definition of the services to be provided, Mr Thompson did not view them as a significant change.[92] He regarded them as "continuations of pre-existing agreements" as a continuation of the retainer arrangements.[93]

9.3.97 Mr Thompson sent an email to Mr Cannings on 14 November 2012, in relation to Mr Rowe's agreement in the following terms:[94]

> Don Rowe has signed his agreement for the full amount. Please confirm that this is what he really wants.

9.3.98 He gave the following evidence in relation to this email:[95]

Q. Well, wasn't that your view? Was it your view that he was entitled to the full amount under his consulting agreement?
A. I've always had a concern about Don Rowe's agreement.

Q. Your concern was that he didn't really justify the amount that he was getting; correct?
A. Incorrect.

Q. Did you think that the hours he was providing justified the fee that he was specified under his agreement?
A. The Board had previously approved that and it was one of the issues that I inherited in 2012.

Q. Yes. And what was your view on it?
A. My view was that he didn't sit on committees, but I'd already been

told that it was appropriate to pay him because of the other services that he was providing.

Q. You weren't convinced by that, were you?
A. It was outside the normal scope of the consultancy agreements.

Q. Yes.
A. I was checking.

…

Q. No. Did you check about the amount in this way with any of other directors?
A. In this specific way, no.

Q. The reason why you singled out Mr Rowe was because of your concern that he didn't sit on committees; correct?
A. Yes.

Q. And, therefore, that he didn't really deserve to get the consulting fee; correct?
A. No, that had already been determined that it was appropriate.

Q. You still had a concern about that, didn't you?
A. I wanted it checked.

Q. Because of you having a concern; correct?
A. I wanted him to be sure of what he was signing up for.

Q. If you had no concerns, why check?
A. Because his contract, his arrangement, was different to all the other Director consultants.

Q. Isn't this right, though, Mr Thompson: you were allowing Mr Rowe to say whether he wanted the full amount or some lesser amount; correct?
A. That's how it reads.

Q. Yes. Do you say that we should read it in some other way?
A. No, I can't - all I'm saying there is that I can't actually recall sending the email.

…

Q. Did you think that it was appropriate to leave the decision of whether to receive the full amount to Mr Rowe?
A. Given the previous instructions that I had received, I don't know that it was unreasonable.

9.3.99 Clearly Mr Thompson was concerned that Mr Rowe did not satisfy one of the pre-requisites in Mr Cannings' advice of service on committees.

9.3.100 In the context of his 2012 review of consulting fees, Mr Thompson gave the following evidence:[96]

Q. Now, as I understand your evidence, in 2012, you carried out a review where you formed a view as to the retainer based upon the number of hours that you estimated, multiplied by an hourly rate; correct?
A. Correct.

Q. Therefore, the exercise that you needed to carry out in 2012 was to estimate the hours that they were actually spending; correct?
A. Correct.

9.3.101 Mr Thompson gave evidence that he became "alive to" the directors being in a position of conflict of interest in determining their own consulting fees in about 2010 or 2011.97 He raised the issue with Mr Cannings who advised him that the directors should not be approving their fee increases and that he would raise it with the Chairman (Mr White).[98] When the Board resolved to increase the consulting fees on 25 February 2010, the following was noted at the end of the resolution:[99]

> It was agreed that the CEO, under the guidance of the Chairman, will review the level of the fees for Specialist Consultants, including seeking appropriate external assistance (eg John Cannings, PWC Legal), to provide the Board with assistance when determining the rates for Specialist Consultants for 2011.

9.3.102 Mr Thompson's evidence, which was not disputed by Mr Cannings,[100] was that Mr Cannings told him that the directors had a conflict in setting their own fees and although Mr Thompson had a conflict, since he depended for his employment and his remuneration upon the directors, it was a "lesser" conflict and should be managed by external advice.[101]

9.3.103 It was not until 2012 that a resolution formally delegating the task of determining the consulting fees to Mr Thompson was made. It was in the following terms:[102]

1. Any transaction involving a director other than payment of specialist consulting fees or out-of-pocket expenses must be considered by the Board.

2. Out-of-pocket expenses of Directors are to be reviewed by the chairman.

3. Specialist consulting fees will be determined by the CEO in conjunction with review and advice from appropriate external organizations such as PWC.

9.3.104 Mr Thompson then went about the task of determining the consulting fees as the Board had directed. In order to reach that determination he consulted with Mr Cannings and created the table, as he put it, "putting some maths around" the fees that had been charged up to that point "to see whether the retainers generally could be supported.[103] Mr Thompson approached the task on the basis that the "retainer arrangement" was to be continued.[104] Mr Thompson's 2012 assessment was carried out without

any input from the directors as to the time they actually spent on committees.[105]

9.3.105 PwC reviewed the consulting fees in 2015 and 2016. When Mr O'Callaghan sent Mr Thompson the draft report in 2015, Mr Thompson expressed the view that he was concerned about the recommendation regarding keeping a record of hours worked as a specialist consultant. He advised Mr O'Callaghan that it was essentially impossible for the hours worked to meet up with the amount paid from the information that he provided. It was in that communication that Mr Thompson said that he had "struggled to estimate consultant hours at over 100 per year" and that he firmly believed those estimates were very "optimistic". He suggested that Mr O'Callaghan's recommendation for record keeping was really "setting the specialist consultants up to fail".[106]

9.3.106 The content of this email and the email in 2016 in which Mr Thompson suggested that Mr O'Callaghan had to be "creative" would be a basis for concern if the consultants were being paid on a a fee for service basis. However that was not the arrangement. Each of them was on a retainer which had been fixed over the years prior to the time that Mr Thompson was delegated the task of determining the fees.

9.3.107 Mr Thompson was asked what he meant by the expression "creative". He described it as follows:[107]

> It goes back to the way it had been calculated in terms of we have a retainer, a general retainer arrangement; we are back-ending in a maths equation into that, to try to assess the reasonableness; and then we are also trying to have a standardisation of rates across all the Director consultants. There is a need to understand that, rather than, as I read Darryl's email, sit down and just do a spreadsheet.
>
> …
>
> We have over here a general retainer agreement. To assess the reasonableness of that, you are completing a maths equation. You are looking at it to see whether it's reasonable or not.
>
> …
>
> The whole purpose of the 2012 and 2015 review were to assess the reasonableness of the fees, the general fees being paid, yes.

9.3.108 It is probable that Mr Thompson believed at least from 2012 that, as he stated in his March 2016 email, the directors "probably do not spend the time to justify the remuneration". His evidence was that this was to be read as "probably do not all spend the time".[108] In any event this was still consistent with a belief as at 2012 that a number of the directors were not spending the time so as to be able to justify the consulting fees that they were receiving.

9.3.109 Mr Thompson raised the conflict of interest in emails to directors in 2015 in explaining why he had sought relevant external input from PwC; and in 2016 discussions were underway as to further managing his conflict of interest when the issue broke in the media and he suspended the consulting fees.

Mr Cannings' position

9.3.110 Before turning to Mr Cannings evidence in respect of the advice that he gave to RSL LifeCare in respect of the consulting contracts and the setting of consulting fees, it is appropriate to deal with some very unsatisfactory aspects of his evidence. Mr Cannings has been the legal adviser to RSL NSW and RSL LifeCare since 2001. Until he gave evidence at the Inquiry, it was understood that he was the Honorary Legal Adviser to both of those entities. However during his evidence Mr Cannings claimed that he had no recollection of having been appointed to the role of Honorary Legal Adviser to RSL LifeCare. He also claimed that such a position had not been "affirmed or reconfirmed" with him over the 14 or 15 years of giving advice to RSL LifeCare.[109]

9.3.111 One of the difficulties for Mr Cannings was that he described himself as the Honorary Legal Adviser to RSL LifeCare on 22 November 2015 in his application for consideration for appointment as a director of RSL LifeCare. It included the following:[110]

> I have been a corporate and commercial lawyer for the past 32 years and involved with the Returned & Services League of Australia (New South Wales Branch) for the past 29 years (18 as Senior Honorary Legal Adviser) and as Honorary Legal Adviser to LifeCare for the past 14 years.
>
> I intend to retire from PwC from 30 June 2016 and as such I am permitted to take on board roles in my last year. If I were to be appointed to the Board prior to 30 June 2016 I would cease my role as Honorary Legal Adviser from that date.

9.3.112 In his "Bio" attached to the letter Mr Cannings also described himself as follows:[111]

> John is the Honorary Legal Adviser to the Board of RSL LifeCare Limited and has been involved with LifeCare for over 14 years. He has also been the Senior Honorary Legal Officer with the Returned & Services League of Australia (NSW Branch) since 1997.

9.3.113 Mr Cannings accepted that it was reasonable to assume from reading that letter that more probably than not, he did consider himself as the Honorary Legal Adviser to RSL LifeCare at the time he wrote the letter. However he then claimed that he could not "explain the incorporation of those words in my letter of intent". He claimed that he did not believe that at any time he had been the Honorary Legal Adviser at RSL LifeCare and that the letter "perplexed" him.[112]

9.3.114 The fact of the matter is that PwC and Mr Cannings charged fees for the legal advice that was given by PwC to RSL LifeCare. It may be that, on reflection, Mr Cannings' analysis of the situation was that it was inappropriate for him to be described as Honorary Legal Adviser when he was receiving fees for the legal services he provided to RSL LifeCare. In any event, the description that he gave himself and that RSL LifeCare gave him over the years was never corrected by Mr Cannings.

9.3.115 Another aspect of Mr Cannings' evidence that is of concern was in relation to the Advisory Agreement he caused his company ICAN Consulting Pty Ltd (ICAN) to enter into with RSL LifeCare. That Advisory Agreement was dated 18 May 2016, effective from 1 March 2016. The services to be provided under that agreement were recorded as follows:[113]

> (a) Upon invitation, attendance at specific Executive or Board sub-committee meetings of RSL LifeCare;
>
> (b) Provide written reports as required;
>
> (c) Specific specialist advisory services in one or more of the following areas:
>
> (i) Contemporary Veterans
>
> (A) the provision of specialist advice and input to RSL LifeCare in the area of Veterans' Culture;
>
> (B) the provision of advice in areas such as the RSL, other ex-service entities, the Australian Defence Force and the culture and ethos of war veterans;
>
> (C) the provision of information regarding the needs of contemporary veterans and ways in which these needs can be provided for;
>
> (D) the fee for the services was $29,700 exclusive of any GST.

9.3.116 On 29 January 2017 Mr Cannings sent a tax invoice and timesheet for the period 1 March 2016 to 31 December 2016 to Mr Broadhead under cover of an email entitled "ICAN Consulting Tax invoice". The tax invoice was for "Services provided pursuant to Advisory Agreement dated 18 May 2016 for the period 1 March to 31 December 2016 as set out in the attached Time Sheet". That fee for the services was $24,750. The Time Sheet listed 38.25 hours over the period, particularising attendances at committee meetings, reviewing committee papers and travelling to and from Narrabeen. It also included two teleconferences, one with Mr Thompson and Mr Lewis "re Best Practice for engaging consultants" and another with the Executive Committee re "various issues".[114] The tax invoice also included expenses for the Harbour Tunnel with a total with GST included of $27,278.95.

9.3.117 On 14 February 2017 Mr Cannings wrote to Mr Broadhead by email "just wondering what the timing is for payment of the invoice I sent through in Jan".[115]

9.3.118 It is apparent that Messrs Broadhead and Thompson were liaising in respect of Mr Cannings' invoice and on 14 February 20 17 Mr Thompson wrote to Mr Lewis, a partner of PwC (from which firm Mr Cannings had retired on 30 November 2016). Mr Thompson wrote to Mr Lewis in the following terms:[116]

> I need some advice on payment of consulting fees to John Cannings. Can you review briefly and talk to me about it? You might have a conflict of interest or simply not want to get involved – and that is fine. I am giving you the option of advising me or not. If not, no worries and I will talk to Prolegis.

9.3.119 There is no evidence that Mr Lewis responded to this email in writing.

9.3.120 Mr Cannings' application to become a director of RSL LifeCare was successful.

9.3.121 On 8 March 2017 Mr Thompson wrote to Mr Cannings referring to their meeting earlier that day and welcoming him as a director of RSL LifeCare. On 9 March 2017 Mr Cannings wrote to Mr Thompson, with a copy to Mr Broadhead, advising that, further to the discussions that took place the previous day, he would "like to propose that the Advisory Agreement entered into May 2016 between my company ICAN Consulting Pty Ltd and RSL LifeCare Limited be now formally terminated given my appointment to the board". Mr Thompson responded almost immediately by email saying that he agreed with this termination.[117]

9.3.122 On 9 March 2017 Mr Cannings wrote to Mr Broadhead, with a copy to Mr Thompson, attaching an amended tax invoice in relation to his Advisory Agreement. That invoice removed the charge of $24,750 for the services provided pursuant to the Advisory Agreement leaving only the expenses of the Harbour Tunnel tolls of $49.05.[118] Shortly after sending the amended tax invoice Mr Cannings then wrote to Mr Thompson in the following terms: [119]

> **Subject: Draft Invoice for Legal and strategic corporate advisory services:**
>
> Hi Ron as discussed attached for your attention is a draft invoice for services performed between August 2016 and end of January 2017.
>
> If you have any issues please call me otherwise I will issue in final form.

9.3.123 That invoice was in the following terms:

For Services provided to RSL LifeCare for the period August 2016 to end of January (inclusive) in relation to advice to the Board, the executive committee, the CEO and Chair variously on matters arising out of the	**$39,000.00**

actions taken by RSL NSW, RSL National and the review by the ACNC.	
Plus GST of	$ 3,900.00
Total payable	$42,900.00

9.3.124 That same afternoon Mr Thompson wrote to Mr Longley, then the Chairman of RSL LifeCare, in the following terms:[120]

> John Cannings provided extensive legal advice to us from October to January. Attached is his invoice for that period. I believe that the fee is reasonable. Please review and consider approval for Mark to pay.

9.3.125 Within 30 minutes Mr Longley responded in the following terms:[121]

> **Subject: re Draft Invoice for Legal and strategic corporate advisory services**
>
> Approved per Board resolution

9.3.126 On 13 March 2017 Mr Thompson wrote to Mr Lewis enclosing the draft invoice and asking him for advice "as to the reasonableness of the invoice". At the same time Mr Thompson wrote to Mr Broadhead asking him to "hold off" paying Mr Cannings' invoice until it was approved by Mr Lewis. In the same communication Mr Thompson asked Mr Broadhead to provide wording of the "related party transaction note re PWC and John Cannings payments and check John ok with the wording and it going in the accounts before you pay".[122]

9.3.127 Mr Lewis responded to Mr Thompson on 14 March 2017 in the following terms:

> From a practitioner's perspective, I think it is reasonable, my thoughts below:
>
> 1. I expect that this invoice was prepared on the basis of time spent by John over the period from August to January;
>
> 2. as a partner of PwC John's legal rate would have been $795/hr, which obviously includes firm overhead etc… At this rate, the invoice suggests 52 hours of John's time;
>
> 3. since I became involved in October, I have spoken with John regularly about the matters the subject of the invoice and note his attendance at several conference (sic) with counsel and the board. I can't comment on the period from August to October, however it seems feasible that John would have spent more than 52 hours during the period of the invoice.
>
> I obviously have something of a conflict on this, in view of John's previous position at the firm. I am sure John will be able to give you more colour on his activities over the period if you would like more information.

9.3.128 On 17 March 2017 Mr Broadhead wrote to Mr Cannings in respect of the related party note in the RSL LifeCare accounts in respect of his recent invoice, requesting his confirmation as to whether he was "ok" with the wording. The wording proposed by Mr Broadhead was: "in the financial year, John Cannings received $39,000 for legal services prior to his appointment as a director in April 2017".[123]

9.3.129 On the same day Mr Cannings responded to Mr Broadhead advising "Yes, I am comfortable with the disclosure".[124] However on 20 March 2017 Mr Cannings wrote to Mr Thompson with a copy to Mr Broadhead in relation to the disclosure in the following terms:[125]

> Hi just to be complete should the final wording be "in the financial year, John Cannings *received a financial benefit via his company ICAN Consulting Pty Ltd* receiving $39,000 for services *performed* prior to his appointment as a director in March 2017".

9.3.130 Mr Cannings gave evidence in relation to the amendment to his original tax invoice in which he removed the charge for his services under the Advisory Agreement. That evidence was as follows:[126]

Q. Apart from the expenses in the Harbour Tunnel, why then was that no charge was being made?
A. After I issued the first invoice, which was in or about January 2017, I followed that up in February. I had – to the best of my recollection, Ron Thompson called me and reminded me that I had indicated to him, in or about May or June of 2016 that I did not want to be paid under the advisory agreement until such time as I had retired from PricewaterhouseCoopers.

Q. Right, but this is then 9 March 2017?
A. That is correct.

Q. And you'd retired from PricewaterhouseCoopers at this time?
A. That is correct.

Q. Then why did you issue a revised invoice when you're seeking nothing under the advisory agreement?
A. Because I'd issued an invoice mistakenly for the full 10-month period and when I had the conversation with Mr Thompson, he reminded me and I recall it and he was correct, that I had indicated that I did not want to be paid under the advisory agreement until I'd retired from PricewaterhouseCoopers, which originally was going to be 30 June, but that date was pushed out until 30 November, by which time he then advised me the company had suspended the payment of consulting fees; so I agreed to reissue my invoice for no charge.

Q. Just to be clear, when you said you didn't want to be paid before you retired from PwC, did you mean receive money or be paid in respect of any period?
A. Paid in respect of any period.

9.3.131 Mr Cannings was then asked about the new invoice that he issued in respect of the services seeking an amount of $39,000 plus GST and gave the following evidence:[127]

> Q. What was this for then?
> A. This was for services that Mr Thompson had asked me to provide towards the end of August to assist himself, the Chair, the Executive Committee in responding to the various matters raised by RSL NSW, RSL National and the ACNC.
>
> Q. So was that legal advice?
> A. No, it wasn't. It was in relation – it was advice, working with PwC Legal, but it was – I - my view of it was it was corporate advisory services.
>
> Q. Did you not understand that that came under your advisory agreement?
> A. No, in fact quite distinct, it had nothing to do with sitting on the various committees, the ARMAC Committee, the SPPD or Homes for Heroes, or providing any other specialised services in respect of that agreement, which was very specific. At the time that I was asked to do it, I said to Mr Thompson, to the best of my recollection, "I'm going to charge you for doing this work". He agreed. We didn't think it was going to be that much and then it grew over time.

9.3.132 Mr Cannings denied that the rendering of this invoice had anything to do with the amended invoice removing the fee for the services under the Advisory Agreement on the same day. He said that he had found out that he had become a board member and he was "tidying up my invoices" and "resolving all outstanding arrangements".

9.3.133 Mr Cannings denied that the advice that he was providing for the fee of $39,000 was legal advice. He claimed that the heading of the email attaching the invoice referring to "legal services" was "an error" and that it was "incorrect". However he accepted that the recipient of such an email with a heading of "Legal" services would understand that it was for legal advice. He agreed that he did not provide any time sheet with the invoice for $39,000 and that he charged an hourly rate of $500 per hour as he had agreed with Mr Thompson in August 2016.[128]

9.3.134 Although Mr Cannings acknowledged that he said he was comfortable with Mr Broadhead's wording in respect of legal services in the disclosure note for the accounts, he did not accept that he knew very well that what he was being paid for were legal services. He accepted that if he had provided either legal or consulting services between August and 30 November 2016 a proportion of the fee should have gone to his firm PwC, as he remained a partner until 30 November 2016.[129]

9.3.135 Mr Cannings' evidence in respect of these invoices and his denial that the services he provided were legal services was most unimpressive. There is no doubt that when Mr Cannings provided his invoice under cover of an email headed for "legal and strategic corporate advisory services" he did

so intentionally because he had, in his own mind, been providing legal and strategic corporate advisory services to RSL LifeCare. His claim that this description was an error is untenable.

9.3.136 Mr Cannings provided an advice on 23 February 2016 as the Senior Honorary Adviser to the then State Secretary of RSL NSW. That contained a proposal to allow for the appointment of persons known to the Board of RSL LifeCare without advertisement. Mr Cannings accepted that in the context of him potentially joining the Board of RSL LifeCare, such advice was potentially to his benefit. He gave the following evidence in respect of this matter:[130]

> Q. So, sitting here today, you would recognise that you had a conflict of interest in providing legal advice to RSL NSW about such changes to the Constitution of LifeCare; correct?
> A. Yes, I would.
>
> Q. Did that occur to you at the time?
> A. No, it didn't. I wasn't involved in the preparation of any amendments to the RSL LifeCare Constitution. I was asked by Mr Kolomeitz to review the proposed changes and to advise state branch whether they were reasonable or not.
>
> Q. You would accept, would you not, that does not alter the fact that in giving this advice you were, in fact, in a position of conflict of interest?
> A. I believe that there was potential conflict of interest, yes.
>
> Q. So you accept, sitting here today, you should not have given this advice; correct?
> A. No. I think I should have made the disclosure.

9.3.137 Mr Cannings was asked about further advice that he provided to Mr Kolomeitz in July 2016 in respect of whether the consultancy fees paid to the directors of RSL Lifecare were in breach of the Constitution. When Mr Cannings provided that advice, he informed Mr Kolomeitz that he was then currently an adviser to RSL LifeCare and was entitled to receive payment for his services in accordance with the Constitution of RSL LifeCare. However he noted that he was not a director of RSL LifeCare, nor an officer of RSL NSW. He gave the following evidence:[131]

> Q. … That was a recognition of the possible conflict of interest by you; correct?
> A. Yes, because at that time I had already entered into the advisory agreement.
>
> Q. It would be right to say that you had been providing legal advice to LifeCare over many years; correct?
> A. Correct.
>
> Q. And in that context you were entitled to be paid for that; correct?
> A. As a – on a solicitor/client basis, correct.

9.3.138 Although Mr Cannings accepted that there was no reference in the letter to the fact that he had entered into an Advisory Agreement with RSL LifeCare, he was sure that he advised Mr Kolomeitz that he had entered into that agreement.[132] He gave the following further evidence:

> Q. But in the context of an advice which you were giving to Mr Kolomeitz as State Secretary, you would understand that he would be likely to circulate this advice; correct?
> A. Yes.
>
> Q. And therefore, it was important not just to tell Mr Kolomeitz, but to make sure that it was absolutely plain in the letter so that any State Councillors who saw it would understand the full position; correct?
> A. I would accept that.
>
> Q. Do you now accept that you ought to have done more in that disclosure in relation to the conflict of interest?
> A. With the benefit of hindsight I could have worded it more carefully.

9.3.139 Turning now to the topic of conflict of interest, Mr Cannings was asked about his advice in relation to directors of RSL LifeCare receiving consulting fees:

> Q. Sitting here today, would you accept that a Board, passing resolutions to follow a mechanism that would lead to them receiving consulting fees, would put them in a position of conflict of interest?
> A. Yes, I would accept that.

9.3.140 However Mr Cannings referred to a portion of his advice in which he recorded that a director should not have a material personal interest in the subject matter of the decision of the Board.[133] He gave the following evidence:

> Q. Mr Cannings, my point to you is everything that then follows with this mechanism for setting up committees and paying specialist consulting fees, didn't all of that of necessity, involve the Directors being in a position of conflict of interest?
> A. Well, no, if they'd taken it to the members and the members could clearly vote on it.

9.3.141 There was nothing within Mr Cannings' letter of advice of 22 November 2006 that suggested that the consulting fees should be determined in a meeting of members. Rather, his advice expressly stated as follows:[134]

> The directors of the Board must convene a meeting to resolve to establish a committee for a particular purpose. The resolution of the directors should specify the general tasks to be carried out by the committee and nominate the proposed remuneration of the members of the committee.

9.3.142 Mr Cannings gave the following evidence:[135]

Q. The question was that the Directors, in following what you have set out, the mechanism for setting up these committees and paying themselves these fees, that put all of those directors in a position of conflict of interest, didn't it?

A. Yes, they would need to disclose it and follow appropriate proceedings.

Q. That is something that is noticeably absent, isn't it, from the end of your advice?

A. I can't add anything to the advice as written.

9.3.143 Mr Cannings referred to clause 11 of the RSL LifeCare Constitution earlier in the letter of advice with reference to a mechanism for dealing with circumstances in which a conflict of interest arose. It is the case that Mr Cannings advised in that earlier section of his letter that if a director of RSL LifeCare had an "interest" in respect of which the Board was voting, including a contract for services, the director had to disclose it and could not vote in respect of such a contract or arrangement that the Board was to determine.[136] This section of Mr Cannings' advice was dealing with whether it was possible to pay consulting fees to directors and involved a process of interpretation of the RSL LifeCare Constitution. It was in that context that Mr Cannings referred to the terms of clause 11; the requirement to disclose an interest; and the prohibition on voting on matters in which the director had an interest. It was the presence of these provisions in the Constitution that convinced Mr Cannings that directors could enter into contracts with the company and be paid for the services provided to the company.

9.3.144 Later in the letter, when Mr Cannings came to suggest the mechanics of how to set up the committees and fix the remuneration for service on the committees, he did not caution the directors at that point in the letter against voting on the remuneration they were to receive, should they be appointed to the committees.

9.3.145 On 11 March 2007 shortly after the RSL LifeCare Board had reviewed, voted on and approved Mr Cannings' advice of 22 November 2006, Mr Cannings was asked for advice under the subject heading "RSL Conflict of Interest" in respect of a proposed agreement between RSL NSW State Branch and RSL LifeCare to provide management services to Remembrance Village. Mr Thompson was clearly alerted to a potential conflict of interest and sought Mr Cannings' "guidance as to how any Board meeting and vote on this matter should be managed". Mr Thompson informed Mr Cannings that he presumed that his advice would be "similar" to that on a previous occasion when RSL NSW State Councillors and employees left the room and there was further discussion and a vote by the remaining directors after which the State Councillors and employees were invited back to the meeting and advised of the outcome of the vote.[137]

9.3.146 Mr Cannings provided that advice on 14 March 2007. After referring to the provisions of clause 11 of the RSL LifeCare Constitution (as he had done in his letter of advice of 22 November 2006) Mr Cannings advised:[138]

> We recommend, in accordance with LifeCare's constitution, that the board members discuss the proposed contract between LifeCare and State Branch with all directors present and that the Interested Directors disclose their interests. Afterwards, the Interested Directors should leave the meeting and abstain from voting while the remaining members vote on the issue.

9.3.147 This was clear and correct advice that should have alerted the RSL LifeCare directors to the appropriate process to be adopted in respect of their consultancy agreements and fees. However it appears that this advice may not have been placed before or discussed at a Board meeting.

9.3.148 Mr Cannings was also asked about the proposal that Mr Thompson had sent to him in 2012 in respect of the increase in consulting fees based on an analysis of estimated hours. Mr Cannings gave the following evidence:[139]

Q. You would recognise that putting a proposal before the Board in respect of their own fees would put them in a position of conflict of interest; correct?
A. Yes, to be dealt with in accordance with the terms of the Constitution and the Corporations Act.

Q. Yes. So when you say that you endorse the proposal for submission to the Board, you needed to raise the issue of conflict of interest, didn't you?
A. Mr Cheshire, I can't add anything more to what is written in this email.

Q. What I am suggesting to you is that you ought to have in that email also raised the issue of the Directors being in a position of conflict of interest; do you accept that?
A. It obviously didn't occur to me at the time, no.

Q. Do you accept that it ought to have done?
A. Sitting here now and looking at it, yes, I'd accept that.

9.3.149 Mr Cannings was also involved in the drafting of the Advisory Agreements.[140] He gave the following evidence:[141]

Q. In the context of you being involved in the drafting of these agreements and at least some discussions about them, I want to suggest to you that there was an obvious at least potential conflict of interest; do you accept that?
A. I would accept that.

9.3.150 Mr Cannings denied having discussions with the directors, individually or collectively, in relation to the Advisory Agreements.[142] However

Mr Thompson's emails to the directors, copied to Mr Cannings, suggest he did have discussions with individual directors, for instance with Mr Kells.[143] It is probable that he did give advice to at least Mr Kells. It is apparent that in those discussions and in revising the agreements, Mr Cannings did not consider whether he was acting for the directors personally or for the company; and he thus failed to recognise the position of a potential conflict of interest in which he put himself in giving that advice.[144]

9.3.151 It is clear that Mr Cannings advised Mr Thompson that he could determine the consultancy fees because he had a "lesser" conflict than the directors. This advice was given in the context of Mr Thompson raising his concerns about the directors' conflicts of interest with Mr Cannings. It is apparent that Mr Cannings did not explain what he meant by a "lesser" conflict. However, as submitted by Counsel for Mr Thompson, it was reasonable for Mr Thompson to infer that Mr Cannings considered that there was no legal impediment to Mr Thompson assuming the role of determining the RSL LifeCare directors' consulting fees at that time.

9.3.152 Mr Cannings assisted Mr Thompson in the process of determining the consulting fees in the first year after the delegation was made to him in March 2012. He approved Mr Thompson's proposal and in doing so endorsed it for submission to the Board. That proposal included the proposed fees for the directors. In suggesting that it should be submitted to the Board for approval would have been once again placing the directors in a position of conflict of interest. However in this instance Mr Thompson did not submit it to the Board. Rather he sent it to individual directors in an attempt to deal with them as "consultants".

Mr Winter's position

9.3.153 As discussed elsewhere the Notes to RSL LifeCare's financial statements for the years 2007 to 2016 included reference to the payment of consulting fees to the directors. Mr Winter gave the following evidence in relation to the identification of a conflict of interest in the directors approving their own consulting fees:[145]

Q. You were aware that these fees increased from year to year; correct?
A. Yes.

Q. Did you have any understanding as to how they had been increased?
A. Well, the Board would have approved them ultimately.

Q. So the, concept of a Board approving fees of payments to the Directors, albeit for consulting fees, would you perceive in that any conflict of interest?
A. Well, that's I guess – you could see it that way, yes

Q. Could you see it any other way?
A. But then the accounting standards were intended to give disclosure around those sorts of transactions, so they were disclosed.

PUBLIC INQUIRER: Q. Could you see it any other way?
A. Sorry?
Q. You were asked whether it was a conflict of interest. You said it could be so, you could see it that way. Mr Cheshire asked you – -
A. Yes yes.

…

Q. Mr Cheshire asked you whether you could see it any other way?
A. Yes, there is a conflict.

9.3.154 Mr Winter had approved the Note in the RSL LifeCare financial statements each year in respect of the directors receiving consulting fees. His evidence included the following:[146]

Q. … Did you ever ask anybody in LifeCare as to how the increases had, in fact, been done, whether the Board had voted for their own increases?
A. I'm sure that upon review of the minutes – in fact, I know we did look at the minutes and saw there was a vote to increase – would have seen a vote to increase the fees.

Q. You would have also seen that vote involved a conflict of interest; correct?
A. Yes.

…

Q. As an auditor, if you see a conflict of interest in a vote for fees which are being included in the financial statements, do you not have a duty to say to LifeCare, "Well, this vote happened, wasn't there a conflict of interest when you voted for it?"
A. Well, I think they would have known that as well.

Q. You say as well, so is the answer to my question, yes, that was part of your duty?
A. Well, I took it that they clearly were aware of that conflict. They voted on it.

Q. I go back to my question, Mr Winter. Do you accept that in the absence of them having told you that they knew about their conflict, you had a duty to bring it up with them?
A. Well, I would have thought that was obvious [to] them.

Q. Mr Winter, whether it was obvious, unless they had explicitly told you, it was your duty to tell them about this conflict of interest?
A. It may have been something we could have reported on, yes, yes.

…

Q. Don't you accept that's part of your role as an auditor to tell them about issues such as that?
A. Yes.

9.3.155 Mr Winter's later evidence included the following:[147]

Q. You appreciate, don't you, that Directors voting for their own fees represented a conflict of interest; correct?
A. Yes.

Q. It appears that nobody ever raised that with LifeCare from your organisation; correct?
A. Other than – whether it was specifically raised as a conflict, that's – you're probably right, yes. I think that's the case.

ANOTHER ISSUE

9.3.156 Before turning to the conclusions in respect of the issues raised in the Terms of Inquiry relating to the conflicts of interest arising out of the entry into the Consulting Agreements and the payment of consulting fees in RSL LifeCare, it is appropriate to refer to another important issue that arises under paragraph 3(c) the Terms of Inquiry. It is whether RSL LifeCare funds have since 1 July 2007 been expended pursuant to decisions made by its directors and/or officer inconsistently with their obligations to RSL LifeCare. The question that arises for determination is whether the consulting fees were in reality directors' fees, that is, fees paid to directors for their ordinary services as directors in breach of clause 9.1 of the RSL LifeCare Constitution (later clause 3.1).

The need for clarity

9.3.157 Mr Cannings' advice of 22 November 2006 made very clear that if RSL LifeCare were to be permitted to pay its directors a Specialist Consulting fee it was "important that the nature of the Specialist Consultancy Services be distinguished from the day to day ordinary services expected of a director by virtue of their position as a director".[148]

9.3.158 Mr Cannings advised that the ordinary services of a director on a day to day basis included the following:

(a) knowing the business of the company, including (where applicable) arranging outside professional advice when a director of the company requires more details to make an informed decision;

(b) attending Board meetings;

(c) ensuring the company can pay its debts;

(d) ensuring the company's financial records are kept up to date and correctly record and explain its transactions;

(e) ensuring continuous reporting and compliance with ASIC requirements;

(f) ensuring continuous disclosure to members and other directors of the Board;

(g) taking extra care if the company is operating a business and when the company is handling other people's money.

9.3.159 Mr Cannings advised that a director must act with due care and diligence and in good faith in the best interests of the company and for a proper purpose. He advised that directors should not have a material personal interest in the subject matter of a decision being made by the Board and should inform themselves about the subject matter of the decision to the extent appropriate. The advice included the following:

> Therefore, the Board may extend the payment of specialist consultancy fees to all directors of RSL LifeCare provided that the contract pursuant to which those fees are to be paid clearly identifies and distinguishes the services that the director will be remunerated for, from those duties ordinarily provided by a director as an officer of RSL LifeCare. For example the contract for services should not include in the description of duties, attending and providing input at meetings, as these duties can be classified as ordinary directors duties.

9.3.160 Although not expressly stated in his advice, it is clear from the example in the last sentence of this part of the advice that Mr Cannings intended to convey that the contract should not include the description of duties for attending "Board" meetings. That also flows from the balance of the advice in which Mr Cannings referred to clause 13 of the Constitution pursuant to which the directors could delegate powers to committees or establish advisory committees which could include current directors of RSL LifeCare. The advice also included the following:

> Those directors who are elected as members of such committees should possess specialist skills and provide specialist consultancy services to the Board, as distinguished from their ordinary services as directors.
>
> The members of the committee may be remunerated for providing their specialist consulting services.
>
> A committee may be formed to advise the Board in relation to a particular project or services, for example a proposal to the Board to invest in property or undertake some other venture.

9.3.161 Mr Cannings then advised on the procedures for setting up the committees to which he had referred. It was as follows:

> The directors of the Board must convene a meeting to resolve to establish a committee for a particular purpose. The resolution of the directors should specify the general tasks to be carried out by the committee and nominate the proposed remuneration of the members of the committee.

9.3.162 In the concluding paragraph of his advice, Mr Cannings dealt with the form of the Contract for Specialist Consulting Services. He advised that "rather than a standard set of terms", which had been in place up to that time with the five external director/consultants, the terms should be "tailored to the specific skills and services to be provided by each individual entering the contract". He advised that "this would enable RSL LifeCare to "more carefully ensure that the consultancy services to be provided are clearly distinguished from the ordinary services of a director".[149]

Directors' Evidence

9.3.163 Some of the directors of RSL LifeCare gave evidence at the Inquiry in respect of the nature of the consulting fees.

9.3.164 Mr Carlson agreed that his consulting agreement with RSL LifeCare constituted a retainer. He accepted that in being paid this retainer amount, he was being paid to carry out ordinary duties as a director of RSL LifeCare.[150]

9.3.165 Mr Crosthwaite rejected the suggestion that in the context of raising the issue of consulting fees being extended to the entire Board of RSL LifeCare, he intended for all Board members to be paid for being directors. He also rejected the suggestion that it was ever discussed that all directors were to be paid for being directors.[151]

9.3.166 Mr Crosthwaite also gave the following evidence:[152]

> Q. Yes. You were being paid, as you understood it, for the skills that you brought for all of the duties that you perform for LifeCare; correct?
> A. Yes.

9.3.167 Mr Crosthwaite gave evidence in respect of some of the work including the assessment of and advice in respect of specific projects that he provided that would be outside the directors' ordinary duties. For instance, he gave the following evidence:[153]

> Q. What was the work that you did, if any, in relation to the Coffs Harbour hospital?
> A. There was an indication to me and came through property developer that the old Coffs Harbour hospital site, which was derelict and delinquent sitting there, maybe an option. The CEO gave a report. I was going down that way and I specifically called in, had a look at the site and formed my view why it was not a suitable site.
>
> Q. Why it wasn't?
> A. It wasn't.
>
> Q. How long did that take?
> A. By the time I looked at it, went to local government, the local council, discussed issues, looked at sewerage, water, contamination, which

was unknown to me, asbestos, being an old site, many questions, I would say I was in Coffs in that period, Madam Inquirer, I would say a day. I think I stayed there that night.

Q. The whole day?
A. Yes.

Q. And you advised LifeCare not to go ahead with that?
A. I formed my opinion - -.

Q. I beg your pardon?
A. When it came up for discussion the reasons why we shouldn't go down that path.

9.3.168 Mr Crosthwaite also gave evidence of other sites that he had assessed and in respect of which he provided his opinion to RSL LifeCare about prospects of acquisition and/or development.[154]

9.3.169 Mr Hardman gave the following evidence:[155]

Q. If it was your understanding that as a Director you were expected to sit on committees of LifeCare, and in this contract part of the duty was for you to attend and sit on committees of LifeCare, is it the case that you were in fact being paid for your specialist knowledge as opposed to any additional services that you provided to LifeCare?
A. Yes, I think you could argue that case.

9.3.170 Mr Humphreys' view was that he was being paid consulting fees for serving on committees.[156] He accepted that part of his role as a director was to serve on committees, but maintained the position that when he served on those committees, this was as a consultant but not as a director.[157]

9.3.171 Mr Kells agreed that there were three components of his role within RSL LifeCare: serving on the Board, serving on committees and providing additional assistance. It was his evidence that he received consulting fees for "advice on financial issues and related administration issues" that he provided to the company and the CEO.[158]

9.3.172 Mr Kells gave the following evidence regarding the payment of consulting fees to the entirety of the Board of RSL LifeCare:[159]

Q. So the Directors continued to serve on committees; correct?
A. Most.

Q. And the difference was that now all of the directors were being paid rather than just the external non-State Councillors; correct?
A. Correct.

Q. Given that the State Councillor Directors had previously been giving their services as Directors for free, it was, in fact, the case that now they were being paid for, effectively, their role as Directors; correct?

A. Yes.

9.3.173 Mr Kells also agreed that when consulting fees were extended to the State Councillor directors, these were in reality payments for their work as directors.[160] Indeed he conceded that all the consulting fees that were paid to directors were, in reality, directors' fees.[161]

9.3.174 Mr Longley accepted that his consulting agreement meant that he was being paid for the ordinary duties and services of a director, although he was not of that view at the time that he was receiving those fees.[162] He gave the following evidence:

Q. Looking at it now, do you now accept that, pursuant to this contract, you were being paid for your ordinary services as a Director; correct?
A. I was not distinguishing them.

Q. No, looking at it now, do you now accept that, pursuant to this contact, you were being paid for your ordinary services as a Director; correct?
A. Yes.

9.3.175 Dr Macri accepted that, in the context of the discussions that led to the decision in 2007 to extend the payment of consulting fees to all directors, the Board was attempting to find a way for all directors to be paid for their ordinary services as directors[163]. She did not accept that this is what occurred since, at least in her case, she provided services outside of her role as a director.[164] In this regard Dr Macri gave evidence that from 2007 she was "doing a lot of work with the Deputy CEO at the time in terms of guiding and being a sounding board for a lot of clinical care issues in the village and in the nursing homes that RSL LifeCare had acquired. Dr Macri regarded that work as outside of her service on the Board and outside of any services on the sub-committees.[165]

9.3.176 Dr Macri also gave evidence that Mr Riddington was in the same position as herself in terms of being available to advise on retirement village matters and that both she and Mr Riddington had become involved in a lot of the acquisitions in terms of their poor clinical outcomes.[166] Dr Macri gave the following evidence:[167]

PUBLIC INQUIRER: Q. Could I ask you about something you said a moment ago in relation to the clinical outcomes and the clinical care, and you being on call to advise urgently on these matters in respect of the acquisition of retirement villages. If I may understand, when you acquired a retirement village, was it usual to have within that acquisition, that village, an area that involved clinical care for those in need of twenty-four hour care?
A. Yes. In most of our villages we tried to have the whole spectrum of care from community care, retirement living, and then residential aged care. Most of our villages – there would probably be only three

or four that were stand-alone retirement villages, the rest provided the full care model.

Q. Some of these acquisitions did not have the same high accreditation that the other LifeCare villages had?
A. That's right.

Q. You were, as I apprehend what you're saying to me, seeking to ensure that those acquisitions lifted their accreditation to that which you in fact wanted them to reach?
A. Absolutely.

Q. That took your advice sand others' advice, I presume, to ensure that appropriate number of carers were on board; is that right?
A. That's right, and the right skills, expertise. You know, a lot of them didn't have good documentation which also drove the funding instrument. If you didn't have proper clinical records or medical records, because we were audited of those by the Commonwealth to provide the funding, there was a real link between funding, accreditation and the quality of care and care outcome.

Q. That seems correct?
A. And absolutely critical, because if you don't meet accreditation, you get sanctioned and you can be closed down. If you don't generate the right funding, you can't do accreditation properly and you can't do the care.

9.3.177 Dr Macri's view was that she was being paid for her service as a director and for providing advice and guidance in relation to RSL LifeCare's facilities outside of her service on the Board and on committees.[168] She gave the following evidence in relation to other directors:[169]

Q. But it would be right, wouldn't it, that in relation to at least some of the other directors, they were not providing the type of services outside of the Board and outside of the committees that you were providing; correct?
A. That's correct.

Q. On that basis, those directors would not have been able to justify receiving payment for a consultancy contract; correct?
A. I guess so, but that's for the individuals to --

Q. I think you were about to say that was for each individual to satisfy themselves?
A. Absolutely, as a professional.

…

Q. In effect, as I understand it, what you were doing is you were satisfied that you could justify receiving consulting fees; correct?
A. That's correct.

Q. Then what you were saying is it is up to each other individual director, if they can justify it to themselves, they can go and get a contract from Mr Thompson and then start receiving fees; correct?
A. Correct.

9.3.178 In the context of the decision in 2007 to extend the payment of consulting fees to non-specialist directors, Dr Macri rejected the suggestion that directors were going to be paid for their ordinary director's duties.[170]

9.3.179 Ms Mulliner accepted that the payment of consulting fees by RSL LifeCare to directors appeared to be payments for their ordinary duties as directors. She gave the following evidence:[171]

Q. And so you may not have thought of this before, Ms Mulliner, but it does rather look, doesn't it, as if these directors were being paid for being directors?
A. I never looked at it that way.

Q. But looking at it that way now, that seems to be right?
A. In terms of your interpretation, yes.

9.3.180 After initially rejecting the proposition that he was being paid by RSL LifeCare for his ordinary duties as a director, Mr Murray gave the following evidence:[172]

PUBLIC INQUIRER: …Q. Just pause. What you've done, you've admitted today, as you see it, it's the ordinary role of a director to sit on committees.
A. Yes.

Q. It is in that context that Mr Cheshire is now asking you, seeing, as you do now, that a director's ordinary role includes sitting on committees, for service on the committees the directors are being paid as directors; do you agree with that?
A. I will agree with it now, yes.

9.3.181 Mr Riddington gave the following evidence as to the payment of consulting fees prior to 2007:[173]

Q. Yes, but, as you understood it, those people were, as part of their ordinary duties of being directors, going to serve on committees, but they were going to do so with, as you saw it, specialist or extraordinary skills; correct?
A. Correct.

Q. And that's what they were going to be paid for; correct?
A. Correct.

Q. So, in effect, they are being paid for being specialist committee members; correct?
A. Right.

Q. Because, at the same time, the other directors, who were State Councillors, some of those were going to continue to serve on committees; correct?
A. Correct.

Q. But they were not going to be paid; correct?
A. Correct.

Q. They were not going to be paid because they were not specialist persons; correct?
A. Correct.

9.3.182 As to the proposal to extend consulting fees, Mr Riddington gave the following evidence:[174]

Q. So, at this stage, there was a proposal for the Board members who were not receiving consulting fees, and who were not specialists, for them also to receive fees; correct?
A. It was to be discussed, yes.

Q. Given that your understanding was that the people who were being paid were paid for being specialists, how did this come about that there was a suggestion that the non-specialists should also be paid?
A. I think some of them suggested that they were bringing expertise and they should be paid.

…

Q. Wasn't that the effect of what was being done, that if you couldn't do it by amending the Constitution, then you were going to extend specialist consulting fees to all directors, subject to if Mr Cannings told you that you could?
A. Okay, that's fair enough, yes.

9.3.183 Mr Riddington made the following concession in respect of the payment of consulting fees being extended to State Councillor directors:[175]

Q. But the reality was that at all times, all of these people were serving on committees as part of their ordinary services and all that changes was they went from not being paid to being paid; correct?
A. Correct.

9.3.184 Mr Rowe gave the following evidence: [176]

Q. You understood, did you not, that, in effect, you were being paid for being a Director of LifeCare; correct?
A. Correct.

Q. And you understood that all of the others were, in reality, being paid for being Directors; correct?
A. Correct.

9.3.185 Mr White gave the following evidence:[177]

Q. You accept from me today that part of your role as a Director was to serve on committees throughout your time; correct?
A. Yes.

Q. You accept, do you not, that the Constitution of LifeCare prohibited the payment to Directors for performance of their ordinary duty; correct?
A. Yes.

Q. It would follow from that, wouldn't it - forget about the advice for the moment - that you could not be paid for sitting on committees; correct?
A. Unless a legal agreement had been entered into.

Q. But the agreement could not get around the Constitution; correct?
A. I agree to that.

Q. It would be fair to say that what I put to you is correct, that it would appear from what I have suggested to you today that you could not be paid for sitting on committees, but you assumed, in the light of the legal advice, that you could; correct?
A. Yes.

Q. Right.
A. The legal advice being the contractual arrangement that we entered into.

9.3.186 Notwithstanding that evidence, Mr White maintained the position that he was never paid for any part of his role as a director, he gave the following further evidence:[178]

Q. What I want to suggest to you is that in reality, what you were receiving were always fees for your ordinary services of being a Directors, albeit that you may have relied upon legal advice? Do you see the distinction?
A. No, I was not receiving it is a Director.

…

Q. I suggest to you that you were always receiving directors' fees; do you accept that?
A. No, I don't.

The nature of the consulting fees

9.3.187 In 2001 the directors appointed by RSL NSW to RSL LifeCare Board were drawn from the ranks of the State Council in addition to five "external" directors who were not members of the State Council. Those five external directors were appointed for their specific expertise in retirement living and property development to assist the Board in improving and expanding the RSL LifeCare business. The external directors were appointed concurrently as specialist consultants.

9.3.188 The position as at 18 October 2005 was that there were two groups on the Board of RSL LifeCare: non-State Councillors, who were being paid consulting fees; and State Councillors, who were not being paid those fees. The services that the State Councillor directors provided to RSL LifeCare at this time and unti 2007 were "their ordinary services as directors" for which they were not entitled to be paid.

9.3.189 The evidence supports the conclusion that it was understood by the RSL LifeCare Board that the "ordinary services" of a director included service on committees. The Directors' Handbooks listed the membership of the committees by reference to directors rather than, for instance, consultants. Mr White's letter to Mr Perrin on 26 May 2011 defined service on committees as part of the requirements of directors.

9.3.190 On 20 February 2007 the Board confirmed that the external directors would receive new contracts and that other directors "interested in receiving consulting fees" could approach Mr Thompson. The resolution did not purport to effect any change in the structure of RSL LifeCare and its committees, but rather permitted directors to approach Mr Thompson for consulting contracts, which would then permit consulting fees to be paid. This led eventually to all of the RSL LifeCare directors signing contracts for and being paid consulting fees.

9.3.191 Prior to 2007, State Councillor directors had served on committees as part of "their ordinary services as directors" for which they were not paid. After 2007 and indeed after entering into their consulting contracts, they continued to serve in the same way on those committees, but were then paid consulting fees for those services. No distinction was drawn between the State Councillor directors and the external directors in the manner in which they provided their services to RSL LifeCare or in their consulting fee arrangements. This created a difficulty in clearly identifying and distinguishing the ordinary services of a director from the services being provided under those arrangements.

9.3.192 The external directors were being paid at least in part for the same services as those being provided by the State Councillor directors. As these services were paid for on a retainer basis, it was not possible to clearly distinguish whether they were being paid for "their ordinary services as directors" of for any "extraordinary" services.

9.3.193 Although additional committees were formed after 2008, there is nothing to suggest that there were any changes in how the committees of RSL LifeCare operated and in particular to support a contention that service upon committees ceased to be part of "their ordinary services as directors".

9.3.194 The difficulty in clearly identifying and distinguishing the ordinary services of a director from the other services being provided was compounded by the nature of the contracts that the directors executed in respect of consulting fees between 2007 and 2010 and which resulted in

all of the directors receiving consulting fees. With the exception of Mr Rowe, the duties of the consultants were all defined by reference to service on committees.

9.3.195 The directors executed these contracts at different times and with contracts and payments often backdated. It is difficult to see how the directors could each determine unilaterally from time to time what constituted "their ordinary services as directors", let alone alter the capacity in which particular services were provided to RSL LifeCare and do so retrospectively (and in some cases before the resolution approving consulting fees to all directors had been passed and even before the issue had been raised).

9.3.196 By way of example, Mr White signed his contract in August 2007 but backdated it to 1 September 2006 and was paid as from 1 July 2006. He could not as at August 2007, alter the capacity in which he had provided services to RSL LifeCare prior to that time, let alone back to the resolution in February 2007 (when all directors were permitted to seek consulting fees) or the resolution in October 2006 (when the issue of extending consulting fees to all directors was first raised). Still less could he alter the capacity in which he had provided services back to July 2006, which was before the matter of payments of consulting fees to directors had even been raised at Board level.

9.3.197 On 21 August 2007 the Board voted for Mr Riddington and Dr Macri to receive an additional $5,000 per annum as part of their consulting fees and for Mr White to receive an additional $10,000 per annum. It might have been possible to justify why Mr Riddington and Dr Macri received this premium since they had been external advisors to the Board before they became directors and were providing considerable additional services outside of service on the Board and committees. However that could not explain why Mr White was to receive a premium and indeed one greater than any other director. The only possible reason for Mr White to receive a premium was because he was Chairman of the Board, as several of the directors conceded.[179] Indeed the additional $10,000 matched the premium given by Mercer in their July 2006 advice for the role of Chairman. However the functions Mr White performed in that role were part of his ordinary services as a director. This leads irresistibly to the conclusion that these consulting fees were a mechanism of paying Mr White at least in part for his ordinary services in that role.

9.3.198 On 25 February 2010 the Board voted to extend consulting fees to include a tools of trade allowance when the reality was that any additional computer and stationery requirements for providing services outside of their role as directors would have been minimal; and to include membership of the Australian Institute of Company Directors, when this related to their ordinary services as directors. This further demonstrates that there was never any clear delineation between services as a director and as a consultant; and the reality that the directors were receiving consulting fees at least in part in relation to their services as directors.

9.3.199 In 2012, the Contracts for Specialist Consultancy Services were redrafted as Advisory Agreements and the services to be provided were changed from service on committees to more nebulous concepts, such as "specific specialist advisory services". However directors continued to provide their services and were paid in the same manner as they had been under their previous contracts.

9.3.200 Mr Thompson and Mr Cannings, who were involved in drafting the Advisory Agreements, were also involved at the same time in preparing a paper that sought to justify the fees being paid by reference to the services provided, which relied heavily upon service on committees (as was also the case in the context of the 2015 PwC review). The Director's Handbook prepared in 2012 and 2016 continued to define membership on most of the committees as including "directors", with no reference to Advisors or Consultants except on the Homes for Heroes Advisory Committee which listed directors "and/or Board Advisors".[180]

9.3.201 In the absence of any changes in how RSL LifeCare, and in particular its committees, operated and how the directors provided their services, the irresistible conclusion is that the directors were being paid at least in part for "their ordinary services as directors" and that this continued even after the directors entered into their Advisory Agreements.

9.3.202 Several of the directors (or former directors) of RSL LifeCare gave evidence that their role for RSL LifeCare encompassed, in broad terms, three parts: attending Board meetings and activities associated with such meetings; attending committee meetings and activities associated with such meetings; and other activities, commonly assisting management, such as attending to issues within villages, assisting with regulatory compliance and drafting manuals.[181]

9.3.203 The first part of that role, relating to Board meetings, would be part of "their ordinary services as directors" of RSL LifeCare.

9.3.204 As discussed above, the second part, relating to committees, was in the circumstances of RSL LifeCare, was in part their ordinary services as directors.

9.3.205 Clause 13 of the RSL LifeCare Constitution contemplated delegation not only to committees consisting of a number of directors (which would then be likely to form part of their ordinary services as directors) but also to advisory committees consisting of such persons as the directors saw fit.

9.3.206 It would therefore have been open to RSL LifeCare in 2007 to establish advisory committees and appoint directors to them as consultants/advisors. Directors could then have served on such committees as consultants/advisors rather than as directors; and in those circumstances service on those committees may well have been outside of "their ordinary duties as directors". This appears to have been what Mr Cannings may have had in mind in his November 2006 advice.

9.3.207 As to the third part of that role, relating to activities outside of Board and committee functions, this may well have been substantially if not indeed wholly, outside of "their ordinary services as directors". For instance, assisting management to ensure regulatory compliance in a particular village would probably involve that person stepping outside of their role as a director and providing services as if an external contractor or advisor and therefore outside of "their ordinary services as directors".

9.3.208 It may have been possible in 2007 for RSL LifeCare to establish specific advisory committees, on which directors might serve as consultants/advisors; and to define the services for which they were to receive consulting fees by reference to service on those new committees and for the work external to the Board and the committees. However that was not the course adopted.

9.3.209 Each of the directors was provided with a copy of Mr Cannings' 22 November 2006 letter of advice and it is apparent that each director understood that the consultancy arrangements had been entered into in accordance with that advice. However, although some attempts were made to tailor the contracts to specific specialist skills, it is clear that the payments of the consulting fees to the directors included payment for their ordinary services as directors, notwithstanding that some of the payments were made to some of the directors for services outside their ordinary services as directors.

9.3.210 It was not possible to clearly identify and distinguish the services that the directors provided as consultants and later as advisors from those duties ordinarily provided by the directors as officers of RSL LifeCare. Insofar as any of those payments related to services ordinarily provided as directors, they were in breach of the RSL LifeCare Constitution and were made pursuant to decisions that were inconsistent with the directors' obligations to RSL LifeCare.

ENDNOTES

[1] Ex 40, Vol 3, p 1013; RSL LifeCare Constitution (1999).
[2] Ex 40, Vol 3, pp 1042, 1086; RSL LifeCare Constitution (2012) and RSL LifeCare Constitution (2016).
[3] Ex 4, Vol 1, p 158.
[4] Ex 4, Vol 1, p 160.
[5] Ex 4, Vol 1, p 189.
[6] Ex 4, Vol 1, p 158.9.
[7] Ex 4, Vol 1, p 169.
[8] Ex 4, Vol 1, p 198.
[9] *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 103; *Boardman v Phipps* [1967] 2 AC 46; RP Austin, HAJ Ford AM and IM Ramsay, *Company Directors: Principles of Law and Corporate Governance* (Lexis Nexis Butterworths 2005) par 8.20.
[10] Ex 1, Vol 1, p 52.
[11] Ex 1, Vol 1, p 54.
[12] Ex 1, Vol 1, p 63.
[13] Tr 135, 159, 170, 238 - 239.
[14] Ex 1 Vol 1, pp 115-116.
[15] Tr 555.
[16] Tr 560.
[17] Ex 1, Vol 3, p 5.
[18] Tr 562 - 563.
[19] Tr 568.
[20] Tr 570 - 573.
[21] Ex 1, Vol 1, p 80.
[22] Tr 576.
[23] Tr 584.
[24] Tr 602 - 603.
[25] Tr 709.
[26] Tr 744 - 746.
[27] Tr 624.
[28] Tr 628 - 630.
[29] Tr 631.
[30] Tr 1122.
[31] Tr 1122 - 1124.
[32] Ex 8, Vol 2, Tab 7, p 98.
[33] Tr 817 - 818.
[34] Tr 822 - 824.
[35] Tr 3095.
[36] Tr 3107 - 3108.
[37] Tr 3108 - 3109.
[38] Tr 3111.
[39] Tr 3117 - 3118.
[40] Tr 3118.
[41] Tr 477.
[42] Tr 478.
[43] Tr 483.
[44] Tr 485 - 486.
[45] Tr 487 - 488.
[46] Tr 489.
[47] Tr 491 - 492.
[48] Tr 549 - 550.
[49] Tr 527.
[50] Tr 528.
[51] Tr 398 - 399.
[52] Tr 401.
[53] Tr 415 - 416.

[54] Tr 398, 401, 413.
[55] Ex 11, pp 69 - 71.
[56] Ex 11, p 78.
[57] Ex 11, p 80.
[58] Tr 332.
[59] Tr 346.
[60] Tr 347.
[61] Tr 354 - 356.
[62] Tr 357 - 358.
[63] Tr 359.
[64] Tr 959 - 960.
[65] Tr 1046 - 1047.
[66] Tr 1055.
[67] Tr 2151 - 2152.
[68] Tr 2153.
[69] Tr 2162.
[70] Tr 2163.
[71] Tr 2198 - 2199.
[72] Tr 2205 - 2206, 2213.
[73] Tr 2258.
[74] Tr 2259.
[75] Tr 72 - 73.
[76] Tr 71.
[77] Tr 77.
[78] Tr 80.
[79] Tr 80 - 81.
[80] Tr 92 - 93.
[81] Tr 94.
[82] Tr 96.
[83] Tr 97.
[84] Ex 19, Vol 1, p 15.
[85] Tr 98 - 99.
[86] Ex 1, Vol 1, p 411.
[87] Tr 243.
[88] Tr 117, 123, 124, 219.
[89] Tr 115 - 116.
[90] Tr 104 - 105.
[91] Tr 120 - 122, 2742.
[92] Tr 2744.
[93] Tr 2744.
[94] Ex 19, Vol 1, p 74.
[95] Tr 2741 - 2743.
[96] Tr 2719.
[97] Tr 135, 146.
[98] Tr 135.
[99] Ex 1, Vol 1, p 116.
[100] Tr 1450 - 1452.
[101] Tr 135, 159, 170, 238 - 239.
[102] Ex 1, Vol 1, p 254.
[103] Tr 149.
[104] Tr 149.
[105] Tr 155, 2717.
[106] Ex 19, Vol 2, p 196.
[107] Tr 2739.
[108] Tr 2735 - 2736.
[109] Tr 1498.
[110] Ex 19, Vol 2, p 251.
[111] Ex 19, Vol 2, p 252.
[112] Tr 1498 - 1499.

[113] Ex 19, Vol 1, p 109.
[114] Ex 19, Vol 1, p 122.
[115] Ex 19, Vol 1, p 126.
[116] Ex 19, Vol 1 p 127.
[117] Ex 19, Vol 1, p 130.
[118] Ex 19, Vol 1, p 133.
[119] Ex 19, Vol 1, p 135.
[120] Ex 19, Vol 1, p 137.
[121] Ex 19, Vol 1, p 137.
[122] Ex 19, Vol 1, p 138.
[123] Ex 19, Vol 1, p 154.
[124] Ex 19, Vol 1, p 153.
[125] Ex 19, Vol 1, p 153.
[126] Tr 1316.
[127] Tr 1317.
[128] Tr 1318 - 1321.
[129] Tr 1328 - 1330.
[130] Tr 1300.
[131] Tr 1302 - 1303.
[132] Tr 1303.
[133] Tr 1348.
[134] Ex 1, Vol 1, p 60.
[135] Tr 1348 - 1349.
[136] Ex 1, Vol 1, p 58.
[137] Ex 19, Vol 1, p 24.
[138] Ex 19, Vol 1, p 25.
[139] Tr 3211 - 3217.
[140] See for example Ex 1, Vol 1, p 274.
[141] Tr 3217.
[142] Ex 1, Vol 3, pp 104, 106; Ex 1, Vol 4, p 651.
[143] Ex 1, Vol 3, pp 104, 106.
[144] Tr 3212 - 3217.
[145] Tr 2593 - 2594.
[146] Tr 2594 - 2596.
[147] Tr 3015 - 3016.
[148] Ex 1, Vol 1, pp 58 - 60.
[149] Ex 1, Vol 1, p 60.
[150] Tr 585.
[151] Tr 712.
[152] Tr 717.
[153] Tr 759 - 760.
[154] Tr 760.
[155] Tr 620 - 621.
[156] Tr 809, 815.
[157] Tr 805 - 809, 815.
[158] Tr 3101 - 3102.
[159] Tr 3109.
[160] Tr 3110.
[161] Tr 3140.
[162] Tr 482.
[163] Tr 394.
[164] Tr 396.
[165] Tr 401 - 402.
[166] Tr 401 - 402.
[167] Tr 403.
[168] Tr 387, 397.
[169] Tr 397 - 398.
[170] Tr 396.
[171] Ex 11, p 69.

[172] Tr 2074.
[173] Tr 324.
[174] Tr 333 - 334, 343.
[175] Tr 345 - 346.
[176] Tr 1048.
[177] Tr 2195 - 2196.
[178] Tr 2265.
[179] See Mr Carlson (Tr 577), Mr Hardman (Tr 626), Mr Kells (Tr 3114), Dr Macri (Tr 403), Mr Riddington (Tr 353), Mr Rowe (Tr 1052) and Mr White (Tr 2204).
[180] Ex 3, Vol 2, p 528.
[181] See for example Tr 396 - 397, 3101.

9.4 CONCLUSIONS

9.4.1 The desire to turn RSL LifeCare's poor financial performance around was the motivation for bringing experienced, non-State Councillors, onto the Board of RSL LifeCare. That decision would ultimately assist the company in moving from struggling financially to an extraordinarily successful operation.

9.4.2 The decision to combine the appointments of external advisers with their appointments as directors was the first step in a series that resulted in the Board becoming a two-tiered structure with some directors being paid consulting fees whilst others were not. Although the suggestion was resisted by some, it is clear that the two-tiered structure caused dissatisfaction in some of the directors who were not being paid in the same way as their co-directors. It was as a result of this dissatisfaction that the company then sought legal advice on a mechanism that would allow all directors to be paid.

9.4.3 The legal advice that was provided by Mr Cannings in October 2006 to propose amendments to the RSL LifeCare Constitution so that all directors could be paid directors' fees was dismissed by the Board of RSL LifeCare without any reasons being noted in the Minutes. The irresistible conclusion is that this decision was political; that it was made because the directors knew that RSL NSW would not agree to the amendment to enable the State Councillors who were RSL LifeCare directors to be paid directors' fees, when RSL NSW State Councillors were prohibited from receiving fees for their services on State Council. It was at this point that the directors sought advice on the alternative method of paying all directors as consultants.

9.4.4 After the Board considered Mr Cannings' advice of 22 November 2006, the Minutes reflected the state of abject cronyism into which the leadership of this company had descended. There was no mention in the Minutes of the needs of the company; nor was there any mention of the particular areas of expertise that it was thought appropriate for the company to draw upon. Rather the focus was upon the directors who were not at that stage being paid as consultants. The Minutes simply recorded that "other persons interested in receiving specialist consulting fees" were to contact Mr Thompson.

9.4.5 The course that the Board adopted ultimately led the directors to decisions that were compromised and in breach of their obligations to RSL LifeCare. Each of the directors who approved their own contracts and their own consulting fees were oblivious to the fact that the whole Board was riddled with conflicts as they moved through the years.

9.4.6 The Board had an obligation to have in place mechanisms that would assist the directors to recognise and deal with any conflicts of interest that arose.

That did not happen during the period covered by the Terms of Inquiry until 2017.

9.4.7 Although the history of the development of the consulting fees regime includes the delegation of the determination of these fees to Mr Thompson in 2012 because of his concerns that the directors were placed in a position of conflict of interest in determining their fees, the evidence of a number of directors suggests that either they were not informed of the reason for the delegation or if they were they did not appreciate it. Those directors gave evidence that it was not until they were preparing to give evidence in the Inquiry that they finally appreciated the problem.

9.4.8 Submissions have been made that a recommendation should be made pursuant to paragraph 4 of the Terms of Inquiry that the Minister should consider referring a number of persons to ASIC, the ACNC and/or regulatory bodies in respect of conduct relating to the decisions in respect of the consultancy agreements and consulting fees. In those circumstances it is appropriate to deal with each of those persons individually.

Mr Carlson

9.4.9 It was submitted on Mr Carlson's behalf that the relevant meetings about which he was examined during his evidence at the Inquiry were meetings at which resolutions were passed in respect of the increases in consulting fees and making consultancy agreements available to all directors. It was submitted that he was not a consultant engaged by RSL LifeCare at the time of those meetings and there is a real question as to whether, in those circumstances, he had a conflict of interest.

9.4.10 At the meeting on 24 October 2006 the directors agreed to increase the consulting fees and, subject to legal advice, to extend the payments to persons (including directors). It is true that Mr Carlson did not take up the contract until 2008, however he voted in favour of making such a contract available to persons that included directors, subject to positive legal advice in this regard.

9.4.11 Mr Carlson gave evidence that he recognised that these decisions placed the directors in a position of conflict of interest and that it upset him. He had not been an RSL LifeCare Board member for very long and he apprehended that matters were being handled reasonably well by the Chairman and the CEO. That is not an excuse for his failure to raise his concern, but rather it is an explanation for why he did not raise it.

9.4.12 Mr Carlson rightly conceded that in being party to the Board agreement on 20 February 2007 that those interested in receiving consulting fees would contact Mr Thompson placed him in a position of conflict of interest. Mr Carlson's conduct was not in any way dishonest. These were in his case isolated incidents which, from Mr Carlson's evidence, will clearly not be repeated.

9.4.13 Mr Carlson was in receipt of consulting fees for only a matter of months.

9.4.14 In these circumstances it is not intended to make a recommendation to the Minister to consider referring Mr Carlson to ASIC or the ACNC.

Mr Crosthwaite

9.4.15 There is no doubt that Mr Crosthwaite genuinely believed that he was entitled to be paid consulting fees under a Specialist Consulting Contract that he understood had been entered into in accordance with legal advice.

9.4.16 There is also no doubt that for years Mr Crosthwaite failed to recognise the position of conflict of interest into which he was placed in voting in respect of own contract and for an increase in his own consultancy fees.

9.4.17 The initial recognition in 2012 when Mr Thompson raised the problem resulted in a flawed approach to the basis upon which the consulting fees could be determined. However the directors understood that Mr Cannings had given advice that Mr Thompson could determine the fees with the assistance of external advice.

9.4.18 The intervention of Mr Cannings is to be taken into account as a mitigating factor in reviewing Mr Crosthwaite's conduct.

9.4.19 It was submitted on Mr Crosthwaite's behalf that personal considerations should be taken into account in determining whether a recommendation should be made to the Minister to consider referring Mr Crosthwaite to ASIC and/or the ACNC. Those personal considerations include that Mr Crosthwaite was a member of the Australian Army and served his nation at war; he is 71 years of age and suffers from Post-Traumatic Stress Disorder as a result of his war services. He also suffered dramatically from Agent Orange.

9.4.20 Mr Crosthwaite is retired and receives a service pension as well as the Totally and Permanently Incapacitated pension from the Department of Veterans' Affairs. He has a lifetime of service to the community referred to elsewhere in this Report.[1] It was submitted that Mr Crosthwaite joined RSL LifeCare in good faith and with a view to grow a great organisation to help veterans and RSL LifeCare benefit from his hard work. These submissions have force.

9.4.21 There is no doubt that this has been a salutary lesson for Mr Crosthwaite. Equally there is no doubt that he acted honestly. However it was his ineptitude as a director and that of the whole Board that permitted this process to occur over such a lengthy period. Ineptitude is always a dangerous attribute in any director, particular a director of a company that is raising funds from the public.

9.4.22 In the circumstances of this conduct over so many years it is appropriate to make a recommendation to the Minister to give consideration to

referring Mr Crosthwaite to ASIC and the ACNC in the context of the mitigating and personal factors referred to above.

Mr Hardman

9.4.23 Mr Hardman served on the Board of RSL LifeCare as a director between 2008 and 2011. His company, Bensari, entered into a Consultancy Agreement with RSL LifeCare pursuant to which Mr Hardman provided consultancy services and in respect of which Bensari was paid consulting fees.

9.4.24 Mr Hardman accepted in his evidence that in voting on the increases in his own fees, albeit indirectly through his family company, he placed himself in a position of conflict of interest. Those meetings occurred in February 2010 and October 2010.

9.4.25 When Mr Hardman's term on the Board of RSL LifeCare terminated in 2011 Mr White, as Chairman of the Board, sought the approval of RSL NSW to appoint Mr Hardman for another term as a director of RSL LifeCare. That was not approved as Mr Hardman was then no longer a State Councillor and RSL NSW wished to appoint a State Councillor to the position.

9.4.26 Mr Hardman was re-elected to the State Council in 2015 and served as the Honorary Treasurer of RSL NSW in 2015 and 2016 until he resigned in November 2016. During the time that Mr Hardman served as RSL NSW State Treasurer, he attempted unsuccessfully to bring in some reforms, including to the process for the approval of State Councillors' expenses. When the controversies were published in the media in late 2016, Mr Hardman decided to resign because he had formed the view that RSL NSW was "dysfunctional".[2]

9.4.27 Mr Hardman came to the RSL LifeCare Board as a qualified accountant with an extensive career in senior management in the finance industry. His business experience included roles as financial controller of a private sector company and as the owner and licensee of a number of hotels.

9.4.28 Mr Hardman voted on two occasions in 2010 in respect of the consulting fees of his family company which placed him in a position of conflict of interest. It is very surprising that he did not identify this conflict, having regard to his very wide experience in business over the years. Seven years has passed since these events and it is six years since he retired from the Board of RSL LifeCare. Having regard to the attempts, although unsuccessful, that he made to bring some good governance to RSL NSW as its Treasurer in 2015 and 2016, it is reasonable to conclude that these two events were isolated incidents and out of character for Mr Hardman.

9.4.29 In all the circumstances, it is not intended to make a recommendation to the Minister to consider referring Mr Hardman to ASIC or the ACNC.

Mr Harrigan

9.4.30 The only Board meeting of RSL LifeCare (then RSL Veterans' Retirement Village) that Mr Harrigan attended at which consultancy fees were considered was on 18 October 2005.[3] Mr Harrigan had no conflict of interest in voting on the resolution that there be a 10% increase in the Specialist Consultant fees for those external directors. In his examination before the Inquiry Mr Harrigan agreed that it appeared that those directors who were in receipt of consulting fees also voted for that resolution and he accepted that this placed them in a position of conflict. However it appeared that he did not recognise this at the time.

9.4.31 This was an incident that occurred prior to the period covered in the Terms of Inquiry. There is no basis upon which Mr Harrigan could be the subject of a referral to ASIC or the ACNC in respect of his conduct as a director of RSL Lifecare relating to the consultancy fees. Accordingly, there will be no recommendation that the Minister should consider such a step.

Mr Humphreys

9.4.32 By the time Mr Humphreys joined the Board of RSL LifeCare in 2011, the delegation to Mr Thompson on 3 March 2012 to determine the consulting fees was imminent. Mr Humphreys did not take part in any Board meeting in which the Board resolved to increase the consulting fees. He accepted in his oral evidence at the Inquiry that the delegation to Mr Thompson did not resolve the conflict of interest.

9.4.33 It is clear that Mr Humphreys had an understanding of his obligations in respect of conflicts of interest. It is also clear that when he recognised or perceived a conflict he raised it appropriately with the Chairman of the relevant entity. However the process of having a CEO, who clearly had a conflict of interest, determine the consulting fees for directors was tolerated and not terminated when it should have been.

9.4.34 It was submitted that personal considerations of Mr Humphreys should be taken into account in considering whether to make a recommendation to the Minister to consider referring his conduct to ASIC. Those personal considerations include that Mr Humphreys was a member of the Australian Army and served his nation at war. He is 70 years of age and suffers from Post-Traumatic Stress Disorder as a result of his war services. He is retired and receives a pension as well as a Totally and Permanently Incapacitated pension from the Department of Veterans' Affairs. Mr Humphreys has a lifetime of service to the community. It was submitted that Mr Humphreys has put great effort into his work for RSL LifeCare in the hope of contributing to the betterment of RSL LifeCare and to the League.

9.4.35 It is the case that Mr Humphreys did not vote for the increase of his own consulting fees and therefore took no part in a Board resolution which

placed him in a position of conflict of interest in that regard. It is true that when the matter was delegated to Mr Thompson soon after Mr Humphreys joined the Board, Mr Cannings had given legal advice that this process was permissible. There are clearly extenuating circumstances in Mr Humphreys' case.

9.4.36 In all the circumstances it is not intended to make a recommendation to the Minister to consider referring Mr Humphreys to ASIC or the ACNC in respect of his conduct as a director of RSL LifeCare.

Mr Kells

9.4.37 Mr Kells was the Treasurer of RSL LifeCare. He was also an extraordinarily experienced businessman. It is clear that he should have recognised the positions of conflict of interest into which he and his co-directors were placed in approving their own contracts and approving the increases in their own consulting fees over the lengthy period he served as a director.

9.4.38 Mr Kells maintained his entitlement to receive consulting fees under his Advisory Agreement up to the time of the establishment of this Inquiry and during this Inquiry. He was one of the original consultants and had clearly provided services to the company that were outside the usual and ordinary services of a director. However it is also clear that some of the services that he provided as a director, serving on committees (as opposed to providing specialist skills), were the subject of the payment of the consulting fees.

9.4.39 Mr Kells gave evidence that he became a director and an adviser to make the organisation one which could be admired for its provision of quality care and affordable living to war veterans "exemplifying the respect with which we hold them".[4] His evidence included the following:[5]

> In attempting to fulfil the vision of the organisation, I have been remiss in some of these areas. To anyone whom I have hurt in this process I unreservedly apologise. I have always expected high standards, those of others and myself particularly, but in some instances in this process I have not maintained these standards myself. I have been deeply distressed, depressed, angered, disappointed with myself. My reputation has suffered greatly and for those of you who expected more of me, I am so sorry.

9.4.40 At the conclusion of his evidence Mr Kells reiterated his "absolute sorrow in how this has all turned out".[6]

9.4.41 Mr Kells' explanation of the failure to recognise the conflict of interest and act upon it included reference to the extent of RSL LifeCare's growth and focus on accreditation; the receipt of legal advice; the fact that no other person raised the issue at Board level or elsewhere until the matters were raised in this Inquiry; and the blurring of lines of responsibilities.

9.4.42 These are all matters that are relevant to consider in determining whether a recommendation should be made to the Minister that consideration be given to referring Mr Kells to ASIC and the ACNC.

9.4.43 It was submitted on Mr Kells' behalf that the submission made by Counsel Assisting that no consideration was given to the interests of the company in entering into the Consulting Contracts from 2006 are not fairly made against Mr Kells. It was submitted that there is no evidence that at any time Mr Kells preferred his interests to that of the interests of RSL LifeCare.

9.4.44 It was submitted that Mr Kells gave his evidence honestly and co-operatively in a way that assisted the Inquiry; that he came to his service at RSL LifeCare from a distinguished background of service including being awarded a Military Cross; that he was not at any stage motivated by any improper motive for financial gain and at all times believed that he was advancing the interests of the organisation; that he made a sincere and proper acknowledgement of the extent of his wrongdoing when he made his public apology in his evidence; and that he made a significant contribution to RSL LifeCare during his period as a director.

9.4.45 These are powerful submissions. There is no doubt that Mr Kells gave his evidence honestly and that he came to the service at RSL LifeCare from a distinguished background. There is no evidence that he was motivated by any improper motive for financial gain. It is accepted that he believed that he was in fact advancing the interests of the organisation notwithstanding that he was placed in a position of conflict of interest over the years when he approved his own contract and increases in his own consulting fees.

9.4.46 It also must be accepted that his acknowledgement of the extent of his wrongdoing was both sincere and proper in a public setting. Finally it must also be accepted that Mr Kells made a very significant contribution to RSL LifeCare during his period as a director.

9.4.47 It was also submitted that there is no utility in recommending that the Minister consider referring Mr Kells to ASIC or the ACNC because of the prospect that no action will be taken against Mr Kells having regard to the nature of his transgressions and the fact that he is now retired.

9.4.48 The mitigating factors in Mr Kells favour referred to above are very powerful. However he was in a very powerful position on the Board of RSL LifeCare over a very long period of time when these conflicts of interest existed.

9.4.49 It is appropriate in the circumstances to make a recommendation to the Minister that consideration be given to referring Mr Kells to ASIC and the ACNC, in the context of the mitigating and personal factors referred to above.

Mr Longley

9.4.50 It was submitted on Mr Longley's behalf that there is no suggestion in either the evidence before the Inquiry or in Counsel Assisting's submissions that Mr Longley acted other than honestly. That is quite so. There can be no suggestion that Mr Longley's conduct at any stage of his service on the RSL LifeCare Board was anything other than honest.

9.4.51 It was submitted that the directors of RSL LifeCare were significantly let down by their professional advisers and that this is one of the mitigating factors to be taken into account in determining whether to make a recommendation to the Minister to consider referring Mr Longley to ASIC and the ACNC in relation to his failure to identify his numerous conflicts of interest and breaches of the Constitution.

9.4.52 Mr Longley served as a director from 1 July 2001 to 24 October 2006 and from 24 August 2007 to 24 August 2017. Mr Longley was not present at the meeting on 18 October 2005 and was not a director at the meetings on 24 October 2006, 22 November 2006, 20 February 2007 and 21 August 2007 at which decisions were made by directors in respect of consulting fees. However Mr Longley made decisions thereafter when he was placed in a position of conflict of interest and in breach of the Constitution and failed to recognise it.

9.4.53 These failures were obviously significant for a person who later became Chairman of RSL LifeCare in 2016. Mr Longley's evidence was that it was not until he was either preparing for his evidence or giving his evidence at the Inquiry that these failures dawned on him. He had been instrumental in reviewing the Conflicts of Interest Policy and establishing a Register of Pecuniary Interests in November 2016 for RSL LifeCare. However it appears that notwithstanding his involvement in these processes, he did not reflect on or recognise the serious failures in respect of the approval of his own consulting fees.

9.4.54 Mr Longley's explanation in his evidence as to how the organisation could have had numerous directors in this position of conflict of interest and also in breach of the Constitution in this regard was not illuminating. Mr Longley tried to explain that alarm bells and signals should have been triggered. It was at this stage that he was driven to make his apology.

9.4.55 In Mr Longley's case, notwithstanding the mitigating factors of the receipt of legal advice and the dependence on others to assist in recognition of conflicts of interest, the failures occurred over a very lengthy period of time and were still not recognised when he became Chairman of the organisation.

9.4.56 In the circumstances it is recommended that the Minister consider referring Mr Longley to ASIC and the ACNC in the context of the mitigating circumstances referred to above.

Dr Macri

9.4.57 There is no doubt that Dr Macri provided services as a director acting in good faith and in the best interests of RSL LifeCare; and that she behaved honestly at all times.

9.4.58 However over a lengthy period Dr Macri failed to recognise the position of conflict of interest in which she was placed in approving her own contracts and increases in her own consultancy fees whilst on the Board of RSL LifeCare.

9.4.59 It was submitted that there is already an Inquiry into RSL LifeCare by the ACNC and it is therefore not necessary to consider making a recommendation to the Minister to refer Dr Macri's conduct to ASIC or the ACNC.

9.4.60 Another matter raised on behalf of Dr Macri was that section 191(2)(ii) of the Corporations Act provides that a director is not required to give notice of a material personal interest if the interest arises in relation to the director's remuneration as a director of the company. That provision does not assist Dr Macri in failing to recognise a conflict of interest in voting to increase what she understood were her own consultancy fees under a separate contract with the company (even if some of those fees were attributable to her ordinary services of a director).

9.4.61 In all the circumstances of the lengthy period during which Dr Macri served when these conflicts of interest occurred, it is appropriate to make a recommendation to the Minister to consider referring Dr Macri to ASIC and the ACNC in the context of the mitigating and personal factors referred to above.

Mr Murray

9.4.62 Mr Murray was a director of RSL LifeCare for a shorter period (17 April 2015 to 30 November 2017) than all the other directors who received consulting fees. His family company, Murson Holdings, received consulting fees under its Advisory Agreement with RSL LifeCare, while Mr Murray was a director, from April 2015 until the payments were suspended in November 2016.

9.4.63 On 30 November 2016, Murson Holdings wrote to Mr Thompson giving one month's notice of termination of its Advisory Agreement with RSL LifeCare.[7] In that letter it claimed that services had been provided during the quarter in which notice was received of the suspension of the consulting payments and that services continued to be performed up to the date of the letter. Murson Holdings advised that at a "future date, when the matters that led to the suspension of the payments are resolved" it looked forward "to a final payment for the current quarter".[8]

9.4.64 In his oral evidence at the Inquiry Mr Murray referred to the approval of a tools-of-trade allowance. He originally said that he was not sure

whether it was at a Board meeting or a "pre-Board meeting". [9] However he also gave evidence that it was at a Board meeting although "it had come to the Board through one of the Board committees".[10] Mr Murray said he understood that this was an approval of an allowance that he was to receive as a director and that he "now" recognised this placed him in a position of conflict of interest. However, his evidence was that he was "completely oblivious to it" at the time, for which he apologised.[11]

9.4.65 Notwithstanding Mr Murray's evidence in this regard it appears that the approval of this allowance may have been outside a Board meeting, perhaps at Committee level, or as Mr Murray said at a "pre-Board" meeting, as there is no reference in any of the RSL LifeCare Board meeting Minutes from the date that Mr Murray became a director recording any such approval. There were emails from Mr Thompson in which he referred to such an allowance, but nothing that would place Mr Murray in a position of conflict of interest as a director at any Board meeting.

9.4.66 Mr Murray was present at the Board meeting on 22 June 2017, which was attended by RSL LifeCare's previous lawyers, PwC. This was the meeting at which Mr Kells was asked to, and did, recuse himself. The relevant resolution at this meeting related to the confirmation of the suspension of the payment of consulting fees subject to this Inquiry and the ACNC Inquiry. Mr Murray's family company had not by this stage indicated that it no longer sought any payment of the consulting fees for the services that Mr Murray provided to RSL LifeCare. In those circumstances Mr Murray had an interest, albeit indirectly through his family company, in the payment of those fees. He accepted in his oral evidence at the Inquiry that all of the directors (including himself) who had not abandoned an entitlement to the payment of those fees were placed in the position of conflict of interest.[12]

9.4.67 It is apparent that no advice was given by any of the lawyers attending the RSL LifeCare Board meeting on 22 June 2017, to any director that if they had not abandoned an entitlement to the payment of the consulting fees that were then in the RSL LifeCare books as a contingent liability, they should not vote on the resolutions in relation to those payments. It is clear that the focus at that meeting was on a letter from Mr Kells requesting payment under his Advisory Agreement.

9.4.68 The services that Mr Murray provided to RSL LifeCare both as a consultant and as director particularly in relation to contemporary veterans and in relation to the Homes for Heroes program, were clearly exemplary. There are extenuating circumstances surrounding the two instances referred to above. The first instance is in any event rather vague. The second instance is after the Inquiry was announced in the presence of a number of lawyers.

9.4.69 In those circumstances it is not intended to make a recommendation to the Minister that consideration be given to referring Mr Murray to ASIC or the ACNC.

Mr Riddington

9.4.70 Counsel for Mr Riddington referred specifically to the Information Sheet numbered 151 published by ASIC in September 2013 entitled "ASIC's Approach to Enforcement". That document included the following:[13]

> We carefully consider how to respond to all potential breaches of the law, but we do not undertake a formal investigation of every matter that comes to our attention. We consider a range of factors when deciding whether to investigate and possibly take enforcement action, to ensure that we direct our finite resources appropriately.
>
> The specific factors we will consider will vary according to the circumstances of the case. … Broadly, however, we consider the following four issues in deciding to take enforcement action.

9.4.71 Counsel for Mr Riddington summarised those relevant factors as follows:[14]

- Strategic significance which includes consideration of such factors as the harm caused or the amount of money lost, the impact of that loss on the people affected, or the wider market implications.
- Benefits of pursuing misconduct and whether it is cost effective, whether the misconduct is widespread or part of a growing trend and whether enforcement action will send an effective message to the market.
- Issues specific to the case, for example, whether the conduct was serious, dishonest, deliberate, or led to widespread public harm, whether there is admissible evidence to prove the conduct, whether the conduct was isolated or ongoing and the time since it occurred.
- The existence of alternatives to formal investigation. ASIC is less likely to investigate matters that would be better addressed by another agency or by private dispute resolution between those involved.

9.4.72 It was submitted that there should be no recommendation made for the Minister to consider referring Mr Riddington to ASIC or the ACNC.

9.4.73 First, it was submitted that Mr Riddington has retired and therefore there is no ongoing compliance concern.

9.4.74 Secondly, it was submitted that Mr Riddington's involvement with RSL LifeCare did not result in the loss of money. It was submitted that Mr Riddington was instrumental in achieving corporate success for RSL LifeCare.

9.4.75 Thirdly, it was submitted that Mr Riddington did not behave dishonestly. Indeed his evidence was that he did not appreciate the existence of relevant conflicts until he began preparing to give his evidence before the Inquiry.

9.4.76 Fourthly, RSL LifeCare is a relatively unique organisation and there are no wider market implications.

9.4.77 Fifthly, the issues raised by the Inquiry have been adequately dealt with by the Inquiry. It was emphasised that the examination of the RSL LifeCare directors was public and the subject of media attention. Reputations have been placed under the microscope by searching examinations and the issues raised have been sufficiently addressed by "another agency", namely the Inquiry.

9.4.78 Sixthly, it was submitted that there has been considerable retrospection on the part of the organisations, and in particular RSL LifeCare in relation to their internal checks and balances.

9.4.79 Seventhly, the Minister will presumably review the position of RSL LifeCare and RSL NSW and their authorities to fundraise once the Inquiry Report is produced.

9.4.80 Finally, it was submitted that it would not be cost effective for ASIC to engage in its own investigation, particularly when a prosecution of Mr Riddington is highly unlikely.

9.4.81 Mr Riddington was Deputy Chairman of RSL LifeCare for many years and then Chairman for two years. The members of the organisation were entitled to depend upon him in those roles to lead the organisation consistently with its legal obligations and to alert others to possible failures including placing themselves in a position of conflict.

9.4.82 There is no doubt that Mr Riddington provided extraordinary service to RSL LifeCare over the years. There is equally no doubt that he acted honestly. His failures in respect of the positions of conflict of interest in which he was placed in voting in respect of his own consulting contracts and his own fees was not a wilful act. Rather it was ineptitude.

9.4.83 In all the circumstances and having regard to the significantly important leadership roles that Mr Riddington held during the period covered by the Terms of Inquiry, it is appropriate to make a recommendation to the Minister to consider referring Mr Riddington to ASIC and the ACNC, in the context of the mitigating and personal factors referred to above.

Mr Rowe

9.4.84 Mr Rowe was an *ex officio* director of RSL LifeCare for many years as the President of RSL NSW.

9.4.85 Mr Rowe should have been exquisitely aware that RSL NSW State Councillors were not entitled to be paid for their services on State Council. Equally he should have been aware that those same State Councillors were prohibited from receiving payment from RSL LifeCare for their ordinary services as directors. His position as a consultant was quite different from each of the other directors, in that, he

did not serve on committees. This was outside the terms of Mr Cannings' advice. Notwithstanding that advice Mr Cannings and Mr White advised Mr Thompson that irrespective of this matter, Mr Rowe could be provided with a consulting contract and later an Advisory Agreement.

9.4.86 The President of RSL NSW as an *ex officio* director of RSL LifeCare should have ensured that he was not placed in a position of conflict of interest in approving his own contracts and then approving his own increases in consulting fees.

9.4.87 Having regard to the significant position Mr Rowe held as the *ex officio* director as President of RSL NSW, it is appropriate to make a recommendation that the Minister consider referring to Mr Rowe to ASIC and the ACNC for appropriate investigation.

Mr White

9.4.88 Mr White was the Chairman of RSL LifeCare for many years upon whom the members were entitled to depend to lead the organisation consistently with its legal obligations. Mr White was intimately involved in the process of the increases in consulting fees and putting those proposals before the Board for their approval.

9.4.89 As a leader of a Board for so many years, Mr White's failures to recognise the positions of conflict into which he placed himself and the other directors was a very serious failing.

9.4.90 In his final written submissions, Mr White contended as follows:[15]

> Although it now appears there should have been some better processes in place, the element of trust of everyone needing to do what was believed to be correct was deemed to have occurred.

9.4.91 This submission might be understood as the suggestion of the mitigating factor of having relied on legal advice and support of management that did not alert the Board to these conflicts.

9.4.92 Mr White has also referred to a number of factors in particular, some recent ill health, as mitigating factors to be considered. Notwithstanding those health considerations, Mr White has indicated that he hopes to continue serving the RSL and assist the veteran community wherever possible.

9.4.93 It is appropriate to make a recommendation to the Minister to consider referring Mr White to ASIC and the ACNC for appropriate investigation.

Mr Thompson

9.4.94 Counsel Assisting the Inquiry submitted that Mr Thompson preferred the interests of the directors and thus his own interests over those of RSL LifeCare and thereby breached his duties to the company in the manner in which the consulting contracts and fees were managed. The context of this submission relates to the manner in which the consultancy contracts and later the

Advisory Agreements were entered into on behalf of RSL LifeCare; the manner in which Mr Thompson determined the consulting fees under the Advisory Agreements after the task was delegated to him in 2012; and his conduct in dealing with PwC Consulting in their review of the fees in 2015 and 2016.

9.4.95 The consideration of Mr Thompson's conduct as the CEO of RSL LifeCare throughout the period covered by the Terms of Inquiry is relevant under paragraphs 3(c) and (4) of the Terms of Inquiry. Clearly funds of RSL LifeCare were expended pursuant to decisions made by the directors and by a group including Mr Thompson who had in respect of such decisions a conflict of interest. It is not controversial that those conflicts existed and Mr Thompson readily accepted that they existed and attempted to do something about them.

9.4.96 Mr Thompson's position is complex. His relationship with Mr Cannings was clearly one of dependency for legal advice and later for both legal and commercial advice. The approach that was adopted, apparently on the advice or with the imprimatur of Mr Cannings, to delegate the task of determining the consulting fees to Mr Thompson so that the Board could rid itself of conflicts of interest was quite wrongheaded. Up to 2012, as the directors of RSL LifeCare sat around the board table approving increases in their own fees, none of them recognised the positions of conflict into which they were placed. Mr Thompson did not alert them to these positions of conflict. This is very surprising having regard to the steps that he took in March 2007 to obtain advice from Mr Cannings about the handling of conflicts of interest at Board level and Mr Cannings' clear advice as to what should happen when a conflict existed.

9.4.97 It is incomprehensible that (apart from Mr Carlson) not one director over the period 2007 to 2012 was alerted to the position of conflict of interest into which they were placed in approving their own contracts and the increases in their own consulting fees. It was Mr Thompson who belatedly became concerned about the position and raised it with the Board.

9.4.98 The steps that Mr Thompson took in determining the consulting fees were wrongheaded. A retainer is an amount that is paid to a person to provide services irrespective of whether the person is actually called upon to provide the services the subject of the retainer. To embark on a process of trying to assess the number of hours to equate to the amount of the retainer was both unhelpful and problematic. It was problematic from the point of view of Mr Thompson dealing with PwC Consulting and also in giving his evidence before this Inquiry.

9.4.99 On the one hand PwC Consulting reviewed Mr Thompson's approach to the assessment of hours and then seemed to adopt the same approach by suggesting that the hours could be more accurately fixed if the directors kept a record of the time they spent in providing the services the subject of the retainer. This compounded the problems of communication between Mr Thompson and PwC Consulting. Mr Thompson resisted the

suggestion that was made of keeping records of hours and in doing so expressed himself in a manner that exposed him to criticism during his evidence at the Inquiry.

9.4.100 By the time of these communications with PwC Consulting, Mr Thompson had reached the Plimsoll line in respect of his involvement in determining the fees and ultimately refused to have anything further do with it. This was clearly the position that he should have adopted from the outset even if it caused the practical difficulties for the directors of having to go to an AGM to have their fees and contracts approved by the only remaining member, being RSL NSW.

9.4.101 It is very unsatisfactory that a CEO of an organisation should have been placed in the position into which Mr Thompson was placed. However CEOs are not only required to have an understanding and appreciation of the proper processes relating to dealing with conflicts of interest, they also need to have the courage and resilience to resist being placed into compromised positions. Had Mr Thompson resisted being placed into this position, the problems that beset RSL LifeCare, at least in respect of the consulting fees controversy, may well have been avoided.

9.4.102 There are numerous mitigating factors in Mr Thompson's favour. There is the fact that he was the only person to identify the conflict of interest. He took legal advice in respect of the position of conflict of interest and also in respect of his own position once the task was delegated to him. He then took further legal advice in respect of the steps that he took in going about determining the fees. He made an attempt to put some maths around the retainers, albeit in a wrongheaded fashion. That conduct was honest and was an attempt to bring some rigour to the process. Mr Thompson should not be criticised for debating the matter with PwC Consulting in the review process, notwithstanding that the debate arose out of his own wrongheaded approach. There is a vast difference between wrongheaded conduct and wilful and self-interested conduct. Mr Thompson's conduct does not fall into the latter categories.

9.4.103 Mr Thompson presented as a person who did as much as he could for the best interests of RSL LifeCare. The process in respect of the consulting fees is an utter debacle that should never have occurred.

9.4.104 Counsel Assisting the Inquiry submitted that a recommendation should be made to the Minister that consideration should be given to referring Mr Thompson to ASIC and the ACNC.

9.4.105 Between 2007 and 2012, Mr Thompson did not recognise that the decisions in respect of the approval of the consultancy contracts and the increases in the consulting fees were made by a Board whose members were riddled with conflicts of interest. Mr Thompson knew from 2012 that the process in which RSL LifeCare funds were to be expended in the payment of consulting fees to directors involved decisions by him which

placed him in a position of conflict of interest. He should have resisted this imposition.

9.4.106 Notwithstanding that Mr Thompson was 'assisted' by Mr Cannings, the length of time during which this conduct occurred is of serious concern and warrants a recommendation being made to the Minister to give consideration to referring Mr Thompson's conduct to ASIC and the ACNC in the context of the mitigating and personal circumstances referred to above.

Mr Cannings

9.4.107 One of the greatest attributes of a legal adviser is objectivity. One of the dangers in acting for a client for many years is the prospect of the diminution of that objectivity which may blinker the adviser from recognising difficulties for the client and/or in advising the client.

9.4.108 Mr Cannings' relationship with RSL LifeCare was lengthy. Although he described himself as the Honorary Legal Advisor to RSL LifeCare, PwC's legal fees during the period covered in the Terms of Inquiry amounted to approximately $8 million. The manner in which Mr Cannings was providing advice to Mr Thompson over the period 2007 to 2016 seemed to be rather *ad hoc*. He also appeared to be effectively on call for any aspect of advice that Mr Thompson might seek from him. At the same time Mr Cannings was providing advice to RSL NSW, as an Honorary Legal Adviser and to RSL WBI.

9.4.109 Mr Cannings had been advising RSL LifeCare since 2001 in respect of its capacity to pay fees to directors. In 2001 he advised that he could find no clear delineation between the ordinary services of directors and those that were extraordinary.[16] By 2006 he was able at least to give examples of what he regarded as ordinary services of directors when he again advised that RSL LifeCare could pay its directors for consulting services.

9.4.110 Although it was submitted that Mr Cannings' letter of advice on 22 November 2006 failed to alert the directors of RSL LifeCare that they would place themselves in a position of conflict of interest if they fixed their own remuneration, the letter read as a whole, which it is reasonable to assume would be the case, does provide advice that directors with an interest in a contract should not vote on a resolution in respect of a contract in which they have an interest.

9.4.111 In 2012 Mr Cannings advised Mr Thompson that he had a "lesser conflict" than the members of the Board, and was thus able to determine the level of the consultancy fees for the directors. It was after this advice and after the task of determining the consulting fees was delegated to Mr Thompson, that Mr Thompson prepared the proposal for the increases in the consulting fees. Mr Cannings advised Mr Thompson that he had reviewed his proposal and confirmed his "agreement to the contents as written" and then "endorsed" it "for submission to the Board".[17]

9.4.112 A proper review of this proposal should have left Mr Cannings with the clear understanding that all of the directors were being paid consulting fees and that there was to be an increase in those fees. In any event, Mr Cannings knew from his advices in late 2006 that their purpose was to provide a mechanism for all the directors to be remunerated. It is difficult to understand how Mr Cannings could have then endorsed the proposal for submission to the Board without appreciating that each of the directors would be placed in the position of a conflict of interest in approving the proposal. That is particularly in light of the previous very clear advice that he had given in 2006 and 2007, that RSL LifeCare directors must not be involved in approving contracts or aspects of them in which they had a personal interest. As it turned out, Mr Thompson did not submit the proposal to the Board but rather sent it to the individual directors, albeit in an email addressed to all of the directors.

9.4.113 The fact that Mr Cannings could give advice that as CEO, Mr Thompson could proceed to make decisions about the expenditure of its funds whilst in a position of conflict of interest (albeit a "lesser" one than others) is very worrying indeed. How Mr Cannings could have then given advice that the proposal for increases should be submitted to the Board, whose members had 'greater' conflicts of interest, is quite inexplicable. The provision of this advice by Mr Cannings in 2012 gives some insight into how his objectivity had been blunted by the years of being involved with this client.

9.4.114 Matters did not improve.

9.4.115 Mr Cannings continued to be involved in the consulting fees review, in particular in September 2015 when PwC Consulting provided advice.[18] Mr Cannings was keen to become a director of RSL LifeCare and submitted an expression of interest for appointment on 22 November 2015. It was in this application that Mr Cannings advised that he had been the Honorary Legal Adviser to RSL LifeCare for the "past 14 years" and had been advising RSL NSW for "the past 29 years (18 as Senior Honorary Legal Adviser)".[19] He also advised that he intended to retire from PwC from 30 June 2016 and that if he were to be appointed as a director of RSL LifeCare he would cease his role as Honorary Legal Adviser from that date.[20]

9.4.116 On 23 February 2016 Mr Cannings provided advice to RSL NSW in respect of the proposed amendments to the RSL LifeCare Constitution which sought, amongst other things, to remove the requirements to advertise Board vacancies for current directors seeking re-appointment and to allow the appointment of persons known to the Board without the need for advertisement.[21] Although these amendments upon which Mr Cannings was advising RSL NSW would potentially benefit him if his application to become an RSL LifeCare director was successful, he appears not to have recognised the position of conflict in which he was placed.

9.4.117 In July 2016 Mr Cannings provided advice to RSL NSW in relation to the position of State Councillors who had received consulting fees from RSL LifeCare. In that advice Mr Cannings disclosed that he was then currently an adviser to RSL LifeCare and was "entitled to receive payment for my services in accordance with the constitution of LifeCare". He also advised that he was not a director of RSL LifeCare nor was he an officer of RSL NSW. Mr Cannings did not advise RSL NSW that he had submitted his expression of interest in joining the Board of RSL LifeCare. Although he referred to his entitlement to receive payment for his "services" as an adviser in accordance with the Constitution, he did not disclose that his company, ICAN, had entered into an agreement with RSL LifeCare on 18 May 2016. That contract was in almost identical terms to those contracts of the State Councillors, who were the subject of his advice to RSL NSW. Also Mr Cannings did not advise RSL NSW that he had provided advice to RSL LifeCare in relation to the consulting fees payable to State Councillors in 2006 and 2012. The advice that Mr Cannings proffered to RSL NSW included the following:[22]

> Provided that any remuneration or payment is in good faith, approved by the directors of LifeCare and for services performed (and not being ordinary services as directors), then such payments are in accordance with the provisions of the constitution of LifeCare.

9.4.118 This was advice at a time when Mr Cannings knew that the payments would not be approved by the directors of RSL LifeCare because that process had been delegated to Mr Thompson by reason of the directors' conflicts of interest. There was no advice given to either RSL NSW or RSL LifeCare of the need for ratification of the consulting fees by the members in general meeting.

9.4.119 It appears that Mr Cannings had no appreciation of the position of conflict in which he placed himself in providing these advices both to RSL LifeCare and RSL NSW.

9.4.120 In relation to his own Advisory Agreement entered into in May 2016, Mr Cannings was involved in the finalisation of that agreement and yet did not make plain to RSL LifeCare that he was not acting for the company at the time that he entered into the contract and sought adjustments to it. It was not suggested to RSL LifeCare by Mr Cannings that the company may wish to take independent legal advice at the time of the entering into of the Advisory Agreement with him.

9.4.121 Once Mr Cannings became a director he attended the Board meetings on 22 June 2017 in his capacity as a director and yet did not recognise the conflict of interest in the directors who had been in receipt at the time of the suspension of the consulting payments in October 2016 voting in respect of those fees, save for Mr Kells who was asked to recuse himself.

9.4.122 RSL LifeCare deserved better from Mr Cannings. He could have, and clearly should have, alerted the directors to the problem of the conflicts of interest and should never have suggested that Mr Thompson could

proceed to determine the consulting fees whilst he was in a position of conflict of interest.

9.4.123 Counsel Assisting the Inquiry submitted that a recommendation should be made to the Minister to refer Mr Cannings to the Legal Services Commissioner in respect to the conduct outlined in this Chapter. Although Mr Cannings' conduct over the years as described in this Chapter may warrant investigation by the Legal Services Commissioner, for the reasons previously discussed it is not intended to make such a recommendation to the Minister. It will be a matter for the Minister separately from any recommendation to take any further steps in relation to Mr Cannings' conduct that are deemed appropriate.

RECOMMENDATIONS

9.4.124 It is recommended that the Minister give consideration to referring Messrs Crosthwaite, Kells, Longley, Riddington, Rowe, Thompson, White and Dr Macri to ASIC and the ACNC for any investigation deemed appropriate by those organisations.

ENDNOTES

[1] Appendix E.
[2] Ex 8, Vol 2, Tab 5, p 142.
[3] Ex 1, Vol 1, p 29.
[4] Tr 3095.
[5] Tr 3095 - 3096.
[6] Tr 3161.
[7] Ex 1, Vol 2, p 543.
[8] Ex 1, Vol 2, p 543.
[9] Tr 2084.
[10] Tr 2084 - 2085.
[11] Tr 2085.
[12] Tr 2101.
[13] Outline of Closing Submissions on behalf of Mr Riddington, 6 November 2017, p 11, par 35 - 36.
[14] Outline of Closing Submissions on behalf of Mr Riddington, 6 November 2017, p 12, par 37.
[15] Outline of Closing Submissions on behalf of Mr White, 6 November 2017, p 3, par 18.
[16] Ex 19, Vol 1, p 1.
[17] Ex 1, Vol 1, p 274.
[18] Ex 19, Vol 2, p 197.
[19] Ex 19, Vol 2, p 251.
[20] Ex 19, Vol 2, p 251.
[21] Ex 19, Vol 1, p 80.
[22] Ex 19, Vol 1, p 114.

10. POLITICAL DONATIONS

10.1 One of the controversies raised in the media in 2017 was a claim that RSL LifeCare made political donations to the Liberal Party of Australia (Federal Liberal Party) and the Liberal Party of New South Wales Division (NSW Liberal Party) (collectively the Liberal Party).[1] Apart from the claim that it was inappropriate for a charity to be making such donations generally, there was the issue whether the donations came from funds raised from the public.

BACKGROUND

10.2 From at least 2005 RSL LifeCare paid for directors, staff, residents and partners to attend functions hosted by the Liberal Party or local politicians who were members of the Liberal Party.[2] Invitations were sent to Mr Thompson, as CEO of RSL LifeCare, who then caused them to be circulated by email to directors and select members of staff.[3] Partners of directors and management were also invited to attend as well as residents of the RSL LifeCare village at Narrabeen.[4] Sometimes the email included details of the event and at other times a flyer for the event was attached to the email.[5]

10.3 RSL LifeCare accepts that between 2005 and 2017 directors, staff, residents and partners attended 24 political functions. They attended 12 functions hosted by the NSW Liberal Party; 10 functions hosted by the Federal Liberal Party and 2 functions hosted jointly by the NSW and Federal Liberal Parties. The amount paid for a table at these functions was usually $1,000 or less.[6]

10.4 Documents held by RSL LifeCare record the acceptances of these invitations. However, no record was kept of the actual attendances at each function. The directors who accepted such invitations were Mr Longley (together with his wife);[7] Mr White (together with his wife);[8] Mr Riddington (together with his wife);[9] and Mr Hardman (together with his wife).[10] Although they informed the Inquiry they did not attend any such function, RSL LifeCare documents record that Mr Rowe,[11] Dr Macri[12] and Mr Kells[13] accepted such invitations from Mr Thompson. The records also include an acceptance by Mr Cannings to such a function on 27 March 2013.[14] Members of management who attended events included Mr Thompson (together with his wife),[15] Mr Broadhead (together with his wife)[16] and Mr Ham (together with his wife).[17]

10.5 Each of these functions was hosted by the Liberal Party. Between 2005 and 2017 the sitting members for the electorate encompassing Narrabeen at both State and Federal level were members of the Liberal Party.[18]

10.6 The invitation to a function on 12 August 2010 included the statement by Mr Thompson's Executive Assistant that "we would love to put a table together

to support our Member for Pittwater".[19] The invitation to a function on 14 March 2013 included Mr Thompson's description of it as an "opportunity" for all directors to listen to the NSW Treasurer.[20] The flyer with the invitation to the event on 9 October 2014 recorded that "[y]our support will go towards the re-election of the Baird government in March 2015".[21] The flyer with the invitation to an event on 12 August 2015 included explanations about "political donations" with a requirement to confirm that the attendee was "eligible to make a political donation".[22]

10.7 It would be very difficult for any recipient of the invitations to these events to conclude that they were anything other than in support of the local members or the Liberal Party generally or in support of the re-election of the local member or the Liberal Party.

10.8 There is no evidence that RSL LifeCare made any donations to any political party or candidate other than by payments to attend these functions.

A "POLITICAL DONATION"

10.9 A payment to attend a function hosted by a political party is a political donation. Such a donation must be declared under New South Wales legislation if it is or exceeds $1,000, or if donations to the benefit of, inter alia, a party or elected member made by the entity in any financial year is or exceeds $1,000.[23] Donations in support of Federal political parties must be declared if they exceeded the threshold of $10,000 at relevant times.[24]

10.10 RSL LifeCare made donations to both the Federal Liberal Party and the NSW Liberal Party by attending the functions referred to above. Declarations were made by RSL LifeCare of payments to the NSW Liberal Party in three financial years.

10.11 In the 2008/2009 financial year RSL LifeCare declared to the Election Funding Authority NSW that it made a donation of $1,000 on 10 November 2008 for a lunch with Mr Ian Kiernan.[25] In the 2011/2012 financial year RSL LifeCare declared to the Election Funding Authority NSW that it made no political donations.[26] In that financial year it in fact made a donation of $2,500.[27] In the 2015/2016 financial year RSL LifeCare declared a donation of $700 to the NSW Electoral Commission to attend a breakfast with the NSW Premier on 2 July 2015.[28] If this had been the only donation in that year RSL LifeCare did not have to make this declaration. However, it failed to declare an amount of $750 for attending a breakfast on 13 April 2016 hosted by the NSW Liberal Party.[29] The combination of these two donations thus exceeded $1,000 and so required disclosure.

10.12 RSL LifeCare's documents provided to the Inquiry on 18 October 2017 included a notation that for the majority of the functions there is no evidence that payments were actually made to the Liberal Party.[30] It is therefore not possible to identify with precision the amount paid by RSL LifeCare to the

Liberal Party nor is it possible to conclude that RSL LifeCare did not otherwise comply with its reporting obligations.

10.13 What is clear is that prior to February 2017, RSL LifeCare had no policies or procedures in place in relation to the attendance at political functions or the declaration of political donations and there was a failure by both the directors and management to ensure compliance with the requirements of the *Election Funding, Expenditure and Disclosures Act* 1981.

EXPOSURE OF THE ISSUE

10.14 On 16 January 2017, a journalist made contact with RSL LifeCare inquiring about amounts paid by the company to attend political breakfast briefings. During that inquiry the journalist referred to the ACNC "guidance on donations".[31]

10.15 On 21 April 2017 Mr James Robertson, a journalist with Fairfax Media, contacted RSL LifeCare seeking comment regarding the payment of consulting fees to Mr Longley.[32] The list of questions Mr Robertson posed included: "RSL Lifecare made two payments to the Liberal Party of NSW, $700 in July for breakfast with Mike Baird and $750 for breakfast with Gladys Berejiklian. Is this an appropriate use of money for the charity?".

10.16 On 21 April 2017, RSL LifeCare responded:[33]

> The aged care industry is one of the most heavily regulated sectors in Australia. As a result, RSL LifeCare's management team needs to keep on top of public policy trends and developments, in order to provide the best care to its 7,000 residents. With this in mind, RSL LifeCare attended two public breakfast briefing sessions with the NSW Premier and the NSW Treasurer, involving more than 100 guests each, where our senior managers were able to learn about the government's plans for the sector. These briefing sessions for about 10 of our senior management team cost about $70-$75 per head.

10.17 On 24 April 2017 Mr Robertson's article entitled "Charity defends donating to the NSW Liberals" was published.[34] It referred to the two payments and the response from RSL LifeCare as well as a statement from the Leader of the Opposition, Luke Foley MP that: "[t]housands of good-hearted people who support RSL LifeCare will be shocked to hear that money was being funnelled off to the Liberal Party."

10.18 On 15 May 2017 at the announcement of the establishment of this Inquiry a journalist asked the Minister a question about these allegations.

10.19 On 10 August 2017, during the parliamentary debate in respect of the amendment to the Act, questions were raised about these allegations.[35]

10.20 On 16 August 2017 Mr Brown, in his role as President of RSL NSW as the "controlling entity of RSL LifeCare", wrote to the President of the

NSW Liberal Party requesting that the Party consider refunding $1,450 paid to it by RSL LifeCare in the 2015/2016 financial year in terms that included the following:[36]

> Since its founding a century ago the RSL has prized being strictly non-partisan and non-sectarian. Whilst I understand RSL LifeCare has underlined that it followed due process in this instance, I am conscious that we need to guard against even the remotest possibility that the public could perceive RSL NSW, or its subsidiaries, as anything other than non-partisan.

10.21 There has not yet been any further request for a refund of any of the other donations to the NSW Liberal Party or the Federal Liberal Party.

ACNC GUIDELINE

10.22 In April 2016 the ACNC published a document on its website entitled "Charities, elections and advocacy", with a subheading "Political campaigning and advocacy by registered charities – what you need to know" (the ACNC guideline).[37] That publication was recorded as "guidance" for charity board and committee members and cautioned that "political advocacy and campaigning is a complex area for charities". It also cautioned that the guidance was not legal advice and referred to the options of the charity seeking specific advice from the ACNC or taking independent legal advice.

10.23 The ACNC guideline defined "advocacy and campaigning" as "activities which are aimed at securing or opposing any change to a law, policy or practice in the Commonwealth, a state or territory, or another country". The ACNC excluded "political party activity" from the definition because registered charities "cannot have a purpose of promoting or opposing a particular political party or candidate".[38] It recognised that advocacy and campaigning could be a legitimate and effective method of furthering charitable purposes. However it warned against crossing the line in having a "disqualifying political purpose" and promoted the maintenance of "independence from party politics".[39]

10.24 The ACNC warned against a charity having "a purpose of promoting or opposing a particular political party or candidate". It referred specifically to the importance of public perception and the potential impact that a charity's advocacy and campaigning may have on its reputation particularly in the lead up to an election.[40]

10.25 The ACNC guideline identified the "purpose" of promoting a political party or candidate for political office as a "disqualifying political purpose".[41]

RSL LIFECARE'S RESPONSE

10.26 In apparent response to the questions raised by the journalist in January 2017, RSL LifeCare produced a document dated January 2017 and entitled "Political Donations" with the recorded purpose of providing "information regarding payments made to attend breakfast briefings held by the local MP".[42] It addressed the two payments in the 2015/2016 financial year and recorded that RSL LifeCare attended the breakfasts as "it must stay on top of policy and regulatory changes in the healthcare industry to continue providing the highest service standards to its residents".

10.27 The document recorded that the purpose of attending the functions was to listen to the local member discuss matters relevant to the organisation; and to listen to the Premier/Treasurer discuss matters relevant to the State and the organisation. It was noted in this regard that RSL LifeCare villages had spread throughout the State. The document recorded the "primary purpose" as the receipt of "further information relevant to the operations of the charity".

10.28 On 16 January 2017 Mr Thompson contacted the Senior Compliance Officer of the ACNC to discuss the matters raised by the journalist in respect of the two donations in the 2015/2016 financial year.

10.29 Following that discussion, Mr Thompson wrote to the ACNC Officer on 18 January 2017, addressing the two functions in the 2015/2016 financial year.[43] He advised that it "[i]s important that the board and management are aware of the policy directions which affect our services, which was the primary reason for attending." Mr Thompson also advised that RSL LifeCare was aware that the functions were Liberal Party events but that "this was not our motivation for attending".

10.30 Mr Thompson made the rather misguided observation that the "price of $750 in one year for attending a breakfast briefing represents an immaterial amount of the charity's revenue". The evidence at this Inquiry establishes that between 2005 and 2016 RSL LifeCare had made political donations to the Liberal Party of at least $15,613.[44]

POLITICAL ADVOCACY POLICY

10.31 On 23 February 2017 the RSL LifeCare Board adopted a "Political Advocacy Policy".[45] The Policy records that RSL LifeCare's core charitable purpose is "to make retirement village accommodation and amenities available to persons who are members of RSL NSW (Veterans), their dependents or other deserving persons".[46] It notes that to maintain its charitable status RSL LifeCare must not have any disqualifying purpose including promoting a political party or a candidate for political office.[47] The Policy applies to all employees and directors of RSL LifeCare in the conduct of their duties.[48] It acknowledges that RSL

LifeCare's funds "cannot be used to support political parties, or to support a person in a federal, State or local council election".[49] It includes the following:[50]

> RSL LifeCare Personnel participating in political activities (including the making of political donations) should do so in such a manner that makes it clear that they are not representing RSL LifeCare, and must not use the Company's resources or rely on their standing within the Company to promote or engage in such activities.

10.32 The Policy provides examples of political donations, including the following:[51]

> a contribution, entry fee or other payment to attend or participate in a fundraising event or function which is primarily a political fundraiser and there is no identifiable purpose for attendance that is linked to the Company's charitable purpose, where the payment forms part of the proceeds of the event.

10.33 A reasonable reading of this example suggests that it is permissible for RSL LifeCare to make a donation to a political party to attend a political event, if the RSL LifeCare director has a purpose in attending the event which can be connected to the charitable purpose of RSL LifeCare. This raises such issues as to: who it is that will identify whether there is a "linked" purpose for the attendance; whether the so called "linked" purpose will be made public; and whether it might dilute the perception of partisanship.

10.34 If one were to take the view, as some of the directors of RSL LifeCare did in their evidence at this Inquiry, that it is permissible for the charity to make political donations for the purpose of its officers attending these functions if, for instance, a director of RSL LifeCare believes that a networking opportunity is available, the serious threat of reputational damage to the charity would be heightened. Those who might observe a chairperson of a charity chatting to the local member at a fundraising event for his re-election cannot reasonably be expected to conclude that the charity's presence and the exchange is not in support of the re-election of the politician but rather in support of some unidentified, unpublished charitable purpose of the charity.

10.35 Another unsatisfactory aspect of this example is the description of the payment as forming "part of the proceeds of the event". It is not at all clear what is intended by this expression. If a charity pays an attendance fee for a function that is promoted as having the purpose of supporting the election of a local member or a particular party, it is a political donation which a charity should not make, irrespective of some private intention of the attendee.

EVIDENCE AT THE INQUIRY

10.36 Each of the directors, the CEO and the CFO of RSL LifeCare gave evidence about attending political functions

Mr Crosthwaite

10.37 Mr Crosthwaite did not attend any of the political functions due to the distance from his residence. With hindsight, he thought attendance was important as a method of discussing industry based and local issues but would have concerns if it could be perceived as a political donation. He would not approve attendance if there was not to be any discussion at the function of issues affecting RSL LifeCare. He did not turn his mind to whether RSL LifeCare should be funding such attendances and accepted that he ought to have made inquiries about the events that RSL LifeCare was paying to attend.[52]

Mr Hardman

10.38 Mr Hardman was aware that RSL LifeCare was paying for tables at functions hosted by local representatives of political parties.[53] He saw no problem in supporting the local politicians as they in turn supported RSL LifeCare.[54]

Mr Harrigan

10.39 Mr Harrigan did not attend any political functions and was not aware that RSL LifeCare paid for tables at such functions. He could not recall any discussion about whether RSL LifeCare should or should not pay to attend such functions.[55]

Mr Humphreys

10.40 Although Mr Humphreys had received an invitation in 2013,[56] he was not aware that RSL LifeCare was paying for people to attend political functions. He did not attend the function as he did not want to be seen as favouring one political party over another.[57]

10.41 Mr Humphreys was of the view that the test for whether it was appropriate for RSL LifeCare to pay for tables at such functions would depend on whether it was an information session.[58]

Mr Kells

10.42 Mr Kells gave evidence that he was invited to attend functions but chose not to attend them as he did not want "anything to do with politics".[59] He understood that people attended these functions because they might receive information "of the political scene of aged care, retirement villages" but if a function was sold as merely supporting a politician or political party he would "totally reject it" and it would not be right for RSL LifeCare to attend.[60]

Mr Longley

10.43 Mr Longley was previously the local NSW Liberal Party member for Pittwater between 1986 and 1996. He acknowledged that paying to attend functions run by the Liberal Party is classified as a political donation and he was aware that in certain circumstances they had to be declared. His purpose in attending

such events was threefold: "one, to represent the organisation at a community event; secondly, to acquire information that may be relevant; and, thirdly, to engage with other community people who attended these functions, because RSL LifeCare in this local area is a significant member of the community." Mr Longley drew a distinction between the purpose for which the function was being held and the purpose for which he attended such a function.[61] In his opinion contact with the local member was only one reason for attending such a function; other reasons were community engagement and representation.[62] He thought it was appropriate for his wife to attend as a representative of RSL LifeCare.[63]

10.44 Mr Longley did not turn his mind to whether RSL LifeCare should be funding attendance at such functions. He accepted that such attendances could be seen as RSL LifeCare supporting and paying for a political party and that this might be an unsatisfactory perception. He accepted that a more effective way to keep in contact with local members would be to arrange a private meeting with them.[64]

10.45 Mr Longley expressed the opinion that attendance at such functions would now not be permitted under RSL LifeCare's Political Advocacy Policy.[65]

Dr Macri

10.46 Dr Macri claimed that she did not attend any of the functions as she wished to remain apolitical.[66] She said she never turned her mind to whether it was appropriate for RSL LifeCare to be paying for directors and management to attend political functions, but expressed the view that it may be appropriate if attendance would result in acquiring knowledge about the local area or if the speakers were addressing the topic of aged care or health care in the electorate; otherwise it is something RSL LifeCare should not be funding.[67]

Mr Murray

10.47 Mr Murray gave evidence that he was not aware that RSL LifeCare was funding attendances at political functions for directors and management of RSL LifeCare until it became an issue in the media. He expressed the opinion that under the new Political Advocacy Policy, an invitation to such an event would not be forwarded to the RSL LifeCare directors.[68]

Mr Riddington

10.48 Mr Riddington attended the political events to find out what was going on locally especially with the local member, the Honourable Mr Robert Stokes MP. He was particularly interested within policy changes in respect of the local hospitals (Manly and Mona Vale) and the proposed new hospital at Frenchs Forest. [69]

10.49 Mr Riddington drew a distinction between a payment of a political donation and a payment for attendance at an event hosted by a political party. He saw the latter as a "two-way street". At these events Mr Riddington spoke to his local members and regarded the maintenance of a relationship with them

and obtaining information on local matters as part of his role within RSL LifeCare. In turn local members often attended functions at the RSL LifeCare village.

10.50 Mr Riddington accepted that if a function appeared to be for the primary purpose of supporting a political party than it was probably not appropriate for RSL LifeCare to attend as it would not be in furtherance of the objects of the Constitution. He accepted that an alternative would be to organise a private meeting with the local member. However he felt that politicians are not necessarily available for such meetings, whereas they were readily available at such functions.[70]

Mr Rowe

10.51 Mr Rowe was aware that RSL LifeCare was making political donations and gave evidence that he did not attend the functions as he believed "RSL" is "non-party political" and should not be involved in political fundraising events.[71] Mr Rowe did not raise with anyone his opinion that RSL LifeCare should not be paying for people to attend such functions but accepted it was a matter that he ought to have raised.[72]

Mr White

10.52 Mr White gave evidence that Mr Thompson would send out the invitations to attend political functions on the basis that the table was to be a group of directors, staff and representatives from the residents. He did not agree that there was a political intent in attending such functions; nor that the functions were purely political events. He saw these functions as an opportunity to engage with elected members of government and with other community representatives who attended. He described them as a "purpose function". He did not think he was supporting a "political fundraiser as such", rather he saw it as "an opportunity to engage and improve our knowledge and professional development for staff".

10.53 Mr White agreed it is not appropriate for RSL LifeCare to align itself with a political party and accepted that the attendance at such functions could be perceived that way. However he saw it as an opportunity "to demonstrate the connection that we had with our residents and stakeholders".

10.54 Mr White accepted that he did not turn his mind to whether RSL LifeCare should have been paying to attend these functions and did not recall any discussions at Board level about whether RSL LifeCare should attend such functions. He accepted that there ought to have been such discussion.[73]

Mr Thompson

10.55 Mr Thompson received the invitations to political events and arranged for them to be forwarded to directors, management and interested residents of the RSL LifeCare village at Narrabeen.[74] This was seen as an opportunity for management and the Board to connect with the residents in a more informal setting.[75]

10.56 Although Mr Thompson gave evidence that RSL LifeCare was not attending the functions to "support" the local member, his later evidence was that RSL LifeCare was attending the functions to be "supportive of a local member".[76] He agreed that it would not be appropriate for RSL LifeCare to be making donations to support a member of the Liberal Party.[77] He recognised that paying to attend functions hosted by the Liberal Party was a political donation but suggested that having regard to the amount paid and the size of the organisation it did not amount to political advocacy.[78] Mr Thompson acknowledged that very little consideration (and perhaps no consideration) was given to whether the attendance at such functions fulfilled the charitable purposes of RSL LifeCare.[79]

10.57 Mr Thompson believed that the funds used to pay for attendance at the functions "came from surplus out of retirement living and aged care" bank account and that "the fundraising funds [had] not been applied to these political functions."[80] Despite this belief, it is not possible to conclude that the funds used to attend these functions did not come from publicly donated funds because the public funds were mixed with other funds in RSL LifeCare's general account.

Mr Ham

10.58 Mr Ham recalled attending one political function and did not recall any discussions within RSL LifeCare about whether they should be paying for people to attend. However he did recall that some directors were very ambivalent about attending.[81]

Mr Broadhead

10.59 Mr Broadhead attended a number of the political functions which he understood were all to the benefit of the Liberal Party. At the time of his attendance at these functions he did not turn his mind to whether RSL LifeCare should be funding the attendances. However in hindsight, he expressed the opinion that it was best if they did not attend, so that RSL LifeCare would be perceived to be politically neutral.[82]

10.60 Mr Broadhead accepted that an effective way for RSL LifeCare communicating with the local members was by meeting with them outside of such functions.[83] He acknowledged there was no proper process in place for the annual reporting of political donations.[84]

CONCLUSIONS

10.61 All of the political functions attended by RSL LifeCare directors and members of management were facilitated by the Liberal Party and all of the functions were connected with the electorate or surrounding electorates in which the RSL LifeCare Village at Narrabeen is located.[85] During the period covered by the Terms of Inquiry, elected members of Parliament for these areas were members of the Liberal Party.[86]

10.62 There was no deliberate decision on behalf of RSL LifeCare to prefer one political party over another. RSL LifeCare attended functions hosted by or at the invitation of the local member, who happened to be a member of the Liberal Party. Mr Thompson did not recall ever receiving an invitation to a Labor Party event.[87]

10.63 Whilst they may have had some insight into the possible problems with attending such functions, the RSL LifeCare directors who attended did not consider that they were attending a purely political fundraising event. Whilst some RSL LifeCare directors declined to attend for personal reasons, including not wanting to be seen to be supporting a political party,[88] none of those directors advocated against other RSL LifeCare directors or management attending the events.

10.64 Having regard to the views expressed by the directors and members of management of RSL LifeCare, it is probable that if the local member had been a member of the Labor Party or some other Party or an Independent and these functions had been organised by them, they would still have attended such functions and RSL LifeCare would still have paid for them to do so.

10.65 Prior to January 2017 the RSL LifeCare directors did not turn their minds to whether it was appropriate for RSL LifeCare to attend such functions; or whether paying for directors (and their wives), management (and their wives) and residents was in compliance with RSL LifeCare's charitable purposes.

10.66 Insofar as RSL LifeCare was attending the functions to learn about policies and actions affecting their local area, it was accepted (by some) that a more appropriate way of accessing their local member would be to arrange a meeting with them, at no cost to RSL LifeCare.

10.67 In line with the recently published RSL LifeCare Political Advocacy Policy, Messrs Crosthwaite,[89] Longley,[90] Riddington,[91] White[92] and Dr Macri[93] accepted that it was not appropriate for RSL LifeCare to be funding attendances at events which were simply supporting a political party, but that it may be appropriate if attendance would result in acquiring knowledge about the local area or if the speakers were addressing the topic of aged care or health care in the electorate.

10.68 There is of course a difference between engaging in advocacy and campaigning in furtherance of a legitimate charitable purpose on the one hand and engaging in such conduct which may amount to an illegitimate and disqualifying political purpose on the other.

10.69 The danger for a charity in attending political functions and making political donations in support of a function that promotes a political party or candidate (irrespective of the attendee's subjective interest or purpose in attendance) is the public perception that the charity is partisan and has a purpose of supporting a particular party or candidate.

10.70 On the face of many of the invitations, attendance at these functions had no purpose other than supporting the Liberal Party.[94] The directors and members of management of RSL LifeCare failed to act in the best interests of

RSL LifeCare in not taking steps to ascertain the true nature of each of these events; and in not assessing on each occasion whether using RSL LifeCare's funds to make their political donations was compatible with RSL LifeCare's charitable purpose. It is clear that they gave these matters no thought on any occasion.

10.71 This has been a salutary lesson for the directors and management and for RSL LifeCare generally.

10.72 Any member of the public who donates funds to a charity should be able to have confidence that their funds are not being used to support a political party or for the election or re-election of a particular political party or candidate. Clear guidance needs to be given to charities, and in particular those engaging in charitable fundraising, to ensure the donating public can have confidence in how their money is being spent. It is recommended that NSW Fair Trading liaise with the ACNC, and any other entity including the Fundraising Institute of Australia to develop that clear guidance.

ENDNOTES

[1] Ex 18, pp 176 - 178, 182 - 184, 185 - 187, 201 - 203.
[2] Ex 37, pp 45 - 67, Ex 7, pp 37 - 39.
[3] Tr 187 - 188, 369, 456. See for example, Ex 7, p 5.
[4] Tr 301, 2135, 2140.
[5] See for example Ex 7, pp 5, 9, 13, 20 - 21, 24 - 26.
[6] Ex 7, pp 42.4 - 42.5; 46 - 49; 54 - 60 with the exception of a function held on 10 July 2013, which was $1,500 (p 58) and a function held on 18 November 2011, which was $2,500 (p 56).
[7] Ex 7 – Mr Longley and his wife said they would attend events on 13 April 2016 (p 54); 28 July 2015 (p 54); 9 October 2014 (p 55); 27 March 2013 (p 55); 18 November 2011 (p 56). Mr Longley also said he would attend events on 10 July 2013 (p 58); 14 March 2013 (p 59); 2 September 2009 (p 49).
[8] Ex 7 – Mr White and his wife said they would attend events on 18 July 2012 (p 59); 18 November 2011 (p 56); 30 July 2009 (p 49). Mr White also said he would attend events on 27 March 2013 (pp 9, 55); 14 March 2013 (pp 13, 59); 8 June 2010 (p 48).
[9] Ex 7 – Mr Riddington and his wife said they would attend an event on 18 November 2011 (p 56). Mr Riddington also said he would attend events on 28 July 2015 (p 54); 9 October 2014 (p 55); 10 July 2013 (p 58); 14 March 2013 (p 59); 18 July 2012 (p 59).
[10] Ex 7 – Mr Hardman and his wife said they would attend an event on 30 July 2009 (p 49).
[11] Tr 966, but see Ex 7, p 55 – function on 27 March 2013 (Davidson Business Breakfast).
[12] Tr 384, but see Ex 7, p 58 – function on 10 July 2013 (Federal Election Countdown Dinner).
[13] Tr 3140 - 3141, but see Ex 7, p 58 – function on 10 July 2013 (Federal Election Countdown Dinner).
[14] Ex 7 – Mr Cannings said he would attend an event on 27 March 2013 (p 55), before he was a director of RSL LifeCare.
[15] Ex 7 – Mr Thompson said he would attend events on 28 July 2015 (p 54); 9 October 2014 (p 55); 10 July 2013 (p 58); 14 March 2013 (p 59); 31 July 2012 (p 59); 18 July 2012 (p 59); two functions on 4 November 2010 (p 42.5, 57); 8 June 2010 (p 48); 17 February 2010 (p 48); 29 November 2009 (p 48). Mr Thompson and his wife also said they would attend an event on 30 July 2009 (p 49).
[16] Ex 7 – Mr Broadhead said he would attend events on 13 April 2016 (p 54); 18 July 2012 (p 59); two functions on 4 November 2010 (pp 42.5, 57); 8 June 2010 (p 48); 17 February 2010 (p 48). Mr Broadhead and his wife also said they would attend events on 31 July 2012 (p 59) and 18 November 2011 (p 56).
[17] Ex 7 - Mr Ham and his wife said they would attend an event on 30 July 2009 (p 49).
[18] Ex 7 pp 51, 62: State Member for Pittwater – Mr Alexander Taggart (Independent) (26 November 2005 to 2 March 2007); Mr Robert Stokes (Liberal Party) (24 March 2007 to present); Federal Member for Mackellar – Ms Bronwyn Bishop (Liberal Party) (February 2003 to 2 July 2016).
[19] Ex 7, p 5.
[20] Ex 7, p 13.
[21] Ex 7, pp 20 - 21.
[22] Ex 7, pp 24 - 25.
[23] *Election Funding, Expenditure and Disclosures Act* 1981, ss 85, 86.
[24] *Commonwealth Electoral Act* 1918 , s 305A.
[25] Ex 7, p 1 - 2.
[26] Ex 7, p 7.
[27] Ex 7, p 56.
[28] Ex 7, pp 32 - 33.
[29] Ex 7, p 54.
[30] Ex 7, pp 45 - 64.
[31] Ex 7, p 33.7.
[32] Ex 7, p 38.
[33] Ex 7, p 37.
[34] Ex 7, pp 40 - 42.
[35] NSW Hansard, Legislative Council, 10 August 2017, The Honourable Lynda Voltz MLC, p 23 - 25 ("proof").
[36] Ex 7, p 43; and see also the media statement released by RSL NSW on 13 September 2017 (Ex 7, p 44).

[37] Ex 7, p 26.1.
[38] Ex 7, p 26.2.
[39] Ex 7, p 26.4.
[40] Ex 7, p 26.4.
[41] Ex 7, pp 26.4 - 26.5.
[42] Ex 7, pp 33.1.
[43] Ex 7, p 33.7.
[44] Ex 7, pp 42.4 - 42.5, 51 - 60.
[45] Ex 7, pp 36.1.
[46] Ex 7, p 36.1, par 1.1.
[47] Ex 7, p 36.1, par 1.2.
[48] Ex 7, p 36.2, par 3.1.
[49] Ex 7, p 36.1, par 1.5.
[50] Ex 7, p 36.3, par 4.7.
[51] Ex 7, p 36.2, par 2.2.2.
[52] Tr 690 - 692.
[53] Ex 8, Vol 2, Tab 5, p 194.
[54] Ex 8, Vol 2, Tab 5, pp 195 - 196.
[55] Tr 1126 - 1127.
[56] Ex 7, p 11.
[57] Tr 765 - 767.
[58] Tr 767.
[59] Tr 3140 - 3141, although RSL LifeCare informed the Inquiry that Mr Kells indicated he would attend an event on 10 July 2013 (Ex 7, p 58).
[60] Tr 3141 - 3142.
[61] Tr 451 - 453, 457.
[62] Tr 463 - 464.
[63] Tr 458.
[64] Tr 461 - 463.
[65] Tr 457.
[66] Tr 384, although RSL LifeCare informed the Inquiry that Dr Macri indicated she would attend an event on 10 July 2013 (Ex 7, p 58).
[67] Tr 384 - 385.
[68] Tr 2102 - 2103.
[69] Tr 369.
[70] Tr 371 - 373.
[71] Although RSL LifeCare informed the Inquiry that Mr Rowe indicated he would attend an event on 27 March 2013 (Ex 7, pp 9, 55).
[72] Tr 966.
[73] Tr 2135 - 2142.
[74] Tr 187 - 188.
[75] Tr 191.
[76] Tr 196, 197.
[77] Tr 196.
[78] Tr 184.
[79] Tr 192, 194.
[80] Tr 199.
[81] Tr 1102 - 1103.
[82] Tr 898 - 899.
[83] Tr 900 - 901.
[84] Tr 949.
[85] Tr 193.
[86] Ex 7, pp 51, 62.
[87] Tr 186.
[88] Tr 384, 767, 966, 3141 - 3142.
[89] Tr 690 - 691.
[90] Tr 457.
[91] Tr 371.
[92] Tr 2138 - 2139.

[93] Tr 384 - 385.
[94] See for example Ex 7, pp 5, 13 - 14, 20 - 21, 24 - 25.

11. REBUILDING

11.1 It is appropriate at this juncture to refer to the extraordinary efforts that have been made by Messrs Brown and Condon in renewing and refreshing the leadership of each of the entities, garnering information, advice and support and implementing positive change. Although it is appropriate to focus on these two leaders of change, it is obvious that the members, employees and advisers have enabled them to execute their plans.

11.2 Each of the organisations has implemented plans, not only for the improvement of good governance, but also for the purpose of persuading the Minister and the public that they can be confident that the organisations can be trusted to conduct charitable fundraising in the future. Each of the organisations accepts that the full implementation of the reforms will not be concluded at the time this Report is delivered to the Minister. However each has contended that the proposals and protections they put forward for consideration will enable the Minister to be satisfied that they can be trusted with public money.

11.3 At the conclusion of the public hearings on 10 November 2017 each of the entities was granted leave to provide material and submissions to the Inquiry by 5 December 2017 in respect of the reform processes that were the subject of evidence during the hearings. Each of those entities has provided that material. Accordingly, this Chapter deals with the plans and proposals as at 5 December 2017.

11.4 Before embarking on the discussion in relation to the steps that have already been taken and the proposals for further reform, it is important to record the apologies proffered by Mr Brown on behalf of RSL NSW and RSL WBI and by Mr Condon on behalf of RSL LifeCare.

11.5 Mr Brown referred to RSL NSW members' commitment to change and the steps taken by each of the entities to acknowledge and accept the issues that have been exposed in the Inquiry and to make sure that such things never happen again.[1] He gave the following evidence:

> Q. I take it from what you've just said to me that the membership is heartily sorrowful for what has happened?
> A. They are, Madam Inquirer. They are disgusted by what has happened. They are sad about what has happened. They are embarrassed by what has happened and they feel like they've let the public down and they don't want to go back to that place.

11.6 Mr Brown emphasised that RSL NSW and RSL WBI are now conscious that the ability to approach the public to raise funds is a privilege and not a right.[2]

11.7 As the Chairman of RSL LifeCare, Mr Condon apologised to the public, the RSL LifeCare staff, residents, families and supporters as well as to the Inquiry and the Minister for the history of compliance failures by RSL LifeCare. He acknowledged that breaching and failing to comply with the Act are significant matters, and emphasised that RSL LifeCare is committed to rectifying all aspects of its non-compliance with its legal obligations.[3]

11.8 Mr Condon gave the following evidence:[4]

> I would like to just conclude by again reinforcing the apology that was a unanimous resolution of the Board of LifeCare this morning, for me to be able to give that apology on behalf of the Board. I wish to reinforce that LifeCare is a veterans and families organisation and it's certainly our desire to continue to support that community whilst also supporting the aged community. It's in our interest to provide those services, not just in Sydney, but in regional Australia or regional New South Wales, sorry, in the first instance, anyway, and we have a significant amount of work to do to really drive the governance and compliance within the organisation. We need to address our Constitution. We need to rebuild the Board. We are dealing with issues around getting our end of [year] financial statement and audit in place.

11.9 Although there is some overlap in the plans of each of the organisations, this Chapter discusses RSL NSW and RSL WBI together, and then RSL LifeCare.

RSL NSW AND RSL WBI

11.10 Mr Brown provided three written Statements of Evidence to the Inquiry, the third of which was provided after the public hearings concluded for reasons that will be discussed shortly.

11.11 In his first Statement dated 14 September 2017, Mr Brown gave very comprehensive evidence relating to the structure and operation of RSL NSW and RSL WBI, his knowledge of the charitable fundraising activities of each entity and his concerns in relation to those activities.[5] He also gave evidence in relation to the circumstances in which fundraising was suspended by a Directive that he issued and also in relation to other governance issues that had been identified in RSL NSW and RSL WBI.[6]

11.12 Mr Brown provided evidence of his background;[7] his reasons for seeking election to the RSL NSW State Council;[8] and his then current intention regarding remedies and reform.[9]

11.13 In his second Statement dated 22 October 2017, Mr Brown gave evidence in respect of some restructure proposals and various measures for reform in the context and with the aim of a resumption of charitable fundraising in the future.[10]

11.14 Mr Brown gave oral evidence at the Inquiry on 24 October 2017.[11] At the conclusion of his evidence Mr Brown said that he was conscious that the "intense and rightful focus" of the Inquiry had been on issues of fundraising and significant deficiencies in compliance with the legislation and regulations.[12] However he contended that consideration should be given to the commitment of the RSL NSW members to change and to the steps that each of the entities had taken to acknowledge and accept the issues, to address them and to make sure the circumstances that led to the Inquiry never happen again.[13] Mr Brown accepted that in the context of the questions posed by the Minister in paragraph 4 of the Terms of Inquiry as to whether there were grounds to revoke the fundraising authorities, there had been such grounds "in the past" but he claimed that they were "disappearing".[14]

11.15 After the conclusion of Mr Brown's evidence, the Inquiry adjourned until the hearing of final oral submissions. In the meantime written outlines of closing submissions were exchanged and the final oral submissions proceeded on 9 and 10 November 2017.[15]

11.16 The written Outline of Closing Submissions by Counsel Assisting dated 31 October 2017 did not include a submission that the Minister "should" revoke any of the entities' fundraising authorities. Rather in addressing the question posed in paragraph 4 of the Terms of Inquiry, Counsel Assisting made the submission that in all the circumstances:[16]

> [T]he Minister could be satisfied, in respect of each of the three organisations, of matters listed in section 16(2) of the Act (in particular (a) to (e) and (h)) so as to refuse an application for an authority; and section 31(1) (in particular (a) to (d) and (f)) so as to revoke an authority.

11.17 RSL NSW's written Outline of Closing Submissions dated 6 November 2017 included reference to Mr Brown's Directive pursuant to which fundraising was suspended and included the following:[17]

> Further, this Directive will only be revoked once Mr Brown is satisfied that all measures necessary for ensuring compliance with the Act, the regulations and the conditions of RSL NSW's authority to fundraise have been implemented: T3325.23-.35. Accordingly, it is unlikely that there will be any non-compliant fundraising, because fundraising will not be permitted to take place until measures ensuring compliance are in place.

11.18 During the hearing on 9 November 2017 Senior Counsel Assisting put the following:[18]

> Indeed, given that each of the three organisations has been non-compliant, has expressed contrition, has suspended fundraising and is not currently in a position to ensure compliance and thus resume fundraising, and given that WBI does not currently have a fundraising authority, and third parties could choose to ignore any direction not to fundraise, it is, in my submission, difficult to see why each of LifeCare and RSL NSW should not now surrender their fundraising authority so that the power to determine whether, and, indeed, when, each of the three organisations is in a position

> to be compliant, and whether it should then be permitted to resume fundraising, is revested in the Minister, …

11.19 Counsel Assisting submitted that there should be a recommendation made to the Minister that "consideration be given to" relevantly "formally revoking" RSL NSW's fundraising authority if it had not "already been surrendered" pending the completion of the reform processes and the independent verification of those processes.

11.20 There was debate during the hearing on 9 November 2017 with Counsel appearing for RSL NSW, Mr Sulan, in respect of the surrender or consensual revocation of the fundraising authorities. Mr Sulan indicated that his client was concerned that this matter had not been addressed prior to the round of submissions and discussions between Counsel and he sought leave for RSL NSW to provide further written evidence and submissions on this aspect.[19] That leave was granted. Mr Brown provided a third written Statement of Evidence dated 17 November 2017[20] and RSL NSW provided further written submissions dated 20 November 2017.

11.21 The extent of the admissions of non-compliance and various failures by RSL NSW has been addressed elsewhere in the Report and it is not necessary to repeat that detail here. The focus on Mr Brown's evidence in respect of both RSL NSW and RSL WBI in this Chapter relates to the steps taken thus far and the proposals and suggestions for the remediation and reform of these organisations and their relationships with RSL LifeCare.

Refreshed leadership

11.22 Since May 2017 there has been a new State Council elected to RSL NSW; new trustees appointed to RSL WBI; and new directors appointed to RSL LifeCare.

11.23 From August 2017 Mr Brown approached those re-elected State Councillors who had been State Councillors at the time of the consideration of Mr Rowe's conduct with a request that they resign from State Council.[21] Those directors of RSL LifeCare who were in receipt of consulting fees have stood down as directors of RSL LifeCare. Although it might appear rather brutal, it is clear that the intention has been to establish fresh leadership across the whole of the RSL organisation. With the exception of Mr James who remains as a State Councillor this has been achieved. It should be said that this was achieved so rapidly by reason not only of the clear motivation of Mr Brown, the State Council and Mr Condon, but also because those Councillors and directors who were approached were willing to acquiesce in tendering their resignations in what must have been very difficult circumstances. However it would appear that they have acted in the best interests of the organisations.

11.24 It is submitted that this refreshment of these leadership roles should be considered in the Minister's determination of whether each entity is a "fit and proper" person within the meaning of section 16(2) and/or section 31(1) of the Act.

Personal history

11.25 Mr Brown holds a Bachelor of Economics and Social Sciences from the University of Sydney and a Master of Arts in Strategy and Policy from the University of New South Wales. He served as an army officer in the ADF between 2003 and 2010, completing two deployments to Iraq and one to Afghanistan as well as a period of service in the Solomon Islands.

11.26 After leaving the Army, Mr Brown worked in management consultancy at the accounting firm KPMG, as a research fellow at the Lowy Institute for International Policy and as a research director, and now Director of Foreign Policy, Defence and Strategy at the United States Studies Centre based at the University of Sydney. Mr Brown also holds an appointment as an Adjunct Associate Professor at the University of Sydney.[22]

Anzac's Long Shadow

11.27 In 2014 Mr Brown's book "*Anzac's Long Shadow – The Cost of Our National Obsession*" was published.[23] This was prior to the exposure of the problem with Mr Rowe's expenses and the public controversy in respect of RSL LifeCare's payment of consultancy fees to directors.

11.28 In that book, Mr Brown suggested that the government and the public needed to examine ex-service organisations and the privileged place they hold in our society and if necessary to assess their performance critically. He suggested that organisations that were not performing efficiently enough should be reformed or have government support withdrawn. He emphasised that the New South Wales Government needed to engage more deeply in the reform of RSL NSW because it is governed by a New South Wales Act of Parliament. He also suggested that much more attention should be given to the registered RSL clubs in New South Wales that he claimed were "abusing the privileged position" they hold in society by contributing little of their funds to veterans' causes.[24]

11.29 Mr Brown wrote perspicaciously of RSL NSW:

> Unsurprisingly there is little transparency and the leadership has remained largely unchanged for the better part of a decade.
>
> …
>
> Most importantly, a thorough review of the veterans charity sector is needed with the goal of better coordinating the activities of the many disparate groups and ensuring better accountability for outcomes. It won't be the first time Australia has had to reform charities associated with veterans. In January 1917 a national conference was held to reorganise the many well-intentioned returned soldiers charities that had become fragmented, overlapping and bureaucratic. Back then it was instigated and personally led by the prime minister, who, unencumbered by the need to plan vast commemorative services, could give care for veterans the attention it deserved.

Motivation

11.30 Mr Brown made a decision to nominate for State President of RSL NSW in late July 2016 in response to a casual vacancy for State President arising from Mr White's resignation when he was appointed as President of RSL National. Although unsuccessful in that election and notwithstanding the media exposure of the controversies in RSL NSW and RSL LifeCare in late 2016, Mr Brown nominated again in early January 2017 for the regularly scheduled congressional election of State President for the term 2017 to 2020.[25]

11.31 At the time Mr Brown nominated in January 2017 he was the Senior Vice President of the North Bondi sub-Branch of RSL NSW, a position which he had held since 2014 having served previously on the Committee and then as Honorary Secretary in 2013 of that sub-Branch.[26]

11.32 Mr Brown's evidence was that by 2016 he had become frustrated with the lack of reform within RSL NSW, in particular its ability to effectively provide help for veterans and their families.[27] His motivation was to "do what I could to bring new ideas and perspective to the State Council, and to get the organisation working harder and more effectively for veterans and their families in need".[28]

11.33 After Mr Brown commenced his role as State President on 23 May 2017, he decided that having regard to the present demands it was not possible to maintain his paid employment.[29] He has taken unpaid leave of absence from his regular employment and has worked full time in his voluntary role as RSL NSW State President since 1 August 2017.[30]

Suspension of fundraising

11.34 Mr Brown addressed the deficiencies in RSL NSW's accounts exposed in the EY letter dated 5 July 2017[31] very promptly. His first written Statement of Evidence included the following:[32]

> Immediately upon becoming aware of the matters raised by Ernst & Young and the concerns expressed by the Inspector, I formed the view that all RSL NSW fundraising including all fundraising by its sub-branches and subsidiaries should be stopped to allow all fundraising and accounting and record keeping processes and procedures to be examined to establish the extent and level of non-compliance with the requirements in the Act, the Regulation and RSL NSW's charitable fundraising authority.

The position as at September 2017

11.35 Mr Brown together with his co-Trustee of RSL WBI, Mr Geoffrey Evans, instructed Ms Collins, as the General Manager of RSL WBI, to take immediate steps to rectify the deficiencies with the accounts of RSL WBI and to ensure that it became fully compliant with its fundraising obligations. In addition Ms Collins was appointed for a term of two years as the General Manager of RSL NSW, acting concurrently as General

Manager of RSL WBI. The appointment is for the short term whilst the rebuilding process is implemented. Although this dual role posed ethical challenges for Ms Collins, both organisations have taken legal and other advice to enable Ms Collins to deal with them.

11.36 At the time of his first Statement of Evidence in September 2017, Mr Brown did not know how the proceeds of fundraising appeals conducted by sub-Branches and subsidiaries were dealt with, nor how they were accounted for or what records were kept at the sub-Branch level. To gather that information, RSL NSW issued a survey on 5 September 2017 to all sub-Branches and subsidiaries seeking details that will allow RSL NSW to obtain a proper understanding of the fundraising activities of each of those organisations.[33]

11.37 As at December 2017 of the 352 sub-Branch fundraising surveys, 331 have been returned and provided to the Inquiry. Analysis has been undertaken by RSL NSW and areas of potential charitable fundraising non-compliance have been identified. Further analysis will continue to identify and prioritise key areas needing work to determine the steps required to address those concerns.[34]

11.38 Mr Brown referred to a paper that was presented by Ms Collins to RSL NSW State Council on 31 August 2017. That paper, "Summary of Key Issues/Events", referred to the breaches of the fundraising legislation by RSL NSW and RSL WBI; the cessation of fundraising by RSL NSW and RSL WBI; and the opinion that the scope and scale of the breaches were likely to be extensive involving a variety of issues in sub-Branches and their subsidiaries.[35] This included: the prospect that fundraising moneys were used for purposes outside the objects; a lack of financial systems to match money raised to expenditure; and a lack of oversight and control by RSL NSW.[36] Ms Collins advised that it was "vital" for the organisation to proactively address the issues with a timetable which included what was described as an "optimistic target" of recommencing fundraising in January 2018.[37]

11.39 Mr Brown's evidence included reference to his intention to cause enquiries with NSW Fair Trading about whether, and how, RSL NSW can consolidate the charitable fundraising authorities granted to RSL NSW and each of the sub-Branches and subsidiaries "so that all are operating under a common and consistent authority and conditions". His evidence included the following candid admission:

> At this point I do not know precisely what changes will be required as a result of the investigations which are underway regarding the fundraising activities of the sub-branches and subsidiaries, and how they will be implemented, but I undertake to report to the Inquiry at a later stage to inform the Inquiry of the ongoing steps that have been, or are being taken.

11.40 Mr Brown referred to the forensic reports of KMF and EY, referred to earlier in this Report, and gave evidence that they confirmed many of the "grave concerns" that he had at the commencement of his appointment in relation to

the accounting controls and governance and conflict of interest issues in the organisation.[38]

11.41 By September 2017 the initiatives and changes that Mr Brown had already put in place were: the Directive to cease fundraising; the commencement of investigations at the sub-Branch and subsidiary level; instructions to Ms Collins to implement changes within RSL WBI and to have them "rolled out" within RSL NSW; the taking of steps to retain a new auditor for RSL NSW; and causing a conflicts of interest policy to be prepared and tabled at the State Council meeting on 31 August 2017.

11.42 Mr Brown also referred to the preliminary steps that State Council had taken to address governance and accountability issues within RSL NSW. These included the appointment of an Acting General Counsel for RSL NSW; the implementation of a restructure within RSL NSW State Branch involving integrating staff from both RSL NSW and RSL DefenceCare into one organisation; issuing a Directive to State Councillors to undertake a company director's course offered by the Australian Institute of Company Directors; establishing clearer processes for RSL NSW to exercise control of RSL LifeCare; seeking additional company secretary support; changing the process by which Minutes for RSL NSW State Council meetings are prepared; implementing more frequent communications to RSL NSW members and the public to increase transparency and accountability; and the setting up of a whistleblower's hotline.[39]

11.43 Mr Brown also referred to the detailed advice that RSL WBI obtained from Ashurst in relation to "Compliance Requirements".[40] If such advice had been provided and followed by these three entities many years ago, it would have obviated the need to deal with many of the problems that have been exposed during this Inquiry.

The position as at late October 2017

11.44 In his second written Statement of Evidence Mr Brown disclosed that it had become apparent to him that the "major organizational and governance reforms" of each of the three entities would "take significant time to fully identify and implement." He emphasised that he was conscious that not all of these changes would be completed by the time the Report must be delivered to the Minister. However his aim was to implement the significant reforms with respect to "accountability measures and the receipt and accounting for charitable funds" before RSL NSW or RSL WBI re-commences any fundraising activities.[41]

11.45 Mr Brown gave evidence of his discussions with the Acting Commissioner of the ACNC, Mr David Locke, with a view to agreeing the terms of "an enforceable undertaking" to be offered by RSL NSW to the ACNC regarding the timeframe for an implementation by RSL NSW of certain initiatives. He instructed his solicitors who were on the record at this Inquiry for RSL NSW, Webb Henderson, to progress those discussions with the ACNC.[42]

11.46 Mr Brown gave evidence that the decision to suspend fundraising was "essential to fixing some of the problems which have become the subject of this Inquiry" and that he has "no intention of giving instructions for the lifting of the fundraising ban" until certain prerequisites are satisfied. He identified those prerequisites as full visibility of all fundraising operations conducted across RSL NSW including at sub-Branch level; and having confidence: (a) that the finance systems and back office processes supporting fundraising initiatives (for example expense management systems and banking operations) are in place; (b) that RSL NSW subsidiaries and related entities have completed appropriate compliance training to understand their obligations under the Act and Regulations, particularly with regard to the receipt and deposit of funds raised; (c) that all funds raised will be expended for the appropriate purpose and that records confirming this can be kept and produced as necessary; (d) that mechanisms are in place to test for non-compliances; and (e) that State Council is empowered and resourced to take actions accordingly.[43]

11.47 Two other prerequisites identified by Mr Brown before any fundraising ban might be lifted are that RSL NSW has complied with an enforceable undertaking provided to the ACNC; and that RSL NSW has communicated and liaised with the relevant officers of NSW Fair Trading in respect of past non-compliance and the steps taken to address such non-compliance.[44]

11.48 Mr Brown disclosed that RSL NSW, in particular, had been in a "state of crisis" as it and RSL WBI had sought to maintain charitable service delivery during the period May to late October 2017.[45]

11.49 RSL NSW engaged Social Ventures Australia (SVA) to undertake a review, examining: RSL NSW's governance structure; interviewing its stakeholders and determining critical issues; and making recommendations for a revised purpose, structure and governance system.[46] The Strategic Review provided by SVA identified the need for RSL NSW to achieve "significant reinvigoration".[47] It includes a timeframe from November 2017 to April 2018 in which there is a plan to "recommence fundraising"; having a plan approved at the May Congress in 2018; agreeing to key changes to the Constitution; and to have a new leadership team with a "clean break from the past".[48]

11.50 Mr Brown referred to the more recent improvement in relations between RSL NSW and RSL LifeCare and his conversations with Mr Condon in relation to a restructure of the "overall RSL NSW group". He referred to the idea of transitioning RSL DefenceCare services from RSL WBI into RSL LifeCare because of the extensive corporate structure and services already available in RSL LifeCare. He suggested that the transition would potentially assist with certain "issues" related to the RSL WBI Trust.[49] That was no doubt a reference that included the probability that the Trust was operating in breach of its objects.[50] If this proposal were to be implemented, RSL LifeCare would become a professional charitable

services delivery organisation for RSL NSW offering, as Mr Brown put it, "cradle to grave services for veterans and their families".

11.51 Mr Brown also consulted with senior staff at NRMA in September and October 2017 for the purpose of understanding the complexities inherent in member-based organisations with control of large business enterprises. In addition, an NRMA governance expert provided pro-bono support to review RSL NSW's structures and governance. Mr Brown identified what he saw as the "advantage" of the RSL NSW group restructure proposal to separate services required to be delivered by professionals from the possible volatility of member-based elections within RSL NSW. His evidence included the following:

> It is proposed that if this restructure were to be implemented, RSL NSW will likely wish to continue to be involved in fundraising and hold a charitable fundraising authority.

11.52 Mr Brown's evidence was that if the restructure occurred it would be the intention to terminate the RSL WBI Trust over time.[51]

11.53 Mr Brown referred to the priority of improving governance for both RSL NSW and RSL WBI since he commenced as President and as Trustee respectively in May 2017. The numerous steps that have been taken in that short time are identified in Mr Brown's second Statement.[52] These have included initiatives being implemented to improve the competencies of RSL NSW State Councillors; an independent assessment of Board processes and company secretarial requirements; the appointment of a Chief Governance Officer by RSL NSW who will also be available to RSL WBI; the recruitment of a full time General Counsel for RSL NSW and RSL WBI; the implementation of a new expense management system within RSL NSW and RSL WBI; the overhaul of credit card policies and procedures within RSL NSW; enhancement of communications between RSL NSW and its sub-Branch members; the engagement of an independent representative from the Ethics Centre to conduct the RSL NSW ballot counts; and the ongoing overall reform of RSL NSW business operations.[53]

11.54 An important aspect of the changes that have been implemented is that RSL WBI, with the assistance of EY, has transitioned to a new finance system with RSL NSW also transitioning to such a system. It is anticipated that the back office functions between the two organisations will be consolidated.[54]

11.55 One significant matter under consideration is whether it is appropriate for RSL NSW to incorporate the financial activities of the many sub-Branches and other subsidiaries into an "overall consolidated financial statement" of RSL NSW.

11.56 Mr Brown dealt with the conflict of interest issues in his present role as RSL NSW State President, as Trustee of RSL WBI and as an *ex officio*

director of RSL LifeCare. He claimed that the management of the issues is "extremely challenging" and gave the following evidence:[55]

> 48. It is my view that many of my predecessors have not understood conflict of interest issues in depth, or how to separately consider their obligations to distinct legal entities. The blurring of expenditure, decision-making, and reporting between RSL NSW and RSL WBI going back several years is perhaps the best example of this point.
>
> 49. Unfortunately, the processes required to establish a more reasonable and sustainable separation of functions and interests between the three entities subject to the Inquiry is neither quick nor easy.

11.57 The steps that have been taken by Mr Brown to reduce the occurrence of situations in which conflicts of interest may arise include: the compartmentalisation of information between RSL WBI and RSL NSW as required; the quarantining of RSL WBI's financial reporting systems from those of RSL NSW; the disentanglement of RSL WBI's banking arrangements from those of RSL NSW; the firewalling of RSL LifeCare information being provided to Mr Brown or disclosed by him to RSL NSW, except as authorised by the RSL LifeCare Board; and the establishment of an RSL LifeCare Committee of State Council consisting of Councillors not appointed as directors to the RSL LifeCare Board to independently exercise the role of member at RSL LifeCare AGMs.

11.58 These strategies and proposals for restructure have been put forward and implemented in part with the aim of clarifying the structure and relationship between those entities so that the RSL NSW State President and State Councillors are no longer placed in a position where they need to manage complex conflict of interest issues.[56]

11.59 An additional matter with which Mr Brown dealt in his second Statement of Evidence was the concern that there had been attempts in recent years to integrate RSL NSW into RSL National governance structures. He expressed the view that this had resulted in significant blurring of accountability and other matters between the Constitutions of the two organisations. He detected that RSL NSW had been issuing incorrect Charters from RSL National to sub-Branches in recent years and has instigated a review of those Charters, replacing those that had been issued incorrectly.[57]

11.60 On 29 November 2017 Mr Brown issued a "President Update" in which he announced that with the endorsement of State Council, he had resigned as a director of RSL National effective 28 November 2017. Mr Brown disclosed that he had done so because he did not agree with the "current direction" that RSL National is taking and had to "give priority to reforms necessary" in RSL NSW.[58]

11.61 One of the critical failings that was identified after Mr Brown became President of RSL NSW was the record keeping and information management of both RSL NSW and RSL WBI. The steps that have been

taken to remedy this problem include the employment of an in-house IT support employee to renovate the information technology services and to establish an architecture for information management. Both organisations are digitising their records, modernising the filing procedures and providing broader access to internal records by the relevant decision makers and staff.[59]

11.62 Other remedial action in this regard includes the ratification of a financial delegations policy; the review of budgets and expenditure for RSL NSW with the identification of areas of major concern; the creation of a new organisational structure for RSL NSW and RSL WBI and publication of it on their websites; a review of the engagement and management of professional advisers; the review of workplace conditions for RSL NSW and RSL WBI with updated contract templates; a full review of staff policies within RSL NSW; a review and reassessment of office requirements for RSL NSW and RSL WBI and property asset registers for RSL NSW subsidiaries; a review of wealth management practices and investment policies for RSL NSW and RSL WBI with steps to improve financial controls, efficiencies and investment returns; a review of banking practices and signatories for RSL NSW and RSL WBI; the taking of steps to understand risks and potential benefits for RSL NSW in the operation of the Hyde Park Inn; and a review and consolidation of the engagement of legal advisers for the RSL Group.[60]

11.63 There has also been a great deal of work performed in respect of sub-Branches and subsidiaries. Mr Brown candidly indicated that "extensive work" remains to be done to investigate the charitable fundraising at sub-Branch and subsidiary level. He has consulted the RSL NSW Day Clubs and Women's Auxiliaries to investigate the fundraising processes at that level. This has included a review of records already held within the State Branch including the annual returns made by the individual sub-Branches.[61] It was in these circumstances that there was a State Council Directive issued on 17 October 2017 to RSL NSW subsidiaries confirming that there would be no Poppy Appeal conducted by RSL NSW on Remembrance Day in 2017. RSL NSW and RSL WBI resolved to provide 136,000 poppies to sub-Branches to be distributed to members of the public for free on that day. The Directive stipulated that under no circumstances were RSL NSW members to accept funds from the public on that day.[62] On 19 October 2017 RSL WBI wrote to NSW Fair Trading explaining these arrangements for Remembrance Day.[63]

11.64 There has also been a review of the manner in which RSL NSW had previously monitored compliance of its subsidiaries. That review has identified a range of shortcomings which are now being addressed. Mr Brown indicated that this will probably result in a substantially strengthened and significantly resourced internal audit team within RSL NSW.

11.65 RSL NSW has also briefed a Senior Counsel to provide an advice on issues relating to the manner in which RSL NSW holds property and the level

of control which it can and does have over sub-Branch property. It is understood that this advice will clarify the relationship between RSL NSW State Branch and its sub-Branches in relation to property, determining the appropriateness of the present arrangements and need for reform.

11.66 There has also been a review of the 600 subsidiaries of RSL NSW, which include Youth Clubs, Day Clubs and Women's Auxiliaries. That review has the aim of reducing the complexity of the organisation and Mr Brown indicated that changes were considered by the RSL NSW State Council at its meeting on 19 October 2017.[64]

RSL WBI's fundraising authority

11.67 Mr Brown also addressed the status of RSL WBI's fundraising authority.

11.68 RSL WBI lodged its application for renewal of its fundraising authority on 29 May 2017.[65] There were communications between NSW Fair Trading and RSL WBI including on 4 August 2017 when NSW Fair Trading advised RSL WBI that it should block the donation function on its website because its authority had expired on 27 May 2017. In that communication NSW Fair Trading advised that "until such time as the authority is renewed, no fundraising activities can proceed".[66] It was after these communications that RSL WBI's fundraising was suspended.

11.69 On 9 August 2017 RSL WBI wrote to NSW Fair Trading advising that because the expiry of the previous authority occurred on a Saturday, the time to renew it was extended to the following Monday and in those circumstances it seemed that the potential effect was that RSL WBI's authority would remain in force until NSW Fair Trading had decided the renewal application. RSL WBI advised NSW Fair Trading that it had suspended fundraising whilst it was renewing its compliance practices and processes.

11.70 On 14 August 2017 RSL WBI wrote again to NSW Fair Trading, providing some information that had been requested and noting its intentions to conduct fundraising appeals each year including the ANZAC Day Appeal and the Poppy Appeal together with online fundraising including the Post War Survive to Thrive Program and the Operation K9 program and the RSL Active program.[67] RSL WBI also advised NSW Fair Trading of the ongoing fundraising from online and other donations for the general charitable purposes of RSL WBI together with *ad hoc* fundraising events organised with community groups.[68]

11.71 RSL WBI also advised NSW Fair Trading of the steps to be put in place to ensure that the income and expenditure of funds from each appeal is appropriately banked and recorded together with some additional safeguards.[69]

11.72 On 22 September 2017 NSW Fair Trading wrote to RSL WBI advising that in circumstances of RSL WBI's inability to provide the 2016 audited

accounts as requested it did not intend to make a decision on the renewal until after the information sought had been received in a satisfactory manner. There were also further requests for independent confirmation by EY and the supply of various accounts.[70]

11.73 On 19 October 2017 RSL WBI's lawyers, Ashurst, forwarded to NSW Fair Trading a copy of the "Statement of Admissions" dated 6 September 2017 made by RSL WBI in this Inquiry.[71] The receipt of that document was acknowledged on 20 October 2017.[72]

The position as at mid-November 2017

11.74 In his third Statement of Evidence, dated 17 November 2017, Mr Brown addressed the topic of the possible recommendation to the Minister that consideration should be given to the revocation of the fundraising authorities of the entities until they can satisfy the Regulator they are or will be able to be compliant with the Act, Regulations and fundraising conditions and that they are fit and proper persons to be dealing with public funds.[73]

11.75 Mr Brown identified his "significant concerns" about the impact and effect that a recommendation for revocation would have on the 38,000-strong membership base of RSL NSW.[74] He expressed the view that revocation would be "counterproductive" to the significant reform process currently being undertaken by RSL NSW.[75] He gave evidence of his belief that there would be "widespread concern and insecurity" amongst the RSL members about the direction of the ongoing reform agenda which he feared would result in a withdrawal of commitment by the sub-Branches and the members to that reform agenda.[76]

11.76 Mr Brown explained the basis of his belief. He said that although RSL NSW members had expressed anger and frustration at the imposition of the fundraising ban, all of the sub-Branches, to his knowledge, had been compliant with that ban. He also explained that from his extensive discussions with members in the sub-Branches, there was commitment to reform and compliance, notwithstanding the very difficult financial circumstances in which some of those sub-Branches find themselves as a result of the ban. He understands that the RSL NSW members have the expectation that the RSL NSW State Council is doing everything possible and necessary to bring about compliance and a consequential resumption of fundraising as soon as possible in 2018, in particular before ANZAC Day 2018.[77]

11.77 Mr Brown also expressed concern that revocation of RSL NSW's fundraising authority could see many of the less financially well-off sub-Branches lose faith in the ongoing reforms and the real potential to resolve the issues which are being addressed. His concern is that they may simply close their doors.[78] Mr Brown also reported on his discussions with a number of the RSL NSW District Councillors who expressed the overwhelming view that the uncertainty that would be

created by the prospect of revocation would have a damaging impact on many of the sub-Branches.[79] The view was expressed by one of the District Councillors that the sustained inability of the sub-Branches to fundraise would make it likely that approximately 15 of the 24 sub-Branches in the Western District would cease to exist.[80]

11.78 Mr Brown also expressed the concern that having to reapply for a new fundraising authority may cause delay and disillusionment within the sub-Branches.[81] Perhaps most importantly Mr Brown candidly disclosed that he was of the view that the membership may see a revocation as a "failure" of the RSL NSW State Council to deliver on the promise of reform and restoration with the League.[82]

11.79 This sensitivity is understandable. There is no doubt that the governance of RSL NSW is made more complex by reason of the impact of the unwieldy political vagaries of the electorate. Not only will the leaders have to be capable governors of the organisation but they will have to win and maintain the support of the electorate to implement their programs of reform.

11.80 It is clear that Mr Brown has driven the reforms and taken control of fundraising across the organisations. It is apparent that if the Minister were to revoke the authorities until the organisations are in a position to comply with the statutory regime, Mr Brown's control would be diluted and his capacity to effect change may be weakened.

11.81 It is understandable then that Mr Brown put forward what he described as a "workable alternative".[83] It was suggested that a recommendation be made that the Minister consider imposing additional "customised conditions" on RSL NSW's fundraising authority.[84]

11.82 The conditions that RSL NSW proposes should be imposed on its fundraising authority as an alternative to a recommendation for revocation are annexed to this Report.[85] In summary they require RSL NSW to notify NSW Fair Trading in writing of its intention to commence any fundraising generally or for a specific fundraising event accompanied by a written report from EY (or a similar firm) certifying that RSL NSW has implemented the various systems, controls, policies and procedures necessary to be compliant with the Act, the Regulations and the existing conditions of its fundraising authority. There is also the requirement that sub-Branches will not be permitted to recommence fundraising unless the President, Treasurer and Secretary of the sub-Branch have undertaken the fundraising compliance training program.

11.83 The additional conditions relate to the notification to NSW Fair Trading within five working days of becoming aware of any instance of material non-compliance with the Act, the regulations or the authority conditions with a requirement to inform NSW Fair Trading of any resignation, removal or replacement of any State Councillor.

11.84 The further conditions relate to the maintenance of expenses policies and procedures which address some of the matters the subject of the Inquiry including reimbursement of expenses, credit card use, the maintenance of records, the review of expenses and credit card claims and the maintenance of financial delegations.

Resumption of fundraising

11.85 Mr Brown expressed the view that RSL NSW will need to take a number of steps (it appears in addition to satisfying the pre-requisites referred to earlier) before it could commence charitable fundraising "in a compliant way". Those steps were identified as: the transition of finance systems at ANZAC House to a new system that is capable of tracking the receipt of public funds and matching them with expenditure; the implementation of a new expense management process at the sub-Branch level to have clear visibility of expenses relating to fundraising; designating a single banking account for the deposit of funds raised from major appeals across the organisation; training relevant sub-Branches and volunteers in respect of their obligations under the Act and the correct processes to be followed in relation to the receipt and deposit of funds raised; seeking necessary amendment to RSL NSW fundraising conditions; advising all RSL NSW members of the policy in relation to acceptable expenditure of funds raised from the public and reporting back to RSL NSW State Branch; and establishing systems necessary to track, confirm and where necessary, audit the expenditure of funds raised from the public.[86] However Mr Brown's evidence was:

> RSL NSW does not currently have all the necessary resources at a state branch level to staff and implement these changes.

11.86 Mr Brown also explained that the decision to suspend fundraising activities was "taken out of concern to ensure that WBI's fundraising activities were fully compliant" with the Act and Regulations.[87] He gave evidence that RSL WBI will continue to work closely with NSW Fair Trading to ensure that it is informed of any further non-compliance issues that come to RSL WBI's attention and will continue to comply with all requests for information from NSW Fair Trading.[88]

Future fundraising

11.87 At the time that Mr Brown gave evidence both in his second Statement and his oral evidence during the Inquiry, RSL WBI's future involvement in charitable fundraising was not "settled". The options under consideration were the cessation of fundraising altogether or working towards a resumption of fundraising. Mr Brown's evidence was that if it is to be the latter, it is essential that RSL WBI's systems and processes are such as to allow the Trustees to be completely confident that the organisation would comply with all charitable fundraising regulations.[89]

11.88 As at October 2017 the Trustees were giving "serious consideration" to whether RSL WBI should cease fundraising altogether. However this decision

was contingent on whether the broader restructure proposals could be implemented.[90]

11.89 Mr Brown identified steps that RSL WBI would have to take to comply with the charitable fundraising statutory regime if a decision were to be made that it would resume fundraising. In addition to engaging EY to report on how existing appeal proceeds could be spent, it is expected that EY's scope of services would be expanded to include a full review of RSL WBI's current financial system and organisational procedures that would enable it to comply with charitable fundraising regulations. It was expected that EY would be in a position to provide an expanded report of this kind by the end of 2017, although as late as October 2017 EY had not been requested to start work on this project as the decision about the future was yet to be made.

11.90 Mr Brown emphasised that the systems and practices relevant to RSL WBI's charitable fundraising activities, for example its finance system, accounting practices and conflict of interest policies, were either already in place or expected to be in place by the end of November 2017. Although its "client management system" was not expected to be finalised until March 2018, Mr Brown emphasised that he believed that this would not delay any compliance certification to be undertaken by EY.[91]

11.91 Critically important to the necessary major reforms in RSL NSW is the acceptance by the RSL NSW membership of the need to change the organisation.[92] Mr Brown gave evidence in relation to the steps that he has taken to bring about a number of cultural changes within RSL NSW included: the fostering of a greater sense of transparency; encouraging the appropriate sharing of information; encouraging critical assessment of all practices and policies, promoting a culture which underpins the organisation's activities and communications with civility and respect; and implementing a zero tolerance approach to bullying and harassment as well as fraudulent and criminal behaviour.[93] He expressed confidence that the membership of RSL NSW are committed to change and to rectifying the many issues that the organisation faces.[94]

11.92 Mr Brown gave the following oral evidence at the Inquiry:[95]

Q. But in view of what I've been asking you then about the sub-branches and the women's auxiliaries and their involvement in the fundraising of RSL NSW and WBI, it was important that the directives that were given in relation to fundraising extended just beyond RSL NSW and RSL WBI; correct?

A. Beyond the State Branch and Anzac House, if that's what you mean?

Q. Yes.

A. Yes, it was important to communicate that across that entire organisation – both organisations.

Q. And to require that the various sub-branches, for instance, ceased fundraising?

A. Yes.

Q. Because unless and until State Branch and WBI could have confidence that it was being done properly at a sub-branch level, then the sub-branches shouldn't be fundraising; correct?
A. That was the decision we made.

Q. That was, to your view, a correct decision?
A. Yes.

Q. I think your view is that unless and until you can satisfy yourself that there are proper and effective controls at all levels of the organisation, that RSL NSW, the State Branch and WBI will not themselves commence fundraising; correct?
A. That's correct.

Q. And also will not permit the sub-branches, the women's auxiliaries and the other parts of the organisation to commence fundraising?
A. That's right. State Council will not make that decision, I don't believe, until we are satisfied that we are compliant.

Q. Am I right that your focus, then, has been addressing those deficiencies; correct?
A. The initial focus has been on scoping the deficiencies and then moving to address them.

…

Q. But there's still some way to go?
A. There is a long task list of issues, many of which are important, all of which we are addressing.

The position as at 5 December 2017

11.93 The newly appointed RSL NSW CFO, who commenced employment of 5 December 2017, has been tasked with implementation of the transition of the new financial system to Navision which is expected to be completed by the end of March 2018. Once that is implemented the Finance Committee will be requested to approve an accounting and legal compliance assessment of RSL NSW financial systems and fundraising policies and procedures. This is to ensure compliance with legislation and regulations similar to the compliance assessment that EY is currently undertaking for RSL WBI.

11.94 The project to transition the RSL NSW payroll to Aurion was to commence in December 2017 and is expected to go "live" in July 2018.

11.95 EY commenced the audit of RSL NSW 2016 accounts and it was expected that draft accounts would be ready for sign-off on 15 December 2017. The EY audit of RSL NSW 2017 accounts was expected to commence on 29 January 2018 with a scheduled draft sign-off date of 23 February 2018.

11.96 The upgrade of RSL NSW servers, both main and backup, has been completed.

11.97 In addition to the work already referred to in relation to the sub-Branches, there has now been a new format created for sub-Branch budgets and SBAs have been designed to meet modern accounting standards. This is intended to assist with classification of income and expenditure, minimising the chance of errors by automating data collection and collation. They have been designed by the Chief Operating Officer of RSL NSW in consultation with and based on advice from EY.

11.98 The new form budgets have already been sent to sub-Branches and are being returned progressively. These have changed the categorisation of income and expenditure to reflect both accounting standards and Charitable Fundraising legislation. It was planned to send the SBAs to sub-Branches at the end of 2017 for return to RSL NSW State Branch by 31 March 2018. The redesign of the forms will assist sub-Branches in the identification of charitable fundraising income and expenditure more clearly and more accurately.

11.99 The RSL NSW Finance Committee has approved the appointment of a full time General Counsel. Ms Leanne Meyer, from Baker & McKenzie, commenced as General Counsel on 18 December 2017.

11.100 The Finance Committee was requested to consider at its meeting on 6 December 2017 approving the appointment of a Property Compliance Manager and Secretariat Officer; a Communications Director; and a Sub-Branch and Membership Support Officer. The aim of these appointments is to improve the skills and expertise of RSL NSW State Branch. This is the first time that RSL NSW has had a dedicated support function aimed at refocusing the State Branch in its role to support sub-Branches, their office bearers and members.

11.101 The Strategic Plan prepared for RSL NSW by SVA which was completed on 6 November 2017 is being tested, refined and implemented. It is estimated that this will be completed by 16 February 2018.

11.102 All internal policies and procedures for all areas within RSL NSW are being reviewed by an external consultant. It is anticipated that such review will be completed by May 2018.

11.103 Induction and training for office bearers and State Councillors has been identified as a key area of concern throughout the organisation and its subsidiaries. Discussions have commenced with the Governance Institute and Australian Institute of Company Directors for exploring computer based and face to face training options for all sub-Branch office bearers with a view to commencing training in the first half of 2018.

11.104 RSL WBI made confidential submissions in relation to the options it is exploring to cure the problem with compliance with its Trust objects. It is not necessary to descend into the detail. However it is noted that this is at the forefront of RSL WBI's considerations. There is no doubt that this should be acted upon very urgently.

11.105 On 14 December 2017 RSL LifeCare advised the Inquiry that, in order to address this issue, on 11 December 2017 its Board agreed in principle to fund services previously provided by RSL WBI to serving and ex-serving military personnel of the ADF and their families. It advised that it will fund those services until a more permanent re-structure is agreed and implemented by the RSL entities. The draft funding agreement that had been noted by the Board is to be finalised and implemented by the newly constituted Audit Risk Management and Compliance Committee.

11.106 RSL WBI also reported that EY was at an advanced stage in formulating the methodology to test applicable legal requirements to undertake the compliance certificate exercise regarding the fundraising activities of RSL WBI. Ashurst has created a comprehensive discussion paper in respect of steps that need to be taken to ensure compliance with the statutory regime for charitable fundraising. It is anticipated that the discussion paper will be supplemented after further discussions with both EY and RSL WBI officers.

11.107 RSL WBI has the new financial system (Navision) now fully operational and the Finance Manager provided comprehensive reports to the Trustees at the 8 November 2017 meeting. EY was in the final stages of the audit of RSL WBI's 2016 financial accounts with an anticipated completion date of 21 December 2017. The audit of RSL WBI's 2017 accounts is expected to be completed by the first week of February 2018. The upgrade of the main and backup servers of RSL WBI has been completed. The Trustees resolved at the meeting on 8 November 2017 to seek expressions of interests from major banks for RSL WBI's transactional banking services.

11.108 A Conflicts of Interest Policy and Procedure was approved by the Trustees at the meeting on 8 November 2017 and conflicts of interest are now a standing agenda item at all Trustees' meetings. The appointment of Ms Gaudry as the third Trustee was ratified at the meeting on 8 November 2017.

11.109 Pecuniary interest forms have been completed by the Trustees. Mr Brown has been appointed as President; Mr Evans has been appointed as Treasurer; and Ms Gaudry has been appointed as Secretary. The Trustees have approved additional Secretariat support to be provided by the NSW Chief Governance Officer. This includes attending and minuting all meetings.

11.110 A draft Fundraising Policy and Procedures Policy has been completed for RSL WBI and will be provided to the Trustees for their review.

11.111 There were three full time staff in the fundraising area of RSL WBI from 11 December 2017. The Fundraising Manager was completing module 3 of 14 of the Fundraising Institute of Australia's Diploma course and the full course will be completed by mid-2018. A second member of the fundraising team was enrolled in the Fundraising Essentials course which

is a three-month introductory course of the Fundraising Institute of Australia.[96]

11.112 On 23 November 2017 RSL NSW approved the appointment of Ms Samantha Challinor and Mr Bruce Bailey to RSL LifeCare's Board. They were formally appointed at the AGM on 30 November 2017.

11.113 On 4 December 2017 the Risk and Audit Manager, reporting to the EGM Legal and Compliance, commenced employment. That Manager has over 20 years' experience in the healthcare industry, including working with heads of compliance to manage risk mitigation matrix.

RSL LIFECARE

11.114 The new Chairman of RSL LifeCare, Mr Condon, attended the Royal Military College, Duntroon graduating in 1985 with a Bachelor of Mechanical Engineering from the University of New South Wales. Mr Condon also holds a Master of Science from Cranfield University in the United Kingdom and a Diploma in Command Management from the US Army Command and General Staff College, Fort Leavenworth, Kansas.

11.115 From 1982 to 2007 Mr Condon served as an Officer of the ADF in various capacities including as Company Commander in a Mechanised Infantry Battalion and Commanding Officer of the 9th Force Support Battalion. He undertook a number of postings within Australia and abroad including in the United Kingdom and the United States of America. He participated in operational visits to Iraq, Timor, Syria, Lebanon, Israel, Sinai, and Sudan. He also undertook various civil secondments during his service in Europe and in Australia.

11.116 In 2004 Mr Condon was assigned to US Headquarters in Bagdad, Iraq on a 6 month operational deployment. In July 2006 he was the Commander of Joint Task Force 629 which was the ADF Joint Task Force deployed to support the evacuation of over 5,000 Australians and 1,500 approved foreign nationals from Lebanon during the 34 day war between Hezbollah and Israel. In 2007 Mr Condon was awarded the Conspicuous Service Cross for his achievements as Commander of that operation.

11.117 On leaving the ADF Mr Condon became the CEO of Sydney Legacy in which he worked from July 2007 to October 2015.

11.118 In November 2015 Mr Condon worked with Aspen Medical to support the work of the Aspen Foundation. Aspen Medical is a health provider in a range of commercial settings including in remote and/or dangerous places. An example of Aspen Medical's work is the assistance it provided in an arrangement with the Department of Foreign Affairs and Trade to assist with the Ebola outbreak in West Africa.[97]

11.119 From November 2015 Mr Condon spent seven months working on a research project for the Aspen Foundation producing a report entitled "Ex-Service Organisations (ESO) Mapping Project".[98] The aims of that project were to map the needs of veterans and their families and the focus and services of ESOs, identifying gaps and overlaps in services to assist the ESO community in planning for the future.[99]

11.120 Mr Condon has provided services in numerous other areas including on the Prime Ministerial Advisory Council on Ex-Service Matters which was established to consider and advise the Prime Minister and Government on strategic and complex matters impacting on the ex-service and defence communities.[100] He served on that committee until December 2013. His various other commitments, all impressive, are detailed in his written Statement of Evidence to this Inquiry.[101]

11.121 On 27 October 2016 Mr Condon was appointed as a director of RSL LifeCare.[102]

11.122 In June 2017 Mr Brown consented to appointment (*ex officio*) as a director of RSL LifeCare by reason of his appointment as President of RSL NSW.[103]

11.123 On 4 August 2017 Mr Brown met with Mr Longley to discuss a number of matters including the option that Mr Longley resign as Chairman of RSL LifeCare. That resignation was subsequently provided to Mr Brown.[104]

11.124 On 24 August 2017 Mr Condon was elected unopposed as the Chairman of RSL LifeCare.[105]

11.125 The admissions of failures and non-compliance made by Mr Condon on RSL LifeCare's behalf are dealt with elsewhere in this Report.[106] The focus in this Chapter is on Mr Condon's evidence of the steps that RSL LifeCare has taken and is taking to strengthen compliance and governance to be in a position to resume fundraising.[107]

11.126 A special committee was constituted within RSL LifeCare to respond to and co-operate with this Inquiry.[108] The co-operation from RSL LifeCare after Mr Condon became the Chairman from its solicitors, Clayton Utz, has been exemplary.

11.127 In his letter to the Inquiry dated 25 August 2017, Mr Condon advised that RSL LifeCare had engaged Ms Alison Choy Flannigan, a partner of Holman Webb Lawyers, to undertake an overall risk and compliance review of RSL LifeCare. Mr Condon also advised that RSL LifeCare had commenced the process of recruiting an Executive Manager of Risk and Compliance.[109]

11.128 Mr Condon participated in an interview with Ms Flannigan as part of Stage 1 of the Holman Webb Review. During this meeting Mr Condon informed Ms Flannigan of his concern that RSL LifeCare needed a

Fundraising Manager and that appropriate expertise was required to ensure compliance.[110]

11.129 On 6 October 2017 RSL LifeCare received the Stage 1 Report of the Holman Webb Review.[111] This Report is at the centre of RSL LifeCare's remedial program to effect both cultural and governance change to the organisation. It is therefore necessary to address it and RSL LifeCare's response to it in some detail.

The position as at early November 2017

11.130 Mr Condon's written and oral evidence during the Inquiry is the basis of the following description of the steps RSL LifeCare has taken to remedy its problems.

Board and members

11.131 The Stage 1 Report contained numerous recommendations in relation to the Board and its composition; its members; its risk management and compliance committee composition; its corporate and clinical governance structures and accountability; and various other governance matters.[112]

11.132 Its recommendations included that: the Board should contain at least two independent directors based upon skills; that the company should consider the rotation of elected directors; that the Board should contain at least one director with accounting experience; that at least one director should have experience in aged care and clinical care; that diversity in the Board should be encouraged; that other members of the Board should have an appropriate mix of skills; that the Board should be accountable to the members and that preferably the directors should not also be members; that any remuneration of directors must comply with the Directors Remuneration Policy; and that decisions on directors remuneration should be made without conflict of interest.[113]

11.133 Mr Condon gave evidence that he agreed with all of these recommendations and that the proposed changes to RSL LifeCare's Constitution to give effect to these recommendations are now with RSL NSW for its consideration.[114]

Audit and Risk

11.134 In respect of the ARMAC Committee and its composition, the Stage 1 Report recommended that: it should consist of at least three members; all members should be non-executive directors and the majority of the members should also be independent directors; it should be chaired by an independent director who is not the Chair of the Board; the members should be appointed for specific terms with an appropriate mix of skills including accounting and financial expertise as well as industry knowledge; it should have at least three non-executive directors, at least one of which is a Certified Public Accountant or has equivalent accounting qualifications; and there should be one member with

clinical/aged care experience. It was noted that a lawyer may be a "good addition".[115]

11.135 In response to these recommendations, RSL LifeCare prepared new Terms of Reference for that Committee on 28 September 2017 that were provided to the Inquiry on 4 October 2017.[116]

Culture of Compliance

11.136 The Stage 1 Report recommended the development of a culture of compliance with ethical and legal responsibilities by clear communication and leadership.[117] Mr Condon gave evidence that he agreed with this recommendation and has adopted it in his own role as Chairman including in a speech to a Team Leaders Conference in the week commencing 16 October 2017.[118]

Reviewing appointments

11.137 The Stage 1 Report recommended that all position descriptions should be reviewed and updated; executive governance for compliance with charity laws should lie with ARMAC; a Privacy Officer should be appointed; a Corporate Work, Health and Safety Officer should be appointed; and a Clinical Governance Director should be appointed or added to the Deputy CEO's title.[119] Mr Condon gave evidence that he endorsed these recommendations.[120]

11.138 The Stage 1 Report noted that RSL LifeCare had already appointed an Executive General Manager (EGM) Legal and Compliance who is a practising lawyer. It referred to this appointment as "commendable" and suggested that the reporting line should be not only to the CEO but also as a "dotted line direct report" to the Board and ARMAC.[121] Mr Condon gave evidence that he agreed with the proposed reporting lines for the EGM Legal and Compliance. He had already found it of great assistance to have a legal resource within RSL LifeCare who was employed shortly before the public hearings of the Inquiry commenced. He noted that the EGM had been able to marshal RSL LifeCare's external legal resources and deploy them in a way that he observed to be efficient and beneficial.[122]

Multi-disciplinary clinical oversight

11.139 The Stage 1 Report recommended the appointment of a multi-disciplinary Corporate Clinical Governance Committee comprised of people such as a geriatrician, general practitioner, nurse, pharmacist, dietician, occupational therapist and a psychiatrist/psychologist with experience in dementia. It recommended that this committee of independent experts could have an overview of clinical governance, review specific clinical policies and procedures and be available to review and discuss clinical cases. It was described as an "umbrella advisory committee" and it was recommended that its Minutes should be available to the ARMAC and the Board.[123]

11.140 Mr Condon recommended that this Committee be established and at the time that he gave his oral evidence he understood that Ms Flannigan was working with another director and the Deputy CEO to establish it.[124]

Refreshing Executive Roles

11.141 The Stage 1 Report recommended that the appointment of the CEO be reviewed at least once every five years, with improvements to be made to Key Performance Indicators (KPIs) and personal accountability for the CEO, Deputy CEO, EGMs, GMs and Facility Managers. It recommended the introduction of a formal performance framework, including annual reviews. It also recommended that Delegations be reviewed and that managers be provided with transparency to information.[125]

11.142 Mr Condon agreed with the recommendations in relation to the review of the CEO and the annual reviews against KPIs. He also agreed with the recommendation in relation to the Delegation Policy and gave evidence that RSL LifeCare was working towards upgrading its information technology platforms in order to provide managers with transparency to information.[126]

Governance training

11.143 The Stage 1 Report recommended governance training for the Board and executive managers and other managers and leadership training for EGMs and GMs.[127] Mr Condon agreed with those recommendations and gave evidence that RSL LifeCare's new EGM Legal and Compliance and Company Secretary were assessing training needs and developing an appropriate training and continuing development program.

11.144 Mr Condon also gave evidence that he had approved director attendance at governance courses in November 2017 and referred to governance training for senior managers. In respect of training for directors, Mr Condon referred to the scheduling of education into most of the Board meetings; the development of a Director Education Policy; a presentation by Ms Flannigan; to the Board; and advice to the directors about the ACNC webinar on Charitable Fundraising held during the week commencing 16 October 2017. Mr Condon also gave evidence that he had tasked the EGM Legal and Compliance to arrange for directors and senior executives to attend the Governance Institute of Australia for specific not-for-profit charity governance training.[128]

Transparency

11.145 The Stage 1 Report also made a number of recommendations in relation to communication, reporting and stakeholder engagement in an appropriate and timely manner.[129] Mr Condon agreed with all of the recommendations and gave evidence that RSL LifeCare had been undertaking a significant review of its information technology systems noting the GM Information Technology paper entitled "IT Strategic Focus Update". Mr Condon also referred to the update that was provided by the Company Secretary to the

RSL LifeCare Board on 10 October 2017 in relation to a review of three risk management software products.[130]

Dealing with Conflicts

11.146 The Stage 1 Report noted that RSL LifeCare had informed Holman Webb that it "will introduce" an updated Conflicts of Interest Policy; a Conflicts of Interest Register; a Related Party Register; a Register of Interests; relevant Gift Policies and Registers of Gifts; and a practice pursuant to which conflicts of interest would be a standing item for disclosure at the beginning of each Board meeting.

11.147 The Stage 1 Report also recommended that RSL LifeCare consider introducing tender processes for the procurement of goods and services in excess of a specified amount to ensure that there is a testing of the market, obtaining value for money and reducing the risk of conflicts of interest in procurement.[131]

11.148 Mr Condon gave evidence that: the Conflicts of Interest Policy was introduced in August 2017; the Company Secretary had introduced a Statement of Conflicts of Interest to be signed by each director; there is a plan to introduce a related party register; that the Register of Interests had been introduced in February 2017; the practice to keep the conflicts of interest item on the agenda at the beginning of each Board meeting had been introduced earlier in 2017; the Gifts Policy and Register had been introduced in August 2017 in respect of directors; and a specific Policy and Register of gifts and donations by RSL LifeCare was yet to be developed.[132]

Board policies

11.149 The Stage 1 Report also referred to the development of a suite of Board policies.[133] Mr Condon gave evidence that commencing in February 2017 numerous policies had been adopted or revised including the Board Charter; the current edition of RSL LifeCare's Governance Manual, the Directors' Information Booklet, the Directors' Expense Policy; the Board Skills Matrix; and the introduction of a Whistleblower Policy approved in principle on 11 October 2017. Mr Condon also referred to the commencement of the process of procuring the services of an independent complaints-handling organisation to operate the whistleblowing scheme and in the interim a Special Counsel in Clayton Utz's Employment Law Practice Group has been appointed as the contact point for receiving any disclosures.[134]

Charitable fundraising

11.150 The Stage 1 Report also noted that RSL LifeCare is currently developing a Charitable Fundraising Policy and Charity Pack for staff and volunteers engaged in fundraising activities. It is also noted that further compliance work was required and was in progress.[135]

11.151 Mr Condon gave evidence that historically RSL LifeCare has had a "poor understanding" of the operation of the Act and the obligations imposed by it. He expressed the view that the organisation had focused on clinical care and safety of residents in an effort to meet the requirements to maintain accreditation under the demands of the Aged Care legislation; but that it was "critical" that the RSL LifeCare directors and employees understand the operation of the Act and RSL LifeCare's obligations under the Act. The Charitable Fundraising Policy is being developed by the EGM Legal and Compliance, EGM Communications and Strategy and the Company Secretary.[136]

11.152 Mr Condon claimed that the "biggest item" that was missing from RSL LifeCare was someone with the background, knowledge, training and skill sets to act as a fundraising manager. At the time Mr Condon gave his oral evidence the recruitment process had commenced but the candidate had not yet been selected.[137]

11.153 On 20 November 2017 RSL LifeCare appointed a Fundraising and Events Manager to work two days per week until 19 December 2017 and thereafter on a full time basis. The Events Manager has 15 years' experience as an events manager and fundraising professional.

11.154 Mr Condon also referred to the measures that had been introduced to improve RSL LifeCare's practices and policies in relation to charitable fundraising that have been developed in conjunction with Ms Flannigan and reviewed by the EGM Legal and Compliance and Company Secretary.[138]

Improving accounting practices

11.155 Not surprisingly the Stage 1 Report made detailed recommendations in relation to improving RSL LifeCare's accounting practices, suggesting: the appointment and refreshment of auditors on a periodic basis; the implementation of procedures to comply with all external financial reporting requirements; the introduction of transparency on funds donated for Homes for Heroes and how they are accounted for and spent; and an independent accounting firm/auditor reviewing the current financial accounts for compliance with charity legislation.[139] Mr Condon gave evidence that he agreed with all of these recommendations,[140] some of which have already been implemented.

11.156 As soon as Mr Condon received the Stage 1 Report he directed the Company Secretary to produce a list of actions arising from it and a list of action items identified during Board meetings requiring action, including advice provided to the Board by RSL LifeCare's Counsel and Solicitors. Mr Condon also directed the Company Secretary to liaise with the EGM Legal and Compliance to review the list and allocate or reassign actions to management. Those lists are to be consolidated and maintained so that they can be provided to the Board on an ongoing basis.[141]

11.157 Stage 2 of Holman Webb's Review was expected at the end of December 2017. In Stage 3 the focus will be on compliance with the Aged Care legislation and the existing accreditation processes, facility management, environmental laws and privacy.[142]

Amending the Constitution

11.158 Following its meeting on 24 August 2017 the Board of RSL LifeCare engaged Holman Webb Lawyers to review its Constitution.[143] That review included the assessment of whether there should be a modification or removal of the references to paying specialist consulting fees to directors; whether there should be a removal of the prohibition on paying directors' remuneration; whether directors' remuneration should be allowed, subject to external professional advice, approval of members and any regulatory authority approval; whether directors should also be members; whether the Board should consist of 100% professionally skilled people; whether there should be more frequent meetings with members, in particular with RSL NSW; whether a process should be adopted for provision of improved information flow between RSL LifeCare and RSL NSW; and whether an annual plan should be agreed between RSL NSW and RSL LifeCare confirming ways that RSL LifeCare might work to provide support for activities that help ex-service people and their families.[144]

11.159 On 6 October 2017 Holman Webb provided a memorandum to RSL LifeCare[145] relating to the proposed amendments to the Constitution which were subsequently sent to RSL NSW. On 20 October 2017 RSL NSW advised RSL LifeCare that at its meeting on 19 October 2017 the State Council referred the Constitutional changes recommended by Holman Webb and the appointment of two additional directors to the RSL LifeCare Member Committee for consideration and approval.

11.160 On 14 December 2017 RSL LifeCare advised the Inquiry that on 11 December 2017 the Members of RSL LifeCare approved a special resolution to amend RSL LifeCare's Constitution. Those changes included the amendment of the objects to permit payment of directors' fees to be determined in general meeting and to improve the dispute resolution mechanism.

Much to do

11.161 Mr Condon emphasised that RSL LifeCare's process of reform and renewal is "ongoing". He expressed the strong desire to continue to work with other members of the Board, management and employees to actively develop "a mature culture of compliance within all aspects of the organisation's operations". He said that the work is "significant" and although there is still much to do "good progress has been made in a short time".

Restructure

11.162 Mr Condon accepts that RSL LifeCare is a critical part of the reforms that have been proposed by RSL NSW, in particular by Mr Brown in his role as State President. As discussed, that restructure involves moving RSL DefenceCare and the charitable services provided by RSL WBI/RSL DefenceCare into RSL LifeCare and, over time, closing down the RSL WBI Trust. That would mean that the RSL in New South Wales would re-emerge as two entities; RSL NSW and RSL LifeCare. The proposal envisages that RSL NSW would maintain its role as the head office and the organisation for volunteers. It would continue to be headed by the President and State Council. RSL LifeCare would be the professional, charitable services delivery arm of the RSL in New South Wales and would be run by an independent, relevantly experienced and remunerated Board accountable to a single member, being RSL NSW.

11.163 It is also envisaged that RSL NSW State Councillors and the President would no longer be appointed to the RSL LifeCare Board and that RSL NSW's control of RSL LifeCare would be strengthened through Constitutional changes.

11.164 The structural reforms include consideration of the transition of RSL NSW Day Clubs to RSL LifeCare; transition of RSL NSW Youth Clubs to the Registered and Services Clubs Association; and some restructure of RSL Women's Auxiliaries. These are all matters that are subject to ongoing consideration at the time this Report is being prepared.

11.165 Mr Condon expressed what he described as a "personal view" that there is significant merit in separating the professional and volunteer arms of the RSL NSW entities.[146] He gave the following evidence:

> By transitioning the operations of DefenceCare to LifeCare, which both involve clinical care issues, there is a recognition of the much more complex overlay of governance and compliance required than that required for the activities of the volunteer arm, which can then focus on comradeship (peer support), fundraising and commemoration. It also provides the opportunity of separating out those parts of the broader RSL NSW entities which are subject to electoral processes and turnover.

11.166 Each of the entities recognised that if this restructure proposal is adopted, the new organisation would be complex, operating a range of services and subject to a wide range of legislation and regulation. They also acknowledged that the current Board and management may need augmentation to operate such an expanded organisation and that it will involve reputational risk and possibly "brand confusion".

11.167 Mr Condon proposed an internal audit program for RSL LifeCare which could be provided to the Regulator to give the public the confidence that what is occurring within RSL LifeCare is compliant with the law. Another aspect of improvement of compliance in the charitable fundraising sector would, in his view, be to have some form of spot-checking by a form of

inspector regime similar to that which is happening in the aged care regulatory regime with accreditation inspectors. Those inspections occur on a random basis and are an incentive to ensure compliance.

11.168 On 2 November 2017 Mr Condon issued a document entitled "Inquiry – Chairman's Update" in which he thanked the management and staff for the effort to ensure that RSL LifeCare co-operated with the Inquiry.[147] That document included the following:

> Parallel to the actions of the Inquiry, RSL LifeCare has commissioned independent external reviews and internal reviews and work streams to both achieve compliance with Charitable Fundraising Act (1991), and more broadly to begin to enhance the organisation's governance and compliance culture, systems, processes and resources. There has also been important cooperation with RSL NSW to identify future opportunities to provide more effective support to veterans and families. While most of this work may not be obvious yet to the whole organisation, there has been a significant effort made to progress this work. An extensive action list has been developed and work is ongoing to both prioritise and resource these actions. This includes cooperating with the ongoing Inquiry by the ACNC.
>
> …
>
> There is much work still required to elevate the organisation's governance and compliance, draw a line in the sand and look to the future.

The position as at December 2017

11.169 RSL NSW, RSL WBI and RSL LifeCare continue to work together to progress a proposed restructure of the organisations. They have been working towards settling a solution which will provide for governance and compliance reforms within the entities. As at early December 2017 the parties were negotiating a Memorandum of Understanding (MOU) to capture the reform and restructure initiatives.[148]

11.170 Holman Webb has prepared a Charitable Fundraising and Donations Policy and an accompanying Charitable Fundraising and Donations Manual. The Policy and Manual were being reviewed by the Fundraising and Events Manager. It is anticipated that they will adopted by the Board in early 2018.

11.171 All the recommendations that were made by Holman Webb in its Stage 1 Review have been accepted by the RSL LifeCare Board. Some have been implemented and others are in the process of being implemented, whilst the remaining recommendations are being included in an implementation plan.[149]

ENDNOTES

[1] Tr 3377.
[2] Tr 3378.
[3] Ex 32, Vol 1, p 2.
[4] Tr 3301.
[5] Ex 34.
[6] Ex 34, p 13, pp 15 - 16, par 67, 84 - 95.
[7] Ex 34, p 1, par 4 - 7.
[8] Ex 34, pp 8 - 9, par 30 - 40.
[9] Ex 34, pp 27 - 29, par 173 - 177.
[10] Ex 35.
[11] Tr 3303 - 3378.
[12] Tr 3376.
[13] Tr 3377.
[14] Tr 3377 - 3378.
[15] Tr 3380 - 3572.
[16] Counsel Assisting's Outline of Closing Submissions, 31 October 2017, p 40, par 47(4)(b).
[17] RSL NSW's Outline of Closing Submissions, 6 November 2017, p 25, par 141.
[18] Tr 3475 - 3476.
[19] Tr 3492 - 3497.
[20] Ex 48.
[21] Ex 35, p 12, par 65.
[22] Ex 34, p 1, par 4.
[23] James Brown, *Anzac's Long Shadow – The Cost of our National Obsession* (Redback, Melbourne, 2014).
[24] James Brown, *Anzac's Long Shadow – The Cost of our National Obsession*, pp 136 - 140.
[25] Ex 34, p 8, par 30.
[26] Ex 34, p 8, par 31.
[27] Ex 34, p 8, par 35.
[28] Ex 34, p 8, par 35.
[29] Ex 34, p 1, par 6 - 7.
[30] Ex 34, p 9, par 40.
[31] Ex 15, pp 6.10 - 6.13.
[32] Ex 34, pp 23 - 24, par 141.
[33] Ex 34, p 24, par 145 - 150.
[34] RSL NSW's Submissions in respect of reform processes, 5 December 2017, p 4, par 18.
[35] Ex 34, p 414, par 1 - 3.
[36] Ex 34, p 314, par 4.
[37] Ex 34, p 414, par 7, 9.
[38] Ex 34, p 25, par 152 - 157.
[39] Ex 34, p 28, par 174.
[40] Ex 34, pp 420 - 434.
[41] Ex 35, p 1, par 6.
[42] Ex 35, p 1, par 7.
[43] Ex 35, p 2, par 8.
[44] Ex 35, p 2, par 8.
[45] Ex 35, p 2, par 10.
[46] Ex 35, pp 2 - 3, par 12.
[47] Ex 35, p 25.
[48] Ex 35, p 34.
[49] Ex 35, p 3, par 14.
[50] Mr Brown also gave evidence in respect of options being considered to remedy this position. As detailed elsewhere, in order to address this issue (at least on a temporary basis) RSL LifeCare has recently entered into an agreement in principle to fund the services that RSL WBI has been providing to serving and ex-serving military personnel of the ADF and their families.
[51] Ex 35, p 3, par 15 - 18.
[52] Ex 35, pp 7 - 8, par 37.

[53] Ex 35, pp 7 - 8, par 37.
[54] Ex 35, p 8, par 41 - 42.
[55] Ex 35, p 9, par 46 - 49.
[56] Ex 35, pp 9 - 10, par 50 - 55.
[57] Ex 35, p 15, par 81.
[58] Ex 47, p 8.
[59] Ex 35, p 16, par 85.
[60] Ex 35, pp 15 - 17, par 83 - 95.
[61] Ex 35, p 17, par 98.
[62] Ex 35, p 17, par 100.
[63] Ex 35, pp 16 - 17.
[64] Ex 35, p 18, par 103 - 105.
[65] Ex 25, Vol 3, pp 981 - 982.
[66] Ex 35, p 136.
[67] Ex 35, pp 137 - 139.
[68] Ex 35, p 139.
[69] Ex 35, pp 139 - 140.
[70] Ex 35, p 142.
[71] Ex 35, pp 143 - 162.
[72] Ex 35, pp 163 - 164.
[73] Ex 48.
[74] Ex 48, p 1, par 7.
[75] Ex 48, p 2, par 7.
[76] Ex 48, p 2, par 8.
[77] Ex 48, p 2, par 8(a).
[78] Ex 48, p 2, par 8(b).
[79] Ex 48, p 2, par 8(c).
[80] Ex 48, p 2, par 8(d).
[81] Ex 48, p 2, par 9.
[82] Ex 48, p 3, par 10.
[83] Ex 48, p 3, par 11.
[84] Ex 48, p 3, par 11.
[85] Appendix H.
[86] Ex 35, p 18, par 101.
[87] Ex 35, p 19, par 108.
[88] Ex 35, p 20, par 116.
[89] Ex 35, p 20, par 117.
[90] Ex 35, p 20, par 118.
[91] Ex 35, pp 20 - 21, par 120 - 122.
[92] Ex 35, p 23, par 135.
[93] Ex 35, p 11, par 61.
[94] Ex 35, p 23, par 135.
[95] Tr 3324 - 3226.
[96] RSL WBI's Submissions in respect of reform processes, 5 December 2017, pp 4 - 5, par 21.
[97] Ex 32, Vol 1, pp 3 - 5, par 15 - 24.
[98] Ex 32, Vol 1, p 5, par 25; Ex 32, Vol 1, pp 66 - 124.
[99] Ex 32, Vol 1, p 5, par 25.
[100] Ex 32, Vol 1, pp 6 - 7, par 28(a).
[101] Ex 32.
[102] Ex 32, Vol 1, p 11, par 55.
[103] Ex 35, p 21, par 124.
[104] Ex 35, p 23, par 133 - 134.
[105] Ex 32, Vol 1, p 17, par 89.
[106] Chapter 7.3.
[107] Ex 32, Vol 1, pp 23 - 24, par 122 - 171.
[108] Ex 32, Vol 1, p 18, par 95.
[109] Ex 2, Vol 3, p 882, par 20.
[110] Ex 32, Vol 1, p 24, par 127.
[111] Ex 32, Vol 2, pp 306 - 562.

[112] Ex 32, Vol 2, pp 316 - 323.
[113] Ex 32, Vol 2, p 316, par 1.
[114] Ex 32, Vol 1, p 25, par 134.
[115] Ex 32, Vol 2, p 317.
[116] Ex 32, Vol 2, pp 556 - 561.
[117] Ex 32, Vol 2, p 317, par 3.
[118] Ex 32, Vol 1, p 26, par 137.
[119] Ex 32, Vol 2, p 318, par 4.2.
[120] Ex 32, Vol 1, pp 26 - 27, par 138.
[121] Ex 32, Vol 2, p 318, par 4.2(b).
[122] Ex 32, Vol 1, pp 26 - 27, par 138.
[123] Ex 32, Vol 2, p 318, par 4.3.
[124] Ex 32, Vol 1, p 27, par 139.
[125] Ex 32, Vol 1, pp 318 - 319, par 4.4.
[126] Ex 32, Vol 1, p 27, par 140.
[127] Ex 32, Vol 2, p 319, par 4.5.
[128] Ex 32, Vol 1, pp 27 - 28, par 141 - 144.
[129] Ex 32, Vol 2, p 319, par 4.6.
[130] Ex 32, Vol 1, pp 28 - 29, par 145 - 147.
[131] Ex 32, Vol 2, p 320, par 4.7.
[132] Ex 32, Vol 1, p 29, par 149.
[133] Ex 32, Vol 2, p 323, par 5.7.
[134] Ex 32, Vol 1, pp 30 - 31, par 150 - 153.
[135] Ex 32, Vol 2, p 321, par 5.2.
[136] Ex 32, Vol 1, p 31, par 154 - 158.
[137] Tr 3256 - 3257.
[138] Ex 32, Vol 1, pp 31 - 32, par 160.
[139] Ex 32, Vol 2, pp 321 - 322, par 5.5.
[140] Ex 32, Vol 1, p 32, par 161.
[141] Ex 32, Vol 1, pp 33 - 34, par 166 - 167.
[142] Ex 32, Vol 1, p 25, par 131 - 132.
[143] Ex 32, Vol 2, p 337.
[144] Ex 32, Vol 2, pp 582 - 584.
[145] Ex 32, Vol 2, pp 582 - 596.
[146] Ex 32, Vol 1, pp 34 - 35, par 170 - 175.
[147] Ex 46, pp 1 - 2.
[148] RSL NSW's Submissions in respect of reform processes, 5 December 2017, p 1, par 4.
[149] RSL LifeCare's Submissions in respect of reform processes, 5 December 2017, pp 1 - 4, par 1.2 - 10.1 (Confidential).

12. A QUESTION OF TRUST

12.1 Prior to late 2016, irrespective of whether members of the community supported the cause to care for needy veterans partly by the use of public moneys raised in charitable fundraising appeals, RSL NSW, RSL WBI and RSL LifeCare, were respected for the extraordinary and voluntary services they provided in caring for those veterans. The thousands of volunteers and employees throughout the State that form the backbone of these entities depended on and expected those in leadership roles to manage the organisations ethically, legally and professionally. It is understandable that there were similar expectations in the donating public.

12.2 The integrity of each of RSL NSW, RSL WBI and RSL LifeCare has been compromised by a combination of sheer ineptitude and cronyism and in the case of RSL NSW, disreputable conduct of the long serving President, Mr Rowe. A sad consequence of the exposure of this conduct is the prospect of a loss of trust in the RSL.

12.3 The real question that arises for the Minister's consideration is whether these organisations can now be trusted with public money.

12.4 It is appropriate to address this question in the context of paragraph 4(b) of the Terms of Inquiry. It is necessary to determine whether or not the management of each entity or the conduct of any fundraising appeal by each entity involves or indicates a ground upon which the Minister could be satisfied of a matter listed in section 16(2) or section 31(1) of the Act.

12.5 On the basis that RSL WBI does not presently hold a fundraising authority, the relevant provision for the Minister's consideration is section 16(2) of the Act. It provides as follows:

> **16 How application dealt with**
>
> (2) The Minister may refuse an application for an authority if the Minister is not satisfied as to any one or more of the following matters:
>
> (a) that the proposed appeal will be conducted in good faith for charitable purposes,
>
> (b) that all of the persons proposing to conduct the appeal, and all persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes,
>
> (c) that the proposed appeal will be administered in a proper manner,

(d) that the grant of an authority would not facilitate the contravention of any Act,

(e) that the applicant can and will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of this Act and the regulations and the conditions of the authority,

(f) that the applicant has furnished all the information required to be furnished in relation to the proposed appeal,

(g) that, having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading,

(h) that it is in the public interest to grant the authority.

12.6 Each of RSL NSW and RSL LifeCare hold a current fundraising authority, notwithstanding they have suspended all fundraising for the time being. The relevant provision for the Minister's consideration in respect of those entities is section 31(1) of the Act. It provides as follows:

31 Revocation of authority

(1) The Minister may, by order published in the Gazette, revoke an authority if the Minister is satisfied:

(a) that any fundraising appeal conducted by the holder of the authority has not been conducted in good faith for charitable purposes, or

(b) that any of the persons who have conducted a fundraising appeal by virtue of the authority, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes, or

(c) that any fundraising appeal conducted by virtue of the authority has been improperly administered, or

(d) that, in connection with any fundraising appeal conducted by virtue of the authority, the provisions of this Act or the regulations or the conditions of the authority were not complied with by any person conducting or participating in the appeal, or

(e) that the holder has not conducted a fundraising appeal within the previous 24 months, or

(f) that, in the public interest, the authority should be revoked.

(2) The revocation of an authority is not stayed by lodgment of an appeal against the revocation.

(3) The revocation of an authority does not have effect until notice of the revocation, and of the reasons for it, is served on the holder of the authority.

(4) Notice of the revocation of an authority is to be published by the Minister in at least one newspaper circulating throughout New South Wales, … or at least one publicly accessible website … to cause the notice to come to the attention of the public.

(5) If the Minister has revoked an authority, the Minister may subsequently, if the Minister thinks fit, issue a further authority (whether in the same terms or otherwise) to the same person or organisation without the need for further application.

12.7 The main considerations for the Minister under both sections focus on honesty and integrity: acting in "good faith" (section 16(2)(a); section 31(1)(a)); fitness and propriety (section 16(2)(b) and (c); section 31(1)(b) and (c)); and compliance with the statutory regime (section 16(2)(d) and (e); section 31(1)(d)). There is then the significant consideration of the public interest (section 16(2)(h); section 31(1)(f)).

FIT AND PROPER PERSON

12.8 In considering an application for a fundraising authority or considering whether to revoke a fundraising authority, a matter relevant for consideration by the Minister is whether the entities or those persons in charge of the entities who have either conducted an appeal or have been associated with an appeal or intend to conduct an appeal, are "fit and proper" persons.

12.9 In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 Toohey and Gaudron JJ said at 380:

> 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 the 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 indication of likely future conduct) or reputation (because it provides 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.

12.10 Their Honours also said at 388:

> The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.

12.11 In *Hughes and Vale Pty Ltd v New South Wales (No.2)* (1955) 93 CLR 127 the High Court said at 156-157:

> The expression 'fit and proper person' is of course familiar enough as traditional words when used with reference to offices and perhaps vocations. But their very purpose is to give the widest scope for judgment and indeed for rejection. 'Fit' (or 'idoneus') with respect to an office is said to involve three things, honesty, knowledge and ability ... When the question was whether a man was a fit and proper person to hold a licence for the sale of liquor it was considered that it ought not to be confined to an inquiry into his character and that it would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend upon its own circumstances.

12.12 The question of whether persons are "fit and proper" within the meaning of that expression under the Act needs to be determined in the context of charitable fundraising. The test is whether the person in question can be trusted to ensure that public funds are kept safe and dealt with in accordance with the purpose for which the funds were represented to be raised; and/or in accordance with the wishes stated by the donor of the moneys that were received. A test of whether a person is fit and proper within the meaning of section 16(2) and section 31(1) of the Act is not a general test of character. However the general integrity of the person in question may be taken into account in so far as it may expose a "general willingness to comply" with the law.[1]

12.13 As at the beginning of May 2017 each of RSL NSW, RSL WBI and RSL LifeCare had been conducting and/or participating in fundraising appeals in breach of the Act, the Regulations and their fundraising authorities for a considerable time. There was ignorance of what was happening in each of the organisations in respect of charitable fundraising. The entities' financial records, so far as charitable fundraising was concerned, were in disarray. It was not possible to trace the money that came in from the public to be sure that it was expended for the purpose for which it was donated. In those circumstances, as at that date, there were clear grounds upon which to be satisfied that none of these organisations was a fit and proper person to conduct or participate in a charitable fundraising appeal.

12.14 After the State Congress in late May 2017 and the election of Mr Brown as President and the appointment of Mr Condon as the Chairman of the RSL LifeCare Board in August 2017 things started to change. The enormous efforts that have been made and continue to be made are exemplary for any organisation intending to seek approval to raise funds from the public.

12.15 There are now no State Councillors on State Council, but for Mr James, who were involved in the Presidential Expenses scandal or on the Council at the time of the widespread breaches of the Act, the Regulations and the charitable fundraising authority. Thus RSL NSW has been almost totally refreshed.

12.16 There are new Trustees of RSL WBI.

12.17 None of the directors involved in the decisions that were in conflict of interest in relation to the consulting contracts and the increases in consulting fees remain on the Board of RSL LifeCare. The Board is totally refreshed.

12.18 The question of whether an entity is a fit and proper person within the meaning of that expression under the Act, obviously requires consideration of the credentials of the persons in the leadership roles in those organisations. None of the new State Councillors of RSL NSW or the new directors of RSL LifeCare have had their credentials considered by the Regulator as the Minister's delegate or by the Minister, because each entity has maintained its authority to fundraise, notwithstanding that fundraising has been suspended for the time being. The Trustees of RSL WBI are in a different situation because they currently have a pending application for a fundraising authority.

12.19 There is nothing to suggest that any of the newly appointed persons who are presently directors of RSL Lifecare, Trustees of RSL WBI or State Councillors of RSL NSW are anything other than fit and proper persons to conduct charitable fundraising. However it is important to look to each of the entities as a whole.

12.20 Until the rebuilding began, there clearly were grounds which would justify the Minister in concluding that the entities were not fit and proper persons to conduct fundraising appeals.

12.21 One of the more extraordinary aspects of the past non-compliance was the breadth of the ignorance of the statutory regime of those in the leadership roles in these organisations. This was coupled with what presented as an apparent lack of appreciation of the seriousness of non-compliance with the statutory regime. It is true that many of the individuals that were involved in the leadership roles of these organisations are extraordinarily brave men who have served their country in various theatres of war. It may be that breaching a condition of a fundraising authority was not on their spectrum of important matters in life. However once an organisation or a person seeks the privilege of asking members of the community to give up their own money, hard-earned or otherwise, there must be an appreciation of the seriousness of ensuring compliance with the regime that governs that privilege.

12.22 The steps that have been taken by each of the entities since May 2017 have focused in part in converting them into organisations that can be respected and trusted by the Minister and the public. This has included the recruitment

of individuals of integrity that have respect for the law. Although Mr Thompson remains in the position as CEO of RSL LifeCare, a fundraising manager will ensure compliance with the statutory regime. RSL WBI now has a fundraising manager and two other full-time members of staff involved in fundraising, who will also be available to RSL NSW.

12.23 In the circumstances that now pertain insofar as the identity of the individuals who are in the leadership roles is concerned, and subject to the matters referred to below, the Minister would not be satisfied of the matters in section 31(1)(b) of the Act in respect of RSL NSW and RSL LifeCare. That is, the Minister would not be satisfied that those persons are not fit and proper persons. Equally, there are grounds upon which the Minister would be satisfied of the matters in section 16(2)(b) of the Act in respect of RSL WBI. That is, that there are grounds that the Minister would be satisfied that those persons are fit and proper persons.

OTHER CONSIDERATIONS

12.24 The balance of the provisions of sections 16(2) and 31(1) of the Act, in particular those that deal with compliance with fundraising authorities, the Act and the Regulations will need to be reviewed at a later time by the Minister or the Minister's delegate when the Minister or the Regulator are provided with the final structure that each of the entities settles upon. Those matters are being considered by the entities at the time this Report is being prepared.

12.25 However from the evidence of Messrs Brown and Condon (and Ms Collins), and depending upon the structures that are to be put in place, there are grounds upon which the Minister could be satisfied that any proposed appeal to be conducted by these entities would be conducted in good faith for charitable purposes (section 16(2)(a); section 31(1)(a)). Similarly there are grounds upon which the Minister could be satisfied that the grant of an authority would not facilitate the contravention of an Act (section 16(2)(d)). This of course is subject to the structures being in place and the certification to be given to the Minister by EY.

12.26 It is reasonable to conclude from the evidence that there are also grounds upon which the Minister could be satisfied that these entities will ensure that persons conducting or participating in any appeal will comply with the provisions of the Act, the Regulations and the conditions of any authority (section 16(2)(e); section 31(1)(d)).

12.27 However as to the past there are grounds upon which the Minister would be satisfied that fundraising appeals that have been conducted were improperly administered (section 31(1)(c)) and that in connection with any fundraising appeals the provisions of the Act, the Regulations and the conditions of any authority were not complied with by the entities in conducting and participating in the appeals (section 31(1)(d)).

12.28 There is then the question of the public interest in respect of whether each of these organisations (or an entity in the new structure) should be permitted to be involved in charitable fundraising.

12.29 It is not in issue that the care for needy veterans and their families is of enormous public interest. The capacity for funding that care requires supplement of public funds from charitable fundraising. There is no doubt that there is a public interest in permitting charitable fundraising for that purpose. The question that arises is whether it is in the public interest that these particular entities be permitted to conduct charitable fundraising for that purpose.

12.30 An issue was raised during final submissions at the Inquiry as to whether in the circumstances of such widespread and lengthy breaches of the Act, the Regulations and their fundraising authorities each of the entities should voluntarily surrender or consent to the revocation of their fundraising authorities. This has been resisted by RSL NSW and RSL LifeCare for the reasons already outlined.[2]

12.31 It really will depend upon the further material that is provided to the Minister by each of these entities after this Report is delivered. However if it is decided to permit them or some of them to fundraise, it is recommended to the Minister that consideration be given to issuing new charitable fundraising authorities rather than amending the present authorities. This is not so much a question of revocation on the basis that these entities cannot then be trusted. Rather it is more the continuation of the refreshment process of each of these entities so that they might in this important way remove themselves from the connection to the extraordinarily serious failings of the entities in the past.

12.32 There is no reason why there would be any delay in the provision of such fundraising authorities, particularly having regard to the Minister's powers to do so under section 31(5) of the Act.

12.33 It is recommended that if any of the entities (or any new entity in the new structure) are to be granted a fundraising authority, the conditions that have been suggested by RSL NSW and which are annexed to this Report should be included in any conditions it is thought appropriate to impose.[3]

12.34 It is also recommended that consideration be given to the imposition of a condition that the executive members of the governing bodies of each of the entities and the management team responsible for fundraising within the entities complete the Certificate in Fundraising course with the Fundraising Institute of Australia and that in addition the Fundraising Manager complete the on-line Diploma in Fundraising course with that Institute.[4]

ENDNOTES

[1] *Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56 at [21].
[2] Chapter 11.
[3] Appendix H.
[4] Ex 47, pp 97 - 144.

13.1 A WIDER LENS

13.1.1 It is thought that it may be helpful to widen the lens of analysis by reviewing charitable fundraising in other jurisdictions both nationally and internationally. This may assist if consideration is to be given to changing the present statutory regime or structure.

COMMONWEALTH

13.1.2 Australian charities mostly operate in only one State or Territory, with only 5% of charities operating nationally and 13 % of charities operating in at least more than one State or Territory as at 2015.[1]

13.1.3 The *Charities Act* 2013 (Cth) (Commonwealth Charities Act) provides the framework for the operation of charity law at a federal level in Australia. It defines a "charity"[2] as a not-for-profit entity that exists for a "charitable purpose"[3] - such as promoting health, education, or social or public welfare - for the "public benefit"[4] (or an incidental or ancillary purpose to those) where none of the purposes are "disqualifying"[5] (e.g. unlawful or political) and the entity is not an "individual, political party or a government entity".[6]

ACNC

13.1.4 As discussed earlier, the ACNC was established under the ACNC Act in December 2012 as a statutory body and the independent national regulator of Australian charities.[7] In addition to its aim of enhancing public trust and confidence in the Australian not-for-profit sector through increased accountability and transparency, the ACNC Act seeks to support, sustain and promote the sector, in part by reducing unnecessary regulatory obligations on it.[8]

13.1.5 The ACNC is led by a Commissioner, two Assistant Commissioners, a leadership team and 107 staff, with access to an Advisory Board.[9] By way of accountability its decisions can be appealed to the Administrative Appeals Tribunal and the courts[10] and it is answerable to the Parliament, Commonwealth Ombudsman, Auditor-General and the Australian Information Commissioner.[11]

13.1.6 As can be seen from some of the overseas charity commissions described later in this Chapter, Australia was relatively late to regulate its charities sector at a national level. The ACNC's establishment followed approximately 20 years of lobbying by the peak bodies and opinion leaders in the not-for-profit sector for a regulatory environment similar to that which existed for the commercial and government sectors. The campaign emphasised the economic significance of the sector, the significant tax concessions available (and the possibly conflicted role of the Australian Tax Office as a de-facto regulator and

protector of the country's revenue base) and the need to provide clarity for both charities and donors. In addition there were six parliamentary inquiries[12] (including the instrumental Report by the Industry Commission in 1995[13] and the Productivity Commission Report in 2010)[14] and an investigation by Treasury in 2011[15] - all of which concluded that a national charity agency would improve the regulatory environment of Australian charities.[16]

13.1.7 Registration as a charity is voluntary.[17] However only registered charities can access Commonwealth charity tax concessions and other exemptions and benefits under Australian law.[18]

13.1.8 The ACNC determines the charitable status of entities and maintains a free and searchable public register of those charities.[19] An entity is entitled to registration under Division 25 of the ACNC Act if it is a not-for-profit entity, has an ABN, complies with the relevant standards and has exclusively charitable purposes or is a "public benevolent institution".[20] "Charitable purposes" are defined as including the advancement of health; education; social or public welfare; religion; culture; reconciliation; respect and tolerance between groups; human rights; security or safety; relieving animal suffering; the environment; and any other purpose benefitting the public that may be regarded as analogous to the stated purposes.[21] As well as the exclusion of political parties and government entities, a charity cannot be registered if it has been characterised as engaging in or supporting terrorist or other criminal activities.[22]

13.1.9 There are approximately 600,000 not-for-profit organisations in Australia of which around 55,000 are registered with the ACNC.[23]

13.1.10 The ACNC regulates charities by monitoring compliance with the governance and external conduct standards[24] and the record keeping and reporting requirements.[25]

13.1.11 All registered entities are required to provide the ACNC with an annual information statement (in the approved form) setting out general information including in relation to human resources, activities and basic financial information.[26] Medium-sized and large entities must also provide a financial report which has either been reviewed (in the case of medium-sized entities) or audited (in the case of large-sized entities).[27] Financial documents which record and explain the registered entity's transactions, financial position and performance, and which allow for accurate financial statements to be prepared and audited, must be kept for seven years.[28]

13.1.12 Registered entities also have an obligation to self-report or notify the Commissioner of various matters including significant contraventions or non-compliance that result in the entity ceasing to be entitled to registration.[29] Failure to comply with the reporting obligations under the ACNC Act may amount to an offence punishable by way of financial penalty[30] and failure to keep proper records is a strict liability offence resulting in a $4,200 fine.[31]

13.1.13 The ACNC has significant regulatory powers[32] including the power to enter premises and to search, inspect, examine, retain or copy any document for the purpose of gathering information to determine compliance or assess an applicant's entitlement to registration.[33] Failure to assist or attempts to circumvent the ACNC's information gathering and monitoring powers will amount to an offence also punishable by a $4,200 fine.[34]

13.1.14 The ACNC may conduct a compliance review or investigation which may result in advice, recommendations, or referrals to another agency or use of its formal powers such as giving directions (e.g. preventing the entering into transactions or transferring assets);[35] accepting enforceable undertakings (including obtaining court orders);[36] applying for injunctions to prevent contravention or to compel something to be done;[37] suspending or removing responsible persons (or appointing an alternate person);[38] issuing warnings and penalty notices;[39] or revoking registration.[40] Failure to comply with a requirement under the ACNC's enforcement powers is an offence punishable by financial penalty or imprisonment or both.[41]

13.1.15 Any use of the ACNC's formal powers will be published on the ACNC Register and appear on the particular charity's entry page. However reviews and investigations "will be confidential and no information about a case will be published ... unless and until … a formal power under the Act [is used]."[42]

13.1.16 The ACNC is subject to "secrecy" provisions[43] that prevent ACNC officers and others[44] from disclosing "protected ACNC information" (being information relating to an entity that was obtained for the purposes of the ACNC Act and is capable of identifying the entity), including to a court or tribunal except where necessary to give effect to the ACNC Act. This requirement is designed to protect confidential information and to encourage the provision of correct information to the Commissioner. Disclosure of protected information may amount to an offence punishable by financial penalty, imprisonment or both.[45] Certain exceptions apply to the non-disclosure requirement including with consent of the entity, the disclosure being made in the performance of duties under the Act, or relating to "personal information" and necessary to achieve the objects of the Act, or if the information has already been lawfully made available to the public and disclosure is for the purposes of the Act.[46]

13.1.17 Following a change of government, a 2014 Parliamentary Report recommended legislation to repeal and replace the ACNC on the basis that it did not meet the aim to cut red-tape or simplify regulatory and reporting obligations for many charities. However, on 3 March 2016 it was announced that the ACNC would be retained and would work with the Government to remove duplication and increase accountability and transparency. On 20 December 2017, the Treasury statutory review of the ACNC legislation was announced.

Overlap between Commonwealth and New South Wales charitable regimes

13.1.18 The regime for charitable fundraising in New South Wales has been detailed in Chapter 3 of the Report.

13.1.19 The New South Wales provisions give rise to a number of overlapping responsibilities on fundraising entities (as between the Commonwealth and New South Wales schemes), as well as overlapping powers of the relevant statutory authority (the ACNC and the Minister and/or NSW Fair Trading). For example:

(a) The information to be provided in the applications for registration to the ACNC and for an authority to the Minister both include the organisational structure, its objects or purpose, governing document/s, financial statements and auditor details.[47] In both cases, the Commissioner and the Minister have the power to require additional information from applicants.[48]

(b) Both the Minister and the Commissioner can refuse to grant or can revoke an authority/registration. Registration with the ACNC may be revoked in circumstances of non-compliance or contravention of the entity's obligations and a New South Wales fundraising authority can also be revoked in those circumstances.[49]

(c) The record keeping and reporting obligations imposed under both schemes are very similar, including the need for annual financial statements to be provided and maintained for seven years.[50] In both jurisdictions the financial statements for larger fundraising entities (with income over $250,000) need to be reviewed or audited.[51] While the New South Wales regime contains greater detail in its reporting obligations, including the keeping of prescribed records of income and expenditure (demonstrating application of funds to stated purposes and special purpose bank accounts)[52] as well as an obligation on the auditor to include a comment in the report about any non-compliance or to report the same to the Minister,[53] the Commonwealth Charities Act imposes an additional duty on registered entities to self-report significant non-compliance to the Commissioner.[54]

(d) In addition to the standard conditions, the Minister may, by notice in writing, attach or vary any condition he or she thinks ought to be imposed having regard to the objects of the Act.[55] Similarly, the Commissioner has the power to impose any additional reporting obligations in certain circumstances (such as when there are concerns regarding compliance).[56]

(e) In terms of monitoring compliance with the obligations, the Commissioner (through its ACNC officers) and NSW Fair Trading (through its officers) have similar powers of investigation and inquiry.

Both have the power to enter premises (either by consent or warrant) to search, inspect, obtain or copy all relevant and necessary information and documents from the charity as well as to require the furnishing of accounts and statements, answers to questions and attendance to give evidence or produce documents.[57]

(f) Failure to comply with reporting obligations[58] or authority conditions,[59] or circumventing an inspector/officer's powers of investigation,[60] in each case constitutes an offence.

(g) If misconduct, mismanagement or some other problem is established following an inquiry or investigation, similar actions can be taken under both the Commonwealth and New South Wales regimes including: warnings and/or future monitoring for less serious cases; written directions or an express prohibition on further fundraising activities or dealing with the charity's property; the suspension/removal/appointment of trustees; and the appointment of an 'administrator' or 'responsible entity' to conduct the affairs and activities of the relevant organisation.[61] The Commissioner may also enforce undertakings, obtain injunctive relief in court and refer matters to other federal regulatory and security agencies,[62] while the Minister can refer the matter to the NSW Police, Attorney General or other appropriate agencies or authorities for legal proceedings and can also appoint a qualified person to conduct a public inquiry.[63]

OTHER STATES AND TERRITORIES

Australian Capital Territory

13.1.20 In the Australian Capital Territory (ACT), the Fair Trading branch of Access Canberra is responsible for issuing charitable collection licences and maintaining the charitable collections record under the *Charitable Collections Act* 2003 (ACT Act) (which replaced the *Collections Act* 1959 (ACT)) and the *Charitable Collections Regulation* 2003 (ACT).

13.1.21 In the ACT an entity is required to apply to the Director-General for a licence authorising a "collection" of money or benefit for a "charitable purpose".[64] A licence may be refused in certain circumstances and otherwise will be issued for up to 5 years and may be amended, suspended or cancelled by the Director-General, who may impose conditions and must also keep a register of all issued licences.[65] The ACT Act also creates offences relating to unauthorised collections[66] and requires that the proceeds of a collection are to be applied to the stated purpose.[67]

13.1.22 Since 1 July 2017, this regime only applies to organisations that are not also registered with the ACNC. Changes brought about by the *Red Tape Reduction Legislation Amendment Act* 2017 (ACT) mean that charities

which are registered with the ACNC no longer need to hold a licence to undertake charitable collections in the ACT. As such ACT charities no longer need to apply or submit annual records and reports to the Fair Trading branch of Access Canberra while they remain on the ACNC register. The ACNC will provide Access Canberra with regular information about those charities.[68]

Victoria

13.1.23 In Victoria the *Fundraising Act* 1998 (Vic) (Victorian Act) and the *Fundraising Regulations* 2009 (Vic) govern the conduct of public collections and require any person or organisation undertaking fundraising (collecting money for a beneficiary, cause or thing rather than for personal profit or commercial benefit) to be registered unless exempt.[69]

13.1.24 Registration with the Director of Consumer Affairs Victoria (within the Department of Justice) is required before conducting a fundraising appeal. Registration may be refused or made conditional and is usually granted for three years (after which time renewal is required). However longer registration periods can be approved on a case-by-case basis (for up to five years).[70] Penalties apply for failing to register and/or comply with imposed conditions.[71] Information on registering and operating as a fundraiser in Victoria is provided in the Fundraising Registration Guidelines gazetted in July 2009.[72]

13.1.25 Fundraising entities that estimate that less than 50% of fundraising proceeds will be distributed to beneficiaries will have their registration subject to a public disclosure condition applicable to all of its fundraising activities.[73]

13.1.26 Certain information about fundraisers is required to be provided to the Director for registration purposes and registration must be recorded on a publicly-searchable register by the Director of Consumer Affairs Victoria.[74] The conduct of appeals, handling of moneys raised, keeping of specific accounts and records (for three years) and audits are also prescribed by the Victorian Act.[75]

13.1.27 In Victoria "patriotic funds" – funds, subscriptions or donations received for any military service or duty related purpose – operate under a separate scheme.[76] The statutory regulation, previously in the *Patriotic Funds Act* 1958 (Vic), is now in Part 4 of the *Veterans Act* 2005 (Vic) (Victorian Veterans Act) and is also administered by the Director of Consumer Affairs Victoria.

13.1.28 The Director of Consumer Affairs Victoria determines applications to establish a patriotic fund and may impose conditions or refuse approval if the proposed trustee is deemed to be ineligible. Generally, financial accounts do not have to be audited if total gross annual receipts are below $10,000 and if receipts are over $50,000 a stricter audit process is required. Compliance is monitored through a range of investigation and

enforcement powers under the Victorian Veterans Act. Trustees may be criminally liable if money or other assets are misappropriated and can be personally liable for any losses from a fund due to their negligence, incompetence or irresponsibility.[77]

Queensland

13.1.29 In Queensland, fundraising by charities is regulated by the Office of Fair Trading[78] through the *Collections Act* 1966 (QLD) (Queensland Act) and the *Collections Regulation* 2008 (QLD).

13.1.30 The Queensland Act requires "appeals for support" to be in relation to a charity that is registered or a charitable purpose that is sanctioned under its terms.[79] When applying for registration a charity must advertise for objections in the Courier Mail and a second local newspaper.[80] The charity must provide written authority in prescribed terms for any appeal and comply with any conditions imposed.[81] The Minister may also, upon application, sanction a purpose for which an appeal for support is made, subject to conditions.[82] Similarly, the Minister may register a nominated charity according to set criteria.[83] The Office of Fair Trading maintains a public register of charities authorised to fundraise in Queensland.[84]

13.1.31 There are strict obligations in relation to record-keeping and reporting including the separation of nominated accounts with financial institutions and the lodgment of annual returns (attaching a statement of expenditure and income, balance sheet and auditor's report).[85] Where there has been contravention, mismanagement or misconduct, the Minister can investigate or may order that an appeal for support be discontinued, no future appeals held, and property raised (including that held in a financial institution) not be parted with without prior approval.[86] The Governor-in-Council may vest the property of a charity in the Public Trustee.[87]

13.1.32 Failure to comply with the provisions and lawful requirements under the Queensland Act constitutes an offence and liability to penalty up to 20 penalty units ($2,523).[88] Fraud and deception offences are punishable by imprisonment for up to 12 months for a summary offence or 5 years for an indictable offence.[89]

South Australia and Western Australia

13.1.33 Similar legislative regimes were enacted in South Australia[90] and Western Australia[91] during and immediately after the Second World War,[92] with major amendments in 2007 for South Australia[93] and in 1999 for Western Australia.[94] In both jurisdictions subject to stated exceptions it is an offence to fundraise without a licence or authority.[95]

13.1.34 In South Australia, charitable fundraising activities are regulated by Consumer and Business Services (CBS) – within the South Australian Attorney General's Department – which maintains the CBS Public Charities Register and a Code of Practice setting out the guidelines for

fundraisers and fundraising activities. In Western Australia, organisations undertaking fundraising are regulated by the Department of Mines, Industry Regulation and Safety,[96] which maintains a voluntary code of practice and also keeps a register of licensed charities.[97]

13.1.35 Since 1 December 2016 charities in South Australia that are registered with the ACNC must give written notice of their intention to act as a collector and are then deemed to hold a licence for the purposes of the legislation.[98] A South Australian charity with a deemed licence that has complied with the ACNC's reporting obligations (Annual Information Statement and financial and auditor's reports where applicable), is exempt from the requirement to keep, audit, or submit accounts to the CBS under South Australian law.

13.1.36 For Western Australian charities and South Australian charities that are not registered with the ACNC, licence applications are made to the respective Minister (who, in Western Australia, refers the application to the Charitable Collections Advisory Committee for decision).[99] In determining whether to grant or refuse a licence, the Minister (or Committee) must consider whether another licence holder would more effectively or economically carry out the applicant's objects.[100] Proper accounts are to be kept and audited accounts (including a statement relating to moneys collected and disbursed) are to be submitted in both jurisdictions.[101] In Western Australia the Auditor-General can inspect, examine and audit accounts relating to the charitable purpose and provide the Minister with a report on the matter.[102] The regulations prescribe requirements in respect of the banking and investment of money held by charities for charitable purposes.[103] In South Australia the Minister has the power to require further information from a licensee at any time and appointed inspectors have broad information gathering powers.[104] In both jurisdictions the Governor can direct that money or goods collected be applied for other charitable purposes.[105]

Tasmania and Northern Territory

13.1.37 Tasmania enacted its *Collections for Charities Act* 2001 (Tas) (Tasmanian Act) following a law reform commission recommendation.[106] The administration of the Tasmanian Act and the *Collections for Charities Regulations* 2011 (Tas) are the responsibility of the Office of Consumer Affairs and Fair Trading who also keeps a public list of approved fundraisers.[107]

13.1.38 The Tasmanian Act covers any soliciting for "charitable purposes" subject to a few listed exceptions.[108] The soliciting entity must hold a written authority from the Commissioner of Corporate Affairs (or be soliciting on behalf of an authorised organisation) and it is an offence to fundraise or collect without the proper approval.[109] While there are no standard reporting requirements the regulator can attach reporting and other conditions to a fundraising approval.

13.1.39 Under the Tasmanian Act, it is an offence to misrepresent the purpose for which the money is sought[110] and all donations must be applied for the stated purpose.[111] It is also an offence for an organisation to permit an agent, contractor, officer or employee to receive a "manifestly excessive" benefit if it is derived in whole or part from funds obtained by donation.[112]

13.1.40 There is no legislation governing fundraising in the Northern Territory. However the Department of Attorney-General and Justice regulates raffles and gaming activities in the Northern Territory under the *Gaming Control Act* 1993 (NT) and the *Gaming Control (Community Gaming) Regulations* 2006 (NT) as well as the Northern Territory Code of Practice for Responsible Gambling.

13.1.41 In particular, an entity conducting lotteries or gaming activities as fundraising activities must apply to the Director-General of Licensing under the *Gaming Control Act* 1993 (NT) to be registered as an "approved association", which can be suspended or revoked.[113]

SUMMARY

13.1.42 Only the Commonwealth (ACNC), Victoria and Queensland require fundraising entities to be registered, whereas New South Wales, the Australian Capital Territory, South Australia, Western Australia and Tasmania require an authority or licence to conduct charitable fundraising. The Australian Capital Territory and South Australia have significantly reduced regulation for entities registered with the ACNC.

13.1.43 The multi-layered regulatory framework for charities in Australia has given rise to suggestions for the creation of greater uniformity across States and Territories by replacing their legislative regimes with further Commonwealth regulations, enforced by the ACNC, with the aim of consolidating regulation and reducing the compliance burden for charities.[114]

NEW ZEALAND

13.1.44 The 27,426 charities in New Zealand are regulated by the "Charities Services" section of the Department of Internal Affairs in accordance with the *Charities Act* 2005 (NZ) (NZ Act).[115]

13.1.45 Administration of the NZ Act falls under the portfolio of the Minister for Community and Voluntary Sector, within the Department of Internal Affairs.[116] It followed almost two decades of calls for reform to the sector prompted in part by alleged impropriety, although support was not universal.[117]

13.1.46 From 1 February 2007 to 1 July 2012, charity monitoring, investigation and education as well as the administration of the Charities Register was carried out by the Charities Commission. However from 2 July 2012 the Charities Commission was dismantled by the government (as a cost cutting measure)[118] and its core functions transferred to the Department of Internal Affairs.[119]

13.1.47 The key functions of Charities Services under the NZ Act include[120] deciding on whether to accept an application for registration; monitoring Annual Returns submitted by registered charities; reporting and making recommendations to Government about charitable sector matters; promoting public trust and confidence in the charitable sector; encouraging the effective use of charitable resources; educating charities about matters of good governance and management; and stimulating and promoting research about the charitable sector.

13.1.48 All decisions about who can be registered, and whether specific charities should be deregistered, are made by the independent Charities Registration Board. In practice, the Board delegates most of its decision making to the Chief Executive (within Charities Services) who, when acting under delegation, acts independently on behalf of the Board.[121]

13.1.49 Registration is voluntary and while an unregistered charitable organisation can still be known as a "charity" and seek donations or undertake fundraising, such an organisation cannot hold itself out to be a "*registered* charitable entity" and will not qualify for tax-exempt status from Inland Revenue.[122]

13.1.50 To be eligible to register as a charity, an organisation must have "charitable purposes" that benefit the community and all of its officers must be "qualified" under the Charities Act.[123] The concept of "charitable purpose" is defined in the NZ Act as including: the relief of poverty, advancement of education or religion, or anything else that benefits the community.[124]

13.1.51 The Charities Register lists all charities registered in New Zealand, summarising their purposes and activities and including their annual returns.[125] The Charities Registration Board can remove or deregister a charity if it no longer qualifies for charitable status (due to changed purpose or activity), if there is a significant or persistent failure to meet obligations under the NZ Act, or if the organisation engages in serious wrongdoing.[126]

13.1.52 Charities in New Zealand must prepare and provide to the chief executive annual returns (accompanied by financial statements) in the form and manner specified in the NZ Act.[127] Changes to the NZ Act created new reporting standards (audit and review requirements for medium and large registered charities) from 1 April 2015. Failure to report may amount to an offence punishable by a maximum fine of $50,000. Auditing and review requirements apply to large and medium

sized organisations – where total operating expenditure is $1,000,000 or $500,000 respectively.[128]

13.1.53 The Chief Executive may conduct inquiries into charitable entities or others engaging in conduct that may constitute a breach of the NZ Act or serious wrongdoing in connection with a charitable entity. The Chief Executive may also give warning notices in respect of a suspected breach of the NZ Act or misconduct.[129]

13.1.54 Entities have a right of appeal from decisions of the Board to the High Court[130] and both registration decisions and court judgments under the NZ Act are published on the Charities Services website.[131]

THE UNITED KINGDOM AND IRELAND

13.1.55 The Charity Commission for England and Wales (CCEW), Office of the Scottish Charity Regulator (OSCR), the Charity Commission of Northern Ireland (CCNI) and the Charities Regulatory Authority (CRA) operate similarly in their respective jurisdictions.

13.1.56 All four act as the independent regulator of the sector and maintain a register for charities having largely identical values and aims – namely, focusing on the promotion of public benefit and confidence through enhanced accountability and compliance with legal obligations in the administration of charities. They each have a similar definition of 'charitable purpose' incorporating a 'public benefit' requirement and all have powers of investigation and enforcement which are appellable.

Charity Commission for England and Wales

13.1.57 The CCEW is the independent, non-ministerial government department (answering directly to Parliament) that regulates registered charities and maintains the Central Register of Charities for England and Wales.[132]

13.1.58 The CCEW's corporate structure (and name) were established by the *Charities Act* 2006 (UK), as was the Charity Tribunal, changes to the public benefit test and codification of over 300 years of case law on charitable purposes.[133] Registration and regulation of charities in England and Wales is under the *Charities Act* 2011 (UK) (the UK Charities Act), which came into effect on 14 March 2012. While that Act did not change the law as it previously stood under the *Charities Act* 2006 (UK), it was intended to make the law easier to understand by simplifying the structure and replacing four Acts with one.[134]

13.1.59 The CCEW is a corporate body governed by a non-executive board that is responsible for the Commission's governance (including values, strategy and performance) and is assisted in its operational management by the Chief Executive and an executive team. The Minister for the Third Sector appoints the members of the board. The CCEW currently employs

285 staff.[135] It is audited by the Treasury and Parliament regarding its efficiency and funding.

13.1.60 The statutory objectives of the CCEW, include:[136] increasing public trust and confidence in charities; promoting awareness and understanding of the operation of the "public benefit" requirement (required for charitable purposes); promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; promoting the effective use of charitable resources; and enhancing the accountability of charities to donors, beneficiaries and the general public.

13.1.61 Charities in England and Wales that are established for "charitable purposes"[137] and meet the general registration threshold of having an annual income over £5,000 must register with the CCEW.[138] "Excepted" charities (such as those connected to churches, charitable service funds of the armed forces and scout/guide groups) must register if they have an annual income over £100,000 and are otherwise not excused from registration but still regulated by the Commission.[139] "Exempted" charities (such as some museums, schools and universities) with a sponsoring government body that has responsibility for regulation, are exempted from registration and most of the Commission's regulation.[140] Otherwise the CCEW will take action to secure compliance if it identifies a charity that is not, but should be registered.

13.1.62 There are over 160,000 registered charities in England and Wales and many more informal, unregistered charitable groups.[141] The overall income of the charitable sector is around £43.8 billion, with 2.9 billion hours provided by volunteers and over £9.6 billion donated by the British public in 2015.

13.1.63 As well as registering eligible organisations, the CCEW provides guidance in respect of charity reporting and accounting and is responsible for ensuring charities meet their legal requirements (including providing information about their activities each year)[142] and taking enforcement action where there is malpractice or misconduct.[143] The UK Charities Act also imposes obligations on charities relating to the auditing of their accounts.[144]

13.1.64 Prior to the *Charities Act* 2006 Act (UK) the CCEW regularly conducted "Charity Review Visits" designed to promote effective governance in charities rather than as an enforcement tool. Following the cessation of these routine inspections in 2007, the Commission focussed its greatest inspection effort on charities where, after a thorough risk assessment, there was evidence of a serious breach of regulations.

13.1.65 Sanctions available to the CCEW include suspending or removing a charity trustee or officer and appointing an additional or replacement trustee/officer or interim property manager as well as making orders

with respect to charity property, bank accounts, payments and other transactions involving the charity.[145]

13.1.66 Fundraising is self-regulated in England, Wales and Northern Ireland through the Fundraising Regulator,[146] an organisation that holds the Code of Fundraising Practice[147] for the UK. As such, it sets and maintains the standards for charitable fundraising in England, Wales and Northern Ireland and regulates charities' compliance with those standards.[148] Any person may complain to the Fundraising Regulator about fundraising and such complaints are dealt with under the Code of Fundraising Practice (which includes sanctioning powers).[149] As a self-regulatory body, the Fundraising Regulator depends on voluntary contributions from charities.[150]

13.1.67 The CCEW works in conjunction with the Fundraising Regulator and expects charities to comply with the recognised standards for fundraising as set out in the Code of Fundraising Practice.[151] The CCEW does have a role in fundraising regulation where there is evidence of a serious risk to a charity, charitable funds or to public trust and confidence.[152]

13.1.68 A review of the CCEW was carried out in December 2009 and January 2010 by a team drawn from the Better Regulation Executive, Companies House and the Local Better Regulation Office, resulting in a March 2010 report entitled "Charity Commission, A Hampton Implementation Review Report".[153] The report revealed that over 2008/2009 the Commission completed 167 regulatory compliance investigations and 21 formal statutory inquiry cases; and used its statutory compliance powers on 707 occasions. The Commission's policy of "naming and shaming" non-compliant charities (by highlighting charities in green or red on their website according to whether they have complied with reporting requirements) was thought to have made a significant difference (and was an example of an effective alternative to formal sanctions). The review team also found that "the ten month filing rule"[154] approach taken by the Commission ensured that the charities responsible for 98% of charitable income filed on time.[155]

13.1.69 The regulatory compliance investigations carried out after 2007 were seen as an intermediate form of action between general monitoring of charities and full statutory investigations for cases that weren't serious enough to warrant a statutory investigation. Statutory investigations were also said to sour the Commission's relationship with the charity, making a positive outcome difficult to obtain. The number of regulatory compliance cases continued to grow while statutory investigations declined, and in 2010 the CCEW opened 144 regulatory compliance investigations, compared to just three full statutory investigations. The legality of the regulatory compliance investigations was questioned on the basis that they lacked a statutory basis and were an abuse of power. The Commission did not agree that its regulatory compliance cases were unlawful. However in October 2011 the Commission announced that due to budget cuts, it would no longer carry out regulatory compliance investigations. Instead,

all matters falling within the remit of investigations and enforcement were to be dealt with as statutory inquiries and the balance as normal casework.[156]

13.1.70 In December 2013 the National Audit Office (NAO), whose role is to scrutinise public spending, released a report in which it was recorded that the Charity Commission was failing in its key roles of regulating charities effectively and providing value for money.[157] In its January 2015 follow up report[158] NAO recorded that the Commission had made good early progress - making better use of its data and powers including opening more statutory inquiries[159] - but found there was still a long way to go before it was fit for purpose.

13.1.71 Following a turbulent period for the sector the *Charities (Protection and Social Investment) Act* 2016 (UK) (2016 Act) was enacted. Most of its provisions are aimed at changing the law in four areas. First, charities will have the ability to make social investments which seek to further the charity's objects rather than just make a financial return. Secondly, there will be greater control (including by way of agreements, statements and government intervention) over charities that use commercial organisations to fundraise. Thirdly, there are new Commission powers to disqualify people from acting as charity trustees. Fourthly, there are more regulatory powers over charities including to give official warnings and direct the use of charity property. The 2016 Act also enhances the existing powers of the CCEW once it has opened a formal statutory inquiry into a charity (of which there are approximately 100 per year) and contains reserve regulatory powers to be introduced in the event that self-regulation via the Fundraising Regulator fails.[160]

13.1.72 In June 2016 CCEW research showed public trust in charities was at a record low after a number of high-profile scandals.[161] Changes to the legislation and a new fundraising regulator are steps that have been taken to combat this negative public perception.

13.1.73 In addition, in response to 178 fraud-related serious incident reports received by the CCEW during the 2015/2016 financial year, the Commission published an overview of the reports[162] and launched a new "Charities Against Fraud" website[163] to help the sector increase its resilience to fraud and ensure charitable funds are used for legitimate purposes.

Office of the Scottish Charity Regulator

13.1.74 The OSCR is an independent non-ministerial department of the Scottish Government with responsibility for regulating and registering over 24,000 charities in Scotland, including community groups, religious charities, schools, universities, grant-giving charities and major care providers.[164]

13.1.75 Charity regulation in Scotland was initially carried out by the Scottish Charities Office, a department in the Crown Office that handles public

prosecutions. However it could only investigate a charity following receipt of a complaint or upon suspecting a problem on reasonable grounds. The regulatory function was transferred to the OSCR on a non-statutory basis in December 2003. This followed over a decade of independent reviews (namely, the 1996 Deakin,[165] 1997 Kemp[166] and 2001 McFadden[167] Commissions), pressure and recommendations for change as well as some widely-publicised charity scandals.[168] Prior to that time charities only had to register with Inland Revenue if they wanted to qualify for tax breaks and otherwise could operate as a charity without any need to be registered. Registration with the OSCR also imposed obligations on charities to keep and submit annual reports and accounts which enabled the regulator to monitor their activities.[169]

13.1.76 The OSCR was formerly an executive agency but after the enactment of the *Charities and Trustee Investment (Scotland) Act* 2005 (Scot) (2005 Act) it has answered directly to the Scottish Parliament. Its full regulatory powers came into force on 24 April 2006. In the following ten years the OSCR registered 9,102 new charities, removed over 8,000 defunct charities, handled 2,663 external concerns about charities and garnered widespread support.[170]

13.1.77 Under the 2005 Act the OSCR's functions are to:[171] determine whether bodies are charities; publish and maintain a Register of charities; encourage, facilitate and monitor compliance by charities with the provisions of the Sottish Act; identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct; and give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions.

13.1.78 An entity is required to register in Scotland if it is a "charity", has exclusively "charitable purposes" and provides a "public benefit" in Scotland or elsewhere.[172]

13.1.79 The OSCR's work is directed by a Board, whose members are appointed by Scottish Ministers and managed by a Senior Management Team chaired by a Chief Executive and approximately 50 staff. Scottish Ministers have ultimate responsibility for policy in relation to charity law and Third Sector policy and the OSCR works closely with the Scottish Government's Charity Law Team.[173]

13.1.80 In 2014 the OSCR launched a consultation on targeted regulation as a general attempt to reinforce public confidence in the charity sector. The consultation included various proposals aimed at increasing proactivity and promoting a more effective use of resources based on four key principles: amending the information required in the annual return;[174] publishing charity annual returns on the Register; creating a database of all charity trustees; and introducing a "notifiable events" scheme, which involves self-reporting of serious incidents.[175]

13.1.81 A new system of enhanced self-regulation has since been launched dealing with charities based in Scotland.[176] The Scottish Fundraising Standards Panel will oversee fundraising standards and complaints for all Scottish-registered charities, in line with the Code of Fundraising Practice that sits with the Fundraising Regulator for England, Wales and Northern Ireland.[177]

Charity Commission for Northern Ireland

13.1.82 The CCNI is the independent regulator of Northern Ireland charities. It was established in 2009 under the *Charities Act (Northern Ireland)* 2008 (NI) (NI Act) to replace earlier regulation by the Voluntary and Community Unit of the Department for Social Development.[178]

13.1.83 The earlier *Charities Act (Northern Ireland)* 1964 (NI) and *Charities (Northern Ireland) Order* 1987 (NI) are still partly in force today – including with respect to trustees' powers and the powers of the Charities Branch of the Department for Communities in Northern Ireland – and are gradually being repealed. The NI Act is not yet fully operational but is being introduced through a series of commencement orders.[179] The Department for Communities is responsible for the legal framework for charities in Northern Ireland and oversees the work of the CCNI, which is a non-departmental public body of the Department for Communities.[180]

13.1.84 The CCNI has a Board of five Commissioners supported by an Audit & Risk Committee and a Human Resource & Remuneration Committee. The senior management team implements the Board's decisions on programs and policies on a day-to-day basis and includes a Chief Executive, Head of Corporate Services, Head of Compliance and Enquiries and Head of Charity Services.[181]

13.1.85 The CCNI's objectives are listed in the NI Act[182] and its main role is to register and regulate the estimated 7,000-12,000 charities working within Northern Ireland.[183] Although the CCNI has been able to exercise its power to investigate the affairs of charities since February 2011, the registration process for charities was suspended between 2010 and 2013 in order to amend the NI Act to clarify the "public benefit" test. Amendments were made to the NI Act in that regard by the *Charities Act (Northern Ireland)* 2013 (NI) and registration began on 16 December 2013.[184] The new searchable Register of Charities was also made publicly available on the CCNI website from that time.[185] Registration in Northern Ireland is compulsory and there are no exemptions or exceptions.[186] A failure to register with the CCNI can constitute a breach of an organisation's statutory duty and the CCNI can take legal action against it.[187]

13.1.86 The NI Act defines a "charity" as an entity established for one of the listed "charitable purposes" and for the public benefit.[188] The CCNI provides guidance on the public benefit test as that term is not defined in statute.[189]

13.1.87 The NI Act sets out the CCNI's powers and its general functions including:[190] determining whether institutions are or are not charities; establishing and maintaining an accurate and up-to-date register of charities; encouraging and facilitating the better administration of charities; and identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action.

13.1.88 The CCNI has wide-ranging powers affecting charities including the power to do anything which is calculated to facilitate, or is conducive or incidental to the performance of any of its functions or general duties.[191]

13.1.89 The CCNI's compliance work involves carrying out assessments and investigations and monitoring charities. It can conduct non-compliance visits, provide advice or guidance,[192] make referrals and undertake statutory inquiries[193] to utilise some of its formal and investigatory and protective powers, where there is a serious risk to a charity, its assets or beneficiaries.[194] Withholding or providing false or misleading information to the CCNI is an offence which may result in a fine, imprisonment or both.[195]

13.1.90 On 1 January 2016 the *Charities (Accounts and Reports) Regulations (Northern Ireland)* 2015 (NI) came into operation making it a legal requirement for all charities to file their annual accounts with the CCNI.[196] Through the annual reporting program, registered charities are required to complete and submit an AMR (annual monitoring return) to the Commission, attaching its accounts, trustees' annual report and a report from an independent examiner or auditor, as applicable.[197]

13.1.91 Following consultation by a working group established by the Northern Ireland Council for Voluntary Action, it was decided that the Fundraising Regulator for England and Wales would also take on responsibility of fundraising regulation in Northern Ireland.[198]

Charities Regulatory Authority

13.1.92 The CRA is the national statutory regulator for the Republic of Ireland. It is an independent authority established on 16 October 2014 under the *Charities Act* 2009 (Ireland) (Irish Act).

13.1.93 The CRA is responsible for the registration of charities and their compliance with charity regulation in Ireland. It is also responsible for maintaining the Public Register of Charities where information about all registered charities is publicly available. Its board is appointed by Ireland's Minister for Justice and Equality.[199]

13.1.94 The objectives or functions of the CRA as set out in the Act are:[200] increase public trust and confidence in the management and administration of charitable trusts and charitable organisations; promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations; promote the effective use

of the property of charitable trusts or charitable organisations; ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public; promote understanding of the requirement that charitable purposes confer a public benefit; establish and maintain a register of charitable organisations; ensure and monitor compliance by charitable organisations with the Irish Act; carry out investigations in accordance with the Irish Act; encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents; carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate; and provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Regulator.

13.1.95 There are over 18,600 not-for-profit organisations in Ireland with a combined income of €7.09 billion.[201] The charities sector in Ireland employs around 100,000 people, with a further 500,000 volunteers, and has a total value/net assets of over €5 billion.[202]

13.1.96 All charitable organisations are required to be registered with the CRA and to report annually to it. As with Northern Ireland and Scotland, there are no exceptions to compulsory registration for any organisation that has exclusively charitable purposes,[203] provides a clear public benefit and intends to conduct charitable activities in the Republic of Ireland.[204] However, to obtain tax exemptions charities must also register with the Revenue Commissioners. There are over 8,000 charities registered with both the CRA and Revenue Commissioners in Ireland.[205]

13.1.97 The Irish Act imposes obligations on charities directed at accountability in relation to the keeping of records and accounts, preparing annual statements, having accounts audited and submitting annual reports of their activities to the CRA.[206] Obligations differ depending on the size of the charity determined by the level of income.[207] The Authority's investigative powers under the Act did not commence until 5 September 2016 following a number of charity scandals.[208] Its powers now include the ability to appoint an inspector to investigate the affairs of a charity believed to be non-compliant with the Act and to require a person to produce books, documents or information for that purpose.[209]

13.1.98 Where contravention of an entity's obligations is found and the CRA believes an immediate sanction is more reasonable and proportionate to bringing proceedings for an offence, it may impose an immediate sanction (being removal from the register for a determined period or publication of the contravention on the CRA's website). If the charity trustees accept the sanction and rectify the contravention within a specified period and adopt an agreed course to prevent future contravention, that will be the end of the matter.[210]

13.1.99 The CRA does not have the power to suspend or remove trustees, freeze assets or deregister a charity. However such orders may be made by the High Court (following application by the CRA) and upon satisfaction of certain matters including an offence under the Irish Act, non-compliance with the Irish Act, mismanagement of charity property or other misconduct in relation to the charity's affairs.[211]

13.1.100 Fundraising Guidelines were recently published by the CRA (in late September 2017) covering a range of issues including donors, donations, the responsibilities of trustees, management and fundraisers as well as financial transparency and accountability.[212]

ENDNOTES

[1] Ex 31, p 3.
[2] Commonwealth Charities Act, s 5.
[3] Commonwealth Charities Act, s 12.
[4] Commonwealth Charities Act, s 6.
[5] Commonwealth Charities Act, s 11.
[6] Commonwealth Charities Act, s 5(d).
[7] ACNC Act, s 105-5; see also the ACNC Regulation.
[8] ACNC Act, s 15-5. ACNC, 'Regulatory Approach Statement' (Statement, ACNC, November 2015), <https://www.acnc.gov.au/ACNC/About_ACNC/Regulatory_app/ACNC/Regulatory/Reg_approach.aspx> (ACNC Regulatory Approach Statement). See also Ex 31, p 1.
[9] ACNC Act, Chapters 5, 6; ACNC, Annual Report (2016-17), pp 20 - 21, 108.
[10] ACNC Act, s 160-25.
[11] ACNC Regulatory Approach Statement, p 4.
[12] Industry Commission, 'Charitable Organisations in Australia' (Report No 45, 16 June 1995); The Treasury, 'Report of the Inquiry into the Definition of Charities and Related Organisations' (Report, 2001) (Charities Definition Inquiry); Senate Standing Committee on Economics, 'Disclosure Regime for Charities and Not-for-Profit Organisations' (Report, December 2008); Productivity Commission, 'Contribution of the Not-for-Profit Sector' (Report, January 2010); The Treasury, 'Australia's Future Tax System' (Final Report, December 2009) (the Henry Review); Senate Economics Legislation Committee, 'Tax Laws Amendment' (Public Benefit Test) Bill 2010 (Final Report, September 2010).
[13] Industry Commission, 'Charitable Organisations in Australia' (Report No 45, 16 June 1995).
[14] Productivity Commission, 'Contribution of the Not-for-Profit Sector' (Report, January 2010).
[15] The Treasury, 'Final Report: Scoping Study for a National Not-for-profit Regulator' (Final Report, The Treasury, April 2011).
[16] Susan Pascoe, 'ACNC five years on: Reflections of the Inaugural Commissioner, Susan Pascoe AM' (ACNC, 26 September 2017) (Pascoe Reflection Paper): http://www.acnc.gov.au/ACNC/Edu/CommissionerSusanPascoeAM.aspx
[17] ACNC Regulatory Approach Statement, p 1. See also Ex 31, p 3.
[18] ACNC Act, ss 15-5(3) - (4), 20-5(2) - (3); Australian Tax Office, 'Is your organisation a charity?' (Fact Sheet QC 16641, ATO, 12 October 2016): <https://www.ato.gov.au/Non-profit/Getting-started/In-detail/Types-of-charities/Is-your-organisation-a-charity-/>.
[19] ACNC Act, ss 20-5, 40-5.
[20] ACNC Act, s 25-5(5); Commonwealth Charities Act, s 12.
[21] Commonwealth Charities Act, s 12.
[22] ACNC Act, s 25-5(3)(d).
[23] ABC Radio National, 'Charities Commission Review', *Saturday Extra*, 30 September 2017 (Geraldine Doogue): <http://www.abc.net.au/radionational/programs/saturdayextra/charities-commission-review/8996792>.
[24] ACNC Act, Part 3-1.
[25] ACNC Act, Part 3-2.
[26] ACNC Act, Division 60-B; and see; ACNC, '2017 Annual Information Statement Guide' (Guide, ACNC, July 2017): <http://www.acnc.gov.au/ACNC/Report/2017AISguide.aspx>.
[27] ACNC Act, Division 60-C; ACNC Regulation, Division 60 sets out the requirements for annual financial reports thereof. A small entity has an annual revenue below $250,000, a medium entity above $250,000 and below $1 million and a large entity above $1 million. See also Ex 31, p 1.
[28] ACNC Act, Divisions 55 and 60.
[29] ACNC Act, Division 65.
[30] Giving false or misleading information in an Information Statement or financial report or failing to provide them on time will result in an administrative penalty: (ACNC Act, ss 60-5(2), 60-10(2), as will failing to report a contravention as required: (ACNC Act, s 65-5(1)). Calculations of administrative penalties are determined under ACNC Act, s 175B for false or misleading information and ACNC Act, s 175C for failing to lodge documents on time.
[31] ACNC Act, ss 55-5(6) - (7).
[32] ACNC Act, Chapter 4.

[33] ACNC Act, Part 4-1.
[34] ACNC Act, ss 70-5(4), 75-40(6), 75-80(2).
[35] ACNC Act, Division 85.
[36] ACNC Act, Division 90.
[37] ACNC Act, Division 95.
[38] ACNC Act, Division 100.
[39] ACNC Act, Division 80.
[40] ACNC Act, Division 35 deals with the procedure for revocation.
[41] See ACNC Act, s 85-30 for failing to comply with a direction ($8,400 penalty); ACNC Act, s 100-25 for circumvention of a suspension or removal of responsible entity ($10,500 or imprisonment or both); and ACNC Act, ss 100-70(1) and (5) for circumventing an order vesting property in an acting trustee or responsible entity ($10,500 penalty).
[42] ACNC Regulatory Approach Statement, p 11; ACNC Act, ss 40-5(2), 40-10(2)(a).
[43] ACNC Act, Division 150.
[44] ACNC Act, ss 150-10, 150D.
[45] ACNC Act, ss 150-25.
[46] ACNC Act, s 150-C.
[47] ACNC Act, s 30-10 and see: ACNC, ACNC Registration Application Guide: <https://www.acnc.gov.au/ACNC/Register_my_charity/Start_Reg/Guide_registration/ACNC/Reg/Guide_registration.aspx>. The application for an authority in New South Wales can be found at NSW Fair Trading, 'Charitable Fundraising Application': <http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Forms/Charitable_fundraising_form_July_2015.pdf>.
[48] ACNC Act, s 30-15(1); the Act, s 16(6).
[49] ACNC Act, Division 35; the Act, ss 16(2), 31.
[50] ACNC Act, s 55-5(4); the Act, s 22.
[51] ACNC Act, s 60C; the Act, s 24; 2015 Regulation, cl 12.
[52] The Act, ss 20(1), 20(6).
[53] The Act, s 24(3).
[54] ACNC Act, Division 65.
[55] The Act, s 19.
[56] ACNC Act, ss 60-75; 60-80.
[57] ACNC Act, Part 4.1; the Act, Part 3, Division 1. See also the Act, s 49 regarding authorised inspectors in New South Wales.
[58] The Act, ss 22(3), 23(4), 24(4) impose a maximum penalty of $5,500 in New South Wales. Under the Commonwealth regime, ACNC Act ss 55-5(6) and (7) Act impose a penalty of $4,200; and see ACNC Act, ss 60-5(2), 60-10(2), 65-5(1) with penalties determined in accordance with ACNC Act, ss 175B and 175C.
[59] The Act, ss 9(1), 9(2) impose a maximum penalty of $5,500.
[60] Under the Act, s 30 the maximum penalty is $5,500 or 6 months' imprisonment or both. The Act, ss 10-13 impose a maximum penalty of $5,500 for unlawful fundraising; the Act, s 20(7) imposes a maximum penalty of $5,500 or 6 months' imprisonment or both for misusing the proceeds of an appeal. And see the Act, s 50 regarding proceedings for an offence. Under ACNC Act, ss 70-5(4), 75-40(6), 75-80(2) the penalty is $4,200.
[61] ACNC Act, Divisions 80, 85, 95 and 100; the Act, s 33.
[62] ACNC Act, Division 90; and see Pascoe Reflection Paper.
[63] The Act, s 39, Part 3A.
[64] G E Dal Pont, *Law of Charity*, pp 460-462 and see the Dictionary and ACT Act, ss 7(1), 7(3), 21(1), 21(3); *Charitable Collections Regulation* 2003 (ACT), cl 6.
[65] ACT Act, ss 23-25, 34-40.
[66] ACT Act, ss 14(1), 15(1), 16 and 18.
[67] ACT Act, s 44(1).
[68] ACT Act, s 14(2); and see Access Canberra, Charitable collections licensing (25 July 2017): <https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1549/kw/charities>.
[69] Victorian Act, s 17A.
[70] Victorian Act, ss 19(b), 19A, 19B, 19C, 20, 22, 23, 23A.
[71] The penalty is 120 penalty units ($19,000) or 12 months imprisonment or both for an individual and 240 units ($38,000) for a corporation: Victorian Act, ss 17A, 25. As of 1 July 2017, 1 penalty unit = $158.57.

[72] Victoria Government, Victoria Government Gazette, No S248, 16 July 2009: http://www.gazette.vic.gov.au/gazette/Gazettes2009/GG2009S248.pdf>.
[73] "Fundraising Registration Guidelines"; and see Consumer Affairs Victoria, Conditions on fundraising registration (8 August 2017): <https://www.consumer.vic.gov.au/clubs-and-fundraising/fundraisers/registration/conditions-on-registration>.
[74] Victorian Act, s 70A.
[75] Victorian Act, Part 3, Divisions 3, 4, 5.
[76] Consumer Affairs Victoria, Clubs and fundraising: <https://www.consumer.vic.gov.au/clubs-and-fundraising/patriotic-funds>; and G E Dal Pont, *Law of Charity*, p 488.
[77] Consumer Affairs Victoria, Compliance and enforcement of patriotic funds laws (10 July 2017): <https://www.consumer.vic.gov.au/clubs-and-fundraising/patriotic-funds/how-we-enforce-the-law/compliance-and-enforcement>.
[78] Queensland Government, Charities and Fundraising (23 October 2017): <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/charities-and-fundraising/>.
[79] Queensland Act, ss 9, 10; and see G E Dal Pont, *Law of Charity*, pp 468 - 475.
[80] Queensland Regulations, cl 4(3).
[81] Queensland Act, ss 10 - 11; Queensland Regulations, cl 33.
[82] Queensland Act, s 12; Queensland Regulations, Part 3.
[83] Queensland Act, s 19.
[84] Queensland Regulations, Part 2, Division 2.
[85] Queensland Act, ss 30 - 32; Queensland Regulations, cl 29 - 34.
[86] Queensland Act, s 34.
[87] Queensland Act, s 35; Queensland Regulations, cl 42A.
[88] Queensland Act, ss 37, 40. 1 penalty unit is $126.15 from 1 July 2017.
[89] Queensland Act, s 38.
[90] *Collections for Charitable Purposes Act* 1939 (SA) (SA Act).
[91] *Street Collections (Regulation) Act* 1940 (WA); *Charitable Collections Act* 1946 (WA) (WA Act); and the *Charitable Collections Regulation* 1947 (WA) (WA Regulations).
[92] G E Dal Pont, *Law of Charity*, pp 475 - 478.
[93] *Collections for Charitable Purposes (Miscellaneous) Amendment Act* 2007 (SA).
[94] *Street Collections Regulations* 1999 (WA); G E Dal Pont, *Law of Charity*, p 479.
[95] SA Act, s 6; WA Act, s 6. The maximum penalty for the offence of fundraising without a licence in Western Australia is $100 (WA Act, s 6(2)) and in South Australia is $8,000 (SA Act, s 6(1)).
[96] It was the Department of Commerce prior to its amalgamation with the Department of Mines and Petroleum from 1 July 2017.
[97] *Charitable Collections Regulations* 1947 (WA), cl 14.
[98] See *Statutes Amendment (Commonwealth Registered Entities) Act* 2016 (SA). Charities will still be included on the Register as authorised to collect in South Australia and must continue to comply with the Code of Practice: see SA Act, s 6(5)(a).
[99] WA Act, ss 10(1) and (2).
[100] WA Act, ss 11(1) and (2); SA Act, ss 11(1) and (2); WA Regulations, cl 3(2).
[101] WA Act, ss 15(1) and (2); SA Act, ss 15(1) and (2).
[102] WA Act, ss 20(1) and (2).
[103] WA Regulations, cl 11 and 16.
[104] SA Act, ss 14B, 15(3), 15A and 15B.
[105] SA Act, s 16(1); WA Act, s 16(1).
[106] The Law Reform Commissioner of Tasmania, 'Report on Public Fundraising by Charitable Institutions' (Report No 75, 1996), p 26, which recommended the enactment of legislation equivalent to the New South Wales *Charitable Fundraising Act* 1991: G E Dal Pont, *Law of Charity*, p 480.
[107] Consumer, Building & Occupational Services, List of approved charities in Tasmania – July 2017: <http://www.consumer.tas.gov.au/__data/assets/pdf_file/0016/63034/Approved_Charities_Tasmania.pdf>.
[108] Tasmanian Act, ss 3(1), 4; *Collections for Charities Regulations* 2011 (Tas), cl 4.
[109] Tasmanian Act, ss 5(1), 5(2)(b) and (c).
[110] Tasmanian Act, 12.
[111] Tasmanian Act, 14.

[112] Tasmanian Act, 13.
[113] See Northern Territory Government, Lotteries and community gambling (28 November 2017): <https://nt.gov.au/industry/gambling/lotteries-community-gambling/become-an-approved-association>.
[114] See Ex 31, p 1; Deloitte Access Economics, 'Australian Charities and Not-for-profits Commission, Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation' (Final Report, 23 February 2016), pp 35-38: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-cutting-red-tape-align-charity-regulation-230216.pdf>.
[115] See Charities Services, Charities Services: <https://www.charities.govt.nz>; and see also Donald Poirier, 'Charity Law in New Zealand' (Department of Internal Affairs, 2013), p 1.
[116] See Department of the Prime Minister and Cabinet, Community and Voluntary Sector (12 October 2017): <https://www.dpmc.govt.nz/cabinet/portfolios/community-and-voluntary-sector>.
[117] G E Dal Pont, *Law of Charity*, p 524 and Carolyn Cordery, 'Light-handed charity regulation: its effect on reporting practice in New Zealand' (Working Paper No. 83, December 2011), p 7: https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/working-papers/WP83.pdf.
[118] Mark Blumberg, 'Role of New Zealand Charities Commission to move over to NZ Department of Internal Affairs', globalphilanthropy.ca, 27 June 2012: <https://www.globalphilanthropy.ca/blog/role_of_new_zealand_charities_commission_to_move_over_to_nz_department_of_i>.
[119] Under the *Charities Amendment Act (No 2)* 2012 (NZ).
[120] NZ Act, s 10; Charities Services, The role of Charity Services: <https://charities.govt.nz/about-charities-services/the-role-of-charities-services-/>.
[121] See the definition of "chief executive": NZ Act, s 4; and see NZ Act, ss 8 - 10, 17 - 20, Schedule 2.
[122] Further it is a criminal offence for a person to falsely claim or imply to be a registered charitable entity: NZ Act, ss 37 - 38.
[123] NZ Act, s 13.
[124] NZ Act, s 5.
[125] NZ Act, s 24.
[126] NZ Act, ss 31 - 32.
[127] NZ Act, ss 41 - 42B.
[128] NZ Act, ss 42C - 42F.
[129] NZ Act, s 54.
[130] NZ Act, s 59.
[131] Charities Services, 'Legal Decisions': <https://charities.govt.nz/charities-in-new-zealand/legal-decisions/>.
[132] *Charities Act* 2011 (UK), Part 2 and Schedule 1; and see: CCEW, About us: <https://www.gov.uk/government/organisations/charity-commission/about>.
[133] Anne-Marie Piper and Philip Reed, 'Charitable organisations in the UK (England and Wales): overview' (Thomson Reuters, 1 September 2016): <https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=(sc.Default)>.
[134] The Act repealed and replaced the *Charities Act* 2006 (UK), *Charities Act* 1993 (UK), *Charities Act* 1992 (UK) and the *Recreational Charities Act* 1958, 6 & 7 Eliz II, c 17.
[135] Rebecca Cooney, 'Charity Commission has cut workforce by 10 per cent, annual report shows', *Third Sector* (online), 7 July 2016: <http://www.thirdsector.co.uk/charity-commission-cut-workforce-10-per-cent-annual-report-shows/governance/article/1401619>.
[136] UK Charities Act, s 14.
[137] UK Charities Act, ss 2, 3.
[138] UK Charities Act, ss 30(2)(d) and 30(3). A charity which is a charitable incorporated organisation (CIO) must also register regardless of income. If a charity is neither a CIO nor has income over £5000 need not register with the CCEW but may apply to HM Revenue and Customs to have the organisation recognised as charitable and eligible to claim certain tax benefits. See CCEW, How to set up a charity: https://www.gov.uk/guidance/how-to-set-up-a-charity-cc21a (CCEW, How to set up a Charity Guide).
[139] UK Charities Act, ss 30(2)(b), 30(2)(b)(c), 161 and see CCEW, How to set up a Charity Guide.
[140] UK Charities Act, ss 22, 160, Schedule 3.

[141] CCEW Website "Find a Charity - Sector Overview" lists 167,695 main charities: see CCEW, Find a Charity- Sector overview: <http://apps.charitycommission.gov.uk/showcharity/registerofcharities/SectorData/SectorOverview.aspx>.
[142] UK Charities Act, Parts 5 and 6.
[143] UK Charities Act, ss 335 - 339.
[144] UK Charities Act, Part 8.
[145] UK Charities Act, ss 78 - 86, 105-106.
[146] The Fundraising Regulator took over from the Fundraising Standards Board (FSRB) on 1 July 2016.
[147] Fundraising Regulator, 'Code of Fundraising Practice' (Code V1.4, Fundraising Regulator, 31 July 2017): <https://www.fundraisingregulator.org.uk/wp-content/uploads/2016/06/Code-of-Fundraising-Practice-v1.4-18102017.pdf>.
[148] Fundraising Regulator, Home <https://www.fundraisingregulator.org.uk/>. Different co-regulatory arrangements apply in Scotland and an independent panel is being developed to manage complaints that can't be resolved by the charities themselves: CCEW, 'Guidance – Charity fundraising: a guide to trustee duties' (7 June 2016), [10.2]: https://www.gov.uk/government/publications/charities-and-fundraising-cc20/charities-and-fundraising (CCEW Guide to Trustee Duties).
[149] CCEW Guide to Trustee Duties.
[150] It is funded by a contribution from registered charities but some have refused to pay on the basis that donors' money was not intended for the regulator: see Hugh Radojev, 'Fundraising Regulator publishes names of over 160 charities yet to pay levy', *Civil Society Media* (online), 31 August 2017: <https://www.civilsociety.co.uk/news/fundraising-regulator-publishes-names-of-162-charities-yet-to-pay-levy-in-list.html> .
[151] CCEW Guide to Trustee Duties.
[152] CCEW Guide to Trustee Duties.
[153] Better Regulation Executive, 'Charity Commission - A Hampton Implementation Review Report' (Report, Better Regulation Executive, March 2010).
[154] The rule refers to the 10-month deadline imposed by the CCEW for charities to file accounts and other annual returns.
[155] Better Regulation Executive, 'Charity Commission - A Hampton Implementation Review Report' (Report, Better Regulation Executive, March 2010), p 22.
[156] Tania Mason, 'Commission to scrap regulatory compliance cases', *Civil Society* (online), 17 October 2011: <https://www.civilsociety.co.uk/news/commission-to-scrap-regulatory-compliance-cases.html>.
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[158] National Audit Office, 'Follow-up on the Charity Commission', 22 January 2015: <https://www.nao.org.uk/report/follow-up-on-the-charity-commission/>.
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[161] Haroon Siddique, 'Trust in charities at record low after scandals', *The Guardian* (online), 28 June 2016: <https://www.theguardian.com/society/2016/jun/28/trust-in-charities-at-record-low-after-scandals>.
[162] See CCEW, 'Protecting charities' funds – Detecting fraud against charities', (Report, CCEW, October 2016): <http://charitiesagainstfraud.org.uk/wp-content/uploads/2016/10/Protecting-charities%E2%80%99-funds-detecting-fraud-against-charities.pdf>.
[163] See CCEW, Protect your charity from fraud, 10 October 2016: <http://charitiesagainstfraud.org.uk/>.
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[165] The Commission on the Future of Voluntary Action, 'Meeting the Challenge of Change: Voluntary Action in to the 21st Century' (Report, NCVO, 1 January 2006); Emma Maier, 'The Next Decade: Older, wiser', *Third Sector* (online), 12 January 2005: <https://www.thirdsector.co.uk/next-decade-older-wiser/article/620512>.

[166] See Arnold Kemp, 'Head and Heart: The Report of the Commission on the Future of the Voluntary Sector in Scotland' (Report, Scottish Council for Voluntary Organisations (SCVO), 1997).

[167] Scottish Charity Law Commission, 'Charity Scotland', (Report, Scottish Charity Law Commission, May 2001). The *Charities and Trustee Investment (Scotland) Act* 2005 (Scot) is based on the proposals of the McFadden Report: see <https://www.gov.scot/Resource/Doc/1136/0010186.pdf> and see Stewart Graham, 'Appealing to charity - A look at the new Scottish Charity Appeals Panel and the impact it is likely to make', (2006) *The Law Society of Scotland Journal*: <http://www.journalonline.co.uk/Magazine/51-3/1002805.aspx>.

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[177] See Fundraising Regulator, 'Code of Fundraising Practice' (Code V1.4, Fundraising Regulator, 31 July 2017): <https://www.fundraisingregulator.org.uk/wp-content/uploads/2016/06/Code-of-Fundraising-Practice-v1.4-18102017.pdf> and Scottish Fundraising Standards Panel, Fundraising Regulation in the UK: <https://www.goodfundraising.scot/fundraising-regulation-in-the-uk/>.

[178] Jenny Ebbage, 'Practical Law: Charitable Organisations in Northern Ireland: overview' (Thomson Reuters, 1 August 2016): <https://uk.practicallaw.thomsonreuters.com/6-632-8588>.

[179] A live version of the NI Act is available on the CCNI's website, CCNI, Charity Legislation: <http://www.charitycommissionni.org.uk/about-us/charity-legislation/>.

[180] See Department for Communities, Introduction to the Regulation of Charities in Northern Ireland: <https://www.communities-ni.gov.uk/articles/introduction-regulation-charities-northern-ireland>.

[181] NI Act, s 6, Schedule 1.

[182] NI Act, s 7.

[183] NI Act, s 16. See CCNI, 'The deemed List': <http://www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/the-deemed-list/>.

[184] CCNI, Charity legislation <http://www.charitycommissionni.org.uk/about-us/charity-legislation/> and see NI Act, ss 3 - 5.

[185] CCNI, Charities Matching your search: <http://www.charitycommissionni.org.uk/charity-search>.
[186] CCNI, Register your charity: <https://www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/>. In relation to recreational charities and sports clubs, see NI Act, s 5.
[187] Jenny Ebbage, 'Practical Law: Charitable Organisations in Northern Ireland: overview' (Thomson Reuters, 1 August 2016): <https://uk.practicallaw.thomsonreuters.com/6-632-8588>.
[188] NI Act, ss 1(1), 2(2), 3.
[189] CCNI, The Public Benefit Requirement: <https://www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/the-public-benefit-requirement/> .
[190] NI Act, s 8.
[191] NI Act, s 10.
[192] NI Act, s 49.
[193] NI Act, s 22.
[194] CCNI, Concerns and Decisions: <https://www.charitycommissionni.org.uk/concerns-and-decisions/>.
[195] NI Act, s 25.
[196] Different requirements applied under the 2013, 2014 and 2015 Regulations. Jenny Ebbage, 'Practical Law: Charitable Organisations in Northern Ireland: overview' (Thomson Reuters, 1 August 2016): <https://uk.practicallaw.thomsonreuters.com/6-632-8588>. In addition to statements of account and annual reporting, the *Charities (Accounts and Reports) Regulations (Northern Ireland)* 2015 (NI) also set out the duties of auditors and examiners. See also the duties in this regard: NI Act, ss 63 - 79, where failure to comply will be an offence: NI Act, s 71.
[197] Material is available by way of guidance for compliance with the Regulations, see for example CCNI, Annual Reporting: <https://www.charitycommissionni.org.uk/manage-your-charity/annual-reporting/>.
[198] Fundraising Regulator, 'About FR: Purpose & Strategy': https://www.fundraisingregulator.org.uk/about/purpose-strategy/; CCNI, 'Review of Fundraising Regulation' (Briefing Paper CCNI, EGO52, CCNI, February 2016).
[199] Charities Regulator, Authority Members: <http://www.charitiesregulatoryauthority.ie/en/cra/pages/board_members>.
[200] Irish Act, s 14.
[201] Irish Act, s 38, Part 6; and see John O'Connor and Helen McGrath, 'Practical Law: Charitable organisations in Ireland: overview' (Thomson Reuters, 1 August 2016): <https://uk.practicallaw.thomsonreuters.com/8-632-9148?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1>.
[202] See Charities Regulator, Information for the Public: <http://www.charitiesregulatoryauthority.ie/en/CRA/Pages/WP16000072>.
[203] Charitable purposes are defined in a list in the Irish Act as being for the prevention or relief of poverty or economic hardship, advancement of education or religion, or 'any other purpose that is of benefit to the community' (Irish Act, s 3) which is further defined to include community welfare (including relief of those in need be reason of youth, age, ill-health or disability), community development (including rural or urban vegetation), civic responsibility or voluntary work, health (including prevention or relief of sickness, disease or human suffering), conflict resolution or reconciliation, religious or racial harmony and harmonious community relations, environmental protection and sustainability, effective use of property of charitable organisations, relief of animal suffering, arts, culture, heritage or sciences and integration of those disadvantaged (Irish Act, s 3(11)). Sport, trade unions, chambers of commerce and political parties, bodies or causes are specifically excluded (see 'excluded bodies', Irish Act, s 2).
[204] See Charities Regulator, Should I apply?: <http://www.charitiesregulatoryauthority.ie/en/CRA/Pages/WP16000037>.
[205] Irish Act, s 38, Part 6; and see John O'Connor and Helen McGrath, 'Practical Law: Charitable organisations in Ireland: overview' (Thomson Reuters, 1 August 2016): <https://uk.practicallaw.thomsonreuters.com/8-632-9148?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1>.
[206] Irish Act, ss 47 - 53.
[207] The requirement to keep audited accounts is restricted to charities with a gross income or total expenditure of more than €100,000: Irish Act, s 48.

[208] For example Catherine Shanahan and Conall Ó Fátharta, 'Charities regulator has no legal powers to probe charity sector', *Irish Examiner* (online), 30 June 2016: <http://www.irishexaminer.com/ireland/charities-regulator-has-no-legal-powers-to-probe-charity-sector-407703.html>.

[209] Irish Act, Part IV.

[210] Irish Act, s 73.

[211] Irish Act, 74.

[212] Charities Regulator, 'Guidelines for Charitable Organisations on Fundraising from the Public' (Guidelines, Charities Regulators, 2017): <http://www.charitiesregulatoryauthority.ie/en/CRA/Guidance%20for%20Fundraising%20(English).pdf/Files/Guidance%20for%20Fundraising%20(English).pdf>.

13.2 A CLEARER FOCUS

13.2.1 Other than the amendments to the Act in August 2017 to establish the Public Inquiry, there have been no substantive changes to the Act since its enactment 27 years ago. This Chapter discusses some of the problems that have been identified with the current statutory regime governing charitable fundraising in New South Wales and includes some recommendations in respect of proposals for improvement. However it must be remembered that this is an Inquiry under section 26 of the Act into specific entities and that there has been no broad consultation with the charitable fundraising community. It is suggested that if any recommendations made or discussed in this Chapter are considered appropriate for adoption they should be the subject of a broader discussion within that community and/or the relevant Law Reform Commission(s).

13.2.2 The comparison with other jurisdictions in the previous Chapter provides examples, some parts of which may be worthy of adoption to create greater effectiveness and efficiencies in the statutory regime in New South Wales. It is not intended to suggest which of these might be adopted because it is apprehended that consultation will be needed between the Department and the Regulator to assess those that may be acceptable. The comparison has been provided to assist in that process.

NSW FAIR TRADING DISCUSSION PAPER

13.2.3 Following the establishment of the portfolio, the Minister for Innovation and Better Regulation proposed what was described as "an annual 'Spring Clean' Bill" in order to introduce "reforms and repeals to reduce the regulatory burden on NSW businesses".[1]

13.2.4 The first Spring Clean Bill was introduced and passed in 2015.[2] In July 2016 and in anticipation of a second Spring Clean Bill, the Minister "requested a review of the Act to determine whether it should be retained or repealed".[3] Accordingly in July 2016 NSW Fair Trading published a Discussion Paper entitled "Charitable Fundraising Review".[4]

13.2.5 The Discussion Paper included the following from a report by Deloitte Access Economics that had been commissioned by the ACNC:[5]

> Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations. Fundraising legislation differs significantly between jurisdictions, which very quickly escalates the administrative costs a charity incurs. Consequently, the annual regulatory burden associated with fundraising regulations is estimated at approximately $13.3 million per year across the sector.

> Fundraising regulation has not kept pace with new forms of fundraising, particularly as online campaigns for funds have grown through the use of third party websites. The current arrangements treat fundraising as an activity isolated to one state or territory, when, in reality, even small organisations may attract interest nationally and internationally through online channels such as crowdsourcing websites.

13.2.6 The Discussion Paper then raised the following general issue:[6]

> The Act assumes that fundraising will be undertaken in certain ways and that the regulatory requirements imposed by the Act assure a specific outcome. The Act does not necessarily meet its potential expectations and can be a poor fit for contemporary fundraising arrangements.

13.2.7 It then proceeded to outline some specific issues, before addressing the following questions:[7]

> Is there a problem that requires an Act?
>
> The Charitable Fundraising Act's requirements have required minimal enforcement and a handful of complaints have been received about the activity of charitable fundraising.
>
> Most of the enquiries made to Fair Trading relate to what specific paperwork is required. Furthermore, there is duplication around the need to provide financial reports for organisations wishing to maintain incorporation as well as a fundraising authority.
>
> NSW does not undertake any specific compliance and enforcement under the Act because such an allocation of resources appears unjustified as there is no evidence of any particular problem in the sector. NSW has few complaints from persons donating to these appeals.
>
> There is no evidence to suggest the Act is any more beneficial than existing general laws appear to be in protecting donors in cases of deception. Additionally, the environment of competition for the 'donor dollar', coupled with donors (or potential donors) ability to ascertain information quickly and easily via internet searches, provides impetus for organisations to act properly and appropriately regards account keeping and charitable expenditure. Given this, a government program regulating the activity does not appear to be an efficient and effective use of resources.
>
> In the 11 months from July 2015 that Fair Trading has administered the Act, 29 complaints have been received about fundraising without an authority. However, investigation of these complaints found that no public detriment resulted in the reported cases.
>
> The majority of breaches, identified during the period that the Office of Liquor and Gaming administered the Act (up until 1 July 2015), have been found to be minor and unintentional mistakes made by good willed volunteers and paid charity workers. Cases of non-compliance have usually been found to result from the complexity and of different

requirements of various Acts. This also been the experience of NSW Fair Trading administering of the Act, more recently.

Both authorities have found charities to be usually always quick to rectify any breaches once the legal requirements are brought to their attention. (Note: In these cases, compliance notices are issued and the charity monitored to ensure ongoing compliance). Liquor and Gaming, also at different times, proactively audited charities and held educational workshops to aid understanding of and compliance with the legal requirements. Reports of fake charities are rare. Then as now, major problems are referred to the Police.

Options – repeal or retain the Act

Repeal option

To resolve the red tape burden on the NFP sector, it is possible that the Act could be repealed. Donors would be protected by general law being the *Crimes Act 1900* (the Crimes Act) and, in certain circumstances, the Australian Consumer Law (ACL). Donors would be able to use the various existing sources of information about organisations with a charitable purpose and proposed beneficiaries. Self-regulation and reputational incentives in the sector would assist to donors to make their choices.

Retain option

Maintaining the status quo is an option. However, by doing so, the red tape burden caused by regulatory requirements around fundraising for a charitable purpose on the NFP sector cannot be reduced or removed. The Act would be retained if it could be proved that the Act and its objectives are still valid and that the Act is the only means by which those objectives could be achieved.

13.2.8 There was no option given or suggestion made in the Discussion Paper that the Act might be maintained but amended. Responses were received from invited key stakeholders.[8]

13.2.9 The ACNC supported the repeal of the Act, but recording that it was open to "aligning requirements between the ACNC and NSW Fair Trading" so that "a significant level of red tape could be reduced for the charity sector in NSW".[9] It referred to alternative approaches to regulation of fundraising, including the development of mutual recognition or reciprocal arrangements between jurisdictions, a single point ACNC licensing or report regime, the application of the *Australian Consumer Law*, Fair Trading legislation and Crimes legislation to the sector and recognition of internet-based or online crowd-sourced fundraising.[10]

13.2.10 The ACNC also recommended increased alignment between New South Wales and Commonwealth requirements in registration, reporting and governance with amendments to the *Australian Consumer Law* to ensure that charity donors are protected.[11]

13.2.11 The Fundraising Institute of Australia "unequivocally endorsed" the repeal of the Act for the reasons set out in the discussion paper.[12] It advocated education and self-regulation and asserted that "in New South Wales, regulation is not proportional to risk".[13] It recommended that the *Australian Consumer Law* not be extended to charities:[14]

> In the absence of any evidence that misleading or deceptive conduct, unconscionability and harassment and coercion are significant problems with Australian charities, the [ACNC] Act and the Charities Act provide enough safeguards specifically for charities.

13.2.12 Justice Connect Not-for-profit Law,[15] the Governance Institute of Australia,[16] the Australian Institute of Company Directors[17] and CPA Australia[18] supported the repeal of the Act, but only in the context of the repeal of all State legislation in this area, amendments to the *Australian Consumer Law* to ensure that it extends to fundraising activities, and the New South Wales Government working with other State and Commonwealth regulators to improve fundraiser conduct. Justice Connect Not-for-profit Law also recommended that support be given for the education and training of charities about the repeal of the Act and about ethical and legally compliant fundraising activities.[19]

13.2.13 The Public Fundraising Regulatory Association supported the repeal of the Act,[20] but only in the context of the provision of adequate protection for donors and the completion of a review of the *Australian Consumer Law* to ensure "its coverage being appropriately expanded" to regulate fundraising activities, but maintaining "similarly protective provisions" and "the essential distinction between consumers and donors". A submission was also made that there should be "an appropriate balance between statutory regulation and self-regulation".[21]

13.2.14 In spite of these unanimous recommendations for the Act to be repealed, it was not included in the Spring Clean Bill that was introduced to Parliament on 19 October 2016.[22]

SUBMISSIONS TO THE INQUIRY

13.2.15 RSL LifeCare's submissions to the Inquiry referred to "poorly drafted and difficult to interpret" provisions of the Act and raised as an issue the scope of the definition of "fundraising appeal" under section 5 of the Act.[23] In particular, an issue was raised as to whether the passive receipt of donations by an organisation falls within that definition having regard to the text, context and purpose of the Act.[24] If it does not, then those donations would not have to be applied in accordance with any purpose represented by the organisation.[25]

13.2.16 It was submitted that there is a "significant" and "potentially burdensome" overlap between the role of the Minister (under the Act) and the ACNC as well as the "significant difficulties" and "risk of non-

compliance" from the different regimes in the various States and Territories.[26]

13.2.17 Mr Condon gave evidence that in the context of aged-care accreditation, inspectors attend randomly and unannounced; and a similar inspection regime for compliance with charitable fundraising regulation would provide an incentive to keep things up to date.[27] Mr Condon also referred to the difficulty of each jurisdiction within Australia having different regimes for fundraising.[28]

13.2.18 Submissions on behalf of the auditors also raised the issue of the regulatory burden arising from different regimes across Australia and criticised the "unique [auditing] obligations and standards" imposed by the Act.[29]

13.2.19 RSL NSW's submissions referred to "a lot of overlap" between the Act, Regulations and conditions in fundraising authorities, which require simplification. In particular, it was submitted that consideration should be given to: sections 5, 6, 8, 10 and 48; the reporting obligations under section 24 and condition 6; whether a distinction should be made between active and passive receipt of donations; various aspects of the application process; an obligation on auditors to inquire about fundraising; adjustment of the exclusion of fundraising proceeds up to $250,000; and "a cohesive and unified system" of governance to avoid the difficulties and risk of non-compliance arising from having differing regimes across Australia and overlap with the ACNC.[30]

13.2.20 In a submission that implied that there is insufficient information and education about the Act, RSL NSW highlighted the ignorance of the existence and provisions of the Act (including the Regulations and standard conditions) by RSL NSW, RSL LifeCare and RSL WBI and their professional advisers and recommended a "process of education" as well as updated and republished Guidelines.[31]

13.2.21 The ACNC provided a written submission to the Inquiry[32] in which it noted that unlike the ACNC Act, the Act does not define the term "charity" but instead defines "charitable purpose" more broadly as including any benevolent, philanthropic or patriotic purpose.[33] It was also noted that the present regime of regulating charitable fundraising in Australia, being based as it is on a licensing and reporting model within separate State and Territory jurisdictions, "is not fit for purpose in a digital era". For example, when organisations fundraise online across multiple jurisdictions through their own websites, social media or dedicated fundraising platforms (e.g. GoFundMe),[34] they either do not comply with the different regulatory regimes (with little consequential regulatory action taken), or they do comply with each of the licencing and reporting obligations and face a significant burden in doing so.[35] The ACNC proposed a national system to ensure effective regulation of fundraising.[36]

13.2.22 On 20 December 2017 the Commonwealth Treasury Department announced that a review panel had been established to undertake a review of the ACNC Act and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act* 2012 after their first five years of operation. It was announced that the review panel will also conduct "roundtables across the country to hear from interested stakeholders".[37] Interested parties have been invited to submit written responses by 28 February 2018.

RECOMMENDATIONS

General

13.2.23 It was concerns about the misuse of charitable donations that led to the enactment of the Collections Act. After wide consultation the Act was introduced in the early 1990s to improve the Regulatory regime. The problems that created the need for the establishment of a statutory regime have not been solved. The manner in which the records of RSL NSW, RSL WBI and RSL LifeCare have been kept has meant that public donations to those organisations may well have been applied other than for their intended purpose. Indeed some may have been applied to Mr Rowe's ordinary living expenses and the RSL LifeCare directors' consulting fees.

13.2.24 Given that charitable fundraising is now a cross-border and international phenomenon, particularly through the internet, a single, unified Australian statutory regime would be of very significant benefit. It would certainly assist in reducing the current "red tape burden" and financial impact identified by NSW Fair Trading in its Discussion Paper.[38] Some of the steps taken in other jurisdictions in the regard referred to in Chapter 13.1 may assist in this regard. However that is a process that would take time.

13.2.25 There are over 5,000 organisations that raise funds for veterans. Mr Condon agreed that this is inefficient, ineffective and inappropriate. In this regard the National Collaboration Project has been established, chaired by Sir Angus Houston and on which Mr Condon will serve, to formulate and implement more effective collaboration between all these organisations. The first stage of the Project is to establish a peak body that that will then set standards for service delivery to veterans and their families by these organisations. At the time he gave his evidence, Mr Condon was convening a meeting of the national CEOs of veterans' organisations in early November 2017 to develop a blueprint for that peak body.[39]

13.2.26 The development of that blueprint and the operation of that peak body will be pivotal to the much needed synthesis of these resources for veterans' needs.

Simplification

13.2.27 In the meantime the current statutory regime in New South Wales for charitable fundraising could benefit from some reform.

13.2.28 Each charitable fundraiser is governed by many different and overlapping provisions in the Act, the Regulations and the standard and particular conditions of their fundraising authority. There is the real prospect, as happened with each of the entities in this Inquiry, that fundraisers may lack familiarity or clear understanding of the detail of the statutory regime. It is therefore recommended that consideration be given to some simplification of the regime by removing the duplication and overlapping provisions and consolidating them into one place, preferably the conditions of the fundraising authorities that are granted, with the Act providing the key provisions.

13.2.29 Without intending to be exhaustive, the central issues relating to fundraising that need to be addressed include the process of obtaining an authority, any exemptions (whether by category, fundraising income or otherwise), ensuring donations can be traced, the deduction of expenses, applying proceeds to the intended or represented purpose, maintaining proper records and reporting.

Passive receipt

13.2.30 A potential distinction has been suggested between active solicitation and passive receipt of donations. However, it is difficult to see why there should be any such distinction as a matter of principle. A fundraising appeal depends upon a representation that the money or benefit will be put towards a charitable purpose.[40] Once a donation follows such a representation, there is no reason to treat it differently depending upon whether that particular donation was solicited. Indeed, it could be said that the making of any such representation contains at least an implied solicitation.

13.2.31 A particular difficulty was identified where the donation is separated in time from the representation. In such circumstances, the recipient may not know whether the donation was tied to a particular representation; or, if several representations were made, to which one it was tied. There might then be uncertainty as to whether the receipt of the donation constituted a fundraising appeal and as to whether it was then applied for the correct purposes.

13.2.32 In holding themselves out as fulfilling charitable purposes most, if not all, charities, represent (even if only impliedly) that the purpose of receiving money is or includes a charitable purpose. Any receipt of donations by a charity is therefore likely to constitute a fundraising appeal. The focus should then be on ensuring that each donation is applied in accordance with the represented purpose. This should not present a difficulty where all donations are sought for the general charitable purposes of the

organisation. It is potentially problematic where an organisation runs several appeals with different representations.

A dedicated bank account

13.2.33 Section 20(6) of the Act requires the proceeds of a fundraising appeal to be paid into a dedicated bank account. However the section then permits the proceeds of several appeals to be paid into a single fundraising account; and standard condition 5(4) permits moneys to be paid into a general account where it can be "clearly distinguished".

13.2.34 It is difficult to see how fundraising proceeds in a general account can be "clearly distinguished" from other funds at any particular time without some form of reconciliation, let alone distinguishing between the proceeds of different appeals. The difficulties that have arisen with these three entities demonstrate the problems that arise when funds are mixed: it becomes difficult, if not impossible, to trace donations and thereby ensure that they are applied in accordance with the represented purpose.

13.2.35 The prospect of ensuring compliance with the statutory regime and maintaining transparency and accountability would be significantly improved if the ability to mix the proceeds of fundraising with other funds were removed; and if organisations were required to maintain a separate account for each fundraising appeal.

13.2.36 By way of example and in order to address the problem that has been identified of fundraising through websites, an organisation maintaining a website with a donate function could permit, and indeed require, a donor to nominate whether the donation is to be applied to a particular appeal, the general charitable purposes of the organisation or the ordinary costs of the organisation. The donation would then be directed to a separate bank account depending upon the nomination, ensuring it could be easily traced and applied in accordance with its intended purpose.

Conducting or participating

13.2.37 The distinction between organising (and thus conducting) a fundraising appeal on the one hand and assisting in organising (and thus participating in) a fundraising appeal is not immediately obvious.[41] Participation might occur where two entities conduct an appeal and one or other entity takes the lead or is to receive the funds raised from the public. However this is far from clear. It is recommended that consideration be given to clarifying these concepts.

Reporting

13.2.38 As to reporting obligations, standard condition 6 requires an income statement, a balance sheet and an officer's declaration in respect of fundraising. On its face, these are required even if no fundraising has actually occurred. This is sensible, particularly since it requires the

organisation to demonstrate that it has actually turned its mind to the issue. However, it would be helpful to make this explicit in the standard condition.

13.2.39 The requirement of an audit and an auditor's report in section 24 is removed by clause 12 of the Regulation where the organisation does not receive more than $250,000 from fundraising appeals. Given the importance that was placed on the auditor's involvement when the Act was introduced, this exemption sets the figure at a high level, particularly if the financial statements are being subject to an ordinary audit in any event. It is recommended that this figure be reduced.

13.2.40 Consideration might also be given to making the requirements for independent verification consistent with those under the ACNC Act,[42] where the nature of the requirements depends upon the size of the organisation and a smaller organisation may have a less onerous "review" of its financial statements rather than a formal audit.

13.2.41 As was the case of these three entities, non-compliance with obligations in respect of financial statements will often be apparent on their face. Consideration might be given to requiring some form of reporting to the Regulator, perhaps on an annual basis similar to the annual returns made to the ACNC and with the Financial Statements (including those relating to fundraising activities) attached.

The Regulator

13.2.42 Since information provided on a renewal application may reveal issues of non-compliance, consideration should be given to authorities being granted for less than a five year period.

13.2.43 In order to ensure a greater level of control and supervision, consideration should be given to authorities being limited to one or more specified appeals;[43] and to extending the application form to require the intended appeals to be specified as well as details of any past fundraising appeals and of any past non-compliance.

13.2.44 Given the problems that have been identified in this Inquiry, it is suggested that the Regulator should be given powers of inspection, such as those in sections 27 and 28 of the Act, that are not dependent upon an Inquiry under section 26. This will facilitate random inspections of charitable fundraisers with the consequence that, over time, those entities that wish to conduct fundraising appeals will develop respect for the regulatory scheme and the need for ensuring compliance with its provisions.

13.2.45 Consideration should also be given to using conditions specific to individual applicants or types (or size) of applicants.

Criminal offences

13.2.46 Section 9(2) of the Act provides that conducting an appeal "in contravention of any condition" of an authority constitutes an offence, but not the contravention of a condition itself. It would appear then that a breach of a condition that is not connected with the conduct of an appeal is not an offence. It is not clear why this should be so.

13.2.47 Thus the soliciting of persons occupying a motor car would constitute conducting an appeal in contravention of condition 24 and therefore an offence. However, disposing of records of previous appeals within 3 years (contrary to condition 23) would probably not constitute an offence, unless perhaps if the records of an appeal were being disposed of at the same time as that appeal was being conducted.

13.2.48 Section 10 proscribes the participation in a fundraising appeal in the knowledge that it "is being conducted unlawfully". It would appear that this would extend not only to fundraising being conducted without an authority (section 9(1)), but also to fundraising being conducted "in contravention of any condition" (section 9(2)), but this would benefit from clarification.

13.2.49 Section 51 extends criminal liability for knowing involvement in the case of a corporation not only to directors but also to anyone "who is concerned in the management". It is not clear why this extension to management should not apply in the case of other "organisations" (as defined in section 4), such as an incorporated or unincorporated association or an organisation run by a board of trustees (such as RSL WBI).

13.2.50 One of the matters that may deter persons or entities from breaching the Act is the prospect of revocation of their fundraising authority. However some of the maximum penalties for offences under the Act may not present as having a deterrant effect. It is recommended that consideration be given to increasing those maximum penalties to a level that may engender more respect for and compliance with the statutory regulation of charitable fundraising.

Ministerial approval

13.2.51 Section 48 provides, relevantly:

> A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if [permission has been obtained from the Minister].

13.2.52 This has been interpreted as requiring the Minister's permission for a person to serve on a governing body if in receipt of remuneration or other benefit from the organisation. However, the section is drafted in the negative and it is at least arguable that it does not have any operation unless there is first some prohibition on such a person serving as a director, such as in the relevant Constitution. Again, this would benefit from clarification.

CONCLUSIONS

13.2.53 There are matters that could be simplified or clarified from which the statutory regime would benefit and which would meet some of the concerns that have been raised. However, if there is to be a unified model across Australia, then this would require extensive consultation between the States, the Territories and the Commonwealth; and the integration of several systems, which might involve a different approach to that currently in force in New South Wales. The comparative review of the statutory regime for charitable fundraising in other jurisdictions in the previous Chapter may also be of assistance in this regard.

13.2.54 In the meantime, the most pressing needs are first to ensure that funds from each fundraising appeal are paid into a separate bank account (with at least initially a revocation or variation of standard condition 5(4)); and secondly to ensure greater awareness and knowledge of the existence, scope, detail and importance of the statutory regime. The Guidelines that were previously published by the Regulator[44] provided an important tool in educating fundraising organisations. It is recommended that they be updated and re-published.

ENDNOTES

[1] Ex 30, p 93.
[2] *Regulatory Reform and Other Legislative Repeals Bill* 2015 which became Act no. 48 of 2015 and received assent on 5 November 2015.
[3] Ex 30, p 93.
[4] Ex 30, p 89.
[5] Ex 30, p 93.
[6] Ex 30, p 97.
[7] Ex 30, pp 100 - 101.
[8] Ex 30, pp 103, 105, 118, 120, 130, 132, 136.
[9] Ex 30, pp 136, 141.
[10] Ex 30, p 138.
[11] Ex 30, p 139.
[12] Ex 30, p 121.
[13] Ex 30, p 125.
[14] Ex 30, p 128.
[15] Ex 30, pp 132 - 133.
[16] Ex 30, pp 130 - 131.
[17] Ex 30, pp 118 - 119.
[18] Ex 30, pp 103 - 104.
[19] Ex 30, p 134.
[20] Ex 30, p 105.
[21] Ex 30, p 108.
[22] *Regulatory and Other Legislation (Amendments and Repeals) Bill* 2016 which became Act no. 60 of 2016 and received assent on 14 November 2016.
[23] RSL LifeCare's Outline of Closing Submissions, 6 November 2017, pp 15-17, par 48 - 61.
[24] RSL LifeCare's Outline of Closing Submissions, 6 November 2017, p 20, par 70.
[25] RSL LifeCare's Outline of Closing Submissions, 6 November 2017, pp 19 - 20, par 64 - 69.
[26] RSL LifeCare's Outline of Closing Submissions, 6 November 2017, pp 22 - 25, par 78 - 86.
[27] Tr 3298.
[28] Tr 3292.
[29] Auditors' Closing Submissions, pp 15 - 17, para 63 - 71.
[30] RSL NSW's Outline of Closing Submissions, 6 November 2017, pp 9 - 10, par 49 - 57.
[31] RSL NSW's Outline of Closing Submissions, 6 November 2017, p 9, par 48.
[32] Ex 31, p 1, dated 10 October 2017.
[33] Ex 31, p 2.
[34] Approximately 13% of charities currently operate in more than one state or territory with many more soliciting donations online and through social media: N Cortis, I Lee, A Powell, R Simnett and K Reeve, 'Australian Charities Report 2014' (Centre for Social Impact & Social Police Research Centre, 2015), p 22 referred to in the ACNC Submission to the Australian Consumer Law Review dated 27 May 2015 p 5 (Ex 31, p 15).
[35] Deloitte Access Economics has estimated the cost to registered charities of complying with state and territory fundraising regulation is over $15 million each year: Ex 46, p 335.
[36] Ex 31, pp 3, 7.
[37] Ex 47, p 67.
[38] Ex 30, p 101.
[39] Tr 3296 - 3300.
[40] The Act, s 5(1).
[41] The Act, s 6.
[42] ACNC Act, s 60-C.
[43] The Act, s 17.
[44] Ex 9.

14. RECOMMENDATIONS

FUNDRAISING AUTHORITIES AND CONDITIONS

14.1 If it is decided to permit any of the entities to fundraise, it is recommended that the Minister give consideration to issuing new charitable fundraising authorities rather than amending the present authorities.[1]

14.2 It is recommended that if any of the entities, or any new entity in the new structure, are to be granted a fundraising authority the conditions that are annexed to this Report in Appendix H should be included in any conditions it is thought appropriate to impose.[2]

14.3 If any of the entities, or any new entity in the new structure, are to be granted a fundraising authority it is recommended that consideration be given to the imposition of a condition that the executive members of the governing bodies of each of the organisations and the management team responsible for fundraising within the entities complete the Certificate of Fundraising course with the Fundraising Institute of Australia and that in addition the Fundraising Manager complete the on-line Diploma in Fundraising course with that Institute.[3]

REFERRAL TO AUTHORITIES

14.4 It is recommended that the Minister refer this Report and all evidence relating to Mr Rowe's expenses, his resignation and its aftermath gathered in the Inquiry to the NSW Police. Such a referral should include an indication that Mr Rowe and other relevant witnesses took an objection under section 41N of the Act at the time of giving evidence before the Inquiry.[4]

14.5 It is recommended that the Minister consider referring the following former RSL NSW State Councillors and one serving RSL NSW State Councillor to ASIC and the ACNC for appropriate investigation in respect of their conduct in relation to the cover up of Mr Rowe's misconduct as detailed in this Report:[5]

(a) Dr Bain;
(b) Mr Crosthwaite;
(c) Mr Haines;
(d) Mr Harrigan;
(e) Mr Henderson;
(f) Mr Humphreys;
(g) Mr Hutchings;
(h) Mr James;
(i) Mr McManus-Smith;
(j) Mr Metcalfe;

(k) Mr Stephenson;
(l) Mr Toussaint; and
(m) Mr White.

14.6 It is recommended that the Minister consider referring the following former directors and current CEO of RSL LifeCare to ASIC and the ACNC for appropriate investigation in respect of their conduct as directors of RSL LifeCare as detailed in this Report:[6]

(a) Mr Crosthwaite;
(b) Mr Kells;
(c) Mr Longley;
(d) Dr Macri;
(e) Mr Riddington;
(f) Mr Rowe;
(g) Mr Thompson; and
(h) Mr White.

REFORM

14.7 It is recommended that NSW Fair Trading liaise with the ACNC and any other entity, including the Fundraising Institute of Australia, to develop clear guidance for charitable fundraising organisations in respect of political donations and attendance at political functions.[7]

14.8 It is recommended that consideration be given to the introduction of a single, unified Australian statutory regime for the regulation of charitable fundraising.[8]

14.9 It is recommended that consideration be given to simplifying the regime established by the Act by removing duplication and overlapping provisions.[9]

14.10 It is recommended that consideration be given to the consolidation of the conditions of fundraising authorities including, but not limited to, the process of obtaining an authority, any exemptions, ensuring donations can be traced, the deduction of expenses, applying proceeds to the intended or represented purpose, maintaining proper records and reporting.[10]

14.11 It is recommended that consideration be given to the imposition of a requirement that fundraising organisations maintain a separate bank account for each fundraising appeal ensuring that funds can be traced and applied in accordance with the intended purpose of the donor.[11]

14.12 It is recommended that consideration be given to clarifying the distinction between organising a fundraising appeal and participating in a fundraising appeal.[12]

14.13 It is recommended that consideration be given to the amendment of standard condition 6 of the fundraising authorities to make it clear that an organisation

is required to prepare an income statement, a balance sheet and an officer's declaration in respect of fundraising even if there has been no fundraising in that financial year or if any fundraising has been unsuccessful.[13]

14.14 It is recommended that consideration be given to lowering the threshold amount in clause 12 of the Regulation.[14]

14.15 It is recommended that consideration be given to making the requirements for independent verification under the Act consistent with the ACNC Act.[15]

14.16 It is recommended that consideration be given to requiring reporting to the Regulator in line with the annual returns made to the ACNC together with the submission of financial statements.[16]

14.17 It is recommended that consideration be given to amending the Act to impose self-reporting requirements similar to those in the ACNC Act.[17]

14.18 It is recommended that consideration be given to reducing the amount of time for which an authority is granted.[18]

14.19 It is recommended that consideration be given to amending the Act so as to ensure that fundraising authorities are limited to one or more specified appeals.[19]

14.20 It is recommended that consideration be given to amending the application form for a fundraising authority to require the intended appeals to be specified as well as details of any past fundraising appeals and any past non-compliance.[20]

14.21 It is recommended that consideration be given to providing the Regulator with powers of inspection such as those in sections 27 and 28 of the Act irrespective of whether there is an Inquiry so as to enable random inspections of charitable fundraisers.[21]

14.22 It is recommended that consideration be given to using conditions specific to individual applications for fundraising authorities or types or size of applicants.[22]

14.23 It is recommended that consideration be given to amending section 9(2) of the Act to also include a breach of a condition not connected with the conduct of an appeal.[23]

14.24 It is recommended that consideration be given to amending section 10 of the Act to make it explicit that it extends not only to fundraising being conducted without an authority (section 9(1)) but also to fundraising being conducted "in contravention of any condition" (section 9(2)).[24]

14.25 It is recommended that consideration be given to amending section 51 of the Act to extend criminal liability for knowing involvement to other "organisations" as defined in section 4 of the Act.[25]

14.26 It is recommended that consideration be given to amending section 48 of the Act to clarify that it is the approval to act as an officer rather than approval to receive fees.[26]

14.27 It is recommended that consideration be given to the development of programmes to ensure there is greater awareness and knowledge of the existence, scope, detail and importance of the statutory regime of charitable fundraising.[27]

14.28 It is recommended that consideration be given to the publication of new Guidelines to assist compliance with the statutory regime for charitable fundraising.[28]

14.29 It is recommended that consideration be given to increasing maximum penalties in the Act to a level that may engender more respect for and compliance with the statutory regulation of charitable fundraising.[29]

ENDNOTES

[1] Chapter 12.
[2] Chapter 12.
[3] Chapter 12.
[4] Chapter 8.6.
[5] Chapter 8.6.
[6] Chapter 9.4.
[7] Chapter 10.
[8] Chapter 13.1.
[9] Chapter 13.2.
[10] Chapter 13.2.
[11] Chapter 13.2.
[12] Chapter 13.2.
[13] Chapter 13.2.
[14] Chapter 13.2.
[15] Chapter 13.2.
[16] Chapter 13.2.
[17] Chapter 13.2.
[18] Chapter 13.2.
[19] Chapter 13.2.
[20] Chapter 13.2.
[21] Chapter 13.2.
[22] Chapter 13.2.
[23] Chapter 13.2.
[24] Chapter 13.2.
[25] Chapter 13.2.
[26] Chapter 13.2.
[27] Chapter 13.2.
[28] Chapter 13.2.
[29] Chapter 13.2.

APPENDICES

APPENDIX A: INSTRUMENT OF APPOINTMENT AND CERTIFICATE ISSUED TO AN INSPECTOR UNDER THE *CHARITABLE FUNDRAISING ACT* 1991 DATED 15 MAY 2017

CHARITABLE FUNDRAISING ACT 1991

INSTRUMENT OF APPOINTMENT

I, Matthew Kean, Minister for Innovation and Better Regulation, appoint Patricia Anne Bergin as an authorised inspector pursuant to section 49(1) of the *Charitable Fundraising Act 1991*

DATED the 15th day of May 2017

Matthew Kean
Minister for Innovation and Better Regulation

CERTIFICATE ISSUED TO AN INSPECTOR

UNDER THE *CHARITABLE FUNDRAISING ACT 1991*

I, Matthew Kean, Minister for Innovation and Better Regulation, certify, under section 28(4) of the *Charitable Fundraising Act 1991* ('the Act'), that Patricia Anne Bergin has been appointed as an inspector for the purposes of the Act and may exercise all powers of an authorised inspector under the Act.

Under section 28(1) of the Act, the authorised inspector may:

a. enter premises, and

b. require production of documents relevant to an inquiry under Part 3 of the Act, and

c. take copies of or extracts from the documents or take possession of the documents for such period as the inspector considers necessary for the purposes of the inquiry.

DATED the 15th day of May 2017

Matthew Kean
Minister for Innovation and Better Regulation

APPENDIX B: TERMS OF INQUIRY DATED 15 MAY 2017

NEW SOUTH WALES

Charitable Fundraising Act 1991

(Section 26)

To: The Honourable Patricia Anne Bergin SC, an inspector appointed pursuant to section 49(1) of the *Charitable Fundraising Act 1991*

I, Matthew Kean, Minister for Innovation and Better Regulation, pursuant to section 26 of the *Charitable Fundraising Act 1991* ('the Act'), require you to inquire into

(A) the body corporate called 'The Returned and Services League of Australia (New South Wales Branch)' ('RSL NSW'), an organisation that I have reason to believe has conducted a fundraising appeal and persons whom I have reason to believe have been associated with a fundraising appeal (within the meaning of the Act), including but not limited to the members of the governing body and officers of RSL NSW;

(B) 'the RSL Welfare and Benevolent Institution' (also known as 'RSL DefenceCare') and its trustees (collectively, 'WBI'), respectively an organisation that I have reason to believe has conducted a fundraising appeal and persons whom I have reason to believe have been associated with a fundraising appeal (within the meaning of the Act), including but not limited to the members of the governing body and officers of WBI; and

(C) RSL Life Care Limited ('LifeCare'), an organisation that I have reason to believe has conducted a fundraising appeal and persons whom I have reason to believe have been associated with a fundraising appeal (within the meaning of the Act), including but not limited to the members of the governing body and officers of LifeCare

with respect to the following matters arising under the Act:

1. whether or not:

    (a) RSL NSW has since 1 July 2007 complied with Condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

(b) the terms of the said Condition 20 are adequate to achieve its purpose and to ensure good governance of RSL NSW in respect of matters relevant to the operation of the Act;

(c) funds of RSL NSW have since 1 July 2007 been used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to RSL NSW and/or who had in respect of any such decision a conflict of interest;

(d) any other Condition of RSL NSW's authority to conduct charitable fundraising has been breached since 1 July 2007;

2. whether or not:

(a) WBI has since 1 July 2007 complied with Condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

(b) the terms of the said Condition 20 are adequate to achieve its purpose and to ensure good governance of WBI in respect of matters relevant to the operation of the Act;

(c) funds of WBI have since 1 July 2007 been paid to LifeCare or otherwise used or expended pursuant to decisions made by a person, or by a group including a person, inconsistently with their obligations to WBI and/or who had in respect of any such decision a conflict of interest; and

(d) any other Condition of WBI's authority to conduct charitable fundraising has been breached since 1 July 2007;

3. whether or not:

(a) LifeCare has since 1 July 2007 complied with Condition 20 (as varied from time to time) of its authority to conduct charitable fundraising;

(b) the terms of the said Condition 20 are adequate to achieve its purpose and to ensure good governance of LifeCare in respect of matters relevant to the operation of the Act;

(c) funds of LifeCare have since 1 July 2007 been used or expended pursuant to decisions made by a person, or by a group including a person,, inconsistently with their obligations to LifeCare and/or who had in respect of any such decision a conflict of interest; and

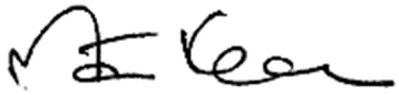
(d) any other Condition of LifeCare's authority to conduct charitable fundraising has been breached since 1 July 2007;

4. whether or not the management of RSL NSW, WBI or LifeCare since 1 January 2007, or the conduct of any fundraising appeal by them since 1 January 2007, or any other matter that comes to the attention of the inquiry, involves or indicates:

   (a) a breach of the Act; or

   (b) a ground upon which I could be satisfied of a matter listed in subsection 16(2) or subsection 31(1) of the Act.

and by 1 February 2018 to report to me on the inquiry, the information that it has obtained, and any recommendations you think appropriate.



Minister for Innovation and Better Regulation
15th May 2017

APPENDIX C: LIST OF WITNESSES

Witness	Date appeared
Roderick Bain*	22 September 2017
Mark Broadhead*	15 September 2017
James Brown*	24 October 2017
John Cannings*	22 September 2017 25 September 2017 23 October 2017
Garth Carlson*	13 September 2017
Robyn Collins*	13 October 2017
Andrew Condon*	23 October 2017
Dennis Cowdroy QC	6 October 2017
Robert Crosthwaite*	13-14 September 2017
Kenneth Doolan*	6 October 2017
Wayne Gladman	23 October 2017
John Haines*	28 September 2017
Peter Ham	20 September 2017
William Hardman*	13 September 2017
William Harrigan*	20 September 2017
Ian Henderson*	25 September 2017
William Humphreys*	14 September 2017
Alan Hutchings*	10 October 2017
Ronald James*	26 September 2017
Graham Kells*	20 October 2017
James Longley*	12 September 2017
Susanne Macri*	11 September 2017
Darren McManus-Smith*	15 September 2017
Robert Metcalfe*	26 September 2017
Allan Murray*	3 October 2017
Christopher Perrin*	21 September 2017
William Riddington*	11 September 2017
Donald Rowe*	18 September 2017
Alison Sheridan*	29 September 2017 19 October 2017
Peter Stephenson*	3 October 2017

Ronald Thompson*	7 September 2017 8 September 2017 12 October 2017
Anthony Toussaint*	27 September 2017
Roderick White*	4 October 2017 5 October 2017
James Winter*	9 October 2017 18 October 2017

Due to Ms Annette Mulliner's terminal illness, her evidence was taken at her home on 9 August 2017. The transcript of that evidence is Exhibit 11. Ms Mulliner passed away in September 2017.

*Witnesses who took objections pursuant to s. 41N(2) of the *Charitable Fundraising Act* 1991.

APPENDIX D: LIST OF ENTITIES AND WITNESSES GRANTED AUTHORISATION TO APPEAR

Entity / Witness	Counsel	Solicitors
RSL NSW	Mr D Sulan and Mr P Strickland	Webb Henderson
		Ms L Meyer, Baker McKenzie (*until 11 December 2017*)
		Ms L Meyer, General Counsel, RSL NSW (*from 12 December 2017*)
RSL LifeCare	Ms D Hogan-Doran SC, Mr T Glover and Ms V O'Halloran	Clayton Utz
RSL WBI and its trustees	Mr P Herzfeld	Ashurst
Grant Thornton Australia Limited	Ms M Painter SC and Mr M Davis	Maddocks
Roderick Bain	Mr V Kerr SC	Goddard & Co Solicitors
Mark Broadhead	Mr M Newton	Wotton & Kearney
James Brown	-	Henry William Lawyers
John Cannings	Mr C Withers and Mr N Bender	PricewaterhouseCoopers (*until 2 November 2017*)
		Corrs Chambers Westgarth (*from 3 November 2017*)
Garth Carlson	Mr S Cominos	Minter Ellison
Robyn Collins	Mr P Herzfeld	Ashurst
Andrew Condon	Mr N Newton	Clifford Chance
Robert Crosthwaite	Mr J Phillips SC	Resolve Litigation Lawyers
Kenneth Doolan	Mr G Melick SC	-
John Haines	-	Mills Oakley
William Hardman	Mr R Ranken	Colin Biggers & Paisley Lawyers
William Harrigan	-	Henry Davis York
Ian Henderson	Mr J Horowitz	Horowitz & Bilinsky
Alan Hutchings	Mr S Jayasuriya	Henry Davis York
William Humphreys	Mr J Phillips SC	Resolve Litigation Lawyers

Ronald James	Mr D McLure SC and Mr B Jacobs	Lander & Rogers Lawyers
Graham Kells	Mr D Lloyd	Clyde & Co
James Longley	Mr S Beckett	Sparke Helmore Lawyers
Susanne Macri	Ms I King	Sparke Helmore Lawyers
Darren McManus-Smith	Mr I Griscti	Moray & Agnew Lawyers
Robert Metcalfe	-	Henry Davis York
Allan Murray	Mr S Cominos	Wotton & Kearney
Christopher Perrin	-	Bowen Legal
William Riddington	Mr S Duggan	Bartier Perry Lawyers
Donald Rowe	Mr A McInerney SC	DLA Piper
Alison Sheridan	Ms M Painter SC and Mr M Davis	Maddocks
Peter Stephenson	Mr A Isaacs	Barry Nilsson Lawyers
Ronald Thompson	Ms M Gerace	Arnold Bloch Liebler
Anthony Toussaint	-	Henry Davis York
James Winter	Ms M Painter SC and Mr M Davis	Maddocks

APPENDIX E: BACKGROUND INFORMATION OF RELEVANT MEMBERS OF THE GOVERNING BODIES AND OFFICERS OF RSL NSW, RSL WBI AND RSL LIFECARE

RSL NSW

RSL NSW State Councillor Witnesses

1. The backgrounds of Messrs Haines, Rowe, Stephenson and White are outlined in Chapter 5.

Roderick Bain

2. Dr Bain completed his medical training in Australia and the United Kingdom.[1] He has a speciality in anaesthesiology and intensive care.[2]

3. Dr Bain served in the Royal Australian Navy from 1966 to 1973, during which time he became the Principal Medical Officer aboard HMAS Sydney. Following discharge, he continued in full-time medical practice until he retired in 1999. He has been a board member of several aged care facilities on the Central Coast.

4. Dr Bain joined the Gosford RSL NSW sub-Branch in 1997. He transferred to the Wollongong RSL NSW sub-Branch in 2012 and to the North Bondi RSL NSW sub-Branch in early 2014. He was the delegate for the Gosford sub-Branch on the Central Coast District Council from 1998 to 2003 and the delegate to State Congress from 2000 to 2003.[3]

5. Dr Bain was elected to the RSL NSW State Council in 2004 and served in that role until he resigned in November 2016.[4] He was the RSL NSW Vice President Southern Country from 2008 to 2014.[5]

6. Dr Bain has also been appointed to a number of committees by the DVA. He is the Medical Advisor to the Australian Veterans and Defence Services Council and the National Naval Association. Until 2017 he was the RSL NSW Medical Adviser.[6]

7. Dr Bain is the recipient of a number of awards and decorations including the Medal of the Order of Australia in 2015 for service to veterans and their families.[7]

James Brown

8. Mr Brown is the current President of RSL NSW, a trustee of RSL WBI and a director of RSL LifeCare. His background is outlined in Chapter 11 in the context of considering the rebuilding in which the entities have recently been engaged.

Garth Carlson

9. Mr Carlson worked as a General Officer with the Administrative Services Department of the Commonwealth Government. He was also the President of the Gresford RSL NSW sub-Branch and the President and Chairman of Hunter Legacy.[8]

10. Mr Carlson was elected to the State Council of RSL NSW in June 2004. He served until May 2008.[9]

11. He served on the Board of RSL LifeCare from 19 October 2004 until 14 October 2008.[10]

Robert Crosthwaite

12. Mr Crosthwaite completed his National Service in 1966-1967 and then served for a further three years in the Regular Army in Malaysia and Vietnam. He was discharged from the Defence Force in 1970.

13. Mr Crosthwaite holds a Bachelor of Engineering (Civil and Structural) from the University of Sydney (1974); a Diploma of Information and Technology from Wollongbar TAFE (1980) and a Bachelor of eCommerce from Griffith University (2006). He worked in the building industry as a civil engineer and consultant and ceased full time work in 1995.[11]

14. Mr Crosthwaite joined the Murwillumbah RSL NSW sub-Branch in 1972 and subsequently transferred to the Byron Bay RSL NSW sub-Branch. He has been Assistant Secretary, Vice President and President of the Byron Bay sub-Branch and has been a trustee of his sub-Branch from 1999.[12] He was elected to the RSL NSW State Council in 1991 and served as a State Councillor of RSL NSW until 1998. In 2002, he was re-elected to State Council and served as a State Councillor until 2017 and held various positions at different times, including as a Vice President.[13]

15. Mr Crosthwaite served on the Board of the Ex Service Home, Ballina from 1987 until 2007, including service as Chairman.[14]

16. Mr Crosthwaite was a director of RSL LifeCare from 19 October 2004 until he resigned on 10 July 2017.[15]

17. Mr Crosthwaite was awarded Life Membership of the RSL in 1995 and the Meritorious Service Medal from RSL NSW in 2009.[16] Mr Crosthwaite is the recipient of a number of awards and decorations including the Medal of the Order of Australia in 2009 for service to the welfare of veterans and their families, particularly in the area of aged care.[17]

William Harrigan

18. Mr Harrigan completed his National Service training from 1956 to 1960. From 1995 to 1996, he served with the United Nations Civilian Police in Cyprus with the Australia Civilian Police Contingent.

19. In his civilian career, Mr Harrigan was employed by the New South Wales Department of Railways, in the Traffic Branch before moving to the Railway Investigation Branch, from 1959 to 1978. He later worked as a Senior Narcotics Investigator for Customs and then for the Australian Federal Police, retiring in 1996 with the rank of Detective Superintendent.[18]

20. Mr Harrigan joined the Bondi Junction Waverley RSL NSW sub-Branch in 1987 and subsequently served as Secretary, Delegate to Eastern Metropolitan District Council and, from 2017, as President of his sub-Branch.[19]

21. Mr Harrigan was elected to the RSL NSW State Council in 2001. He served as an Eastern State Councillor from 2001 to 2008 and as a Metropolitan State Councillor from 2008 until 2017.[20]

22. During his time as a State Councillor Mr Harrigan served on a number of committees, including the FARM Committee.[21]

23. Mr Harrigan also served as a Director of RSL LifeCare from 25 November 2003 to 18 October 2005.[22]

24. On 20 October 2017, following a resolution, the RSL NSW State Council wrote to Mr Harrigan calling for his resignation.[23] On 27 October 2017 Mr Harrigan resigned as a State Councillor of RSL NSW.[24]

25. Mr Harrigan became a Life Member of the RSL in 2008.[25] He is the recipient of a number of awards and decorations including the National Medal in 1995; the Police Overseas Service Medal – Clasp Cyprus in 1996; and the Centenary Medal in 2001 for outstanding voluntary service to the welfare of veterans in New South Wales.[26]

Ian Henderson

26. Mr Henderson completed his National Service in 1955, following which he joined the Regular Army and was assigned to the Royal Australian Engineers. He was later seconded to the British Army in 1966 and was posted to Vietnam in 1971. Mr Henderson was then assigned to the Royal Australian Corps of Transport in 1973. He transferred to the Army Reserve in 1979 and retired in September 1986.

27. In 1991, Mr Henderson joined the Mosman RSL NSW sub-Branch. He has held positions as Committee member, Vice President and President, having been elected in 2006. He was also elected to the Northern Metropolitan District Council, where he held positions including Delegate and Secretary.[27]

28. Mr Henderson was elected to the RSL NSW State Council in 2004 and served as a State Councillor until 2016. He was also appointed as nominee director of RSL LifeCare from 2015 to 2016.[28]

29. Mr Henderson is the recipient of a number of awards and decorations, including the National Medal in 1977.[29]

William Humphreys

30. Mr Humphreys served in the Australian Regular Army from 1965 to 1974 including a posting to Vietnam. From 1975 to 1980 he served in the Army Reserve where he rose to the rank of Warrant Officer Class 2.

31. In his civilian life Mr Humphreys worked for General Motors Holden on the assembly line and in various roles as a driver, truck driver and haulier driver.

32. Mr Humphreys joined RSL NSW in 1969 and has been a member of the Kiama RSL NSW sub-Branch since 1980, where he has held the positions of Secretary, Vice President, President and trustee. He has been the Secretary/Treasurer and President of the RSL NSW Central Southern District Council.

33. Mr Humphreys was elected to the RSL NSW State Council in 2002 and served as a State Councillor until May 2017.

34. As a member of State Council, Mr Humphreys served on a number of committees including the FARM Committee.

35. Mr Humphreys served on the board of the Illawarra Diggers Aged & Community Care Board for over ten years including four years as Chairman.[30]

36. He also served as a director of RSL LifeCare from 27 October 2011 until 5 July 2017.[31]

37. Mr Humphreys became a Life Member of RSL NSW in 1996 and was recognised as ANZAC of the Year in 2011.[32] He is the recipient of a number of awards and decorations including the Order of Australia Medal in 2011 for service to veterans and their families through RSL NSW.[33]

Alan Hutchings

38. Mr Hutchings served in the Royal Australian Navy from 1964 to 1984, retiring with the rank of Warrant Officer Medical.

39. In 1993 Mr Hutchings joined the Howlong RSL NSW sub-Branch. In 1995 he was elected as Vice President and in 1999 he was elected as President. He served in that role until he stood down in February 2014. He was also active in the Far West District Council, serving as a Delegate in 2000, as Vice President from 2004 to 2011 and as President from 2011.

40. Mr Hutchings was elected as an RSL NSW State Councillor in May 2014.[34]

41. On 20 October 2017, following a resolution, RSL NSW State Council wrote to Mr Hutchings calling for his resignation.[35] On 27 October 2017 Mr Hutchings resigned as a Councillor of RSL NSW.[36]

42. Mr Hutchings was awarded Life Membership of RSL NSW in May 2015.[37] He is the recipient of a number of awards and decorations including the National Medal.[38]

Ronald (Ray) James

43. Mr James served in the Royal Australian Navy from 1965 to 1985 and thereafter in the Royal Australian Navy Reserve until 2014.[39]

44. Mr James joined the New South Wales State Rail Authority Transport Investigation Branch in 1985, which was absorbed into the NSW Police Force in 1988. Mr James was elevated to Sergeant in 1990 and was based at Liverpool and Campbelltown. In 1996 he moved to the Weapons Training Unit and in 2000 to the Sydney Olympic Athletes Village and then to the forensic procedures implementation team. He retired in 2005.[40]

45. Mr James joined RSL NSW in 1975. He has been a member of the Marrickville, Ingleburn and Campbelltown RSL NSW sub-Branches. Mr James became the Vice President of the Ingleburn sub-Branch in 2010 and President in 2011.

46. Mr James was elected as an RSL NSW State Councillor Metropolitan in 2014. He resigned as a State Councillor in January 2017. Mr James stood for re-election and in May 2017 he was elected State Vice President Metropolitan and continues as a serving State Councillor.[41] As a State Councillor, Mr James has served on a number of committees.[42]

47. Mr James became a Life Member of RSL NSW in 2016. He is the recipient of a number of awards and decorations including the National Medal in 1982; the National Medal 1st clasp and the National Medal 2nd clasp in 2006; the New South Wales Police Diligent and Ethical Service Medal; and the National Police Service Medal.[43]

Darren McManus-Smith

48. Mr McManus-Smith served in the Australian Army from 1989 to 1993.

49. Mr McManus-Smith joined RSL NSW in 1994. He has served in various positions within the Southlake Macquarie RSL NSW sub-Branch, including Secretary, President and trustee. In 1998 he was elected as delegate to the Hunter Valley District Council and has served as Treasurer and President of that District Council; from 2008 he was the delegate to the Central Coast District Council; and he was President of that District Council from 2009 until 2013.

50. Mr McManus-Smith was elected to the RSL NSW State Council in 2010.

51. Prior to his election as a State Councillor, Mr McManus-Smith was involved in a number of committees and positions for the RSL NSW State Branch, including as Recruiting Officer.

52. Mr McManus-Smith also undertakes work with the AFOF (NSW Division) and is on a number of RSL National Committees.[44]

53. On 12 October 2017, Mr McManus-Smith resigned from the RSL NSW State Council, which took effect on 17 October 2017.[45]

54. Mr McManus-Smith became a Life Member of RSL NSW in 2009. He has been awarded a number of awards and decorations, including the Order of Australia Medal in 2015 for service to veterans and their families.[46]

Robert Metcalfe

55. Mr Metcalfe served in Vietnam for one year in the Royal Australian Army Service Corps.

56. Mr Metcalfe joined the Lawson RSL NSW sub-Branch in 1981 and served as the Secretary from 1982 until 1983, before transferring to the RSL NSW Port Macquarie sub-Branch where he served as Treasurer from 2003 to 2006 and trustee from 2005 to 2008. In 2008 he transferred to the RSL NSW Kendall sub-Branch and has served there as Secretary and Treasurer. He was the delegate for the Lower North Coast District Council from 2008 until 2015.

57. Mr Metcalfe was elected to the RSL NSW State Council as a Northern Country State Councillor in 2008 and was elected as the State Vice President, Northern Country in May 2017.[47]

58. On 14 October 2017, Mr Metcalfe resigned from his position on the RSL NSW State Council, which took effect on 17 October 2017.[48]

59. Mr Metcalfe is the recipient of a number of awards and decorations.[49]

Anthony Toussaint

60. Mr Toussaint completed his national service between 1968 and 1970.

61. Mr Toussaint is a licenced building contractor and was a qualified licenced building works supervisor for the Department of Ageing and Disability.

62. Mr Toussaint joined the Merimbula RSL NSW sub-Branch in 1970, where he has served as Secretary and Trustee. In 1997 he was appointed as the Secretary/Treasurer of the Monaro & Far South Coast District Council.

63. He served on the RSL NSW State Council as the Monaro & Far South Coast State Councillor from 2001 until 2008 and as a Southern Country State Councillor from 2009 until 2013. He was elected State Vice President, Southern Country in 2014.[50]

64. On 20 October 2017, following a resolution, the RSL NSW State Council wrote to Mr Toussaint calling for his resignation.[51] On 27 October 2017 Mr Toussaint resigned as a State Councillor of RSL NSW.[52]

65. In 2008, Mr Toussaint was awarded Life Membership of RSL NSW. He is the recipient of a number of awards and decorations including the ANZAC of the Year Award in 2012.[53]

RSL NSW Officer Witnesses

Robyn Collins

66. On 1 August 2017, Ms Collins was appointed as the General Manager of RSL NSW.[54] Her focus in this role includes reforming RSL NSW's finance system, modernising its IT and software and improving governance.[55]

67. Ms Collins holds a Bachelor of Economics degree from the University of Sydney and a Diploma in Journalism. She was employed by the CBA from 1979 to 1994, holding positions such as Senior Manager, Government Affairs and Senior Manager Training. In 1996 she worked as a freelance journalist, writer and consultant and from 1997 until 2012 she worked for Learning Links as General Manager Marketing & Fundraising and from December 2008 as General Manager Business Services.

68. In August 2012, Ms Collins was appointed as General Manager of RSL DefenceCare;[56] and from early 2017 she has acted as General Manager of RSL WBI.[57]

Annette Mulliner

69. The late Ms Mulliner served as the State Secretary/Chief Financial Officer of RSL NSW and a director of RSL LifeCare. Her background is outlined in Chapter 5.

Christopher Perrin

70. Mr Perrin served as the State Secretary/Chief Executive Officer of RSL NSW and a trustee of RSL WBI. His background is outlined in Chapter 5.

Glenn Kolomeitz

71. Mr Kolomeitz served in the Australian Army from 1986 to 1996. He served in both permanent and then reserve capacities within the Royal Australian Air Force from 1996 until 2000. From 2000 until 2007 he was a Military Police Officer in the Australian Army Reserves.

72. Mr Kolomeitz joined the New South Wales Police Force in 1998 until 2003. He obtained a Bachelor of Law in 2003. He served as an officer, a police prosecutor, counsel assisting the coroner and as a counter terrorism legal adviser/analyst. From October 2005 until October 2006 he was the defence policy adviser for the Australian Labor Party.

73. From 2007 until 2010 Mr Kolomeitz was a legal officer with the Australian Army. Mr Kolomeitz completed tours of East Timor and Afghanistan. From 2010 until 2013 he was a prosecutor.

74. Mr Kolomeitz has obtained a Master of International Law (2006); Master of Defence Studies (2007); Master of Justice, Intelligence (2008); Master of Business Administration (2017) and Master of Fraud & Financial Crime (2017) as well as a number of graduate certificates and diplomas.

75. In 2013 Mr Kolomeitz was an Australian Labor Party senate candidate for the 2013 Federal election and in 2015 he was the Labor candidate for Kiama in the 2015 NSW State election.

76. From 2011 until 2016, Mr Kolomeitz was the director of Veritas Intelligence and Investigations Pty Ltd, a corporate investigations firm. Since 2014 Mr Kolomeitz has been the principal of Glenn Kolomeitz Lawyers, which describes itself as a legal practice for veterans and defence members.

77. Mr Kolomeitz was the CEO and State Secretary of RSL NSW from September 2015 until May 2017; and a trustee of RSL WBI from September 2015 to May 2017.[58]

78. Mr Kolomeitz is a member of the Gerringong RSL NSW sub-Branch and has served in executive positions including as President.[59]

79. Mr Kolomeitz is the recipient of a number of awards and decorations.[60]

Current RSL NSW State Councillors

80. The current RSL NSW State Council comprises Mr Brown as President; Mr Philip Chin as Treasurer; Mr James as Vice President Metropolitan; Mr Michael Bainbridge as Vice President Southern Country; and Mr Brad Copelin, Ms Sandra Lambkin and Messrs Greg Makutu, Scott Seccombe and Bryan Slattery as State Councillors.

81. The background of Mr Brown is outlined in Chapter 11 and the background of Mr James has been outlined above.

Philip Chin

82. Mr Chin is a current serving member of the Australian Army Reserve, Royal Australian Army Pay Corps, having enlisted in 2007. He is 34 years of age.

83. Mr Chin holds a Bachelor of Commerce (Accounting and Finance) and a Master of Risk Management (Business Operations). He is a member of the Certified Practicing Accountants Australia (CPA). He is a manager with the Australian Trade Commission (Austrade), responsible for the risk management of the export market development grants program. He was previously an assistant director at the Australian Taxation Office.

84. Mr Chin has been a member of the Taxation RSL NSW sub-Branch since 2013. He has held the position of Honorary Treasurer within that sub-Branch.[61]

85. Mr Chin was elected as Treasurer of RSL NSW on 19 September 2017.[62]

Michael Bainbridge

86. Mr Bainbridge served in the Australian Army from 2002 until 2011. Mr Bainbridge served with Special Forces and the Commando Regiment and earned his Green Beret. He completed a tour of East Timor and four tours of Afghanistan.

87. Mr Bainbridge is currently enrolled in a law and commerce degree at Wollongong University. He volunteers for a law firm assisting in the pro-bono representation of veteran and ex-service persons.

88. Mr Bainbridge is a member of the Gerringong RSL NSW sub-Branch.[63]

89. Mr Bainbridge was elected as Vice President of the State Council on 24 May 2017 at age 32.[64]

Brad Copelin

90. Mr Copelin served in the Australian Army from 1987 until 1996 as an Infantryman, with the Military Police and as a Recruit Instructor. In 1996 Mr Copelin transferred to the Army Reserve and joined the Victorian Police. In 2001 Mr Copelin returned to the Australian army until 2011, serving in Military Police Stations and the Defence Prison. He rose to the rank of Warrant Officer in Charge, Advanced Military Police Training. He was deployed to the Solomon Islands and Afghanistan.

91. Mr Copelin owns and operates Learning & Development Solutions, a business specialising in Recognition of Prior Learning assessments for current and former military personnel. The business is a Corporate Supporter of RSL DefenceCare.

92. Mr Copelin is the Honorary Secretary of the Engadine RSL NSW sub-Branch. He is the recipient of a number of awards and decorations.[65] He was elected as a State Councillor on 24 May 2017.[66]

Sandra Lambkin

93. Mrs Lambkin served in the Women's Royal Australian Naval Service from 1968 until 1971.

94. In civilian life, Mrs Lambkin has worked both as a florist and for the Northern Territory Police and the New South Wales Police.

95. Mrs Lambkin joined the Alice Springs RSL SA sub-Branch in 1980 and transferred to the Tamworth RSL NSW sub-Branch in 1982, where she has served as Secretary and Vice President. She was President of the New England District Council from 2013 until 2017.

96. Mrs Lambkin has been awarded Life Membership of RSL NSW.[67] She was elected as a State Councillor on 24 May 2017.[68]

Greg Makutu

97. Mr Makutu served in the New Zealand Defence Force from 1980 until 2002 primarily in management and logistics.

98. Mr Makutu holds a Bachelor of Administrative Leadership, an Executive Master of Public Administration and numerous diplomas in management and administration. Mr Makutu is the Manager of the Department of Internal Affairs for the New Zealand Consulate.

99. Mr Makutu was awarded the Queens Service Medal for services to the Maori community and veterans.[69] He was elected as a State Councillor on 24 May 2017.[70]

Scott Seccombe

100. Mr Seccombe served in the ADF from 1991 until 1999 as a Combat Engineer in Malaysia, Singapore, Sarawak, United Kingdom, Canada and Bosnia.

101. Mr Seccombe works in a self-employed capacity in a number of areas, including corporate team building and skirmish; private investigation and debt collection; and public speaking. He also owns and operates a martial arts school.

102. Mr Seccombe is a member of the Coffs Harbour RSL NSW sub-Branch and serves as the Parade Marshall. Mr Seccombe is also the President of the Veterans' Centre Mid North Coast.[71] He was elected as a State Councillor on 24 May 2017.[72]

Bryan Slattery

103. Mr Slattery served in the Australian Army during the Vietnam War.

104. Mr Slattery is a member of the Mosman RSL NSW sub-Branch and has held executive positions, including Treasurer. He was elected as a State Councillor on 24 May 2017.[73]

RSL WBI

105. Until September 2017, the trustees of RSL WBI were those holding the offices from time to time of President, Treasurer and State Secretary/CEO of RSL NSW.[74] Changes have recently been made to the WBI Rules to broaden the category of persons eligible to be appointed as a trustee.[75]

Current RSL WBI Trustees

106. The current trustees of RSL WBI are Messrs Brown and Geoffrey Evans and Ms Del Gaudry. Mr Brown's background is outlined in Chapter 11.

Geoffrey Evans

107. Mr Evans served in the Australian Army from 1994 until he was wounded in action in Afghanistan on 22 December 2010. Mr Evans rose to the rank of Lieutenant. He also served as Senior Fire-Fighter with Fire and Rescue NSW.

108. Mr Evans holds a Bachelor of Arts, International Relations and Affairs. He is the CEO of Team Rubicon Australia, which trains veterans to act as emergency responders to natural disasters.

109. Mr Evans serves as the Contemporary Veterans Advisor to RSL LifeCare and was the founder of Homes for Heroes. In 2014 he was appointed to the Prime Ministerial Advisory Council on Veterans' Mental Health.[76] He was appointed as a trustee of RSL WBI in February 2017.[77]

Del Gaudry

110. Ms Gaudry is a serving Royal Australian Air Force (RAAF) Squadron leader.[78] She works as an Air Force Coach and as a member of Support – Air Force. She recently held positions in the RAAF as a Staff Officer implementing UNSCR 1325 "Women, Peace and Security"; and as a coordinator of the Women's Integrated Network Groups.

111. Ms Gaudry is a member of the Penrith RSL NSW sub-Branch and a director of Penrith RSL Club.[79] She was appointed as a trustee of RSL WBI on 17 October 2017.[80]

RSL LIFECARE

RSL LifeCare Director Witnesses

112. The following RSL NSW State Councillors referred to above were appointed to the Board of RSL LifeCare: Messrs Brown, Carlson, Crosthwaite, Haines, Hardman, Harrigan, Humphreys, Rowe and White. Ms Mulliner was also appointed as a director of RSL LifeCare. Their backgrounds have been outlined above. The additional directors who gave evidence were as follows.

113. The background of Mr Cannings, who also served as the Honorary Legal Advisor to RSL NSW and RSL LifeCare, is outlined in Chapter 5.

114. The backgrounds of Messrs Longley and Riddington are outlined in Chapter 5.

Andrew Condon

115. Mr Condon is the current Chairman of the Board of RSL LifeCare. His background is outlined in Chapter 11 in the context of considering the rebuilding in which RSL LifeCare has recently been engaged.

Graham Kells

116. Mr Kells graduated from the Royal Military College at Duntroon in 1969 and served as a Platoon Commander in Vietnam, for which service he was awarded the Military Cross in 1972. He also served in Malaysia, Germany and Oman. He was the Commander of the Army's Logistic Support Group and the Senior Staff Operations Officer of the Field Army prior to leaving the Army in 1987. Mr Kells rose to the rank of Lieutenant Colonel.

117. Mr Kells' civilian career was in financial services. It included senior management positions with ANZ Funds Management, CBA Financial Services and SMA Consultants. He then established his own company, PSP Solutions Pty Ltd, consulting in actuarial and superannuation services.

118. Mr Kells is a member of the RSL NSW Mosman sub-Branch and served as its Vice President for approximately 20 years.[81]

119. He served as a director and Treasurer of RSL LifeCare from 1 July 2001 until his resignation on 5 July 2017.[82]

120. In addition to the Military Cross, Mr Kells was awarded the National Medal in 1981.[83]

Susanne Macri

121. Dr Macri is a registered nurse and certified midwife. She is a Fellow of the Australian College of Nursing.

122. Dr Macri was in senior management within the private hospital industry and a surveyor with the Australian Council on Healthcare Standards. In 1987 she commenced working in the aged care industry.

123. In 1994 Dr Macri was the chair of the Macri panel of experts on nursing home documentation and accountability, reporting to the Honourable Dr. Carmen Lawrence, the former Minister for Human Services and Health. In 2006 she was appointed to the National Review of Nursing Education Taskforce. In 2010 and 2011 Dr Macri was an Associate Commissioner working on the Productivity Commission's Inquiry into Caring for Older Australians. She was also on the board of The Royal District Nursing Service (Melbourne).

124. Dr Macri provides consultancy and project work in health and aged care. She served as a director on the board of LifeLine MidCoast NSW and Garden Village Port Macquarie.

125. In 2007, Dr Maci was awarded an Honorary Doctorate from the Australian Catholic University.[84]

126. Dr Macri was appointed as an advisor to the Board of RSL LifeCare in 1998.[85] She served as a director of RSL LifeCare from 1 July 2001 until 27 October 2016.[86]

127. Dr Macri was awarded the Member of the Order of Australia in 2007 for service to the community in the area of aged care, particularly in the review and development of industry standards, accreditation and future management practice and to nurse education and training.[87]

Allan Murray

128. Mr Murray entered the Royal Military College Duntroon in 1979 and graduated into the Royal Australian Army Ordinance Corps. In 2000, he transferred from the Regular Army to the Army Reserve, having risen to the rank of Brigadier. Mr Murray was a member of the Hornsby RSL NSW sub-Branch.[88] However at the time that he gave his oral evidence at the Inquiry, he was no longer a member of an RSL NSW sub-Branch.

129. Mr Murray holds a Bachelor of Arts from the University of New South Wales through the Royal Military College Duntroon and a Bachelor of Business through the University of Southern Queensland. He also holds a Master of Business degree from RMIT University.

130. Mr Murray was deployed overseas during his Regular Army Service in Syria and South Lebanon as a United National Military Observer. In early 2011 he was appointed the Honorary Aide-de-Camp to the Governor General. He received the Conspicuous Service Medal in 2009 for his work in implementing the Army Reserve Regional Command and Control Initiative for the 2nd Division of the Australian Army.[89]

131. Mr Murray's civilian career included work as a logistics consultant with clients such as the Sydney Organising Committee for the Olympic Games; work with the Australian Bureau of Statistics and Westpac Bank; and establishing a family company which operates an accommodation business. Other volunteer appointments held by him include as Chairman of the Logistics Association of Australia Ltd and Director of SMART Conferences Pty Ltd.[90]

132. Mr Murray was a director of RSL LifeCare between 17 April 2015 and 30 November 2017.[91]

RSL LifeCare Officer Witnesses

Mark Broadhead

133. Mr Broadhead was appointed as General Manager Finance and Administration in 2009 and subsequently as CFO. He is a qualified accountant.[92]

134. From time to time, Mr Broadhead has acted as the Company Secretary of RSL LifeCare.[93]

Peter Ham

135. Mr Ham was the financial controller of RSL LifeCare from 2001 until March 2010, reporting to Mr Thompson.[94]

Ronald Thompson

136. Mr Thompson is the CEO of RSL LifeCare. His background is outlined in Chapter 5.

Current RSL LifeCare Directors

137. The current directors of RSL LifeCare are Messrs Condon (Chairman), Brown, Bruce Bailey, Nathan Jacobsen, Ms Samantha Challinor and Ms Kristine Hume.[95]

138. The backgrounds of Messrs Condon and Brown are outlined in Chapter 11.

Bruce Bailey

139. Mr Bailey is a chartered accountant, chartered tax adviser and a registered company auditor. He recently obtained a Master of Public Health.

140. Mr Bailey is founding director of PrideLiving Group, a specialist consultancy business providing services to the Aged and Disability sectors. He was previously a partner with RSM Australia as National Head of the Aged Care and Retirement Advisory practice and continues as a consultant to RSM Australia.[96]

141. Mr Bailey was appointed as a director of RSL LifeCare on 30 November 2017.[97]

Samantha Challinor

142. Ms Challinor is a certified practising accountant.

143. Ms Challinor is a director of Sydney North Primary Health Network and is the executive manager of the Agency for Clinical Innovation, NSW Health. She was previously the general manager corporate and operations at Sydney North Health Network; the deputy CEO and executive general manager at Sydney North Shore and Beaches Medicare Local; and a business consultant at Lexmark International (Australia) Pty Ltd.[98]

144. Ms Challinor was appointed as a director of RSL LifeCare on 30 November 2017.[99]

Kristine Hume

145. Ms Hume holds a Master of Business Management.

146. Ms Hume is an associate of Co-Design Network, a consultancy service which facilitates contract and tender development; quality, policy and patient

safety; community health organisational reviews; and the implementation of translational clinical and operational research and evidence based best practice. Ms Hume is also a board member of the Northern Metropolitan Cemeteries Trust.

147. Ms Hume has previously served as CEO at Sydney North Shore & Beaches Medicare Local; executive general manager at Royal District Nursing Service Group (where she established the community service operations for veterans); and homecare and general manager of BrightSky Australia which included fundraising management.[100]

148. Ms Hume was appointed as a director of RSL LifeCare on 27 October 2016.[101]

Nathan Jacobsen

149. Mr Jacobsen served in the Royal Australian Navy from 1992 until 2000 and in the active Navy Reserve in 2002. He has been a member of RSL NSW since 2015 and was a member of the Hyde Park Inn Board in 2015 and 2016.

150. Mr Jacobsen holds a Bachelor of Science, a Graduate Certificate in Management and a Master of Business Systems. He is the general manager at Perpetual Limited, having previously served as the general manager of native title trusts and investments and the general manager of advice operations of Perpetual Limited.[102]

151. Mr Jacobsen was appointed as a director of RSL LifeCare on 31 July 2017.[103]

ENDNOTES

[1] Ex 41, p 1.
[2] Tr 1387.
[3] Ex 41, pp 1 - 4.
[4] Tr 1351.
[5] Ex 41, p 4.
[6] Tr 1389 - 1390; Ex 41, pp 1 - 4.
[7] Ex 41, p 6.
[8]Ex 20, Vol 2, p 518.
[9] Tr 555.
[10] Ex 1, Vol 4, p 778.
[11] Ex 41, p 14.
[12] Ex 8, Vol 2, Tab 6, pp 150 - 151.
[13] Tr 644; Ex 8, Vol 2, Tab 6, p 151.
[14] Ex 8, Vol 2, Tab 6, pp 151 - 152.
[15] Ex 1, Vol 4, p 777.
[16] Ex 8, Vol 2, Tab 6, p 151.
[17] Ex 41, p 16.
[18] Ex 41, p 24.
[19] Tr 1120; Ex 41, p 25.
[20] Ex 41, p 27.
[21] Ex 41, pp 25, 27.
[22] Ex 1, Vol 4, p 779.
[23] Ex 35, p 12.
[24] Ex 47, p 5.
[25] Ex 41, p 25.
[26] Ex 41, pp 28 - 30.
[27] Ex 41, p 37.
[28] Tr 1537, 1553 - 1554, 1546.
[29] Ex 41, p 35.
[30] Ex 8, Vol 2, Tab 7, pp 90 – 92; Ex 41, p 36.
[31] Ex 1, Vol 4, p 777.
[32] Ex 8, Vol 2, Tab 7, p 92.
[33] Ex 41, p 37.
[34] Ex 41, p 38.
[35] Ex 35, p 12.
[36] Ex 47, p 5.
[37] Ex 41, p 39.
[38] Ex 41, p 38.
[39] Ex 41, p 41.
[40] Tr 1616 - 1617.
[41] Tr 1614 - 1615; Ex 41, pp 41 – 42.
[42] Ex 13, p 282.
[43] Ex 41, pp 41 - 47.
[44] Ex 41, pp 48 - 50.
[45] Ex 35, pp 126 – 127.
[46] Ex 41, pp 49 - 52.
[47] Ex 41, pp 53 - 54; Tr 1561 - 1562.
[48] Ex 35, p 128.
[49] Ex 41, p 53.
[50] Ex 41, p 64 - 65.
[51] Ex 35, p 12.
[52] Ex 47, p 5.
[53] Ex 41, p 64.
[54] Tr 2787.
[55] Ex 25, Vol 1, p 64.
[56] Ex 25, Vol 1, pp 81 – 83; Ex 41, pp 109 - 111.

[57] Tr 2795 - 2796, 3326.
[58] Ex 41, p 71.16.
[59] Ex 18, p 197.
[60] Ex 41, p 71.19.
[61] Ex 41, p 71.4.
[62] Ex 47, p 79.
[63] Ex 41, p 71.5; Ex 47, p 80.
[64] Ex 34, p 6.
[65] Ex 41, pp 71.6 - 71.8.
[66] Ex 34, p 6.
[67] Ex 41, p 71.9.
[68] Ex 34, p 6.
[69] Ex 41, pp 71.12 - 71.14.
[70] Ex 34, p 6.
[71] Ex 41, p 71.15.
[72] Ex 34, p 6.
[73] Ex 34, p 6.
[74] Ex 40, Vol 3, p 1134.
[75] Ex 35, p 10.
[76] Ex 41, pp 112.1 - 112.2.
[77] Ex 34, p 10.
[78] Ex 35, p 122.
[79] Ex 41, p 112.4.
[80] Ex 47, p 91.
[81] Ex 41, pp 97, 101.
[82] Ex 1, Vol 4, p 777.
[83] Ex 41, p 102.
[84] Ex 41, pp 83, 103 - 104.
[85] Tr 385.
[86] Ex 1, Vol 4, pp 777 - 778.
[87] Ex 41, p 106.
[88] Ex 41, p 99.
[89] Tr 2120 - 2121.
[90] Ex 41, p 99.
[91] Ex 1, Vol 4, p 774.
[92] Tr 891.
[93] Ex 1, Vol 4, p 775.
[94] Tr 1064.
[95] Ex 47, p 145.
[96] Ex 47, p 11.
[97] RSL LifeCare Submissions in relation to the status of reforms, dated 5 December 2017, p 3, par 5.2.
[98] Ex 47, p 12; Ex 41, p 112.6.
[99] RSL LifeCare Submissions in relation to the status of reforms, dated 5 December 2017, p 3, par 5.1.
[100] Ex 41, p 112.15.
[101] Ex 1, Vol 4, p 774.
[102] Ex 41, pp 112.19 - 112.21.
[103] Ex 1, Vol 4, p 775.

APPENDIX F: LIST OF FUNDRAISING APPEALS CONDUCTED BY OR ON BEHALF OF RSL LIFECARE DURING THE PERIOD 5 FEBRUARY 2015 TO 30 JUNE 2017

Date and Duration	Title of Fundraising Appeal
5 February 2015 to 13 June 2015	Giving Back – Helping our Homeless Vets
11 March 2015 to 24 March 2015	100km Walk for the CBR100 Challenge
24 March 2015 to 16 May 2015	2015 Half Marathon
28 March 2015	Election Day Cake Stall at 90 Veterans Parade Narrabeen
24 March 2015 to 4 June 2015	Young Veterans Homelessness Program
10 May 2015	Team France – City to Surf
3 August 2015	Walking City to Surf for Homes for Heroes
7 July 2015	Team France – City to Surf
7 August 2015 to 30 August 2015	City to Surf
18 August 2015 to 30 June 2015	Homeless Veterans to Lobuche East Expedition
31 October 2015	Spooks Fright Night
27 August 2015 to 1 October 2015	Australian Clearance Diving Team – Blackmores Half Marathon – Bomb Suit
1 September 2015 to 17 October 2015	Exercise Stone Pillow Sleepout
16 October 2015 to 30 November 2015	Operational Support Squadron, 6th Engineer Support Regiment
11 December 2015 to 6 February 2016	Save a Warrior Challenge
14 December 2015 to 7 January 2016	Ultramarathon – Michael Le Serve
30 December 2015 to 25 March 2016	Roll the Dice Charity Ride for Homeless Veterans
25 April 2016 to 6 May 2016	ANZAC Day Fun Day
18 February 2016 to 23 March 2016	Escape Trekking Adventures – Mud, Sweat and Tears
14 April 2016 to 21 April 2016	Kikki K Charity Event
2 April 2016	Blues and BBQ Festival
25 February 2016	Reconnect
19 March 2016 to 1 April 2016	Penrith RSL Sub-Branch Penrith Festival Stall
21 April 2016 to 31 May 2016	The Bush Verse

1 January 2016 to 30 September 2016	IGT – Workplace Fundraising
17 February 2016 to 31 August 2016	RSL & Services Clubs Honour our Heroes Relay Walk
5 July 2016 to 10 October 2016	Aviation Firefighters Walking for Heroes
1 April 2016 to 30 July 2016	Red Poppy Ball, Narooma RSL Sub-Branch
1 September 2016 to 17 October 2016	60th in Memory of Simon Bromley
4 August 2016 to 30 November 2016	Rock for Heroes Benefit Day
24 October 2016	Liberating Horse and Hero
1 February 2017 to 19 March 2017	Homeless Veterans Ride
4 March 2017 to 3 June 2017	PTSD Mastering the Murray
20 August 2016	Rugby Union Grand Final

AUTHORITY TO FUNDRAISE FOR CHARITABLE PURPOSES

Charitable Fundraising Act 1991

Number **CFN15124**

This is to certify that

Returned Services League of Australia (New South Wales Branch)

is on and from **13th August 2006**

the holder of an authority under the provisions of Section 16 of the Charitable Fundraising Act, 1991, subject to compliance with—

- the Charitable Fundraising Act 1991;
- the Charitable Fundraising Regulation 2003;
- the Authority Conditions attached as Annexure A.

This authority remains in force until **12th August 2011** unless sooner revoked.

This authority is granted so as to authorise an indefinite number of appeals.

The authority conditions attached as Annexure A may be varied by notice in writing.

This authority is **Not Transferable.**

under delegation from the Minister

Office of Charities
Department of Gaming and Racing

ANNEXURE A

AUTHORITY CONDITIONS
SECTION 19, CHARITABLE FUNDRAISING ACT 1991

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Department of Gaming and Racing
ABN 17 316 647 277
Office of Charities
Level 7, Corner Hay & Castlereagh Streets, Sydney
GPO Box 7060 Sydney 2001
Phone: (02) 9995 0666 Facsimile: (02) 9995 0611
Email: charity.inquiries@dgr.nsw.gov.au Website: www.dgr.nsw.gov.au

FUNDRAISING AUTHORITY CONDITIONS - ANNEXURE A

Definitions

In these authority conditions:

authority holder means a person or organisation that holds an authority to fundraise under section 16 of the Act.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

the Act means the Charitable Fundraising Act 1991.

trader means a person so described in section 11 of the Act.

SCHEDULE 1—CONDITIONS APPLYING TO AUTHORITIES

1 Compliance with best practice guidelines

As far as practicable, the authority holder should observe the relevant or appropriate best practice described in the publication Best Practice Guidelines for Charitable Organisations. Alternative practices may be employed where they provide similar standards of accountability.

2 Internal controls

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

3 Safeguarding of assets

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

4 Maintenance of proper books of account and records

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account) held with a bank, building society or credit union, or with any other institution, or institution of a class, prescribed under section 20 (6) of the Act, into which the gross income obtained from any fundraising appeal is deposited or invested,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

5 Report on outcome of appeal or appeals

(1) An authorised fundraiser that is an unincorporated organisation must send a section 23 return to the Minister:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $20,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send a section 23 return to the Minister within one month after the close of each appeal conducted by the person.

(3) In this clause, ***section 23 return*** means a return referred to in section 23 of the Act.

6 Maintenance of an account

(1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20 (6) of the Act must include the name of the authorised fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20 (6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be by cheque drawn on the account, unless the particular conditions of the authority otherwise provide.

7 Annual financial accounts

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) a statement of financial performance (also known as a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of all fundraising appeals conducted during the financial year, and

(b) a statement of financial position (also known as a balance sheet) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the statement of financial performance and the statement of financial position if, in the financial year concerned, the gross income obtained from any fundraising appeals conducted by it exceeds $20,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement:

(i) that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied, and

(ii) that distinguishes between amounts spent on direct services in accordance with the charitable objects or purposes for which the authority was granted, recurrent costs of administration and any other significant purposes (including transfers to reserves or accumulated funds),

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged,

(e) a list of all forms of fundraising appeals conducted by the authorised fundraiser during the period covered by the financial statements,

(f) the following comparisons (expressed in each case both as a monetary figure and as a ratio or percentage):

(i) a comparison of the total costs of fundraising to the gross income obtained from fundraising,

(ii) a comparison of the net surplus from fundraising to the gross income obtained from fundraising,

(iii) a comparison of the total costs of services provided by the authorised fundraiser to the total expenditure,

(iv) a comparison of the total costs of services provided by the authorised fundraiser to the gross income received.

(3) The statement of financial performance for fundraising appeals must show:

(a) the aggregate gross income received, and

(b) the total expenditure associated with all fundraising appeals, and

(c) the net operating surplus or deficit.

(4) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the statement of financial performance gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the statement of financial position gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation, and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(5) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(6) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

(7) The requirements of this clause do not oblige an authorised fundraiser that is an organisation to reproduce information that is already contained in its annual financial statements, but merely require the information to be separately itemised or to be shown as notes to its statement of financial performance or its statement of financial position.

(8) The requirements of this clause are subject to the particular conditions of the authority concerned.

8 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 40 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

(3) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

9 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account established at a bank, building society or credit union, or at any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, or

(e) the particular conditions of the authority provide otherwise.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into a bank, building society or credit union, or into any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

(8) For the purposes of this clause, a receipt is taken to include a ticket.

10 Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

11 Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

(1) This clause applies when an authorised fundraiser authorises a member, employee or agent as mentioned in section 9 (1) (b) of the Act.

(2) The authorisation given by an authorised fundraiser to a person who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector:

(a) must be in writing, and

(b) must include the person's name, and

(c) must include the terms and conditions under which the authorisation is granted, and

(d) must include a description of the appeal or appeals to be undertaken, and

(e) must indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and

(g) must be recovered by the authorised fundraiser from the person as soon as the person's authorised involvement in the appeal has ended.

(3) The authorisation given by an authorised fundraiser to a person who participates in a fundraising appeal as a face-to-face collector:

(a) must be in the form of an identification card or badge, and

(b) must be consecutively numbered, and

(c) must include the name of the authorised fundraiser and a contact telephone number, and

(d) must include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, must include the words "paid collector" and the name of the collector's employer, and

(f) must indicate its issue and expiry dates, and

(g) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and

(h) must be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(i) must be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(4) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of subclause (2) (f) or (3) (g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(5) Despite subclause (3), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist (being community service organisations) of a

member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

12 Participation of children in fundraising appeals

Children may be authorised to participate in a fundraising appeal only if:

(a) in the case of children who do not receive any wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):

(i) the child has attained the age of 8 years, and

(ii) Part 1 of Schedule 2 is complied with, and

(b) in the case of children who receive wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):

(i) the child has attained the age of 13 years, and

(ii) Parts 1 and 2 of Schedule 2 are complied with.

13 Fundraising through telemarketing

If a fundraising appeal is conducted by soliciting through means of a telephone, the authorised fundraiser conducting the appeal must ensure that it is conducted in accordance with Part C of the *ADMA Code of Practice* published by the Australian Direct Marketing Association Limited, dated November 2001 (or its successor).

14 Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

15 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

16 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal:

(a) must clearly and prominently disclose the name of the authorised fundraiser, and

(b) must be conducted in accordance with decency, dignity and good taste, and

(c) must be based on fact and must not be false or misleading, and

(d) must conform strictly to the provisions of any relevant law.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in subclauses (3) (a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader operates for purposes of the appeal, and the details of the trader's normal place of business, telephone and facsimile numbers, and e-mail and website addresses, and

(ii) details of the basis on which the benefit to be received by the authorised fundraiser is to be calculated or provided (*not* to be expressed as a percentage of the "net" income obtained from the appeal), and

(iii) details of the extent of the benefit to be obtained by the trader from the appeal (*not* to be expressed as a percentage of the "net" income obtained from the appeal), and

(iv) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in subclause (3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in subclause (3) (a) (ii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in paragraph (a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of this clause do not apply in relation to a notice referred to in clause 17 (1) (e) (i) or (3) (a).

17 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin,

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the Department of Gaming and Racing, that bears the Department's logo and the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal,

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal,

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in subclause (4), and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or the Department of Gaming and Racing, that bears the Department's logo and the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in subclause (4).

(4) For the purposes of subclauses (2) (c) (i) and (3) (b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:

COMMERCIALLY OPERATED	CHARITY OPERATED

18 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

19 Lotteries and games of chance

If a fundraising appeal involves a lottery or game of chance, in addition to complying with the requirements of the Act and the conditions of the authority, the authorised fundraiser must also comply with the provisions of the *Lotteries and Art Unions Act 1901* and any regulations under that Act.

20 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated (*not* to be expressed as a percentage of the "net" income obtained from the appeal), and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, unless provided for otherwise by a condition attached to the authority,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

21 Management

If the authorised fundraiser is an organisation:

(a) it must be administered in relation to its fundraising activities by a governing body of not fewer than 3 persons, and

(b) all business transacted by the governing body in relation to its fundraising activities must be properly recorded in the organisation's minutes.

22 Circumstances under which records may be kept at a place other than registered office

Records may be removed from the authorised fundraiser's registered office for either of the following reasons:

(a) to be taken into the custody of the auditor for purposes of audit,

(b) any other purpose required by law or by a condition of the authority.

23 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

24 Internal disputes

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

25 Complaint handling mechanism

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

26 Retention of records

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 5 years.

27 Soliciting from occupants of motor vehicles

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this clause:

road means a road within the meaning of the *Road Transport (General) Act 1999* (other than a road that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

SCHEDULE 2—CONDITIONS RELATING TO PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

PART 1—GENERAL

1 Application of this Part

(1) In this Schedule:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means:

(a) a parent, step parent or guardian of the child, or

(b) a person who has for the time being parental responsibility for the child.

(2) This Part prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(3) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

2 Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

FUNDRAISING AUTHORITY CONDITIONS - ANNEXURE A

3 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

4 Working in pairs

Child participants must work at least in pairs.

5 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant are not put at risk.

6 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

7 Entry of private homes, and dealing with persons in motor vehicles, prohibited

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

8 Hours of participation

(1) A child participant may not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

9 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Part without receiving a minimum break of 12 hours.

10 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

11 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

12 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

13 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child,

when the child is travelling home after his or her participation in the appeal is finished.

(2) This clause does not apply:

(a) if the child is more than 12 years old, and

(b) if the distance to the child's home is less than 10 kilometres, and

(c) if public transport is available, and

(d) if the journey is to be completed within daylight hours.

14 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

15 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

PART 2—ADDITIONAL REQUIREMENTS—IF CHILD RECEIVES A WAGE OR OTHER BENEFIT

16 Application of this Part

This Part prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

17 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee.

18 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any),

(b) the child's date of birth,

(c) a description of the nature of the employment,

(d) details of any consent provided by the child's parents (any written documentation to be retained),

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

NSW GOVERNMENT | Communities
Office of Liquor, Gaming & Racing

Charitable Fundraising Authority

15124

This document certifies that

Returned Services League Of Australia (New South Wales Branch)

holds a charitable fundraising authority under section 16 of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2008* and the conditions attached as Annexure A.

This authority is in force from 13/08/2011 until 12/08/2016 unless surrendered or revoked earlier. It is not transferable.

By delegation from the Minister administering the *Charitable Fundraising Act 1991*

11/08/2011

NSW GOVERNMENT | Communities
Office of Liquor, Gaming & Racing

ANNEXURE A

AUTHORITY CONDITIONS

Definitions

In these authority conditions:

a receipt is taken to include a ticket.

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

SCHEDULE 1

PART 1 – GENERAL CONDITIONS

1 ***Internal controls***

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2 ***Safeguarding of assets***

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3 ***Maintenance of proper books of account and records***

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4 *Report on outcome of appeal or appeals*

(1) An authorised fundraiser that is an unincorporated organisation must send to the Minister a return referred to in section 23 of the Act:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $100,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send to the Minister, within one month after the close of each appeal conducted by the person, a return referred to in section 23 of the Act.

5 *Maintenance of an account*

(1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20(6) of the Act must include the name of the authorised fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

6 *Annual financial accounts*

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

7 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

9 *Record systems for items used in fundraising appeals*

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10 *Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser*

(1) The authorisation given by an authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing, and

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted, and

(d) include a description of the appeal or appeals to be undertaken, and

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body).

(2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer, and

(f) indicate its issue and expiry dates, and

(g) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(h) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10 (1)(f) or (2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(2), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary, Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

11 Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine, the website or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12 Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the normal place of business, the telephone number, the facsimile number, the e-mail address and the website address of the trader or person, and

(iii) the benefit to be received by the authorized fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product, and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal, and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3)(a)(ii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1)(e)(i) or (3)(a).

15 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the NSW Office of Liquor, Gaming and Racing (OLGR), that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4)

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or OLGR, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:



16 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product) and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18 Management

(1) If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than 3 persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

(2) If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19 ***Circumstances under which records may be kept at a place other than registered office***

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to OLGR.

20 ***Conflicts of interest***

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may arise involving a member of the governing body or an office-holder or employee of the organisation.

21 ***Internal disputes***

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22 ***Complaint handling mechanism***

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23 ***Retention of records***

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 3 years.

24 ***Soliciting from occupants of motor vehicles***

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means a road within the meaning of the *Road Transport (General) Act 2005* (other than a road that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road related area that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25 ***Definitions***

In this Part:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

26 **Participation of children in fundraising appeals**

(1) A child must not participate in a fundraising appeal if the child has not attained the age of 8 years

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child has not attained the age of 13 years.

Division 2 – General Conditions where children participate in fundraising appeals

27 *Application of this Division*

(1) This Division prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(2) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

28 *Parental consent and contact*

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29 *Supervision*

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30 *Working with other children*

A child participant must work with at least one other child participant.

31 *Endangering of child*

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32 *Insurance*

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33 *Prohibition on entry to private homes, and dealing with persons in motor vehicles*

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34 *Hours of participation*

(1) A child participant must not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

35 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

38 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

39 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance to the child's home is less than 10 kilometres, and

(c) public transport is available, and

(d) the journey is to be completed within daylight hours.

40 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

41 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42 Application of this Division

This Division prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

43 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee.

44 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any)

(b) the child's date of birth

(c) a description of the nature of the employment

(d) details of any consent provided by the child's parents (any written documentation must be retained)

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

Business Licensing
Locked Bag 5138
Parramatta NSW 2124
Tel 02 9895 0011
ABN 81 913 830 179
www.fairtrading.nsw.gov.au

01/11/2016

Mr Glenn Kolomeitz
State Secretary
Returned Services League Of Australia (New South Wales Branch)
245 Castlereagh St
SYDNEY NSW 2000

Charitable fundraising authority

Charitable fundraising number	**15124**
This document certifies that	**Returned Services League Of Australia (New South Wales Branch)**

holds an authority to fundraising under section 13A of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2015* and the conditions attached as Annexure A.

This authority is in force from	**01/11/2016**
until	**31/10/2021**

unless surrendered or revoked earlier.

This authority is approved under delegation from the Minister administering the Charitable *Fundraising* Act 1991.

Important information

Please ensure you read the conditions attached.

You must inform us of any change to the information you provided in your application within 28 days.

Please contact us at charity.inquiries@finance.nsw.gov.au for further information.

NSW GOVERNMENT | Fair Trading

ANNEXURE A
CHARITABLE FUNDAISING AUTHORITY CONDITIONS

Definitions

In these authority conditions:

a receipt is taken to include a ticket.

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

Fair Trading means NSW Fair Trading.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

PART 1 – GENERAL CONDITIONS

1. ***Internal controls***

   Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2. ***Safeguarding of assets***

   An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3. ***Maintenance of proper books of account and records***

   (1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

   (a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

   (b) a register of assets,

   (c) a register recording details of receipt books or computerised receipt stationery,

   (d) a register recording details of tickets or computerised ticket stationery,

   (e) a petty cash book (if petty cash is used).

   (2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

   (3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4. ***Repealed.***

5. ***Maintenance of an account***

(1) For the purposes of section 20(6) of the Act, the gross income obtained from fundraising appeals conducted by the authorised fundraiser may be paid into an account approved by Fair Trading. The income must be clearly identifiable in the banking and accounting records maintained by that fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

(5) In relation to any appeals that are conducted for the authorised fundraiser by a trader, the gross income from those fundraising appeals must be paid into the account of the trader. This income must be clearly identifiable in the banking and accounting records of the trader and distributed to the authorised fundraiser in accordance with a written agreement between the trader and the authorised fundraiser.

(6) In relation to the authorised fundraiser's appeals conducted by volunteers, voluntary organisations or business houses which do not receive any benefit from the appeal (such as an event based or one off type fundraising appeal), the gross income from those fundraising appeals must be paid into the account of the nominated person or organisation. This income must be clearly identifiable in the banking and accounting records of the person or organisation and distributed to the authorised fundraiser in accordance with a written agreement between the nominated person or organisation and the authorised fundraiser.

6. ***Annual financial accounts***

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation must be presented at the annual general meeting of the organisation within six months of the close of the financial year.

(6) In addition to the requirements of paragraph (2), the annual financial statements of the authorised fundraiser must contain, as notes accompanying the statement of financial performance and the statement of financial position:

(a) details of the type and amount of remuneration or benefit received by a member of the governing body of the authorised fundraiser (other than reimbursement of reasonable out-of-pocket expenses), and

(b) the name and position held by each recipient.

For the purpose of this condition, details of the amount of remuneration or benefit is only required to be disclosed if it is received as a direct result of holding office as a member of the governing body of the authorised fundraiser. For example, the remuneration or benefit is received by payment of a director's fee, salary or allowance, or by the provision of free accommodation, a car, etc.

7. Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8. Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) In relation to online appeals conducted by a trader through the trader's website, the authorised fundraiser must ensure that the trader issues receipts in accordance with their agreement with the trader.

9. Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

(1) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(2) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(3) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10. Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

(1) The authorisation given by an authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing, and

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted, and

(d) include a description of the appeal or appeals to be undertaken, and

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body).

(2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer, and

(f) indicate its issue and expiry dates, and

(g) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body, and

(h) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(i) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10 (1)(f) or (2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(2), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

(5) In relation to online appeals conducted through a trader's website for an authorised fundraiser, the trader must issue authorities and/or identification badges to persons conducting or participating in a fundraising appeal via email on behalf of the authorised fundraiser provided the authorisations comply with authority conditions 10(1) & 10(2) respectively and this arrangement is detailed in the written agreement between the authorised fundraiser and the trader.

11. Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, email, internet or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than five business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12. Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13. Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14. Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the telephone number and the website address of the trader or person, and

(iii) the benefit to be received by the authorised fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product), and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal), and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end, or where no end date is known, the words "this in an ongoing appeal".

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3)(a)(iii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1)(e)(i) or (3)(a).

15. Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from Fair Trading, that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4),

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

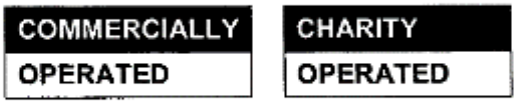
(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or Fair Trading, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:



16. Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17. Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product) and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18. Management

(1) If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than three persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than three persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

(2) If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than three persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19. *Circumstances under which records may be kept at a place other than registered office*

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to Fair Trading.

20. *Conflicts of interest*

(1) The authorised fundraiser must establish a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the authorised fundraiser. This includes the establishment of a register of pecuniary interests.

(2) Members of the governing body of the authorised fundraiser that are, or are to be remunerated, must be excluded from that part of a meeting of the governing body where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(3) Members of the governing body that are, or are to be remunerated, must not be counted in a quorum for that part of the meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(4) The appointment, conditions of service, remuneration of, or supply of goods or services by a member of the governing body of the authorised fundraiser must be subsequently ratified by a general meeting of the members of the authorised fundraiser (or a committee to which this function has been delegated).

21. *Internal disputes*

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22. *Complaint handling mechanism*

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23. *Retention of records*

Unless otherwise approved by the Minister, all entries made in any record required to be kept in accordance with these conditions must be maintained:

(a) in the case of accounting records, for a period of at least seven years, and

(b) in any other case, for a period of at least three years.

24. *Soliciting from occupants of motor vehicles*

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

road related area means:

(a) an area that divides a road, or

(b) a footpath or nature strip adjacent to a road, or

(c) an area that is open to the public and is designated for use by cyclists or animals, or

(d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or

(e) a shoulder of a road, or

(f) any other area that is open to or used by the public and that has been declared under section 18 of the *Road Transport Act 2013* to be an area to which specified provisions of this Act or the statutory rules apply.

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25. Definitions

In this Part:

child means a person under the age of 15 years.

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

Division 2 – Conditions where children participate in fundraising appeals

26. Application of this Division

This Division prescribes conditions with respect to the participation of children in fundraising appeals.

(1) An authorised fundraiser conducting an appeal:

(a) must ensure that the requirements of this Division are complied with, and

(b) must take all reasonable steps to ensure that any child participant complies with the requirements of this Division.

27. Participation of children in fundraising appeals

(1) A child must not participate in a fundraising appeal if the child is under the age of eight years.

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child is under the age of 13 years.

28. Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in a fundraising appeal:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29. Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30. Working with other children

A child participant must work with at least one other child participant.

31. Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32. Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33. Door-to-door fundraising appeals and motor vehicles

(1) A child must not participate in a door-to-door fundraising appeal if the child is under the age of 14 years and 9 months old.

(2) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34. Hours of participation

(1) A child participant must not participate in a fundraising appeal for more than four hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than six hours.

(3) An authorised fundraiser conducting an appeal must ensure that each child participant is given:

(a) a 10 minute rest break every hour, and

(b) a 1 hour rest break every 4 hours.

(4) A child participant must not participate in a fundraising appeal on more than five days per week.

(5) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise or 6.30am (whichever is the later), and must not finish later than sunset or 6.00pm (whichever is the earlier).

(6) A child participant must not be required or permitted to participate in a fundraising appeal later than 9.00pm if the following day is a school day.

35. Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36. Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37. Food and drink

(1) An authorised fundraiser conducting an appeal must ensure that each child participant is provided with appropriate and sufficient nutritious food, having regard to the age, taste and culture of the child.

(2) The food should be varied and should be served at reasonable hours.

(3) An authorised fundraiser conducting an appeal must ensure that water, fruit juice or other such drinks are readily available at all times.

38. Toilet facilities

An authorised fundraiser conducting an appeal must ensure that clean and easily accessible toilet, hand-washing and hand-drying facilities are accessible to each child participant.

39. Travel

(1) A child participant must be taken home after the child's participation in an appeal is finished or be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance between work and the child's home is less than 10 kilometres, and

(c) travel home will be by public transport and will be completed within daylight hours.

40. Protection from elements

An authorised fundraiser conducting an appeal must ensure that a child participant is adequately clothed and otherwise protected from extremes of climate.

41. Punishment prohibited

An authorised fundraiser conducting an appeal muse ensure that no child participant is subjected to any form of corporal punishment, social isolation or immobilisation or any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42. Application of this Division

This Division prescribes additional conditions with respect to the employment of children for the purpose of a fundraising appeal, in circumstances in which the child receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(1) An authorised fundraiser conducting an appeal must ensure that the requirements of this Division are complied with.

43. Letter of appointment

(1) A letter of employment must be issued to a child, which contains details of the terms and conditions under which he or she is employed.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee (the child).

44. Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any),

(b) the child's date of birth,

(c) a description of the nature of the employment,

(d) details of any consent provided by the child's parents (any written documentation must be retained), and

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

Office of Charities
NSW Office of Liquor, Gaming and Racing
323 Castlereagh Street, Haymarket
GPO Box 7060, Sydney NSW 2001
Tel: 02 9995 0666 | Fax: 02 9995 0611
www.olgr.nsw.gov.au

Charitable Fundraising Authority

12317

This document certifies that

RSL Welfare And Benevolent Institution

holds a charitable fundraising authority under section 16 of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2003* and the conditions attached as Annexure A.

This authority is in force from 28/5/2007 until 27/05/2012 unless surrendered or revoked earlier. It is not transferable.

By delegation from the Minister administering the *Charitable Fundraising Act 1991*

01/05/2007

Office of Charities
NSW Office of Liquor, Gaming and Racing
323 Castlereagh Street, Haymarket
GPO Box 7060, Sydney NSW 2001
Tel: 02 9995 0666 | Fax: 02 9995 0611
www.olgr.nsw.gov.au

ANNEXURE A

AUTHORITY CONDITIONS

Definitions

In these authority conditions:

authorised fundraiser means a person or organisation that holds an authority to fundraise under section 16 of the Act.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

the Act means the *Charitable Fundraising Act 1991*.

trader means a person so described in section 11 of the Act.

SCHEDULE 1– GENERAL CONDITIONS

1 Compliance with best practice guidelines

As far as practicable, the authority holder should observe the relevant or appropriate best practice described in the publication *Best Practice Guidelines for Charitable Organisations*. Alternative practices may be employed where they provide similar standards of accountability.

2 Internal controls

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

3 Safeguarding of assets

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

4 Maintenance of proper books of account and records

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account) held with a bank, building society or credit union, or with any other institution, or institution of a class, prescribed under section 20 (6) of the Act, into which the gross income obtained from any fundraising appeal is deposited or invested,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

5 Report on outcome of appeal or appeals

(1) An authorised fundraiser that is an unincorporated organisation must send a section 23 return to the Minister:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $20,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send a section 23 return to the Minister within one month after the close of each appeal conducted by the person.

(3) In this condition, section 23 return means a return referred to in section 23 of the Act.

6 Maintenance of an account

(1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20(6) of the Act must include the name of the authorised fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be by cheque drawn on the account, unless the particular conditions of the authority otherwise provide.

7 Annual financial accounts

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) a statement of financial performance (also known as a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of all fundraising appeals conducted during the financial year, and

(b) a statement of financial position (also known as a balance sheet) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the statement of financial performance and the statement of financial position if, in the financial year concerned, the gross income obtained from any fundraising appeals conducted by it exceeds $20,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals

(c) a statement:

(i) that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied and

(ii) that distinguishes between amounts spent on direct services in accordance with the charitable objects or purposes for which the authority was granted, recurrent costs of administration and any other significant purposes (including transfers to reserves or accumulated funds)

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged

(e) a list of all forms of fundraising appeals conducted by the authorised fundraiser during the period covered by the financial statements

(f) the following comparisons (expressed in each case both as a monetary figure and as a ratio or percentage):

(i) a comparison of the total costs of fundraising to the gross income obtained from fundraising

(ii) a comparison of the net surplus from fundraising to the gross income obtained from fundraising

(iii) a comparison of the total costs of services provided by the authorised fundraiser to the total expenditure

(iv) a comparison of the total costs of services provided by the authorised fundraiser to the gross income received.

(3) The statement of financial performance for fundraising appeals must show:

(a) the aggregate gross income received

(b) the total expenditure associated with all fundraising appeals and

(c) the net operating surplus or deficit.

(4) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the statement of financial performance gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals

(b) the statement of financial position gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(5) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration referred to in condition 7(4) is required in addition to the directors' declaration provided under section 295 of that Act.

(6) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

(7) The requirements of condition 7 do not oblige an authorised fundraiser that is an organisation to reproduce information that is already contained in its annual financial statements, but merely require the information to be separately itemised or to be shown as notes to its statement of financial performance or its statement of financial position.

8 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 40 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

(3) For the purposes of condition 8, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

9 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device

(b) the money is received through the supply of goods or services

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account established at a bank, building society or credit union, or at any other institution prescribed (or of a class prescribed) under section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into a bank, building society or credit union, or into any other institution prescribed (or of a class prescribed) under section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) For the purposes of condition 9, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

(8) For the purposes of condition 9, a receipt is taken to include a ticket.

10 Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

11 Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

(1) This condition applies when an authorised fundraiser authorises a member, employee or agent as mentioned in section 9(1)(b) of the Act.

(2) The authorisation given by an authorised fundraiser to a person who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted

(d) include a description of the appeal or appeals to be undertaken

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and

(g) be recovered by the authorised fundraiser from the person as soon as the person's authorised involvement in the appeal has ended.

(3) The authorisation given by an authorised fundraiser to a person who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) include the words "paid collector" and the name of the collector's employer if the face-to-face collector receives a wage, commission or fee for services

(f) indicate its issue and expiry dates

(g) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body)

(h) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(i) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(4) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 11(2)(f) or 11(3)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(5) Despite condition 11(3), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

12 Participation of children in fundraising appeals

Children may be authorised to participate in a fundraising appeal only if:

(a) in the case of children who do not receive any wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):

(i) the child has attained the age of 8 years, and

(ii) Part 1 of Schedule 2 is complied with, and

(b) in the case of children who receive wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):

(i) the child has attained the age of 13 years, and

(ii) Parts 1 and 2 of Schedule 2 are complied with.

13 Fundraising through telemarketing

If a fundraising appeal is conducted by soliciting through means of a telephone, the authorised fundraiser conducting the appeal must ensure that it is conducted in accordance with Part C of the ADMA Code of Practice published by the Australian Direct Marketing Association Limited in November 2001.

14 Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed

(b) properly sealed

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

15 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

16 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser

(b) be conducted in accordance with decency, dignity and good taste

(c) be based on fact and must not be false or misleading, and

(d) conform strictly to the provisions of any relevant law.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in conditions 16(3)(a) and 16(4).

(3) If a fundraising appeal is jointly conducted with a trader, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader operates for purposes of the appeal, and the details of the trader's normal place of business, telephone and facsimile numbers, and e-mail and website addresses

(ii) details of the basis on which the benefit to be received by the authorised fundraiser is to be calculated or provided (not to be expressed as a percentage of the "net" income obtained from the appeal)

(iii) details of the extent of the benefit to be obtained by the trader from the appeal (not to be expressed as a percentage of the "net" income obtained from the appeal), and

(iv) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser

(ii) if the name of the trader is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 16(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 16(3)(a)(ii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 16(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 16 do not apply in relation to a notice referred to in conditions 17(1)(e)(i) or 17(3)(a).

17 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences)

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the NSW Office of Liquor, Gaming and Racing, that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 17(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 17(4)

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 17(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or the NSW Office of Liquor, Gaming and Racing, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 17(4).

(4) For the purposes of conditions 17(2)(c)(i) and 17(3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:

COMMERCIALLY OPERATED

CHARITY OPERATED

18 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

19 Lotteries and games of chance

If a fundraising appeal involves a lottery or game of chance, in addition to complying with the requirements of the Act and the conditions of the authority, the authorised fundraiser must also comply with the provisions of the *Lotteries and Art Unions Act 1901* and any regulations under that Act.

20 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated (not to be expressed as a percentage of the "net" income obtained from the appeal), and the manner in which payment will be effected

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal

(d) the basic rights, duties and responsibilities of both parties

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance)

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees

(i) the reporting requirements imposed on the trader

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority

(l) the circumstances in which the contract is or may be terminated.

21 Management

If the authorised fundraiser is an organisation:

(a) it must be administered in relation to its fundraising activities by a governing body of not fewer than 3 persons, and

(b) all business transacted by the governing body in relation to its fundraising activities must be properly recorded in the organisation's minutes.

22 Circumstances under which records may be kept at a place other than registered office

Records may be removed from the authorised fundraiser's registered office for either of the following reasons:

(a) to be taken into the custody of the auditor for purposes of audit

(b) any other purpose required by law.

23 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

24 Internal disputes

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

25 Complaint handling mechanism

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

26 Retention of records

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 5 years.

27 Soliciting from occupants of motor vehicles

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means a road within the meaning of the *Road Transport (General) Act 1999* (other than a road that is the subject of a declaration made under section 9(1)(b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road related area that is the subject of a declaration made under section 9(1)(b) of that Act relating to all of the provisions of that Act).

SCHEDULE 2 – CONDITIONS RELATING TO PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Part 1 – General

1 Application of this Part

(1) In this Schedule:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means:

(a) a parent, step parent or guardian of the child, or

(b) a person who has for the time being parental responsibility for the child.

(2) This Part prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(3) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

2 Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

3 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

4 Working in pairs

Child participants must work at least in pairs.

5 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant are not put at risk.

6 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

7 Entry of private homes, and dealing with persons in motor vehicles, prohibited

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

8 Hours of participation

(1) A child participant may not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

9 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Part without receiving a minimum break of 12 hours.

10 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

11 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

12 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

13 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old

(b) the distance to the child's home is less than 10 kilometres

(c) public transport is available, and

(d) the journey is to be completed within daylight hours.

14 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

15 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Part 2 – Additional requirements – if child receives a wage or other benefit

16 Application of this Part

This Part prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

17 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit

(b) the method by which payment will be effected
(c) the general conditions of employment, and
(d) the rights of the employee.

18 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:
(a) the child's full name, residential address and telephone number (if any)
(b) the child's date of birth
(c) a description of the nature of the employment
(d) details of any consent provided by the child's parents (any written documentation to be retained)
(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

NSW GOVERNMENT | Trade & Investment
Office of Liquor, Gaming & Racing

Charitable Fundraising Authority

Charitable Fundraising Number
12317

This document certifies that

RSL Welfare And Benevolent Institution

holds a charitable fundraising authority under section 13A of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2008* and the conditions attached as Annexure A.

This authority is in force from **28/05/2007** until **27/05/2012** unless surrendered or revoked earlier.

It is not transferable.

P Wicks

Manager, Licensing
Issued under delegation from the Minister administering the *Charitable Fundraising Act 1991*

20/04/2012

Trade & Investment
Office of Liquor, Gaming & Racing

ANNEXURE A

AUTHORITY CONDITIONS

Definitions

In these authority conditions:

a receipt is taken to include a ticket.

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

SCHEDULE 1

PART 1 – GENERAL CONDITIONS

1 ***Internal controls***

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2 ***Safeguarding of assets***

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3 ***Maintenance of proper books of account and records***

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4 ***Report on outcome of appeal or appeals***

(1) An authorised fundraiser that is an unincorporated organisation must send to the Minister a return referred to in section 23 of the Act:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $100,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send to the Minister, within one month after the close of each appeal conducted by the person, a return referred to in section 23 of the Act.

5 Maintenance of an account

(1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20(6) of the Act must include the name of the authorised fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

6 Annual financial accounts

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

7 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

9 Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10 Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

(1) The authorisation given by an authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing, and

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted, and

(d) include a description of the appeal or appeals to be undertaken, and

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body).

(2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer, and

(f) indicate its issue and expiry dates, and

(g) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(h) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10 (1)(f) or (2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(2), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary, Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

11 Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine, the website or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12 Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the normal place of business, the telephone number, the facsimile number, the e-mail address and the website address of the trader or person, and

(iii) the benefit to be received by the authorized fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product, and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal, and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3)(a)(iii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1)(e)(i) or (3)(a).

15 ***Appeals for goods to be donated by way of collection bins or bags***

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the NSW Office of Liquor, Gaming and Racing (OLGR), that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4)

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or OLGR, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:



16 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage

of the "wholesale" price of a product) and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18 Management

(1) If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than 3 persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

(2) If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19 Circumstances under which records may be kept at a place other than registered office

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to OLGR.

20 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may arise involving a member of the governing body or an office-holder or employee of the organisation.

21 *Internal disputes*

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22 *Complaint handling mechanism*

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23 *Retention of records*

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 3 years.

24 *Soliciting from occupants of motor vehicles*

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means a road within the meaning of the *Road Transport (General) Act 2005* (other than a road that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road related area that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25 *Definitions*

In this Part:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

26 Participation of children in fundraising appeals

(1) A child must not participate in a fundraising appeal if the child has not attained the age of 8 years

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child has not attained the age of 13 years.

Division 2 – General Conditions where children participate in fundraising appeals

27 *Application of this Division*

(1) This Division prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(2) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

28 *Parental consent and contact*

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30 Working with other children

A child participant must work with at least one other child participant.

31 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33 Prohibition on entry to private homes, and dealing with persons in motor vehicles

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34 Hours of participation

(1) A child participant must not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

35 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

38 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

39 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance to the child's home is less than 10 kilometres, and

(c) public transport is available, and

(d) the journey is to be completed within daylight hours.

40 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

41 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42 Application of this Division

This Division prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

43 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee.

44 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any)

(b) the child's date of birth

(c) a description of the nature of the employment

(d) details of any consent provided by the child's parents (any written documentation must be retained)

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

NSW GOVERNMENT | Trade & Investment
Office of Liquor, Gaming & Racing

Charitable Fundraising Authority

Charitable Fundraising Number
12317

This document certifies that

RSL Welfare And Benevolent Institution

holds a charitable fundraising authority under section 13A of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2008* and the conditions attached as Annexure A.

This authority is in force from **28/05/2012** until **27/05/2017** unless surrendered or revoked earlier.

It is not transferable.

P Wicks

Manager, Licensing
Issued under delegation from the Minister administering the *Charitable Fundraising Act 1991*

26/04/2012

NSW GOVERNMENT | Trade & Investment
Office of Liquor, Gaming & Racing

Mr Christopher Perrin
RSL Welfare And Benevolent Institution
245 CASTLEREAGH ST
SYDNEY NSW 2000

FUNDRAISING AUTHORITY – VARIATION TO CONDITIONS

Charitable Fundraising Number 12317

Dear Mr Perrin

This Office previously granted a fundraising authority under the *Charitable Fundraising Act 1991* to **RSL Welfare And Benevolent Institution.** A set of conditions was attached to the fundraising authority.

Section 19(2) of the Act enables this Office to vary conditions attached to any fundraising authority. Conditions can be varied by amending a condition, removing a condition, or imposing a new condition.

Please note that we have varied the conditions attached to your organisation's fundraising authority. The variation takes effect on the date of this letter.

Enclosed is a full set of the conditions that now apply to your organisation's fundraising authority. This replaces the set of conditions issued previously.

If you wish to discuss the information in this letter, please call (02) 9995 0666 or email us at charity.inquiries@olgr.nsw.gov.au.

Yours sincerely,

P Wicks

Peter Wicks
Manager, Licensing

09/08/2013

323 Castlereagh Street, Haymarket NSW 2000
GPO Box 7060, Sydney NSW 2001
Tel: 02 9995 0666 Fax: 02 9995 0611
ABN 72 189 919 072
www.olgr.nsw.gov.au

Trade & Investment
Office of Liquor, Gaming & Racing

ANNEXURE A

AUTHORITY CONDITIONS

Definitions

In these authority conditions:

a receipt is taken to include a ticket.

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

SCHEDULE 1

PART 1 – GENERAL CONDITIONS

1 Internal controls

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2 Safeguarding of assets

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3 Maintenance of proper books of account and records

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4 Report on outcome of appeal or appeals

(1) An authorised fundraiser that is an unincorporated organisation must send to the Minister a return referred to in section 23 of the Act:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $100,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send to the Minister, within one month after the close of each appeal conducted by the person, a return referred to in section 23 of the Act.

5 *Maintenance of an account (modified)*

(1) Subject to condition 5(5), the title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20(6) of the Act must include the name of the authorised fundraiser.

(2) Subject to condition 5(5), if a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

(5) In relation to any appeals that are conducted for the authorised fundraiser by a trader nominated to the NSW Office of Liquor, Gaming and Racing, the gross income from those fundraising appeals must in the first instance be paid into the account of the trader, provided this income is clearly identifiable in the banking and accounting records of the trader and is distributed to the authorised fundraiser in accordance with a written agreement between the trader and the authorised fundraiser.

6 *Annual financial accounts*

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

7 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8 Receipting requirements (modified)

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Subject to condition 8(8), receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) In relation to online appeals conducted by a trader through the trader's website for an authorised fundraiser and other authorised fundraisers, the first mentioned authorised fundraiser must ensure that the trader issues receipts in accordance with the agreement between the trader and that authorised fundraiser.

9 ***Record systems for items used in fundraising appeals***

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10 ***Persons conducting or participating in a fundraising appeal on behalf of an authority holder (modified)***

(1) The authorisation given by an authorised fundraiser to a person who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector:

(a) must be in writing, and
(b) must include the person's name, and
(c) must include the terms and conditions under which the authorisation is granted, and
(d) must include a description of the appeal or appeals to be undertaken, and
(e) must indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and
(f) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and

(2) The authorisation given by an authorised fundraiser to a person who participates in a fundraising appeal as a face-to-face collector:

(a) must be in the form of an identification card or badge
(b) must be consecutively numbered
(c) must include the name of the authorised fundraiser and a contact telephone number
(d) must include the name of the face-to-face collector
(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer
(f) must indicate its issue and expiry dates
(g) must be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and
(h) must be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10(2)(f) or 10(2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(3), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary, Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

(5) In relation to online appeals conducted through a trader's website for an authorized fundraiser, the trader will issue authorities and/or identification badges to persons conducting or participating in a fundraising appeal via email on behalf of the authorized fundraiser provided the authorizations comply with authority conditions 10(1) & 10(2) respectively and this arrangement is detailed in the written agreement between the authorized fundraiser and the trader.

11 Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine, the website or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12 Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the normal place of business, the telephone number, the facsimile number, the e-mail address and the website address of the trader or person, and

(iii) the benefit to be received by the authorized fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product, and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal, and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3) (a) (iii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5) (a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1) (e) (i) or (3) (a).

15 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the NSW Office of Liquor, Gaming and Racing (OLGR), that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1) (d) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4)

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2) (b) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or OLGR, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:

COMMERCIALLY OPERATED | CHARITY OPERATED

16 *Appeal connected with sale of goods or provision of services*

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17 *Agreement with trader*

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product) and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18 *Management*

(1) If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than 3 persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

(2) If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19 Circumstances under which records may be kept at a place other than the registered office

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to OLGR.

20 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may arise involving a member of the governing body or an office-holder or employee of the organisation.

21 Internal disputes

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22 Complaint handling mechanism

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23 Retention of records

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 3 years.

24 Soliciting from occupants of motor vehicles

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means a road within the meaning of the *Road Transport (General) Act 2005* (other than a road that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road related area that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25 Definitions

In this Part:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

26 Participation of children in fundraising appeals

(1) A child must not participate in a fundraising appeal if the child has not attained the age of 8 years

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child has not attained the age of 13 years.

Division 2 – General Conditions where children participate in fundraising appeals

27 Application of this Division

(1) This Division prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(2) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

28 Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30 Working with other children

A child participant must work with at least one other child participant.

31 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33 Prohibition on entry to private homes, and dealing with persons in motor vehicles

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34 Hours of participation

(1) A child participant must not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

35 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

38 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

39 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance to the child's home is less than 10 kilometres, and

(c) public transport is available, and

(d) the journey is to be completed within daylight hours.

40 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

41 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42 Application of this Division

This Division prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

43 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee.

44 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any)

(b) the child's date of birth

(c) a description of the nature of the employment

(d) details of any consent provided by the child's parents (any written documentation must be retained)

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

AUTHORITY TO FUNDRAISE FOR CHARITABLE PURPOSES

Charitable Fundraising Act 1991

Number **CFN13809**

This is to certify that

RSL Veterans'Retirement Villages Limited

is on and from **31st December 2005**

the holder of an authority under the provisions of Section 16 of the Charitable Fundraising Act, 1991, subject to compliance with—

- the Charitable Fundraising Act 1991;
- the Charitable Fundraising Regulation 2003;
- the Authority Conditions attached as Annexure A.

This authority remains in force until **30th December 2010** unless sooner revoked.

This authority is granted so as to authorise an indefinite number of appeals.

The authority conditions attached as Annexure A may be varied by notice in writing.

This authority is **Not Transferable.**

under delegation from the Minister

Office of Charities

Department of Gaming and Racing

Form CF6 - 1 September 2003

Gaming and Racing
A NEW SOUTH WALES GOVERNMENT DEPARTMENT

OFFICE OF CHARITIES
LEVEL 7, 323 CASTLEREAGH STREET, SYDNEY
TELEPHONE 61 2 9995 0666 FACSIMILE 61 2 9995 0611
All written correspondence to GPO BOX 7060, SYDNEY NSW 2001
E-mail Address charity.inquiries@dgr.nsw.gov.au
Web site www.dgr.nsw.gov.au
ABN 17 316 647 277

Annexure A - Conditions relating to Fundraising Authority No. CFN13809

DEFINITIONS

In these authority conditions:

'authorised fundraiser', in relation to a fundraising appeal, means a person or organisation that holds an authority to fundraise under section 16 of the Act.
'child' means a person under the age of 15 years.
'face-to-face collector' means a person who participates in a fundraising appeal by face-to-face solicitation.
'financial year', in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.
'the Act' means the Charitable Fundraising Act 1991.
'trader' means a person so described in section 11 of the Act.

SCHEDULE 1 - CONDITIONS APPLYING TO CERTAIN AUTHORITIES

1 Compliance with best practice guidelines

As far as practicable, the authority holder should observe the relevant or appropriate best practices described in the publication Best Practice Guidelines for Charitable Organisations. Alternative practices may be employed where they provide similar standards of accountability.

2 Internal controls

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

3 Safeguarding of assets

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

4 Maintenance of proper books of account and records

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:
  (a) a cash book for each account (including any passbook account) held with a bank, building society or credit union, or with any other institution, or institution of a class, prescribed under section 20 (6) of the Act, into which the gross income obtained from any fundraising appeal is deposited or invested,
  (b) a register of assets,
  (c) a register recording details of receipt books or computerised receipt stationery,
  (d) a register recording details of tickets or computerised ticket stationery,
  (e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

5 Report on outcome of appeal or appeals

(1) An authorised fundraiser that is an unincorporated organisation must send a section 23 return to the Minister:
- (a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and
- (b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $20,000:
  - (i) within 3 months after the audited financial statements are adopted at its annual general meeting, or
  - (ii) within 7 months after the conclusion of the financial year concerned, whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send a section 23 return to the Minister within one month after the close of each appeal conducted by the person.

(3) In this clause, 'section 23' return means a return referred to in section 23 of the Act.

6 Maintenance of an account (modified)

(1) Section 20 (6) of the Act is modified to allow the gross income from any fundraising appeal to be paid into the authorised fundraiser's 'main' account. The title of the account must include into which the gross income obtained from any fundraising appeal is paid must include the name of the authorised fundraiser. The gross income from fundraising appeals shall be dissected in the cash book maintained by the authorised fundraiser, which shall also dissect expenses relating to such fundraising appeals.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20 (6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be by cheque drawn on the account, unless the particular conditions of the authority otherwise provide.

7 Annual financial accounts

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:
- (a) a statement of financial performance (also known as a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of all fundraising appeals conducted during the financial year, and
- (b) a statement of financial position (also known as a balance sheet) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the statement of financial performance and the statement of financial position if, in the financial year concerned, the gross income obtained from any fundraising appeals conducted by it exceeds $20,000:
- (a) details of the accounting principles and methods adopted in the presentation of the financial statements,
- (b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,
- (c) a statement:
  - (i) that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied, and

(ii) that distinguishes between amounts spent on direct services in accordance with the charitable objects or purposes for which the authority was granted, recurrent costs of administration and any other significant purposes (including transfers to reserves or accumulated funds),

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged,

(e) a list of all forms of fundraising appeals conducted by the authorised fundraiser during the period covered by the financial statements,

(f) the following comparisons (expressed in each case both as a monetary figure and as a ratio or percentage):

(i) a comparison of the total costs of fundraising to the gross income obtained from fundraising,

(ii) a comparison of the net surplus from fundraising to the gross income obtained from fundraising,

(iii) a comparison of the total costs of services provided by the authorised fundraiser to the total expenditure,

(iv) a comparison of the total costs of services provided by the authorised fundraiser to the gross income received.

(3) The statement of financial performance for fundraising appeals must show:

(a) the aggregate gross income received, and

(b) the total expenditure associated with all fundraising appeals, and

(c) the net operating surplus or deficit.

(4) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the statement of financial performance gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the statement of financial position gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation, and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(5) If the organisation is a company incorporated under the Corporations Act 2001 of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(6) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

(7) The requirements of this clause do not oblige an authorised fundraiser that is an organisation to reproduce information that is already contained in its annual financial statements, but merely require the information to be separately itemised or to be shown as notes to its statement of financial performance or its statement of financial position.

(8) The requirements of this clause are subject to the particular conditions of the authority concerned.

8 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 40 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

(3) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

9 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:
- (a) the money is received through a collection box or similar device, or
- (b) the money is received through the supply of goods or services, or
- (c) the money is received through a payroll deduction scheme, or
- (d) the money is deposited directly into an account established at a bank, building society or credit union, or at any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, or
- (e) the particular conditions of the authority provide otherwise.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:
- (a) each receipt must be consecutively numbered as part of an ongoing series,
- (b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into a bank, building society or credit union, or into any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

(8) For the purposes of this clause, a receipt is taken to include a ticket.

10 Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:
- (a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and
- (b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and
- (c) all collection boxes or similar devices used in a fundraising appeal for monetary donation, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

11 Persons conducting or participating in a fundraising appeal on behalf of an authority holder

(1) This clause applies when an authorised fundraiser authorises a member, employee or agent as mentioned in section 9 (1) (b) of the Act.

(2) The authorisation given by an authorised fundraiser to a person who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector:
- (a) must be in writing, and
- (b) must include the person's name, and
- (c) must include the terms and conditions under which the authorisation is granted, and
- (d) must include a description of the appeal or appeals to be undertaken, and
- (e) must indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and
- (f) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and
- (g) must be recovered by the authorised fundraiser from the person as soon as the person's authorised involvement in the appeal has ended.

(3) The authorisation given by an authorised fundraiser to a person who participates in a fundraising appeal as a face-to-face collector:
- (a) must be in the form of an identification card or badge, and
- (b) must be consecutively numbered, and
- (c) must include the name of the authorised fundraiser and a contact telephone number, and
- (d) must include the name of the face-to-face collector, and
- (e) if the face-to-face collector receives a wage, commission or fee for services, must include the words "paid collector" and the name of the collector's employer, and
- (f) must indicate its issue and expiry dates, and
- (g) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and
- (h) must be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and
- (i) must be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(4) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of subclause (2) (f) or (3) (g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(5) Despite subclause (3), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:
- (a) the appeal concerned is of a type generally associated with the organisation, and
- (b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and
- (c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and
- (d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

12 Participation of children in fundraising appeals

Children may be authorised to participate in a fundraising appeal only if:
- (a) in the case of children who do not receive any wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):
  - (i) the child has attained the age of 8 years, and
  - (ii) Part 1 of Schedule 2 is complied with, and

(b) in the case of children who are in receipt of wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):
(i) the child has attained the age of 13 years, and
(ii) Parts 1 and 2 of Schedule 2 are complied with.

13 Fundraising through telemarketing

If a fundraising appeal is conducted by soliciting through means of a telephone, the authorised fundraiser conducting the appeal must ensure that it is conducted in accordance with Part C of the ADMA Code of Practice published by the Australian Direct Marketing Association Limited, dated November 2001 or its successor.

14 Use of collection boxes

(1) If a collection box or similar device is used for monetary donations, it must be:
(a) securely constructed, and
(b) properly sealed, and
(c) consecutively numbered, and
(d) clearly labelled with the name of the authorised fundraiser.
(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

15 Authorisation of expenditure

If the authority holder is an organisation, all payments made in connection with:
(a) any expenditure involved with the conduct of a fundraising appeal, and
(b) any disposition of funds and profits resulting from a fundraising appeal,
must be properly authorised by or on behalf of the organisation.

16 Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal:
(a) must clearly and prominently disclose the name of the authorised fundraiser, and
(b) must be conducted in accordance with decency, dignity and good taste, and
(c) must be based on fact and must not be false or misleading, and
(d) must conform strictly to the provisions of any relevant law.
(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in subclauses (3) (a) and (4).
(3) If a fundraising appeal is jointly conducted with a trader, the following additional requirements must be complied with:
(a) any written or printed advertisement, notice or information must include:
(i) the full name under which the trader operates for purposes of the appeal, and the details of the trader's normal place of business, telephone and facsimile numbers, and e-mail and website addresses, and
(ii) details of the basis on which the benefit to be received by the authorised fundraiser is to be calculated or provided (not to be expressed as a percentage of the "net" income obtained from the appeal), and
(iii) details of the extent of the benefit to be obtained by the trader from the appeal (not to be expressed as a percentage of the "net" income obtained from the appeal), and
(iv) the date on which the appeal commenced, or will commence, and the date on which it will end,
(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in subclause (3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in subclause (3) (a) (ii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in paragraph (a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of this clause do not apply in relation to a notice referred to in clause 17 (1) (e) (i) or (3) (a).

17 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin,

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the Department of Gaming and Racing, that bears the Department's logo and the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal,

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal,

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in subclause (4), and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or the Department of Gaming and Racing, that bears the Department's logo and the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in subclause (4).

(4) For the purposes of subclauses (2) (c) (i) and (3) (b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:

18 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

19 Lotteries and games of chance

If a fundraising appeal involves a lottery or game of chance, in addition to complying with the requirements of the Act and the conditions of the authority, the authority holder must also comply with the provisions of the Lotteries and Art Unions Act 1901 and any regulations under that Act.

20 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated (not to be expressed as a percentage of the "net" income obtained from the appeal), and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,
(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,
(d) the basic rights, duties and responsibilities of both parties,
(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),
(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, unless provided for otherwise by a condition attached to the authority,
(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,
(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,
(i) the reporting requirements imposed on the trader,
(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,
(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,
(l) the circumstances in which the contract is or may be terminated.

21 Management

If the authorised fundraiser is an organisation:
(a) it must be administered in relation to its fundraising activities by a governing body of not fewer than 3 persons, and
(b) all business transacted by the governing body in relation to its fundraising activities must be properly recorded in the organisation's minutes.

22 Circumstances under which records may be kept at a place other than the registered office

Records may be removed from the authorised fundraiser's registered office for either of the following reasons:
(a) to be taken into the custody of the auditor for purposes of audit,
(b) any other purpose required by law or by a condition of the authority.

23 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:
(a) a register of pecuniary interests, and
(b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

24 Internal disputes

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

25 Complaint handling mechanism

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

26 Retention of records

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years; and

(b) in any other case, for a period of at least 5 years.

27 Soliciting from occupants of motor vehicles

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this clause:

'road' means a road within the meaning of the Road Transport (General) Act 1999 (other than a road that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

'road related area' means a road related area within the meaning of the Road Transport (General) Act 1999 (other than a road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

SCHEDULE 2 - CONDITIONS RELATING TO PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

PART 1 - GENERAL

1 Application of this Part

(1) In this Schedule:

'child participant' means a child who participates in a fundraising appeal.

'parent', in relation to a child, means:

(a) a parent, step parent or guardian of the child, or

(b) a person who has for the time being parental responsibility for the child.

(2) This Part prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(3) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

2 Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

3 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.
(2) A supervisor may supervise no more than 6 child participants simultaneously.
(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.
(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

4 Working in pairs

Children participating in a fundraising appeal must work at least in pairs.

5 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant are not put at risk.

6 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

7 Entry of private homes, and dealing with persons in motor vehicles, prohibited

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and
(b) does not solicit, sell to or collect from a person in a motor vehicle.

8 Hours of participation

(1) A child participant may not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).
(2) On days other than school days, the child participant must not participate in a fundraising appeal for more than 6 hours.
(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.
(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.
(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30pm if required the following day is a school day.

9 Minimum breaks between successive shifts etc

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Part without receiving a minimum break of 12 hours.

10 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

11 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

12 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

13 Travel

(1) A child participant must be accompanied:
- (a) by a parent of the child, or
- (b) by an adult authorised by a parent of the child,

when the child is travelling home after his or her participation in the appeal is finished.

(2) This clause does not apply:
- (a) if the child is more than 12 years old, and
- (b) if the distance to the child's home is less than 10 kilometres, and
- (c) if public transport is available, and
- (d) if the journey is to be completed within daylight hours.

14 Protection from the elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

15 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

PART B - ADDITIONAL REQUIREMENTS - IF CHILD RECEIVES A WAGE OR OTHER BENEFIT

16 Application of this Part

This Part prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

17 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:
- (a) details of the basis or method on or by which payment of wages or or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and
- (b) the method by which payment will be effected, and
- (c) the general conditions of employment, and
- (d) the rights of the employee.

18 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and phone number (if any),

(b) the child's date of birth,

(c) a description of the nature of the employment,

(d) details of any consent provided by the child's parents (any written documentation to be retained),

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

NSW GOVERNMENT | Communities
Office of Liquor, Gaming & Racing

Charitable Fundraising Authority

13809

This document certifies that

RSL Lifecare Limited

holds a charitable fundraising authority under section 16 of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2008* and the conditions attached as Annexure A.

This authority is in force from 31/12/2010 until 30/12/2015 unless surrendered or revoked earlier. It is not transferable.

By delegation from the Minister administering the *Charitable Fundraising Act 1991*

20/12/2010

NSW GOVERNMENT | Communities
Office of Liquor, Gaming & Racing

ANNEXURE A

AUTHORITY CONDITIONS

Definitions

In these authority conditions:

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

child means a person under the age of 15 years.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

SCHEDULE 1

PART 1 – GENERAL CONDITIONS

1 ***Internal controls***

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2 ***Safeguarding of assets***

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3 ***Maintenance of proper books of account and records***

(1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

(a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

(b) a register of assets,

(c) a register recording details of receipt books or computerised receipt stationery,

(d) a register recording details of tickets or computerised ticket stationery,

(e) a petty cash book (if petty cash is used).

(2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4 *Report on outcome of appeal or appeals*

(1) An authorised fundraiser that is an unincorporated organisation must send to the Minister a return referred to in section 23 of the Act:

(a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and

(b) if in any financial year the gross income obtained from any appeals conducted by it exceeds $100,000:

(i) within 3 months after the audited financial statements are adopted at its annual general meeting, or

(ii) within 7 months after the conclusion of the financial year concerned,

whichever occurs sooner.

(2) An authorised fundraiser that is a natural person must send to the Minister, within one month after the close of each appeal conducted by the person, a return referred to in section 23 of the Act.

5 *Maintenance of an account*

(1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20(6) of the Act must include the name of the authorised fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

6 *Annual financial accounts*

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements.

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year.

7 Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8 Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) For the purposes of condition 9, a receipt is taken to include a ticket.

9 *Record systems for items used in fundraising appeals*

A record system must be instituted and maintained for:

(a) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10 *Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser*

(1) The authorisation given by an authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing, and

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted, and

(d) include a description of the appeal or appeals to be undertaken, and

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body).

(2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer, and

(f) indicate its issue and expiry dates, and

(g) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(h) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10 (1)(f) or (2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(2), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary, Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

11 *Fundraising through direct marketing*

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine, the website or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12 *Use of collection boxes for monetary donations*

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13 *Authorisation of expenditure*

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14 *Advertisements, notices and information*

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the normal place of business, the telephone number, the facsimile number, the e-mail address and the website address of the trader or person, and

(iii) the benefit to be received by the authorized fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product, and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount. The disclosure can not be expressed as a percentage of the "net" income of the appeal, and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end,

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3)(a)(iii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1)(e)(i) or (3)(a).

15 Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from the NSW Office of Liquor, Gaming and Racing (OLGR), that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4)

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or OLGR, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:



16 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17 Agreement with trader

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated (*not* to be expressed as a percentage of the "net" income obtained from the appeal), and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18 Management

If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than 3 persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than 3 persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19 ***Circumstances under which records may be kept at a place other than registered office***

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to OLGR.

20 ***Conflicts of interest***

If the authorised fundraiser is an organisation, it must establish:

(a) a register of pecuniary interests, and

(b) a mechanism for dealing with any conflicts of interest that may arise involving a member of the governing body or an office-holder or employee of the organisation.

21 ***Internal disputes***

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22 ***Complaint handling mechanism***

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23 ***Retention of records***

Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

(a) in the case of accounting records, for a period of at least 7 years, and

(b) in any other case, for a period of at least 3 years.

24 ***Soliciting from occupants of motor vehicles***

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means a road within the meaning of the *Road Transport (General) Act 2005* (other than a road that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road related area that is the subject of a declaration made under section 15(1)(b) of that Act relating to all of the provisions of that Act).

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25 ***Definitions***

In this Part:

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

26 **Participation of children in fundraising appeals**

(1) A child must not participate in a fundraising appeal if the child has not attained the age of 8 years

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child has not attained the age of 13 years.

Division 2 – General Conditions where children participate in fundraising appeals

27 Application of this Division

(1) This Division prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(2) An authorised fundraiser conducting an appeal:

(a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and

(b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

28 Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29 Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30 Working with other children

A child participant must work with at least one other child participant.

31 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32 Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33 Prohibition on entry to private homes, and dealing with persons in motor vehicles

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34 Hours of participation

(1) A child participant must not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.

(3) A child participant must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.

(5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

35 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36 Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37 Food and drink

(1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.

(2) Food should be available to a child participant at reasonable hours and drinking water at all times.

38 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

39 Travel

(1) A child participant must be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance to the child's home is less than 10 kilometres, and

(c) public transport is available, and

(d) the journey is to be completed within daylight hours.

40 Protection from elements

A child participant is to be adequately clothed and otherwise protected from extremes of climate or temperature.

41 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42 Application of this Division

This Division prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

43 Letter of appointment

(1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee.

44 Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any)

(b) the child's date of birth

(c) a description of the nature of the employment

(d) details of any consent provided by the child's parents (any written documentation must be retained)

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

NSW GOVERNMENT | Fair Trading

Business Licensing
Locked Bag 5138
Parramatta NSW 2124
Tel 02 9895 0011
ABN 81 913 830 179
www.fairtrading.nsw.gov.au

30/11/2015

Mr Mark Broadhead
RSL Lifecare Limited
PO Box 56
NARRABEEN NSW 2101

Charitable fundraising authority

Charitable fundraising number **13809**

This document certifies that **RSL Lifecare Limited**

holds an authority to fundraising under section 13A of the *Charitable Fundraising Act 1991*, subject to compliance with the Act, the *Charitable Fundraising Regulation 2015* and the conditions attached as Annexure A.

This authority is in force from **31/12/2015**

until **30/12/2020**

unless surrendered or revoked earlier.

This authority is approved under delegation from the Minister administering the Charitable *Fundraising* Act 1991.

Important information

Please ensure you read the conditions attached.

You must inform us of any change to the information you provided in your application within 28 days.

Please contact us at charity.inquiries@finance.nsw.gov.au for further information.

NSW GOVERNMENT | Fair Trading

ANNEXURE A
CHARITABLE FUNDAISING AUTHORITY CONDITIONS

Definitions

In these authority conditions:

a receipt is taken to include a ticket.

authorised fundraiser means a person or organisation that holds an authority to conduct an appeal.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

same family means spouse, defacto partner, children, siblings, parents and grandparents.

financial year, in relation to an organisation, means the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

Fair Trading means NSW Fair Trading.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgement of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

PART 1 – GENERAL CONDITIONS

1. ***Internal controls***

   Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

2. ***Safeguarding of assets***

   An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

3. ***Maintenance of proper books of account and records***

   (1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:

   (a) a cash book for each account (including any passbook account), into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act,

   (b) a register of assets,

   (c) a register recording details of receipt books or computerised receipt stationery,

   (d) a register recording details of tickets or computerised ticket stationery,

   (e) a petty cash book (if petty cash is used).

   (2) If the authorised fundraiser is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any committee of that governing body) and any general or extraordinary meeting of its general membership.

   (3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

4. ***Repealed.***

5. *Maintenance of an account*

(1) For the purposes of section 20(6) of the Act, the gross income obtained from fundraising appeals conducted by the authorised fundraiser may be paid into an account approved by Fair Trading. The income must be clearly identifiable in the banking and accounting records maintained by that fundraiser.

(2) If a fundraising appeal is conducted jointly by the authorised fundraiser and a trader, and the trader maintains an account for the purposes of section 20(6) of the Act, the account is to consist only of money raised in the fundraising appeal conducted on behalf of that fundraiser.

(3) Disbursement from the account in amounts of $260 or more must be either by crossed cheque or by electronic funds transfer.

(4) For the purposes of section 20(6) of the Act, money is not required to be paid into an account consisting only of money raised in the fundraising appeals conducted by the same authorised fundraiser in the following circumstances:

(a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,

(c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

(5) In relation to any appeals that are conducted for the authorised fundraiser by a trader, the gross income from those fundraising appeals must be paid into the account of the trader. This income must be clearly identifiable in the banking and accounting records of the trader and distributed to the authorised fundraiser in accordance with a written agreement between the trader and the authorised fundraiser.

(6) In relation to the authorised fundraiser's appeals conducted by volunteers, voluntary organisations or business houses which do not receive any benefit from the appeal (such as an event based or one off type fundraising appeal), the gross income from those fundraising appeals must be paid into the account of the nominated person or organisation. This income must be clearly identifiable in the banking and accounting records of the person or organisation and distributed to the authorised fundraiser in accordance with a written agreement between the nominated person or organisation and the authorised fundraiser.

6. *Annual financial accounts*

(1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:

(a) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and

(b) a balance sheet (also known as a statement of financial position) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.

(2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds $100,000:

(a) details of the accounting principles and methods adopted in the presentation of the financial statements,

(b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,

(c) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,

(d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

(3) The annual financial accounts of an authorised fundraiser that is an organisation are to include a declaration by the president or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

(a) the income statement gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and

(b) the balance sheet gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and

(c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation and

(d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

(4) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

(5) The annual financial accounts of an authorised fundraiser that is an organisation must be presented at the annual general meeting of the organisation within six months of the close of the financial year.

(6) In addition to the requirements of paragraph (2), the annual financial statements of the authorised fundraiser must contain, as notes accompanying the statement of financial performance and the statement of financial position:

(a) details of the type and amount of remuneration or benefit received by a member of the governing body of the authorised fundraiser (other than reimbursement of reasonable out-of-pocket expenses), and

(b) the name and position held by each recipient.

For the purpose of this condition, details of the amount of remuneration or benefit is only required to be disclosed if it is received as a direct result of holding office as a member of the governing body of the authorised fundraiser. For example, the remuneration or benefit is received by payment of a director's fee, salary or allowance, or by the provision of free accommodation, a car, etc.

7. Ratio of expenses to receipts

(1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 50 per cent of the gross income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.

(2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross income obtained.

8. Receipting requirements

(1) Receipts are to be written or issued immediately for all money received, even when not requested by the donor, except where:

(a) the money is received through a collection box or similar device, or

(b) the money is received through the supply of goods or services, or

(c) the money is received through a payroll deduction scheme, or

(d) the money is deposited directly into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act.

(2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.

(3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:

(a) each receipt must be consecutively numbered as part of an ongoing series,

(b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.

(5) If money is received by direct debit from the donor's account into an account into which the gross income obtained from a fundraising appeal is paid in accordance with section 20(6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.

(6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

(7) In relation to online appeals conducted by a trader through the trader's website, the authorised fundraiser must ensure that the trader issues receipts in accordance with their agreement with the trader.

9. Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

(1) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(2) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned, and

(3) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

10. Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

(1) The authorisation given by an authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector must:

(a) be in writing, and

(b) include the person's name, and

(c) include the terms and conditions under which the authorisation is granted, and

(d) include a description of the appeal or appeals to be undertaken, and

(e) indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

(f) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body).

(2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must:

(a) be in the form of an identification card or badge, and

(b) be consecutively numbered, and

(c) include the name of the authorised fundraiser and a contact telephone number, and

(d) include the name of the face-to-face collector, and

(e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words "paid collector" and the name of the collector's employer, and

(f) indicate its issue and expiry dates, and

(g) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body, and

(h) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and

(i) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.

(3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of condition 10 (1)(f) or (2)(g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.

(4) Despite condition 10(2), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist or UHA of NSW Incorporated (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:

(a) the appeal concerned is of a type generally associated with the organisation, and

(b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and

(c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and

(d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

(5) In relation to online appeals conducted through a trader's website for an authorised fundraiser, the trader must issue authorities and/or identification badges to persons conducting or participating in a fundraising appeal via email on behalf of the authorised fundraiser provided the authorisations comply with authority conditions 10(1) & 10(2) respectively and this arrangement is detailed in the written agreement between the authorised fundraiser and the trader.

11. Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, email, internet or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and

(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and

(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and

(d) the name and other details of a person are not provided or sold to any other person or organisation ,without the express consent of the person to whom the information relates, and

(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than five business days (excluding weekends and public holidays), and

(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within that right must be exercised, and

(g) all direct marketing by phone complies with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 of the Commonwealth.

(h) in relation to fundraising appeals involving telemarketing operations, a telemarketer who receives a wage, commission or fee, whether or not requested to do so by the person being solicited, is required to disclose to that person at the beginning of the conversation the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

12. Use of collection boxes for monetary donations

(1) If a collection box or similar device is used for monetary donations, it must be:

(a) securely constructed, and

(b) properly sealed, and

(c) consecutively numbered, and

(d) clearly labelled with the name of the authorised fundraiser.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

13. Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

(a) any expenditure involved with the conduct of a fundraising appeal, and

(b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

14. Advertisements, notices and information

(1) Any advertisement, notice or information provided as part of a fundraising appeal must:

(a) clearly and prominently disclose the name of the authorised fundraiser, and

(b) not be reasonably likely to cause offence to a person, and

(c) be based on fact and must not be false or misleading.

(2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).

(3) If a fundraising appeal is jointly conducted with a trader or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal, such as telemarketing services, the following additional requirements must be complied with:

(a) any written or printed advertisement, notice or information must include:

(i) the full name under which the trader or person operates for purposes of the appeal, and

(ii) the telephone number and the website address of the trader or person, and

(iii) the benefit to be received by the authorised fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product), and

(iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal), and

(v) the date on which the appeal commenced, or will commence, and the date on which it will end, or where no end date is known, the words "this in an ongoing appeal".

(b) in respect of any advertisement, notice or information provided or displayed:

(i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and

(ii) if the name of the trader or person is shown, it must be in the same print size as the name of the authorised fundraiser, and

(iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.

(4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.

(5) If a fundraising appeal referred to in condition 14(3) involves the collection of donated goods and material:

(a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in condition 14(3)(a)(iii), must be expressed in the advertisement, notice or information as:

(i) a percentage of the average gross income derived or expected to be derived from all goods and material collected over a specified period of the appeal, and

(ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

(b) if the advertisement, notice or information is continuously displayed:

(i) the details referred to in condition 14(5)(a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and

(ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.

(6) The requirements of condition 14 do not apply in relation to a notice referred to in conditions 15(1)(e)(i) or (3)(a).

15. Appeals for goods to be donated by way of collection bins or bags

(1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:

(a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,

(b) if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),

(c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,

(d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin

(e) if the appeal is for the collection of donated articles of clothing:

(i) each bin must have continuously displayed on its chute a notice, to be obtained from Fair Trading, that bears the words "COMMERCIALLY OPERATED", and

(ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(1)(d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:

(a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal

(b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal

(c) if the appeal is for the collection of donated articles of clothing:

(i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words "COMMERCIALLY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4),

(ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and

(iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in condition 15(2)(b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.

(3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:

(a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained from the National Association of Charitable Recycling Organisations Incorporated (NSW) or Fair Trading, that bears the words "CHARITY OPERATED",

(b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in condition 15(4).

(4) For the purposes of conditions 15(2)(c)(i) and (3)(b), the words "COMMERCIALLY OPERATED" and "CHARITY OPERATED" must:

(a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and

(b) appear in black and white in the following format:



16. *Appeal connected with sale of goods or provision of services*

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross income obtained.

17. *Agreement with trader*

(1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

(2) Such an agreement must include at least the following particulars:

(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product) and the manner in which payment will be effected,

(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,

(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,

(d) the basic rights, duties and responsibilities of both parties,

(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),

(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,

(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,

(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,

(i) the reporting requirements imposed on the trader,

(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,

(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority,

(l) the circumstances in which the contract is or may be terminated.

18. *Management*

(1) If the authorised fundraiser is an organisation, in relation to its fundraising activities:

(a) it must be administered by a governing body of not fewer than three persons,

(b) all business transacted by the governing body must be properly recorded in the organisation's minutes,

(c) the minimum quorum for all meetings of the governing body must not be fewer than three persons,

(d) persons who are members of the same family can not comprise more than one third of the governing body, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

(2) If the authorised fundraiser has individuals acting as trustees for a trust, in relation to its fundraising activities:

(a) it must be administered by not fewer than three trustees,

(b) all business transacted by the trustees must be properly recorded in a minute book,

(c) the minimum quorum for all meetings of the trustees must not be fewer than three persons,

(d) persons who are members of the same family can not comprise more than one third of the trustees, and

(e) persons who are members of the same family can not be co-signatories on the same transaction on the bank account of the organisation.

19. *Circumstances under which records may be kept at a place other than registered office*

Records may be removed from the authorised fundraiser's registered office:

(a) to be taken into the custody of the auditor for purposes of audit, or

(b) for a purpose required by law or by a condition of the authority, or

(c) to be taken to a place, the location of which has been notified in writing to Fair Trading.

20. *Conflicts of interest*

(1) The authorised fundraiser must establish a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the authorised fundraiser. This includes the establishment of a register of pecuniary interests.

(2) Members of the governing body of the authorised fundraiser that are, or are to be remunerated, must be excluded from that part of a meeting of the governing body where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(3) Members of the governing body that are, or are to be remunerated, must not be counted in a quorum for that part of the meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

(4) The appointment, conditions of service, remuneration of, or supply of goods or services by a member of the governing body of the authorised fundraiser must be subsequently ratified by a general meeting of the members of the authorised fundraiser (or a committee to which this function has been delegated).

21. *Internal disputes*

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

22. *Complaint handling mechanism*

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

23. *Retention of records*

Unless otherwise approved by the Minister, all entries made in any record required to be kept in accordance with these conditions must be maintained:

(a) in the case of accounting records, for a period of at least seven years, and

(b) in any other case, for a period of at least three years.

24. *Soliciting from occupants of motor vehicles*

(1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).

(2) In this condition:

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

road related area means:

(a) an area that divides a road, or

(b) a footpath or nature strip adjacent to a road, or

(c) an area that is open to the public and is designated for use by cyclists or animals, or

(d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or

(e) a shoulder of a road, or

(f) any other area that is open to or used by the public and that has been declared under section 18 of the *Road Transport Act 2013* to be an area to which specified provisions of this Act or the statutory rules apply.

PART 2 – PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS

Division 1 – General

25. Definitions

In this Part:

child means a person under the age of 15 years.

child participant means a child who participates in a fundraising appeal.

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

Division 2 – Conditions where children participate in fundraising appeals

26. Application of this Division

This Division prescribes conditions with respect to the participation of children in fundraising appeals.

(1) An authorised fundraiser conducting an appeal:

(a) must ensure that the requirements of this Division are complied with, and

(b) must take all reasonable steps to ensure that any child participant complies with the requirements of this Division.

27. Participation of children in fundraising appeals

(1) A child must not participate in a fundraising appeal if the child is under the age of eight years.

(2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child is under the age of 13 years.

28. Parental consent and contact

(1) An authorised fundraiser that proposes to allow a child to participate in a fundraising appeal:

(a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and

(b) must not allow the child to participate in the appeal if a parent objects to the child participating in the appeal.

(2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

29. Supervision

(1) A child participant must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 child participants simultaneously.

(3) A supervisor must be in close proximity to a child participant, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child participant less than 11 years of age, the supervisor must be in constant contact with the child.

30. Working with other children

A child participant must work with at least one other child participant.

31. Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant is not put at risk.

32. Insurance

Appropriate insurance must be secured for a child participant, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability and other such risks.

33. Door-to-door fundraising appeals and motor vehicles

(1) A child must not participate in a door-to-door fundraising appeal if the child is under the age of 14 years and 9 months old.

(2) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

(a) does not enter a private dwelling when soliciting door-to-door, and

(b) does not solicit, sell to or collect from a person in a motor vehicle.

34. Hours of participation

(1) A child participant must not participate in a fundraising appeal for more than four hours on any school day (that is, a day on which the child is required to attend school).

(2) On days other than school days, a child participant must not participate in a fundraising appeal for more than six hours.

(3) An authorised fundraiser conducting an appeal must ensure that each child participant is given:

(a) a 10 minute rest break every hour, and

(b) a 1 hour rest break every 4 hours.

(4) A child participant must not participate in a fundraising appeal on more than five days per week.

(5) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise or 6.30am (whichever is the later), and must not finish later than sunset or 6.00pm (whichever is the earlier).

(6) A child participant must not be required or permitted to participate in a fundraising appeal later than 9.00pm if the following day is a school day.

35. Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Division without receiving a minimum break of 12 hours.

36. Maximum loads for lifting

A child participant must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

37. Food and drink

(1) An authorised fundraiser conducting an appeal must ensure that each child participant is provided with appropriate and sufficient nutritious food, having regard to the age, taste and culture of the child.

(2) The food should be varied and should be served at reasonable hours.

(3) An authorised fundraiser conducting an appeal must ensure that water, fruit juice or other such drinks are readily available at all times.

38. Toilet facilities

An authorised fundraiser conducting an appeal must ensure that clean and easily accessible toilet, hand-washing and hand-drying facilities are accessible to each child participant.

39. Travel

(1) A child participant must be taken home after the child's participation in an appeal is finished or be accompanied:

(a) by a parent of the child, or

(b) by an adult authorised by a parent of the child, when the child is travelling home after his or her participation in the appeal is finished.

(2) This condition does not apply if:

(a) the child is more than 12 years old, and

(b) the distance between work and the child's home is less than 10 kilometres, and

(c) travel home will be by public transport and will be completed within daylight hours.

40. Protection from elements

An authorised fundraiser conducting an appeal must ensure that a child participant is adequately clothed and otherwise protected from extremes of climate.

41. Punishment prohibited

An authorised fundraiser conducting an appeal muse ensure that no child participant is subjected to any form of corporal punishment, social isolation or immobilisation or any other behaviour likely to humiliate or frighten the child.

Division 3 – Additional conditions where children receive benefit for participation in fundraising appeal

42. Application of this Division

This Division prescribes additional conditions with respect to the employment of children for the purpose of a fundraising appeal, in circumstances in which the child receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

(1) An authorised fundraiser conducting an appeal must ensure that the requirements of this Division are complied with.

43. Letter of appointment

(1) A letter of employment must be issued to a child, which contains details of the terms and conditions under which he or she is employed.

(2) The letter must include:

(a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, including details of any guaranteed minimum payment or benefit, and

(b) the method by which payment will be effected, and

(c) the general conditions of employment, and

(d) the rights of the employee (the child).

44. Record of employment

(1) A record of employment must be maintained for each child participant employed or engaged.

(2) The record must include the following particulars with respect to the child:

(a) the child's full name, residential address and telephone number (if any),

(b) the child's date of birth,

(c) a description of the nature of the employment,

(d) details of any consent provided by the child's parents (any written documentation must be retained), and

(e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader, the employer must make the records available to the authorised fundraiser.

1. RSL NSW must notify NSW Fair Trading in writing of its intention to re-commence any fundraising generally, or for a specific fundraising event, not less than 30 days before doing so (**Notice of Intention to Resume Fundraising**);

2. Any Notice of Intention to Resume Fundraising must be accompanied by a written document from Ernst & Young (EY), or any accounting services firm of similar standing, certifying that in its opinion RSL NSW has implemented financial systems and controls, and policies and procedures, necessary to ensure that RSL NSW receives, handles, records and expends the proceeds of fundraising appeals in the manner required by the Act, the Regulations and the existing conditions of RSL NSW's authority.

3. Before giving a Notice of Intention to Resume Fundraising, RSL NSW will:
   a. issue a written directive to all RSL NSW sub-branches that any sub-branch holding its own, independent charitable fundraising authority must surrender that authority to NSW Fair Trading and notify RSL NSW State Branch in writing that it has done so; and

   b. undertake fundraising compliance training with each RSL NSW sub-branch president, treasurer and secretary regarding the requirements of the Act and the Regulations.

4. Any Notice of Intention to Resume Fundraising must be accompanied by a copy of the compliance training program, and a record and register of all persons who have completed the compliance training.

5. RSL NSW will not allow the RSL NSW sub-branch to recommence fundraising unless and until the president, treasurer and secretary from that sub-branch has undertaken the fundraising compliance training referred to in paragraph 3(b).

6. Following re-commencement of fundraising and until the expiration of RSL NSW's charitable fundraising authority, RSL NSW must:

   a. notify Fair Trading within 5 working days of becoming aware of any instance of material non-compliance with the Act, associated regulations or authority conditions;

   b. inform NSW Fair Trading of any resignation, removal or replacement of any State Councillor;

   c. maintain expenses policies and procedures that:

      i. regulate the reimbursement of expenses incurred by State Council members and employees of RSL NSW;

      ii. regulate the use of credit cards issued by RSL NSW to State Council members and employees of RSL NSW;

      iii. require State Council members and RSL NSW employees to keep records of their expenses, and where no record is kept, to provide a statutory declaration describing the nature of the expense;

      iv. ensure that all expense reimbursement claims and credit card expenses are properly reviewed and verified as falling within RSL NSW's expenses policies; and

      v. maintain a financial delegations matrix that clearly identifies limits and policies in relation to expenditure by particular RSL NSW State Council members and employees.

APPENDIX I: LIST OF CLOSING SUBMISSIONS

Witness / Interested Party	Date
Counsel Assisting the Inquiry	31 October 2017
RSL NSW	6 November 2017
RSL NSW – Supplementary Submissions	20 November 2017
RSL NSW – Submissions in respect of reform processes	5 December 2017
RSL LifeCare	6 November 2017
RSL LifeCare– Supplementary Submissions	5 December 2017
RSL LifeCare– Supplementary Submissions in respect of reform processes	14 December 2017
RSL LifeCare– Further Supplementary Submissions in respect of reform processes	18 December 2017
RSL WBI	6 November 2017
RSL WBI - Supplementary Submissions in respect of reform processes	5 December 2017
Grant Thornton, Alison Sheridan and James Winter	6 November 2017
Mark Broadhead	8 November 2017
John Cannings	8 November 2017
Garth Carlson	6 November 2017
Andrew Condon	6 November 2017
Robert Crosthwaite and William Humphreys	6 November 2017
Kenneth Doolan	5 November 2017
John Haines	6 November 2017
Ronald James	6 November 2017
Graham Kells	6 November 2017
James Longley	6 November 2017
Susanne Macri	6 November 2017
Darren McManus-Smith	7 November 2017
Darren McManus-Smith – Supplementary Submissions	8 November 2017
Allan Murray	6 November 2017
Christopher Perrin	6 November 2017
William Riddington	6 November 2017
Donald Rowe	6 November 2017
Peter Stephenson	3 November 2017
Ronald Thompson	6 November 2017

APPENDIX J: LIST OF COUNSEL AND STAFF OF THE INQUIRY UNDER THE *CHARITABLE FUNDRAISING ACT* 1991

Counsel Assisting the Inquiry

A P Cheshire SC

J Single

M Rabsch

Senior Solicitor Assisting the Inquiry

Enzo Camporeale (*Crown Solicitor's Office*)

Crown Solicitor's Office Legal Team

Timothy Buckley

Ellyse McGee

Jessica Natoli

Margo Patchett

Department of Finance, Services & Innovation Staff

Andrea Hayward-Maher

Kate McMurtrie

Diane McWilliam

Linda Nicolson

Mary Snell

Amanda Williams



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