



## DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Ms Jean Madden**

v

**Street Swags Ltd**

(U2016/1866)

COMMISSIONER HUNT

BRISBANE, 14 JANUARY 2021

*Application for relief from unfair dismissal – lengthy application history – Small Business Fair Dismissal Code - belief the applicant had engaged in conduct sufficiently serious to justify immediate dismissal based on reasonable grounds – application dismissed.*

[1] On 22 April 2016, Ms Jean Madden made an application to the Fair Work Commission (the Commission) pursuant to s. 394 of the *Fair Work Act 2009* (the Act) alleging her dismissal from Street Swags Ltd (Street Swags/the Respondent) was harsh, unjust and unreasonable.

[2] I note that in her initial Form F2 – Unfair Dismissal application, Ms Madden named Mr Adrian De Maria and Mr Brian O’Reilly as respondents to the application. Mr De Maria and Mr O’Reilly were Directors of Street Swags at the time. Ms Madden was contacted by the Registry of the Commission and ultimately filed an amended application on 24 May 2016.

[3] On 31 May 2016, the Respondent filed a Form F3 – Employer’s Response raising jurisdictional objections on the grounds that the application had been made out of time, Ms Madden had not been dismissed, and that the Respondent was a small business and the dismissal was consistent with the Small Business Fair Dismissal Code.

[4] The matter was allocated to me for consideration on 17 June 2016. I held an in-person conference on 18 July 2016. Boss Lawyers represented the Respondent. Ms Madden informed me that there had been a meeting held of members overthrowing the purported board and therefore their decisions were invalid, and she did not recognise Boss Lawyers as having any authority to represent the Respondent. I suggested to Ms Madden if that were the case, perhaps the new board would reinstate Ms Madden and her application before the Commission is unnecessary. Boss Lawyers advised that an application was before the Supreme Court that very same afternoon to assist in the determination as to the true representatives of the Respondent. Accordingly, I adjourned the conference.

[5] On 23 February 2017, Ms Madden (through her representatives at the time, Lander & Rogers Lawyers) made a request for a stay of the proceedings, on the basis that Ms Madden had been charged with criminal offences by the Queensland Police Service relevant to her involvement with the Respondent. These included one count of fraud dishonestly causing

detriment, some eight counts of fraud involving dishonestly gaining benefit/advantage by a director/member of a governing body, and one count of falsification/destruction/alteration/damage of records. Ms Madden sought for a stay to be granted in dealing with the unfair dismissal application until the criminal proceedings were finalised. The stay was opposed by the Respondent at first instance but ultimately a four-month stay was granted.

[6] The criminal proceedings continued, and a further stay was granted. A number of mentions regarding the progress of the criminal proceedings occurred, resulting in further requests for adjournment of the matter.

[7] On 5 July 2018, after seeking the views of the parties and receiving no response, I issued a Decision<sup>1</sup> determining that the proceedings in this matter should be stayed pending the finalisation, or withdrawal, or other appropriate disposal, of the related criminal proceedings. That Decision goes into greater detail of the progress of the matter until that point.

[8] On 6 January 2020, Ms Madden wrote to my Chambers advising that the criminal proceedings had been withdrawn and requesting the stay be revoked. I issued a decision on 2 March 2020<sup>2</sup> revoking the stay.

## **Background**

[9] This application has a lengthy history. Ms Madden is the founder of Street Swags Ltd, a charitable organisation providing waterproof sleeping bags to homeless people across Australia. As will be detailed below, Ms Madden was ultimately dismissed as an employee of the Respondent on 19 May 2016. It is undisputed that the Respondent had less than 15 employees as at 19 May 2016, and therefore it is a small business employer pursuant to s.23 of the Act.

[10] On 24 March 2016, Ms Madden was sent the following letter from Boss Legal representing the Respondent (emphasis maintained):

*“Dear Ms Madden*

### ***Suspension of your employment***

*We act for Street Swags Limited (Street Swags).*

*The directors of Street Swags have undertaken a review of the company's bank accounts and financial statements. During the course of that review, a number of transactions have been identified which have caused the directors grave concern.*

*Accordingly, pursuant to clause 12 of your employment agreement, the board has resolved to suspend your employment with full pay **effective** immediately pending the outcome of an independent audit and forensic investigation of the company's financial affairs. You will, of course, be afforded the opportunity to respond to any allegations made against you.*

*You are hereby directed to attend Boss Lawyers Spring Hill premises located at [address redacted] at 10.00 am on Tuesday, 29 March 2016 to return all property of Street Swags in your possession or under your control, including but not limited to:*

- 1. any vehicles provided by Street swags, including the Holden Colorado Ute and/or Land Cruiser provided to you by Street Swags;*
- 2. any mobile telephones provided by Street Swags;*
- 3. any laptop computer provided by Street Swags;*
- 4. any fax machine or printer provided by Street Swags; and*
- 5. all credit and debt cards provided by Street Swags.*

*You are not to attend the premises of Street Swags or to contact any staff, donors, or make any appearances or statements to the media or anyone else on behalf of Street Swags in relation to the above matters until further notice.*

*As you know, Walk About Beds Pty Ltd is a wholly owned subsidiary of Street Swags. We take this opportunity to remind you of your statutory and common law duties to Street Swags. All monies in Walk About Beds Pty Ltd must be properly accounted for.*

*Please do not hesitate to contact me in writing if you require any further information.*

*Yours faithfully  
Mark Harley, Partner”*

[11] Numerous correspondence then passed between Ms Madden’s lawyers at the time and the Respondent’s lawyers in attempts to resolve the matter.

[12] Ms Madden’s evidence is that she did not receive this correspondence until the evening of 28 March 2016.

[13] On 30 March 2016, Boss Lawyers wrote to Ms Madden on behalf of the Respondent, terminating her employment (the first termination):

*“Dear Ms Madden*

***False documents lodged with ASIC***

*We refer to ASIC Documents No. 7E7824903 and 7E7825233, which were lodged with the Australian Securities and Investments Commission (ASIC) electronically on 29 March 2016 at 5.23 pm and 5.46 pm respectively (the ASIC Documents). Copies of the ASIC Documents are attached.*

*The ASIC Documents purport to remove Mr De Maria and Mr O'Reilly as directors of Street Swags Limited (Street Swags) and appoint new directors.*

*Pursuant to our letter of 24 March 2016, you have no authority to lodge documents with ASIC or to make any statement or give information on behalf of Street Swags. Furthermore, given that Mr De Maria and Mr O'Reilly remain directors of Street Swags, the information that you have provided to ASIC is demonstrably false.*

*We note that it is an offence pursuant to s 1308 of the Corporations Act 2001 (Cth) {the Act} to make false or misleading statements in a document lodged with ASIC. The maximum penalty for an offence committed under s 1308 of the Act is a fine of 200 penalty units or 5 years' imprisonment. The lodgement of the false ASIC Documents will be referred to the appropriate authorities for investigation.*

*Given the above matters, the board of Street Swags is satisfied that you have engaged in serious misconduct and hereby terminates your employment pursuant to cl 13.2 of your Employment Agreement.*

*By reason of cl 14.2 of your Employment Agreement and article 5.3(c)(iv) of the Street Swags Constitution, you are also hereby removed from the board of Street Swags Limited.*

*Yours faithfully  
Mr Mark Harley”*

[14] Later on the same day, Boss Lawyers, on behalf of the Respondent wrote a lengthy letter to Lander & Rogers Lawyers, outlining what it described as a selection of the numerous concerns regarding Ms Madden’s conduct and requiring her to answer particular questions and retain certain property:

*“Dear Colleagues*

***Street Swags Limited***

*We act for Street Swags Limited (Street Swags). We understand that you represent Ms Jean Madden, who is a former director and former employee of Street Swags, and a group of individuals claiming to be the board of Street Swags.*

*We refer to your email of 30 March 2016, in which you offer to facilitate a "round table" meeting between each of our clients. We are currently taking our client's instructions in relation to such a meeting and will revert to you in due course. Naturally, given her conduct to date, our client is concerned that Ms Madden would not approach such a meeting in good faith.*

*In the meantime, we take this opportunity to outline a selection of the numerous concerns that Street Swags has with Ms Madden's conduct. For present purposes, it suffices to say that our client has grave concerns about Ms Madden's attitude regarding her statutory and fiduciary responsibilities.*

***Suspension of Ms Madden***

*1. On 24 March 2016, the board of Street Swags resolved, by written resolution, to suspend Ms Madden from her employment on full pay pending the outcome of an investigation into apparent breaches of the Corporations Act 2001 (Cth) (the Act).*

*2. Ms Madden was informed of the board's decision by a letter dated 24 March 2016, which was emailed to her, sent by registered post and delivered by hand to her residence on 25 March 2016. A copy of the letter is attached.*

3. *The letter required Ms Madden to:*

- (a) deliver up all property of Street Swags in her possession or under her control;*
- (b) refrain from attending Street Swags' premises;*
- (c) refrain from contacting staff or donors of Street Swags in relation to her suspension.*

4. *To date, Ms Madden has failed to comply with any of the board's directions outlined in the letter of 24 March 2016.*

### ***The Unauthorised Meeting***

5. *On 28 March 2016 at 2.00 pm, Ms Madden purported to call a meeting of members for 6.00pm on 28 March 2016 (the **Invalid Meeting**).*

6. *On 28 March 2016 at 5.44 pm, Street Swags, by its lawyers, sent a letter to the members of Street Swags noting that the Invalid Meeting was unauthorised. A copy of the letter is **attached**.*

7. *The Invalid Meeting was invalid for the following reasons:*

- (a) Ms Madden is not authorised pursuant to article 4.2 of the Street Swags Constitution or the provisions of the Act to call a meeting of members;*
- (b) Ms Madden failed to give notice in the form required by article 4.4 of the Street Swags Constitution to any member of Street Swags; and*
- (c) no waiver of notice was given in writing as required by article 4.4(d) of the Street Swags Constitution.*

8. *At the Invalid Meeting, persons purporting to be members of Street Swags purported to pass resolutions removing Mr De Maria and Mr O'Reilly as directors of Street Swags.*

### ***The False ASIC Documents***

9. *As averred to in our earlier letter of today's date, Ms Madden caused Documents No. 7E7825233 and 7E7824903 to be lodged with ASIC (the **False ASIC Documents**), which purported to remove Mr O'Reilly and Mr De Maria as directors of Street Swags.*

10. *Ms Madden lodged the False ASIC Documents in the full knowledge that she had no authority to do so, thereby committing an offence pursuant to s 1308 of the Act.*

11. *ASIC has altered its register in reliance upon the False ASIC Documents.*

12. *We are instructed that Ms Madden intends to attend the National Australia Bank branch at Ashgrove and use the altered register to change the signatories of Street Swags' bank accounts.*

13. We put your client on notice that if any funds are removed from any bank account belonging to Street Swags or Walkabout Beds Pty Ltd (**Walkabout Beds**), we are instructed to immediately contact the Queensland Police Service and provide a brief of evidence to them.

### **The 30 March Letter**

14. We have recently been provided with a letter from your client to Mr Harold Thornton dated 30 March 2016 that raises serious concerns regarding Ms Madden's intentions towards Street Swags (the 30 March Letter). A copy of the letter is attached. Its contents are, to say the least, bizarre.

15. In the 30 March Letter, Ms Madden makes a number of statements as to what would happen if she were removed as director that she describes as "cold truths" but which appear to be in the nature of threats. These "cold truths" are to the effect that, *inter alia*:

- (a) Street Swags' premises is leased in Ms Madden's name and she would not allow Street Swags to occupy its current premises;
- (b) the accrued leave entitlements owed to Ms Madden are so great that the company would become insolvent if she were to leave;
- (c) Street Swags has 'over fished' its donor pool and needs Ms Madden to raise necessary funds in a "winter waive" (sic);
- (d) Ms Madden owns the entirety of Street Swags' intellectual property and would not allow the company the use of it or her "physical name" (whatever that may be) if she were not allowed to remain;
- (e) if Ms Madden were to leave, she would take Street Swags' cabin business with her as her own commercial endeavour;
- (f) if she desired, she could acquire Street Swags' shares in Walkabout Beds.

16. Aside from being fantastical and highly inculpatory, Ms Madden's "cold truths" are demonstrably untrue as:

- (a) it is of no consequence that Street Swags' lease is in Ms Madden's name as the company could simply relocate and leave her to deal with the consequences of her poor commercial decisions;
- (b) aside from her common law duties, all intellectual property developed by Ms Madden during her time at Street Swags vests in Street Swags pursuant to cl 9 of her Employment Agreement;
- (c) Street Swags is the sole shareholder of Walkabout Beds; and
- (d) Ms Madden is restrained from using her position to launch Street Swags' cabin business as her own commercial endeavour both at law and under the Act.

17. Furthermore, the "cold truths" are revealing of Ms Madden's lack of regard for her fiduciary and statutory duties as they appear to be entirely to her own benefit and to the detriment of Street Swags.

### **The Manufacturing Contract**

18. On or about 1 December 2015, Ms Madden, on behalf of Walkabout Beds Pty Ltd (**Walkabout Beds**) executed a contract with Mr Carl Weiss whereby he would manufacture Manufactured Homes/Transportable Cabins (**the Manufacturing Contract**). A copy of the Manufacturing Contract is **enclosed**.

19. We are instructed that Mr Weiss is Ms Madden's de facto partner.

20. We are further instructed that Ms Madden failed to gain the consent of the members of Walkabout Beds (being Street Swags through its board) before entering into the Manufacturing Contract.

21. The Manufacturing Contract included a number of terms which appear to operate solely to the advantage of Mr Weiss, including, inter alia:

(a) by cl 3.1(b): Walkabout Beds will order the greater of a minimum of 44 Manufactured Homes/Transportable Cabins or \$528,000 worth of Manufactured Homes/Transportable

Cabins from Mr Weiss each calendar year;

(b) by cl 8.3: if it chooses to terminate the Manufacturing Contract, Walkabout Beds will cover any expenses connected with termination of the Manufacturing Contract, including (but not limited to) Mr Weiss's obligations in respect of his leased business premises and the payment of his employees;

(c) by schedule 2, item 8: Walkabout Beds will provide Mr Weiss with a copy of its financial statements at the end of each financial year; and

(d) by cl 9.1: Mr Weiss will be paid \$10,000 per year to store property of Street Swags and Walkabout Beds including, inter al/a, a Hino truck (the Hino Truck), a moveable stage (the **Stage**) and a Holden Colorado Ute (**the Ute**).

22. Mr Weiss appears to have the exclusive use and enjoyment of the Ute.

23. Despite the provisions of cl 9.1 of the Manufacturing Contract, we are instructed that neither the Hino Truck nor the Stage have been stored at Mr Weiss's premises and that swags owned by Street Swags were not stored at Mr Weiss's premises until the end of February 2016.

24. We are further instructed that the Stage has been stored at a property belonging to a Mr James Booth, who has been dealing with the hiring of the Stage to other persons and the taking of payment for such hire.

25. On 14 March 2016, Mr Weiss revealed by email that he was trading whilst insolvent. Despite this, no action has been taken to terminate the Manufacturing Contract.

26. On 14 March 2016, Ms Madden proposed Street Swags pay Mr Weiss a retainer of \$130,000 per annum with back pay to 1 December 2015.

27. On 10 March 2016, Ms Madden authorised the payment of invoice no. IN-00041 (enclosed) to Mr Weiss in the amount of \$10,000 from the accounts of Street Swags (**the Invoice 41 Payment**). We note that although the Manufacturing Contract is

*between Mr Weiss and Walkabout Beds, the invoice is made out to Street Swags and was paid from Street Swags' accounts.*

*28. On 17 March 2016, Ms Madden made a payment from Credit Card No. 4336 8757 5518 8580 to Super Steel Australia 01\$2,467.32 (**the Steel Payment**). The Steel Payment was made solely for the benefit of Mr Weiss.*

*29. From 17 March 2016, Ms Madden commenced making payments to Mr Weiss from Street Swags' accounts of \$2500 per week (**the Weekly Payment**).*

*30. The payments outlined in paragraphs 27 to 29 above will be referred to collectively as the **Weiss Payments**.*

*31. Accordingly, Ms Madden is required to show cause for the following in relation to the Manufacturing Contract and the Weiss payments:*

*(a) Why did Ms Madden fail to consult the members of Walkabout Beds concerning the Manufacturing Contract?*

*(b) Why does the Manufacturing Contract contain a number of terms that are uncommercial and operate solely for the benefit of Mr Weiss?*

*(c) Is there any reason why the award of the Manufacturing Contract to Mr Weiss without the approval of the members of Walkabout Beds and the Weiss payments do not constitute a breach of s 208 of the Corporations Act 2001 (Cth) (**the Act**)?*

*(d) Is there any reason why the award of the Manufacturing Contract to Mr Weiss without the approval of the members of Walkabout Beds and the Weiss payments does not constitute an improper use of Ms Madden's position pursuant to s 182 of the Act?*

*(e) Is there any reason why the award of the Manufacturing Contract to Mr Weiss without the approval of the members of Walkabout Beds and the Weiss payments do not constitute a breach of Ms Madden's fiduciary duties to both Walkabout Beds and Street Swags?*

*(f) Is there any reason why the award of the Manufacturing Contract to Mr Weiss without the approval of the members of Walkabout Beds and the Weiss payments does not constitute a breach of Ms Madden's fiduciary duties (both at law and pursuant to cl 3.5 of her Employment Contract) to Walkabout Beds and Street Swags?*

*(g) We require Ms Madden to provide all evidence concerning the hiring of the Stage, including receipts for payment and the bank entries noting such receipts.*

### ***Payment of Expenses***

*32. On the 15th of each month {most recently on 15 March 2016}, the amount of \$1,350.77 is paid from Walkabout Beds to 'Finrent' (**the Finrent Payments**). We are instructed that this amount is for the financing of three (3) cabins, two (2) of which are located on Ms Madden's residential property and are used by her father and son.*

*33. On or about the 15th of each month (most recently on 15 March 2016), the amount of \$345.75 is paid from NAB Account 86-478-3727 to Toyota Finance for the lease of the Ute (**the Ute Payments**). As noted above, we are instructed that Mr Weiss has exclusive use and enjoyment of the Ute.*



34. On 3 March 2016, the amount of \$300 was transferred from NAB Account [redacted] under the entry "CMC tickets' (**the CMC Payment**). We are instructed that this amount was transferred to purchase tickets for Ms Madden and Mr Weiss to attend a country music festival.

35. On the following dates, the following amounts have been transferred under the entry

"Reimbursement":

(a) 11 November 2015, the amount of \$5,982.51 from NAB Account [redacted];

(b) 29 February 2016, the amount of \$2,359.00 from NAB Account [redacted];

(collectively, **the Reimbursement Payments**)

36. On the following dates, the following amounts have been paid to various recipients that appear to be unrelated to the business of Street Swags and Walkabout Beds:

NAB Account [redacted]

(a) 4 August 2014, the amount of \$400.00 to Chemist Warehouse ;

(b) 5 September 2014, the amount of \$66.61 to Woolworths;

NAB Account 86-478-3727

(c) 17 August 2015, the amount of \$52.98 to Choice Discount Store;

(d) 17 August 2015, the amount of \$11.52 to Coles Kenmore;

(e) 17 August 2015, the amount of \$715.00 to Lutece Bistro & Wine Bar;

(f) 21 August 2015, the amount of \$584.00 to Lutece Bistro & Wine Bar;

(g) 31 August 2015, the amount of \$275.00 to Gympie Muster;

(h) 21 August 2015, the amount of \$584.00 to Lutece Bistro & Wine Bar;

(i) 24 September 2015, the amount of \$2,585.00 to Brooks Legal Service;

(j) 2 October 2015, the amount of \$11, 176.00 for "Invoice #1594899 108428"";

(k) 10 October 2015, the amount of \$1,000.00 for "topup";

(l) 21 October 2015, the amount of \$3,000.00 for 'topup";

(m) 21 October 2015, the amount of \$418.00 for "Reimb Batteries";

(n) 23 November 2015, the amount of \$10,000 for '28 Fienta Place Da";

(o) 23 November 2015, the amount of \$88,000 for "Order 1000 ssl";

(p) 25 November 2015, the amount of \$40.60 for Osaka Japanese Dinner;

(q) 9 December 2015, the amount of \$269.90 to Red Earth Hotel;

(r) 9 December 2015, the amount of \$9.40 to Sunset Opal Factory";

(s) 10 December 2015, the amount of \$33.50 to Australian Age of Dinosaur;

(t) 10 December 2015, the amount of \$81.00 to Tatts Hotel;

(u) 4 January 2016, the amount of \$10,117.80 to Walkabout Beds;

(v) 20 January 2016, the amount of \$9936.89 to Regional Insurance;

(w) 28 January 2016, the amount of \$4002.00 to Westpac Cards;

(x) 29 February 2016, the amount of \$800.00 to Apple Store;

(y) 2 March 2016, the amount of \$32.30 to French Twist Chermside;

(z) 2 March 2016, the amount of \$5,120.00 to Bundaberg Toyota;

(aa) 7 March 2016, the amount of \$66.57 to 7-Eleven;

(bb) 18 March 2016, the amount of \$166.30 to Soul Sun Ashgrove;

Credit Card No. [redacted]

(cc)6 September 2013, the amount of \$1586.77 to Repco Enoggera;  
(dd)17 December 2013, the amount of \$390.00 to Sheepskin & Opal World, Peregian Beach;  
(ee)25 February 2014, the amount of \$1,144.32 to TJM Geebung;  
(ff) 25 February 2014, the amount of \$103.50 to Interflora Prahran;  
(gg)14 March 2014, the amount of \$237.60 to Neta Tyres;  
(hh)28 March 2014, the amount of \$388.71 to Repco Enoggera;  
(ii) 6 May 2014, the amount of \$725.00 to Direct Clutch Services;  
OD 7 May 2014, the amount of \$1,222.63 to Repco Enoggera;  
(kk)20 June 2014, the amount of \$1,362.26 to Repco Enoggera;  
(II) 30 July 2014, the amount of \$1695.52 to Beaurepaires Indooroopilly;  
(mm) 12 September 2014, the amount of \$473.15 to Go Electrical Albion;  
(nn)14 November 2014, the amount of \$94.67 to Noonan's IGA Ashgrove;  
(oo)12 February 2015, the amount of \$405.85 to Wayne Park Autos & Tyres, Milton;  
(pp)22 June 2015, the amount of \$2,324.00 to Apple Store Online;  
(qq)18 August 2015, the amount of \$175.00 to Cakes by Judy;  
(rr) 8 September 2015, the amount of \$39.64 to Coles The Gap;  
(ss) 17 September 2015, the amount of \$84.97 to Kenmore Hardware; and  
(It) 29 February 2016, the amount of \$53.84 to BP The Gap.  
(collectively, **the Miscellaneous Payments**)

37. Pursuant to cl 5.2 of Ms Madden's Employment Contract, she is required to provide the following in respect of each of the Fin rent Payments, the CMC Payment, the Ute Payments, the Reimbursement Payments and the Miscellaneous Payments:

- (a) reasons as to how each payment constituted an expense incurred in the performance of Ms Madden's duties in connection with the business of Street Swags;
- (b) all documentary evidence of each payment, including any relevant tax invoices; and
- (c) for any payment over \$5000, the written approval of the board of Street Swags obtained for that payment.

#### **Membership of Street Swags**

38. We refer to article 2.2 of the Constitution of Street Swags, which outlines the process by which persons may become members of Street Swags Limited.

39. Pursuant to s 173 of the Act, Ms Madden is directed to provide this office with a copy of the Register of members of Street Swags Limited (**the Register**).

40. Ms Madden is further directed to provide the following particulars of each person appearing in the Register:

- (a) a signed membership application;
- (b) the date on which the membership application was received by Street Swags;
- (c) the date on which the membership application was accepted by Street Swags;
- (d) the written notice of acceptance given by Street Swags to the member; and
- (e) the date on which the member's name was entered in the Register.

41. If the Register is located in the Ashgrove office, inform us of its location.

42. *We are instructed that without the consent or knowledge of the board, Ms Madden purchased a Toyota Landcruiser (**the Landcruiser**) by way of a loan in the name of Street Swags.*

43. *Ms Madden has exclusive use and enjoyment of the Landcruiser.*

44. *Ms Madden is hereby directed to deliver up the Landcruiser and provide all documents relating to the purchase and financing of the Landcruiser to this office.*

***Refusal to obey and comply with lawful directions of the board***

45. *On 24 March 2016 the board provided Ms Madden with a letter, by hand, registered mail and email, noting that Ms Madden was suspended from her employment immediately and requiring her to do the following:*

- (a) not attend the premises of Street Swags;*
- (b) not contact any staff or donors of Street Swags; and*
- (c) deliver up all property of Street Swags in her possession or under her control.*

46. *Despite the direction of the board, Ms Madden has failed, as at the date of this letter, to deliver up any property of Street Swags in her possession or under her control.*

47. *Despite the direction of the board, on 28 March 2016, Ms Madden purported to issue a staff member of Street Swags with a show cause notice.*

48. *Despite the direction of the board, on 28 March 2016, Ms Madden purported to call a meeting of members of Street Swags.*

49. *Despite the direction of the board, on 28 March 2016, Ms Madden purported to pass a resolution of members of Street Swags removing the current directors;*

50. *Despite the direction of the board, on 29 March 2016, Ms Madden attended the premises of Street Swags and:*

- (a) attempted to gain entry to the premises; and*
- (b) locked herself in the common area of the premises.*

51. *We note that the assistance of the Queensland Police Service was required in order to have Ms Madden unlock the common area.*

52. *Despite the direction of the board, on 29 March 2016, Ms Madden contacted a security services provider employed by Street Swags and represented herself as authorised to give directions on behalf of Street Swags.*

53. *Despite the direction of the board, on 29 March 2016, Ms Madden purported to lodge documents removing Mr De Maria and Mr O'Reilly as directors of Street Swags with ASIC.*

54. Despite the direction of the board, on 29 March 2016, Ms Madden contacted McCullough Robertson and purported to engage them as Street Swags legal representatives. We note that McCullough Robertson does not act for Street Swags and will not be paid for any services rendered.

55. In light of the matters outlined at paragraphs 46 to 54 above, the board was satisfied that Ms Madden had engaged in serious misconduct which warranted summary termination of her employment pursuant to cl 13.2 of her Employment Contract.

56. Accordingly, Ms Madden was terminated by letter dated 30 March 2016 and was removed as a director of Street Swags by reason of cl 14.2 of her Employment Agreement and article 5.3(c)(iv) of the Street Swags Constitution.

We require Ms Madden's answer to paragraphs 31, 37, 40 and 44 above by 4,00 pm on 6 April 2016.

We again reiterate that McCullough Robertson does not act for Street Swags and that your fees and outlays will not be paid by Street Swags.

We note that a complaint has been made to ASIC concerning Ms Madden's conduct and that Street Swags intends to fully cooperate with any regulatory or criminal investigation.

Street Swags otherwise reserves all its rights.

Yours faithfully  
Mark Harley, Partner”

[15] Further events took place, detailed later in this decision in evidence, culminating in a letter being sent to Ms Madden on 19 May 2016, dismissing her (the second termination). The letter read (emphasis retained):

“Dear Ms Madden

**Summary Dismissal Notice**

On behalf of the directors of Street Swags Limited (**Street Swags**), I hereby give you notice that the directors have resolved to terminate your employment by way of summary dismissal pursuant to cl 14.2 of your Employment Agreement effective immediately. Your last day of work is 20 May 2016, however the directors do not require you to attend work on that date.

The directors have considered your letter of 13 April 2016 in response to the allegations leading to your suspension and have also taken into account your conduct since that date as well as the report of a qualified forensic accountant of Worrells Accountants in coming to their decision.

We note that you agreed to be suspended as Chief Executive Officer on 12 April 2016, which will be referred to herein as the **Suspension Date**.

### ***Reasons for Summary Dismissal***

*The reasons for your summary dismissal are as follows:*

*Since the Suspension Date, you have repeatedly refused to turn over property belonging to Street Swags, which is essential to its day-to-day operation, including:*

- (a) social media accounts; and*
- (b) Street Swags' Xero Accounting Software subscription.*

*1. We note in relation to the Xero account that you were warned in letters dated 29 April 2016 and 3 May 2016 from Boss Lawyers that failing to turn over Street Swags' Xero account was serious misconduct and grounds for summary dismissal.*

*2. Since the Suspension Date, you have continued to intimate to third parties that you represent Street Swags, including inter alia the Department of Housing and Public Works and the organisers of the Commonwealth Games.*

*3. Since the Suspension Date, you have openly disparaged and made defamatory comments concerning the directors of Street Swags.*

*4. The report of Worrells Forensic Accountants indicates that you have incurred \$441,399.43 in expenses from Street Swags and its subsidiary over the past year without proper authorisation.*

### ***Your Entitlements***

*You will be paid:*

- 1. your accrued statutory leave entitlements; and*
- 2. your accrued and unpaid salary to date.*

*These amounts will be subject to tax, and the final amounts will be paid into your bank account once we have received access to Street Swags' Xero account or you have provided us with payslips to substantiate the amounts owing. Final superannuation payments will also be paid into your superannuation fund.*

### ***Your Duties***

*Street Swags expects that you will comply with all post termination obligations set out in your employment agreement, including your obligations to return Street Swag's property and protect its confidential information.*

*Please return all property of Street Swags in your possession or under your control by **4.00 pm on 25 May 2016** to our office at [redacted] including (but not limited to):*

- 1. the Toyota Landcruiser;*
- 2. the laptop; and*
- 3. the mobile telephone.*

*We hereby put you on notice that if these items are not returned, they will be reported as stolen and appropriate repossession action will be taken.*

*Yours faithfully the Board Street Swags Ltd.”*

## **Relevant Legislation**

[16] I am required to consider the competency of the application, beginning with s.394 of the Act which sets out:

### **“394 Application for unfair dismissal remedy**

(1) A person who has been dismissed may apply to the FWC for an order under Division 4 granting a remedy.

Note 1: Division 4 sets out when the FWC may order a remedy for unfair dismissal.

Note 2: For application fees, see section 395.

Note 3: Part 6 1 may prevent an application being made under this Part in relation to a dismissal if an application or complaint has been made in relation to the dismissal other than under this Part.

(2) The application must be made:

(a) within 21 days after the dismissal took effect; or

(b) within such further period as the FWC allows under subsection (3).

(3) The FWC may allow a further period for the application to be made by a person under subsection (1) if the FWC is satisfied that there are exceptional circumstances, taking into account:

(a) the reason for the delay; and

(b) whether the person first became aware of the dismissal after it had taken effect; and

(c) any action taken by the person to dispute the dismissal; and

(d) prejudice to the employer (including prejudice caused by the delay); and

(e) the merits of the application; and

(f) fairness as between the person and other persons in a similar position.”

[17] Further, ss.385 relevantly provide as follows:

### **“385 What is an unfair dismissal**

A person has been unfairly dismissed if the FWC is satisfied that:

- (a) the person has been dismissed; and
- (b) the dismissal was harsh, unjust or unreasonable; and
- (c) the dismissal was not consistent with the Small Business Fair Dismissal Code; and
- (d) the dismissal was not a case of genuine redundancy.

Note: For the definition of consistent with the Small Business Fair Dismissal Code: see section 388.”

**[18]** Section 388 of the Act provides that a person’s dismissal was consistent with the Small Business Fair Dismissal Code (the Code) if:

- (a) immediately before the time of the dismissal or at the time the person was given notice of the dismissal (whichever happened first), the person’s employer was a small business employer; and
- (b) the employer complied with the Small Business Fair Dismissal Code in relation to the dismissal.

**[19]** The Code was declared by the Minister for Employment and Workplace Relations on 24 June 2009, and states:

**“Small Business Fair Dismissal Code**

**Commencement**

The Small Business Fair Dismissal Code comes into operation on 1 July 2009.

**Summary Dismissal**

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee’s conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

**Other Dismissal**

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee’s conduct or capacity to do the job.

The employee must be warned verbally or preferably in writing, that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee's response. Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

### **Procedural Matters**

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia, including evidence that a warning has been given (except in cases of summary dismissal). Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.”

**[20]** If the dismissal was not consistent with the Small Business Fair Dismissal Code, I am required to consider the criteria set out under s.387 of the Act which provides:

#### **“387 Criteria for considering harshness etc.**

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:

- (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and



(g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and

(h) any other matters that the FWC considers relevant.”

[21] As to any remedy to be ordered, s.390 provides:

**“390 When the FWC may order remedy for unfair dismissal**

(1) Subject to subsection (3), the FWC may order a person’s reinstatement, or the payment of compensation to a person, if:

(a) the FWC is satisfied that the person was protected from unfair dismissal (see Division 2) at the time of being dismissed; and

(b) the person has been unfairly dismissed (see Division 3).

(2) The FWC may make the order only if the person has made an application under section 394.

(3) The FWC must not order the payment of compensation to the person unless:

(a) the FWC is satisfied that reinstatement of the person is inappropriate; and

(b) the FWC considers an order for payment of compensation is appropriate in all the circumstances of the case.

Note: Division 5 deals with procedural matters such as applications for remedies.”

**Submissions**

[22] The parties initially made submissions in relation to the application in 2016, prepared by their respective legal representatives at the time. Both parties adopted these submissions and were given an opportunity to provide final written submissions prior to the hearing, given the number of years that had elapsed between the filing of the initial material and the hearing date. At the time of filing final submissions, neither party was legally represented. The summary of submissions below attempts to summarise both sets of submissions.

[23] I note that all material, including all submissions, in the matter has been read and considered in its proper context and that this summary merely outlines the parties’ positions.

**Hearing**

[24] The matter was heard before me on the following dates:

- 11 – 14 May 2020;
- 28 – 29 May 2020; and
- 12 June 2020.

[25] Ms Madden represented herself. The following people gave evidence for Ms Madden:

- Dr Harold Thornton;
- Mr James Booth;
- Mr Carl Weiss;
- Mr Kathleen Cleland; and
- Ms Candice Todd.

[26] The Respondent was represented by Mr Paul Daly, a current Director. Mr De Maria was permitted to participate in the hearing and also gave evidence. The following people gave evidence for the Respondent:

- Mr De Maria, current Managing Director of Street Swags;
- Mr Brian O'Reilly, retired, former teacher at Nudgee College and current Director of Street Swags;
- Mr Kevin Gillett; retired; and
- Mr Tony Deane, Special Counsel, Clayton Utz.

[27] It became necessary during the proceedings to issue to Ms Madden a caution in relation to her right not to answer any question where she considers that an answer may incriminate her. I informed Ms Madden that the Commission is not able to draw any adverse inferences from any decision she makes to exercise that right. I provided such a caution to Ms Madden on several occasions during the hearing.

### **Trickling in of further material**

[28] The parties used the opportunity of the hearing to “go to war” with each other. Clearly there is a repulsion Ms Madden has for Mr De Maria, so much that she cannot bring herself to refer to him as Mr De Maria; she simply refers to him as “De Maria”, often spoken in a scornful tone.

[29] Each of the parties continued to file and serve a substantial amount of documents, mainly emails, during the course of the hearing. I note that the parties are relatively unsophisticated with respect to litigation and each of them considered that the additional emails before the Commission would assist in their respective case. I permitted the trickling in of further material and I have had regard for all of the material provided by the parties.

### **Ms Madden’s evidence**

[30] Ms Madden filed three witness statements in the matter, dated 16 September 2016 (the First Witness Statement), 25 January 2017 (the Second Witness Statement), and 22 April 2020 (the Third Witness Statement).

[31] Ms Madden said that in 2005, she founded Street Swags to help the homeless by assisting them off the street by connecting with them through the delivery of sleeping materials and engaging with other organisations. Street Swags was registered as an Australian, non-profit, public company on 18 September 2007 and was bound by a company constitution and administered by the Australian Charities and Not-for-Profits Commission (ACNC). A copy of

the Street Swags constitution was provided. Ms Madden said Street Swags (at the time of the witness statement) gave almost 50,000 canvas swags to homeless Australians in 11 years of operation.

[32] The Street Swags Constitution at clause 1.4 states the following Objects of the charity:

**“1.4 Objects**

**(a) The objects of the Company are:**

(i) to provide homeless people with “street swags” in order to reduce the effects and dangers of sleeping outdoors without adequate protection to the elements;

(ii) to provide comfort and shelter to the homeless and needy, including but not limited to supported accommodation;

(iii) to provide holistic support to the homeless and needy; including but not limited to educational and, social and practical support;

(iv) to provide education to homeless people about the dangers of sleeping outdoors without adequate protection;

(v) to provide education to the homeless, vulnerable and needy, to assist in their personal development;

(vi) to promote community awareness of homeless people and the dangers they face sleeping outdoors;

(vii) to promote education and awareness to the community about the dangers and disadvantages of the homeless, vulnerable and needy;

(viii) to provide community education concerning homeless people and the dangers they face sleeping outdoors;

(ix) to reduce the amount of illness and the number of deaths in Australia attributed to homelessness and sleeping outdoors without adequate protection to the elements.”

[33] Ms Madden said that since 2010, she had been delivering a community healing program to at-risk youth in remote Aboriginal communities aiming to reduce crime, violence and sexual abuse. She said she received financial grants for this purpose and arranged for volunteers, staff and members to travel to remote indigenous communities, to deliver on Street Swags’ constituted objectives by providing holistic support to the homeless including social, emotional and practical support, and education and training to the homeless to assist in their personal development.

[34] Ms Madden said she was the first Australian winner of the world's largest design award, the INDEX: People's Choice Award in 2009, and also won the QLD Young Australian of the Year 2010 and was a finalist in two categories for the 2011 Telstra Business Woman of the

Year Awards and winner for QLD Innovation. In 2009 Ms Madden received silver for the Female Innovator of the year - Government or NonProfit section in the Stevie Awards New York and became the Ernst and Young Social Entrepreneur of the Year for Australia in 2014.

2013

[35] Ms Madden noted that Mr O'Reilly was the chairperson of Street Swags in 2013. Her evidence is that he stated to her that he was against Ms Madden meeting the company's constituted objectives and developing the company. She considered that Mr O'Reilly did not seem to appreciate that Street Swags' constitution required more of Street Swags than simply creating swags for the homeless. Ms Madden said that the constitution required a holistic approach which also met the emotional and social needs of the homeless, and that Mr O'Reilly did not seem to appreciate that there was insufficient donations to cover the cost of the staffing necessary to facilitate the swags reaching the homeless.

[36] Ms Madden said Mr O'Reilly attempted to have her expelled from Street Swags in 2013 over her development of the community healing project, and that he created a rift in the Street Swags board by making assertions that she was misusing donor money, despite being aware that Street Swags had received financial grants of funding to pay for the work related to the community healing project. Ms Madden said Mr O'Reilly alleged that she was using money that had been donated for the swags for the community healing project. Ms Madden said she explained to Mr O'Reilly that whilst the money may have come in as 'donated funds', it was money that had been itemised in grant funding applications and received as a grant for the community healing project work. Ms Madden said that while Mr O'Reilly said he accepted this explanation, he never really accepted her developing the community healing project work.

*Walkabout Homes Pty Ltd and Walkabout Beds Pty Ltd*

[37] Ms Madden said that in February 2016, independent of Street Swags and Walkabout Beds Pty Ltd, she personally established Walkabout Homes Pty Ltd, which was a company intended to provide affordable housing and necessary financial access to it. Her evidence is as follows:

"I had sought extensive advice (both legal and financial) about how best to structure the company. A due diligence report had been issued to the board of Street Swags in about June 2015. Additionally, all active members of Street Swags and staff were aware that Walkabout Homes had been in development for approximately two (2) years."

[38] It appears that Walkabout Homes Pty Ltd is Ms Madden's own private entity, and it is distinct from Walkabout Beds Pty Ltd which is a wholly owned subsidiary of Street Swags and had been operational for some years. Ms Madden was both a director of Street Swags and Walkabout Beds Pty Ltd, as well as having her own interests in Walkabout Homes Pty Ltd.

2015

[39] Ms Madden said that in about July 2015, she was accused of misappropriating approximately \$41,000.00. Ms Madden said she believed the allegations were made by Ms

Shelley Ryan, former employee of Street Swags, and Ms Nicole Quinn, who was formerly the company secretary.

[40] Ms Madden said that Ms Ryan had previously been advised that her role was being made redundant, and that an independent audit revealed that Ms Ryan had incorrectly coded transactions to inflate project expenditure, such as using the community healing project code to transactions relating to fuel and office expenses, which had nothing to do with the community healing project. The incorrect coding meant that the transactions appeared as though Ms Madden had spent over budget when she had not.

[41] Ms Madden's evidence is that Street Swags engaged 'Notch Above' accountants to review the transactions. She stated that a full audit was undertaken by Geraghty Accountants at significant expense to Street Swags which revealed the incorrect coding and the allegations were found to be baseless. Ms Madden said Ms Ryan's employment was subsequently terminated.

[42] In June 2015, Ms Madden presented the board of the Respondent with eight quotes regarding manufacture of cabins as part of a due diligence process.

[43] In July 2015, Ms Madden began a personal relationship with Mr Carl Weiss, who operated a business as a sole trader, and in 2016 established a company called Weiss Industrial Pty Ltd (Weiss Industrial).<sup>3</sup> Ms Madden said she had known Mr Weiss since 2002 and they had been long-time friends and neighbours.

[44] At the Street Swags AGM in December 2015, Ms Madden said she openly declared her business arrangements with Mr Weiss, including that Mr Weiss was willing to sacrifice personal profit to assist in the manufacture of cabins for the cabin project. Ms Madden said that she was congratulated on the new initiative and Mr O'Reilly suggested that Mr Weiss should be afforded some profit margin.<sup>4</sup> Ms Madden attached purported AGM minutes to her witness statement. The Respondent disputes the AGM minutes and states that they have never been adopted as there has not ever been an AGM since the December 2015 AGM.

[45] The contract for production of the cabins was ultimately awarded to Weiss Industrial. Ms Madden said that she was asked what would happen to the cabin project if something happened with her relationship with Mr Weiss. Ms Madden said that she had documented the arrangement for the cabin projects in writing, and it was agreed a formal contract should be prepared<sup>5</sup> and the contract was formalised in March 2016.<sup>6</sup>

[46] Ms Madden said that Weiss Industrial had agreed to add little to no mark up on the manufactured homes to ensure a price point that was around half the price of any equivalent on the market. Ms Madden said that the small mark-up meant that Weiss Industrial could only cover its expenditure for the project if a minimum of 44 orders per year was achieved, and that based on sales figures provided by Mr De Maria, this was achievable.

#### *January 2016*

[47] In about January 2016, Ms Madden said Mr De Maria approached her following a lunch. Ms Madden said Mr De Maria knew that she had had a few drinks at lunch, and said words to the effect, "*I have heaps of contacts and would be able to sell 100 cabins in a month*" and "*I could replace Virginia Daniels.*" Ms Daniels was employed as a sales manager

and was to replace Ms Madden in her role over the Christmas holidays but was unable to do so due to personal circumstances.

[48] Ms Madden agreed to employ Mr De Maria as a sales manager on the same salary as Ms Daniels on the basis that he made the 100 sales. Mr De Maria commenced working in the Ashgrove office on 25 January 2016.

[49] Ms Madden sent the following text message to Mr O'Reilly on 9 January 2016:

*"Hi I hope you had a lovely Christmas and New Year. Just to update you: The Christmas Campaign has achieved similar results to past years with final figures to be calculated in the coming weeks.*

*Orders for swags are also similar historically for this time of year.*

*We start production on cabins next week with the staff cabins being first off the rank, mine, Ginny's then yours which have now been approved for finance. We have 67 orders from different people who have confirmed their intent to buy. With Community Sector Banking approving 1.5 million for rent to buy orders. These orders were generated from the radio I did before Christmas.*

*On top of this we are underway negotiating large orders for 3 cabin villages, Arnhem Land, and just started looking into Cape York.*

*Manufacturers Contract, Sales Contract, Financers Agreements and Engineers Reports have all been drafted, and will be finalised in the next 2 weeks when Candy and I get back to work.*

*In short an excellent start to the year!"*

[50] Ms Madden said she returned to work after Australia Day 2016 and was frustrated by Mr De Maria's lack of performance and unsettling of staff, and she was advised of a number of issues by staff including that Mr De Maria had spent the first three weeks of his employment as sales manager drawing caricatures of her for a website which depicted her as a very young girl in a very short dress. Ms Madden said Mr De Maria misled staff as to his role as sales manager and made assertions that "sales is Kathy's role", referring to Ms Kathy Cleland, another employee.

[51] Ms Madden said she formalised an employment contract for Mr De Maria with Walkabout Beds on a fixed term of three months, with the employment contract back dated to his commencement on 25 January 2016. Ms Madden said she reluctantly set Mr De Maria's salary at \$120,000 plus superannuation as that was what he had previously been paid in other external employment. The stipulated key performance indicator (KPI) in Mr De Maria's contract of employment was reduced to the sale of 40 cabins by the end of March 2016.

#### *Concerns raised with Mr De Maria*

[52] Ms Madden said her assistant, Ms Candice Todd was on a period of leave following her own annual leave in January 2016, and Ms Madden did not discover that Mr De Maria had been "paying himself" out of the charity funds of Street Swags until the first week of March 2016. Specifically, Ms Madden said she learned that while she was on leave, Mr De Maria withheld the fact that he had been engaged by Walkabout Beds, and he instructed Ms Cleland to pay him from Street Swags. Ms Madden understood Mr De Maria received a substantial personal monetary benefit of \$15,000 (\$30,000 pre-tax value) salary sacrifice.

This is despite Ms Madden's witness statement attaching Mr De Maria's employment agreement from Street Swags.

[53] Ms Madden said she brought the issue of the payment from Street Swags to his attention and referred him to the Street Swags constitution, and Mr De Maria said he would get legal advice.

[54] Following this discussion, Ms Madden said she had a series of conversations with Mr De Maria in relation to him not fulfilling his responsibilities as sales manager, and his divisiveness and disrespectful behaviour towards Ms Madden and other staff. Ms Madden said she spent considerable time performance managing Mr De Maria, who did not take the matters seriously and referred to her matters of concern as his 'charge sheet'. Ms Madden said Mr De Maria also made a number of sexual advances towards her during these meetings.

[55] Ms Madden said she spoke to Mr De Maria about concerns that he was wasteful with company resources in that he made a number of decisions without properly researching beforehand and his not respecting staff and their roles. Smaller concerns raised by other staff included:

- (a) numerous iPhone charger cables disappearing from the office;
- (b) Ms Cleland and Ms Todd regularly finding their personal phone cables plugged into Mr De Maria's computer;
- (c) Mr De Maria regularly borrowing USB sticks and not returning them;
- (d) Mr De Maria not cleaning up after himself;
- (e) Mr De Maria wearing canvas bedroom slippers to work and always looking generally dishevelled; and
- (f) Mr De Maria often touching and readjusting his crotch.

[56] Ms Madden said it was revealed to her that Mr De Maria regularly requested copies of financial records and information for Street Swags and Walkabout Beds from Ms Cleland, and that as Mr De Maria was not a director of Walkabout Beds, he had no reason to request the financial records for it and such request was beyond his scope of employment with Walkabout Beds.

[57] Ms Madden said Mr De Maria also sexually harassed Ms Todd and other members of Street Swags staff. She recalled an occasion in or about January 2016, during the Christmas holiday period (which Ms Todd in fact puts as mid-February 2016), when Ms Todd attended her office and appeared to be out of sorts, and Ms Madden observed that she had wet herself. Ms Madden said she was interrupted by other staff and did not get a proper opportunity to speak to Ms Todd about what had happened, but discretely offered her a change of clothes.

[58] Ms Madden said that she only learnt the extent of the harassment when she and Ms Todd were later working in the Darra office. Ms Madden said that by that time, she was no longer working in close proximity with Mr De Maria and did not have an opportunity to raise the issue directly with him. Ms Madden said she understood Ms Todd had made a complaint about the harassment to the Fair Work Commission shortly after she learned of the extent of the harassment, and understood that Work Cover has approved claims lodged by Street Swags staff members based on Mr De Maria's bullying and sexual harassment, and that in response, Mr De Maria often stated words to the effect that "*if anyone stands in my way, my lawyers will take your house and savings.*"

**[59]** On 16 February 2016, Mr O'Reilly sent a text to Ms Madden advising that he and his wife would not be purchasing a cabin as it didn't suit their retirement plans.

*March 2016*

**[60]** On 15 March 2016, a full staff meeting was held. During this staff meeting, the issue of Mr De Maria not fulfilling his contract was again discussed. Mr De Maria was present during this meeting. Ms Madden said a solution was proposed that Weiss Industrial would take over the sales of the cabins and deal with customers past their initial contact. Ms Madden said that Mr Weiss and his staff had the necessary knowledge to answer customer questions, make required design changes, and perform site inspections.

**[61]** Ms Madden said a number of the staff during this meeting voiced their frustration that the current arrangement of having Mr De Maria in the role of sales was not working and that it would be in the best interest of the organisation to hand this role over to Mr Weiss and his staff for the sake of efficiency and results.

**[62]** After the meeting, Ms Madden said she explained to Mr De Maria that having made no sales at all, it looked most unlikely that he would be able to reach his KPI of 40 cabin sales by the end of March, but that she would not hold him in breach but would let his contract run out to give him time to make alternate arrangements.

**[63]** Ms Madden said that on 23 March 2016, Mr De Maria emailed Ms Cleland, claiming to have "gastro" and stated he would be working from home but to "put it down as sick leave." During the day staff attempted to contact him however he was not available.

**[64]** On 24 March 2016, Mr De Maria emailed Ms Cleland to say he was sick again, claiming to be "on the mend but not wanting to spread his germs." Ms Madden said she later found out that Mr De Maria had been briefing "his lawyers".

**[65]** Between 25 and 28 March 2016, Ms Madden said she was on holidays for the Easter long weekend in Noosa. She said that on 25 March 2016, she loaded her weekly diary post to her Facebook page and YouTube channel, unaware that staff had been emailed by Mr De Maria earlier that day. Having viewed Ms Madden's diary posts of 25 March 2016, I note that Ms Madden gushed well wishes to Mr De Maria towards the end of the video, noting he had been unwell. From viewing her video, Ms Madden appears to be extremely fond of Mr De Maria.

*28 March 2016*

**[66]** On 28 March 2016, Ms Madden returned from Noosa to attend a birthday party for Ms Todd at her house. While at Ms Todd's house, Dr Harold Thornton, said that there was something she should know and that she might want to check her emails. Ms Madden said she checked her emails on her phone, and that she also had access to Ms Todd's emails on her phone. She observed an email had been sent to staff of Street Swags by Mr De Maria advising that Ms Madden had been suspended pending an investigation into financial irregularities.



[67] Ms Madden said that at the time of reading the email, she had not received any email from Mr De Maria about any suspension of her employment or any letter from about any suspension of her employment. Ms Madden said she left Ms Todd's house and telephoned Mr O'Reilly to ask if there was anything that he wanted to tell her, to which Mr O'Reilly responded, "No". Ms Madden then sent an email to Mr De Maria at 2:32pm as follows:

*"Dear Adrian,*

*It will not come as news to you that there has been issues with your employment in Street Swags Ltd and Walkabout Beds Pty Ltd.*

*An incident of a very serious nature concerning your conduct has been brought (sic) to my attention therefore the decision has been reached to provide you with an opportunity to 'show cause' as to why you (sic) employment with these organisations should continue.*

*I will explain the process for this 'show cause' to you further at my earliest opportunity hopefully this week in the meantime you are stood down on full pay until further notice.*

*This is a highly confidential matter and you are directed as an employee to refrain from discussing it with other staff or associates of this organisation but only with properly constituted support person (union-legal).*

*Yours faithfully*

*Jean Madden"*

[68] After sending the email to Mr De Maria, Ms Madden said she caused notice to be given of an extraordinary special meeting of members to be held at her residence at 6.00pm. Members that were unable to attend were advised to telephone in.

[69] At about 5.43pm, members of Street Swags received an email from Boss Lawyers acting for Street Swags advising the following:

*"To whom it may concern*

***Unauthorised meeting***

*We act for Street Swags Ltd.*

*It has been brought to the attention of Mr O'Reilly and Mr De Maria, the directors of Street Swags Limited that Ms Madden has attempted to organise a meeting purportedly of the members (Invalid Meeting).*

*Ms Madden has absolutely no authority to organise such a meeting nor is the Invalid Meeting binding on the company. Any resolution passed is null and void. We direct you to disregard Ms Madden's unauthorised and unsolicited email.*

*Ms Madden's conduct demonstrates a flagrant breach of the directives given to her by the directors of Street Swags Limited and will be dealt with accordingly.*

*Ms Madden has been stood down from Street Swags Limited pending a full investigation and you are again reminded and directed not to take any directions from Ms Madden until further notice of the directors of Street Swags Limited.*

*We are confident that most members will do the right thing and let the investigation into Ms Madden run its course through the proper channels. However, for those of you who don't, then the directors and indeed other members may consider your conduct warrants expulsion from Street Swags Limited.*

*If you have any questions, please direct them to either Mr O'Reilly or Mr De Maria.*

*Yours faithfully*

*Mark Harley, Partner."*

[70] At about 5.56pm, Ms Madden emailed Boss Lawyers the following email:

*"Dear Mark, as set out in the Street Swags Constitution, I absolutely do have the authority to call this meeting.*

*I have not been stood down and have received no communication to the like.*

*Your services are no longer required, you now no longer act for Street Swags Ltd.*

*Jean"*

[71] It is Ms Madden's evidence that she did not receive the email at [10] until 6:03pm. Further, it is Ms Madden's evidence that Boss Lawyers had been retained by Walkabout Beds. The retainer with Boss Lawyers was arranged by Mr De Maria, who Ms Madden said did not declare that Boss Lawyers had previously been acting for him in a personal capacity.

[72] At about 6.00pm, the members' meeting commenced. In relation to the members' meeting, Ms Madden's evidence was that:

- (a) all active current members were in attendance with the exception of Mr De Maria;
- (b) all members agreed to waive their rights to the required notice;
- (c) Mr O'Reilly attended by telephone;
- (d) at 6.03pm, Ms Madden received an email copy of a letter dated 24 March 2016 from Boss Lawyers (above at [10]) advising her that she had been suspended on full pay and that she was to deliver property of Street Swags including a truck and stage to the offices of Boss Lawyers in the Brisbane CBD by 10am on 29 March 2016;
- (e) resolutions were passed including:
  - (i) removing all existing directors being Mr De Maria, Mr, O'Reilly, and Ms Madden;
  - (ii) appointing Dr Harold Thornton, Dr Angela Richards and Mr James Booth as directors and Ms Todd to continue as company secretary; and

(iii) that a further meeting to consider the situation would be scheduled for 4 April 2016.

[73] Ms Madden said she was happy to be removed as director at that time to ensure there was no perception of a conflict of interest while the alleged financial irregularities were investigated. Ms Madden said the letter dated 24 March 2016 she received from Boss Lawyers at 6.03pm was forwarded to an incorrect email address, and to date she had not received a hard copy of the letter from Boss Lawyers despite claims that it was sent by registered post.

*29 March 2016*

[74] On 29 March 2016, Ms Madden said she was advised by a member of the Ashgrove branch of the National Australia Bank that Mr De Maria caused the Street Swags accounts to be frozen.

[75] Ms Madden attended the Ashgrove office for work, and on arrival, two security guards were refusing access to the Street Swags office. Ms Madden said the security staff had been engaged by Mr De Maria without financial delegation or authority from Street Swags. Mr Mark Harley of Boss Lawyers was in attendance with Mr De Maria and was taking photographs and threatening legal action against staff seeking to retrieve personal property from the office.

[76] Ms Madden said that her personal property including furniture, awards and other personal items have not been returned to her. Ms Madden said office files were also removed together with valuable designer accessories belonging to staff, and Mr De Maria informed the police that none of the property is in his possession.

[77] Ms Madden said that the Queensland Police Service (QPS) were called to attend and advised her that there was nothing they could do. Ms Madden said the QPS told her and Mr De Maria that no one could enter the office until the issues were resolved.

[78] Ms Madden said she believed Mr De Maria seized control of Street Swags without authority and his actions were designed to remove her as CEO of Street Swags and put himself in her place. Ms Madden said that in accordance with her role as CEO she asked Mr De Maria to leave, but he blocked the entrance/exit to the premises and instructed the security guards to follow her if she tried to move, including following her to the toilet. Ms Madden said she was distressed and fearful for her personal safety.

*30 March 2016 and first termination*

[79] On 30 March 2016, Ms Madden received a termination letter (the first termination letter) from Boss lawyers, above at [13]. Ms Madden said she received the termination letter by email, and prior to receiving the termination letter, she had no opportunity to address the reasons for her termination or suspension.

[80] Ms Madden said she was confused as to the validity of her termination and suspension in circumstances where Mr O'Reilly and Mr De Maria had been removed as directors by the members on 28 March 2016.

*April 2016*

**[81]** Ms Madden said that on 2 April 2016, she was advised by business owners and tenants of the arcade in which Street Swags operated that Mr De Maria had been in the Street Swags office and moved boxes in front of the glass doors preventing anyone from seeing inside. Ms Madden attended the Street Swags office and took photographs of the boxes and observed that the lock had been ground off with a machine tool.

**[82]** Ms Madden said a business owner from within the arcade advised her that he observed files being removed from the office by Mr De Maria and an unknown man. Ms Madden said that the description given to her of the unknown man matched the description of Mr Harley of Boss Lawyers.

**[83]** Ms Madden said that Dr Thornton, Dr Richards, and Mr Booth, as directors of Street Swags installed at the members' meeting of 28 March 2016 obtained legal advice from McCullough Robertson. Ms Madden said she was advised that McCullough Robertson attempted to schedule a meeting between the new directors and Mr De Maria and Mr O'Reilly to address issues including who was properly a director, but no meeting occurred.

**[84]** Ms Madden said that she was not legally represented by McCullough Robertson, and that during exchanges of correspondence between McCullough Robertson and Boss Lawyers, McCullough Robertson advised Boss Lawyers that McCullough Robertson was acting for the new board and not Ms Madden.

**[85]** On 10 April 2016, Ms Madden sent the following text to Mr O'Reilly:

*"You are breaking employment law by not paying staff. You need to unfreeze the bank accounts. You are also party to Adrian's break and enter and stealing."*

**[86]** On 11 April 2016, Ms Madden received a copy of a letter, dated 30 March 2016 (reproduced above at [14]), that Boss Lawyers had sent to McCullough Robertson. The correspondence outlined a number of allegations in relation to financial irregularities that were directed at Ms Madden, which caused her to become very upset because she had only just received the correspondence after weeks of wondering whether she had been suspended or terminated and not properly understanding the proper reasons for her termination. Ms Madden said it was unclear as to whether this letter was sent to her in her capacity as CEO or as Director.

**[87]** Ms Madden said that in the following days, Dr Thornton, Dr Richards, and Mr Booth were served with a Supreme Court application on behalf of Street Swags seeking orders including preventing them from acting as directors. The correspondence also threatened costs against them personally.

*13 April 2016*

**[88]** Ms Madden said she stayed up very late the night before on 12 April 2016 writing her responses to the allegations in the 30 March 2016 letter, and that she continued writing her response into the morning of 13 April 2016. She said that given she had been terminated she assumed the allegations were about her conduct as a Director of Street Swags.

[89] At about 1:26pm, Ms Madden sent her response letter to Boss Lawyers refuting the allegations of misusing funds and provided a full account for each of the transactions in question, stating she believed the members meeting of 28 March 2016 was valid.

[90] Ms Madden said that after sending her response, she noticed it contained a typographical error and she immediately sought to amend it. At this time, Ms Madden said someone came to the Darra office looking for her, and she was scared and hid in the toilets with the lights off. Ms Todd recognised them and told them Ms Madden wasn't in the office. Ms Madden and other workers were working from the "Darra office" purportedly doing Street Swags and Walkabout Beds work, on the premises provided by Mr Weiss.

[91] Ms Madden said that at about 2:17pm, she received news that McCullough Robertson advised Dr Thornton, Dr Richards, and Mr Booth that they could not provide pro bono representation in any litigation, and that as volunteers with families and work commitments, Dr Thornton, Dr Richards, and Mr Booth decided they would sign the consent forms in relation to the Supreme Court interlocutory relief action commenced by Mr De Maria and Mr O'Reilly on behalf of Street Swags. Ms Madden said that they agreed that the 28 March 2016 meeting was invalid, solely due to personal, time and financial constraints, and felt as though they had no option but to sign.

[92] At about 2:30pm, Ms Madden said she left in a distressed state to collect her children from school, and at about 3:30pm she took the children from school to Mr Weiss' house and hid, as she could hear someone driving up and down her driveway. Ms Madden said she wanted to avoid being served with any court papers until such time as she had obtained legal advice.

[93] Ms Madden said she received a number of angry text messages from Mr Booth at about 6:39pm, making her aware he had been served with court papers and he was named as a respondent to the interlocutory action.

*14 April 2016*

[94] Ms Madden sent the following email at 6:08am on 14 April 2016 to Mr Tony Deane of Clayton Utz:

*"Hi Tony, I hope you have been well. I'm sorry that things ended up badly between us. Street Swags did have an independent accountant go through every receipt and carry out a thorough audit. This revealed Shelley had retrospectively in Xero put transactions into the wrong job codes in order to inflate the expenses in certain projects. Her campaign spread a great deal of poison.*

*Two directors who remained from this time have rehashed this campaign. They have issued an interlocutory application for Friday at 10am (emailed to me last night).*

*There is only around \$80k in the consolidated accounts and the demands they are asking for tomorrow will leave Street Swags Ltd insolvent.*

*I have no legal representation to save the company. PLEASE HELP ME.  
I am very happy to pay commercially.*

*My best contact is [number]*

*Jean”*

[95] Ms Madden’s evidence is that she was so stressed by events that she forgot to take her son to his piano lesson. She said she then took her children to school and sent the following text message to Mr O’Reilly hoping that he could see reason in the situation before she drove to Mr Weiss’s office and locked the doors:

*“SSL has \$49k in cash, paying Boss and the security tomorrow will make it insolvent.”*

[96] Ms Madden said she received correspondence from Boss Lawyers via email, also directed to Dr Thornton, Dr Richards, and Mr Booth, proposing terms of settlement in relation to the Supreme Court proceedings. The terms included, in summary, that:

- (a) all parties agree the proper Directors of Street Swags are Mr De Maria, Mr O'Reilly, and Ms Madden;
- (b) the Directors appoint an independent auditor to undertake a forensic audit of Street Swags’ finances; and
- (c) Ms Madden be stood down as Chief Executive Officer (on full pay) until the completion of the independent audit.

[97] Ms Madden said she received a reply from Mr Deane at 10:46am saying he could not help her due to a conflict with Street Swags. Ms Madden replied to Mr Deane as follows:

*“Thank for taking the time to read it and for all you have done for us over the years.*

*I will act now to wind up the company.*

*xo”*

[98] Ms Madden’s evidence is that at about 11:23am, she spoke with Mr Nigel Markey at Pilot Partners about “our” options, including attempting to stop the destruction of “my” company which she felt would be inevitable if the Supreme Court orders were made. Mr Markey told her there was nothing she could do about Street Swags.

[99] Ms Todd informed Ms Madden that Dr Richards was distraught and furious, and that Dr Richards’ children had been staying up late crying and scared that their mother was going to go to jail. Dr Richards sent Ms Madden a message asking her to make the matter go away and asking, *“Is he after my money too?”* Ms Madden responded in part, *“I’m sorry. I am making it go away the whole charity to keep you safe.”*

[100] Ms Madden said she agreed to sign the terms of settlement at 2:30pm as she was frightened and felt she had no choice but to accept the terms as she had no money and no other options for legal support, and she was deeply concerned by how her supporters were being affected. Ms Madden said that at the time of agreeing to the settlement she did not understand what it meant for her employment, as the terms referred to her being stood down, but she understood she had already been terminated. Ms Madden said she was not sure whether the stand down related to her capacity as a Director or as an employee.

*15 April 2016*

**[101]** Ms Madden said that on 15 April 2016, not really understanding the full impact of what had happened the previous day nor what she had signed, she made her weekly 'Jean's Diary' video.

**[102]** Following the filing of consent orders, Ms Madden said:

- (a) the Supreme Court made orders in the terms of the consent orders signed by Dr Thornton, Dr Richards, Mr Booth, and Ms Madden;
- (b) Mr De Maria gained access to the Street Swags accounts and appointed himself to the role of Managing Director, and immediately back paid himself to the 25 March payday a new unauthorized salary of \$150,000, not including super.

**[103]** Ms Madden said all other staff salaries and super remained unpaid, and large sums of money were paid to Boss Lawyers and the security company, both being unsecured creditors. Ms Madden said other unsecured creditors, such as the vehicle leasing company and foam supplier, remain unpaid.

*From 19 April 2016*

**[104]** Ms Madden said that the Street Swags members issued a notice calling a meeting of members, with the principle agenda items being to add members, add directors and appoint new company lawyers.

**[105]** Ms Madden said that she received a letter dated 20 April 2016 from Boss Lawyers providing notice that each of the parties was required to “provide an original signature to the court indicating their consent to the orders to be made”. A request for consent order was attached to the correspondence together with draft orders that provided:

“THE COURT DECLARES BY CONSENT THAT-

1. The proper directors of Street Swags Limited ACN 127 605 832 are Adrian Pasquale De Maria; Brian John Emmett O'Reilly and Jean Ellen Madden.
2. The notice of meeting dated 28 March 2016 is invalid.
3. All resolutions passed at the purported Meeting of Members on 28 March 2016 are invalid.”

**[106]** At about 2.03pm on 20 April 2016, Ms Madden sent the following email, resigning as a Director of Street Swags:

*“Due to being precluded from carrying out my duties as a director and as per my letter (15 April to my fellow directors, outlining my concerns for solvency), I resign as a director of Street Swags Ltd.”*

**[107]** Ms Madden said that following the agreement reached on 14 April 2016, Ms Todd, Mr Weiss, and Ms Madden each had their personal email, Facebook and iCloud accounts hacked by someone operating from within Ashgrove. This was reported to the police and other relevant authorities.

*First unfair dismissal application*

[108] Ms Madden said she was confused by what application the terms of settlement, dated 14 April 2016, had in relation to her termination of 30 March 2016, and consequently she emailed Mr O'Reilly requesting confirmation of whether or not she would be reinstated or terminated noting that it had been a week since she provided her detailed response to the allegations in the 30 March 2016 letter. The email is as follows:

*“A week has now passed since I responded to your show cause... attached. I believe this is ample time for you to respond.*

*Can you please advise today whether you reinstate or terminate....*

*My termination pay is as follows:*

*3 weeks in unpayed (sic) wages plus 4 weeks notice for termination*

*\$846.16 ordinary pay x 7 is \$5,923.12*

*Annual Leave Owing 591.178 units is \$15,667.69*

*= \$21,590.81*

*Into account [redacted]*

*And*

*\$307.69 salary sacrifice pay x 7 = \$2,153.83*

*Into account [redacted]*

*Jean”*

[109] As at 22 April 2016, Ms Madden stated that she remained confused as to what application the terms of settlement had in relation to her employment and sought to protect her interests and filed an application in the Fair Work Commission seeking an unfair dismissal remedy.

[110] On 26 April 2016, Ms Madden received a letter from Boss Lawyers as follows:

*“26 April 2016*

*.....*

*Dear Ms Madden*

***Suspension of your employment***

*We refer to your email on 21 April 2016, in which you ask whether your employment has been terminated.*

*As noted in our letter of 24 March 2016 (a copy of which we attach), your employment has been suspended pending the outcome of an independent audit and forensic investigation of the company's financial affairs.*

*We thank you for your response to our letter of 30 March 2016 but as the director's investigations into the financial affairs of the company remain ongoing, your employment remains suspended*



***Payment of monies owing***

*We note that the directors of Street Swags only obtained access to the National Australia Bank Account late on 20 April 2016. The directors are currently calculating the entitlements owed in back pay to each employee and will make such payments. we note that any monies due to be paid to you from Walkabout Beds will need to be referred to the administrators of that company.*

***Bendigo Bank Account***

*We have been informed by Community Sector Banking that a number of significant transactions were made on Street Swags' Bendigo Bank Account on 1 April 2016. We note that you were the sole signatory of the account at this time.*

*We are therefore instructed to seek that you provide a full account of the monies disbursed from the Bendigo Account by 4:00 pm on 28 April 2016.*

***Mail Plus Redirection***

*We have also been informed by Mail Plus that you represented yourself to them on 21 April 2016 as a representative of Street Swag. As you are stood down as CEO and have subsequently resigned as a director, you have no authority to give any directions.*

*Accordingly, you are directed to cease representing yourself as an authorised representative of Street Swags Limited and to deliver up to the directors any mail received during the time of unauthorised redirection by 4:00 pm on 28 April 2016.*

*We note that all mail of Walkabout Beds should be provided to the administrators of that company.*

*Yours faithfully”*

[111] Ms Madden said she remained confused as to whether or not her employment had been terminated or not because the correspondence from Boss Lawyers referred to the suspension letter dated 24 March 2016, but made no mention of the termination letter dated 30 March 2016.

*Consent Orders and Access*

[112] On 6 May 2016, Ms Madden signed the original of the request for consent order accepting the terms outlined in correspondence from Boss Lawyers dated 20 April 2016. Ms Madden said she believed this reinstated her as a Director.

[113] On 9 May 2016, in response to threatening letters from Boss lawyers, Ms Madden said she gave Mr De Maria read only access to the online accounting software Xero, which gave him the ability to register a new account and transfer the historical data for the company. Ms Madden said that having full access to Xero would enable Mr De Maria to make changes to the historical data in the account, and if Ms Madden gave her username and password, any

changes he made would look as if they were made by her. Ms Madden said she was very concerned that access would be abused in order to fabricate a criminal case against her.

[114] On 18 May 2016, Ms Madden said she received notice from Boss Lawyers that they had received the signed consent orders and that they intended to file an affidavit in support of the consent orders. Despite Ms Madden having granted read-only access to Mr De Maria, Ms Madden said Boss Lawyers foreshadowed an amended application if she continued to refuse to co-operate by allowing access to Xero and maintaining administration of the Street Swags Facebook account.

*Second termination*

[115] On 19 May 2016, Ms Madden received a second termination letter (reproduced at [15]) which alleged that “*The report of Worrell’s Forensic Accountants indicates that you have incurred \$441,399.43 in expenses from Street Swags and its subsidiary over the past year without proper authorisation.*”

[116] Ms Madden said the second termination letter made representations about paying to her statutory leave entitlements and conceding she had not been paid her salary to date.

[117] Despite being advised on 26 April 2016 that an investigation into the financial affairs of the company remained ongoing, Ms Madden said she received no opportunity to respond to any allegations before receiving the second termination letter.

[118] Ms Madden said she had read the Worrell’s Report and disagreed that the report makes any findings as alleged in the second termination letter or that it is an audit, forensic or otherwise. Ms Madden said that at the time of her first statement, she had received no response to her detailed response dated 13 April 2016.

*Amended application*

[119] On 24 May 2016, Ms Madden filed an amended application in the Fair Work Commission.

*19 June 2016*

[120] On 19 June 2016, a meeting of members was held which passed resolutions including that:

- (a) there be 16 new members;
- (b) there be 7 directors appointed including:
  - Brad Pillette Hughes;
  - Julien Frise;
  - Kirstie Shaw;
  - Jean Madden;
  - Carl Weiss;
  - Harold Thornton; and
  - Bryce McConnell;

(c) The services of Boss Lawyers be terminated.

[121] As it eventuates, this purported meeting has never been acted upon or tested as being valid. It is clear that none of the above are, in fact, directors of the Respondent otherwise they would have been involved in the Respondent's business in the past four years, and on Ms Madden's evidence, none have been involved as directors. They are not recognised by the board of the Respondent.

*Response to Allegations*

[122] Ms Madden responded to the purported reasons for her dismissal in the first witness statement. Ms Madden summarised the allegations as follows as detailed in the termination letter of 19 May 2016:

- (a) Since the suspension date, Ms Madden repeatedly refused to turn over property belonging to Street Swags which is essential to its day-to-day operation, including:
  - (i) social media accounts; and
  - (ii) street Swags' Xero accounting software subscription;
- (b) Since the suspension date, Ms Madden continued to intimate to third parties that she represented Street Swags, including inter alia the Department of Housing and Public Works and the organisers of the Commonwealth Games;
- (c) Since the suspension date, she had openly disparaged and made defamatory comments concerning the directors of Street Swags; and
- (d) The report of Worrell's Forensic Accountants indicates that she had incurred \$441,388.43 in expenses from Street Swags and its subsidiary over the past year without proper authorisation.

[123] Ms Madden provided a response to each of these allegations in her witness statement.

*Turnover of property*

[124] Ms Madden said that she had explained to Mr De Maria and Boss Lawyers that a new Xero account would need to be commenced by them, and that Xero support also advised them of this. Ms Madden said she gave read-only access to the historical Street Swags Xero account which enabled copying of any files that were necessary to commence a new account with Xero.

[125] Ms Madden did not respond to the issue of her control of social media accounts of the Respondent.

*Representing Street Swags*

[126] Ms Madden said that Mr Brian Chu, a representative from the Department of Public Works telephoned Ms Madden during her suspension. Ms Madden advised Mr Chu that she had stepped away from Street Swags and was concentrating on her cabin project. Mr Chu

stated “Yes, my boss would like to see one”. Ms Madden said she advised Mr Chu that there was a cabin going to be on display the following week at the Brookfield Show and that they were welcome to attend.

[127] Arrangements were then made for members of the Department to attend on the following Thursday morning; however, Ms Madden said the meeting was cancelled as a consequence of defamatory claims made about her to the Department by Mr De Maria. Ms Madden said this was confirmed to her when she telephoned the Department on the Wednesday afternoon to confirm the meeting for Thursday.

[128] On 6 May 2016, Ms Madden attended a meeting with representatives of the Commonwealth Games. Ms Madden said during this meeting she represented herself and Walkabout Homes Pty Ltd, which she made clear during the meeting. She said that at no time did she discuss Street Swags or intimate she represented Street Swags.

*Disparaging and defamatory comments*

[129] During the period of her suspension, Ms Madden said she had been entirely truthful, and moreover had not made any comments disparaging of Street Swags. Ms Madden conceded she had criticised Mr O’Reilly and Mr De Maria in a personal capacity for the way in which they had acted.

*Worrell’s Report*

[130] Ms Madden provided a copy of the Worrell’s Report dated 19 May 2016, which was attached to her statement.

[131] Ms Madden denied that she had incurred \$441,399.43 in expenses from Street Swags and its subsidiary without authorisation. She further set out that:

- (a) as the CEO of Street Swags, she had financial delegations set by the board which she had stringently adhered to, and that there are no financial delegation limits for Walkabout Beds;
- (b) in 2015, the Street Swags board passed a resolution to have Walkabout Beds pay for the cabin development; again without setting a financial limit;
- (c) the sum of \$441,399.43 is more than the total year expenditure for either company whilst they were under Ms Madden’s management; and
- (d) all money was spent on the business of the charity.

[132] Ms Madden said with respect to the expenses/liabilities incurred by Street Swags and Walkabout Beds which may be in breach of the provisions of employment contract or potentially a breach of directors duties:

- (a) in relation to the expenses noted to be in excess of \$5,000:
  - i. the financial delegation by the board was in draft form and specified for only non-budgeted items to not exceed \$5,000;
  - ii. the community healing expenses were budgeted for with grant funding;
  - iii. the advertising and marketing expenses were budgeted for annually;

- iv. the expenses for registrations and subscriptions were outlined in the business plan and annual budget;
- v. the expense for wages (bonus - Emily Anderson) was approved by the board and was a term of Ms Anderson's employment contract;
- vi. the loan - Walkabout Beds expense was an accounting entry caused by franked tax dividends and discussed annually with the board;
- vii. the motor vehicle expenses were budgeted for as ongoing maintenance;
- viii. the expenses for motor vehicles were budgeted;

(b) in relation to the travel expenses noted to be in excess of \$1,000:

- i. there had never been a financial delegation specific to travel and it is not mentioned in the board financial delegation draft;
- ii. the community healing expenses were budgeted for and had funds allocated for this purpose from grant funding received from JVT and the Clayton Utz Foundation;
- iii. the JVT approved grant is an example of a budgeted travel expense exceeding \$1,000;
- iv. the directors of Street Swags had knowledge of the grants received;
- v. general travel was budgeted for annually;

(c) in relation to the legal costs;

- i. the professional fees were higher than usual as a direct consequence of expenses related to the employment matter regarding Shelley Ryan;
- ii. Counsel was engaged to represent Street Swags in relation to an employment related matter;
- iii. once it became apparent the legal fees would exceed \$5,000, the matter was referred to Street Swags' insurer who then managed the case;
- iv. the legal costs were approved by the board;
- v. the Crowley Greenhalgh expenses related to Ms Madden's salary (from Walkabout Beds) being paid directly into the trust account of her family lawyers, which she claims was done after consultation with the accountants and auditors of Street Swags and Walkabout Beds. Ms Madden's evidence is that she was advised by the accountants that she could direct her salary into any account of her choice, provided tax was paid correctly;

(d) in relation to payments to Virginia Daniels:

- i. it was the responsibility of the CEO, and not the board, to manage Virginia's employment;
- ii. nevertheless, Virginia's appointment and salary was approved by the board as part of Street Swags' '5 Year Plan';
- iii. Virginia's employment was staggered due to company cash flow and her own personal commitments;

(e) in relation to staff back pay:

- i. Kathleen Cleland spent considerable time working with an independent accountant rectifying Street Swags' accounts as a direct consequence of the incorrect coding by Shelley Ryan;
  - ii. errors in staff salary payments were identified by Kathleen Cleland and the accountant during the period of time they spent rectifying Street Swags' accounts;
  - iii. once the errors in staff salary payments were identified, payments were made to rectify those payments;
- (f) the payments to staff were monitored by Street Swags accountant; in relation to truck expenses:
  - i. both Street Swags and Walkabout Beds owned vehicles which required ongoing maintenance which was budgeted for annually;
  - ii. insurance for the vehicles was also budgeted for annually;
- (g) in relation to cash advances:
  - i. there were insufficient particulars or information to respond to the advance of \$1,000;
  - ii. the internet transfer - closure was likely to have been in relation to closing an account;
- (h) the amounts exceeding \$1,000 from NAB listings not in Xero relate to bills paid but not yet job coded, for example, freight and foam;
- (i) in relation to other expenses potentially of interest:
  - i. the office expenses related to the purchase of a new staff laptop;
  - ii. the expenses relating to training, conferences and workshops related to training of new staff;
  - iii. the motor vehicle expenses related to servicing of the vehicles
- (j) in relation to employee reimbursements:
  - i. staff used Street Swags' and Walkabout Beds' credit cards, which were in Ms Madden's name for general running costs;
  - ii. the reimbursement to Kathy Cleland was for office supplies;
  - iii. the reimbursement to Candice Todd was for office supplies, event expenses and travel;
  - iv. the reimbursement to Ms Madden was for motor vehicle and event expenses;
- (k) in relation to the payments to Weiss:
  - i. the arrangements and payments for storage were approved by the board;
  - ii. the cabin expenses were approved by the board;
  - iii. the payments from Walkabout Beds were approved by the board and invoiced;

(l) in relation to financial agreements:

- i. Metro Finance was for a vehicle under lease agreement by Walkabout Beds; and
- ii. Capital Finance was for cabin and vehicle financing, which included an amount paid accidentally to Weiss Industrial that was later reimbursed.

### *Loss and Damage*

[133] Ms Madden said she is a single mother of two children, and she had not worked since being terminated from Street Swags. Ms Madden asserted in her statement dated 16 September 2016 that she had not been paid any wages in lieu of notice, superannuation entitlements and leave entitlements.

[134] Ms Madden said that without a job, and no salary, she had been unable to continue paying for legal representation in her concurrent family law proceedings, and without any income, she was not able to qualify to transfer her home loan into her name as part of her divorce settlement and as a result lost her home and custody of her children, which she said had grossly exacerbated the psychological damage caused by her termination.

[135] Ms Madden said that in or about mid May 2016, she learned that Mr De Maria had advised Centrelink that she was receiving a salary which caused Centrelink to cease her child support payments.

[136] Ms Madden said that the loss of her family home, her children and her independence was directly attributable to her wrongful termination, and she had lost any ability to continue servicing mortgage repayments and everyday items including school fees, water, groceries, worn out clothes and shoes, and cleaning products.

[137] Ms Madden said she was unable to afford medical and dental service for herself or her children, and she was unable to afford a motor vehicle and faced difficulty getting her children to and from school, sporting events, social activities family commitments or holidays. Ms Madden said her children had suffered as a consequence of the allegations the subject of her termination, being teased at school that Ms Madden was a thief, had done naughty things and has stolen money from homeless people.

[138] Ms Madden said she had lost her support network and was suffering social exclusion. Ms Madden said she had to borrow money from people as the banks would not loan her any money. Ms Madden said she had lost her good credit rating and her reputation.

### *Second Witness Statement*

[139] Ms Madden's second witness statement was made in reply to the Respondent's material. It is dated 25 January 2017. Ms Madden referred and relied to her previous witness statement in her reply statement.

### *Objectives of Street Swags and director opposition*

[140] Ms Madden reiterated that she founded Street Swags in 2005 as a charity with the Australian Charities and Not for Profits Commission (ACNC). Ms Madden said the Street Swags' constitution detailed a list of objectives unrelated to the manufacture and delivery of street swags, but its aim was not simply “to supply bedding and accommodation to the homeless.” Ms Madden said the objects of Street Swags included the manufacture and distribution of street swags but also to be connected to the issues of homelessness and respond to those issues with practical and innovative solutions.

[141] Ms Madden said that in March 2013, she delivered a presentation to the Street Swags' members that outlined in order to reduce the percentage of donations Street Swags spent on administration, Street Swags needed to develop and expand to create separate revenue raising ventures to support a portion of the parent company's necessary wages.

[142] Ms Madden said that this form of expansion had already commenced in 2009 via Walkabout Beds, which was a subsidiary of Street Swags, by separating the commercial and benevolent activities. Ms Madden said that the members of Street Swags resolved to continue to work towards meeting Street Swags' constituted objectives and adopted the proposal she outlined during the 2013 presentation in its entirety. The members requested that they be updated at the next Annual General Meeting (AGM).

[143] Ms Madden said that despite the resolution reached by the members regarding the direction of Street Swags, the directors did not agree with the proposal. On a date between the March 2013 members' presentation and early April 2013, Ms Madden said the Board provided her with a written ultimatum to the effect that she walk, or they would. Ms Madden said because the Board had ignored the wishes expressed by members, and the constituted objectives of Street Swags, she “decided to let go those members of the Board who were not willing to work towards the objects of the company” but asked the treasurer to stay on.

[144] On 22 April 2013, Ms Madden circulated an email advising that Mr O'Reilly, Mr Daly, Mr Gillett and Mr Michael Baker had mutually agreed to step down as directors on 30 June 2013.

[145] Ms Madden said that after this time, Mr O'Reilly came to her requesting that she let him return, and she did so on the proviso that he agreed to work towards the company's objectives.

*May 2015*

[146] On 18 May 2015, Ms Madden and Ms Daniels proposed the Clarendon Station Project and the Cabins Project. Ms Madden said that at the time, she envisaged that the Clarendon and Cabins Projects would be linked. On or about 18 May 2015, Ms Madden and Ms Daniels presented the Street Swags five-year plan (for 2015-2020) which outlined the steps to be taken to fulfil the rest of Street Swags' constituted objectives. The steps included:

- (a) To provide holistic support to the homeless and vulnerable; including but not limited to educational, social, emotional and practical support;
- (b) To provide education to the homeless, and those at risk of becoming homeless, to assist in their personal development and training;
- (c) To provide comfort and shelter to the homeless and needy, including but not limited to supported accommodation;



- (d) To provide education and awareness to the community about the dangers and disadvantages of the homeless, vulnerable and needy, including the dangers they face sleeping outdoors; and
- (e) To reduce the amount of illness and the number of deaths in Australia attributed to homelessness.

[147] Ms Madden said the five-year plan outlined that the Clarendon Station project was the next step in Street Swags' evolution, enabling Street Swags to develop a model that fulfils Street Swags' core objectives.

[148] Ms Madden said that ultimately, the Clarendon Project did not proceed as it was not in the commercial interests of Street Swags. With respect to the Cabins Project, Ms Madden said she participated in a preliminary meeting with Clayton Utz Lawyers who raised a number of issues which they advised needed to be addressed in relation to the cabins project. Clayton Utz Lawyers were acting in a pro bono capacity.

[149] There was a fair degree of written correspondence between Ms Madden and Clayton Utz in mid-2015 relevant to specific risks that Clayton Utz had identified relevant to the Cabins Project.

[150] Ms Madden said she felt that Clayton Utz were being overly cautious. She asserts that the minutes of the directors meeting of 5 August 2015 evidenced that the directors were aware of the concerns raised by Clayton Utz and that those issues were worked through by Ms Madden, staff, and the Board, and that the Board was aware of the breakdown in the relationship with Clayton Utz.

[151] The relevant part of the 5 August 2015 meeting minutes is reproduced as follows:

“RESOLVED: The Directors have acknowledged the advice given by Tony Deane from Clayton Utz beginning 25 June 2015 and are committed to systematically following through on this advice.

Brian acknowledged that the issues raised by Clayton Utz are being worked through and will continue to be worked through by Jean and the Board. He suggested Clayton Utz be updated on a regular basis.

Jean explained the timeliness and process around the email exchanges provided and explained her actions around managing the risk with the information provided to her by Clayton Utz within a timely manner. Some of the concerns raised by Clayton Utz are raised the night they were due to leave to Mt Isa. It was Jean's view that the risk of cancelling would be a real dollar figure of around \$35k. A real and immediate cost as distinct from a possible risk of something going wrong with the retreat as raised by Clayton Utz/Nicole Quinn. Measures were put in place to mitigate risk and potential injury to participants as per legal advice.

Jean had been in extensive negotiations with the insurance company for 2 weeks prior to the retreat to mitigate risk.

Jean asked if the board were comfortable with the way she managed risk.

Allan – the board should endorse the CEO’s actions.

Brian – questions raised were reasonable.

Allan – some of the questions were unreasonable.

Jean stated some information passed to the Board and Clayton Utz was inaccurate.

Brian – Clayton Utz has asked reasonable questions given information provided, and all agreed that while some questions were unnecessary specific, all are committed to answering all questions and resolving issues.

Jean – Clayton Utz raised the issue that person/persons must have had a conversation with someone from the board who has raised allegations that SSL was operating illegally and subsequently SSL has lost funding for September 2015 community healing project. Jean raised the possibility of not being able to raise funds for the upcoming retreat \$20k plus the loss of Pro Bono support (approx. \$50k annually) and although she will try all available avenues she may need to come to the board re funding the retreat.

Discussion around whether the board should be able to speak to Pro Bono lawyers – all agreed. Outcome: In no circumstances is it appropriate for board members to approach Pro Bono.

Board members suggested Clayton Utz should be informed that they should not have discussed SS business with anyone other than CEO / Chair.

Board members suggested that SS should look for new Pro Bono partner as they felt Clayton Utz had also acted inappropriately. Brian – suggest we address/resolve the issues raised and seek to meet with CU and if they are not open Jean is to seek another Pro Bono partner. Jean outlined the extent of their financial support in donations and Pro Bono work as quite extensive and historically supportive of the community healing retreats, to the extent Annette Deane (Tony Deane’s wife participated as a volunteer in the previous cabin building retreat). Discussion around who is responsible for risk management. Jean confirmed she is.

Allan suggested a risk management matrix be put in place and Jean agreed that would be done.

Jean noted there was an issue with previous minutes not being accurately reflected this may have been exacerbated due to formatting issues with the minutes and text being omitted. 8 cont. Re formatting issues: Jean pointing out board had agreed to use WAB funds for cabin/clarendon development but subsequent minutes did not reflect this.

It was noted that Jean had disagreed with minutes reflecting funds inappropriately spent on cabins/Clarendon Station, as funds had been approved by the board for research and development.

Brian agreed the 2<sup>nd</sup> resolution on Minutes dated 18 May 2015 was resolved allowing Jean to use WAB funds to develop the cabins and Clarendon. At the following meeting it was resolved in retrospect to only allow spending according to resolutions from the previous meeting.

Board agreed to draw a line in the sand on that issue and to acknowledge Jean's actions as being in accord to a resolution passed in the meeting per minutes 18 May 2015.

Jean requested a vote of confidence by the board and the acceptance of the minutes of 18 May 2015 and her actions of being in accordance with resolution passed by the board.

Brian moved that he would draft a statement to the board reaffirming their commitment to the CEO. Jean raised that the lines of communication had been inappropriate. The Board unanimously agreed.

RESOLUTION: Moved by Brian that the board expresses their confidence in the CEO and the CEO affirmed her commitment to keeping communication to the current board through her, in a way that is open and transparent. Seconded by Allan."

[152] Ms Madden said Walkabout Beds had been created to further Street Swags' commercial endeavours. Walkabout Beds manufactured street swags and was paid by Street Swags for each order.

#### *Relationship with Mr Weiss*

[153] On 14 June 2015, Ms Madden emailed Mr De Maria, together with the other directors at that time, eight quotes outlining market rates for cabin-like structures, comparing them with the offer made by Mr Weiss. Ms Madden's evidence is that as a director she was aware that she was to declare any conflict of interest and present alternative quotes for comparable work. Ms Madden said the eight quotes she provided the directors is evidence of this.

[154] Ms Madden said a few weeks after the report WAB SWAGS and WAB Cabins Operational Recommendations Summary June 2015 was written, she and Mr Weiss became a couple, and as at the time they were on a retreat with a number of Street Swags' members and staff, their relationship quickly became common knowledge, although she was otherwise very private about it.

[155] Ms Madden said she verbally advised Mr O'Reilly about her relationship with Mr Weiss in about October 2015, and also handed Mr O'Reilly a copy of the submissions that were filed in the Fair Work Commission in relation to case C2015/6639 *Chaplin v Street Swags Limited and Madden* related to a sexual harassment case. The submissions filed on behalf of Street Swags outlined Ms Madden's relationship with Mr Weiss. Ms Madden said she further discussed the matter with Mr O'Reilly and in particular, what the claimant, Ms Chaplin was alleging. Additionally, Ms Madden said she formally declared her relationship with Mr Weiss at the AGM in December 2015.

[156] Ms Madden rejected any assertion that the minutes of the AGM were not accurate. Ms Madden said there was no AGM held by Street Swags in 2016 which would have provided the members an opportunity to accept or amend the minutes from the 2015 AGM. Ms Madden said that unfortunately, the members had been denied an opportunity to address the minutes given Street Swags failed to hold an AGM for 2016, but that the members she had spoken to

who were present at the 2015 AGM had all advised her they accept the minutes that she has produced as being accurate.

[157] Ms Madden said the manufacturing contract between Walkabout Beds and Weiss Industrial was not finalised until March 2016, and that by this time, her relationship with Mr Weiss had been disclosed multiple times and a number of quotes had been presented to the Board for their consideration. Ms Madden rejected any assertion she had acted without bona fides, and said that it was clear that her relationship with Mr Weiss was not a secret from the company, the Board, or members.

*Ms Madden's role as CEO*

[158] Ms Madden said that she was the Chief Executive Officer (CEO) and managing director and was not appointed by a Board of directors. Because she founded the company, Ms Madden said she was the managing director prior to the time the Board was established, and she therefore initially engaged members and directors on behalf of Street Swags.

[159] Ms Madden said her employment was subject to a contract of employment. Ms Madden said that clause 5.2(b) of her contract was superseded by a financial delegation. Amendments were made in 2015 as it was necessary to accommodate the ongoing growth of the business.

*Mr De Maria's employment*

[160] Ms Madden said Mr De Maria was not employed as a project manager, rather he was employed as a sales manager by the company Walkabout Beds. Ms Madden said she had reviewed Mr De Maria's contract of employment and noted it incorrectly referred to Street Swags as his employer on the front page, but correctly identified at page 13 where his remuneration was to be paid from.

[161] Ms Madden said that had Mr De Maria been paid according to the employment contract, it would have mitigated the risk of him being paid for director duties, but this is not what happened. Ms Madden said she was advised that Mr De Maria instructed Ms Cleland to pay him from the Street Swags account, which was a breach of the Street Swags constitution.

[162] Ms Madden said Mr De Maria had told her he expected his position as sales manager to be ongoing. However, Ms Madden said she made it clear to Mr De Maria that it would only happen if he reached his sales targets, and that it was she who insisted on the contract being limited to three months, not Mr De Maria. Ms Madden said that by the time she formalised Mr De Maria's contract of employment and had signed it, she held serious concerns as to his conduct and made no provision for any extension, but said that she could have drawn up a new contract had Mr De Maria fulfilled his sales targets, which she said he ultimately did not.

*Termination of employment on 30 March 2016*

[163] Ms Madden said that on 15 March 2016, she informed Mr De Maria his contract would not be renewed because he was unlikely to reach his sales targets and had in fact made no sales at all. Ms Madden denied meeting with Mr De Maria in "mid-March 2016, a few days after the staff meeting on 15 March 2016", and denied that she met with Mr De Maria to

discuss any alleged conflict issues or alleged financial irregularities as he asserted in his witness statement of 23 November 2016.

[164] Ms Madden denied the assertions in the Respondent's submissions that she was 'confronted' by Mr De Maria and denied meeting with him at all. Ms Madden said that none of the matters outlined were raised with her prior to being summarily dismissed on 30 March 2016, and said she was afforded no opportunity to respond to any of the matters before being summarily dismissed on 30 March 2016.

[165] Ms Madden said the suspension letter dated 24 March 2016 indicated the correspondence was emailed to an incorrect email address due to missing a letter (the email address referred to 'streetswag' rather than 'streetswags') and therefore was never received. Ms Madden said that given the email address the correspondence was sent to was not a registered email address, she would have anticipated an automated email reply would have alerted Street Swags to the fact it had not been received by Ms Madden.

[166] Ms Madden said she only learned of her purported suspension on 28 March 2016, after being alerted to an email sent to all Street Swags' staff other than herself. Bearing in mind the serious concerns she already held regarding Mr De Maria's conduct, Ms Madden said she stood him down pending the provision of allegations of misconduct.

[167] Ms Madden reiterated that she did not receive any verbal warning nor any written particulars as to any alleged serious misconduct in her capacity as CEO. Ms Madden said she was never afforded any opportunity to address any allegations of serious misconduct either orally or in writing regarding her capacity as CEO.

[168] Ms Madden said that she received written correspondence only on 11 April 2016 via McCullough Robertson Lawyers who she said had previously advised the Respondent that they did not hold instructions to represent her personally. Ms Madden said that despite her confusion as set out above regarding whether the allegations concerned her capacity as a CEO or Director, she responded to the allegations, and did not receive a response.

*First member's meeting and stand down of Street Swags directors*

[169] Ms Madden said her understanding was that the stand down of the directors and the resolutions passed by the members and new directors on 28 and 29 March 2016 were lawful until such time as they were overturned by the Supreme Court on 13 June 2016, due to what she described as a technicality.

[170] Ms Madden said that in the period between 29 March and 14 April 2016, she took all steps necessary, in her role as CEO, under the direction of the then Board, her supporters, to ensure Street Swags continued to operate. Ms Madden denied updating ASIC in relation to changes to company positions, stating that this was not her role as CEO. She denied stopping any investigation and said she was supportive of an independent investigation and supportive of the resolution that she be stood down from the Board in March 2016 to better allow for this process. Ms Madden said she had always been willing to cooperate with independent accountants and auditors, but this opportunity was never afforded to her.

*Termination of employment on 19 May 2016*

[171] Ms Madden said that on 19 May 2016 she was summarily dismissed again by way of correspondence from Boss Lawyers. Ms Madden said that the bases for her termination as outlined in the Respondent's material went well beyond those reasons outlined in the Respondent's Form F3 Employer Response, the first termination letter of 30 March 2016, and the second termination letter of 19 May 2016, and the bases advanced had not been previously put to her orally or in writing and she had not been afforded an opportunity to respond to them before her dismissal.

[172] Ms Madden said that she further understood from various media releases Street Swags had made that a number of the bases advanced in the Respondent's material as reasons for her termination were also the subject of a (then-current) police investigation. Ms Madden said she had not received any allegations in relation to that police investigation.

*Specific responses to the Respondent's witnesses*

[173] Ms Madden's statement specifically addressed the witness statements provided by the Respondent as evidence.

*Mr Brian O'Reilly*

[174] In response to Mr O'Reilly's statement, Ms Madden said Street Swags never paid for labour in making swags. The task of rolling and packing swags had previously been undertaken for free by prisoners at the Woodford Correctional Centre and at other correctional centres. Ms Madden said Mr O'Reilly had asked her if Nudgee College could perform this role.

[175] Ms Madden rejected that the community healing program she had run since 2010 did not fit within the objects of Street Swags. Ms Madden said that the objects of Street Swags were not confined to the production of swags. Ms Madden said she had explained to Mr O'Reilly many times that the community healing project was paid for by grants of money and general funds and was not funded from gifted funds. Ms Madden said this was demonstrated in multiple financial statements and by the fact the community healing project was allocated its own job code in the Xero software and those financial reports were given to the directors at each meeting, and further that Mr O'Reilly was provided with information in relation to all applications for grant money and with balance sheets, cash flow summaries and reports on the progress at every meeting and in between meetings.

[176] Ms Madden rejected Mr O'Reilly's evidence in relation to his knowledge about the due diligence report prepared by Clayton Utz and the reports provided by Ms Madden to the Board concerning the Clarendon Station and Cabins Projects. In short, Mr O'Reilly's evidence is that he and the Board were never informed of Clayton Utz's grave concerns with the project and their ultimate withdrawal in acting for the Respondent. Ms Madden stated that the Board, including Mr O'Reilly, had full knowledge and evidence regarding her interactions with Clayton Utz and their views regarding the projects as she says that it was contained within the meeting minutes of 5 August 2015.

[177] In relation to Mr O'Reilly's evidence about the meeting on 20 June 2015, in which the Board resolved that no further funds were to be expended regarding the projects until the advice of Clayton Utz could be considered, Ms Madden said that the decisions in that meeting were struck off at the following meeting.

**[178]** Mr O'Reilly's evidence was that Ms Madden then travelled to Western Australia and announced the cabin project to the media despite the Board telling her not to. Ms Madden said that she was already in Western Australia and had spoken with the ABC and the press release had gone out days earlier. Ms Madden said she received an email from Ms Quinn advising Ms Madden against meeting with media and supporters and that she had the power to dismiss Ms Madden. Ms Madden said she later learned that Ms Quinn and Ms Ryan had falsified the Xero accounting record. Ms Madden said that she believed this was a bid by Ms Ryan to keep her job which was to be made redundant, and for Ms Quinn to take the position of CEO.

**[179]** Ms Madden denied Mr O'Reilly's evidence regarding dismissing Ms Ryan to engage her sister, Ms Emily Madden. Ms Madden said that her sister ran her own business and filled in until Street Swags was able to fill the administrative position. Ms Madden said that together they began looking closely at the Xero job coding and realised that the donations, wages and job codes did not add up, and they then engaged an independent accounting firm, Notch Above, to assist in recoding. Once Ms Cleland was employed by Street Swags, she assisted in that process, and Geraghty Accountants then were engaged by Street Swags to undertake a full audit. This was an expensive exercise costing Street Swags approximately \$10,000.

**[180]** In response to Mr O'Reilly's evidence regarding Street Swags being debt free to his knowledge until March 2016 when he was told about the finance arrangements around the cabin project, Ms Madden said the cabin deal was with Walkabout Beds and not Street Swags. Ms Madden said that where Walkabout Beds received a commission, which was essentially the profit margin on each cabin, this amounted to about 20% of the overall price.

**[181]** Ms Madden rejected Mr O'Reilly's assertion that she and Mr Weiss were in a de facto relationship in December 2015 and said they had only become girlfriend and boyfriend a few months prior. Ms Madden said that Walkabout Beds was used to continue the cabins project and was approved by the directors in May 2015 and reaffirmed in August 2015. Ms Madden said the nature of the business relationship between Walkabout Beds and Weiss Industrial was documented in emails which dated back to the genesis of the idea of the community healing retreat program; some of which were sent to the Board in June 2015.

**[182]** Regarding the minutes of the annual general meeting of 11 December 2015, which Mr O'Reilly contended were not accurate or approved, Ms Madden said her response as quoted in her original statement was a direct quote taken from the written address he delivered at the AGM and as reflected in the minutes of the AGM.

**[183]** Ms Madden said she had spoken to Mr O'Reilly about Mr De Maria's employment on 10 March 2016 at approximately 7.00pm in the car park above the swimming pool at Nudgee College, after the opening of the "ED shed" which she and Mr O'Reilly were photographed together at. Ms Madden said she spoke to Mr O'Reilly about the difficulties she was having with Mr De Maria in the office, and said words to the effect that she "*was frustrated with [Mr De Maria's] performance and that [she] felt like we were just going round and round in circles.*" Ms Madden said she told Mr O'Reilly that Mr De Maria wasn't making any sales and that she was not going to be renewing Mr De Maria's contract.

**[184]** In response to Mr O'Reilly's evidence regarding payments made for production of the cabins, Ms Madden said that Walkabout Beds was a separate company with a separate board

and separate books, and that the members and directors received a copy of Walkabout Beds' audited accounts every year at the AGM.

**[185]** Mr O'Reilly gave evidence regarding payments from Walkabout Beds to Ms Madden's personal family law firm, Crowley Greenhalgh Solicitors. Ms Madden said that at the time she had the majority of her net pay from Walkabout Beds go directly to her lawyers, and referred to the bank statement of 26 February 2016 as showing that only \$28.63 was paid to her personal account while \$603 was deposited into her lawyer's trust accounts.

**[186]** Regarding legal costs incurred in relation to the employment matter involving Ms Ryan, Ms Madden disputed Mr O'Reilly's denial that legal costs were approved by the Board. Ms Madden said the legal costs incurred fell within her financial delegation as CEO, and that in any event, the expenses related to a claim made against Mr O'Reilly by Ms Ryan and required Mr O'Reilly to work with counsel as engaged on occasion.

**[187]** Ms Madden refuted Mr O'Reilly's evidence that Geraghty Accountants had not given her advice regarding paying her salary directly into the trust account of her lawyers. Ms Madden noted that in the letter from Mr Brenden Evans on behalf of Geraghty Accountants, he was asked whether he advised Ms Madden to salary sacrifice her wages to her then family lawyers. Ms Madden said this was a misleading question as she was directing her after-tax salary into the trust account of her family lawyers, and that as a result it was net salary being deposited and not salary sacrifice.

**[188]** Ms Madden said that the manufacturing contract Mr O'Reilly referred to, having been entered into with Weiss Industrial was an early draft. Her evidence is that Mr O'Reilly had no reason to be involved in the contract more than he already had been given it was a different company, Walkabout Beds and not Street Swags. Ms Madden said that the Street Swags' delegated financial thresholds for expenditure did not apply to Walkabout Beds as it was a different company. Ms Madden said that at the time of the draft contract, she was not in a de facto relationship with Mr Weiss, no profits were made under the contract, and Mr O'Reilly was not a director of Walkabout Beds. Ms Madden said that there was a great financial loss to Mr Weiss as a result of Mr De Maria not making any sales.

**[189]** Ms Madden rejected Mr O'Reilly's evidence regarding sales projections with respect to the cabin manufacturing contract. Ms Madden said:

- (a) The sales projections were for Walkabout Beds and not Street Swags, which was a separate company;
- (b) the sales projection were not that of Weiss Industrial, who were paying commission of 20% of the sale price to Walkabout Beds which was essentially the entire profit;
- (c) the contract between Weiss Industrial and Walkabout Beds was finalised in March 2016;
- (d) Walkabout Beds was placed in voluntary administration the following month;
- (e) Pilot Partners, the appointed administrators, examined the final contract with Weiss Industrial and audited the books, bank statements, among other things, of Walkabout Beds;
- (f) Pilot Partners declared Walkabout Beds was put into administration for a proper purpose; and
- (g) the Street Swags board authorised Walkabout Beds' funds to be used for the project in May and again in August 2015.



[190] Ms Madden denied she was in breach of any fiduciary duties to either Street Swags or Walkabout Beds, either as an employee or a director. Her evidence is that Mr O'Reilly was not on the board of Walkabout Beds, accordingly there was no reason for her to seek his approval on the final contract between Walkabout Beds and Weiss Industrial. Ms Madden said Street Swags never entered into a contract with Weiss Industrial.

[191] Ms Madden rejected the assertion that Mr O'Reilly was not aware of the transactions or the expenditure in relation to the cabins. Ms Madden exhibited a copy of an email from Mr O'Reilly dated 23 June 2015, and her own email to Mr O'Reilly. The emails include the following:

*Ms Madden: "Making a resolution to go back by 2 meeting for financial approvals and ignoring that I was approved to use WaB PL money in the following meeting for this initial phase of RnD, the Board has sort to put me in breach retrospectively. I do not think this can be effective when I have informed you all in writing before the resolutions were made, that there are 2 cabins and 2 more paid for and about to built on retreat next week. To cancel all the flights, accommodation and our partnering organisation YPA two days before we are due to leave is unacceptable and would be too detrimental to our organisation for me to allow.*

*You have effectively put me in a situation where I act in the companies best interest or I breach my contract.*

*To that end I can only see this coming to a head before Thursday.*

*Without any willingness for the board to meet tomorrow as I have requested I will have no choice but to call a general meeting with the purpose of raising a vote of no confidence against the board.*

*This isn't a threat this is letting you know my situation in advance before I am forced into it."*

*Mr O'Reilly: "I will be responding to you and the board tomorrow on what I discussed with you on Sunday. As per our conversation it was acknowledged that the two units purchased this financial year were for the retreat and that they would be paid for in the next Financial year. I am happy with that and our contracts with these retreats go ahead.*

*That as per our conversation Virginia continue to getting all necessary documentation for the cabins. She is also to keep working on the Clarendon project with the end being that all issues that is involved in establishing a new business enterprise. That Virginia be paid for this and not a donation. If she wishes she can donate monies. When I listened to your work load given court yesterday your wanting to have Thursday and Friday off it would be unreasonable to call a meeting that will not be able to answer questions as yet on due diligence of the cabins and Clarendon.*

*If you still wish to proceed with a meeting to get rid of Streetswags Ltd Board that is for you to put in process.*

*What you need to understand we are not trying to make your life difficult but we have real concerns about these projects being put on line without due diligence and legal advice and if you are finding that as unreasonable when we are trying to discharge our roles as directors of Street Swags Ltd.*

*As per our minutes we just want checks put in place and you discharge your authority as approved by the board. I will ask Nicole to negotiate with you on timing to call a meeting so you can have on hand up to date information that can allow this application to move forward.”*

[192] As to evidence regarding the Colorado Ute, Ms Madden said that Walkabout Beds purchased the Colorado Ute in 2013 and paid for it via cheque. Ms Madden said the Land Cruiser which was traded in was not driveable due to an electrical fault, and the Street Swags Board had requested the vehicles be turned over every three years.

[193] Regarding finance for the vehicle, Ms Madden said that Walkabout Beds' registered office was her home address and Street Swags rented a space at the Darra factory of Weiss Industrial. At the time she obtained advice from Mr Michael Giorgas, an agent at Finlease, who advised her that the vehicle had to be in her possession.

[194] Ms Madden said that the loan agreements with Mr Weiss were in respect of the cabins and the Board had approved the expenditure in the five-year plan.

[195] Regarding Mr O'Reilly's statement that he was concerned Ms Madden would attempt to stop any investigation into the awarding of contracts to Mr Weiss, Ms Madden strongly denied that she would have stopped any investigation. Her evidence is that she was supportive of an independent investigation and that she stood down from the Board to assist the process.

Ms Madden said that while suspended she did not receive full pay. Ms Madden did not provide any evidence as to how it is she was genuinely supportive of the decision to stand her down; her conduct demonstrates otherwise.

[196] Regarding the 30 March 2016 letter, Ms Madden denied having ever been represented by McCullough Robertson and said that the Respondent writing to McCullough Robertson with “more detailed reasons” for her suspension was curious given she felt she had been terminated on 30 March 2016.

[197] Regarding Mr Gillett, the former secretary of Walkabout Beds, Ms Madden said that Mr Gillett had resigned as secretary many years earlier which was reflected in the end of financial year audited statements for Walkabout Beds. The fact Mr Gillett was not removed on the ASIC register was an oversight which Ms Madden said was corrected by Ms Todd and Mr

Evans in or about 2016, and she had previously thought Mr Evans had updated the record in 2013.

[198] In response to Mr O'Reilly's statement that he did not believe there was any rational justification for placing Walkabout Beds into voluntary administration, Ms Madden said she held genuine concerns that Street Swags may be trading insolvent, and that Pilot Partners analysed the books and affairs of Walkabout Beds and found nothing of concern. Ms Madden

said she believed the loan itemised in Pilot Partners' reports to be accumulated franked tax dividends.

**[199]** Ms Madden rejected Mr O'Reilly's assertion that her conduct demonstrated serious disregard for Ms Madden's corporate governance obligations, and said she was a graduate of the Australian Institute of Company Directors, GA/CD, and had completed a course in not-for-profit governance. Ms Madden said that she was aware that it is an offence to be a director of a company trading whilst insolvent and therefore resigned as a director from Street Swags on 20 April 2016. Ms Madden said that Ms Todd resigned as company secretary only, and she did not resign her employment.

**[200]** Ms Madden said Ms Cleland and Geraghty Accountants had their own individual Xerox log-ins, and rejected Mr O'Reilly's assertions regarding the Xerox accounts, saying:

- (a) a full download had been taken before immediately transferring the subscription. The date stamps would show this;
- (b) DLS Accountants were Mr de Maria's personal accountants, and no conflict had been disclosed by Mr De Maria; and
- (c) the accounts had been reconciled up until shortly before the events in 2016, and other than that were kept up to date.

**[201]** Ms Madden said she did not make the gofundme website "I stand with Jean" and had never seen it.

**[202]** Ms Madden also rejected Mr O'Reilly's contention that Street Swags was used to fund the cabin business and that no money was paid to Street Swags out of the business, and denied that this was a serious conflict of interest and breach of fiduciary duties.

*Mr Adrian De Maria*

**[203]** Ms Madden rejected that Mr De Maria was appointed as a director in October 2014, and said that the agenda and minutes of the 2014 AGM and accepted at the 2015 AGM demonstrated this. Ms Madden said that Mr De Maria attended very few of the quarterly directors' meetings and they usually took four hours, rather than the half an hour Mr De Maria described. Ms Madden said that screen captures of bank accounts were supplied at every directors meeting together with cash flow statements and balance sheets. Ms Madden further stated that the Board of Street Swags was an advisory board, not a managing board.

**[204]** In response to Mr De Maria's evidence regarding the cabins, Ms Madden said that cabins were made per the orders received. Ms Madden said the cash flow projections in the operational recommendations report to the Street Swags board contained were conservative, and had the project not been derailed in March 2016, the lease agreements with the customers who ordered the five cabins, which Walkabout Beds subsequently made, would have been mostly paid out, bringing the cost to the company to nil.

**[205]** Ms Madden rejected the assertion that Ms Ryan's conduct was about transfers of funds in Ms Madden's favour, and said it was about the purposeful miscoding of transactions to inflate project expenditure. Ms Madden said that the accounts for the 2015 financial year were audited and she denied any transfers of funds were made in her favour.

[206] Ms Madden rejected that any work regarding the cabins was hidden from the Board, and said that members and staff were all very hands-on with the project and directors were invited to see the cabin (the only one which was in Brisbane at the time) on two separate occasions on 13 June 2015 and on 17 October 2015. Ms Madden said the directors refused to visit the cabin on both occasions. Ms Madden said an email circulated to the directors on 23 June 2015 informed them that four cabins were to be built during this time. This is the same email Ms Madden sent to Mr O'Reilly threatening to call a meeting of members to pass a motion of no confidence in the board.

[207] Regarding the invoices from Weiss Industrial, Ms Madden said that the amounts taken out were for unrelated expenses which should not have been job coded as 'cabins' in Xerox. Ms Madden said that these transactions included office equipment and supplies and other general running costs of the company.

[208] Ms Madden rejected Mr De Maria's evidence that she had spoken to him about comments made by Mr Daly, or that Ms Quinn was trying to take Ms Madden's job. Ms Madden said she did not say these things to Mr De Maria.

[209] Ms Madden said her sister filled in during the lead up to Christmas 2015 to support Street Swags until the administrative position was filled. She rejected any inference or assertion that her sister "fixed the books". Ms Madden said that regarding the bookkeeping, Mr De Maria knew that Ms Cleland and Ms Joanne Collins from Notch Above were correcting the job codes as he was in the office at the time.

[210] Regarding financial irregularities Mr De Maria said were identified in the Worrell's Report, Ms Madden relied on her earlier statement and said that the report was premised on highly qualified assumptions, attributed no actual financial irregularities to Ms Madden, and said that Ms Daniels was paid as a contractor for a period before being placed on a salary which explained why PAYG tax was not taken out of her pay. Ms Madden said that Mr De Maria was aware of this as evidenced in the minutes of directors meeting dated 18 May 2015.

[211] Ms Madden said that Mr De Maria had repeatedly asked her not to communicate with Mr O'Reilly about the cabins until things were up and running. Ms Madden said that despite this, she occasionally emailed Mr O'Reilly and spoke to him about the cabins project. She said that Mr De Maria presented as shocked and angry that she had spoken to Mr O'Reilly on 10 March 2016 about what Mr De Maria had been doing.

[212] Ms Madden said that Mr De Maria was not involved on a limited basis only, but rather had been in the administration office, sitting in the middle of the office, and engaged in all conversations since the beginning of 2016. Ms Madden said Mr De Maria had been imposing on Ms Cleland to give him bank statements and financial breakdowns repeatedly.

#### *Quotes for cabins*

[213] Regarding her presentation to the Board in 2015, Ms Madden rejected Mr De Maria's evidence and said that what she presented to the Board was the summary of the eight quotes of similar products. Ms Madden said she believed Mr De Maria was referring to the folder that she kept in her office with related printouts from her research.

[214] Ms Madden rejected Mr De Maria's evidence regarding the requirement for a tender document. Ms Madden said that the manufactured homes are products and not building works as defined in the *Queensland Building and Construction Commission Act 1991* (the QBCC Act), which was current at the time (being October 2015). Ms Madden referred to Division 2, section 9 of the QBCC Act which defined residential construction work as being fixed to land and does not include a manufactured home. Ms Madden said that as the cabins did not constitute building works, no tender was required or asked for by the directors, and it was her understanding that protocols around products and services that may involve a conflict of interest require three quotes. Ms Madden said she provided eight quotes and said consequently, when the conflict of interest regarding Mr Weiss arose, it was declared informally and then formally at the AGM. Ms Madden said the manufacturing contract was concluded in March 2016, well after her relationship with Mr Weiss had been disclosed.

*False/misleading minutes of AGM held on 11 December 2015*

[215] As to Mr De Maria's statements that following the AGM of December 2015, he did not receive a copy of the purported minutes for his review and approval, and they were an incorrect record of what was said, Ms Madden relied on her evidence as above that she rejected any assertion the minutes of the AGM were not accurate. She stated the minutes of general meetings are accepted at the following general meeting, and not by directors at directors' meetings.

[216] Ms Madden stated that the members who were present at the December 2015 AGM agreed that the minutes were an accurate record of the events. Mr De Maria stated the minutes recorded Mr O'Reilly suggested paying for storing swags at the Darra shed, where there was "no way" that Mr O'Reilly would have suggested that.<sup>7</sup> However Ms Madden stated Mr O'Reilly's intent is "readily apparent"<sup>8</sup> from emails between Mr O'Reilly and Mr Weiss organising for the storage of swags at the Darra address in early February 2016.<sup>9</sup>

[217] As to Mr De Maria's statement that any supplier being engaged for the construction of the cabins required approval by the Board and the Board 'had no knowledge of it', Ms Madden stated the Board had full knowledge that Weiss Industrial was manufacturing the cabins and had "made several resolutions around this".<sup>10</sup> She said this was reflected in the minutes of meetings throughout the previous year. She further stated it was the responsibility of the Walkabout Beds Board to engage contractors for its business, not the Street Swags' Board.

*Mr De Maria's employment by Street Swags*

[218] In response to Mr De Maria's statement that when he came on board, Ms Madden had informed him she had received approval for the cabins and didn't require certification requirements, Ms Madden said it is unclear on his statement who is claimed to have provided this approval. Ms Madden said she was therefore unable to properly respond to this assertion.

[219] Ms Madden said she had had ongoing conversations with Mr O'Reilly over a period of two years, about helping her get the cabins into production. She said she had emailed Mr O'Reilly the legislation regarding manufactured homes, which he was content with.

[220] Regarding Clayton Utz being behind the project, Ms Madden rejected Mr De Maria's statement that the Board was not aware Clayton Utz were *not* one hundred percent behind

Street Swags. She said she never communicated to the Board that she intended to meet with them in February 2016. She stated they were already with Creagh Weightman Lawyers, whom she believed were a better fit for the project.

[221] While Mr De Maria stated approval was never given for production of any more than the prototype cabin, Ms Madden stated that during the meeting of 18 May 2015, and again on 5 August 2015, the directors gave authorisation to use Walkabout Beds to further develop the cabins.

[222] Ms Madden referred to an email circulated between the directors on 23 June 2015, reproduced at [189] which she suggests demonstrates that Mr O'Reilly had authorised the third and fourth cabins being built. I comment at this time that it is bewildering how Ms Madden makes such an assertion.

[223] As to Mr De Maria stating he was shocked when Clayton Utz advised it was not in support of the project, Ms Madden stated the Board was aware of a letter from Clayton Utz withdrawing their support, as it was noted in the minutes of the directors meeting of 5 August 2015 reproduced at [149]. Ms Madden said the minutes of the 5 August 2015 meeting demonstrate she was transparent with the Board regarding her correspondence with Clayton Utz. In fact, the minutes do nothing of the sort.

[224] Ms Madden rejected Mr De Maria's statement that she had lied regarding Clayton Utz's ongoing support of the project. She stated the client agreement received by Mr De Maria from Boss Lawyers dated 2 March 2016 demonstrates Mr De Maria was aware Clayton Utz were no longer engaged. She stated Mr De Maria had sought to engage his personal lawyers, being Boss Lawyers, for providing advice including on the sale of the cabins. Ms Madden made no statement denying that she had said to Mr De Maria that Clayton Utz wished to invest approximately \$250,000 for the purchase of ten cabins to donate to Indigenous communities.

[225] Ms Madden denied misleading the Board. She stated Mr De Maria had fabricated matters to "*cover for his hostile takeover of Street Swags*".<sup>11</sup>

#### *No Cabin Sales*

[226] As to certification requirements, Ms Madden stated certification is done for each cabin which is attached to the ground on an individual basis. She said that is the only way it can be done as final inspection and certification cannot be done without a location. She stated all requirements, including an engineer's form 15 and certified electrical work were carried out during the manufacturing process. She stated it would then be mounted on a trailer and would require road registration. She said those orders were destined to be attached to the ground and work require installation by a local tradesman, and a partnership had been proposed with a company called Install All to undertake this work.

[227] In response to Mr De Maria's statement that the required certification had not been obtained, Ms Madden stated his evidence demonstrated a gross lack of understanding regarding the manufactured homes and tiny homes industries. She stated each cabin is unique due to the individual customer's intended use and location for it, and therefore the requirements of each differed substantially.

[228] Ms Madden rejected that there was anything wrong with the marketing material. She stated that as a start-up project, the marketing material had been done in-house and was sufficient for the intended gradual roll out as proposed in the 5-year plan. She said the marketing included an article on the website and a PDF flier with specifications, text and photographs which were designed to be mailed out to the targeted list which she had compiled. She stated the base models of the cabins were compliant to the Australian structural standards, with any extras to be certified on an individual basis as it related to individual Council requirements for its destined location, in conjunction with the customer's intended use. She stated partnerships with individuals and companies were established for this process.

[229] As to Mr De Maria's statement that his contract provided he was employed by Street Swags and that Ms Cleland arranged the pays, Ms Madden stated the terms of his employment "*clearly outlined where his remuneration was to come from*" and she confirmed the contract was signed by him.<sup>12</sup>

*Concerns raised by Ms Kathleen Cleland*

[230] Ms Madden stated it was her password Mr De Maria used without her consent to access Street Swags' bank accounts. She stated as a sales manager or non-executive director, Mr De Maria had no legal authority to access the bank accounts or to do so under her login without her knowledge.

[231] She stated Walkabout Beds was a separate commercial company and the manufacturer for the swags and as such Street Swags paid Walkabout Beds for those orders, which were often paid in batches of 1,000 units.

[232] Ms Madden noted she was the sole director for Walkabout Beds and had been for a number of years. She said the Board of Street Swags had on 18 May 2015, and reaffirmed on 5 August 2015, made a resolution to use surplus funds in Walkabout Beds to develop the cabins project. She stated that as it is a different company, this permission was sought as it affected the profits which would be achieved for the company in that financial year and therefore the dividend Street Swags would have ultimately received. She said this was seen as an investment by Street Swags in its subsidiary.

[233] Ms Madden said while she did not need Street Swags' directors' approval for Walkabout Beds' business activities, she always kept the directors of the parent company informed on relevant activities where they affected Street Swags' interests.

*Missing donated funds from bank accounts*

[234] Ms Madden stated all transactions prior to mid-February 2016 have been accounted for in the Xero system. She stated all those transactions had been properly accounted for and reviewed by Notch Above accountants. She said the Xero accounts were kept up to date by Ms Cleland and Ms Nicolls from Notch Above accountants.

*Unauthorised contract with Mr Weiss*

[235] Ms Madden rejected that there was anything unauthorised by Street Swags or Walkabout Beds' business with Weiss Industrial.

[236] She stated the contract forwarded to Mr O'Reilly was an early draft of the contract which Ms Daniels was involved in the process of drafting. She stated involving Ms Daniels in the drafting process was her way of keeping an arm's length approach to any business transactions with Weiss Industrial. She said the final contract was reviewed by Pilot Partners who found nothing of concern.

[237] Ms Madden said there is no requirement or practise for a non-executive director of a parent company to be consulted by a subsidiary when entering into a contract with a supplier. She stated that is the responsibility of the CEO of the company which is undergoing business with that supplier. She said there was no request made by the Board of the parent company to the Board of the subsidiary company to supply this or any other contract of its business to the Board of the parent company. Ms Madden stated Mr O'Reilly was acting outside his authority by requesting this information from Ms Daniels.

[238] While Mr De Maria took concern with some of the contract terms seeming to offer advantage to Mr Weiss, Ms Madden reiterated that the contract was an early draft which she consulted Ms Daniels about in her role as business developer for Walkabout Beds. Ms Madden noted Ms Daniels had also operated as Ms Madden's relief in the role of CEO of commercial activities.

[239] Mr De Maria noted a clause 3.1(b) under which Walkabout Beds must purchase a minimum 44 manufactured homes/transportable cabins. Ms Madden responded by noting the period of development Mr De Maria was referring to spanned 6 months. She stated the Board of Street Swags was kept up to date with changes during the development process, and it was discussed openly with members at the AGM. She stated of significance, at the time of the operational report, it was intended that the property at Clarendon would be purchased by a subsidiary of the charity and used to house the manufacture of the cabins in conjunction with a training programme for youth at risk of homelessness, a mirror of how the project had developed in the indigenous communities. Ms Madden stated that as a result of this change of plans, it was decided instead of increasing the price to the homeless, they would agree on a conservative minimum order, well below the target volume, to allow Mr Weiss's business to sustainably provide the product to them exclusively 'at a fraction of any competitor's price'. She said this would enable Walkabout Beds to retain the profits "*and monopoly on the market*".<sup>13</sup> Ms Madden said their model enabled a home to be paid off in 5 years by someone on a Centrelink pension or Job Start Government allowance. She said that there would then be a 20% markup, retained by Walkabout Beds, similar, she said to a chocolate drive fundraiser.

[240] As to the price Walkabout Beds was to pay to Weiss Industrial, she stated this was 'at cost' being that it was only enough to cover materials, labour and factory if 44 orders were placed per year. She said any less and Weiss Industrial would operate at a loss. She stated the contract was 'worth nothing' and the minimum order was to lessen the risk of loss for Weiss Industrial. She noted Mr Weiss had been a part of the project's development at great financial loss, as he shared the altruistic vision of what they were trying to achieve.

[241] Ms Madden also noted the contract as referred to by Mr De Maria was between Weiss Industrial and Walkabout Beds, not Street Swags.

*No response to allegation of misappropriate of funds*



[242] In Mr De Maria's statement his evidence is that on 9 March 2016, Ms Madden came into the office and in Mr De Maria's presence, requested a loan from Ms Todd of \$3,000 to pay for Mr Weiss' steel invoice as he was "strapped for cash". Ms Todd approached Mr De Maria to see if the request could be authorised. He said words to the effect, "*Jean hasn't asked me yet.*" His evidence is that he did not authorise the transaction.

[243] Mr De Maria's evidence is that in his presence, Ms Madden then made a telephone call, making payment of an amount of \$2,467.32 using the Street Swags credit card. The credit card statement evidences this. No deduction was ever made from an invoice from Weiss Industrial for this amount.

[244] Ms Madden exercised her right not to respond to the allegation.

*Meeting with Ms Madden regarding Mr Weiss' involvement*

[245] Mr De Maria stated Ms Madden had convinced him that she had Mr O'Reilly's approval for the arrangement with Mr Weiss, and he hadn't challenged it further at the time. In response, Ms Madden stated it is illogical that Mr De Maria would accept this assurance from her then claim to have reprimanded her and threatened to call the police within 5 business days of that assurance. She noted during that time, she was involved in a number of meetings and was out of the office; further that Mr De Maria was also absent for a number of days during this time due to sickness.

[246] Ms Madden stated the sequence of events as described by Mr De Maria is false.

[247] Ms Madden further stated that on the evidence and on Mr De Maria's statement, the date he enacted his "hostile takeover" was 15 March 2016, "*the day it was made clear his contract was not going to be renewed*".<sup>14</sup> She said this was before Mr De Maria asserts he had a meeting with her where he accepted her assurance of Mr O'Reilly's acceptance of the project. She stated that in any event, email correspondence on 4 February 2016 from Mr O'Reilly demonstrated Mr O'Reilly did not have concerns regarding the cabin development.

[248] Ms Madden stated she was advised and believed that when Mr O'Reilly delivered swags to the factory for storage, he expressed to Mr Weiss and later to herself that he was pleased with the display cabin he inspected.

[249] Ms Madden said she sent an email to Mr O'Reilly on 17 February 2016 including an up-to-date financial breakdown of both Street Swags and Walkabout Beds. She said this showed the amount spent on cabins and included the Finlease loan on the Walkabout Beds' balance sheet. Ms Madden rejected that he was not aware of the loan. She said she gave Mr De Maria a copy of these documents in the office. She said that in her meeting with Mr O'Reilly on 10 March 2016, she spoke to him about the difficulties she was having with Mr De Maria in his role as sales manager for the cabins, and Mr O'Reilly did not indicate any concerns with the cabin project's management, the financials that he had been supplied, or her performance or the discharge of her duties.

*Unauthorised transfer of donated funds to pay for Mr Weiss's lease deposit*

[250] Mr De Maria stated records show that Ms Madden transferred donated funds of Street Swags to pay the deposit for Mr Weiss' lease for work premises in his sawmilling business. In

response, Ms Madden stated the accounts and records included documents stating Street Swags paid Mr Weiss for storage of goods belonging to Street Swags. Ms Madden did not provide evidence as to where this was endorsed by the board.

[251] Mr De Maria referred to an email of 20 November 2015, in response to which Ms Madden stated the email chain states that Mr Weiss will not commit to leasing premises for the sole purpose of building cabins for Walkabout Beds, without a finalised contract and deposit paid for the manufacture of the cabins under the first year's contract.

[252] As to the invoice no. 41 referred to in Mr De Maria's statement, Ms Madden stated that invoice no. 41 was for storage of goods belonging to Street Swags, at Mr Weiss's premises in Darra. She stated the handwritten invoice was paid 23 November 2015, and no value is stated. She said the address provided is the location of the storage provided by Street Swags per the invoice. She further stated the address was leased to Mr Weiss personally; Weiss Industrial was not established until later on 22 March 2016.

[253] In response to the manufacturing contract as referenced by Mr De Maria in his statement, Ms Madden said this contract was an unsigned early draft.

[254] Mr De Maria stated he was of the view Ms Madden had used \$10,000 of donated money from Street Swags to fund her defacto partner's business premises lease; to which, Ms Madden responded Mr De Maria had formed an incorrect opinion with respect to the contract without consulting any staff to gather correct information. Again, no evidence was provided of the authority of the board to pay \$10,000 for storage of swags and other equipment at Mr Weiss' premises.

[255] In response to the matter of a conflict of interest, Ms Madden stated the contract with Mr Weiss was not finalised until March 2016. She said the possible conflict of interest had been declared and alternate quotes had been presented to the Board prior to this time. Ms Madden did not address Mr De Maria's evidence that the \$10,000 paid for storage fees on 23 November 2015 pre-dated her announcement of her relationship with Mr Weiss at the AGM in December 2015.

[256] She reiterated that the transfer of \$10,000 was for the payment of invoice no 41 which was for storage of Street Swags' goods. She said all relevant information was kept on record as attached to Mr De Maria's statement.

*Payment of 'storage fee' but no goods stored*

[257] Ms Madden's evidence was the following goods were stored at Mr Weiss's Darra address:

- (a) Approximately 900 swags that were delivered in person by Mr O'Reilly and collected by Mr De Maria and Mr Daley;
- (b) A fridge truck collected by Mr De Maria and Mr Daley;
- (c) A prototype Clarendon cabin collected by Springfield Towing at Mr De Maria's request and given to a family living near Lowood as demonstrated on Street Swags' Facebook page; and
- (d) A Holden Colorado which was collected by an agent acting for the finance company.

[258] It is noted that the evidence before the Commission is that Mr O'Reilly did not deliver a number of swags for storage at the Darra address until February 2016, not as early as 23 November 2015 when the \$10,000 was paid.

*Meeting with Ms Madden – giving Mr Weiss a company car*

[259] Ms Madden stated Street Swags held registration for the Holden Colorado ute which was owned by Walkabout Beds and purchased in 2013 using a cheque. She stated Mr Weiss was a contractor for Walkabout Beds and owns a fleet of company vehicles.

[260] As to the conversation referenced by Mr De Maria in his statement where he informed Ms Madden that Mr Weiss should not be driving a Street Swags branded vehicle, and Ms Madden claimed his own car had broken down, Ms Madden denied having such a conversation with Mr De Maria. She said Mr Weiss used the vehicle to visit the site and conduct site inspections for prospective customers of Walkabout Beds.

*Mr Weiss's infringement notices*

[261] Street Swags incurred a speeding fine on 24 December 2015 on account of Mr Weiss driving the Street Swags vehicle. Ms Madden stated the speeding fine was paid for by Mr Weiss.

[262] She stated neither Mr Weiss nor herself had received any correspondence regarding the toll as referred to by Mr De Maria. She said all Street Swags and Walkabout Beds vehicles were fitted with electrical tolling devices, and if this toll was received in error then Mr De Maria should have returned the statutory declaration identifying the correct driver at the time.

*Unauthorised finance for Holden Colorado utility*

[263] Where Mr De Maria stated that Ms Madden had authorised a \$25,000 loan for Walkabout Beds to buy the Street Swags branded vehicle without the knowledge of the Street Swags board, Ms Madden elected not to provide any written response.

*Damage to Holden Colorado utility*

[264] In response to Mr De Maria's statement regarding damage to the Holden Colorado vehicle, Ms Madden stated:

- (a) [Mr Weiss] is not a cabinet maker;
- (b) [Mr Weiss] advised the financier that the vehicle had a cracked windscreen and arranged a time for the vehicle to be collected;
- (c) On 18 May 2016 the vehicle was collected from the address at Darra.

[265] Ms Madden said Mr De Maria has acknowledged the vehicle was picked up by Slatters Auctions holding yard. She said the vehicle was operational and driven onto the tilt tray by Slatters Auctions' agents and has been seen 'numerous times' since, parked outside Mr De Maria's house and the Street Swags' office at Ashgrove.

*Signing the 'rental agreements'*

[266] Ms Madden stated Walkabout Beds was to receive 20% of the sale price for every order Ms Daniels leased with the finance companies as part of customer service. She stated this was arranged to assist the clientele who were largely homeless and vulnerable, requiring support.

[267] She said Walkabout Beds took on the loan and had the lease agreements with customers. She stated at the time, three of those cabins were leased to staff. I note that this includes herself. She stated Mr O'Reilly visited the factory in early February 2016 and expressed he was pleased with the prototype. She stated she had been keeping Mr O'Reilly up to date.

[268] Ms Madden denied ever giving Mr De Maria a thumbs up while on the phone to Mr O'Reilly. She further stated she would never have stated she was constantly talking to Mr O'Reilly, noting that as Mr De Maria was aware that Mr O'Reilly was overseas for much of this time.

*Unauthorised guarantees of loans to pay Mr Weiss*

[269] As to Mr De Maria's statement that he inspected the rental agreements he had signed and discovered them to be guarantees of loans, Ms Madden stated he was aware of what he was signing as he was a part of making the arrangement with Ms Daniels. Ms Madden said Mr De Maria sat with Ms Daniels at the same desk, and she would have expected Mr De Maria to have read what he was signing.

[270] She reiterated that Walkabout Beds was retaining 20% of the sales price for each cabin.

*False certification of delivery of cabins*

[271] As to Mr De Maria's statements regarding the certification of delivery of cabins, Ms Madden stated she checked with the Finlease agent, Mr Michael Giorgas, who advised the arrangement needed to be in her possession. She stated Mr De Maria was sitting at the table during this conversation, and she believed he heard this. She stated her home address was the registered office of Walkabout Beds as well as still being one for Street Swags. She said they had leased the space in the workshop at Darra so she didn't at that time see any difficulty in which office was listed on the front of the agreement.

[272] Ms Madden said that at the time of her suspension, the cabins had not been used for any purpose other than displays. She stated one cabin had been picked up by Mr De Maria and given to a family (without a rental agreement), and two of the cabins were to her knowledge unused. She said she was unsure what happened to the last two cabins.

*Unauthorised 'exoneration' of Finlease regarding cabin transactions*

[273] While Mr De Maria stated he was uncertain whether the cabins that were financed ever existed, Ms Madden stated Mr De Maria was aware the cabins existed as he picked one up and posted a photo of it on the Street Swags' Facebook page.

*Mr Weiss' proposed 'retainer' of \$2,500 per week*

[274] On 7 March 2016, Mr Weiss sent an email expressing his disappointment in the lack of orders for cabins and stating that it was costing him money without orders. On 14 March 2016 he followed that email up with the following email:

“I’m quite disappointed that no one has replied to my email of last week.

To reiterate my concern

I am \$14,322.00 in the red this month (march) because there has been insufficient orders this month (only one). I do not have any capital behind me and I am not able to cover this deficit. This being said I am currently trading insolvent.

If orders are not placed for cabins next month then this situation will worsen. The deadline for orders for next month was today. There is a 2-3 week lead time on most materials so we cannot build next month if orders are not placed in time.

Considering that it is an offence to continue to operate and incur more debts when a company is insolvent and penalties can include civil penalties, compensation proceedings and criminal charges, continuing to trade with no orders for next month would be negligent and leave me open to prosecution.”

[275] Ms Madden responded by email, copying in Mr De Maria, Ms Daniels and Ms Cleland as follows:

“Carl, I realise this situation is our fault and we are in breach of our contract with you.

Can you please call me so we can arrange a suitable retainer amount, which would keep you exclusive to us.

I would be pleased for us to backpay this from the time of our agreement with you.

Jean”

*Staff meeting of 15 March 2016*

[276] At a staff meeting on 15 March 2016, Mr De Maria’s evidence is that the following was said in front of the staff:

Ms Madden: Because we haven’t been able to sell any cabins, we are going to put Carl on a retainer of \$2,500 to \$3,500 per week on top of his manufacturing retainer and he will be responsible for sales.”

Mr De Maria: That definitely needs to be halted until Brian gets back. That needs to go to the directors’ meeting.

[277] Ms Madden denied making the statements as provided by Mr De Maria in his statement. She stated the meeting was about coming up with solutions. She stated:

*“Taking the responsibility of sales after the initial contact was put forward by Kathy during the meeting and had also been put to me by Carl. We then discussed this proposal together with other possibilities at the meeting.”*

[278] Further, Ms Madden suggested that the decision to pay to Mr Weiss a weekly retainer was a Walkabout Beds management decision and not the responsibility of Street Swags directors.

[279] In Ms Madden’s reply statement to the Commission she stated that the weekly payments to Mr Weiss never occurred. This is factually incorrect and within Ms Madden’s knowledge as she would know, having control of the Walkabout Beds weekly bank statements that two payments of \$2,500 were made to Mr Weiss by Walkabout Beds.

[280] Mr Weiss sent to Ms Madden a proposal dated 15 March 2016, confirming their telephone discussion of the same date where Street Swags would pay to Weiss Industrial a weekly retainer of \$2,500 to cover site inspections within 700km of Brisbane, sales and customer service. His letter states, “This would also help cover the day to day running cost deficit that has been incurred by us threw (sic) Street Swags being in breach of contract and not supplying the required cabin orders each month. This does not release Street Swags from its commitment to supply a minimum of 44 cabin orders per year.”

*Unauthorised payment of Ms Madden’s family law solicitor’s bills*

[281] Regarding the issue raised in Mr De Maria’s statement as to ‘salary sacrifice’, Ms Madden stated the accountants were asked about salary sacrifice, however, it was not a salary sacrifice arrangement.

[282] Further, Ms Madden stated the bank statement exhibited in Mr De Maria’s statement demonstrates the amount of pay going into her personal account at the time which had been coming from Walkabout Beds. She said the amount decreased by about \$603 per week as the pay had been directed into the Crowley Greenhalgh trust account. She noted Walkabout Beds is a commercial company and she had no reason to disclose to Street Swags directors which account her pay was going into.

*Unauthorised payment of Ms Madden’s home phone service*

[283] Mr De Maria’s evidence is that following the dismissal he discovered that Ms Madden had installed a landline telephone to her home residence and had it charged to Street Swags’ Telstra account. This occurred on 23 February 2016. At his direction, Telstra cancelled the line in September 2016. Street Swags had, by that time, paid \$496 for this line to Ms Madden’s home.

[284] Ms Madden stated Ms Candice Todd had set up a landline for Street Swags at Ms Madden’s residence, which was still an office of Street Swags at the time, so that “we” could obtain internet to reduce the data costs for her work phone. She stated this was necessary as she undertook a large volume of work from home.

*Use and payment of cabins*

[285] Ms Madden stated the directors of Street Swags authorised Walkabout Beds to continue to develop the cabins projects during the meetings of 15 May 2015 and 5 August 2015. She stated the board were aware in June 2015 that there were four cabins and Mr O'Reilly authorised it in an email circular to the board.

[286] She denies that she was pumping money into the cabins. She stated the cabins project never had six full-time staff. Street Swags had three part-time and one full-time staff, plus a volunteer administrative position. She stated Walkabout Beds had two part-time staff, a contractor and Mr De Maria on his three month contract. She said Street Swags' staff were paid at non-profit industry rates and Walkabout Beds staff at commercial rates. She said the work of manufacturing swags, fundraising and running the charity was the responsibility of four of the staff. Her evidence is that Ms Daniels was contracted to oversee business development and Mr De Maria was for sales of cabins, and they were not involved in the manufacture of swags or the administration of the charity. She stated Mr De Maria routinely allocated his work to others in the team, *"so it may have been his view that everyone in the office was there undertaking work for the cabins project"*.<sup>15</sup>

[287] Ms Madden stated the projections as referred to by Mr De Maria were for Street Swags and not Walkabout Beds.

[288] Where Mr De Maria noted that one of the manufactured cabins was delivered to Ms Madden's residence and placed on her land, and close to \$30,000 of invoices were issued noting "Dad" and "Dad no 2", and emails between Ms Madden and Ms Daniels refer to Ms Madden's father's cabin, it is Ms Madden's evidence that her father never lived in a cabin on her property.

[289] Ms Madden accepts there was a rental agreement in place for her father with his Centrelink pension to use Centrepay to make the repayments on the cabin. She stated however, the company was put into administration before it was completed. She further stated the Manufacturing Contract referred to by Mr De Maria at paragraph 150(c)(ii) was the early draft of the agreement which Weiss Industrial had with Walkabout Beds. She stated this draft no longer exists.

[290] Ms Madden conceded there was a small amount of Street Swags' general funds used in the set-up of the project. She stated these were not donated or gifted funds. She said accommodation is covered in Street Swags' constituted objectives, and so using gifted funds would not have been a problem even if it had been done, which she states was not. She said setting up the project was communicated to donors and potential donors through mail-outs, newsletters and substantial media coverage.

[291] Her evidence was that all transactions with Weiss Industrial relevant to the Street Swags board were disclosed to them. She said both directors were kept up to date with Walkabout Beds' business, even though they were not directors of that company and there was no requirement to provide them with this information.

[292] Ms Madden reiterated her romantic relationship with Mr Weiss was declared to the board and the members in an official capacity soon after it began, and at the AGM of December 2015. She stated these disclosures predated the transactions in question by Mr De Maria.

[293] Ms Madden stated Mr Weiss set up Weiss Industrial, of which he is the sole director. She stated she is not a director or employee of that company. She stated the company was set up by Mr Weiss to manufacture cabins, for sawmilling and property maintenance.

*Last meeting with Ms Madden re conflict issues and financial irregularities*

[294] Mr De Maria's evidence is that he had the following conversation with Ms Madden a few days after the staff meeting of 15 March 2016, and after Ms Daniels had informed him that Ms Madden was proposing purchasing a logging truck:

Mr De Maria: We need to talk about Carl's involvement ... I want the whole project frozen until Brian gets back from Cambodia.

Ms Madden: As you know, Brian has always been very supportive.

Mr De Maria: I'd like to have a round table and hear it from him.

Ms Madden: What are your concerns?

Mr De Maria: The legality of this cabin project is at a point where I'm concerned that the police would be interested in this operation. I'm talking about Carl. I'm talking about the company ute being given to him at no cost. He's using it to pull his mill. I'm not selling any cabins so he's not using it to build cabins. And he's using the company fuel card. ...

You have given him a multi-million dollar contract without any board approval. As his defacto, you are a direct beneficiary of that. I'm no lawyer but its got to be a major breach of the Corporations Act. ...

I'm seeing hundreds of thousands of dollars out of Street Swags' and Walkabout Beds' accounts going to Carl. ...

You are paying his debts using Street Swags funds – Candy was talking about the \$3,000 you asked for and you paid it with the company credit card.

Carl emailed us the other week that he's trading insolvent. Now Virginia has told me that you are going to transfer \$2,500 into his account without any board approval, and for what? ...

Virginia has now told me that you want Street Swags to buy a logging truck for Carla. That's ridiculous. ...

The charity used to have hundreds of thousands of dollars in its account and now there's only about twenty thousand dollars – you have moved all this money ...



The charity will be bankrupt if this keeps happening ... If you don't stop this then I will complain to the police.

[295] Mr De Maria said after this exchange, Ms Madden immediately left the office and it was the last meeting he had with her prior to the proceedings in this matter.

[296] Ms Madden's evidence was that she was never going to buy a logging truck. She stated Ms Daniels had the idea, but it never developed.

[297] Ms Madden denied that the conversation above occurred or that he ever said those things to her. She stated these matters have been fabricated by Mr De Maria. She noted Mr De Maria had been, up until that time, on board with the project. She stated it was only after she informed him she would not be renewing his contract on 15 March 2016 that these matters arose.

[298] Ms Madden responded as follows:

- Between January 2016 and April 2016, she was using the ute as her Land Cruiser was in Bundaberg and not driveable;
- Mr De Maria knew Mr Weiss was not her defacto partner and that she was in no way a beneficiary to a 'multi million dollar contract';
- Neither Street Swags nor Walkabout Beds had ever had a fuel card; and
- Mr Weiss never said he was insolvent. She stated in the email Mr De Maria referred to, Mr Weiss stated his company could not keep paying the overheads it took on to make the cabins, if Mr De Maria did not sell any cabins.

#### *Unauthorised purchase of Toyota Land Cruiser*

[299] Ms Madden stated the Land Cruiser was purchased with the trade-in of two vehicles which had been granted and finance approved. She said it was in her contract of employment that she have a company vehicle. She stated on 1 August 2013, the board resolved to trade in the Navarra she was using for a Toyota Land Cruiser. She further stated on 27 November 2014, the board resolved to turn over the vehicles every three years. Following that resolution, she emailed Ms Quinn a summary of the resolutions passed, including the turnover of vehicles.

[300] She stated that in January 2016, after approximately 3 years of owning the Land Cruiser, it had an electrical fault. She stated the vehicle was then rolled over with a replacement vehicle.

[301] She stated Mr De Maria had been driving the vehicle more recently, until it was repossessed by the finance company which resulted in a loss of equity in the vehicle.

#### *Falsely signing as company secretary of Street Swags*

[302] Ms Madden stated Ms Todd was appointed as company secretary at the directors meeting of 20 August 2015.

[303] Ms Madden stated that as a charity, Street Swags reported to the ACNC. She said it was the job of the ACNC to update ASIC. She stated it was an error that Mr Gillet was still

listed with ASIC for Walkabout Beds, and was most likely an undertaking between herself and Geraghty Accountants.

*Falsely signing as company secretary of Walkabout Beds*

**[304]** Ms Madden's evidence was that after Ms Todd discovered the error that Mr Gillet was still listed as secretary for Walkabout Beds, she sought advice from their auditors and with their help she corrected the record.

**[305]** Ms Madden stated she believed that neither Mr De Maria nor Mr O'Reilly were directors of Street Swags on 11 April 2016 as a consequence of resolutions passed by members on 28 March 2016. She stated Mr Gillet had full knowledge he was no longer the Walkabout Beds company secretary when he resigned from the position in June 2013 and never contacted her thereafter.

*Ms Madden's suspension*

**[306]** Ms Madden stated she believed she had not been stood down by a valid board meeting, given she had in fact stood Mr De Maria down (from his employment). She stated she did not receive full pay during the purported suspension, and she was not aware of any audit of Street Swags finances being undertaken.

*Notice to staff regarding Applicant's suspension*

**[307]** Ms Madden disputed Mr De Maria's evidence that staff were advised it would be 'business as usual', stating that locking staff out of the office is not 'business as usual'.

*Unauthorised attendance at Street Swags office*

**[308]** Ms Madden denied ever saying to Mr De Maria that she would change the lock. She stated she did not change the lock. She noted other tenants used their key to come and go on the relevant morning. She noted Mr De Maria had been stood down by her as an employee on 28 March 2016, and she asked him to leave the premises.

**[309]** Ms Madden rejected Mr De Maria's summary of what was said by police. She stated the police actually said no one was to enter the property until there was a court order. Further she stated she had shown the police a copy of the minutes of the meeting from 28 March 2016, and the police advised it was a 'civil matter'.

**[310]** Ms Madden stated she believed the document Mr De Maria showed to Ms Todd 'that morning' was out-dated.

*Unauthorised meetings of 28 and 29 March 2016*

**[311]** Ms Madden stated as at 2pm on 28 March 2016, she had not been suspended and she had not received any correspondence to that effect.

*Dismissal for lodging false Street Swags records with ASIC*

[312] Ms Madden said she suspected Street Swags realised her conduct was neither criminal nor constituted a valid reason for termination, and therefore retracted her termination by letter dated 26 April 2016.

[313] She denied appointing directors on 28 March 2016. She stated the members passed resolutions.

[314] Ms Madden stated she believed at the time that neither Mr De Maria nor Mr O'Reilly were directors by virtue of the resolutions passed by the members on 28 March 2016.

*Unauthorised withdrawals from Street Swags' Bendigo Bank account*

[315] Ms Madden stated the payment was made to cover staff salaries which neither Mr De Maria nor Mr O'Reilly had paid, despite stating they would.

*Unauthorised attempt to change signatories on Bendigo Bank account*

[316] Ms Madden denied trying to have Mr De Maria put on as a signatory. She stated this was a bizarre claim.

[317] While Mr De Maria stated that on 22 July 2016 Bendigo Bank emailed Boss Lawyers, providing copies of statements following the unauthorised withdrawal from the account, Ms Madden stated this evidence is misleading. She stated the statement attached to Mr De Maria's witness statement includes payments for staff wages as she described above.

*Unauthorised removal of Mr Gillet from Walkabout Beds bank account*

[318] Mr De Maria stated Ms Madden put Walkabout Beds into voluntary administration three days after seeking removal of Mr Gillet from the Commonwealth Bank account, thereby hindering further investigation into the bank accounts of Walkabout Beds. In response Ms Madden stated this to be a malicious claim and without basis. Ms Madden stated both reports from Pilot Partners reveal Walkabout Beds was placed into voluntary administration for a proper purpose and that their financial investigations found nothing of concern.

*Ms Madden's letter responding to issues, 13 April 2016*

[319] Ms Madden stated she believed Street Swags ignored her detailed response, which she stated was consistent with it already having terminated her employment on 30 March 2016, summarily and without putting any allegations to her or affording her the opportunity to respond to any allegations.

*Settlement regarding court proceedings*

[320] Ms Madden stated the agreement reinstated her as a director and CEO of Street Swags, pending a forensic audit. She said, at the time of filing her second statement, she is yet to 'receive' a forensic audit.

*Failure to keep proper financial records of Walkabout Beds*

[321] Ms Madden stated she believed Mr De Maria's evidence in this regard to be misleading. She stated Walkabout Beds was audited annually, even though there was no legal requirement to do so. She stated all records were sent to Pilot Partners along with providing them full access to the Xero online books which were kept up to date by an independent accountant and staff member, Ms Cleland.

[322] Ms Madden said as she was locked out of the Street Swags office, she was limited to what else she could supply to Pilot Partners.

*Damage to Street Swags from putting Walkabout Beds into voluntary administration*

[323] Ms Madden stated Mr De Maria has conceded he did not understand how Walkabout Beds could be indebted, and yet rather than conduct a proper investigation, he used this information in the media to defame Ms Madden. She stated this conduct 'bespeaks' the harshness of her dismissal.

[324] Ms Madden noted the Board Minutes of the 18 May 2015 and 5 August 2015 meetings resolved the use of Walkabout Beds' excess money in 2015 for the purpose of research and development within Walkabout Beds, therefore not paying the accrued dividend that financial year.

[325] She stated the funds Mr De Maria referred to are not missing, and the financial books of the company do exist.

[326] She stated the only transfers of money to herself from Street Swags 'in the history of the company' have been as wages and legitimate receipt reimbursements. She stated that to accuse her of transferring money into Walkabout Beds for her own use or benefit is a lie which has been 'squarely refuted' by the reports of Pilot Partners after they examined the finances. She stated involving the police in this matter is malicious and also bespeaks the harshness of her dismissal.

*Denial of Street Swags' Xero accounting records*

[327] Ms Madden stated 'read only' access was granted by her, and was sufficient to allow Mr De Maria to 'see everything' and transfer the data to their own account. She stated staff pay was recognisable from the bank statement. She stated she declined to give full access due to the concerns she held that the historical data would be manipulated.

[328] Ms Madden stated she was informed and believed Ms Cleland also declined to hand over her personal account details for fear of records being manipulated under her login. She stated Ms Cleland also said this was against the Xero policy in the sign up agreement. Ms Madden stated full access was not required to pay staff or for tax purposes.

[329] As to Mr De Maria's evidence that Ms Cleland knew that without access to the accounting software, they could not do staff pays, Ms Madden stated this was absurd. She stated it is not difficult to work out how much tax to take from staff wages. She stated Mr De Maria had each of the staff contracts in a folder behind her desk labelled 'contracts', and that to accuse Ms Cleland of these things speaks to the manner in which Mr De Maria conducts himself. She stated it was also demonstrative of Mr De Maria's pattern of behaviour to make "scandalous allegations" when he does not understand something.<sup>16</sup>

[330] While Mr De Maria stated he understood Ms Cleland to have transferred the Street Swags' Xero account password to Ms Madden prior to 19 May 2016, Ms Madden replied that this was a lie. She stated that for Xero, an individual person holds the account/user ID/login and they may have several businesses that they can access through that. She stated multiple people can have access to the same business, through their own personal login/account. She stated this allows individual employees to upload their own receipts, complete their own job coding, create invoices, check leave entitlements and other matters. She stated there are different levels of access, as a sales manager would not be given access to make changes to staff leave entitlements for example.

[331] Ms Madden stated Street Swags' books were set up from her account. She held the primary account, and Ms Cleland and other accountants, along with their auditor and previous staff had their own accounts which they used to access Street Swags' books.

[332] As to Mr De Maria's evidence that on 27 April 2016, Geraghty Accountants emailed Boss Lawyers advising that its access to Street Swags' Xero account had been revoked, Ms Madden stated Ms Cleland was being cautious. Ms Madden stated Ms Cleland by this stage knew that Mr De Maria could not be trusted and so access was revoked to preserve the accounts.

[333] Ms Madden's evidence was that she was very willing to "*co-operate fully*" with an independent auditor should she have been afforded the opportunity.

[334] Ms Madden stated that her earlier statement regarding the accounts being audited in a forensic manner was a reference to her understanding that to examine something forensically is to 'look at what has happened in the past to piece it together'. She stated this was meant as an action not a title. She stated Mr De Maria has incorrectly joined the two statements and made an incorrect assumption in an attempt to accuse her of something.

[335] As to Mr De Maria's statement that Ms Madden had continued to refuse to hand over the Xero Accounting Software subscription, Ms Madden stated she did not have legal representation at that time.

[336] As to Mr De Maria's statement that on accessing the Street Swags Xero account, it was discovered all the payroll records had been deleted, Ms Madden stated this was false. She stated a further download of Xero was taken and time/date stamped minutes before the transfer which proved the statement as false. She stated she would not be surprised if Mr De Maria did not know how to access it or alternatively had deleted the data himself.

[337] Ms Madden stated that all records in her control were up to date at least until the 'hostile takeover' was done by Mr De Maria.

[338] Ms Madden said she had a full record of every transaction during her employment, for the last financial years, 'all accounted for'. She stated what will be missing is data from when Mr De Maria obtained control of the bank accounts.

[339] She stated as to financial statements, copies of each years audited financial statements were in the 'Street Swags Company Register'.

*Letter from Ms Madden asking if terminated*

[340] Ms Madden stated the calculation the subject of her email dated 21 April 2016 to Mr O'Reilly was before she was informed by Pilot Partners that Walkabout Beds would not be paying her the portion of her wage that it had been doing so on behalf of Street Swags' behalf, and that it was the legal responsibility of Street Swags to pay her full wage as her contract was with them. She stated these calculations therefore needed to be redone at a pay rate of \$150,000 per year as set by the Street Swags board at the meeting of 5 August 2015.

*Unlawful denial of Street Swags' social media accounts*

[341] In response to Mr De Maria's statement that the Street Swags' website [www.streetswags.org](http://www.streetswags.org) was hacked on 17 July 2016, Ms Madden denied the inference that she hacked something she claims that she personally owned and had authority to use. Ms Madden put on the webpage the following statement: "*Street Swags is closed for business until the management issues can be resolved and a full audit of the company (sic) finances can be undertaken.*" I note that this occurred two months after Ms Madden's employment was terminated.

*Defamatory comments on Facebook*

[342] Regarding Mr De Maria's evidence as to an 'I Stand With Jean' website, Ms Madden responded she did not make this website and had never seen it until reading Mr De Maria's statement.

*Ms Madden representing Street Swags to third parties during suspension period*

[343] Ms Madden stated Weiss Industrial has continued to make manufactured homes. She stated she does not work for Weiss Industrial and she is not a director or beneficiary.

*Notice of summary dismissal*

[344] Ms Madden stated the second termination letter failed to set out the 'other conduct referred to in my statement' as indicated by Mr De Maria. She stated it set out four substantive reasons which were the subject of the Respondent's 'employer response' filed in the Commission. However, she said the material filed on behalf of the Respondent on 23 November 2016 has raised a significant number of issues that were not previously put to her either orally or in writing.

*Refusal to hand over Street Swags property*

[345] As to Mr De Maria's evidence regarding Ms Madden's refusal to hand over property on 27 May 2016, Ms Madden responded that she was in Maleny at the relevant time and not present at her residence.

*Further matters – Mr De Maria's responses to allegations against him personally*

[346] As to allegations against Mr De Maria, Ms Madden stated she discussed the 'emerging difficulties' the staff were having with Mr De Maria on 10 March 2016.

[347] She stated she understands that Work Cover undertake thorough investigations before accepting any claim, and noted she was advised and believed the claims made by Ms Cleland and Ms Todd were ‘accepted in full’. She noted although the evidence for Mr De Maria’s bullying, sexual harassment and the stress it caused her was substantial, her claim was not granted as she was a director during her employment.

*Fair Work proceedings*

[348] Ms Madden rejects any assertion that she colluded with Ms Todd or Ms Cleland against Mr De Maria, Mr O’Reilly or anyone else.

[349] She said there was no basis on which Mr De Maria, Mr O’Reilly or Street Swags could form a reasonable belief that she had engaged in serious misconduct and certainly not wilfully or deliberately.

[350] She said she believed the ‘hostile takeover’ was orchestrated by Mr De Maria for his own ulterior motives.

[351] Ms Madden stated the workers compensation claims as referred to are for context and not used as evidence of the allegations contained therein. She stated any reflection of Mr De Maria’s character that may be taken from the claims that have been investigated and approved is not intended and is incidental to these proceedings.

*Further information*

[352] Ms Madden said she had continually sought to preserve records in an attempt to clear her name and denied that she destroyed or lost records or hindered any investigation.

[353] Ms Madden said that the hostile takeover, which she believed was orchestrated by Mr De Maria, had caused irreparable harm to Street Swags and to Ms Madden, and had caused significant harm and stress to the employees of Street Swags.

[354] Ms Madden said she had conducted herself throughout her career with altruism, honesty and professionalism. Ms Madden said that to date there had been no authentic investigation regarding the allegations, and that she wanted nothing more than to have the finances audited.

[355] Ms Madden said that Mr De Maria had been hired by Street Swags as a salesman, and that he failed to sell any cabins. When he learned that his contract was not to be extended, Ms Madden said he orchestrated a hostile takeover of the Respondent.

*Loss and damage*

[356] Ms Madden said that since providing her statement on 16 September 2016, she was yet to receive any salary in lieu of notice, superannuation entitlements, or leave entitlements. She said that because of the ongoing criminal proceedings, which were commenced following notifications by Street Swags, she had been unable to obtain her registration as a teacher and this hindered her ability to obtain alternate employment. Ms Madden said she had recently had to decline an offer of a teaching position because of the ongoing criminal proceedings, and continued to suffer social exclusion, emotional distress and financial difficulties.

### ***Third Witness Statement***

**[357]** In her third witness statement dated 22 April 2020, Ms Madden said she had suffered extensive trauma as a result of her unlawful termination, her initial arrest and charge along with the subsequent arrests and charges. Ms Madden said the actions of the Street Swags directors has had a devastating effect on her life.

**[358]** Apart from the mental anguish she had suffered, Ms Madden said that the media attention and other factors have led to her being unable to work in both charity and as a teacher. In support of this, Ms Madden provided a medical certificate from a consulting psychiatrist that stated she was being treated for chronic depression and anxiety in the setting of significant legal stressors complicated by major physical debility, and that in the psychiatrist's opinion, she was not in any position to consider employment. The medical certificate was dated 22 August 2018.

**[359]** Ms Madden said that in 2016, Mr De Maria had a complaint to the QPS which caused criminal proceedings to commence against her in July 2016. Ms Madden described these proceedings as malicious and protracted.

**[360]** Ms Madden said that on 19 July 2016, she was arrested and charged with a fraud offence that alleged that she dishonestly caused the inability of Mr De Maria to operate and manage Street Swags Limited between 13 July and 19 July 2016. Upon the arrest, Ms Madden said she was taken into the watch house in Brisbane, and her lawyer at the time was informed by watch house staff that the arresting officer indicated that bail was to be opposed and that she would appear before the Magistrates Court the next day. Ms Madden's lawyer contacted the watch house sergeant and held a discussion with him. Following that discussion, Ms Madden understood the arresting officer's position had been rejected and she was released some hours later.

**[361]** Ms Madden said the Courier Mail broke this story on Twitter before she was told she was being arrested, and when she was released, she found a 'swarm' of media waiting outside, and found this so stressful she tried to go back into the watch house.

**[362]** Ms Madden said she was charged with eight further offences on 28 February 2017 that alleged various fraud related offences and included the offence which was to proceed to trial in December 2019. On this occasion, Ms Madden said a QPS officer physically launched at her to grab her and physically remove her from her home in front of her children. Ms Madden said she received calls from media who were aware of the second arrest and were waiting for her at the watch house. Ms Madden said she continued to be hounded and harassed by the media who on occasions snuck through bushland to find the caravan she was living in.

**[363]** On 4 March 2018, Ms Madden said she was charged with seven more fraud related offences, and that the discontinuance and re-charging of various offences, after she was originally arrested, delayed proceedings significantly. Ms Madden said that the delay since 2016 cannot in any way be attributed to her defence.

**[364]** Ms Madden said that in December 2019, she was "cleared of all wrong-doing", with all remaining charges dropped, with no evidence being offered. Ms Madden said she was currently waiting on a costs decision from the Magistrate.



[365] Ms Madden's evidence was that she had not been able to work since March 2016, and had to rely on Centrelink, with an income of approximately \$16,000 per annum. Ms Madden provided a Centrelink statement as an annexure to her third statement.

[366] Ms Madden said the social shunning and shame which resulted from the negative media associated with her termination and the conduct of the Street Swags directors cost her many friendships and her confidence to leave the house. Ms Madden said her relationships with her mother and sisters have also broken down to the point of complete non-communication.

[367] Ms Madden described the impact of the 'unrelenting' stress on her relationship with her then partner, resulting in their decision to end the relationship. Ms Madden said that further adding to his stress was a significant loss of income as a direct result of losing jobs due to his association with Ms Madden, and that her former partner had spent years building his business and will take years to recover the success he once had.

[368] Ms Madden said the termination had caused her to lose custody of her children which had continued to negatively affect their lives, including failing at school in literacy and numeracy, and said her children had been subject to bullying as a result of the media surrounding her termination. Ms Madden said that she felt this had led to a strain in her relationship with her children as she felt they had lost respect for her.

[369] Ms Madden said her physical and mental health has greatly suffered, having gone through anxiety and depression, fainting episodes, bouts of shingles, and suicidal thoughts, requiring multiple hospitalisations. She provided a letter from a nephrologist and general physician.

[370] Ms Madden said she had been willing but unable to secure work as her teaching license had been revoked, and she became ineligible to gain a blue card due to the charges. She said she had applied for volunteering positions among many other jobs, including plucking chickens, but her smeared reputation and police record stood in her way on every occasion. Ms Madden said that subsequent to the charges being dropped in March 2020, she had regained her teaching license and completed her Return to Teaching course at The Australian Catholic University.

[371] Ms Madden said that the other impact of these proceedings was financial in respect of legal fees in both the Commission and for the criminal proceedings.

#### *Oral evidence at hearing*

[372] Ms Madden was extensively cross-examined by the Respondent and also asked questions by me. Ms Madden's evidence was not limited to the first day of the hearing, and I accepted evidence from her throughout the hearing as it arose.

[373] Relevant to changes to ASIC registers and who did that on the various occasions the ASIC register was changed for either Street Swags or Walkabout Beds, Ms Madden denied that she did that, and instead said it was Ms Todd who made the relevant changes. She stated that there was only one login to do so. Ms Madden denied that she changed the ASIC register in April 2016, saying it was done by Ms Todd. She stated, "*I might not have even noticed.*"

[374] Ms Madden considered that when she was informed of her suspension, it was relevant only to her employment, and not as a director. She considered that at the purported board meeting of 28 March 2016 (which we know was not valid), she effectively dismissed herself as a director by virtue of that purported board resolving to remove the board and create a new board. After then being appointed as CEO the following day at the early morning purported meeting, she went about assisting with the creation of new bank accounts for Street Swags.

[375] As to how many cabins were eventually built, Ms Madden thinks it might have been around seven or eight. She recalled that there were three for Mt Isa, one display cabin (later repossessed by the directors), one built for Mr Christian Hedgart, one for “Margaret” and one built for use on her property. She stated that she was going to be the client and it was going to be used for her father to live in. I understand from her evidence that the small cabin situated on Ms Madden’s property was delivered approximately December 2015.

[376] Her evidence is that the cabin on her property was to be used as a display, and she considered that she was making contributions towards paying it off through deductions in her wages. There is absolutely no evidence of any deductions from Ms Madden’s wages to cover the cabin put on her property. Ms Madden stated, *“I had very little to do with the pay and accounts.”*

[377] As to arrangements with Finlease and how the financing of loans for cabins would be organised, in cross-examination Ms Madden walked away from ownership of that arrangement. She stated, *“I wasn’t the one who arranged that.”* I understand she implicates Ms Daniels as the mastermind behind the financing arrangements between Street Swags, Walkabout Beds, Finlease, Mr Weiss and the ultimate purchaser who was likely to be homeless and paying off finance via welfare payments.

[378] On day seven of the hearing and after a further warning of self-incrimination, Ms Madden stated that she raised with relevant officers of Pilot Partners, including “Liz and Katy” being entitled to her accrued leave entitlements as Walkabout Beds was being put into administration. Ms Madden repeatedly informed the Commission that she was entitled to have used the \$14,400 of Walkabout Beds money to pay for her private legal fees, because it covered part of the accrued leave entitlements she considered that she was owed.

[379] This is, of course, an outrageous lie as Ms Madden had already had her private law firm, Crowley Greenhalgh paid two amounts, including a large payment of \$14,400 in March 2016, many weeks before Walkabout Beds was put into administration by her. Ms Madden has not been able to keep up the circular lie, and is out by around one month, with the law firm fees having been paid well in advance of any such suggestion that she lawfully thought she could recover outstanding entitlements from an organisation that she had placed into administration.

### **Evidence of Mr Carl Weiss**

[380] Mr Carl Weiss filed two witness statements in support of Ms Madden’s application. The first statement was made in September 2016 when Mr Weiss was in a relationship with Ms Madden. The relationship has since ended, and they are friends.

#### ***First witness statement***

*Relationship with Ms Madden*

[381] Mr Weiss stated that he met Ms Madden in 2002, and that in 2005, she showed him a piece of canvass she had sewn into a small swag. He confirmed she founded Street Swags in 2005.

[382] Mr Weiss stated he had assisted Street Swags in a volunteering capacity since around 2005/2006. He initially volunteered at events in the local area, and over time his volunteering increased to assist at music festivals and events more broadly.

[383] In his statement (filed in the Commission in September 2016) Mr Weiss stated he had begun his relationship with Ms Madden ‘approximately one and a half years ago’. He stated the relationship was made known to Street Swags at the AGM of December 2015, and that he did not recall anyone raising concerns about the relationship or any conflict of interest between Street Swags and Weiss Sawmilling.

*Street Swags*

[384] Mr Weiss stated he became a member of Street Swags in around 2013 to 2014. He stated he was purportedly expelled as a member of Street Swags following a show cause process alleging he had defamed its directors, among other things. He noted there was an offer to respond to the show cause, however no date was provided, and he did not provide any response.

[385] He noted he had attended two or three AGMs of Street Swags, the most recent was in December 2015.

*Manufacturing contract*

[386] Mr Weiss stated he attended a community healing retreat in Mt Isa in July 2015, along with Ms Madden. They took some materials proposed to use for cabin manufacture, to show the elders of the indigenous community they visited at the elders’ request. He said the elders were very interested in having them manufacture the cabins for their community.

[387] He said that in December 2015, Street Swags held their AGM, at which discussions were had regarding the manufacture of the cabins. He said a number of quotes had been obtained from other manufacturers, including a quote provided by himself. He said it was agreed at the AGM that the manufacturing contract be awarded to Weiss Industrial.

[388] A contract was entered into between Weiss Industrial and Walkabout Beds on 22 March 2016 to manufacture the cabins. I note that this contract was executed some time after Ms Madden says that it became apparent to her that cabins were not being sold, and the retainer of \$2,500 per week was devised. Ms Madden had, of course, been treating the contract as on foot since at least 1 January 2016.

[389] Mr Weiss stated Street Swags paid Weiss Sawmilling to store swags and other equipment at an industrial space in Darra that he had rented.

*Mr De Maria*

**[390]** He stated that in January/February 2016, Mr De Maria became a sales manager for Walkabout Beds. He noted Mr De Maria had previously been a director of Street Swags for approximately 12 to 18 months. He said that as a sales manager, Mr De Maria was to sell cabins and referred the customers on to Weiss Industrial.

**[391]** He stated he recalled experiencing difficulties with Mr De Maria not long after he commenced his role as sales manager. Mr Weiss said that Mr De Maria told him he needed to be a registered builder in order to build the cabins; Mr Weiss said this was wrong. He said the cabins, being manufactured homes, are built in a factory which does not require the builder to be registered.

**[392]** He further stated he received an email from Mr De Maria advising him not to use gum for the cabins as he believed it would rot. Mr Weiss said he explained to Mr De Maria that significant research had already been undertaken by Street Swags in relation to the appropriate materials to be used for the cabins. He explained that there were numerous types of gum, not just one type.

**[393]** Mr Weiss said he was not referred any customers from Mr De Maria during Mr De Maria's time as sales manager. Mr Weiss stated he was paying rent and wages to build the cabins but because no sales were coming through, this was not sustainable. He noted the original plan had been that approximately one cabin would be sold per week, however only one sale was made, and this was organised by Ms Daniels.

**[394]** Mr Weiss said he emailed Ms Madden, Ms Daniels, Mr De Maria and Ms Cleland on 7 March 2016, advising he could not continue to operate without any sales. I note that Mr Weiss' email pre-dates the execution of the contract with him.

*15 March 2016*

**[395]** He noted a staff meeting was held by Street Swags on 15 March 2016, during which he was telephoned and asked questions about what needed to be done to keep the cabin business operating. He said cabins needed to be ordered otherwise there was a risk that Weiss Industrial would not be able to continue. He stated the process of sales was taking too long, and that customers would make enquiries about the cabins but then there was a delay between contact being made and sales. He noted there was a proposal by the staff that Weiss Industrial should deal directly with the quotes.

**[396]** He said that following the staff meeting, he understood Weiss Industrial was to be paid a weekly retainer for staffing of sales, including drawing up plans for the cabins and liaising with the engineers and customers. He said Walkabout Beds would continue to undertake the marketing. He noted his understanding at the time was Mr De Maria would still undertake initial enquiries.

**[397]** He said from the time of the staff meeting, he undertook these additional tasks and manufactured the cabins.

*Easter long weekend, 2016*

[398] Mr Weiss said between 25 and 27 March 2016, Ms Madden and her sons camped in Noosa with Mr James Booth and his son. Mr Weiss noted he was on a fishing charter at Rainbow Beach at that time.

[399] He said around 28 March 2016, he learned that Mr De Maria had caused an email to be sent to staff informing them Ms Madden had been suspended. He said on that same date, Ms Madden issued a notice calling a members meeting. Mr Weiss confirmed he attended the meeting at Ms Madden's house and recalled the first item of business being to waive the ordinary notice period. He stated after the meeting had commenced and after the waiver, an email was received from Boss Lawyers acting on behalf of Street Swags which stated the members meeting was invalid and that Ms Madden had no authority to call the meeting.

[400] Mr Weiss stated that during the members meeting, Ms Madden advised the members she had learned of her suspension but had not received a copy of the email directly. He said he recalled Ms Madden receiving a copy of the suspension letter at approximately 6:10pm, which was after the meeting had commenced.

[401] He said during that meeting, Ms Madden discussed learning that Mr De Maria and Mr O'Reilly had attempted to, or had, suspended Ms Madden for misappropriation. He noted she said she had tried to contact them however had not elicited any information. His evidence is that he remembered thinking that if the allegations were serious enough to suspend Ms Madden as the CEO and director of the company, why had the members not previously been notified?

[402] He stated he had no knowledge of any notice of a directors meeting considering the suspension of Ms Madden. He also said he had not seen any minutes of a meeting regarding Mr De Maria and Mr O'Reilly considering Ms Madden's suspension.

[403] Mr Weiss stated with respect to the resolutions passed by the members during the members' meeting, he was of the belief they were valid, and he assumed they were decisions that members of the organisation could make. He stated the members 'deliberately' elected to remove Ms Madden as a director pending an audit and investigation. He said the plan was for temporary directors to be appointed so that they could determine the allegations and obtain further information about the 'sudden takeover'.

*29 March 2016*

[404] Mr Weiss said he attended the Street Swags office with Ms Madden on 29 March 2016. He said he was of the belief that Ms Madden had been reinstated as CEO by the newly appointed directors.

[405] He said when they arrived at the office, it was locked and there was a post it note which read: "*Any locksmith who attempts to change these locks will face prosecution via Street Swags Pty Ltd signed Directors 25/3/16*".

[406] He said 30 minutes after their arrival, a security guard arrived. Mr Weiss asked the security guard whether he was looking for someone, and the security guard replied he was looking for 'Street Swags'. Mr Weiss said Mr De Maria then arrived not long after; he requested the security guard remove Ms Madden and Mr Weiss. Mr Weiss said Mr De Maria then called the police who attended and said they were unable to do anything. Mr Weiss noted

he stayed on site outside the office with Ms Madden for the remainder of the day, trying to figure out what to do.

[407] Mr Weiss said he recalled a number of emails and letters were received over the following days from Boss Lawyers on behalf of Street Swags, alleging the members' meeting was invalid. He said during this time, Street Swags operated out of Weiss Sawmillings' Darra office and he understood Street Swags to be operating as normal.

*First termination*

[408] Mr Weiss confirmed that on 30 March 2016, Ms Madden received a termination letter. He said she had not received any allegations prior to this, and had not been given an opportunity to respond.

[409] Mr Weiss said that on 11 April 2016, Ms Madden then received a copy of correspondence addressed to McCullough Robertson Lawyers outlining a number of allegations of misappropriation. He said Ms Madden had not previously been given a copy of this correspondence, however it was apparent this letter had been sent after Ms Madden was terminated.

[410] He stated that on 13 April 2016, Ms Madden provided a detailed response to each of the allegations, however no response was received from Street Swags in reply to her 13 April 2016 correspondence. He said as a consequence, Ms Madden was unsure whether she was terminated or not, and filed an application in the Commission seeking an unfair dismissal remedy. He said both he and Ms Madden were confused as to whether or not she had actually been dismissed.

*Supreme Court proceedings*

[411] Mr Weiss confirmed that on 13 April 2016, proceedings were commenced in the Court against Ms Madden, Dr Richards, Mr Booth and Dr Thornton, seeking declarations and orders including that the members' meeting was invalid.

*Second termination*

[412] Mr Weiss' evidence confirmed that on 19 May 2016, Ms Madden was summarily dismissed by the Respondent. He said the second termination letter was not signed, and again it was unclear whether the termination of her employment was a proper termination. He said as with the first termination letter, Ms Madden had not been afforded any proper opportunity to respond to the allegations on which the termination was based.

*Employer response*

[413] Mr Weiss stated he was informed by the solicitors that were acting for Ms Madden at the time, that Street Swags had filed a response in the Commission outlining a number of reasons for the summary dismissal of Ms Madden. In response he stated as follows.

[414] He believed Ms Madden had been reinstated as CEO and that Mr De Maria and Mr O'Reilly had been removed as directors. On that basis, it was unclear to him why Ms Madden should deliver documents and access to software to Mr De Maria and Mr O'Reilly.

[415] In the days following the members' meeting, he and Ms Madden attended a meeting with representatives of the Commonwealth Games. He said the Commonwealth Games were interested in having Weiss Industrial build cabins for the Commonwealth Games on the Gold Coast. He noted Ms Madden did not attend the meeting as a representative of Street Swags, which he said she made clear and accordingly declined to answer any questions about Street Swags.

[416] Mr Weiss stated Ms Madden's Facebook account was hacked between 18 April and 26 May 2016. He said he knew this as he observed her password had been reset. On his evidence, he believed that Ms Madden's Facebook was hacked by Street Swags as her account is linked to the Street Swags account and after it was noticed the account had been hacked, he "*observed posts on the Street Swags page*".

[417] He said he had read a report issued by Worrells and was aware of the transactions listed in the report. He noted it appears those transactions are a list of transactions 'over a certain amount'. He said all transactions relating to Weiss Sawmilling and Weis Industrial were properly invoiced. He said the report says payments of \$91,000 were paid twice to Weiss Sawmilling. In response he noted Weiss Sawmilling was paid by Walkabout Beds, as Walkabout Beds thought it would be recovering this amount from the financier. He said however, Walkabout Beds was unable to obtain money back from finance and so he reimbursed Walkabout Beds. He stated invoices for those transactions can be produced to the Commission on request.

[418] Mr Weiss confirmed Ms Madden provided 'read only' access to Street Swags prior to instructions being given to Worrells. He said the transactions were accessible to Street Swags at the time of providing instructions to Worrells.

### ***Second statement***

[419] In response to various matters raised in Mr De Maria's witness statement, Mr Weiss filed a second statement dated 25 February 2017.

[420] Mr Weiss stated he and Ms Madden complied with all necessary regulations and certifications. He said many aspects of the QBCC Act and the NCC Act do not apply to manufactured homes. He said that in accordance with the QBCC Act, correct at that time, division 2, section 9 defined residential construction work as being fixed to land and did not include a manufactured home. He said further that section 13 of division 2, part 1 provided that residential construction work does not include:

- c) unloading a building that if it were fixed to land, could be a residence;*
- d) off-site prefabrication of the whole building that could be a residence.*

[421] He stated Division 2, section 13, subsection 2 provided a completed prefabricated building:

- b) is such that services have not been connected.*

[422] He stated he was paid the amount of \$10,000 by Street Swags for storage of items belonging to Street Swags.

[423] He noted that Street Swags agreed to the contract at the 2015 AGM. He noted he was issuing invoices to Walkabout Beds as his contract was with Walkabout Beds. And further, he stated he was unsure of what money was paid from Street Swags to Walkabout Beds and for what purpose but that it was his understanding that Street Swags paid Walkabout Beds for the supply of swags in the amount of \$80 each.

[424] In response to Mr De Maria's statement, Mr Weiss confirmed he operated as a sole trader conducting property maintenance services, including fencing, mowing, shed and stable construction, mobile sawmilling and earthmoving until the time he registered Weiss Industrial Pty Ltd in March 2016. He noted this was due to the increased risk and expense of fulfilling the Walkabout Beds contract.

[425] Mr Weiss stated he requested Ms Madden to pay for the steel for the skid and roof of a cabin that had been ordered by Walkabout Beds, as no payment had come through for that cabin at the time and he was being pushed to have it completed by the specified deadline by Walkabout Beds for their customer. He said this amount was deducted off the invoice at final payment. Mr Weiss's evidence was he was unsure if the payment of that amount came from Walkabout Beds or from Street Swags. Mr Weiss provided no evidence of the amount having been deducted from any invoice.

[426] As to the contract with Walkabout Beds, Mr Weiss stated the manufacture of cabins required him to have larger premises in an industrial area. He said he had not intended to lease the larger premises until the contract commenced, however Street Swags also wanted to store the prototype cabin, a truck, swags and a trailer at the leased premises and these had needed to be moved from their present location as soon as possible. He said he invoiced Street Swags for 12 months of storage of goods, and this money was paid directly to Blue Commercial under his instruction.

[427] I note that Ms Weiss sent the following email to Ms Madden and Ms Todd on 20 November 2015:

*"Gday*

*I have got everything sorted with regards to the lease of a premises and am able to move in as soon as I have signed the tenancy agreement.*

*Before I can sign this I need the contract for the cabins, being for a guaranteed minimum order of 44 of the base model large cabin or equivalent amount of work in other orders. Including termination clauses similar to discussed with Jean. Along with this I need a \$17 600.00 deposit being \$400 on each cabin.*

*I also need the \$10 000.00 storage fee being for storage of 1xtruck, 1xtrailer and up to 10 pallets of other goods (swags, camping gear, sound gear etc) for a period of 12 months.*

*As soon as this is organised then we can bring the cabin down from lowood and ss other stuff can be put in the shed.*

*Regards*



*Carl Weiss*

[428] Mr Weiss said he stored one Hino truck and approximately 900 swags for Street Swags. He said the swags were delivered to him by Mr O'Reilly and a 'band of Nudgee boys' and that he stayed back one night to receive them. He noted the Hino truck was delivered to the premises by Mr James Booth.

[429] Mr Weiss stated the items were collected from his workshop by Mr De Maria and Mr Daly on 23 May 2016, with members of the Queensland Police Service with them. Mr Weiss stated Mr De Maria signed a statement saying he received everything. Mr Weiss's evidence was that Mr De Maria was not at his workshop at any other time, that he was aware of.

[430] Mr Weiss stated that he used a Holden Colorado ute belonging to Walkabout Beds to visit prospective customers and undertake site inspections. He said this was done under direction from Walkabout Beds' staff.

[431] As to his own business, including when he operated as a sole trader conducting property maintenance services, Mr Weiss stated he had a fleet of five company vehicles which he used to run his business, some of which were 4 wheel drives. He said he used Walkabout Beds' vehicle as it wasn't being used by other staff. He said that he considered this was fair as he was giving a considerable amount of his own time to perform the inspections which were beyond the terms of his contract.

[432] As to the matters of speeding fines and toll invoices, he stated that he paid Street Swags for the speeding fine and he was not aware of any toll notice. Mr Weiss stated a toll notice was never brought to his attention, and had it been, he would have paid the toll if he had been the driver at the relevant time. Mr Weiss stated he was unsure why Mr De Maria didn't sign a statutory declaration to have the toll notice transferred to him, if Mr De Maria had believed it was Mr Weiss who was driving at the relevant time.

[433] As to issues raised by Mr De Maria regarding Mr Weiss's possession of the Holden Colorado, Mr Weiss stated he was contacted by a staff member of Finrent Finance but couldn't recall the date of this contact. He was asked if he had possession of the Holden Colorado, to which he replied it was stored in his workshop. Mr Weiss stated Finrent told him it needed to be collected due to Walkabout Beds being put into voluntary administration. He replied that he wouldn't be back at the workshop until the following week, for them to collect it. He said he also informed Finrent that the vehicle had a cracked windscreen. His evidence is that he was unsure how this damage occurred, and to his knowledge there was no other damage to the vehicle. He arranged with Finrent a time for the vehicle to be collected by tilt tray, and it was later collected but he couldn't recall the date.

[434] As to the operations of Walkabout Beds, Mr Weiss stated he was told by Walkabout Beds staff that:

- (a) Walkabout Beds would find prospective customers;
- (b) Walkabout beds would apply for finance on behalf of the customer;
- (c) Walkabout beds would receive the payment from the finance company and pay Weiss Industrial for the cabin;
- (d) [his] team would manufacture the cabin;
- (e) Walkabout Beds would organise the cabin to be delivered to the customer; and

(f) Walkabout Beds would pass on the finance repayments to the customer.

[435] As to the matters of finance, his evidence was that:

- (a) To [his] knowledge the only change to the finance was that the finance company Finrent would not pay directly to Walkabout Beds but would pay to [him] directly;
- (b) This created an overpayment of approximately \$91,000 which he promptly reimbursed Walkabout Beds for. (He attached a copy of invoices and his bank deposit demonstrating the refund);
- (c) Mr O'Reilly visited [his] shed to deliver the swags and [they] did not discuss the cabins; and
- (d) [Ms Madden] was not present.

[436] As to the contract signed by Mr De Maria, Mr Weiss stated he could not speak for someone who does not read something before signing it. He stated that in any event, he had nothing to do with the finance other than issuing invoices when requested for an order. He said once the finance had been established, he was then informed by Walkabout Beds' staff that the company would pay him directly for the cabins and not Walkabout Beds. He reiterated that this created an overpayment, which he reimbursed. He reiterated as a sole trader, the account in question was used for business purposes but it was in his name.

[437] Mr Weiss's evidence was the handover of each cabin was handled differently, as each situation was different and involved a different set of circumstances. He said some cabins were delivered and some were picked up. He said he was instructed to put the Darra address on all invoices by Finrent staff.

[438] Mr Weiss's reiterated that he had no involvement in the finance other than issuing invoices when requested by Walkabout Beds or Finrent, as stated above.

[439] He stated he had sent through a breakdown of costs he had incurred as a direct result of the Walkabout Beds contract, which was not being fulfilled. He noted he was also carrying out site inspections and meeting with Walkabout Beds' customers "*for free*" which was beyond the terms of his contract. He noted he was originally offered a larger amount by Walkabout Beds' staff but had stated he was happy to just over his costs.

[440] He stated he registered as a business in March 2016 on advice from his accountant, based on the increased risk and expense of fulfilling the Walkabout Beds contract. He stated he did not register as a business to manufacture cabins paid for by Street Swags; it was for Walkabout Beds.

[441] Mr Weiss stated that he expanded his business to meet the terms of his contract with Walkabout Beds, and he was never paid by Street Swags for commercial cabins. He stated that he was unsure who the cabins were provided to and for what purpose, as he was simply providing what was requested by Walkabout Beds.

[442] Further to his earlier evidence regarding the events of 29 March 2016, Mr Weiss added that the lock on the arcade was not changed and other tenants continued to use the gate. He stated he did not believe Mr De Maria had a security key for the gate. He denied ever stating he would change the lock.

[443] Mr Weiss agreed with Mr De Maria's statement that the police sergeant said words to the effect, "*This is a public space. You have to unlock the gate.*" Mr Weiss stated he responded that he had not locked it; he and Ms Madden had simply left it closed.

[444] Mr Weiss stated the police said it was a civil matter and that no one should enter until the matter was resolved. Mr Weiss stated he and Ms Madden agreed but stayed outside the office so that Mr De Maria did not enter. He said the police said they could not remove anyone unless that was a threat to the public, and asked them not to cause a public disturbance then they left.

[445] Mr Weiss agreed that he did sit with Ms Madden in the arcade all day. Ms Todd sat with them for some of the day.

[446] Mr Weiss agreed that he attended the Street Swags office on 6 April 2016, along with four others, with the Street Swags fridge truck. He said Mr James Booth explained that he was a director of Street Swags and asked the security guard to let them enter which was refused. Mr Weiss said he walked past him and slid the door open, noting it was unlocked. He said they stood at the doors while the security guard attempted to call the police. Mr Weiss denied assaulting the security guard, and stated Ms Madden was not in attendance.

[447] Mr Weiss's evidence was that the Street Swags and Walkabout staff used his offices in Darra over a number of weeks; however he stated he did not receive any mail for Street Swags or Walkabout Beds to his knowledge.

[448] As to the meeting he called, Mr Weiss's evidence was that the reasons for calling the meeting were outlined in his email dated 19 June 2016. He said he understood the calling of the meeting to be valid as he was a member and considered that he had more than 5% of the voting capacity.

[449] Mr Weiss gave evidence that at no time had he contacted Mr Booth to collect a trailer from his residence in Brookfield. He said he was unaware that the trailer, as referred in Mr De Maria's statement, had been hired by the Brookfield Show Society Inc for use at the Brookfield show. Mr Weiss said that as a long-term volunteer of the Brookfield Show Society Pty Ltd, he assisted when asked to set up a stage at the Brookfield Show. Mr Weiss said he gave no instructions to Mr Booth with regards to the trailer nor would Mr Booth have any obligation to take instructions from him under any circumstances.

[450] Mr Weiss stated he did not and had never collected the trailer from the Brookfield Show Grounds, and he did not have the means to tow a trailer as large as the one referred to by Mr De Maria, at that time.

#### *Statement of Mr O'Reilly*

[451] Mr Weiss stated that regarding the 2015 AGM, he had said he was happy manufacturing the cabins at a minimal profit margin as long as the volume was high enough to meet costs, hence the 44 cabins per year as stated in the contract.

[452] He said a prototype cabin was built at Lowood over a course of time in 2015. He said the manufacturing agreement started much later in January or February of 2016, however we note that the contract was not executed until March 2016.

[453] Mr Weiss highlighted Mr O'Reilly's statement that a group of volunteers including staff had assisted him in moving 100 cartons, holding swags, from Nudgee College to Mr Weiss's work premises at Darra. Mr Weiss stated it was 90 cartons, and noted this assertion contradicted Mr De Maria's evidence that he had no property of Street Swags on his premises.

[454] As to any monies transferred to Mr Weiss, he denied that there was \$245,000 in payments made to him or his entity. He stated there were eight cabins built in total – three in Mt Isa, invoiced to and paid by Street Swags, one display in Lowood, invoiced to and paid by Street Swags, and four commercial cabins, invoiced to and paid by Walkabout Beds.

[455] Mr Weiss further stated that regarding finance, he was informed by Walkabout Beds staff that the finance company would pay him directly. He stated he had to reissue invoices to Finrent that had already been paid. He reiterated his evidence that it was this overlap which caused the overpayment referred to, which he reimbursed.

[456] As to Mr O'Reilly's evidence that around 30 March 2016, Ms Madden arranged for Street Swags staff to meet at Mr Weiss's business premises, Mr Weiss reiterated his evidence that Street Swags and Walkabout Beds staff used his office for a number of weeks over that relevant period.

*Oral evidence at hearing*

[457] In cross-examination and answering questions from me, Mr Weiss stated that he did not know why Walkabout Beds was put into administration and by whom. Despite being Ms Madden's partner at the time, his evidence is that he cannot recall if Ms Madden putting Walkabout Beds into administration was discussed. Mr Weiss' evidence on this point was entirely unsatisfactory and completely unbelievable.

[458] Mr Weiss recalls that nine cabins were built. His recollection is that one of the cabins was intended to go to Ms Daniels for her use, but he thinks it might have gone to somebody else. His recollection is that Ms Madden had two cabins on her property.

[459] Relevant to the weekly retainer of \$2,500, Mr Weiss agreed that it had been paid to him on "a couple of occasions". His evidence is that the staff of Street Swags decided that he should be paid it as a "sales and site inspection consulting fee." Even though he invoiced for more than two occasions, only two were paid. He stated that it wasn't his idea and he was joined into a staff telephone call.

[460] Mr Weiss stated that he wasn't building the cabins at cost and his intention was to have a 10%-15% profit margin. His evidence is that he informed Mr O'Reilly that as long as the quantity was there, it was OK.

**Evidence of Ms Kathleen Cleland**

[461] Ms Cleland, administration officer, filed two witness statements in support of Ms Madden's application. The first statement was made in September 2016; the second statement in January 2017.

*First statement*

[462] Ms Cleland stated she had known of Ms Madden since around 2005, when Ms Madden founded Street Swags. However, she did not meet Ms Madden until September 2015, when Ms Madden made an appearance at a local community fundraising event.

[463] Having met Ms Madden, she then commenced employment with Street Swags on 4 November 2015 as an administration officer. She confirmed she had previously been involved with the organisation in a volunteer capacity, assisting with fund raising efforts.

[464] Ms Cleland stated her duties at Street Swags included but were not limited to:

- (a) Attending to all Street Swags financial accounts including business payments and invoices;
- (b) Payroll;
- (c) Purchasing canvas foam; and
- (d) Liaising with the prison (who arranged for the swags to be sewed by prisoners).

[465] She said her position was previously filled by Ms Shelley Ryan, and when Ms Cleland commenced in the role she noted a number of transactions which “*looked odd*”. She said based on those transactions, there appeared to have been errors made in the bookkeeping and the bookkeeping was very behind. Her evidence is that she worked closely with external bookkeepers to resolve the transactions, and also recalled during this time with the external bookkeepers that it was discovered the staff had been underpaid. She said that by January 2016, most of these issues had been resolved.

[466] Ms Cleland’s evidence was that between January and March 2016, the books fell behind again as she was required to assist Mr De Maria with his role. She said he had commenced on 18 January 2016 as a sales manager to sell cabins. She said she was required to perform “*most of Adrian’s role in addition to [her own]*” as he was not performing his role. She confirmed this meant she was answering phone calls for all sales, and the bookkeeping fell behind as she was required to priorities urgent matters.

[467] She said that during February 2016, Mr De Maria requested a number of financial documents she felt were not necessary for his role. She said she told him she felt uncomfortable providing those documents, and that she felt he was not entitled to the information contained. She stated Mr De Maria replied with words to the effect “*I’m a director and I’m entitled*”.

[468] Her evidence was he sought:

- (a) Profit and loss statements;
- (b) Balance sheets;
- (c) Monthly takings;
- (d) Transaction listings; and
- (e) Any payment to Weiss Industrial.

[469] Ms Cleland stated she formed the view that Mr De Maria was trying to get rid of Mr Weiss. She said she thought Mr De Maria had affections for Ms Madden at that time, as his mannerisms included staring at Ms Madden and sitting opposite her with his legs open and adjusting himself.

[470] Ms Cleland said she attended a staff meeting on 14 March 2016 where it was discussed that it would be more cost effective to have Mr Weiss's company, Weiss Industrial, performing the sales role in addition to building the cabins. She stated around this time, Mr De Maria was given notice that his contract would not be renewed. Ms Cleland's evidence was that she was happy with the decision, as she was overwhelmed with her workload including having to perform Mr De Maria's role.

[471] She said that on 23 and 24 March 2016, Mr De Maria emailed Street Swags advising he was ill and unable to attend work.

[472] She said that around 8:17am on 25 March 2016, she received an email from him, advising Ms Madden had been suspended and he was unable to say why other than there were 'serious reasons'. Ms Cleland said she was unsure whether Mr De Maria had authority to suspend Ms Madden in circumstances where:

- (a) There was no evidence of a directors' meeting being held to consider her suspension;
- (b) There was no evidence of any notice given to Ms Madden or Ms Todd (as company secretary), of the directors' meeting; and the email was received from Mr De Maria personally rather than from Street Swags.

[473] On 28 March 2016, a members' meeting was called by Ms Madden. Ms Madden had been at Ms Todd's house celebrating Ms Todd's birthday.

[474] She said she received an email from Boss Lawyers on 29 March 2016, advising that staff were not to attend work but were to be paid. She said she attended the NAB website to pay staff salary, but the website had been locked. She sent an email to Mr O'Reilly to advise she was unable to make salary payments. She said Mr O'Reilly responded with "what do we do", to which she replied that if the website had not been changed then they could pay early, however if it had been changed, there would be no ability to make payment.

[475] Ms Cleland attempted to work from home the week following Easter. She said prior to that time, she had organised with Ms Madden to work from home. She advised Mr De Maria that she would be working from home, via an email on 29 March 2016. She said although she was unable to pay bills or do other banking due to being locked out, she was still able to perform her other duties including allocating and reconciling transactions in the accounting software, entering donation details into etapestry software, issuing donor receipts, receiving and responding to emails, and taking and making phone calls (including sales calls). She said as far as she was aware, all other staff worked from the Darra office during this time.

[476] She said that around 9:19am on 30 March 2016, she received a text message and email from Ms Madden advising that staff were to attend work at the Darra office. She said she believed Ms Madden had been reinstated as CEO and that Mr De Maria and Mr O'Reilly were no longer directors.

#### *April 2016*

[477] While working from home on 2 April 2016, she said she needed to action some sales and required access to Mr De Maria's email to find particular sales to follow up. Having

accessed his email account, she saw a number of emails had been sent to Mr O'Reilly on Good Friday, Easter Saturday and Easter Sunday including emails about staff only working three hour days. In fact, the email read by Ms Cleland includes the following:

*“...Jean has done an incredible amount of damage here, and the culture she has created of 3hrs a day of work is through his office like an obnoxious weed. I am just giving you an update of what I am preparing now and the direction I am taking on this...”*

[478] Her evidence is that she became aware that Mr De Maria had sent confidential financial statements to Boss Lawyers, including the contract with Weiss Sawmilling. She said based on this information, she was of the belief Mr De Maria was seeking to undermine Ms Madden's position. She said she had not observed any questionable transactions in the Street Swags accounts during her employment with them. She stated Ms Madden was rarely involved in the finances, and that she undertook almost all payments and invoices herself.

[479] Ms Cleland filed a WorkCover claim on 19 April 2016. She was absent from work on sick leave since 14 April 2016. She stated during her period of sick leave, she received a number of emails from Mr De Maria and Mr O'Reilly requesting log-in details for the Xero Accounting Software as well as her own personal internet banking log-in.

[480] She said she received emails from Mr De Maria threatening to report a computer and laptop as stolen, despite them being provided to her for work purposes. Ms Cleland wrote to Mr O'Reilly and said the items could be picked up from her solicitor's office.

#### *June 2016*

[481] Ms Cleland said she became a member of Street Swags on 19 June 2016. She said she had not attended a members' meeting since 19 June 2016, and had not received any minutes of meetings other than the meeting of 19 June 2016 when she became a member.

#### *Employer's response*

[482] Ms Cleland said she was advised via Ms Madden's solicitors at that time, that the Respondent had filed an employer response in the Commission. As to the matters raised in the employer response, she responded:

- (a) On about 9 March 2016 Ms Madden contacted her asking how she could grant the directors access to the accounting software. She advised Ms Madden she could not hand over her user access or her log in details as any transactions undertaken with her username would appear as though she had made those transactions. She stated consequently, Ms Madden gave the directors a 'read only' access which would have granted sufficient access for the purposes of an audit.
- (b) She had read the Worrells report in respect of an audit undertaken of Street Swags. She said in her observation, the information given to Worrells included incorrect information. For example, that every transaction over \$5,000 was unauthorised. She said during her employment with Street Swags, she was never made aware of requirement that transactions exceeding \$5,000.00 were to be reported. Mr De Maria and Ms Daniels sat directly behind her in the office and both of them discussed

Finlease finance arrangements and payment amounts for cabin purchases that exceeded \$5,000.00 with her. Despite this, neither ever mentioned to her that payments exceeding that amount needed to be reported or approved by the board. She said moreover, during February and March 2016, Mr De Maria constantly requested her to provide financial information and reports for Street Swags and Walkabout Beds which demonstrated a number of transactions exceeding \$5,000.00. She said despite having knowledge of these transactions, Mr De Maria never queried the transactions and never instructed Ms Cleland to report them to the board.

- (c) She was not able to identify any transactions in the list of transactions contained in the Worrell's report that appeared questionable. She noted some in fact were for salary and salary sacrifice purposes.

*Additional matters*

[483] She recalled the purported suspension of Ms Madden was confusing as the members were of the belief that Mr De Maria and Mr O'Reilly did not have sufficient authority to stand Ms Madden down.

[484] Ms Cleland was surprised by the allegations against Ms Madden as neither Mr De Maria, Mr O'Reilly nor Boss Lawyers had ever asked her for an explanation regarding any transactions, despite her being responsible for Street Swags' accounts and transactions. She stated neither Mr De Maria nor Mr O'Reilly had ever queried any particular transactions with her.

***Second statement***

*Responses to statement of Mr De Maria*

[485] Ms Cleland stated in the ordinary course of her employment she processed salary payments to staff. She said she did not know at first that Mr De Maria was employed and that he was to be paid a salary. She said Mr De Maria brought that to her attention and informed her that he had not been paid. Ms Cleland asked him for his employment details, and he told her he was employed by Street Swags and his salary was \$120,000. She said she then arranged for payment of Mr De Maria's salary to be processed from the Street Swags bank account into his instructed bank account.

[486] Ms Cleland rejected Mr De Maria's assertion in his witness statement that she said to him: *"I'm not getting any sleep at night and I feel sick in the stomach about funds being transferred from Street Swags to Mr Weiss"*. She added:

- (a) On 1 February 2016, her daughter was sick with the flu and she took personal/carer's leave for the day to take care of her. On 2 February 2016, she arrived at work at 9.30am but at 9.57am a phone message from her daughter's teacher came through and she had to leave work to collect her daughter from school. She said she left immediately. She worked from home for the remainder of that day. On 3 February her daughter remained unwell and she had also caught the flu, so she worked from home that day too. On 4 February 2016, she became even more unwell with the flu and was unable to work so took that day as a sick day. She said on the Friday, 5 February 2016, she was on a rostered day off;



- (b) She did not say that statement to Mr De Maria on 2 February 2016 or in ‘mid-February 2016’ (as stated in Mr De Maria’s statement), or at any other time;
- (c) On a number of occasions throughout February and March 2016, she spoke to Mr De Maria about the enormity of her workload and informed him she was stressed due to the amount of sales work she was being delegated by him. She informed him that her administrative duties were falling behind as a result. She said Mr De Maria was not performing his sales work at all and was delegating the bulk of his work to her, as well as making a large number of demands from her to provide financial reports. She said the work he delegated included:
  - i. Responding to prospective new client emails;
  - ii. Answering sales enquiry phone calls; and
  - iii. Following up sales leads with potential clients.
- (d) She said those demands were in addition to him constantly asking for various financial reports and completion of her own administration and bookkeeping duties; and
- (e) Around this time, she was feeling sick and losing sleep due to the stress caused by the excessive workload. She said she may have informed Mr De Maria that she was losing sleep and feeling unwell due to her excessive workload, though she could not recall the specific date she said this.

**[487]** She further rejected Mr De Maria’s statement that she said to him words to the effect of *“It’s not right. The arrangement was that payments were supposed to be made from Walkabout Beds to Carl not from Street Swags. If we get audited there will be trouble”*. She responded to this allegation as follows.

**[488]** Mr De Maria constantly asked her for copies of financial reports and copies of invoices. She recalled in mid-March 2016, Mr De Maria asked her to show him a tax invoice from Weiss Sawmilling for \$10,000 for storage fees. This tax invoice was made out to Street Swags for storage of Street Swags property and she considered that it was a legitimate Street Swags expense. She further recalled there being a large number of swags moved from Nudgee College to Weiss Sawmilling to be stored there.

**[489]** Ms Cleland rejected that she left a post-it note on Mr De Maria’s desk with an online banking password written on it. She said the main online banking password was contained in a word file on the shared office drive. She said all Street Swags staff, including Mr De Maria, had access to the shared drive and could access the Word file. She alerted Ms Madden that this could be a security risk, and then Ms Madden made arrangements with NAB for the existing main login and password to be cancelled and for new personal user logins to be created. Ms Cleland stated she received a personal user login and password which she did not and has not provided to anyone. She said Mr De Maria did not have authority to access Street Swags’ online banking. She said it was possible Mr De Maria may have obtained the main online banking login and password from the shared drive to access the online banking prior to Ms Madden making the change to personal logins.

**[490]** Ms Cleland’s evidence was that Mr De Maria was employed as sales manager in January 2016 and was contracted to sell 30 cabins in 3 months. She said on a number of

occasions during February 2016, she raised concerns to Mr De Maria regarding the projected cabin sales not being reached and that if the situation continued this could cause financial issues for Street Swags. She said she also raised on numerous occasions that she was stressed due to having to perform sales work that he was delegating to her in addition to the requests for financial reports and her own duties.

[491] She reiterated that Mr De Maria made a large number of demands for financial information. She said he frequently requested she provide him with financial records and statements that he would not ordinarily be privy to in his role as sales manager. She stated that initially, his requests made her feel uncomfortable as they were not required for his sales role and she said she told him so. She said Mr De Maria was insistent and persistent in his demands, and that he said he was entitled to the reports in his role as Director. She said on this basis she did provide him with the reports and financial information.

[492] She said Mr De Maria also requested she provide all transactions for Weiss Industrial from both Street Swags and Walkabout Beds. She said she provided these as he made demands from late January through to March 2016.

[493] She rejected Mr De Maria's assertion that she withheld financial information. She recalled that when the online banking details were changed to personal logins, Mr De Maria requested she provide him with her personal login. She said she refused this, as she believed it inappropriate.

[494] She said at no time did she 'change sides'; and she noted she had nothing to gain or lose regardless of the outcome of this unfair dismissal matter before the Commission.

[495] As to a staff meeting referred to in Mr De Maria's statement, Ms Cleland said she believed this to be the meeting of 15 March 2016. She confirmed she attended the meeting. She rejected making some of the statements suggested by Mr De Maria in his witness statement. She said she recalled Ms Madden stating to all staff that Mr De Maria's sales manager contract would soon end, and she further recalled a general discussion regarding the lack of cabin sales thus far. Ms Cleland said it was suggested the sales be outsourced to Weiss Industrial. She said she recalled this clearly as she felt a huge sense of relief that it would mean she no longer had to perform the excess duties. She recalled being one of the first in the meeting to agree that was a good idea, and that generally the others felt the same. She said she did not recall Mr De Maria responding at all.

[496] Ms Cleland rejected Mr De Maria's assertion that she ignored the notice sent on 25 March 2016 regarding Ms Madden's suspension. She added:

- (a) On 29 March at 6.16am, she responded to Mr De Maria's email of 25 March 2016. In her email she stated she had previously organised to work from her home office that week as it was school holidays and this was within her employment contract allowances. She said in her email she also asked Mr De Maria to advise her of the time he had scheduled the one-on-one meeting with her, and stated she would go to the Street Swags' office to attend the meeting;
- (b) She did not have any contact with Mr De Maria, Ms Madden or any Street Swags staff, members or directors between receipt of Mr De Maria's email and her reply on 29 March 2016;

- (c) She did not receive a response to her email of 29 March 2016;
- (d) At 6:09pm on 29 March 2016, she received a letter from Boss Lawyers directing staff not to attend the Street Swags' offices and instructing that all staff would be paid as usual;
- (e) On receipt of this letter from Boss Lawyers, on the evening of 29 March 2016 she attempted to log into Street Swags' online banking to amend the date of recurring transactions for staff salary payments to ensure all staff would be paid as usual. However, she was locked out of the system;
- (f) On the same evening she sent an email to Mr De Maria and Mr O'Reilly advising she was locked out, and unable to amend salary payment dates;
- (g) She received a response from Mr O'Reilly at 9.33pm that day, querying the process and she said she responded that if the automatic payments had been cancelled, the staff pays would need to be made manually;
- (h) On 30 March 2016 she received an email from Ms Madden containing attachments of the minutes of a Street Swags' Members' meeting held on 28 March 2016 and Board Meeting held 29 March 2016. She said on receipt of these, she believed Ms Madden had been reinstated at CEO pursuant to the meeting documents. She said she responded to the email and informed Ms Madden that her current banking login had been cancelled which would likely have caused all automatic payments under her login, including salary payments, to have been cancelled. Ms Cleland said that week, 29 March to 2 April 2016, she worked from home as previously arranged, carrying out her various other duties but unable to make online banking transactions including salary payments.

[497] Ms Cleland noted that the letter from Boss Lawyers had stated staff were not to attend Street Swags' offices; it did not state that she was not to work. She stated that as the letter advised staff would be paid as usual, she understood she was still required to work given that process staff payments was within her normal duties. She reiterated she had already been granted permission to work from home during that time.

[498] As to accessing Mr De Maria's emails, she said she never accessed his personal emails, she accessed his emails at [adrian@streetswags.org](mailto:adrian@streetswags.org). She said she accessed this account regularly between 2 April and 14 April 2016 to respond to sales enquiries and other Street Swags business that was sent to that address. She said she did this as she believed Mr De Maria was no longer an employee or director of Street Swags pursuant to the meeting notes received from Ms Madden on 30 March 2016. She said Ms Madden, whom she understood to be CEO at the time pursuant to the meeting documents, asked her to follow up any outstanding sales enquiries. Ms Cleland said that to do this, she needed to access Mr De Maria's Street Swags' email account. She said she did not recall the exact date she was instructed by Ms Madden to follow up on sales enquiries, though she stated she believed it was around 2 April 2016. She said she did not recall accessing the email account [adrian@streetswags.org](mailto:adrian@streetswags.org) since 14 April 2016.

[499] Ms Cleland did not recall deleting forwarded emails, however she stated in the event that she had done so, her reason for doing it would usually be to maintain a tidy inbox as she sees no reason for keeping duplicate or forwarded emails. She stated she had no reason to conceal any access to Mr De Maria's email account, as at the time she did not believe he was a Director or employee of Street Swags. I do not accept this evidence from Ms Cleland in the slightest. She was, in my view, inappropriately reading Mr De Maria's emails.

[500] Ms Cleland's perceived ignorance is an extraordinary position to take, as it was she who was feeding Ms Madden all relevant emails of Mr De Maria. She knew that Mr De Maria was emailing Mr O'Reilly with the knowledge that he had obtained, together with the plans that he had for the charity. As is clear from the remainder of her evidence, she knew that Mr De Maria was engaged in the business and purporting to run the business, all the while Ms Madden was portraying herself as the legitimate CEO. Further, I do not accept her evidence that she did not access the account after 14 April 2016.

[501] Ms Cleland stated that she and Ms Todd set up a new bank account for Street Swags with the Commonwealth Bank, but she could not recall the date the account was opened. She stated the account was opened to, among other things, enable payment of Street Swags salaries. She stated she did not recall sending a confirmation email to Ms Madden or Ms Todd, however that it was likely she would have done so.

[502] As to 'GPO Box 1846', Ms Cleland rejected Mr De Maria's statement that she had control of this GPO Box, noting she had never been in possession of a key for the GPO Box, and her understanding was the purpose of it was "*simply to adhere to common business practice*". Her evidence was that she did not know who had 'ownership' of the GPO Box.

[503] Ms Cleland stated that the Xero Accounting Software enables 'separate and individual' logins for each user, and each user login enables the software to 'track and log' particular users' transactions, changes to transactions, and at what date and time this occurred. She stated she held a user login which allowed her to access the Xero Accounting Software for Street Swags accounting. To access this, she entered her user login details and password; and her access was for performing financial duties relevant to her position as Administration Officer under her contract of employment.

[504] Ms Cleland rejected Mr De Maria's statement that she refused to hand over Street Swags' account information. She conceded she refused to hand over her personal user login and password and NAB online banking details as this would have allowed another person to make or change transactions as if she had done them. She said she explained this to Mr O'Reilly and Mr De Maria by email, and filed copies of these correspondence with her statement.

[505] Ms Cleland stated she held her password and personal user login for the Xero subscription, and no one else had her personal login password. She noted Ms Madden held the password to the main Xero subscription that contained Street Swags' accounts data. Ms Cleland's evidence is she did not provide the password from her personal login to Ms Madden or anyone else.

[506] She stated she did provide Mr O'Reilly and Mr De Maria with the information required for making salary payments, on multiple occasions. She stated access to the accounting software was not required for these purposes, as staff salary payments were made

by transferring funds from the Street Swags bank account to each staff member's nominated bank account; therefore access to the bank accounts only was required. Ms Cleland stated that Mr De Maria and Mr O'Reilly had advised her they had access to the Street Swags bank account, and Mr De Maria on a number of occasions told her he had processed salary payments to her. Ms Cleland's evidence was that she had not received the payments. She stated Mr O'Reilly also told her he understood salary payments had been made.

**[507]** Ms Cleland rejected Mr De Maria's assertion that access to the Xero software was required to pay staff, and she rejects that she had any bearing on the delay in payment of wages. She states she did not have authorisation to provide Mr De Maria full access to the software.

**[508]** As to Walkabout Beds being placed into administration, Ms Cleland stated that Ms Madden informed her of this occurring on 14 April 2016. Ms Cleland then accessed the Xero accounting software to remove all personal user logins, to prevent any changes or transactions being made while the administrators were working. She stated she also removed personal user logins from Street Swags that used the same personal user logins as Walkabout Beds. Her evidence is that this did not prevent the Xero subscription owner from adding the users back again, so it did not appear to be an issue to her at the time. Ms Cleland stated that in April 2016, she was suffering from extreme stress and anxiety as a result of the situation of Street Swags. She was receiving threatening emails from Mr De Maria, demanding she provide him her personal user login and passwords, which exacerbated her anxiety. She stated accordingly on 22 April 2016, she accessed the Xero software and removed her own access to prevent further harassment from Mr De Maria. As to her evidence above that her actions had no impact on the payment of wages, she confirms that after removing her own user access she was unable to access the software herself, however is *not* required for making staff salary payments.

**[509]** Ms Cleland stated that her last date attending to work at Street Swags was 14 April 2016, and after that date she commenced leave due to her work-related stress and anxiety.

**[510]** Ms Cleland stated she resigned in November 2016 and provided Mr De Maria and Mr O'Reilly the details required for her salary and superannuation payments to be made. At the date of her executing her reply statement, she had not received a response to her resignation and had not been paid her annual leave entitlements, her superannuation entitlements, nor provided a Group Certificate for the 2016 financial year.

**[511]** Ms Cleland rejected Mr De Maria's assertion that she colluded with Ms Madden or Ms Todd to discredit Mr De Maria and hinder the investigation of financial irregularities. She stated:

“a) I have not made any false allegations and I have nothing to gain from doing so. I resigned from Street Swags in November 2016. I have nothing to personally gain from discrediting Mr de Maria. I have nothing to personally gain, nor lose in regard to the outcome of this case. I have nothing to personally gain nor lose in regard to the outcome of any financial investigation. I did not receive any financial benefit other than my small wage from Street Swags;

b) Whilst I was working for Street Swags in a bookkeeping capacity, I worked closely with Joanne from Notch Above Bookkeeping, an external bookkeeper that came into

the Street Swags office and worked with me to help get the bookkeeping up-to-date. Joanne had full access to the Xero accounting software and all financial documentation, and had done so prior to my employment with Street Swags, I believe the Street Swags accountant also had access to the same information;

c) I observed complete transparency and to the best of my knowledge no irregularities in the bookkeeping for which any criminal liability may arise and therefore no reason for me to want to hinder any financial investigations. Mr de Maria has made a number of false assertions about me. He told provable lies about me personally, as well as my family, business and personal situation in his statement to WorkCover. Fortunately, I was able to provide proof that his allegations were untrue but it caused me much stress and anxiety in the process; and

d) I do not understand why Mr de Maria has made false assertions about me or why he has attempted to discredit me in this way. The only reason I can think of is that his position at Street Swags was going to be outsourced when his 3 month contract ended late March 2016 so he has created a situation that removed Ms Madden and all existing staff in order to provide himself with a permanent paid position which he still holds.”

*Responses to statement of Mr Brian O'Reilly*

**[512]** In response to Mr O'Reilly's statement, Ms Cleland stated she commenced working at Street Swags in November 2015 and communicated with Nudgee College regarding swag orders. She recalled Ms Madden, Ms Todd and Ms O'Dwyer also communicated with the college regarding Street Swags generally.

**[513]** As to Ms Madden's suspension, Ms Cleland rejected Mr O'Reilly's assertion that she ignored the suspension notice and proceeded to set up an alternate office at Mr Weiss' business premises in Darra along with Ms Madden and Ms Todd. She stated she did not set up an office at those premises, rather she worked from home the week of 29 March to 1 April 2016 as it was school holidays. She said from 4 April to 14 April 2016 she did attend at the Darra premises for work. She stated there was a display cabin stored there, which was used as an office space by Street Swags' staff at that time.

**[514]** She re-confirmed her evidence as to Walkabout Beds being placed into administration, and her removing personal logins to Walkabout Beds in the Xero account system. She re-confirmed her evidence that this did not prevent the Xero subscription owner from adding users back in, and she did not see her removal of user logins as an issue.

*Oral evidence at hearing*

**[515]** In examination-in-chief, Ms Cleland stated that she considered and became aware that Mr O'Reilly and Mr De Maria were attempting to undermine Ms Madden. When she received the email from Mr De Maria on Good Friday in late March 2016, standing Ms Madden down, she was confused and surprised. She stated that the email came from his personal email account.

[516] She stated that she had been asked to provide reports to Mr De Maria, but had not provided anything else. Mr De Maria had taken two days of leave and his employment was not going to be extended.

[517] She considered that there had not been misappropriation of funds, and what was happening was a corporate takeover. She said she discovered on 2 April 2016 that the undermining of Ms Madden was occurring, and she was confused.

[518] Ms Cleland stated she was not aware that payments in excess of \$5,000 needed to be approved by the board. She considered that Mr De Maria would have been aware as he was present in the workplace.

[519] In cross-examination, Ms Cleland agreed that she had not seen the job advertised, and she had met Ms Madden at a fundraising event. The group that she belonged to had decided to gift money to Street Swags, and she was impressed and interested in Street Swags. She said that she had dealings with Ms Todd. Some weeks after the event Ms Todd called her and they discussed Ms Cleland's work history. She then sent Ms Madden her CV.

[520] When asked if she should have been aware of the financial delegations available to Ms Madden, Ms Cleland answered that she was not sure, and could not recall.

[521] Ms Cleland agreed that as at 2 April 2016 she was accessing Mr De Maria's emails. She stated that it was a transparent workplace. She responded, "*I believed he was no longer part of Streetswags*". She stated that she could not recall if Ms Madden asked her to access Mr De Maria's emails.

[522] Her evidence is that from 4 April 2016 she was working from the Darra office. She was contacting donors and requesting they redirect their gifting to a new banking account. She stated, "*We were in crisis mode.*" Her evidence is that she does not recall who asked her to do these things. She "thinks" it was under instruction from the new directors.

[523] When asked what authority there was for a contract to be offered to Mr Weiss, she responded, "*Generally it was accepted that it would be a good idea.*"

[524] Ms Cleland agreed that she obtained the Worrells accounting report when it was sent to Mr De Maria's email on 19 March 2016. What is clear, is that despite Ms Cleland going on leave and bringing a workers' compensation claim, she continued to access Mr De Maria's emails. She last attended for work on 14 April 2016, but read the confidential Worrells accounting report on 19 May 2016. On the balance of probabilities, I conclude that Ms Cleland then provided this report to Ms Madden, who included it in her material before the Commission.

[525] Where the Respondent's evidence is that it did not know how Ms Madden came to be in possession of various documents or correspondence, the answer is that it was Ms Cleland who was, in my view, inappropriately providing the material to Ms Madden. Ms Cleland was the quintessential corporate mole.

### **Evidence of Ms Candice Todd**

[526] Ms Todd, administration officer, filed two witness statements in support of Ms Madden's application. The first statement was made in September 2016; the second statement in January 2017.

*First statement*

[527] Ms Todd stated she was an executive assistant employed with Street Swags. She commenced employment as an administration officer in May 2015, and worked in this role for three months before being appointed executive assistant to Ms Madden in around September 2015. She stated this role included monitoring Ms Madden's emails, organising Ms Madden's diary, taking phone calls, and sending receipts and invoices. Ms Todd stated during her time as executive assistant to her, Ms Madden's diary was very full with media appointments and speaking engagements.

[528] Ms Todd stated around May-July 2015, Ms Ryan and the former company secretary, Ms Quinn, sought to have Ms Madden terminated from Street Swags. She stated there were allegations made that Ms Madden misused funds for cabin projects. Ms Todd stated an audit was undertaken by Geraghty Accountants which revealed Ms Ryan had inflated the cost of the cabin projects. She stated that when these irregularities were identified, Ms Ryan's response was that she did not know that those expenses ought not to be allocated to the cabin project. Ms Todd said these issues were discussed at a board meeting of June/July 2015.

[529] Ms Todd said that around 20 August 2015, she was appointed company secretary of Street Swags, confirmed in the minutes of the meeting from 20 August 2015. Her duties as company secretary included, but were not limited to, reporting to the ACNC, attending members' and directors' meetings, and drafting and circulating minutes of meetings.

[530] Ms Todd said around November 2015, Street Swags employed Ms Cleland as an administration officer, and from this time she did not undertake any work regarding the finances of Street Swags.

[531] She resigned as company secretary in April 2016, as she did not wish to incur any financial liability regarding Street Swags' situation.

*AGM – December 2015*

[532] Ms Todd said during the AGM of December 2015, there was discussion of the manufacturing contract with Weiss Sawmilling. She notes Ms Madden's relationship with Mr Weiss was discussed, and after the meeting she heard Mr O'Reilly and Ms Madden discussing the relationship which she thought was 'odd'. She recalled Mr O'Reilly being particularly excited about the contract and that 20% of the profit margin would be donated back to Street Swags from cabin sales. Ms Todd stated that donation would become a fund so that people on Centrelink benefits could access the funds.

[533] Ms Todd stated during this AGM meeting, it was also discussed that Street Swags would pay Mr Weiss for storage regarding a stage, a truck and other equipment of Street Swags. She said it was considered cheaper to pay Mr Weiss to store the equipment than to pay rent commercially. She noted there was also a large volume of swags that were a substandard level and not able to be used in Australia, and the plan was to store them and use them in the event of a natural disaster. She stated Mr O'Reilly suggested Street Swags pay Mr Weiss for



storage of them along with the other equipment. I do not accept this evidence from Ms Todd. With more than enough room at Nudgee College for the storage of swags, this is nonsensical.

**[534]** Ms Todd recalled Mr O'Reilly saying he was happy with how donations were being spent and also noted his concern at those people who were keen to see Street Swags 'come unstuck'. Her evidence is that she was not sure what he meant by this statement. Ms Todd did recall that Ms Ryan was keen to have Ms Madden removed from Street Swags, as Ms Ryan was of the view Ms Madden's involvement in 'healing retreats' in Mt Isa would dilute Ms Madden's commitment to Street Swags. Ms Todd stated Ms Ryan had previously alleged Mr O'Reilly had bullied her, which Mr O'Reilly was hurt by. Ms Todd stated the employees therefore did not mention Ms Ryan around Mr O'Reilly.

*January 2016*

**[535]** Ms Todd said on 18 January 2016, Mr De Maria commenced with Street Swags as sales manager, a new role. She recalled Mr De Maria saying words to the effect "*Jean owed me*", and "*I could pull the pin on Street Swags at any time*" and stating Mr O'Reilly was in his back pocket.

**[536]** Ms Todd stated Mr De Maria was meant to be working with Walkabout Beds, as his employment contract indicated he was employed by that entity. She said however, he advised Ms Cleland that he was employed by Street Swags and was paid from Street Swags and not Walkabout Beds.

**[537]** Ms Todd's statement included information that she provided to WorkCover on account of her bringing a workers' compensation claim against the Respondent, alleging inappropriate conduct by Mr De Maria. Ms Todd's claim was accepted, however in my view her claims are extraordinary; she claims that from his very first day of employment he effectively indecently assaulted her and repeatedly threatened she could lose her house if she crossed him. I note that Ms Todd is a woman aged 49 years (at the time of the hearing) and is the partner of Dr Thornton. Allegations were not made by her for some months, after the incidents of late March 2016. It appears that she did not report any of this alleged behaviour to Ms Madden until Ms Madden was suspended. I did not have before me all of the relevant information that Workcover had in its deliberation as to the Workcover claim. After hearing oral evidence from Ms Todd on this issue I would be unwilling to accept her evidence as to the truth of the accusations.

**[538]** Ms Todd recalled that during the first three weeks of employment, Mr De Maria drew caricatures of Ms Madden. He said he was funding a website for Street Swags and his caricatures were used for that. Ms Todd said this website never eventuated, to her knowledge.

**[539]** Ms Todd also recalled Mr De Maria spent significant time researching alternative products for the cabins from China. She said he did this despite such research already having been undertaken, and she understood no sales were made by Mr De Maria in his time as sales manager. She noted Mr De Maria also spent a lot of time creating a new brochure for the cabins, in the 'ill-suited' program Photoshop. She said this brochure could have been outsourced to a pro bono expert with the required skillset and would have been completed in a fraction of the time.

*March 2016*

[540] Ms Todd said between 17 February and 7 March 2016, she was on holidays, returning on 7 March 2016. Despite this, in her statement to WorkCover, Ms Todd claimed that she was at work on 19 February 2016, unable to commence her leave as there was still work to be done, when Mr De Maria engaged in an act of indecent assault. She claimed to have “pee’d her pants” as she ran up the stairs. It is noted that Ms Madden referred to such an incident as having occurred in January 2016 but there was no discussion at the workplace between Ms Madden and Ms Todd as to why, a woman aged approximately 45 was distressed enough in a corporate environment of a few employees to have wet herself. It seems that Ms Todd did not inform Ms Madden of the alleged incident until some time in April 2016, after Ms Madden has been suspended.

[541] Ms Todd said on 14 March 2016, Ms Madden and Mr De Maria had a discussion in Ms Madden’s office, and she recalled Ms Madden saying Mr De Maria’s contract was not going to be renewed. She said Mr De Maria responded to the effect, *“This Jean, us, we need to fix it, we need to fall in love again”*, and Ms Madden responded, *“You need to do your job and sell cabins”*.

[542] Ms Todd said on 15 March 2016 a staff meeting was held, where Ms Madden announced that Mr De Maria’s contract was not being renewed. She recalled asking Mr De Maria after the meeting whether he was okay, and he responded, *“I have plans”*.

[543] Ms Todd stated on 21 March 2016, a colleague asked whether she knew what a ‘white rectangular device’ was that she’d seen on her return to work. Ms Todd asked Mr De Maria about the ‘device’ and he said he didn’t know what it was and that he would remove it. She said Mr De Maria then stated, *“Telstra had installed it this morning to increase the speed of the internet”*, to which Ms Todd stated that was odd as she hadn’t rung them, and further asked why it wasn’t installed in Mr De Maria’s office. She said Mr De Maria responded it was a ‘repeater or an extender’. He said he didn’t know and *“what is the difference?”* to which Ms Todd stated, *“Repeaters are very harmful and make birds fall out of the sky dead. I’m going to move it until I ring Telstra and find out what it is”*. She said the device looked like a sender unit for surveillance cameras.

#### *Ms Madden’s suspension*

[544] On 25 March 2016, Ms Todd received an email from Mr De Maria advising Ms Madden had been suspended pending an investigation into ‘financial irregularities’ and all positions were to be reviewed by Mr De Maria the following Tuesday.

[545] Her evidence is that she thought the email was a joke, given she had access to Ms Madden’s email and noted she had not received a copy of the email or any other correspondence regarding a suspension. Ms Todd noted it was not an email from the directors of Street Swags, it was only from Mr De Maria himself. She said she had not received any notice of a directors’ meeting being called to consider a suspension of Ms Madden.

#### *28 March 2016*

[546] Ms Todd’s birthday is on 28 March, and she had invited friends to attend her house for lunch. She notes Ms Madden was invited and attended at around 2-2:30pm. Ms Todd stated she had discussed the suspension email with her partner, Dr Thornton, who had advised her

that he discussed the email with Ms Madden. He had previously told Ms Todd not to discuss the email with Ms Madden as it was from Mr De Maria who stated the matter was not to be discussed by staff with Ms Madden. Dr Thornton told Ms Todd that Ms Madden appeared not to have known about the suspension and she became distraught at learning of the suspension and left in tears.

[547] Ms Todd said Ms Madden returned to their house a little later, at a time she couldn't specifically recall, and said she was going to call a members' meeting for 6pm that night. Ms Madden said she had spoken with Mr O'Reilly and asked whether there was anything he needed to tell her to which he replied "*No, I don't*"; and Ms Madden said she told Mr O'Reilly, "*Well, I'll do what I need to do then*".

[548] Ms Todd said she did not attend the members' meeting as she had personal business to attend to, however she discussed with Ms Madden what should be on the agenda. She said the meeting was called at 6pm at Ms Madden's house, and all members were invited, including Mr O'Reilly and Mr De Maria. Ms Todd said Ms Madden told her she had phoned all members to give them notice of the meeting and asked if they were prepared to waive the required notice period. Ms Madden told Ms Todd that all members were happy to waive the short notice, given the urgency of the matter.

[549] Ms Madden told Ms Todd that the members' meeting had removed Mr De Maria and Mr O'Reilly as directors and appointed new directors being Dr Thornton (Chair), Mr Booth and Dr Richards.

[550] On 29 March 2016, a directors' meeting was held at Dr Richards' house, where a resolution was passed to include reinstating Ms Madden as CEO.

[551] Ms Todd said following that directors' meeting, she attended the office of Street Swags and found a security guard, representatives of the Queensland Police and a lawyer from Boss Lawyers there with Mr De Maria. She said the lawyer gave her a copy of an ASIC extract. Ms Todd said she advised Street Swags does not report to ASIC, it reports to the ACNC.

[552] Ms Todd's evidence confirmed the office was locked and she was unable to gain entry. She recalled looking through the window and noticing the office was untidy and appeared as though people had been in the office over the Easter long weekend. She said her hard drive was connected to Mr De Maria's computer, which she knew was his computer as he used a personal computer as the charity could not afford to buy him one. She took a video and attached a relevant screenshot to her statement.

[553] Ms Todd stayed outside the office until 7:00pm. She recalled phoning Mr O'Reilly around 10:00am and he advised he had just returned from Cambodia and was on his farm.

[554] She said between 29 March and 14 April 2016, she continued to work with Ms Madden, believing she was properly reinstated as CEO. She recalled a significant volume of correspondence being sent by Boss Lawyers to Ms Madden during this time.

[555] Ms Todd specifically recalled a letter addressed to Ms Madden, attached to an email and dated 30 March 2016, terminating her employment. She brought this to Ms Madden's attention, and Ms Madden told her she was unsure as to the validity of the termination.

[556] On 11 April 2016, Ms Todd attended a meeting with Dr Thornton, Ms Madden and McCulloch Robertson. Dr Thornton had engaged McCulloch Robertson ‘pro bono’ to obtain legal advice for Street Swags. Ms Todd said Ms Madden was not represented by McCulloch Robertson. Ms Todd recalled during that meeting a discussion around Ms Madden’s suspension, to which McCulloch Robertson lawyers stated, “*Why don’t you respond to their allegations*”. Ms Todd said she and Ms Madden said they hadn’t seen any allegations. McCulloch Robertson then produced a letter of 30 March 2016, containing a number of allegations. While Ms Todd only ‘glanced’ at this letter, she recalled the allegations appeared to be transactions that had simple explanations. She said one transaction stood out to her, being an expense to purchase \$400 worth of items at Chemist Warehouse in 2013; she said Mr De Maria knew Street Swags had purchased hygiene packs from Chemist Warehouse.

[557] Ms Todd said there was also an expense regarding dinner at a restaurant at Ashgrove, which was a function arranged by Ms Madden for the 10 year anniversary of Street Swags. She said Street Swags paid for staff to attend, and it was a fund raising event, paid for in instalments and which made more money than it cost.

#### *WorkCover Queensland*

[558] On 14 April 2016, Ms Todd went on ‘WorkCover’ leave. She said her WorkCover claim was granted for stress leave, and the claim had been made following sexual harassment from Mr De Maria. She confirmed she has not worked with Street Swags since 14 April 2016.

[559] Ms Todd said before going on WorkCover leave, Ms Madden had been in discussions with the Department of House and Public Works regarding her undertaking a ‘speaking arrangement’. Ms Todd said the plan was that Street Swags may receive fund raising from the department. Ms Todd said that while she was on WorkCover leave, she was telephoned by a representative of the Department to follow up with Ms Madden, and Ms Todd advised the representative she was on sick leave and they should contact Ms Madden directly.

#### *Employer Response*

[560] Ms Todd responded to the Respondent’s responses in this matter as follows:

“a) In relation to delivery access to accounts, Jean gave read only access to Street Swags. Read only access was provided in order to preserve the account material as it is registered in Jean’s name and any activity within the account would appear as if it was by Jean.

b) I recall that on 29 March 2016, Adrian indicated there would be a forensic audit, however, I am not aware that any audit, forensic or otherwise was commenced at that time.

c) With respect to continuing to represent herself as the face of Street Swags, following the lock out on 29 March 2016, Jean attended an Optus event which was a sponsorship deal which had the potential to earn Street Swags up to \$250,000. It was determined that Jean should attend that sponsorship event for reasons including the members genuinely believe that Jean had been properly reinstated as CEO and that the purported suspension of Jean by the directors was invalid.

d) At a members' meeting in about late June 2016, seven new directors were appointed, including Jean.

e) With respect to alleged misappropriation, during my time of working with Jean and employment, I have never seen Jean deal with any finances and have not observed any questionable transactions."

### ***Second statement***

#### *Responses to statement of Mr De Maria*

**[561]** Ms Todd states she did not inform Mr De Maria that Ms Madden and Mr Weiss were in an intimate relationship. She said she did not speak to Mr De Maria about Ms Madden's personal business, and her understanding was Mr O'Reilly had spoken to Ms Madden about her personal relationship at the 2015 AGM in the context of 'what would happen to the cabins project should Ms Madden and Mr Weiss cease being in a relationship'.

**[562]** Ms Todd disputes that Ms Madden asked her to lend her \$3000 to pay a steel bill for Mr Weiss. Ms Todd said she did not recall Ms Madden making a phone call regarding this payment on 9 March 2016, and she believed she would remember such a call if it had occurred and she would have made a contemporaneous file note at the time. She states she was routinely making such file notes at that time, of all significant events involving Mr De Maria. Further, she stated regarding payment of Street Swags' expenses, it was standard procedure that they be paid for using the credit card.

**[563]** Ms Todd confirmed she was employed by Street Swags, and Mr De Maria was employed by Walkabout Beds as the Sales Manager. She said she believed Mr De Maria knew more about the finance agreements than she did as his job required him to understand finance packages, and to advise clients and customers accurately. She said her job did not involve an intimate understanding of these finance agreements and packages.

**[564]** Ms Todd said she did not trust Mr De Maria and kept her contact with him 'to a minimum'. She said she did not call Mr De Maria on 5 February 2016 regarding his signature on a rental agreement, and if she had, it would have been in an 'administrative capacity' at the request of Mr Giorgas of Finlease

**[565]** Ms Todd said her recollection is that the Finlease finance agreement was signed during a meeting with Mr Giorgas and Mr De Maria on 10 March 2016. The finance agreement had been organised by Ms Daniels. She said her understanding is that Ms Daniels was employed by both Street Swags and Walkabout Beds, and was a highly regarded former bank employee, and sat beside Mr De Maria in the office.

**[566]** Ms Todd said that in his Sales Manager role, Mr De Maria was responsible for looking after the sales of the cabins for Walkabout Beds. She said she recalled dealing with Mr De Maria in an administrative capacity during this time. On 10 March 2016, she recalled being asked by Ms Madden to come to a meeting where Mr De Maria and Ms Madden were signing a finance agreement for the cabins. Mr Giorgas was also present. Ms Todd witnessed Ms Madden and Mr De Maria's signatures. She said her only purpose there was to witness signatures and she did not hear any other discussions.

[567] Ms Todd refers to Mr De Maria's evidence around an event occurring one week after 10 March 2016; however she reiterated her evidence that she dealt with Mr De Maria in an administrative capacity only, and she did not recall Mr De Maria raising 'serious concerns' about any matter.

[568] As to Finlease indemnity forms, Ms Todd stated the indemnity forms originated from a request made by Mr Giorgas to progress a cabin order. She said a letter was sent to Mr Weiss to print in order for her to then sign, scan and return to Finlease. She said the 'temporary office' did not have access to a printer, and the printer was in the office that had been 'sealed'. She said they were not networked with Mr Weiss's office and she could not print directly.

[569] Ms Todd's understanding of the Finlease finance agreement was that the purchaser of a cabin would enter into a 'rent to buy' arrangement. Her evidence is that the 'original finance agreement' had been negotiated by Ms Daniels, and Ms Todd had no reason to believe it was illegitimate.

[570] As to a meeting of 15 March 2016, Ms Todd confirmed she was present and recalled Ms Madden announcing Mr De Maria's contract was not being extended and the sales role would be transferred to Mr Weiss. Ms Todd understood this to be due to a lack of cabins sold by Mr De Maria.

[571] Ms Todd reiterated she did not ask Mr De Maria about \$3,000 and Ms Madden had not asked her about the \$3,000 expense. She reiterated she understood Street Swags' credit card was used to pay legitimate company expenses.

[572] Ms Todd confirmed she was appointed as Company Secretary during a directors' meeting of 20 August 2015. She said Mr De Maria, Mr O'Reilly, Ms Daniels, Ms McGrigo and Ms Madden were present. Ms Todd said minutes of the meeting were circulated and accepted at the December 2015 AGM. She confirmed that before this time she was employed to act as Ms Madden's Executive Assistant.

[573] Ms Todd never held any concern about the validity of her appointment as Company Secretary. She said Mr De Maria and Mr O'Reilly were present when she was appointed, and Mr O'Reilly congratulated and welcomed her to the position, and requested her to update the ACNC register, which she said she did shortly after the meeting, though she couldn't recall the date.

[574] Ms Todd said Mr De Maria never discussed with her his suggestion that she was not the authorised company secretary on 29 March 2016 or at any other time. She said she kept contemporaneous file notes of conversations with Mr De Maria and Mr Harley of Boss Lawyers from 18 January 2016.

[575] Ms Todd received an email from Mr De Maria on Friday, 25 March 2016, providing a statement regarding Ms Madden's suspension. Ms Todd said while she 'complied' with the email, she didn't believe its contents to be valid.

[576] As to being locked out of the Street Swags office, Ms Todd said:

“a) On 29 March 2016 I asked Mr Harley of Boss Lawyers and Mr de Maria to provide me access to enter the office to collect my personal belongings. Inside, I had left a pair of Prada shoes, a pair of Versace sunglasses, a Louis Vuitton pouch and a container of Metamucil. I informed Mr de Maria these items remained in the office. These items have never been returned to me and their value is in excess of \$2,000. On this date, I kept contemporaneous notes of my exchange with Mr Harley and Mr de Maria. I have reviewed my notes of this event and say:

i) I asked Mr de Maria what was happening and whether this action was a retaliatory action because Ms Madden was not renewing his contract;

ii) Mr de Maria told me words to the effect, “There is some very serious shit going down, Brian [O’Reilly] will be here at 10.30am”;

iii) I told Mr de Maria words to the effect, “I am Company Secretary and I haven’t heard anything about this. It [Ms Madden’s stand down] isn’t legal”;

iv) Mr de Maria did not say to me words to the effect, “You’ve been signing financial documents as the Company Secretary but you are not authorised to do so”, or any words to this effect; and

b) I reject Mr de Maria’s assertion I was not the Company Secretary because it invalidates any directors’ meeting that Mr de Maria and Mr O’Reilly attended and stood Ms Madden down.”

[577] Ms Todd rejected Mr De Maria’s assertion that *he* was holding an ASIC search in his hand on 29 March 2016 as *she* was holding the ASIC search in her hand. She said earlier, Mr Harley of Boss Lawyers had ‘thrust’ it to her. She therefore rejected Mr De Maria’s assertion that she asked to look at the ASIC search he was holding.

[578] Ms Todd said when she walked into the arcade on 29 March 2016, she introduced herself to Mr Harley and informed him she was the Company Secretary, to which Mr Harley responded she was not. She said Mr Harley forced the ASIC search into her hand and he was holding several copies of that search. She read the document and she told him the search was out of date. Mr Harley responded she would need to pay \$20 to conduct her own search. She said she replied that she had the ASIC key. Ms Todd said she then spoke with Mr De Maria and showed him the document from Mr Harley; she told Mr De Maria the search was out of date as they report to the ACNC, who are responsible for updating ASIC. Her evidence was that the ACNC *had* been notified of her appointment. She said she may have told Mr De Maria that he had “*doctored the documents*” but she could not specifically recall this. She stated she felt upset and is still upset regarding Mr De Maria’s dishonest behaviour.

[579] She confirmed Ms Cleland’s evidence that around 5 April 2016, they set up new bank accounts with the Commonwealth Bank, to carry out Street Swags’ ordinary business activities including receiving donations and paying bills.

[580] Ms Todd gave evidence that when delivering mail to the street address of Street Swags, the mailman would often leave mail on the floor of the arcade or shove it in the slot of a ‘permanently locked door’. She said she emailed Mr McKillop of the Commonwealth Bank on 6 April 2016 to ensure delivery of the Street Swags mail would be sent to the ‘more

reliable' address. Ms Todd stated at this time, McCulloch Robertson were representing the newly appointed board members on a pro bono basis, and given the likely delivery of legal documents, she wanted to ensure all mail was received.

**[581]** Ms Todd said at a members' meeting of 5 April 2016 at Dr Richards' home, the members instructed them to ensure Street Swags remained operational as a charity. She said Mr O'Reilly and Mr De Maria have not kept the Street Swags' current members updated. They have actively excluded the members to whom they have a responsibility to report. She said Mr De Maria had the bank accounts frozen, and bills and invoices were unable to be paid.

**[582]** As to Mr De Maria's assertion that Ms Todd colluded with Ms Madden and Ms Cleland to discredit Mr De Maria, she said his own actions discredited him. She noted Mr De Maria was employed as a Sales Manager but sold no cabins. She said she was advised and believed he remained employed and retained a donor-funded \$120,000 pay packet.

**[583]** Ms Todd said she did not oppose a financial audit of Street Swags, and she expressed as much "*at every opportunity*".

**[584]** As to her WorkCover claim, she rejected Mr De Maria's statement that her claim remained ongoing. She said she was yet to receive the first excess payment to which she was entitled under the claim. Further she said Mr De Maria was yet to pay her superannuation contributions, and had not returned her personal belongings. At the date of filing her reply statement she said she was owed outstanding pay, the excess payment, and her superannuation. She said her WorkCover claim in no way hindered any financial audit, and an audit of 'this scale' could easily be conducted.

*Responses to statement of Mr O'Reilly*

**[585]** She said as to Mr O'Reilly's evidence that immediately following the December 2015 AGM he said to Ms Todd, "*Isn't this a conflict of interest?*", she could not recall this conversation.

**[586]** She stated pursuant to the instructions of the members to keep the charity operating, another office was established at Mr Weiss's premises using a display cabin as the office space.

**[587]** Ms Todd said she did not resign from her employment with Street Swags on 20 April 2016, and she remained employed by them however she had been on WorkCover stress leave since 14 April 2016. She said on 20 April 2016 she resigned as Company Secretary, and not from her employment with the company.

*Oral evidence at hearing*

**[588]** Ms Todd's evidence is that at the height of the drama in late March 2016 and early April 2016, she lent the business \$24,000, I assume as she was in Ms Madden's camp. She further lent Ms Madden \$6,000 towards her family law legal costs.

**[589]** She stated that she has known Ms Madden for many years, and provided her with a CV to commence employment.



[590] Ms Todd stated that she did not update ASIC, as when she updated ACNC, they informed her that she did not need to update ASIC. An email produced by Mr De Maria during the hearing demonstrates the following:

(a) Email of Brenden Evans of Geraghty Accountants dated 6 April 2016:

*“Hi Candy, thanks for sending the form through. It turns out that Kevin was still listed as a director. The attached form will remove him from that role. Can you please have this one signed and returned too.*

*Cheers, Brenden”*

(b) Email of Candice Todd to Ms Madden dated 8 April 2016:

*“Darling,*

*This is the form to remove Kevin as a director from walkabout beds, can you please sign & return?*

*X”*

(c) Email of Candice Todd to Ms Weiss dated 11 April 2016:

*“Hi darling*

*Can you please print”*

[591] Ms Todd stated that she couldn't remember if she knew that Mr De Maria's emails were being forwarded to Ms Cleland's email account. She said she can't remember, but it could well have happened.

[592] Even when Ms Todd went off on workers compensation leave, she was accessing emails, and organising meetings. As to whether Ms Madden informed her that she was going to put Walkabout Beds into administration, her evidence is, *“She may have told me.”*

[593] In re-examination, Ms Todd stated that she would not have worked for Ms Madden if Ms Madden was dodgy.

### **Evidence of Dr Harold Thornton**

[594] Dr Thornton filed a witness statement in support of Ms Madden's application.

[595] He confirmed that his partner, Ms Todd, commenced employment with Street Swags in a voluntary capacity in 2015. He noted Ms Madden was a director and CEO of Street Swags. He had known Ms Madden socially since around 2009, stating they had both been on the Upper Brookfield Hall Committee, which he was treasurer of at the time of filing his statement.

*March 2016*

[596] He confirmed on 25 March 2016, Ms Todd received an email advising of Ms Madden's suspension. He confirmed staff were instructed not to speak to Ms Madden about the suspension.

[597] He confirmed 28 March 2016 was Ms Todd's birthday and a lunch had been arranged at which Ms Madden was to attend. Dr Thornton said he believed it best that Ms Todd did not discuss the email with Ms Madden, in light of Mr De Maria's instruction that it not be discussed.

[598] Dr Thornton recalled Ms Madden arriving at their house between 12pm and 12.30pm. He said as he was not an employee of Street Swags or otherwise associated with the company at that time, he took it upon himself to speak with Ms Madden about her suspension. He said she was not aware of the email or suspension and became very upset. He stated Ms Madden accessed Ms Todd's email to view what had been sent by Mr De Maria, and then left to her own house, returning at 5:00pm that night.

[599] Dr Thornton confirmed that on her return, Ms Madden said she was calling a meeting to consider the events.

#### *Members' Meeting*

[600] Dr Thornton confirmed he attended the members' meeting at Ms Madden's house, and Ms Madden's suspension was discussed. His evidence is that Mr O'Reilly attended by phone. Dr Thornton understood a notice of the meeting was sent to Mr De Maria but he did not attend.

[601] Dr Thornton said the first item addressed was whether the members were agreeable to the usual notice requirement being waived in the emergency circumstances, and Dr Thornton did not recall anyone objecting.

[602] He said he then recalled members received an email from Boss Lawyers acting on behalf of Mr De Maria and Mr O'Reilly, to the effect the members' meeting was invalid and Ms Madden had no authority to call the meeting. He recalled everyone at the meeting believing Ms Madden's suspension was not valid as no notice of a directors' meeting had been given to Ms Todd as Company Secretary. He stated no minutes had been made available of any such meeting, and any decisions purportedly made by Mr De Maria and Mr O'Reilly "*amounted to decisions made by the board without a sufficient quorum*".

[603] Dr Thornton said the members felt the action taken against Ms Madden was 'precipitated and underhanded'; he noted various members voiced concerns that the action was taken on Good Friday and designed to disadvantage everyone. He confirmed the members passed resolutions removing Mr De Maria, Mr O'Reilly and Ms Madden as directors; Dr Thornton then accepted a nomination to become a Director, along with Ms Richards and Mr Booth. He said they agreed to act as directors on an interim basis to protect Street Swags "*from demise*". He said their view was that Street Swags should promptly engage an independent auditor to investigate the allegations made against Ms Madden and also to get legal advice moving forward.

[604] Dr Thornton recalled stating he did not want to receive information about any contracts or agreements entered into by Street Swags, prior to the date of his appointment. He

wanted to give all material to independent auditors and have them report back to Street Swags.

#### *Directors' Meeting*

[605] Dr Thornton said on 29 March 2016, he attended a directors meeting held at Dr Richard's house. He said resolutions were passed, including that Ms Madden was reinstated as CEO and Street Swags should obtain independent legal advice. He said Ms Madden attended by phone, and it was during this conversation that he learned Mr De Maria had been put on notice by Ms Madden about his role as Sales Manager. Dr Thornton's recollection was that his contract would not be extended as he had not made any sales in his role. Dr Thornton understood Mr De Maria's position to be controversial as he was the highest paid employee of Street Swags despite securing no sales. It should be noted that Ms Madden's salary across the two organisations was \$150,000 per annum and Mr De Maria's \$120,000.

#### *Office Shutdown*

[606] He said in the evening of 29 March 2016, after he had attended work, he attended the offices of Street Swags in Ashgrove. He said as he arrived, he saw the Queensland Police Service leaving. He saw two security officers in attendance. The offices of Street Swags had been locked.

[607] Dr Thornton said he saw Mr Booth speaking with Mr De Maria when he arrived. He said Mr De Maria said words to the effect he had paid the rent for the Street Swags office out of his own pocket. Dr Thornton said shortly after, the landlord "*serendipitously*" arrived and asked Mr De Maria where his money was. Dr Thornton instructed Mr Booth to make a file note of these events.

[608] Dr Thornton then said to Mr De Maria words to the effect, "*Candy has not been paid*". Mr De Maria replied: "*I've paid everyone out of my own money*".

[609] Dr Thornton said over the next two or three days, he received correspondence from Boss Lawyers acting on behalf of Street Swags to the effect that the members' meeting was invalid including any resolutions passed. He said threats were made regarding the directors' dispute.

[610] Dr Thornton said the directors remained committed to engaging accountants to review Street Swags' records and report about the alleged financial irregularities. He said the bank accounts were frozen as the banks were unsure who was in control, and consequently there was no ability to properly conduct an audit. He said McCulloch Robertson advised that the best way forward was for them to have a meeting with Mr De Maria and Mr O'Reilly on the basis that it appeared 'both parties' wanted an audit undertaken to consider the alleged financial irregularities. Dr Thornton said however that all requests sent to Boss Lawyers were rejected.

[611] Dr Thornton's evidence was that despite the correspondence from Boss Lawyers, he believed the members' meeting had been properly convened and Ms Madden had been properly reinstated as CEO.

#### *First Termination*

**[612]** Dr Thornton confirmed Ms Madden was terminated on 30 March 2016, and he later received advice from McCulloch Robertson as to the validity of that termination. He said he ignored the purported termination on the basis of advice received.

**[613]** Dr Thornton said he was of the ‘honest belief’ that Ms Madden had been reinstated properly by the new Board. He said the advice he received was that the termination of 30 March 2016 would likely be held not valid, if challenged.

#### *Further Members’ Meeting*

**[614]** Dr Thornton said approximately a week after the 28 March 2016 meeting, there was a further members’ meeting at Dr Richard’s house. He said the meeting was called as members wanted to be informed about events following the last meeting. He said resolutions were passed including appointing McCulloch Robertson as company lawyers. He said a plan was made to have Street Swags’ accounts available to Geraghty’s Accountants as soon as possible.

#### *11 April 2016*

**[615]** Dr Thornton said on 11 April 2016, he attended a meeting with McCulloch Robertson with Ms Todd and Ms Madden. He said McCulloch Robertson enquired of Ms Madden why she did not respond to the allegations of Street Swags, to which Ms Madden said she was not aware what the allegations were. Dr Thornton’s evidence confirmed McCulloch Robertson provided Ms Madden a copy of correspondence outlining, among other things, demands of delivery of property. He said it was unclear why this correspondence had gone to McCulloch Robertson when Boss Lawyers had been advised they did not represent Ms Madden, only the company.

#### *Employer Response*

**[616]** Further to the employer response filed in this matter, Dr Thornton stated:

“a) The members and directors felt that they should maintain access to the Xero account so that they could monitor if any transactions were being made. This was to preserve Street Swags’ interests. It was unclear whether the directions given to Jean Madden to deliver up property were lawful directions, noting that Adrian De Maria and Brian O’Reilly had been removed as directors during the members’ meeting.

b) Within the first week after Adrian De Maria had caused the Street Swags’ office to be locked, Jean Madden had two speaking engagements. First, a speaking engagement with Optus, who was preparing to enter a major promotional deal and would match dollar for dollar fundraising efforts. In my observation, Jean was not doing anything different to what she had always been doing in attending this function – namely, being the public face of Street Swags. The members and directors felt that Jean should continue until any allegations had been substantiated.

c) I understand that Worrells were not appointed for some months after the allegations were first made. Further, the Worrells’ report is based on total expenses for a number of preceding years and not simply the preceding year. I note that the expenses had previously been signed off and validated by prior AGMs.”

*Further information*

[617] Dr Thornton said on about 3 June 2016, he inadvertently replied ‘all’ to an email he had received from Boss Lawyers. He said he received a concerns notice from Boss Lawyers within an hour, threatening defamation proceedings. He said on 17 June 2016, he responded to the concerns notice and offered a compromise which was accepted.

[618] Dr Thornton understood one of the expenses outlined in the Worrells’ report is for an expense claimed for a dinner in November 2015. He said this dinner was organised by Street Swags, for its 10 year anniversary and also acted as a fundraising event. He attended with Ms Todd. He noted all staff were invited, and Mr O’Reilly won a \$10,000 pearl necklace donated as a prize by a jeweller. He said Ms Madden spoke and the dinner raised thousands for the charity. Dr Thornton understood there was an allegation that the expenses in relation to the dinner were ‘inappropriately claimed’, however he understood the funds raised far exceeded the cost of running the event.

[619] Dr Thornton noted this expense had also been the subject of an article in the Daily Telegraph and caused A Current Affair to ‘burst’ into the Upper Brookfield Hall in June 2016 during a members’ meeting to try to elicit information about the dinner.

*Oral evidence at hearing*

[620] Dr Thornton stated that until it was brought to Ms Madden’s attention on 28 March 2016 at Ms Todd’s birthday, Ms Madden had no idea of the communication that had been sent to her. He stated that Mr O’Reilly was on the phone at the purported members’ meeting of 28 March 2016, however he did not state to what extent and whether it was beyond Mr O’Reilly’s evidence in this matter.

[621] Dr Thornton considers Mr De Maria to be akin to a “Peter Foster conman”.

[622] Relevant to Ms Madden putting Walkabout Beds into administration, Dr Thornton stated, “*I had nothing to do with Walkabout Beds.*” He did not know any detail about its assets and liabilities.

**Evidence of Mr James Booth**

[623] Mr Booth filed a witness statement in September 2016 in support of Ms Madden’s application.

[624] Mr Booth said he first met Ms Madden around 2005/2006 through volunteering. He said he had been associated with Street Swags for approximately nine years in a volunteer capacity, primarily assisting at function and fundraising events. He noted his background is as an electrician, and he volunteered primarily to assist with lighting and donation of lighting for events.

[625] He noted he was previously president of the Brookfield Show Society and was heavily involved with events regarding that. He decreased his role in the Show Society and became increasingly involved with Street Swags. He said his role expanded to include attending

retreats in Mt Isa, and he also drove a Street Swags truck delivering a manufactured stage to different music festivals.

[626] In mid-2015 he became an employee of Street Swags, running the stage at events as a casual employee. Ms Madden suggested he also become a member, and he did so ‘three to four years ago’ (at the time of filing his statement) and paid a nominal fee.

#### *Ms Madden’s Suspension*

[627] Between 24 March and 16 April 2016, he camped at Noosa with his children. Ms Madden and her partner, Mr Weiss stayed with them between 25 and 27 March 2016.

[628] He said on 28 March 2016, Ms Madden told him by phone that she had been suspended pending an investigation, and she said words to the effect that she had purportedly been suspended ‘on or about’ Good Friday but she had not received any notice of her suspension.

#### *Members’ Meeting*

[629] On 28 March 2016 he attended the members’ meeting by telephone as he was still in Noosa. He had received a notice of the meeting by email earlier that day.

[630] His evidence confirmed that the first item was to waive the usual notice period, for which he recalled no objections. And he said the purpose of the meeting was to update members as to Ms Madden’s suspension and to consider removal of the current directors and to put in place temporary directors to resolve issues around the financial transactions. Mr Booth understood that Mr De Maria had been stood down prior to the meeting and that the main reason was he had not sold any cabins during his times as Sales Manager.

[631] Mr Booth believed the members’ meeting was valid, and that all things necessary to ensure the validity of the meeting had been complied with, including the waiving of the notice period. He accepted a nomination to become a director, with it being made clear it was on a temporary basis, and nothing occurring prior to the members’ meeting would be held against him as a director. He recalled resolutions being passed that included the ASIC register being updated.

#### *Directors’ Meeting*

[632] On 29 March 2016, Mr Booth attended a directors’ meeting by telephone. He recalled the directors agreeing that legal advice should be obtained, and that Ms Madden should be reinstated as CEO.

[633] Mr Booth believed he had been appointed as a director properly and understood Street Swags needed the directors to keep Street Swags running as normal, pending an investigation into the allegations of financial irregularities.

[634] He said he received a call from Mr De Maria a day or so after the members’ meeting, and Mr De Maria stated. “*You’re aware that that was not a valid meeting?*” to which he responded “*I’m not aware that it was invalid*”.

[635] Mr Booth said a week after being appointed as a director, he received correspondence from Boss Lawyers stating the members' meeting was invalid.

[636] As to Ms Madden's termination, his evidence was that he was not aware of the full extent of allegations in respect of financial irregularities. He said in his volunteering role and his short time as director, he had no knowledge of any financial transactions.

[637] Mr Booth is aware Walkabout Beds is a wholly owned subsidiary of Street Swags and is able to sell and manufacture cabins. He said he had never been involved with Walkabout Beds and was not aware of any contract between Street Swags and Walkabout Beds.

[638] Mr Booth recalled a verbal conversation with Mr De Maria where Mr De Maria made comments about Ms Madden. Mr Booth said Mr De Maria said words to the effect, "*Jean is going to go down. I'm going to make sure Jean is never involved in a charity again*". Mr Booth could not recall the date of this conversation but said it was two to three weeks after Ms Madden had been suspended.

[639] Mr Booth said Mr De Maria alleged Ms Madden had spent money inappropriately in respect of Street Swags' 10 year anniversary function. He noted the event was also a fundraising event and raised funds in excess of the cost of the function. Mr Booth said Mr De Maria said words to the effect he would provide proof and a forensic report would be done. Mr Booth said he had not seen any evidence of any forensic report.

[640] Mr Booth said he recalled Mr De Maria saying words to the effect, "*Carl and Jean are going to end up in prison*".

#### *Supreme Court Proceedings*

[641] Mr Booth said around 13 April 2016, he received a notice that Street Swags (Mr De Maria and Mr O'Reilly) had commenced proceedings in the Supreme Court of Queensland, seeking orders and declarations that the members' meeting was invalid. Mr Booth was named as a respondent to the proceedings. He said the last thing he wanted to do was go to court; he is a single and sole parent and was frightened and felt threatened by the correspondence associated with those proceedings.

[642] Mr Booth said his involvement with Street Swags was as a volunteer and he wanted to help but did not want to be involved in legal proceedings. He signed a consent order to avoid any further involvement in the court proceedings, and he stated he believed the consent orders would have placed Ms Madden "*back in the same position that she had been*".

[643] Mr Booth recalled feeling like he had done something wrong, when he was of the honest belief that the meeting of 28 March 2016 was valid, and he was trying to assist Street Swags with their operations.

#### *Employer Response*

[644] As to the Employer's response filed in this matter, Mr Booth responded:

- “a) The directors were concerned to hand over the log in details for the Xero Accounting, particularly because there were concerns raised over financial transactions;
- b) I recall observing the correspondence addressed to McCulloch Robertson containing a number of allegations about financial irregularities in relation to Jean. I note some of the matters listed included things like a purchase for a birthday cake for a staff member from 7 Eleven and many other things which were clearly related to business costs, including milk.
- c) I have not seen a copy of the forensic accountant report;
- d) I have had little involvement with Street Swags since signing the consent orders; and
- e) I have known Jean Madden for a very long time and do not believe that she is a dishonest person.”

## **RESPONDENT’S EVIDENCE**

### **Evidence of Mr Adrian De Maria**

**[645]** At the time of filing his witness statement in this matter, Mr De Maria stated he was the managing director of Street Swags. He had been a director of Street Swags since his appointment on 11 October 2014.

**[646]** Mr De Maria stated Street Swags primarily obtains its funding through donations, fundraising, and grants. He referred here to the Company Constitution at clause 1.4(b):

“The Company will only apply the income and property of the Company in promoting the objects of the Company and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.”

**[647]** Mr De Maria stated during his appointment as director, governance of Street Swags was as follows. Ms Madden was CEO, appointed by the board of directors to be responsible for the day to day conduct of the affairs of Street Swags, with a duty to report back to the board of directors. As a director on the board of directors, Mr De Maria attended quarterly directors’ meetings usually running for half an hour. Mr De Maria did not have access to the bank accounts of Street Swags and was reliant on Ms Madden for the running of the company. The board of directors only met every quarter and therefore were reliant on Ms Madden as CEO and managing director, to properly manage the charity and ensure its funds were properly and lawfully disbursed, and to report to the board on matters requiring its attention.

**[648]** Mr De Maria attached a copy of Ms Madden’s terms of employment, and stated at clause 5.2(b), her employment contract required her to obtain the written approval of the board before accruing travel and business expenses exceeding \$5,000. Mr De Maria said additional delegation of authority limits imposed by the board of directors to expenditure items also applied.



*The Cabins Project Proposal*

[649] Mr De Maria stated that in her capacity as CEO, Ms Madden tabled a proposal regarding “the Clarendon Station Project” and “the Cabins Project” around March 2015, which would involve the construction of cabins.

[650] A directors’ meeting was held 18 May 2015 where it was resolved that:

- (a) Further due diligence and development of a business plan was required before the project could proceed; and
- (b) Any funding of the Clarendon Station would be on the basis of a loan from available funds in Walkabout Beds Pty Ltd only and not from Street Swags Ltd funds, particularly donations.

[651] Mr De Maria said around June 2015, Street Swags engaged Clayton Utz on a pro bono basis to carry out the due diligence on the proposed projects. Mr De Maria noted Ms Madden had provided in her statement that she presented a due diligence report to the board around June 2015; however Mr De Maria responded that this should not be confused with the report to be produced by Clayton Utz, rather it was one of two reports prepared by Ms Madden and Ms Daniels delivered to the board at that time:

- (a) “Clarendon Station Due Diligence Report Summary June 2015” (which outlined a proposal for the establishment and operation of a registered Training Organisation and a working farm model) (“**due diligence report to the board**”)...
- (b) “WAB SWAGS and WAB Cabins Operational Recommendations Summary June 2015” (which outlined proposed operations of the current Walkabout Beds Cabins enterprise) (“**operational recommendations report to the board**”)...

[652] Mr De Maria stated Ms Madden’s due diligence report as presented to the board, related only to the Clarendon project and not the cabin project. The report noted:

“Jean Madden has met with Tony Deane (Litigation) and John Middleton (Taxation) at Clayton Utz and presented to them our plans and that [sic] were both extremely supportive of the proposed plans, with the caveat that at every step careful attention to risk management and legal process be maintained”

[653] He said Ms Madden’s operational recommendations report stated:

“Jean Madden has met with Tony Deane (Litigation) and John Middleton (Taxation) at Clayton Utz and presented to them our plans. They were both extremely supportive of the proposed plans, with the caveat that at every step careful attention to risk management and legal process be maintained

Tony then spoke to the Clayton Utz Pro Bono controllers. They have committed to support the work, starting with a commitment to understanding the scope of their involvement through the first phase as detailed below. From there they will set a necessary and likely substantial budget to walk us through the next 6-12 months, and to assist in managing our legal obligations and risk mitigation.

...

We will liaise closely with Clayton Utz at every stage of our development and believe their enthusiasm and commitment to the project and our future direction will ensure we are fully protected and compliant through every phase.”

**[654]** He said the operational recommendations report proposed the following structure:

“Per initial discussions with Clayton Utz, and subject to detailed advice,

- The Business operations will be conducted by one or more sibling entities which will come under the Street Swags Family of companies, and will exist to generate funds for the activities of Street Swags...”

**[655]** Regarding avoiding risk of loss of income, her operational recommendations report provided:

“WAB cabins only incurs cost when an order is produced. While we intend to actively grow the business, ultimately if no orders are forthcoming, we will not place orders ourselves and therefore incur no capital risk”.

**[656]** Mr De Maria submitted Ms Madden’s operational recommendations report contained cash flow projections for the 2015-2016 financial year, providing the total expenses (as wages) for the Clarendon project and the cabin project for the 2015-2016 period were expected to be \$57,500.

**[657]** Mr De Maria said the board relied on the representations in these reports that Clayton Utz were supportive of the project and would have continued involvement in the project and produce a due diligence report on the proposed project, and that any project expenditure or liability would not involve Street Swags.

*Concerns raised by Ms Quinn and Mr Daley*

**[658]** Mr De Maria sated that Ms Quinn was appointed company secretary on 1 July 2013, and vacated the position on 26 June 2015. Mr Paul Daley was appointed a director of Street Swags on 17 March 2015, and vacated the position on 28 June 2015.

**[659]** Mr De Maria said around mid-2015, he became aware that Ms Ryan had raised concerns about financial irregularities involving transfers of funds from the Street Swags accounts in favour of Ms Madden. He said around 14 June 2015, he received an email from Ms Madden (as CEO), addressed to the directors and others, and attaching the due diligence and operational recommendations reports to the board, as outlined above.

**[660]** Mr De Maria said he then received correspondence on 18 June 2015, as follows:

- (a) An email from Ms Quinn addressed to him and the other directors including Ms Madden, which raised concerns by Ms Quinn regarding the Cabin project...
- (b) A further email from Ms Quinn addressed to him and the other directors including Ms Madden, which raised further concerns by Ms Quinn regarding the Cabin project and which attached as an email thread an email from Mr Tony Deane of Clayton Utz to Nichole dated 18 June 2015 at 1.56pm...

*Limits on production of Cabins & Expenditure*

**[661]** Mr De Maria said on 20 June 2015, he participated in a directors' meeting by teleconference, during which concerns about Ms Madden's proposed projects were discussed. He said the board:

- (a) Ratified the 18 May 2015 resolution that the cabin project required further due diligence and a business plan before the project could proceed;
- (b) Ratified the previous decision to fund the building of only one cabin as a prototype for due diligence investigations; and
- (c) Resolved that no funds (other than funds already approved and noted in the Minutes) be expended in relation to the Clarendon project or cabin project until the board has received and considered the independent written advice of Clayton Utz and the business plans;
- (d) Resolved to re-affirm the previous delegations of authority from the board circulated with the Notice of Meeting.

*Undisclosed further Weiss invoices*

**[662]** Mr De Maria referred to the statement of Mr Deane dated 2 November 2016, which exhibited an email from Ms Madden to Mr David Hillard of 15 July 2015 and provided:

“We have had 2 board members resign after Shelley told them I had spent \$46,000 on cabins. This figure was I believe purposefully miss represented (sic) to the board. On examination of the breakdown Shelley had included mostly unrelated amounts from unrelated projects and activities. Now that those amounts have been taken out of the project breakdown the amount spent is what had been decided by the board at the two relevant board meetings held”.

**[663]** Mr De Maria stated he has since discovered invoices to Street Swags by Mr Weiss which relate to the construction and fit out of numerous cabins totalling \$43,122.50, issued between 24 March 2015 and 10 August 2015 inclusive, all indicating that they had been paid:

- (a) *Weiss Sawmilling invoice no. 13 dated 24 March 2015 issued to Street Swags in the sum of \$8,500;*
- (b) *Weiss Sawmilling invoice no. 16 dated 22 April 2015 issued to Street Swags in the sum of \$8,800;*
- (c) *Weiss Sawmilling invoice no. 18 dated 3 June 2015 issued to Street Swags in the sum of \$4,400;*
- (d) *Weiss Sawmilling invoice no. 19 dated 12 June 2015 issued to Street Swags in the sum of \$19,360.00;*
- (e) *Weiss Sawmilling invoice no. 27 dated 10 August 2015 issued to Street Swags in the sum of \$2,062.50.*

**[664]** Mr De Maria's evidence is that he was not aware of these transactions and given only one prototype cabin was approved by the board at that time, these transactions were unauthorised by the board. He stated these invoices were only discovered after the Worrells report was issued on 19 May 2016.

**[665]** Mr De Maria stated the invoices indicated to him that by 15 July 2015, at least \$34,622.40 had been paid by Street Swags to Mr Weiss for the cabins, and those expenses

should have been costed as cabins expenses. He submitted he was therefore “*gravely concerned*” that Ms Madden’s email of 15 July 2015 to Clayton Utz stated:

“Now that those amounts have been taken out of the project breakdown the amount spent is what had been decided by the board at the two relevant board meetings held”.

*Resignation of Mr Daly and Ms Quinn*

[666] Mr De Maria said that as to the concerns raised by Ms Quinn and Mr Daly, he didn’t accept much of what they said to him “*(at the time)*”. He said Ms Madden told him on several occasions, and he believed her, that Mr Daly had made remarks regarding his role as director and that he didn’t think Mr De Maria should be on the board, and that Ms Quinn was trying to take her job. He said Ms Madden had also said Clayton Utz were keen to help set up the cabin project, and that it had their endorsement.

[667] Mr De Maria said that at that time, he had a very good relationship with Ms Madden, who was the founder of Street Swags and he “*believed everything she told [him]*”. He said based on the representations to the board regarding the projects, he was fully supportive of them.

[668] Mr De Maria said subsequent to Ms Quinn raising her concerns, she resigned as company secretary and her appointment ceased on 26 June 2015. Mr Daly resigned as director and his appointment ceased on 28 June 2015.

[669] Mr De Maria said at that time, Ms Ryan’s employment as bookkeeper was also terminated, following which Ms Madden employed her sister Ms Emily Cloake to correct the transactions of Street Swags in the Xero accounting system. Ms Madden’s sister was later replaced by Ms Cleland.

*“Independent” audit*

[670] Mr De Maria referred to Ms Madden’s statement that an independent audit revealed that Ms Ryan had incorrectly coded transactions to inflate project expenditure, and that a full audit was undertaken by Geraghty Accountants. Mr De Maria stated he did not believe a proper audit was carried out. He said Ms Madden used regular accountants to prepare Street Swags’ financial statements, based on the records as corrected by her sister.

[671] Mr De Maria said in addition to the financial irregularities identified in the Worrells Report of 19 May 2016, he recently discovered that no superannuation for Street Swags’ staff had been paid since April 2015, and between August 2015 and March 2016, Ms Daniels, who was on a \$120,000 per annum salary, had no PAYG tax taken out of her pay. He said Ms Daniels was earning about \$2,200 a week without any tax. His belief is that if a proper audit had been carried out, it would have identified these anomalies.

[672] Mr De Maria stated, however, he had a good relationship with Ms Madden at the time and she assured him on many occasions that she had already discussed things with Mr O’Reilly and that he was supportive. Mr De Maria’s said therefore his reliance on her as CEO and his limited involvement with the day to day financial running of Street Swags meant that he accepted what Ms Madden told him on face value, and he was supportive of Ms Madden and not of Ms Quinn or Mr Daly.

*Quotes for Cabins*

[673] Mr De Maria referred to Ms Madden’s evidence that around June 2015, she presented the board of Street Swags with eight quotes regarding the manufacture of cabins. Mr De Maria’s evidence is that this assertion is inaccurate. He said Ms Madden presented the board with eight documents that were “*merely copies of printouts of web pages*” which advertised sheds of roughly the same dimensions as the proposed cabins to be constructed by Mr Weiss. He said he remembered one printout being of the Stratco web page, and another from the Bunnings web page.

[674] Mr De Maria said the specifications for the different sheds Ms Madden printed off were different, and also different from the design proposed by Mr Weiss. Mr De Maria said a proper tender document should have been prepared, which set out the specifications of the cabin, and other businesses should have been given the opportunity to respond to those specifications with a quote, and this did not happen.

*False/misleading Minutes of 11 December 2015 AGM*

[675] Mr De Maria said following the AGM of 11 December 2015, he didn’t receive a copy of the minutes for his review and approval as per the usual procedure. He said the first time he saw a copy of those minutes was as annexed to Ms Madden’s statement.

[676] Mr De Maria said the minutes are an incorrect record of what was said at the AGM; for example, it says Mr O’Reilly suggested paying for storing swags at the Darra shed. Mr De Maria denied Mr O’Reilly ever suggesting this.

[677] Mr De Maria said the minutes also said a supplier had been engaged for construction of the cabins, which he said would have to have been approved by the board, and the board had no knowledge of it.

*Disclosure of Ms Madden’s relationship with Mr Weiss*

[678] Mr De Maria stated he did not recall any mention of Ms Madden’s relationship with Mr Weiss at the AGM on 11 December 2015. He said in late 2015 he had been aware that Ms Madden and Mr Weiss were neighbours and friends, but he had no idea they were in an intimate relationship or that they were a couple, until Ms Todd told him after he started working at the Street Swags office in January 2016.

*Mr De Maria’s employment by Street Swags*

[679] Mr De Maria stated he agreed to work for Street Swags in the role of project management and sales, in early January 2016. He said he had experience with building projects and could use his knowledge to assist with the production of the cabins. He said at the time, he had anticipated being involved in other private projects so he insisted that the term of his employment could not be more than three months. He said this is reflected in his employment contract, providing a fixed term of three months with no provision to renew the contract after that period. He said he at no time requested an extension of that period.

[680] Mr De Maria responded that the various allegations in Ms Madden's material, regarding non-renewal of his contract are misleading.

[681] He said before he came on board as an employee in the Street Swags office, Ms Madden had informed him that she already received approval for the cabins on the basis that the cabins were transportable and didn't require building certification requirements.

[682] Mr De Maria said Ms Madden had told him she had been in contact with Mr O'Reilly and he had been helping her and keen to get the cabins into production now that she had approval. He said Ms Madden also informed him on multiple occasions in February 2016 that Clayton Utz were "*a hundred percent*" behind the project and that she was meeting with them in February as they were eager to see one of the cabins. Ms Madden told Mr De Maria that Clayton Utz were 'so supportive' of the project that they were going to see one of the cabins as they wanted to buy a minimum of 10 cabins. Mr De Maria said Ms Madden told him Clayton Utz were talking about investing around \$250,000 for 10 cabins, and that the firm would gift to remote Aboriginal communities over a 12- month period.

[683] Mr De Maria said no approval was ever given at any board meeting for the production of more than one prototype cabin. He said since the board meetings were only every quarter, Ms Madden advised him that Mr O'Reilly and Clayton Utz fully supported production of the cabins, and Mr De Maria did not think to question whether further production of the cabins was in fact authorised.

[684] Mr De Maria stated therefore that he believed Ms Madden's representations were untrue.

[685] Mr De Maria said, however, when he spoke to Mr O'Reilly around 24 March 2016, he advised Mr De Maria it was not the case that he supported production of the cabins. Mr De Maria said Mr O'Reilly told him that he was unaware the cabins had gone into production, and as far as he was aware, only production of a prototype cabin had been approved and he thought they were still awaiting due diligence on the project from Clayton Utz.

*Later discovery of Clayton Utz concerns*

[686] Mr De Maria's evidence was that he and Mr O'Reilly were "*shocked*" to find out on 25 October 2016, when Boss Lawyers obtained a copy of the Street Swags file from Clayton Utz, that it did not support the project and had ceased to act for Street Swags around 15 July 2015. He said there was a file memo dated 16 July 2015 of a conversation between Mr Hillard of Clayton Utz and Ms Madden that noted Mr Hillard advised:

*"I am extremely concerned that advice has been provided by us in relation to a high risk project and despite that advice, Jean has chosen to proceed with the project and not address the concerns we raised. I was also very concerned to read in the document provided to the Street Swags Board, under the heading Legal Advice and Risk Mitigation, that Jean described Clayton Utz as being "extremely supportive of the proposed plans". We are not extremely supportive of the proposal. We think there are significant risks associated".*

[687] Mr De Maria submitted this was completely at odds with what Ms Madden had been telling him, and what he was led to believe. He said at no time did Ms Madden advise him that Clayton Utz had ceased to act and would not be providing the due diligence report.

[688] Mr De Maria said that the representations made by Ms Madden in February 2016 regarding the ongoing support of Clayton Utz and a meeting to buy cabins were ‘lies’. He believed that Ms Madden would have known that disclosing this to the Board would result in the immediate termination of those projects. He believed Ms Madden intentionally misled him to enable her to continue with the projects, and he believed her conduct was a serious breach of her duties as a fiduciary, as an employee, and as a director.

#### *No Cabin Sales*

[689] Mr De Maria said the operational recommendations report to the board had stated Mr Weiss would obtain the necessary certifications for the Clarendon cabin, as follows:

*“Following completion of this [prototype] cabin, Carl Weiss will work closely with council certifiers to ensure the Cabin is compliant and suitable for sale and location on the property as a liveable dwelling with engineering, BSA and council certification requirements met. All regulatory requirements and certifications to allow for siting of the cabins in a range of situations will be attained prior to the construction of the next cabin, with the intent that any “bugs” and issues will be able to be addressed to allow commercial manufacture of the cabins”.*

[690] Mr De Maria reiterated that based on Ms Madden’s assurances, he believed this would have been done. He said however once he started work at the Street Swags office, it became immediately apparent that the required regulatory certification had not been obtained. Mr De Maria said the certifications required included a *Building Act 1975* Form 16 Inspection Certificate, electrical certification, gas certification, insulation certification, plumbing certification (including waterproofing for wet areas) and glazing certification. He said the cabins did not have all the necessary certification required by law for them to be classed habitable, and therefore could not be sold as habitable cabins until certification was obtained.

[691] Mr De Maria added that once he started work, it also became apparent that the marketing materials referred to in the ‘additional recommendations report’ under the ‘Year One’ business goals and objectives had not been prepared and there was no way the cabins were ready to be sold even if they were compliant. He noted there was no web page, no brochures, and no written specifications for the cabins.

[692] Mr De Maria said he spent the first couple of months in his role chasing up what certification was required with town planning, private certifiers, the Queensland Building and Construction Commission and with engineers, to make the cabins compliant and saleable.

[693] He conceded that he did not sell any cabins during his employment at Street Swags, but said the allegations in Ms Madden’s material as characterising him as having failed to sell cabins as a performance issue is misleading, and the assertion that any conduct or decision of his being motivated by non-renewal of his contract is “*baseless and wrong*”.

[694] Mr De Maria submitted Ms Madden claimed in her statement that he withheld the fact that he had been engaged by Walkabout Beds rather than Street Swags, and instructed Ms

Cleland to pay him from the charity; and in response to this he said this was “*nonsense*”. Mr De Maria said his employment contract is on Street Swags letterhead and states at clause 1.1 that he was “*employed by Street Swags*”, with Schedule 1 identifying his employer as “*Street Swags Limited*”. He added that Ms Cleland arranged the pays, and not him.

*Conflict of interest and financial irregularities – concerns raised by Ms Cleland*

[695] Mr De Maria said around mid-February 2016, Ms Cleland approached him and they had a conversation where she said words to the effect, “*I’m not getting any sleep at night and I feel sick in the stomach about funds being transferred from Street Swags to Mr Weiss*”.

[696] He said Ms Cleland showed him an invoice where Street Swags paid \$10,000 to Mr Weiss, and she said words to the effect, “*It’s not right. The arrangement was that payments were supposed to be made from Walkabout Beds to Carl, not from Street Swags. If we get audited, there will be trouble*”.

[697] Mr De Maria said shortly after that conversation, Ms Cleland left a post-it-note on his desk with Street Swags’ only banking password on it. He said prior to this occurring, he did not have access to the online bank accounts of Street Swags, nor know the password. His evidence was that due to the concerns raised by Ms Cleland regarding transfers, he used the password to access the bank account of Street Swags. He said he spent the next two weeks going through the transactions and other financial documents of Street Swags, and what he saw was “*alarming*” and appeared to him to confirm Ms Cleland’s concerns. He said the transactions presented a “*bread crumb trail*” to follow.

[698] Mr De Maria stated it appeared, without the board’s knowledge or approval, that Street Swags was paying invoices issued by Mr Weiss, and large sums were being transferred from Street Swags to Walkabout Beds, and from Walkabout Beds to Mr Weiss. Mr De Maria said it appeared to him that Walkabout Beds was being used to move charity funds out of Street Swags into an entity which had no delegation caps imposed by the board for expenditure, and which had no board of directors to ensure proper corporate governance, and was outside of the scrutiny of the board of Street Swags.

[699] Mr De Maria stated he made numerous requests of Ms Cleland in her role as bookkeeper for financial information during this time. He said at first, Ms Cleland was enthusiastic about providing this information but she later “*changed sides to Jean*”.

*Missing donated funds from bank accounts*

[700] Mr De Maria said he was most concerned at the time regarding the lack of money in the charity account, and large transfers to Walkabout Beds and Mr Weiss. He said those transactions were not properly documented he had no idea what happened to the majority of the donated money. Those payments had not been disclosed to the board, and the board was unable to identify any documentation to properly explain those transfers, or which would disclose how the funds were ultimately disbursed.

*Unauthorised Contract with Mr Weiss*

[701] Mr De Mara confirmed Mr Weiss was not an employee of Street Swags or Walkabout Beds.



[702] Mr De Maria said around 25 February 2016, Ms Daniels told him that Ms Madden had arranged a contract between Mr Weiss and Walkabout Beds for the manufacture of cabins. She forwarded a copy to him at that time. The email sent from Ms Madden to Ms Daniels on 17 February 2016 stated:

*“Attached is the contract with Carl.*

*There are a number of things which need work...*

*In particular Schedule 2c, as examples, my one for Dad’s isn’t compliant because of the coloured glass and yours isn’t because of it not having lining.”*

[703] Mr De Maria said he did not become aware of the manufacturing contract until Ms Daniels raised it; and the contract had never been put before the board and its terms not discussed with him as a director.

[704] The draft manufacturing contract was backdated to have commenced on 1 January 2016, and included a number of terms that appeared to operate solely on the advantage of Mr Weiss. He referred to the following:

- (a) By cl 3.1(b): Walkabout Beds will order the greater of a minimum of 44 Manufactured Homes/Transportable Cabins from Mr Weiss each calendar year of \$528,000;
- (b) By cl 8.3: if it chooses to terminate the Manufacturing Contract, Walkabout Beds will cover any expenses connected with termination of the Manufacturing Contract including (but not limited to) Mr Weiss’s obligations in respect of his leased business premises and the payment of his employees;
- (c) By Schedule 2, item 8: Walkabout Beds will provide Mr Weiss with a copy of its financial statements at the end of each financial year; and
- (d) By cl 9.1: Mr Weiss will be paid \$10,000 per year to store property of Street Swags and Walkabout Beds including, inter alia, a Hino truck, a moveable stage and a Holden Colorado Ute.

[705] Mr De Maria submitted that the obligation to purchase a minimum of 44 manufactured homes/transportable cabins *“or \$528,000 worth of Manufactured Homes/Transportable Cabins”* from Mr Weiss each calendar year was in stark contrast to what was presented to the board by Ms Madden in July 2015, which had included that *“ultimately if no orders are forthcoming, we will not place orders ourselves and therefore incur no capital risk”*.

[706] Mr De Maria said the cabins cost about \$47,000 each. Ms Daniels had forecast sales of about 100 cabins per year, making the contract that Ms Madden gave to Mr Weiss without the board’s knowledge or approval, worth about \$4.7 million per year. Mr De Maria said he was immediately concerned as Ms Madden was Mr Weiss’s de facto, and therefore a beneficiary of the ‘multi-million dollar contract’. He believed Ms Madden’s failure to disclose the contract was a serious breach of her duties as an employee and director of Street Swags.

#### *Unauthorised payment of Mr Weiss’s Steel Bill*

[707] I have earlier described Mr De Maria’s evidence at [241 – 242] relevant to Ms Madden’s payment using the Street Swags credit card of a steel bill of Mr Weiss in the

amount of \$2,467.32. In summary, his evidence is he observed and heard her pay the bill from the Street Swags credit card.

*Meeting with Ms Madden regarding Mr Weiss's involvement*

[708] Mr De Maria said he was concerned about a potential conflict of interest when he found out that Mr Weiss was Ms Madden's de facto partner. He said shortly after finding out about the contract, he had a meeting with Ms Madden to raise his concerns. He said Ms Madden responded to the effect, "*Brian is very happy to go ahead with the cabins. He was very happy with the workmanship*".

[709] Mr De Maria said he did not challenge this at the time, as Ms Madden had convinced him that she had Mr O'Reilly's approval for the arrangement.

[710] He said Mr O'Reilly later said this was not true and that he was unaware the cabins were going ahead. Mr De Maria said he believed Ms Madden mislead him in this regard.

*Unauthorised transfer of donated funds to pay for Mr Weiss' lease deposit*

[711] Mr De Maria said the accounts and records of Street Swags contained documents showing Ms Madden had transferred donated funds of Street Swags to pay for Mr Weiss' lease for work premises for his sawmilling business. He said the transfer was documented using an invoice issued for a "storage fee".

[712] He said the documents include:

- (a) An email dated 20 November 2015 from Mr Weiss to Ms Madden and Ms Daniels. Mr Weiss advised that before he can sign the lease, he needs:
  - i. A contract for a minimum order of 44 cabins or an equivalent amount of work in other orders including termination clauses similar to that discussed with Ms Madden;
  - ii. A \$17,600.00 deposit being \$400 on each cabin;
  - iii. A \$10,000 "storage fee" for storage of 1 x truck, 1 x trailer and up to 10 pallets of other goods (swags, camping gear, sound gear) for a period of 12 months.
- (b) The invoice no. 41 dated 23 November 2015 issued to Street Swags from Mr Weiss's business Weiss Sawmilling for \$10,000, for:
  - i. "Sublease of storage area for period of 12 months.
  - ii. Truck and trailer (50m<sup>2</sup>)
  - iii. General palletized Goods (50m<sup>2</sup>) maximum pallet weight 1 ton max pallet height 1 m"
- (c) An email thread from 23 November 2015 which comprised:
  - i. An email dated 23 November 2015 from [email redacted] to Ms Daniels (copied to Mr Carl Weiss) providing trust account details for payment of a deposit totalling \$25,666.67 to Blue Commercial (QLD) Pty Ltd – Sales Trust Account;
  - ii. A forwarding email from Ms Daniels to Ms Madden on 23 November 2016, asking for payment to be made. Handwritten on the email thread is "Paid 10k 23<sup>rd</sup> Nov".

- (d) Street Swags' NAB bank statement for account number [redacted] for period 21 November 2015 to 27 November 2015. It shows that on 23 November 2015, \$10,000.00 was transferred from Street Swags bank account for the Darra address.
- (e) A draft lease document for the Darra address naming Mr Weiss's company Weiss Industrial Pty Ltd as the tenant for the lease period 1 December 2015 to 30 November 2017. The Lessor's agent is Blue Commercial (QLD) Pty Ltd.

[713] Mr De Maria said the terms of the Manufacturing Contract between Mr Weiss and Walkabout Beds reflects the terms contained in the email of 20 November 2015, from Mr Weiss to Ms Madden and Ms Daniels as outlined above.

[714] He said based on this documentation, he was of the view that Ms Madden used \$10,000 of donated money from Street Swags to fund her de facto partner's business premises lease and that she entered Walkabout Beds into the Manufacturing Contract on terms that were to enable her de facto partner to secure the lease for his own business.

[715] He referred to Ms Madden's statement where she said she commenced her relationship with Mr Weiss in July 2015, and declared her relationship to the board on 11 December 2015. Mr De Maria said on Ms Madden's own evidence, the Manufacturing Contract and \$10,000 payment to Mr Weiss occurred while she was in a relationship with him and prior to declaring the relationship to the board.

[716] Mr De Maria believe the \$10,000 transfer to Mr Weiss was 'misleading' and Ms Madden had acted in conflict with her statutory and fiduciary duties as an employee and director. Street Swags was paying a different entity \$10,000 for the benefit of Mr Weiss.

*Payment of 'storage fee' but no goods stored*

[717] Mr De Maria said as a result of his concerns regarding the \$10,000 'storage fee' for storage of a truck, a trailer, and up to 10 pallets of other goods, he went to Mr Weiss' shed at Darra to check if the items were in fact being stored there. He said he saw that there was no stage, no Hino truck and no other goods belonging to Street Swags being stored there. He said also, the Hino truck owned by Street Swags was a refrigerated truck but was not used for Street Swags business.

*Meeting with Ms Madden – Giving Mr Weiss a company car*

[718] Mr De Maria said Street Swags was the registered owner of a Holden Colorado utility. He said the ute was owned outright by Street Swags Limited, and it was originally funded by a community grant and belonged to the charity as a 'prime asset'. He said it is 'branded' with Street Swags signage.

[719] Mr De Maria said around February or March 2016, Ms Daniels told him people had seen Mr Weiss driving the Street Swags ute around.

[720] He reiterated his evidence that Mr Weiss was not an employee of Street Swags or Walkabout Beds. He said Mr Weiss owned a sawmilling business and drove an older model four wheel drive.

[721] He said around this time, the following conversation was had:

- Mr De Maria: Where is the Street Swags ute?
- Ms Madden: Carl's got it. He needs it because his car has broken down so I've given him the ute to drive.
- Mr De Maria: That's a branded company vehicle ... You need to put some distance between the company and your defacto. We can't be paying him a wage. We can't be letting him drive the company vehicle.
- Ms Madden: He needs to go see clients for the cabins.
- Mr De Maria: That's ridiculous, we don't even have a client yet.

*Mr Weiss's infringement notices*

[722] On 24 December 2015, the ute was detected speeding and photographed by a speed camera located on Harcourt Road at Darra. An infringement notice was issued to Street Swags on 8 January 2016, which has been recorded as "*Paid \$785 SS. 10/2/16 chase up amnt*".

[723] On 10 February 2016, Ms Cleland emailed Mr Weiss regarding the fine and asked if he wanted the company or him to pay the fine. Mr Weiss responded, "*Yes I have paid the company fine amount to Street Swags*".

[724] Around 8 March 2016, Street Swags received a demand notice for non-payment of a toll on 5 February 2016, recorded against a trip in the ute. Mr De Maria said the demand notice included a photo of the vehicle towing a "Lucus Mill" which is a mobile saw mill which he believed Mr Weiss used for his business.

*Unauthorised finance for Holden Colorado utility*

[725] In January and February 2016, Ms Madden arranged to obtain finance through Metro Finance for Walkabout Beds to purchase the Holden Colorado utility from Street Swags. He said the loan was for \$25,000 to be repaid over 36 months, plus interest at 6.95%, and additional fees of \$1,400 plus GST. He said the loan was guaranteed by Street Swags without knowledge of the board.

[726] Around 28 January 2016, Ms Madden issued a tax invoice that was signed by her, from Street Swags to Walkabout Beds for \$25,000.

[727] Around 3 February 2016, Ms Madden signed the Metro Commercial Finance documents as 'director' on behalf of Walkabout Beds, executing the agreement as 'borrower' without the signature of the company secretary, Mr Gillett; and as 'authorised officer' for Street Swags, executing the agreement as 'guarantors' without the signature of another office holder of Street Swags.

[728] Also around 3 February 2016, Ms Madden issued a direction to pay (signed by her) from Street Swags to Walkabout Beds for \$25,000. He said the statement of Street Swags'

NAB bank account shows that on 5 February 2016, there was a transfer from Walkabout Beds of \$25,000 into the account.

[729] Mr De Maria stated the transfer was improper as the sale and transfer of a Street Swags owned asset, and the guaranteeing of the arrangement by Street Swags was done without knowledge or approval of the board. He said further, the loan documentation required the signature of another director of Street Swags, which did not occur.

[730] Mr De Maria said following the sale, no attempt was made to remove the Street Swags signage on the vehicle, and it represented to the public and to the company that it was a Street Swags vehicle.

[731] He noted the finance agreement made no commercial sense as Walkabout Beds was funded by Street Swags which meant that donated Street Swags funds were being channelled through Walkabout Beds, to be used to pay the loan fees and repayments for the \$25,000 borrowed and paid back to Street Swags.

[732] Mr De Maria noted Ms Madden had given the vehicle to her de facto partner, for his exclusive use for his sawmilling business. Mr De Maria stated Street Swags had paid for the vehicle and was paying for his fines and his fuel, and paying him \$10,000 to store the vehicle from donated funds.

#### *Damage to Holden Colorado utility*

[733] Mr De Maria said on 16 September 2016, Mr Raj Kripal of Metro Finance advised him of the following:

- (a) Following advice that Walkabout Beds had been placed into voluntary administration by Ms Madden, Metro Finance contacted Ms Madden who advised that the vehicle is with Mr Carl Weiss who is a cabinet maker contracting to Walkabout Beds, and she provided contact details for Mr Weiss.
- (b) Metro Finance contacted Mr Weiss who advised that the vehicle had been in an accident and was not driveable however he arranged a time for Metro Finance to collect the vehicle.
- (c) On 18 May 2016, the vehicle was picked up by Slattery's Auction (authorised agents for Metro Finance) and is currently held at Slattery's Auction premises.

[734] Mr De Maria said after being 'repossessed' from Mr Weiss, the damaged ute was towed from Slattery's Auction premises to a mechanical workshop to repair the significant damage to the front panel and windscreen. He said around 21 October 2016, he telephoned the mechanic who said words to the effect: "*The car doesn't go. I think someone has fucked with the electrics on purpose*".

[735] At the time of filing his statement, Mr De Maria said they were still waiting to see if the car was repairable.

#### *Signing the 'Rental Agreements'*

[736] Mr De Maria said that prior to beginning work at Street Swags in January 2016, he was aware of the financial model for the financing of the cabins, whereby Ms Daniels would

broker a deal between a finance company and a purchaser of a cabin for the purchaser to obtain finance, to then be paid to Mr Weiss.

[737] He said in late January or the beginning of February 2016, Ms Madden advised that Ms Daniels had brokered an alternative arrangement where Street Swags would lease the cabin and would be reimbursed by the client, and Mr O'Reilly had been visiting Mr Weiss' shed and had been constantly talking to her about it and he was very excited about the arrangement. Mr De Maria said on another occasion around the same time, he saw Ms Madden talking into her mobile phone and she hung up and said it was Mr O'Reilly about the cabin project and he was very happy. And on another occasion, he saw Ms Madden talking into her mobile phone and she pointed to it, mouthing 'Brian' and giving Mr De Maria the thumbs up. He also relayed another instance where Ms Madden told him she was in constant contact with Mr O'Reilly and that Mr O'Reilly had been helping and was supportive and very keen to get the cabins into production now that she had approval.

[738] Mr De Maria said he wasn't clear on the arrangement but was reassured by Ms Madden's assurances of Mr O'Reilly's endorsement. Mr De Maria said he believed the whole time that Mr O'Reilly approved of these things, however Mr O'Reilly later told him she had never contacted him about it.

[739] Mr De Maria said around 5 February 2016, Ms Todd rang him and said she needed his signature on a rental agreement as Mr O'Reilly was unavailable. She presented Mr De Maria with a 'Rental Agreement' with terms and conditions in small type. He referred to this as the 'First Rental Agreement' and he signed it, believing it was some type of rental lease arrangement for a cabin.

[740] He said that around 10 March 2016, Ms Todd again approached him and said she needed a signature on a rental agreement as Mr O'Reilly was unavailable. She presented another document titled 'Rental Agreement', which he referred to as the 'Second Rental Agreement'. He again signed the agreement believing it was a rental lease arrangement for a cabin.

[741] Mr De Maria said a week later, Ms Todd again approached him to sign a 'Rental Agreement' but he refused to do so because he had serious concerns regarding the documents that he was being asked to sign.

*Unauthorised Guarantees of Loans to pay Mr Weiss*

[742] Mr De Maria subsequently investigated the rental agreement he had signed, and discovered they were guarantees of loans to Walkabout Beds for payment to Mr Weiss. Mr De Maria's evidence is he had no idea that he was signing guarantees, and if he had known he would have refused to do so.

[743] He said regarding the First Rental Agreement, the document he signed was a guarantee of a loan to Walkabout Beds of \$91,840.65 payable to Mr Weiss' personal bank account. He referred to relevant documents that he was not aware of at the time of signing, as follows:

- (a) Capital Finance document dated 2 February 2016 which lists Walkabout Beds as the client and Street Swags as the Guarantor in respect of a finance amount of \$91,840.65 in respect of 4 x demountable buildings.

- (b) A bundle of tax invoices issued by Mr Weiss to Finrent Pty Ltd which included:
- i. Tax invoice no. 39 dated 23 November 2015 issued to Finrent Pty Ltd as payee for \$27,765.65. (This appears to be a duplicated invoice of Tax Invoice no. 39 dated 23 November 2015 issued by Mr Weiss to Street Swags as payee for \$27,765.65, with the handwritten note “Dad’s”).
  - ii. Tax invoice no. 40 dated 23 November 2015 issued to Finrent Pty Ltd as payee for \$12,485.00. (This appears to be a duplicated invoice of Tax Invoice no.40 dated 23 November 2015 issued by Mr Weiss to Street Swags as payee for \$12,485.00).
  - iii. Tax invoice no. 43 dated 1 December 2015 issued to Finrent Pty Ltd as payee for \$23,732.39.
  - iv. Tax Invoice no. 44 dated 1 December 2015 issued to Finrent Pty Ltd as payee for \$27,857.61.
- (c) A document entitled “Finrent Annexure A” which refers to the Rental Services Agreement. It itemizes 4 cabins and it is signed by Ms Madden on behalf of Walkabout Beds.
- (d) A document entitled “Equipment Acknowledgement of Delivery and Installation” signed by Ms Madden (“**First Delivery Acknowledgement**”).
- (e) Fax transmissions (x2) dated 10 February 2016 from Capital Finance to FINRENT confirming settlement of the transaction and transfer of \$91,840.65 to Mr Weiss’ personal bank account.

[744] As to the Second Rental Agreement, Mr De Maria said the document he signed was a guarantee of a loan to Walkabout Beds of \$42,965.73 payable to Mr Weiss’s personal account. The relevant documents he was not aware of at the time of signing, were stated as follows:

- (i) Capital Finance document dated 26 February 2016 which lists Walkabout Beds as the client and Street Swags as the Guarantor in respect of a finance amount of \$42,500 in respect of 2 x demountable buildings.
- (ii) Tax Invoice no. 53 dated 29 February 2016 issued to Finrent Pty Ltd as payee for \$42,965.73.
- (iii) A document entitled “Equipment Acknowledgement of Delivery and Installation” signed by Ms Madden (“**Second Delivery Acknowledgement**”).
- (iv) Finrent Direct Debit request dated 10 March 2016 signed by Ms Madden.
- (v) Fax Transmissions (x2) dated 11 March 2016 from Capital Finance to FINRENT confirming settlement of the transaction and the transfer of \$42,965.73 and of \$4,296.58 to Mr Weiss’ personal bank accounts.

*False certification of delivery of cabins*

[745] Mr De Maria said the invoices issued by Mr Weiss to Finrent, and the Equipment Acknowledgement of Delivery and Installation documents signed by Ms Madden, provided a delivery address at Ashgrove. He said by the First Delivery Acknowledgement, Ms Madden had certified delivery of 4 cabins to that address; and he believed these cabins were never delivered as the premises at that address had no capacity to receive delivery of those cabins. Mr De Maria said delivery of cabins at that address would be impossible, and while he was working from that location at the time, he was not aware of any such delivery.

[746] Mr De Maria said he contacted Capital Finance about the finance agreements, and was told Capital Finance would never have released the funds to Mr Weiss for the cabins if they knew the cabins had not been delivered as certified by Ms Madden in the acknowledgements.

[747] Mr De Maria said he has since received further confirmation from Mr Jose Marajas of Capital Finance, who advised of the following that Mr De Maria believes to be true:

- (a) Altogether, 5 cabins were financed: 4 cabins under agreement no. 31526244, 1 cabin under agreement no. 3153762.
- (b) Capital Finance paid Mr Weiss (t/as Weiss Sawmilling) for goods relating to agreement no. 31526244 on 10 February 2016 and for agreement no. 31537628 on 11 March 2016.
- (c) Capital Finance received 5 delivery of equipment documents signed by Jean Madden, and this is when funds were released upon receipt of these documents.
- (d) These delivery notes were witnessed by the broker, Finlease.
- (e) The contract documents provided to Capital Finance indicate that the location of goods is [Ashgrove address redacted].
- (f) Capital Finance had no knowledge that the cabins were being used for any purpose other than for supplying accommodation for homeless people.
- (g) Capital Finance would not have provided finance if they knew that the cabins were to be used for any purpose other than for supplying accommodation for people experiencing homelessness.

*Unauthorised 'exoneration' of Finlease regarding cabin transactions*

[748] Mr De Maria said he has identified the following further documents regarding the cabin finance agreements:

- (a) Email from Ms Todd to Mr Weiss dated 5 April 2016. The email attaches a letter from Street Swags to 'Michael' signed by Dr Thornton (and with blank signature blocks for Mr Booth, Ms Todd and Dr Richards), which states:

*"Dear Michael*

*Please accept this document to be the written approval from the Directors of Street Swags that Finlease (Aust) Pty Ltd is totally exonerated from any liability".*

- (b) Email from Ms Todd to Michael Giorgas dated 5 April 2016 which states:

*"Hi Michael*

*Please find attached the letter from the Chair of Street Swags and exonerating FinLease from all liability".*

- (c) An attached letter from Street Swags on Street Swags letterhead signed by Dr Thornton and Ms Todd which states:

*"Dear Michael*

*Please accept this document to be the written approval from the Directors of Street Swags that Finlease (Aust) Pty Ltd is totally exonerated from any liability".*



[749] It is clear that these documents were executed by the individuals who believed, at the time, that they were directors of Street Swags in early 2016. None of the individuals who executed these purported waiver of liability documents has given evidence as to why they did so.

[750] Mr De Maria submitted that his understanding is Finlease uses its own standardised forms for its finance agreements, and if an indemnity was a legitimate requirement, it would have been contained in a standardised form and with ‘proper legal wording’. He stated the indemnity signed by Dr Thornton and Ms Candice is “*broad and unspecific*”, “*is of no obvious commercial or legal benefit to Street Swags*” and “*could in no way be in the best interests of Street Swags*”. In his view, there was no proper commercial reason for the purported directors of Street Swags (not recognised by Street Swags) to issue the exoneration letter to Finlease, and it was very unusual.

[751] Mr De Maria said Ms Todd sent the letter to Mr Weiss before sending to Finlease, which indicates Mr Weiss’ involvement. He said the word ‘exonerating’ appears to assume or anticipate some wrongdoing, and the correspondence appears to be a ‘letter of comfort’ from Ms Todd and Dr Thornton given to Mr Giorgas in relation to finance of the cabins. Mr De Maria said Capital Finance advised him that delivery certifications signed by Ms Madden were witnessed by Mr Giorgas.

[752] Mr De Maria was uncertain whether the cabins as financed ever existed. After he advised Capital Finance that the cabins were never delivered, he was advised Capital Finance had referred the matter to their ‘fraud squad’ and Mr De Maria was asked to and did provide a statutory declaration. The matter had also been reported to the Queensland Police Service for investigation.

*Mr Weiss’ proposed ‘retainer’ of \$2,500 per week*

[753] Mr De Maria said he was copied into correspondence of 14 March 2016, between Ms Madden, Mr Weiss and Ms Cleland, in which Mr Weiss claimed to be trading insolvent due to insufficient orders to which Ms Madden ‘readily admitted liability’ and asked Mr Weiss to call so that a ‘suitable retainer amount’ could be arranged and back-paid to the date of the agreement.

[754] Mr De Maria was provided a copy of a letter dated 15 March 2016 from Mr Weiss to Ms Madden/Street Swags, seeking a retainer of \$2,500 per week (\$130,000 per year). Mr De Maria stated he could see no rational commercial basis for Street Swags agreeing to this retainer, and he believed it was an excuse to channel additional Street Swags funds into Mr Weiss’ bank account. Further, he stated these matters were not disclosed to the Board, and the Board was never given the opportunity to consider the issues or obtain independent advice.

*Staff Meeting 15 March 2016*

[755] Mr De Maria said Ms Madden held a staff meeting on 15 March 2016 to propose the \$2,500 retainer to Mr Weiss. At this meeting were Ms Madden, Mr De Maria, Ms Dwyer, Ms Cleland, Ms Daniels, and Ms Todd. He said words to the effect of the following were said:

Ms Madden: Because we haven't been able to sell any cabins, we are going to put Carl on a retainer of \$2,500 to \$3,500 per week on top of his manufacturing retainer and he will be responsible for sales.

Mr De Maria: That definitely needs to be halted until Brian gets back. That needs to go to the director's meeting.

*Telephone call to Mr O'Reilly*

[756] Mr De Maria said he called Mr O'Reilly to raise his concerns about the potential serious conflict of interest and misappropriation of Street Swags funds. He recalled the following exchange:

Mr O'Reilly: I didn't know the cabins were in production. I thought we were waiting on due diligence.

Mr De Maria: Jean asked me to sign loan documents that you had pre-approved.

Mr O'Reilly: I don't know anything about that. Jean never spoke to me about that.

Mr De Maria: As soon as you land, come straight to Brisbane. We have a problem.

[757] Mr De Maria said he was of the view that what Ms Madden had told him about Mr O'Reilly approving the cabin production and the rental agreements was untrue. He said he believed he had been misled by Ms Madden into signing the guarantee documents on behalf of Street Swags.

[758] Mr De Maria said Mr O'Reilly did not return to Australia until five days later, and in that time Mr De Maria requested financial documents from Ms Cleland and tried to make sense of the transactions.

*Unauthorised payment of Ms Madden's family law solicitor's bills*

[759] Mr De Maria noted Walkabout Beds was funded primarily by Street Swags, using money donated to Street Swags for the purpose of the manufacture and delivery of swags to homeless people.

[760] Mr De Maria stated the accounts of Walkabout Beds showed a payment of \$3,195.96 to Ms Madden's personal family law firm, Crowley Greenhalgh Solicitors on 26 February 2016, using a reference number '010716'.

[761] Mr De Maria said he later discovered an email from Crowley Greenhalgh Solicitors to Ms Madden on 31 March 2016, with that reference number against her family law matter. He said the email discussed Ms Madden's family law proceeding and her retainer for a Queens Counsel for the trial, and asked whether the payment of \$14,400 received on 22 March 2016 was from Walkabout Beds. He said the reference number confirmed to him that the payment to the solicitors using funds from Walkabout Beds' account was for payment of Ms Madden's private family law matter.

[762] Mr De Maria referred to Ms Madden's evidence that the Crowley Greenhalgh expenses related to her salary being paid directly into the trust account of her family lawyers, after consultation with the accountants and auditors of Street Swags and Walkabout Beds. Mr De Maria said on his understanding of the rules of salary sacrifice, he did not believe the accountants would have given such advice to Ms Madden and he asked Boss Lawyers to seek the accountant's response to Ms Madden's statement. On 18 October 2016, Geraghty Accountants wrote to Boss Lawyers in response to this matter as follows:

*"We firstly wish to advise that none of our staff have any recollection of giving the advice as stated by Ms Madden.*

*Walkabout Beds Pty Ltd was a wholly owned subsidiary of Street Swags Ltd and was run with the intention of making profits. It had not been granted any Fringe Benefit Tax (FBT) exemptions by the ATO. Therefore, if Ms Madden has salary sacrificed any of her salary from Walkabout Beds Pty Ltd, to pay her private family law solicitor's fees, this would have created a FBT liability to the company. Due to these FBT issues, we do not believe that we would have recommended this arrangement.*

*The alternative treatment, which may be that Ms Madden is claiming, that she has treated the payment as an after-tax deduction from her salary. This type of payment occurs where the employer first deducts PAYG Withholding from the gross wages. In this instance, the payment should have been fully accounted for in the payroll accounting system of Walkabout Beds Pty Ltd. It may have been acceptable for Walkabout Beds Pty Ltd to make a deduction from Ms Madden's after-tax net salary, if a written agreement was in place. However, we again do not believe that we would have advised this course of action due to the confusion it may have caused. As we were acting as auditors of the company, we would have advised that the salary first be paid to Ms Madden's personal bank account, to remove any chance of confusion and maintain a clear audit trail."*

[763] Mr De Maria submitted that in any event, salary sacrifice means the 'sacrificed' portion of the person's salary is deducted from their pay, and there does not appear to be any record or documentation of any salary sacrifice arrangement in place for Ms Madden. He said there also did not appear to have been any reduction of her pay to offset the amount said to have been 'salary sacrificed'.

[764] Mr De Maria stated he did not believe Ms Madden's excuse for the payment, and he believed there was sufficient evidence to justify a view that she misused company funds to pay her family law legal bills.

#### *Unauthorised payment of Ms Madden's home phone service*

[765] Mr De Maria said he reviewed the Telstra phone accounts being paid by Street Swags, which included telephone number [redacted] which he said was not a Street Swags office number, and he had since identified as being a service connected on 23 February 2016 to Ms Madden's private residence. He said Street Swags had been paying that account in full. He stated that while Ms Madden may have been entitled to recover some expenses from Street Swags, he did not believe she was entitled to use donated funds to pay her home phone bill in its entirety.

*Use and payment of cabins*

[766] Mr De Maria reiterated that the Board had only ever formally approved the construction of a prototype cabin. He noted at the Board meeting of 20 June 2015, it was resolved that the cabin project required further due diligence and a business plan, only one cabin was required as a prototype for the due diligence investigations, and no funds would be expended in relation to the Clarendon project or cabin project until the board had received and reviewed independent advice from Clayton Utz.

[767] Mr De Maria said however, following the departure of Ms Quinn, Mr Daley and Ms Ryan, Ms Madden and Mr Weiss had ‘ramped up’ production of the cabins. Mr De Maria said he had not questioned the production as the board only met every quarter and Ms Madden had assured him that Mr O’Reilly had approved production, which he believed at the time. He noted Mr O’Reilly had later informed him this was not true and confirmed only construction of a prototype cabin was approved.

[768] Mr De Maria said he had not realised how much money was being ‘pumped’ from Street Swags into the cabins project. He noted it had six full time staff earning salaries above \$100,000. He said in contrast, Ms Madden’s cash flow projections for 2015-2016 financial year had stated total expenses (wages) for the Clarendon project and cabin project for the 2015-2016 period was expected to be \$57,500.

[769] Mr De Maria said these matters were of great concern to him as he felt he had been misled and as a director of a public company dealing with donated funds from the public, he could be held liable for breaches of corporate law regarding governance and due diligence.

[770] Mr De Maria said he was aware of three cabins that had been manufactured, one being a display, one given to Mr Christian Hedberg, and one put on Ms Madden’s property, which Mr De Maria believed Ms Madden’s father lived in.

[771] He said regarding cabins on Ms Madden’s property, the following documents are relevant:

- (a) Weiss Saw Milling and Property Maintenance invoice number IN-00039 dated 23 November 2015, issued to Street Swags for a 7.2m Clarendon Cabin, electrical package, veranda with roof, VJ lining package, colonial doors and windows for \$27,765.65, has “Dad’s” handwritten on it in (sic).
- (b) Weiss Saw Milling and Property Maintenance invoice number IN-00049 dated 26 January 2016, issued to Walkabout Beds for custom made doors and windows and guttering kit for \$1,870.00, has “Dad no 2” handwritten on it in (sic).
- (c) On 17 February 2016, Ms Madden sent Ms Virginia Daniels an email which states:

*“There are a number of things that need work ... In particular Schedule 2c, as examples [sic], my one for Dad’s isn’t compliant because of the coloured glass and yours isn’t because of it not having lining”.*

Which attached a copy of the Manufacturing Contract for the cabins between Walkabout Beds and Mr Weiss. Item 7 of Schedule 2 of that contract states:

*“Weiss Sawmilling and Construction and its staff are not to make Manufactured Homes or Transportable Cabins for any other person or third party other than Walkabout Beds (or Walkabout Beds Pty Ltd or Street Swags Ltd’s future subsidiary.”*

[772] Mr De Maria said the records of Street Swags included invoices issued from Mr Weiss to Street Swags as follows:

- (a) INV-00039 dated 23 November 2015 (7.2m “Clarendon Cabin plus extras) for \$27,765.65.
- (b) INV-00040 dated 23 November 2015 (2.4m transportable cabin plus extras) for \$12,485.00.
- (c) INV-00041 dated 23 November 2015 (sublease and storage) for \$10,000.00.
- (d) INV-00042 dated 23 November 2015 (deposit for 44 cabins as per contract) for \$15,666.60.

[773] Mr De Maria said the cabins were paid for by Street Swags, using donated money which was given on the belief that the money was going towards manufacturing swags to assist homeless people. He said these transactions with Mr Weiss were not disclosed to the board, nor approved by it, and the transactions occurred while Ms Madden was in a defacto relationship with Mr Weiss and prior to declaring that to the board as required by law.

[774] Mr De Maria said it was apparent to him that Ms Madden and Mr Weiss had set up a “*straight cabin business*” and were selling cabins, and the business was funded by Street Swags. He said to his knowledge, no one that is homeless ended up in any of these cabins.

*Last meeting with Ms Madden regarding conflict issues and financial irregularities*

[775] Mr De Maria said he had a conversation with Ms Madden in mid-March 2016 as detailed at [294].

*Unauthorised purchase of the Toyota Land Cruiser*

[776] Mr De Maria confirmed Street Swags was the owner of a 2013 Toyota Land Cruiser paid for by a grant. Around 21 March 2016, without knowledge or approval of the board, Ms Madden traded in the Street Swags’ vehicle and purchased a brand new Land Cruiser for \$72,317.12, with \$50,978.58 funded by finance.

[777] He said at this time, a direction and authority was issued by Street Swags to Capital Finance, for it to pay \$50,978.58 to Bundaberg Toyota for the purchase of the 2016 Toyota Land Cruiser. He said this direction and authority was executed by Street Swags under signatures of Ms Madden as director and Ms Todd as company secretary.

[778] Mr De Maria said on 23 March 2016, Ms Madden executed and dated a finance document titled ‘Customer Onboarding Form’. He said also on 23 March 2016, Ms Madden dated and executed a Capital Finance Specific Security Deed on behalf of Street Swags, securing the loan for the purchase of the vehicle. Ms Todd executed the document on behalf of Street Swags as company secretary.

[779] Mr De Maria said on 24 March 2016, Capital Finance confirmed the transaction had settled. Street Swags became the registered owner of the Land Cruiser from 29 March 2016.

*Ms Madden's Suspension – 24 March 2016*

[780] Mr De Maria stated that on 24 March 2016, Mr O'Reilly arrived in Australia and they met around 9am at a café in Spring Hill to discuss financial documents and Mr De Maria's concerns. They agreed to seek immediate legal advice. They then attended Boss Lawyers' offices, where they further reviewed the financial records and Mr De Maria's concerns. Mr De Maria noted they conceded he had accepted Ms Madden's statements that she had spoken to Mr O'Reilly and had acted with his approval. It was also conceded that Mr O'Reilly had accepted Ms Madden telling him she had spoken with Mr De Maria and had his approval; and neither had thought to confirm these statements with the other.

[781] Mr De Maria said he and Mr O'Reilly agreed Ms Madden may have committed serious breaches of her duties to Street Swags in her capacities as director and employee of the company, including applying company funds for her personal expenses and conferring financial benefits on her de facto partner without proper authorisation, and further that it may be necessary to report matters to the police.

[782] Mr De Maria said he and Mr O'Reilly were also of the view that there was an urgent need to investigate financial irregularities identified in Street Swags' records, and to secure and account for the property of Street Swags, and that this needed to happen without interference. Mr De Maria said they were both concerned Ms Madden would try to interfere. Therefore, they resolved Ms Madden should be suspended on full pay, pending the outcome of an investigation into these concerns and the financial irregularities.

[783] Mr De Maria said in accordance with article 8.1 of the Street Swags Constitution, on 24 March 2016 the directors passed a written resolution in the following terms:

- (a) That Ms Madden be immediately suspended as Chief Executive Officer of Street Swags Limited until further notice.
- (b) That Ms Madden deliver up all property of Street Swags Limited in her possession or under her control to the office of Boss Lawyers at [address redacted] by 10.00 am on 29 March 2016.
- (c) That Ms Madden be prohibited from contacting any employee of Street Swags Limited concerning her suspension until further notice.
- (d) That Ms Madden be prohibited from entering any premises of Street Swags.

[784] Mr De Maria said the purpose of the suspension was to enable an independent audit and forensic investigation of Street Swags' financial affairs without interference or loss of evidence, after which Ms Madden would be given an opportunity to respond before any final decision was made.

[785] Mr De Maria said the timing of the suspension was based on the events recorded in his statement, including the timing of Mr O'Reilly's return from Cambodia.

[786] On 24 March 2016, Boss Lawyers prepared a letter to the Directors of Street Swags, constituting Mr De Maria and Mr O'Reilly only. The letter contains privileged legal advice

which has been waived by the Respondent. Pertinent parts of the letter are as follows, and demonstrate what was within the Respondent's knowledge at the time:

*"We have been instructed to provide you with urgent advice on the corporate governance of Street Swags Limited (ACN 127 605 832) (**Street Swags**).*

***Scope of Advice***

*You have sought advice on whether Ms Jean Madden, Chief Executive Officer and Director of Street Swags has committed breaches of any of the following:*

- A. Her statutory duties owed to Street Swags pursuant to the Corporations Act 2001 (Cth);*
- B. Her fiduciary duties owed to Street Swags at law; and*
- C. Her employment obligations as Chief Executive Officer of Street Swags.*

***Summary of Advice***

*Based on the information provided to us, there is prima facie evidence that Ms Madden has breached her duties in all of the categories outlined in paragraphs A to C above.*

*Given the extent of the apparent breaches and the urgent timeframe we have confined our advice to her statutory and employment obligations.*

.....  
.....

***The Manufacturing Contract***

9. *On or about 1 December 2015, Jean Madden, on behalf of Walkabout Beds, executed a contract with Carl Weiss whereby he would manufacture Manufactured Homes/Transportable Cabins (**the Manufacturing Contract**).*

10. *Ms Madden did not seek the approval of the board of Street Swags before signing the Manufacturing Contract.*

11. *The Manufacturing Contract included a number of terms which appear to operate solely to the advantage of Mr Weiss, including inter alia:*

- (a) By cl 3.1(b): Walkabout Beds will order the greater of a minimum of 44 Manufactured Homes/Transportable Cabins or \$528,000 worth of Manufactured Homes/Transportable Cabins from Mr Weiss each calendar year;*
- (b) By cl 8.3: if it chooses to terminate the Manufacturing Contract, Walkabout Beds will cover any expenses connected with termination of the Manufacturing Contract, including (but not limited to) Mr Weiss's obligations in respect of his leased business premises;*
- (c) By Schedule 2, item 8: Walkabout Beds will provide Mr Weiss with a copy of its financial statements at the end of each calendar year; and*

(d) *By cl 9.1: Mr Weiss will be paid \$10,000 per year to store property of Street Swags and Walkabout Beds including a Holden Colorado Ute (the Ute).*

12. *Mr Weiss appears to have the exclusive use and enjoyment of the Ute.*

13. *On 14 March 2016, Mr Weiss revealed by email that he was trading whilst insolvent. Despite this, no action has been taken to terminate the Manufacturing Contract.*

14. *On 14 March 2016, Ms Madden proposed that Street Swags pay Mr Weiss a retainer of \$130,000 per annum and with back pay to 1 December 2015.*

#### *Conduct of Street Swags' Affairs*

15. *Ms Madden has been operating outside of the delegations given to her by the board of Street Swags and making major financial decisions, including the purchase of vehicles, computers and other equipment as well as the awarding of various contracts.*

16. *The staff of Street Swags is largely comprised of friends and/or relatives of Ms Madden who operate with little apparent supervision.*

17. *Ms Madden refuses to adhere to relevant regulations for the manufacture of the manufactured homes/transportable cabins.*

18. *In addition to the matters outlined above, there have also been a number of apparently improper transactions involving Ms Madden, including, inter alia:*

- (a) On 7 March 2016, Ms Madden paid debts owing by Mr Weiss using a credit card in the name of Street Swags;*
- (b) On 17 March 2016, Ms Madden began transferring \$2500 per week from Street Swags' accounts to Mr Weiss to cover his operating expenses; and*
- (c) On various dates, Ms Madden has incurred expenses at various retail and dining outlets seemingly unconnected with the business of Street Swags.*

.....  
.....”

**[787]** On 24 March 2016, Boss Lawyers provided a letter of suspension to Ms Madden by email and registered post, outlining the terms of her suspension including the right to respond to any allegation made against her following the conclusion of the investigation. Mr De Maria noted the letter also directed Ms Madden to:

- (a) Return all property of Street Swags in her possession or control;
- (b) Not to attend the premises of Street Swags
- (c) Not contact any staff, donors, or make any appearances or statements to the media or anyone else on behalf of Street Swags in relation to these matters until further notice.



[788] Mr De Maria said Ms Madden ‘wilfully disregarded’ these directions and seriously hindered the investigation.

*Notice to National Australia Bank – 24 March 2016*

[789] Mr De Maria and Mr O’Reilly attended at NAB’s Ashgrove branch on 24 March 2016, and suspended Ms Madden’s access to Street Swags’ accounts held by NAB. Mr De Maria said this was done by presenting a letter from Boss Lawyers with a copy of the ASIC Current Organisation Extract. Mr De Maria said they did not seek or request that Street Swags’ account be frozen. He said his understanding was that the accounts became frozen when Ms Madden contacted NAB to dispute the suspension and NAB followed their own protocol regarding a dispute between directors and locked down the accounts until the dispute was resolved.

*Notice to staff regarding Ms Madden’s Suspension*

[790] Mr De Maria said around 8.18am on 25 March 2016, he emailed Street Swags’ staff providing a statement regarding Ms Madden’s suspension. The statement provided that: Ms Madden had been suspended on full pay until further notice; staff were not to communicate with Ms Madden regarding her suspension or any business related aspects of Street Swags or Walkabout Beds and to advise Mr De Maria or Mr O’Reilly if Ms Madden attempted such communication; and it would be business as usual at Street Swags, with the directors assuming day-to-day control of the company.

[791] Mr De Maria stated Ms Todd and Ms Cleland ignored this notice and joined Ms Madden and assisted her in ‘acts of serious misconduct’.

*Unauthorised attendance at Street Swags office*

[792] Mr De Maria said on Saturday, 26 March 2016, he and Mr O’Reilly arranged for the locks to be changed on the office doors to secure the books and records over the Easter public holiday weekend, and for a security guard to attend until the financial investigation had been completed.

[793] He said that on 29 March 2016, he attended the shopping arcade where the offices were located and saw Ms Madden and Mr Weiss who had locked themselves in the common area of the shopping arcade. Mr De Maria said his key for the gate didn’t work in the lock, and Mr Weiss said words to the effect, “*I changed the lock*”. Mr De Maria said this meant none of the shop owners could access the shopping arcade.

[794] Mr De Maria phoned the police and two police arrived followed by a police sergeant, who said: “*This is a public space. You have to unlock the gate*”. Mr Weiss did so. Mr De Maria said he then spoke with the sergeant and showed him the recent ASIC search that Boss Lawyers had obtained. He said the sergeant said words to Ms Madden and Mr Weiss to the following effect:

*“This is obviously a civil dispute. The ASIC search shows that Mr De Maria and Mr O’Reilly are current directors of Street Swags. We are going to maintain the status quo. Mr De Maria and Mr O’Reilly are allowed on the premises because they are the*

*current directors, so you are excluded from the premises. If you want to challenge this, the matter will have to be resolved by way of civil proceeding and court order.”*

[795] Mr De Maria confirmed Ms Madden and Mr Weiss sat in the arcade all day. Ms Todd sat with them also. He said at one point, Ms Todd confronted him, together with Mr Harley and demanded entry on the basis that she was the Street Swags company secretary. He said there was the following exchange:

Ms Todd:                   What’s going on with Jean?

Mr De Maria:            There is an investigation. I can’t really talk about it.

Ms Todd:                   I am the company secretary and I want to know what is happening.

Mr De Maria:            You’re not the company secretary of Street Swags. You’ve been signing financial documents as the company secretary but you’re not authorised to do so.

Ms Todd:                   I’m on ASIC and ACNC.

Mr Harley:                You are not recorded as the company secretary.

[796] Ms Todd asked to look at the ASIC search Mr De Maria was holding, and he handed it to her. Mr De Maria said she appeared to read it and handed it back to her. Ms Todd then said words to the effect: “*You have doctored that document.*”

[797] Mr De Maria said that while he and Mr O’Reilly were at the office, a locksmith arrived at the arcade and advised him Ms Madden had called for the locks to be changed. Mr De Maria told the locksmith of Ms Madden’s suspension and advised him she had no authority to arrange for the locks to be changed, further to which the locksmith left.

[798] Mr De Maria said he was informed by Mr Vendo Vincent, director and manager of Queensland Security Solutions, that Ms Madden telephoned him at 2pm on 29 March 2016 and told him that Mr O’Reilly and Mr De Maria were ‘under investigation’ and not authorised to act on behalf of Street Swags.

[799] Mr De Maria said on 6 April 2016 around 5.30pm, he received a call from Queensland Security Solutions saying a number of people saying they were employees of Street Swags were attempting to gain access to the Street Swags office. Mr De Maria said he then attended the Street Swags office and saw Ms Madden, Mr Weiss and about seven others were at the premises with two removals vans. Mr De Maria said the group was aggressive towards the security guard and were shoving and pushing him. Mr De Maria said the security guard was preventing their access to the office, however they were attempting to barge in and the security guard was trying to hold them back. Mr De Maria said Mr Weiss was arguing with the guard and grabbing his wrist; Mr Weiss then pushed the office door off its rail.

[800] Mr De Maria said in accordance with their instructions, Boss Lawyers wrote to McCullough Robertson complaining of the attempted access to the premises.

**[801]** Mr De Maria said the next morning he discovered that someone had put heavy duty locks on the u-bolts of the office door so that they could not open it or gain access to the office. Mr De Maria therefore arranged to have those cut off.

**[802]** He said some weeks later, while Mr Daley, Ms Ryan and himself were in the office, a 'rough looking male' entered the office holding a golf club in a threatening manner. The man was agitated and aggressive, and he stood over Mr De Maria who was at his desk. The man said words to the effect:

*"I know who you are and I know where your family lives. I am here to get you to get the fuck out of this office. ... You can call bad people, you can call really bad people, and when Jean rings Redeye, you know you have called the worst fucking person. ... I love your hair. I used to put lippy on boys on the inside who had hair like yours."*

**[803]** Mr De Maria said they called the police and the man was arrested. Mr De Maria said he was later told by the police that the man had said Ms Madden had only asked him to help with the move. The man was charged with 'trespass with intent', and the police told Mr De Maria that because the man had a serious criminal history, including armed robbery, they should consider relocating. Mr De Maria said about three days later, his family relocated to another address.

**[804]** Mr De Maria believed that by attending the offices, Ms Madden wilfully failed to comply with the board's direction of 24 March 2016 not to attend the premises and not to contact the staff of Street Swags. Mr De Maria also believed Ms Madden arranged for the man calling himself 'Redeye' to threaten him so that she could stop the enquiries into the financial irregularities.

*Falsely backdated Street Swags company secretary appointment*

**[805]** Mr De Maria noted that following him saying to Ms Todd outside the offices on 29 March 2016 that she had been signing finance documents without authorisation, that night Ms Madden filed the Change to Company Details form with ASIC. As already noted in his evidence, Mr De Maria confirmed the appointment date was backdated to December 2015.

*Unauthorised meetings of 28 and 29 March 2016*

**[806]** Mr De Maria noted that during Ms Madden's suspension, she purported to call a meeting of the members on 28 March 2016 at 6pm.

**[807]** He said around 5.44pm that night, Street Swags by Boss Lawyers emailed a letter to the members of Street Swags advising Ms Madden had no authority to organise the meeting, the meeting would be invalid, and any resolution would be 'null and void'.

**[808]** Mr De Maria said he did not believe the appointment of the directors was a genuine appointment. Mr De Maria referred here to Mr Booth and Dr Thornton having filed evidence that their appointments were temporary, and the day after their appointments, they purported to reinstate Ms Madden as CEO of Street Swags.

**[809]** Mr De Maria said on 19 May 2016, Dr Thornton emailed Boss Lawyers and copied in Mr De Maria. The email stated:

*“Dear [name],*

*Do go and get fucked, you unpleasantly malodorous little dog on the arse of the legal profession.*

*As you have made abundantly clear on behalf of your con artist client, I am not nor have I ever been a director of Street Swags. I have no influence upon anything whatsoever to do with Street Swags. You well know this, so your continuing correspondence can only be part of your general tactic to bully your victims.*

*Further harassment of me will result in (privileged, naturally) complaints to the Legal Services Commission and the Law Society, whichever route will result in your well-deserved reputation for dodginess becoming the more widespread and you and your colleagues’ registration with Centrelink the sooner.*

*This correspondence is at an end.”*

**[810]** Mr De Maria said Street Swags was forced to bring an application in the Supreme Court to deal with this conduct. He said the parties eventually agreed to consent orders that all resolutions passed at the meeting of 28 March 2016 were invalid.

*Direction to Staff regarding temporary closure of the office – 29 March 2016*

**[811]** Mr De Maria said as a result of the events of 28 and 29 March 2016 at the Street Swags’ office, on 29 March 2016 an email via Boss Lawyers was sent to the staff of Street Swags:

- (a) Advising the staff that the office was temporarily closed and directing the staff not to attend the Street Swags office until further notice;
- (b) Advising the staff that they would be paid as usual during the temporary closure; and
- (c) Directing staff to direct all enquiries to Mr O’Reilly or Mr De Maria.

*Unauthorised transfer of the staff of Street Swags*

**[812]** Mr De Maria said following the direction that staff not attend the offices, Ms Madden appears to have contacted the staff and redirected them to Mr Weiss’s business premises. He said after that, the staff never returned to Street Swags.

**[813]** He said this is reflected in Ms Cleland’s statement where she states she was aware of staff working from the Darra office during 29 March 2016, and on 30 March 2016 she received an email from Ms Madden advising that staff were to attend work at the Darra office.

**[814]** Mr De Maria said Street Swags has never had an office at Darra. He believed the office referred to is the business premises of Mr Weiss’s business, which he said means Ms Madden had diverted staff of Street Swags to work from Mr Weiss’ shed and this was done without knowledge or approval of the board.

**[815]** He said without authority, Ms Madden, assisted by Ms Todd and Ms Cleland, proceeded to engage in wrongful conduct that was seriously harmful to the business of Street

Swags and was in breach of Ms Madden's contract of employment and in breach of her duties as fiduciary and director of Street Swags and Walkabout Beds.

*Lodging false Street Swags records with ASIC*

**[816]** Mr De Maria said that at 5.23pm on 29 March 2016, Ms Madden lodged documents with ASIC without Mr De Maria's knowledge or consent, and which falsely reported Mr O'Reilly and himself had ceased being directors on 28 March 2016. The documents further purported to appoint Dr Thornton, Mr Booth and Dr Richards as directors of Street Swags, and appointed Ms Todd as company secretary (backdated to 11 December 2015).

*Dismissal for lodging false records with ASIC*

**[817]** Mr De Maria said he and Mr O'Reilly became aware of the falsely lodged records on 30 March 2016, and based on legal advice obtained from Boss Lawyers, they formed the view that this conduct constituted serious misconduct by Ms Madden justifying dismissal, and further that it was necessary to do so to try to protect Street Swags from harm caused by further misconduct.

**[818]** Mr De Maria confirmed that on 30 March 2016, Boss Lawyers wrote to McCullough Robertson Lawyers, who he says at the time were taking instructions from Ms Madden, setting out the allegation of misconduct by Ms Madden in relation to a proposed round table discussion with the new directors appointed by Ms Madden to replace the proper directors.

**[819]** He said on the same date, by written resolution, the board of directors of Street Swags resolved that Ms Madden be summarily dismissed as CEO for serious misconduct. Boss Lawyers were instructed to write to Ms Madden on that date, notifying her of her dismissal and the primary reason for it.

*Suspension of bank accounts – 30 March 2016*

**[820]** Further to Ms Madden's alteration of the ASIC records, Boss Lawyers were instructed to write to NAB on 30 March 2016, to confirm the continuance of the suspension of Ms Madden's access to Street Swags' account and advising that a Supreme Court application would be brought.

**[821]** Boss Lawyers were also instructed to write to Bendigo and Adelaide Bank on 31 March 2016, to advise of Ms Madden's suspension and dismissal, and to direct that her access to the nominated accounts of Street Swags cease until further notice.

**[822]** Mr De Maria said Street Swags did not regain access to the accounts until around 15 April 2016.

*Unauthorised access to confidential email on Mr De Maria's email account*

**[823]** Mr De Maria referred to Ms Cleland's statement and her evidence that she accessed his emails on 2 April 2016. Mr De Maria said she has exhibited emails that are confidential and highly sensitive emails between Mr O'Reilly and himself, regarding Ms Madden's suspension, the investigation and police involvement, which she forwarded to Ms Madden's email address on 2 April 2016.

**[824]** Mr De Maria stated he never authorised Ms Cleland to access his emails, and he had no knowledge of this until reading her statement filed in the Commission. Mr De Maria said the sent folder and trash folder of his email account did not contain copies of the emails she sent. He therefore believed after sending the emails, Ms Cleland deleted the files to conceal her access.

**[825]** Mr De Maria said at no time did Ms Madden disclose to him that she had received copies of the correspondence from Ms Cleland. He noted that the copies exhibited in Ms Cleland's statement appear to be copies received by Ms Madden, and not copies printed off directly by Ms Cleland.

**[826]** Mr De Maria believed this conduct by Ms Cleland was a breach of her employment contract, in that she was aware of Ms Madden's suspension, the conduct was unlawful and deceptive, and in breach of the directions to staff of 25 March 2016 not to communicate with Ms Madden or discuss Street Swags matters with her, and to inform Mr De Maria of any contact. Mr De Maria said based on these events, he believed Ms Madden was heavily involved in Ms Cleland's unauthorised access to his email account.

**[827]** Mr De Maria said: *"I have no idea how long my email account has been hacked by these people"*. It is apparent that Mr De Maria did not have knowledge of Ms Cleland's actions at the time of Ms Madden's dismissal.

#### *Unauthorised creation of new bank accounts*

**[828]** Mr De Maria said he later discovered emails on the Street Swags email server which were sent on 4 April 2016, which show that Ms Cleland and Ms Todd had set up new bank accounts for Street Swags with Commonwealth Bank, on or before that date, and had emailed Ms Madden and Ms Todd those details. Ms Madden responded by email, *"Well done ladies"*.

**[829]** Mr De Maria said the new accounts were unauthorised and he had no knowledge of the new accounts; and further, he was told by Mr O'Reilly that he had no knowledge of them either.

**[830]** Mr De Maria believed this conduct by Ms Todd and Ms Cleland was a breach of their employment contracts as they were aware of Ms Madden suspension, and the conduct was in breach of the directions of 25 March 2016. Mr De Maria believed Ms Todd and Ms Cleland were working 'under' Ms Madden at this time and Ms Madden had them engage in this conduct.

#### *Unauthorised diversion of bank correspondence*

**[831]** Mr De Maria also discovered an email thread containing an email of 6 April 2016, from Ms Todd to Mr McKillop of the Commonwealth Bank, where Ms Todd states:

*"Something we forgot to mention, we aren't always in the office and the mailman has a habit of dropping things on the ground outside.  
When sending anything to Street Swags, can you please send to [GPO Box address redacted]"*

[832] Mr De Maria said Mr McKillop had responded: “*Not a problem, I have changed (sic) mailing address on file to GPO Box for all correspondence.*”

[833] Mr De Maria said that GPO Box was held by Street Swags, but Street Swags paid Mail Direct to clear the box and deliver the mail to the Street Swags office at Ashgrove. He said he later discovered that around this time, Ms Madden had arranged to have Mail Direct deliver the mail to Mr Weiss’s business address at Darra.

[834] Mr De Maria’s evidence was that he was not aware of any problem regarding the mail delivery person dropping mail on the ground outside of Street Swags’ offices. Mr De Maria believed that Ms Madden made this statement to justify diverting correspondence from the Street Swags office to a PO Box controlled by Ms Madden, Ms Todd and Ms Cleland so that the existence of the new account was concealed from Street Swags.

[835] He also believed that this conduct was a breach of Ms Todd’s employment contract as she was aware of Ms Madden’s suspension, and it was in breach of the directions of 25 March 2016. Mr De Maria reiterated his belief that Ms Todd and Ms Cleland were working ‘under’ Ms Madden.

*Unauthorised contact with donor to divert donated funds*

[836] Mr De Maria submitted he found emails on the Street Swags email server as follows, noting that these emails were not discovered prior to Ms Madden’s dismissal:

- (a) Email dated 5 April 2016 from Ms Cleland (CC Ms Todd) to one of Street Swags biggest donors [name redacted], that Street Swags had changed its bank account to the Commonwealth Bank, provided him with new (unauthorised) bank account details, and advised him that they would send him a deposit book;
- (b) Email thread dated 5 April 2016 between Ms Todd and the donor confirming that he is to use the new account;
- (c) Email dated 10 April 2016 from the donor to Ms Todd confirming his first deposit into the new account.

[837] Mr De Maria said he also discovered an email on Street Swags’ email server dated 12 April 2016 between Ms Todd and a school teacher, who had been attempting to donate \$350 to Street Swags as a result of the fundraising of selling hot chocolates during winter. Ms Todd responded that the cheque could be delivered or sent to the Darra premises. Mr De Maria believed this conduct by Ms Todd was also in breach of her employment, in light of her being aware of Ms Madden’s suspension, and the conduct being in breach of the directions of 25 March 2016.

[838] He reiterated his belief that these actions were at Ms Madden’s direction.

*Unauthorised withdrawals from Street Swags’ Bendigo Bank account*

[839] On 4 April 2016, Bendigo Bank emailed Boss Lawyers advising that ‘no withdrawal’ stops had been placed on the Street Swags accounts.

[840] Mr De Maria was told by Boss Lawyers that on 5 April 2016, Bendigo Bank informed Boss Lawyers that on or around 1 April 2016, Ms Madden accessed the Bendigo Bank

accounts and disbursed a total of \$5,821.09 in funds from the CSB Cash Management Trading Account over several transactions. Ms Madden's evidence on this matters is that the money was used to pay staff salaries.

*Unauthorised attempt to change signatories on Bendigo Bank Account*

[841] Mr De Maria said on 15 April 2016, prior to the directors of Street Swags becoming aware of the unauthorised Bendigo Bank transactions, Boss Lawyers wrote to Bendigo Bank on Street Swags' instruction, to advise that an agreement had been reached regarding the signatories of the Bendigo Bank Accounts. Ms Madden had signed an agreement that the correct signatories on the Bendigo Bank accounts were to be Mr De Maria and Mr O'Reilly.

[842] On 29 June 2016, Boss Lawyers wrote to Bendigo Bank attaching an ASIC search confirming the proper directors of Street Swags were Mr De Maria, Mr O'Reilly, and Mr Daly.

[843] He said however on 30 June 2016, he was told by Boss Lawyers that they had been informed by the Bank that Ms Madden had attended the Mt Ommaney branch on 23 June 2016 with documents purporting to be minutes of a meeting. Ms Madden sought to have the signatories to the Bendigo Bank Accounts unlawfully changed to Mr De Maria as signatory, and to all the unlawfully appointed directors as signatories on the accounts. Mr De Maria said Boss Lawyers were informed that Ms Madden's request to change the signatories from the Bendigo Bank accounts were denied, and access to the accounts was 'frozen' pending unanimous agreement from the parties involved, or a court order.

[844] Mr De Maria said on 22 July 2016, Bendigo Bank emailed Boss Lawyers, confirming the events of 23 June 2016 and providing copies of the bank statements showing unauthorised withdrawals from the account.

*False ASIC document removing Walkabout Beds company secretary*

[845] Mr Gillett was the company secretary of Walkabout Beds from 19 December 2009. Mr De Maria said on 11 April 2016, Geraghty Accountants electronically lodged a Change to Company Details Appointment or Cessation of a Company Officeholder to ASIC, which was certified as true and complete and was digitally signed by Ms Madden on 11 April 2016. This document recorded that Mr Gillett had ceased as company secretary with his cessation date backdated to 20 March 2016.

[846] Mr De Maria said Mr Gillett informed him that he was completely unaware of Walkabout Beds being put into voluntary administration, and he was completely unaware of his appointment ending.

[847] Mr Gillett told Mr De Maria that he had not been consulted by anyone about being removed as secretary, or regarding the opening of a new bank account, or Walkabout Beds being put into voluntary administration.

[848] Mr De Maria noted any decision to put Walkabout Beds into administration should have been put to the members and board of directors of Street Swags, but Ms Madden failed to do so. Mr De Maria's understanding was that to put the company into administration required the signature of its director and the company secretary, which would be Mr Gillett.



**[849]** Mr De Maria submitted that Street Swags' email server also provided the following:

- (a) Email thread dated 6 April 2016 between Geraghty Accountants, Ms Madden and Ms Todd in which Ms Todd appointed Geraghty Accountants as agents with ASIC and asked Geraghty Accountants to send through the paperwork to update the Walkabout Beds (referred to as 'WAB') directors.
- (b) Email thread dated 8 April 2016 between Geraghty Accountants, Ms Madden and Ms Todd titled 'Form 484 to remove Kevin Gillett as director', in which Ms Todd asked Ms Madden to sign the Form 484 to remove Mr Gillett.
- (c) Email from Ms Todd to Mr Weiss dated 11 April 2016 attaching a copy of a Form 484 Change to Company Details Appointment or Cessation of a Company Officeholder to remove Mr Gillett as company secretary.
- (d) Email thread dated 11 April 2016 between Geraghty Accountants and Ms Todd in which Ms Todd sent the signed Form 484 to Geraghty Accountants.

*Unauthorised removal of Mr Gillett from Walkabout Beds bank account*

**[850]** Mr De Maria said Street Swags' email server recorded an email thread dated 6 April 2016 between Mr McKillop of Commonwealth Bank and Ms Todd in which Mr McKillop confirmed Ms Madden and Mr Gillett were identified as signatories to its accounts, and which attached various documents including a company search of Walkabout Beds showing Mr Gillett as current secretary.

**[851]** Records also showed an email thread of 11 April 2016, in which Ms Todd advised Commonwealth Bank that the cabins project was located at the Darra address, and requested that the bank login toggles be couriered to that location. Commonwealth Bank responded that the 'correct address' was fixed and the login tokens were on their way. Once Ms Todd had these, she would be able to amend the online banking platform for other users. Mr De Maria said the chain showed Ms Todd responding:

*"We have updated Walkabout Beds, Kevin Gillet hasn't been the secretary roughly since 2012. It should hopefully be completed by now if you want to send through the paperwork for the walkabout beds, we will complete and get back to you"*

**[852]** Commonwealth Bank responded:

*"Paperwork is attached for Walkabout Beds. I will do a new company search when you send the documents back to make sure that Kevin has been removed. If another person has replaced Kevin please let me know who this is...so I can check if they have been 100 point identified through CBA."*

**[853]** Mr De Maria said Ms Madden put Walkabout Beds into voluntary administration three days later, thereby hindering further investigation of the bank accounts of Walkabout Beds.

*Supreme Court Interlocutory Application*

**[854]** On 12 April 2016, Boss Lawyers were instructed to file an interlocutory application by Street Swags in the Supreme Court, against Ms Madden, Dr Thornton, Mr Booth and Dr Richards seeking in respect of Street Swags or Walkabout Beds:

- (a) To restrain the respondents from dealing with or disbursing any of their monies, dealing with any of their bank accounts, dealing with or destroying any of their property, or entering upon any of their premises; and
- (b) An order that Mr De Maria and Mr O'Reilly were authorised to operate the bank accounts to pay necessary operating expenses.

*Ms Madden's letter responding to issues – 13 April 2016*

**[855]** Around 13 April 2016, Boss Lawyers received a letter from Ms Madden responding to the allegations against her.

**[856]** Mr De Maria said that response was considered, “*but it went nowhere near justifying either what we were seeing in the accounts and the continued misconduct by Ms Madden set out in this statement*”.

*Settlement regarding Court proceedings and related matters*

**[857]** Mr De Maria said that on 14 April 2016, Boss Lawyers made an offer to settle the Supreme Court proceedings on the following basis:

- (a) That all parties agree that the proper directors of Street Swags Limited are Adrian De Maria, Brian O'Reilly and Jean Madden;
- (b) That the directors undertake to call a meeting of directors to discuss, inter alia, the calling of a valid meeting of members;
- (c) That the directors appoint an independent auditor to undertake a forensic audit of Street Swags finances.
- (d) That Ms Madden be stood down as Chief Executive Officer (on full pay) until the completion of the independent audit.
- (e) That the directors be empowered to authorise the payment of all expenses incurred since 24 March 2016, including, inter alia, the payment of legal and security fees.
- (f) That the parties sign a consent order that:
  - i. The proper directors of Street Swags are Ms Madden, Mr O'Reilly and [Mr De Maria];
  - ii. The Unauthorised Meeting of 28 March 2016 is declared to be invalid;
  - iii. All resolutions passed at the purported Meeting of Members on 28 March 2016 are declared to be invalid;
  - iv. The ASIC register be rectified.

**[858]** He said that on 14 April 2016, Ms Madden accepted the offer in writing, agreeing to its terms. Dr Thornton, Mr Booth and Dr Richards also consented to the consent order which had the effect of invalidating their appointments as directors.

*Unauthorised voluntary administration of Walkabout Beds*

**[859]** On 15 April 2016, Mr O'Reilly and Mr De Maria received an email from Ms Madden, advising that she had put Walkabout Beds into administration because “*according to her*” she held concerns as to Street Swags Limited’s solvency. Mr De Maria noted that Walkabout Beds was a wholly own subsidiary of Street Swags, and he and Mr O'Reilly were surprised

by this development as it made no commercial sense to Mr De Maria, “*except to cause as much collateral damage to Street Swags Limited as possible*”.

**[860]** Mr De Maria said that at the time of filing his witness statement, he then knew that Walkabout Beds was placed into voluntary administration on 14 April 2016, the same day that Ms Madden signed the agreement to settle the Supreme Court proceedings.

*Failure to keep proper financial records of Walkabout Beds*

**[861]** Mr De Maria said that the administrators of Walkabout Beds provided in its Report to Creditors dated 13 May 2016, that Walkabout Beds’ books and records were inadequate and deficient, and concluded that:

*“Our review of the limited information and records available indicates the company records may not have been maintained in accordance with the requirements of section 286 of the Act.”*

**[862]** Mr De Maria’s understanding was that s.286 of the *Corporations Act* placed an obligation on Ms Madden to keep written financial records of Walkabout Beds which correctly recorded and explained its transactions, financial position, and performance, and which would enable true and fair financial statements to be prepared and audited. His understanding was that any failing to do so may be an offence under the Act.

**[863]** Mr De Maria believed that Pilot Partners, the administrators, were of the view that Ms Madden did not keep appropriate financial records as required under the Act.

*Damage to Street Swags from putting Walkabout Beds into voluntary administration*

**[864]** Mr De Maria said that the Worrells Solvency & Forensic Report dated 19 May 2016 states:

(a) At paragraphs 73-74, that:

*“73. By appointing voluntary administrators, Ms Madden has exposed [Street Swags] to considerable liabilities due to the guarantees on the financial agreements.”*

*“74. In addition, any amount due to [Street Swags] by [Walkabout Beds] (claimed to be \$197,482, however I understand that this is yet to be confirmed by the administrators) is unlikely to be recovered.”*

(b) At paragraph 70-71, that:

*“70. Given that [Street Swags] was the sole shareholder of by [Walkabout Beds] and therefore the sole beneficiary of the profits generated by that company, it is not clear why Ms Madden did not simply resign as a director of Walkabout Beds and appoint a director or board member of [Street Swags] to take her place.”*

**[865]** Mr De Maria said he did not understand how Walkabout Beds could be legitimately indebted to Street Swags in the amount of \$197,482 or how those funds could legitimately be missing from Walkabout Beds. He said that due to Walkabout Beds being put into voluntary

administration, the Board of Street Swags did not have access to the accounts and records of Walkabout Beds “(to the extent that they actually exist)”, which hindered their ability to investigate the missing funds.

**[866]** He said that at the time Ms Madden had put Walkabout Beds into voluntary administration, she knew of the investigation into financial irregularities involving transferred funds from Street Swags to Walkabout Beds, Ms Madden and Mr Weiss, and that the board intended to involve the Queensland Police Service. He said the appointment of administrators to Walkabout Beds hindered any investigation into the financial governance of Walkabout Beds. His view therefore was that there were sufficient grounds to conclude Ms Madden had acted contrary to her fiduciary and statutory duties as a director to act in good faith, which was continuing to cause harm to Street Swags and was hindering the financial investigation, and that this conduct was ‘serious misconduct’ justifying summary dismissal.

*Denial of Street Swags’ Xero accounting records*

**[867]** Mr De Maria said that Street Swags was using a cloud-based accounting software program, Xero. All of Street Swags’ financial data was stored in the cloud based system, accessible only through an account held under the email address of streetswags@gmail.com, and subsidiary accounts held by Ms Cleland and Geraghty Accountants.

**[868]** Mr De Maria said following Ms Madden’s suspension, it became necessary for the board of directors to access Street Swags’ Xero account in order to pay staff and continue the investigation into financial irregularities. He said however, once the bank accounts were unfrozen, they discovered that they were unable to access the payroll information held on the Xero account.

**[869]** He said that from 10 April 2016, Ms Cleland refused to hand over the Xero account information that would allow them access to the system to make the relevant payments. He said at that same time, she was making demands for payment of her outstanding wages. He attached various email correspondence to his statement in support of this submission.

**[870]** Mr De Maria said that non-payment of wages later became a ground for her claim of psychological injury in support of her workers’ compensation claim against Street Swags. He said that as the company bookkeeper, Ms Cleland knew that without access to the accounting software, they could not make payments to staff. He said she probably also knew this because at the time she was secretly accessing his emails.

**[871]** Mr De Maria confirmed that Ms Cleland held the password to the Xero account, but his understanding is that she transferred it to Ms Madden some time prior to 19 May 2016.

**[872]** He said that on 27 April 2016, Geraghty Accountants emailed Boss Lawyers advising that its access to the Xero account had been revoked by Ms Cleland on 14 April 2016. He noted 14 April 2016 was the last day that Ms Cleland attended work at the Street Swags office.

**[873]** Mr De Maria said Ms Madden subsequently refused to hand over the login details, or to have the subscription transferred to the Respondent.

**[874]** On 29 April 2016, Ms Madden wrote to Boss Lawyers regarding various matters, including the following:

*“Your client Adrian De Maria has been trolling through staff email accounts including my own, going through all physical and electronic files in the office including my personal affairs and banking for over a month now, in order to find something to frame me with. So far the best you have come up with are a handful of normal company expenses most of which have already been audited. Let me make myself clear, there is no way I will be giving you or your clients my personal Xero login, a full backup of which has already been taken by forensic auditors 29 March 2016. I look forward to them taking an update to show your more recent activities of serious misconduct.”*

**[875]** He said that he was told by Boss Lawyers that following receipt of this correspondence, Boss Lawyers contacted Geraghty Accountants who confirmed they are not forensic accountants, and at no time had they carried out a forensic audit of Street Swags, and Ms Madden had not provided them with a backup of the Xero file.

**[876]** Mr De Maria said that Boss Lawyers wrote to Ms Madden on 29 April 2016 advising of this, and demanding delivery of the login details or transfer of the account back to Street Swags, and repeated the request on 3 May 2016.

**[877]** On 4 May 2016, Boss Lawyers wrote to Xero accounting, requesting that it immediately transfer the Street Swags’ Xero access to admin@streetswags.org.au. He said that on 11 May 2016, Angela from Salesforce on behalf of Xero Support emailed Boss Lawyers rejecting this request and offering to contact Ms Madden about the subscription transfer request.

**[878]** Mr De Maria said that in accordance with Street Swags’ instructions, Boss Lawyers wrote to Xero Accounting on 12 May 2016, disputing the basis of the rejection. On 13 May 2016, Angela from Salesforce emailed Boss Lawyers advising:

*“Ms Madden has declined the request to transfer the subscription to your client at this time. She is also currently unwilling to upgrade the level of your clients’ access to the subscription from ‘read only’ to a higher level of access. However, Ms Madden has said that she will provide payroll information to you or your client so that staff entitlements can be determined.”*

**[879]** Mr De Maria said Ms Madden continued to refuse to hand over the Xero subscription, and therefore they were forced to take court action to recover it. On 3 June 2016, Street Swags filed an originating application of recovery of that and other property of Street Swags. On 24 June 2016, Magistrate Cosgrove ordered that Ms Madden deliver up property of Street Swags including transfer of the Xero Accounting subscription to Street Swags, with costs ordered against Ms Madden.

**[880]** Mr De Maria said that Street Swags did not gain full access to the Xero accounting subscription until 27 June 2016, and on accessing the system they discovered that all of Street Swags’ payroll records had been deleted. He believed that the files were deleted on purpose, to conceal financial irregularities contained in the records, which he believes was done out of malice.

**[881]** Mr De Maria said they were forced to request assistance from the Xero technical support team. On 30 June 2016, the support team recovered records that had been deleted, however the financial records of Street Swags were incomplete, and many were missing from the office.

**[882]** Mr De Maria said that the board of Street Swags arranged for DLS Accountants to take over from Geraghty Accounts, and DLS had since advised that the Xero accounts appear to have been amended to remove itemization of cash payments, which cannot be reconciled. He said they advised they could not proceed with the appointment as there were insufficient financial records to enable them to do so.

**[883]** Mr De Maria said that attachments to the letter from DLS Accountants included a copy of:

- (a) A letter dated 30 June 2016 that DLS Accountants sent to Geraghty Accountants to request the following financial documents from them; and
- (b) A letter dated 11 July 2016 from Geraghty Accountants advising that:

*“The directors should already have copies of prior year financial statements. We do not have the company secretarial file in our possession”.*

**[884]** Mr De Maria said that since that time, Geraghty Accountants have provided no documents to DLS Accountants.

**[885]** Mr De Maria said that the delay in the Respondent gaining full access to the Xero subscription caused by Ms Cleland and Ms Madden was a major factor in the delay in payment of wages to staff. He reiterated that despite this, non-payment of wages was then used as a ground of justifying a workers’ compensation claim by Ms Cleland and Ms Todd, referred to in Ms Madden’s material.

**[886]** He said the denial of accounting records and missing records had seriously hindered the board’s ability to properly investigate the financial irregularities.

*Ms Madden’s resignation as director*

**[887]** Mr De Maria said that on 20 April 2016, he and Mr O’Reilly received an email from Ms Madden resigning as director of Street Swags. He said that on that same date, Ms Todd resigned from her employment with Street Swags.

*Unauthorised re-direction of Street Swags mail*

**[888]** On 21 April 2016, Mr De Maria was informed by Mr Greg Heart, operations manager of Mail Plus, that Ms Madden had represented herself to Mail Plus as a representative of Street Swags, and had arranged to have Street Swags’ mail redirected.

**[889]** Mr De Maria said that at the relevant time, Ms Madden was stood down as CEO and had resigned as director of Street Swags, and Walkabout Beds was in voluntary administration.

**[890]** On 21 April 2016, Boss Lawyers wrote to Mail Plus to confirm Ms Madden was not authorised to represent Street Swags, and to request further information regarding the matter. Boss Lawyers raised this with Ms Madden, and in Ms Madden’s letter of 29 April 2016 to Boss Lawyers, she said:

*“Street Swags Ltd, Walkabout Beds, and 3 other entities share GPO Box 1846. Further to this I will likely represent myself until a ripe old age. I am happy to pass on the unopened Street Swags Ltd mail I have received. I actually had it with me at our meeting at Pilot Partners to give to you should you have asked, or been willing to engage in any dialog.”*

*Letter from Ms Madden asking if terminated*

**[891]** Mr De Maria said that on 21 April 2016, Ms Madden emailed himself and Mr O’Reilly, asking whether her employment had been terminated and provided calculations for her termination pay. They instructed Boss Lawyers to write to Ms Madden on 26 April 2016, to the following effect:

- (a) Confirming her suspension;
- (b) Asking that she give a full account of the money disbursed by her from the Street Swags Bendigo Bank account on 1 April 2016; and
- (c) Asking her to deliver up the Street Swags mail that she obtained during the time of the unauthorised redirection.

*Defamatory comments: video posted on Facebook*

**[892]** Mr De Maria said that on 30 June 2016, Ms Madden posted a video on her Facebook page publicly commenting on the financial irregularities of Street Swags and alleging that:

- (a) *“On top of this \$150,000.00 a year salary, he [Mr De Maria] has been transferring to his private accounts thousands of dollars of donated funds. About \$22,000.00 is now in question, with some of that taken as cash withdrawals.”*
- (b) *“Brian O’Reilly, a fellow director from Nudgee College, has also had thousands of dollars transferred into his account”.*

**[893]** Mr De Maria denied these allegations, stating they are false, and his belief that they were made to bully and discredit himself and Mr O’Reilly.

*Unlawful denial of Street Swags’ social media accounts*

**[894]** Mr De Maria said that around 9.50am on Sunday, 17 July 2016, he was informed that the streetswags.org website, owned and maintained by Street Swags, was hacked and unauthorised changes were made to it. He said the content of the website was replaced with the comment on the homepage that:

*“Street Swags is closed for business until the management issues can be resolved and a full audit of the company (sic) finances can be undertaken”*

**[895]** Mr De Maria said below the comment was a YouTube video of Ms Madden, regarding the events referred to in her application and making a number of false and serious allegations

against Street Swags, Mr De Maria and Mr O'Reilly. Mr De Maria noted that Boss Lawyers had a copy of a recording of that video.

**[896]** Mr De Maria stated that in this video, Ms Madden said:

- (a) *“We were then told by the NAB fraud team that Adrian De Maria over the last three months has given himself \$150,000.00 a year wage. When I was the CEO of Street Swags I was being paid \$60,000.00 a year by the company. On top of this \$150,000.00 a year wage, the NAB fraud team informed us he has transferred another \$22,000.00 into his private accounts some of that being in cash”*
- (b) *“Brian O'Reilly from Nudgee College has also had thousands of dollars transferred into his accounts. These transactions are very upsetting ... and so serious that ... both Brian and Adrian have now been reported to the CIB”*
- (c) *“The two remaining staff have both had significant WorkCover claims approved because of the bullying by Adrian De Maria. Bullying, stress and sexual harassment”.*

**[897]** Ms Madden's statements regarding her own salary are, of course, incorrect. By mid-2015, Ms Madden was being paid a base salary of \$150,000 per annum across the two entities, Street Swags and Walkabout Beds.

**[898]** Mr De Maria said he discovered that Street Swags and its employees had been locked out from access its Facebook page and email accounts. He said that on 17 July 2016, he received an email from Telstra attaching a copy of the account access log confirming that:

- (a) On 16 July 2016, Ms Madden joined the Street Swags account, modified Street Swags subscription to Microsoft Office 365 Business Essentials subscription, removed access to Mr Geoffrey McGrath (the IT contractor); and
- (b) On 16 July 2016, Ms Madden deleted Street Swags' IT services provide Tech's On Time subscription.

**[899]** Mr De Maria stated that Street Swags then caused an application to be filed in the court for interlocutory injunction, restraining Ms Madden from dealing with the property of Street Swags, and to deliver up control of Street Swags' website and email server. He said that on 20 July 2016, Justice Atkinson made orders by consent that Street Swags' application be adjourned to a date to be fixed upon an undertaking given by Ms Madden (among other things):

- (a) Not to deal with or disburse any monies, property etc. of Street Swags or its wholly owned subsidiary, Walkabout Beds Pty Ltd;
- (b) To deliver up any business or other records in her possession of Street Swags Limited created after 19 April 2016;
- (c) To provide authority to do all things necessary as reasonably possible and within the terms of her bail conditions to facilitate Street Swags having access to:
  - i. The website [www.streetswags.org](http://www.streetswags.org);
  - ii. The Xero subscription (used by Street Swags to maintain its accounting and payroll records);
  - iii. Access to Street Swags Telstra service, and email hosting service.

*Unexplained possession of confidential report*



[900] Mr De Maria noted that Ms Madden’s statement annexed a copy of the Worrells report which had been emailed directly to him by Worrells on 19 May 2016, which was confidential and contained sensitive information, and was kept confidential by Street Swags in its email server. He said at that time, the matter had been reported to the police who were investigating alleged fraud.

[901] He said at no time was Ms Madden or any of her witnesses in these proceedings provided access to the report, or authorised to access, possess, or distribute a copy of the report. He believed that to obtain a copy of the report, Ms Madden would have unlawfully accessed his emails on or after the date 19 May 2016. He said that by being in possession of a copy of the report, he believed Ms Madden had failed to deliver up the document which was in her possession, after she gave her undertaking to the Court that she would “*deliver up any business or other records in [her] possession of Street Swags Limited created on or after 19 April 2016*”.

[902] Mr De Maria said Ms Madden had the benefit of legal advice on this issue, because her solicitors at the time in these proceedings also represented her at the Supreme Court hearing and prepared her written undertakings to the Court.

[903] By a letter dated 26 September 2016, Boss Lawyers raised the issue with Ms Madden’s solicitors, identified Ms Madden appeared to be in breach of her undertaking, and sought further information by way of statutory declaration as to how it had come into her possession. Ms Madden’s solicitors responded on 29 September 2016, rejecting the assertions and stating no explanation would be provided.

[904] Mr De Maria believed that by refusing to explain the timing and circumstances of how the Worrells report came into her possession, Ms Madden has sought to conceal unlawful conduct by her.

#### *Defamatory comments on Facebook*

[905] Mr De Maria said that on or before 19 July 2016, Ms Madden posted comments on her Facebook page for the public to read including the following:

- (a) “*Looks like Adrian De Maria is really pissed that NAB fraud team cut him off from taking anymore (sic) donated funds. Unfortunately for him the members own Street Swags Limited not him*”
- (b) “*Street Swags is temporarily closed until a real audit is done and solvency established*”

[906] Mr De Maria said on or before 27 July 2016, Ms Madden set up an “*I stand with Jean*” website asking the public to donate funds. He said the website stated:

*“I stand with Jean Madden” is a fund to raise much needed monies to obtain the correct help to fight for Jean, obtain a proper audit and to clear her name of these horrible allegations made against her.*

*We believe that there has been a fraud, going on but its not from Jean.”*

...

*“With approval from the Street Swags Board of Directors, Walkabout Beds Pty Ltd granted the manufacturing contract to Weiss Industrial after considering a number of other quotes and option (sic).”*

[907] Mr De Maria stated that this second statement was false, and this conduct was in breach of the board’s direction in the letter from Boss Lawyers to Ms Madden on 24 March 2016, not to make any statements to the media or anyone else on behalf of Street Swags.

*Ms Madden representing Street Swags to third parties during suspension period*

[908] Ms Madden wrote the following letter to Dr Thornton on 30 March 2016:

*“30 March 2016*

*Dear Harold*

*Among a great deal other things the lease at Ashgrove is in my name.*

*Below are a few more cold truths to share:*

- 1. I currently have more holidays owed to me than Street Swags together with Walkabout Beds has in the bank. Therefore if I was sacked the companies would be immediately insolvent.*
- 2. We have currently over fished out our donor pool. Which means without me doing a great deal of media and quest speaking in the next few weeks the company will not initiate its usual ‘winter waive’ of donations that it needs.*
- 3. Without this ‘winter waive’ of fresh donors the consolidated companies will be insolvent in 10 weeks. To match previous years this ‘winter waive’ would need to be around \$600,000.*
- 4. Most of the companies IP including the swag design, logo and the work mark ‘Street Swags’ is in my personal name. I wouldn’t allow the business it’s use or the use of my physical name without me.*
- 5. The company is already in breach of its contract with our cabin manufacturer and he has a right to the cabin IP.*
- 6. If I was to leave, the cabin business would go with me and I may make it my new commercial endeavour.*
- 7. If desired I could legally acquire Street Swags Ltd’s shares in Walkabout Beds’s Pty Ltd.*

*In short, if I was sacked or chose to walk, the companies wont see out this financial year. Street Swags would have to disperse the last of it’s stock and other assets to a charity/charities with similar objectives (most of the organisations we already give them to). So if proceedings are not swift and to my liking, which this current stock is gone Street Swags will be noting more than my legacy.*

*To make my position clear, I will not be reinstating Brian or Adrian as directors, members or staff.*

*Sincerely,*

*Jean Madden*”

[909] Mr De Maria said that in breach of her suspension, she also engaged around April or May 2016 with representatives of the Department of Public Works and the Commonwealth Games regarding the cabin project. He noted that Ms Madden states at paragraph 126 and 127 of her statement, that Mr Chu from the Department of Public Works had contacted her during her suspension and that she had advised him “*I had stepped away from Street Swags and was concentrating on my cabin project*”, after which she arranged a meeting with members of the Department. He noted that Ms Madden also states at paragraph 128 that a meeting with representatives of the Commonwealth Games was held on 6 May 2016, and she ‘clearly’ represented herself and Walkabout Homes (not to be confused with Walkabout Beds, which she had put into administration on 14 April 2016), and at no time did she discuss Street Swags or intimate that she represented Street Swags.

[910] Mr De Maria stated that Ms Madden is the sole director, secretary and owner of Walkabout Homes, which she set up on 16 February 2016. He said however the cabin project belonged to Street Swags, not Ms Madden and not Walkabout Homes. He believed her actions as described in her own statement, amount to a serious conflict of interest and breach of her ongoing fiduciary duties to Street Swags.

*Summary dismissal notice – Worrells report*

[911] Mr De Maria said that on 19 May 2016, Worrells Solvency & Forensic Accountants issued its report as to alleged misuse of funds. Among other matters, the report indicated:

- (a) ... *that Ms Madden incurred up to \$441,339.43 in expenses from Street Swags and its subsidiary over the past year without proper authorisation.*
- (b) *The preliminary report provided to the respondent as a creditor by the Liquidators of Walkabout Beds shows that Street Swags was an unsecured creditor in the amount of \$197,842.00...*
- (c) ... *it appears that Mr Weiss was been (sic) paid twice for amounts totalling at least \$65,396.14.*

*Notice of Summary dismissal*

[912] Therefore, on 19 May 2016, the board of directors of Street Swags, being Mr De Maria, Mr O’Reilly and Mr Daly, resolved to terminate Ms Madden for summary dismissal and issued a letter of that date to Ms Madden, providing her notice of summary dismissal and setting out the major reasons for the dismissal.

[913] Mr De Maria said that the reasons for the dismissal included those set out in the letter, and other conduct referred to in his statement, including the continued escalation of that conduct and the hindering of their attempts to properly investigate the financial irregularities.

*Refusal to hand over Street Swags’ property*

[914] Mr De Maria said the termination notice required Ms Madden to return all property of the Respondent in her possession or under her control by 4pm 25 May 2016. Mr De Maria said this did not occur.

[915] He said that at approximately 5.30pm on 24 May 2016, he then reported the property as stolen to the Queensland Police Service. On 27 May 2016, he then spoke with Constable Peter Randall, who advised him that he attended Ms Madden's residence to recover Street Swags' property including the Land Cruiser, and was told by Ms Madden that she was entitled to retain the property. Constable Randall informed him that the police were unable to pursue the matter further.

[916] Mr De Maria said that Street Swags were therefore forced to file an application in the Magistrates Court on 3 June 2016, and as a result of that application, Ms Madden was ordered to deliver up the Toyota Land Cruiser and pay Street Swags' costs of \$2,855.10.

*Criminal charge on 19 July 2016*

[917] Mr De Maria said that following the complaint to the Queensland Police Service regarding Ms Madden's conduct, on 19 July 2016, Ms Madden was interviewed by the Queensland Police and subsequently charged with the offence of 'Fraud – dishonestly cause detriment'.

*Invalid meeting on 19 June 2019*

[918] Mr De Maria noted that at paragraph 120 of her statement filed in these proceedings, Ms Madden referred to a meeting of members held on 19 June 2016. He said the board of Street Swags has obtained legal advice from Boss Lawyers that the meeting was invalid because:

- (a) The meeting was called by Mr Weiss who did not hold the required percentage of votes required under section 249F of the *Corporations Act 2001 (Cth)* to hold the meeting;
- (b) The purported notice calling for the Invalid Meeting did not satisfy the requirements under Street Swags' constitution for a notice to call a meeting of the members;
- (c) At least 68% of the membership of Street Swags were not sent a copy of the purported notice calling for the Invalid Meeting; and
- (d) The Invalid Meeting was called for an improper purpose.

*Failure to return the Trailer*

[919] Mr De Maria said that as stated, on 23 November 2015, Mr Weiss issued invoice no. 41 to Street Swags for \$10,000 for sublease of storage space at his shed, paid for using Street Swags donated funds. Mr De Maria said one of the items Street Swags was purportedly paying to store at the shed, as a mobile stage trailer. Mr De Maria said that following Ms Madden's refusal to hand over Street Swags' property, he attended at Mr Weiss's shed on 23 May 2016, along with a Senior Constable and Mr Daly, in order to recover property of Street Swags. He said he spoke with Mr Weiss, who said words to the effect that he did not have possession of the trailer and did not know its current location.

[920] Mr De Maria said that on 2 June 2016, he had a conversation with Mr Booth by telephone, and that Mr Booth told him that:

- (a) The trailer had been stored at his property in Upper Brookfield in the State of Queensland;

- (b) On or about 7 May 2016, Mr Weiss telephoned Mr Booth and said words to the effect that he would come and take the Trailer to the Brookfield Showgrounds for the Brookfield Show to be held from 13 to 15 May 2016;
- (c) When he arrived home on or about 10 May 2016, the Trailer had been removed; and
- (d) On 13 May 2016, he assisted Mr Weiss in setting up the trailer as a mobile stage at the Brookfield Showgrounds and that on 16 May 2016, under instructions from Mr Weiss, he packed up the Trailer and left it for collection by Mr Weiss outside the Brookfield Showgrounds.

[921] Mr De Maria said that Street Swags was forced to bring an application in the Magistrates Court, for return of property including the trailer. In those proceedings, Mr Booth deposed that he did not know who collected the trailer and he was unaware of the trailer's whereabouts, and Mr Weiss deposed that he had no knowledge of the location of the trailer and that the trailer had never been stored by him.

[922] Mr Weiss submitted that the trailer had not been recovered by Street Swags and the matter had been reported to the police for investigation.

*Further matters – Response to allegations made against him personally*

[923] Mr De Maria noted there has been a large number of allegations, “*both serious and petty*”, made against him by Ms Madden, Ms Todd and Ms Cleland in these proceedings and in other forums.

[924] He said that many of the allegations are defamatory, and there have been attempts to have Ms Madden remove them from the record, but she has refused to do so. He referred to the following:

- (a) On 26 September 2016, Boss Lawyers wrote to Lander & Rogers regarding various allegations on the public record including requesting the removal of the objectionable material...
- (b) On 28 September 2016, Boss Lawyers wrote to Lander & Rogers identifying further objectionable material sought to be removed...
- (c) On 29 September 2016, Lander & Rogers wrote to Boss Lawyers rejecting the request to remove the objectionable material and pointing out that Boss Lawyers' attention should be drawn to criminal offences which may apply regarding its correspondence...
- (d) On 30 September 2016, Boss Lawyers wrote to Lander & Rogers objecting to the references made regarding Boss Lawyers' criminal conduct...
- (e) On 6 October 2016, Lander & Rogers wrote to Boss Lawyers providing their response...

[925] Mr De Maria said that the allegations against him by Ms Madden first began after Ms Madden was suspended and became aware of the investigation into the financial irregularities, and after he challenged Ms Todd about falsely signing financial documents as company secretary. Mr De Maria said there are serious issues regarding not only transactions involving Walkabout Beds and Street Swags, but also regarding the accuracy of bookkeeping and accounting records for which Ms Cleland was responsible.

[926] Mr De Maria said after Ms Madden, Ms Todd and Ms Cleland relocated to Mr Weiss' work shed and engaged in conduct as described in his statement, they also lodged their

applications for workers compensation against Street Swags for psychological injury, which Ms Madden seeks to rely on as a basis of an allegation against Mr De Maria of bullying and sexual harassment.

[927] Mr De Maria said that email correspondence located on Street Swags' email server shows that during that time, Ms Madden, Ms Todd and Ms Cleland were involved in a range of conduct which seriously hindered the ability of Street Swags to investigate the financial irregularities and missing donated money. He said that the positions held by them of CEO, company secretary and bookkeeper appear to be "*strongly connected to the irregularities under investigation*". He stated that the conduct occurred during a period for which psychological injury has been claimed against Street Swags in the workers' compensation claims.

[928] Mr De Maria stated that on 19 July 2016, Queensland Police charged Ms Madden with a criminal offence of fraud against Street Swags and the board of Street Swags is (at the time of filing his statement) continuing to assist the police with their enquiries. He said given these matters, he believed that because he was initially the 'driving force' of the investigation, false allegations have been made against him personally by Ms Madden, Ms Todd and Ms Cleland who have "*colluded together*" in an attempt to discredit him and to hinder the investigation of the financial irregularities for which criminal liability may arise.

[929] Mr De Maria said that in her statement, Ms Madden makes allegations against him regarding his conduct and lack of performance as an employee, and non-renewal of his employment contract. He said Ms Todd and Ms Cleland have made similar allegations, however these allegations are untrue or are misleading for the reasons as provided in these submissions.

[930] He stated that Ms Madden made an allegation against him that he made a number of sexual advances against her, during meetings in which she was performance managing him. He said this allegation is untrue, and he believes it was made dishonestly for the purpose of discrediting him.

[931] He stated that Ms Madden has made an allegation that he sexually harassed Ms Todd and other members of Street Swags staff, however he said that allegation was also untrue and made dishonestly for the purpose of discrediting him.

[932] He notes that Ms Todd made a number of 'highly offensive' allegations of sexual harassment, sexual assault and assault against him in her statement and annexures. He said those allegations are untrue and made falsely and dishonestly, for the purpose of discrediting and harassing him, and stopping the investigation into the financial irregularities.

#### *Commission proceedings*

[933] Mr De Maria stated that he believes the Board's actions in suspending Ms Madden on full pay so that a proper investigation could be carried out without interference or loss of evidence was both lawful and reasonable, and urgently required in the circumstances. He said based on the events that have occurred, he believed Ms Madden's reaction to her suspension and the investigation was to act in complete and utter disregard of the suspension, and to 'wilfully' do everything she could to attack Mr De Maria, the board of Street Swags, and Street Swags itself to disrupt any investigation including the police investigation.

[934] Mr De Maria said that based on the evidence, he believes Ms Todd and Ms Cleland collaborated with Ms Madden to do the same.

[935] He believes that the evidence is overwhelming that Ms Madden wilfully and deliberately engaged in serious misconduct that was inconsistent with the continuation of her contract of employment and as a fiduciary and office holder of Street Swags. He further believes that Ms Madden's dealings with staff after her suspension destroyed the relationship of trust and confidence between Street Swags and its staff.

[936] Mr De Maria stated that Ms Madden has engaged in conduct which forced and continues (at the time of filing his statement) to force Street Swags to apply to the Courts to enforce its legal rights at great cost.

[937] He said that Ms Madden, Ms Todd and Ms Cleland have all lodged workers compensation claims against Street Swags for psychological injury based on allegations against Street Swags and himself personally, which he says were false and very damaging. He noted that those appear throughout Ms Madden's material, and Ms Madden has sought to use the existence of those claims as evidence of those allegations, in these proceedings.

[938] Mr De Maria believes that the workers compensation claims were a further avenue to harass and hinder attempts to investigate the financial irregularities, and to general 'credibility' for Ms Madden's allegations against Street Swags and Mr De Maria.

[939] He further believes that Ms Madden commenced this unfair dismissal application for the same 'ulterior' purpose, and that if Street Swags did not fully respond to the allegations it would leave itself open to Ms Madden referring to these proceedings in other venues to support her allegations.

[940] Mr De Maria said that due to Walkabout Beds being put into voluntary administration, and the loss of the financial records that Ms Madden was obliged by law to maintain, and the unauthorised transfer of Street Swags office staff, and all of Ms Madden's post-suspension conduct, Ms Madden has caused Street Swags to be put to significant cost to properly respond to the allegations in Ms Madden's material and to protect the reputation of Street Swags and its directors from further damage.

[941] Mr De Maria stated his belief that at the time of Ms Madden's termination, her conduct was sufficiently serious to justify the immediate dismissal. He said that reinstatement of Ms Madden's employment would be inappropriate as Street Swags could have no trust or confidence that she could act in the best interests of the company.

*Oral evidence at hearing*

[942] In examination-in-chief, Mr De Maria said that he knew Ms Madden from school days and from friends. They reacquainted some years ago and he was invited onto the board three to four months later.

[943] Relevant to the December 2015 AGM, his evidence is that Ms Madden did not disclose her relationship with Mr Weiss prior to this time. Mr De Maria was not aware, having attended the AGM that in December 2015 a payment of \$10,000 in storage fees had

already been made, or that there had been deposits made for cabins. He could not understand, when he later discovered these payments why Street Swags had paid the companies directly, and not paid Mr Weiss if they were bona fide. He stated that it was Ms Cleland who had raised these issues with him.

[944] When asked whose initiative it was to employ him, he stated, *“I thought Clayton Utz was behind the project. I thought Brian was supportive.”* He said that by day two of his employment he had concerns. By day two or three, Ms Cleland had informed him that she was concerned that payments were going to Mr Weiss. His evidence is that he was trying to put the puzzle together.

[945] Relevant to the steel bill paid for Mr Weiss, his evidence is that he observed Ms Madden use the Street Swags credit card to pay for Mr Weiss’ steel bill over the phone.

[946] Mr De Maria’s evidence is that by the time he addressed his concerns with Mr O’Reilly, he had around 30-40 concerns. A local person had contacted him to express his concern with Mr Weiss using the Street Swags branded ute while towing a saw mill. The ute had been purchased with a community grant.

[947] Relevant to Ms Madden’s machinations in having Street Swags sell the vehicle to Walkabout Beds and then a loan taken out with Street Swags as the guarantor, Mr De Maria’s evidence is that it makes no sense at all. Street Swags now has a liability in the mid \$20k region after repossession/trade in. His evidence is the vehicle was owned outright by Street Swags. Metro Finance then deposited \$25,000 on account of the financing and that money was then moved to Mr Weiss, who then refused to return the vehicle. Street Swags then had to pay the \$25,000 loan.

[948] Relevant to Ms Madden’s evidence that Finlease has “forgiven” Street Swags, Mr De Maria’s evidence is that it hasn’t been forgiven, and there is still “hundreds of thousands of dollars still on the books.”

[949] Relevant to the legal fees discovered as paid to Ms Madden’s private law firm, Crowley Greenhalgh, Mr De Maria’s evidence is that at the time of the suspension he held major concerns, and when Ms Madden was dismissed in May 2016 there were even greater concerns.

[950] He considered that the charity had a lot of staff, with salaries of \$120,00 for each of Ms Madden and himself (Ms Madden’s salary was, in fact, \$150,000 per annum), Ms Todd receiving \$50,000 and Ms Cleland \$50,000. Further, Ms Daniels was being paid approximately \$120,000 as a contractor, but had been set up as a PAYG employee but never had taxation deducted. He stated that he refused to sell a single cabin.

[951] When asked why he didn’t speak with Ms Madden before suspending her, he stated that it had moved past that. His evidence is that Ms Madden’s family was making contact with him; *“It was bigger than that.”*

[952] When “Redeye” turned up with a golf club and threatened him, Mr De Maria was fearful of his family’s safety. He stated that the police informed him to take the threat seriously, and he then had a static guard for three days. He stated that he had bullets left in the letterbox of his new house and bullets left on the seats of the vehicle he was driving.



[953] As to why the agreement was reached in April 2016 to make the consent order, he stated that he did not know that Ms Madden was going to “*bring Walkabout Beds down. Nobody else had any idea either.*” He stated that all of the swags were taking by the administrator because they were in the shed at Darra at the time.

[954] He stated that during that time, Ms Madden was not cooperating, having had the mail redirected, Street Swags not receiving the Bendigo Bank funds, and redirections of donor’s funds. He considered these to be major breaches of her employment obligations.

[955] In cross-examination, Ms Madden put to Mr De Maria that Street Swags had earlier been paying for storage at two other locations; \$50 per week to Mr Booth and \$100 per week to Mr McLeod. Mr De Maria replied that he would never had agreed to pay \$10,000 to store 15 boxes of swags.

[956] Mr De Maria stated that he had been in Ms Madden’s “camp”, including earlier having asked Mr Daly to resign as a director, but when Ms Cleland approached him with concerns, his evidence is that he started to see what was going on.

[957] Ms Madden put to him that he personally owed Boss Lawyers money on account of some neighbour disputes/litigation he was involved in, and the purchase of a home that went wrong. Mr De Maria denied that he owed money to them.

[958] His evidence is that after around one month of employment, and Ms Madden had been telling him that Mr O’Reilly was supportive, he decided not to do the job of selling the cabins. I understand his evidence is that he then started drilling down to uncover what he considered to be inappropriate behaviour of Ms Madden.

[959] Ms Madden asked the reasons for the suspension; Mr De Maria said succinctly it was because of transfers of money to Mr Weiss and for transfers of money to her family lawyer.

[960] Mr De Maria agreed that by 30 June 2016, Street Swags had expended \$119,000 in legal fees with Boss Lawyers. He stated that because Ms Madden had taken over the website, and other actions, it was necessary to commence numerous proceedings in various courts. He stated that there were about eight different issues going on at the one time. He agreed that Street Swags to-date owes Boss Lawyers approximately \$80,000 - \$100,000.

[961] Mr De Maria stated that as at September 2019, his salary has reduced to \$50,000 per annum. He does not take a wage, and instead the payments owed to him go onto a loan account. Ms Madden questioned the viability of the Respondent, to which Mr De Maria stated that ACNC is comfortable with the structure of the Respondent.

[962] Ms Madden put to Mr De Maria that he knew about the prototype cabin and also all of the R&D that had been going on to get the cabin project ready.

[963] Mr De Maria’s evidence is that he believed all of the amounts in the Worrells report constituted improper transactions.

[964] Mr De Maria did not recognise at the time that pursuant to the Street Swags constitution, if Ms Madden was no longer a director, she could no longer be the CEO. He did

not appreciate this until I raised it with the parties just prior to the commencement of the hearing. In any event, Street Swags did not action this pursuant to the constitution at the time of Ms Madden's resignation as director on 20 April 2016.

[965] Mr De Maria denied any sexual harassment of any of his colleagues, and considers himself to be a whistleblower. He stated, "*She would never listen to anybody. Ms Quinn had concerns. It was a runaway freight train.*"

### **Evidence of Mr Kevin Gillett**

[966] Mr Gillet, retired at the time of filing his statement, and former director and company secretary of Street Swags, filed a witness statement in these proceedings.

[967] Mr Gillet said that he resigned as director and company secretary of Street Swags due to Ms Madden continually refusing to follow directions from the board. He said that he and the other board members were concerned that Ms Madden was not communicating her intentions as to the direction she was taking Street Swags, which was in conflict with the board's considerations and rulings.

[968] Mr Gillet said he had a meeting with Mr O'Reilly, Mr Michael Baker and Mr Paul Lewis, regarding their concerns as to the corporate governance of Street Swags being ignored by Ms Madden. He said that at the meeting, the following was discussed:

- (a) I said that Ms Madden had a track record of calling special general meetings and stacking the voting members with her family members and then sacking the board and establishing a new board.
- (b) I said that Nudgee College were unlikely to allow Mr O'Reilly (who was its employee) to resign due to its financial involvement with Street Swags.
- (c) We discussed the need for there to be sufficient representation on the board to allow a quorum for the continued operation of Street Swags.
- (d) Mr Brian O'Reilly, myself, and Mr Michael Baker agreed to resign; and
- (e) Mr Paul Lewis agreed to stay on to enable sufficient representation on the board.

### *Secretary of Walkabout Beds*

[969] Mr Gillet's evidence confirmed that Walkabout Beds was a wholly owned subsidiary of Street Swags. He said that he was appointed company secretary of Walkabout Beds from 19 December 2009. The 'First ASIC search' dated 23 March 2016 confirmed that he was recorded on the ASIC indices as of 23 March 2016 as a duly appointed company secretary of Walkabout Beds.

[970] Mr Gillet said that because Walkabout Beds was a wholly owned subsidiary of Street Swags, and because the boards of Street Swags and Walkabout Beds had resigned, the business of Walkabout Beds was to be determined by the new board of directors of Street Swags, who would appoint a new board of directors to Walkabout Beds.

[971] Mr Gillet said he handed over secretarial duties for Street Swags to Ms Quinn in the second week of July 2013, with the understanding that directorship of Walkabout Beds would be resolved in due course. He said subsequently, he was not contacted by Ms Madden regarding further business of Walkabout Beds or given any notices of meetings regarding the

business of Walkabout Beds. He did however continue to receive notifications from ASIC. He said this led him to believe that Street Swags hadn't appointed a new board of directors for Walkabout Beds and by extension, that Walkabout Beds was receiving little or no attention from the new board. He said when he received notices from ASIC, he forwarded them to Street Swags for the new board to deal with.

*Authority to bind the company*

[972] Mr Gillet stated his understanding that under corporations law, for Walkabout Beds to execute a document it required the signature of either two directors or a director and a company secretary. He stated his understand that his participation would have been required for the signing of any important documents by Walkabout Beds.

*Walkabout Beds put into voluntary administration*

[973] Mr Gillet said that around mid-April 2016, he was advised by a friend that Walkabout Beds had been placed into voluntary administration. He contacted Mr O'Reilly who confirmed this was a fact.

[974] Mr Gillet said this news came as a complete surprise to him, and he was angry as he was the company secretary and had not been consulted and received no notice of any intention to place the company into voluntary administration. He said he was told by Mr O'Reilly that he was likewise caught by surprise.

[975] Mr Gillet said that as company secretary of Walkabout Beds, his signature would have been required on the paperwork used to put Walkabout Beds into voluntary administration. He said that he did a google check, and identified that Pilot Partners had been appointed as administrators of Walkabout Beds. He said he wrote a letter to Pilot Partners complaining about Walkabout Beds being put into voluntary administration, however he received no response.

*Removal as company secretary without his knowledge or consent*

[976] Mr Gillet said that around 18 October 2016, Mr O'Reilly forwarded to him a copy of an ASIC form – change to company details. He said that this document was signed by Ms Madden and submitted on 11 April 2016 and said that he had ceased to be secretary of Walkabout Beds on 20 March 2016.

[977] Mr Gillet said that he had no idea there was any intention to remove him as secretary, and he had no notice of it occurring until he was advised by Mr O'Reilly. His evidence is that he did not resign from the position and the submission of the ASIC form was done without his knowledge, consent or authority.

[978] Mr Gillet said that ASIC subsequently recorded on its indices that his appointment as secretary ended on 20 March 2016.

[979] He said that he was removed as secretary on 11 April 2016 and the company was placed into voluntary administration on 14 April 2016, and from that timing he deduced that the CEO removed him from the records to allow her to put the company into administration without his involvement.

[980] His evidence is that for Ms Madden to have put the company into administration without seeking his approval, this raises questions as to why the matter was kept from him.

[981] Mr Gillet said he has been informed that Ms Madden said he could not be contacted. He said he lived at Taigum for 30 years with no change in his email address, landline or mobile numbers over that period, and therefore he could only deduce that Ms Madden didn't want anyone to know about her actions.

[982] Mr Gillet said he had no problems with the ethos and idea of Street Swags. He has maintained contact with Mr O'Reilly and he helps with the collection of swags from Woodford Prison when asked, and has been involved in other ways. He said however, being ex-military, he is a systems man and this latest matter being conducted without due diligence in sticking to the 'letter of the law' was frightening to him and he said could place Street Swags in a bad light.

*Oral evidence at hearing.*

[983] Mr Gillett stated that he never saw audited reports of Walkabout Beds. He considered that something underhand was going on. He said he wanted more information, but Pilot Partners never answered his emails.

[984] Ms Madden put to him that if was indeed the company secretary, he would have had a responsibility to come to meetings. He replied that he expected Street Swags to appoint a new board and he expected to be replaced.

#### **Evidence of Mr Anthony Deane**

[985] Mr Anthony Deane, special counsel at Clayton Utz, filed a witness statement in these proceedings. Mr Deane said that he had significant interaction with Street Swags and Ms Madden over several years and is generally familiar with their work.

[986] He said that in late January 2015, he spoke with Ms Ryan, Street Swags' operations manager, regarding action to be taken on a litigious matter. He said that ultimately that matter required no action from him.

[987] Mr Deane heard nothing further from Street Swags until around 2 June 2015, when Clayton Utz was contacted by Ms Madden for the purpose of setting up a meeting. He said from a telephone message and subsequent call, he was aware that the meeting was to discuss a new proposed project to be undertaken by Street Swags. Prior to the meeting, Ms Madden gave him a 'superficial' overview of the project. She sought to engage Clayton Utz on a pro bono basis to help with a "*major expansion*" of Street Swags. He said this involved:

- (a) The creation of a programme for design, construction fabrication, distribution and operation of relocatable cabins to be used for homeless people and a prototype was currently being built by Street Swags;
- (b) Real property [Street Swags] was planning to purchase for a training facility and youth drop in centre;
- (c) The set-up of a crisis accommodation centre; and
- (d) The liability and corporate structural issues surrounding these matters.

**[988]** He said this was to become known as the ‘cabins projects’.

**[989]** Mr Deane said it became immediately apparent that Ms Madden’s proposals involved a number of issues. It was obvious that considerable further information and work was required in order to work through the issues. He said a conference was arranged for 10 June 2015, for Ms Madden, possibly Ms Ryan, himself and Mr John Middleton, a member of the corporate practice group at Clayton Utz.

**[990]** At a meeting held on 10 June 2015, Ms Madden, Mr Deane and Mr Middleton discussed the project, its scope and the work that would need to be carried out. He said the meeting lasted about 2 hours and 10 minutes. His evidence is that Ms Madden outlined the multi-faceted aspect of the cabins project, which had the following elements:

- (a) Design and construction/fabrication of skid mounted relocatable cabins for low cost accommodation;
- (b) A series of different marketing approaches for dealing with the cabins for homeless persons accommodation including:
  - i. Outright sale for the cabins via an appropriate corporate vehicle as a means of earning money for the charity work;
  - ii. Sale of cabins for communities to provide homeless shelters;
  - iii. Sale and leaseback of cabin to be located on private land to create a network of accommodation;
- (c) Capital commitment over 15 years was to be \$300,000,000;
- (d) Acquisition of land near Lowood / Esk for the purpose of locating cabins onto and creating a farming school;
- (e) Relief of overcrowding in indigenous communities;
- (f) Structured charity partners to back the project;
- (g) An Ipswich community facility for youth focused on trade education on the land where there could be day students and boarders; and
- (h) A venture capital raising programme.

**[991]** Mr Deane said he outlined that the interrelated design, fabrication, distribution, financing and usage of the pre-fabricated structures were substantial undertaking including engineering certifications, local government compliance, liability issues, land tenure problems, and other finance driven matters such as PPS issues. He said that he recommended that the work be divided up and that the issues would need to be identified and isolated. He advised that the necessary work involved for each component would be considerable.

**[992]** Mr Deane said he advised Ms Madden that:

- (a) The volume of the work was large,
- (b) [he needed] material to give some more depth to the issues; and
- (c) [they] would have to scope out the way forward with a budget.

**[993]** Mr Deane’s evidence was that he considered it would be a project of around three to five years to bring it together.

**[994]** Mr Deane said that around 11 June 2015, he received an email from Ms Madden attaching documents relating to the proposed projects. He said the material concerned him in that:

- (a) It outlined a five-year project where all the liability and risk assessments would need to be done upfront. While the project was meritorious, the scope of the work required would be significant and his preliminary view was that there would be significant regulatory and liability issues to overcome for the project to go ahead.
- (b) Entirely separate corporate and funding structures would be required. Whilst funds raised from ‘corporate commercial’ activities of Walkabout Beds could potentially be used for the benevolent cabin project, publicly raised funds from Street Swags could only be used for the purpose for which they were donated. The need for a special purpose vehicle was noted in their corporate structure, but nothing had been done in relation to it so far as Clayton Utz was aware.
- (c) It referred to commencing sales and distribution for 100 cabins in July 2015, with Hub motels at Clarendon Station and Mt Isa; and
- (d) It referred to Clarendon Station acquisition and lease-back as being ready to be operational.

**[995]** Mr Deane said that following discussions with a number of people in the firm, on 11 June 2015, he secured support for an initial phase that would involve a pro bono budget of approximately \$20,000 legal work. He then sent an email to Ms Madden confirming that:

- (a) The pro bono controllers were willing to support the first phase of the work; and
- (b) Notionally, the work would be divided up into the following components:
  - i. Scoping of issues and preliminary overview advices;
  - ii. Structural and implementation of structure for both commercial work and charitable work;
  - iii. Preliminary advice capital works; and
  - iv. Operational advices.

**[996]** He said that on 18 June 2015, he received a call from Ms Quinn, Street Swags company secretary, where she advised him that she was concerned the Clarendon and cabins projects appeared to be going ahead prior to Clayton Utz completing the work, including the preliminary review of the project and initial due diligence. He said he also received the following emails from Ms Quinn:

- (a) Email dated 18 June 2015 at 12.42pm, attaching an earlier email from Ms Quinn to the directors of Street Swags Limited requesting a meeting in response to the reports issued by Ms Madden regarding the Clarendon and Cabins projects...
- (b) Email dated 18 June 2015 at 12.52pm, attaching an earlier email from Ms Madden to various people regarding the ‘Due Diligence Report’ and ‘Operational Recommendations’ report, and attaching the reports referred to ...
- (c) Email dated 18 June 2015 at 1.10pm, attaching an earlier email thread from Shelly Ryan, which attached a copy of a proposed media release announcing Street Swags’ plan to build and supply thousands of low-cost dwellings...

**[997]** Mr Deane said he provided reply correspondence to Ms Quinn on 18 June 2015, providing his comments regarding the cabins. He said of particular concern was that Clayton Utz had only just started scoping out the issues and no analysis had commenced. He said that

Ms Quinn sought his comments as to the prototype cabin, and his opinion was that there was insufficient information to provide any considered advice but that Street Swags ought to assume that it is liable for loss and damage arising by reason of use of the cabin.

[998] He said that on 24 June 2015, he received an email from Ms Quinn advising that the directors of Street Swags had serious concerns regarding the operation of Street Swags and Walkabout Beds. Mr Deane said he was concerned about a number of matters as they were unfolding, and sought legal advice as to Clayton Utz position in relation to these matters. He claimed legal professional privilege in relation to that advice.

[999] However, he said of immediate concern to him was a proposed Street Swags community retreat near Mt Isa. He was aware the Street Swags staff intended to travel to Mt Isa on 26 June 2015, and part of the activities at the retreat was to construct two cabins.

[1000] Mr Deane said around 25 June 2015, Ms Madden sent him an email responding to a number of preliminary questions that had been asked of her regarding the cabins project. Mr Deane considered that the answers did not address the questions that were asked in relation to the issues for the cabins project part of the Mt Isa expedition.

[1001] On 26 June 2015, he was copied in on an email from Ms Quinn to the board of Street Swags, tendering her resignation. The letter from Ms Quinn states:

*“Dear Brian, Jean, Paul and Adrian,*

*We are all here with the purpose of supporting Street Swags.*

*Street Swags Limited is a public charitable registered company.*

*Jean is where she is because a lot of people have worked just as hard as she has and also invested both substantial funds and time, often to the detriment of their other commitments.*

*The lack of accountability and legal compliance at Street Swags under the direction of its Managing Director concerns me. The last company I saw with similar disregard for these things is no longer in existence. I hope, as Adrian suggests, that these are merely distractions that will be overlooked because of the work Street Swags undertakes.*

*As directors we have a personal strict liability to comply with workplace health and safety laws. Based on the information to the Board there has been no sign off that the construction of the cabins complies with these laws. I am not prepared to put my family at risk on the hope and pray that nothing untoward happens.*

*Having reflected last night and then considered Adrian’s response this morning, it would be best to advise of my resignation from the Board.*

*Please find attached the required notice in writing, together with ASIC form that I asked be lodge prior to the commencement of the retreat. You will need to appoint a replacement secretary.*

*I wish Street Swags all the future success it so deserves.*

*If acceptable to the company I am happy to fulfill my commitment to help at the Sydney and Gold Coast Homeless Connect.”*

[1002] Mr Deane said later in the evening of Thursday, 25 June 2015 he had a telephone conversation with Ms Madden, where he expressed concern about the cabins project and the construction of two further cabins at Mt Isa. He said he expressed concern about:

- (a) Workplace health and safety issues;
- (b) Work statements;
- (c) Risk management issues; and
- (d) The fact that the cabins would have to be warranted as fit for their purpose.

[1003] He said that when speaking to her, she was preparing to drive to Mt Isa, and she stated that:

- (a) Any concerns [he] had, were being addressed;
- (b) This included any insurance issues.

[1004] Mr Deane said that after speaking with Ms Madden, he was unable to contact her further given the isolation of the area she was in.

[1005] Mr Deane stated that he found the conversation in relation to risk for the Mt Isa retreat quite alarming. He considered that the conversation on 26 June 2015 ought to be reduced to writing and forwarded to Ms Madden. On 3 July 2015, he sent an email to Ms Madden in which he reduced to writing his responses to her answers as discussed on 26 June 2015.

[1006] He said that by this stage, although they had only just begun the first phase of the due diligence process, it had become apparent that Ms Madden was proceeding with the Mt Isa Cabins project ahead of Clayton Utz advice. Mr Deane said he had grave concerns regarding risks involved in the project, and that there appeared to be corporate governance issues causing members of the board of Street Swags to resign.

[1007] Mr Deane said he was also concerned that Ms Madden had stated in reports presented to the board that Clayton Utz was “*extremely supportive of the proposed plans*” when in fact the firm had raised concerns that needed to be worked through before the project could proceed.

[1008] He said that due to his concerns, on 15 July 2015, he convened a meeting at Clayton Utz between himself, Ms Hedy Cray, and Mr David Hillard, a partner and the National Practice Group Leader of the Clayton Utz Pro Bono team. Mr Deane said that Mr Hillard had no significant involvement previously with this matter, and his inclusion in the meeting was to obtain a view of the firm’s continued involvement in this pro bono matter.

[1009] On 15 July 2015, Mr Hillard sent the following email to Ms Madden:

*“Dear Jean*



*I have been speaking with Tony Deane, John Middleton, and Hedy Cray about recent conversations and advices to Street Swags Limited (SSL).*

*My understanding is that:*

- *Tony and John met with you on 4 June 2015 and discussed some significant high-level risks in the proposed demountable dwellings and property acquisition involved in the Mt Isa Cabins project. One of the key points was that substantial information would need to be gathered, in order for us to give SSL meaningful advice.*
- *On 25 June 2015, Tony spoke with you again about the high-level and fundamental risks around construction of the cabins and confirmed these in his email to you of 3 July 2015. (That email is attached).*
- *Despite our advice about the significant risks, including with the frantic pace of the project, you elected to proceed to have two cabins constructed at Mt Isa.*
- *Three directors have since resigned from the Board of SSL as a result of their disagreement and concerns about the company proceeding with the Mt Isa Cabins project and other matters.*
- *You are currently one of two remaining directors on the Board of SSL.*
- *Yesterday you spoke with Hedy in relation to seeking employment advice regarding two SSL employees.*

*I am concerned that there appear to be substantial governance questions within the company at the moment, including a potential lack of quorum of directors under the SSL constitution. I am also concerned that you proceeded with the Mt Isa Cabins project contrary to the advice which we have provided to you.*

*As you understand from our Pro Bono terms of engagement, Clayton Utz will not continue to act for a client where we cannot obtain adequate instructions, or where a client fails to accept and act on our advice. In all of the circumstances set out above, we are not prepared to consider providing any further pro bono advice to Street Swags Ltd until the company has show us:*

- (a) That there is a full quorum of Directors of the company and SSL is otherwise complying with its constitution;*
- (b) Confirmation from the full quorum of Directors that they have reviewed the advice which was set out in Tony's email to you of 3 July 2015; and*
- (c) Answers addressing each of the matters and dealing with the concerns raised in Tony's email of 3 July 2015.*

*I am sorry to have to take these steps, but until these matters are clarified, I cannot authorise further pro bono assistance by Clayton Utz. I am happy to discuss this email with you and your Board. Please let me know when would be a suitable time for a call."*

**[1010]** Ms Madden replied to Mr Hillard on the same day:

*“Hi David I hope you are well.*

*It seems you have been getting information from a variety of sources.*

*We have had 2 board members resign after Shelley told them I had spent \$46,000 on cabins. The figure was I believe purposefully miss represented (sic) to the board. On examination of the breakdown Shelley had included mostly unrelated amounts from unrelated projects and activities. Now that those amounts have been taken out of the project breakdown the amount spent is what had been decided by the board at the two relevant board meetings held.*

*This leaves us with a quorum of 3 board members. Brian O’Reilly, Adrian De Maria and Myself. I have a fourth I have approached who I feel will be an excellent addition to help guid (sic) us into our next phase. Our next board meeting will be held on Au 13<sup>th</sup> which I have asked our accountant to attend.*

*I had a long talk with Tony before leaving for the last Mount Isa Community Healing retreat where part of the planed (sic) activities was to help with the building of cabins. This was the second its kind for the year. As discussed there were risks with going ahead and with cancelling. On Tony’s advice we made sure we were compliant with relevant safety requirements for a construction site. We also made sure our insurer covered us for all the activities in relation to the retreat including the construction of the cabins and their ownership as well as for farming activities. This was Tony’s bottom line to me as I understood it over the phone. The follow up email came after I was on site and out of range.*

*I will forward you the confirmation from our insurer and the email sent to all the directors with the document outlining Tony’s advice at the time.*

*I have phoned your office and they suggested you might be available for a talk between 10.30 and 12.30.*

*I need Clayton Utz advice and guidance at the moment. Next month will be the 10 year anniversary of our partnership and I would hate it to fall down now over what I see as a miscommunication.*

*Thank you.*

*Warm regards  
Jeannie”<sup>17</sup>*

**[1011]** Mr Hillard sent the following email to Mr Deane the same day:

*“Hi Tony*

*I am calling Jean back tomorrow, but I'd be interested on your comments regarding your version of events before I call. Particularly the suggestion that there were only 2 Board resignations.*

*Both you and John have been clear with me that the concerns you raised with Jean in June were much more than just making "sure our insurer covered us for all the activities in relation to the retreat including the construction of the cabins and their ownership as well as for farming activities".*

*Are you available for a chat between 8am and 10am tomorrow?"*

**[1012]** Mr Hillard telephoned Ms Madden on 16 July 2015. His file note is as follows:

*"I rang Jean at 3:30pm. She apologised that she had been completely out of reception until Sunday.*

*I said that the concerns we had raised and the steps we had take in my email of yesterday regarding Street Swags were not done lightly by us. I am extremely concerned that advice has been provided by us in relation to a high risk project and despite that advice, Jean has chosen to proceed with the project and not address the concerns we raised. I was also very concerned to read in the document provided to the Street Swags Board, under the heading Legal Advice and Risk Mitigation, that Jean described Clayton Utz as being "extremely supportive of the proposed plans". We are not extremely supportive of the proposal. We think there are significant risks associated.*

*Jean said to me that the retreat to Mt Isa was one component of the "Cabins" program. She said that what was being built were really cubby houses as they did not have a kitchen or a bathroom. If the program was to continue at Clarendon, then more complex accommodation with bathrooms and kitchens would be built. At the moment no manufacturing is taking place in relation to Mt Isa.*

*Jean said that following Tony Deane's advice, the decision was taken that the cubbies at Mt Isa would not be sold to anyone.*

*Jean said she understood that Tony's advice was what she would describe as "simply regarding process". I said that it was absolutely not the case that this was just about process. There are some fundamental issues to be resolved and as set out in my email of yesterday, we are concerned with the frantic pace at which this project is proceeding.*

*Jean talked to me in some detail about what took place at Mt Isa on the retreat in late June. She said there were "only two young teenagers (being a 12 and 13 year old girl) and that "we did not let them near the power tools". She said that the young teenagers did painting but did not do anything regarding construction. I asked whether they worked with nails and hammers and saws and Jean was a little bit vague in her answer. She said that the entire period of construction work on site was not more than four hours over the course of the week.*

*Jean said that she followed the “Australian Standards for what you have to do on a construction site”. I said that I wasn’t a construction or occupational health and safety lawyer, but I was concerned about what those requirements might have been and how Jean ensured that she had complied with them. I said that my gut feel was that children were not permitted onto a construction site.*

*I said that all of this was an example of where and how we think that a lot of questions need to be answered before anything proceeds. Jean has nevertheless gone ahead without asking and answering those questions.*

*I said that I wanted to be blunt. Tony and John Middleton’s views were that this project was one with significantly high risk. The concept was a very challenging one. We were prepared to give a high level initial assessment but it was completely wrong for Jean to advise her Board that we were being “extremely supportive”.*

*That is why we have taken the position that the three matters in my email need to be answered. Jean needs to put our advice to her independent Board and she needs to have the Board confirm that they have understood the advice and that they are able to answer the questions which we have raised. I am not prepared to accept a response from Jean on this – it needs to be the Board. It is clear that there are some real governance challengers at Street Swags at the moment. It is an extraordinary thing to have two Board members resign.*

*Jean then tried to go into detail about how Shelley (an employee) was a terrible person and very unwell and that’s why Shelley had made mistakes. I explained that Shelley was of no concern to me in this issue. I am concerned about us providing pro bono advice which has not been taken. It is not our position that we give advice and allow a pro bono client to pick and choose which bits of it they want to take. We gave the advice genuinely and we expect that it will be followed. If it’s not followed, we are not prepared to act on a pro bono basis.*

*Jean confirmed with me that the next Board meeting will take [place] on 13 August. I will await her Board’s response after that.”*

**[1013]** Mr Deane said that Clayton Utz did not provide any other work for Street Swags in relation to the cabin project, or any other matter after 16 July 2015. He said he is not aware of:

- (a) Ms Madden or Street Swags demonstrating the things referred to, being receipt of the advice in the email of 3 July 2015 and that the concerns had been responded to; and
- (b) Any other dealings that have occurred between Clayton Utz and Street Swags since that date.

#### *Oral evidence at hearing*

**[1014]** In examination-in-chief, Mr Dean said that the project was large in scope, and he considered it was outside the scope of the Street Swags objectives.

**[1015]** When Ms Quinn called, he considered that things were going ahead too quickly. The legal issues were significant, and Clayton Utz hadn’t even begun to catalogue them all. He

was shocked that media was involved already. He considered that every facet of law or risk was included in such a project. His evidence is that “you need to crawl before you run.”

[1016] He considered that Ms Madden’s responses did not satisfy him, and the media announcement made by her and the undertaking of actual construction work were very big issues. He considered that governance wasn’t being adhered to.

[1017] He stated that it’s not unusual to have initial discussions directly with a CEO, but as the project became larger, he would have expected more people to have been involved.

[1018] In cross-examination, Mr Deane agreed that he and Clayton Utz had helped Ms Madden set up Street Swags in 2005, assisting with the writing of the constitution.

[1019] Ms Madden discussed with Mr Dean the proposed corporate structure, and she sent it to him one day after the meeting. He considered that it was imprudent.

[1020] Ms Madden stated, rather than asked a question, informing Mr Deane that she considers him to be somewhat of a mentor, having worked together for around 10 years.

[1021] Relevant to the retreat where the young indigenous children worked on the cabin building (painting), Mr Deane stated that he did not think that Ms Madden had risk-managed enough to go on the retreat, and he held grave concerns. He stated that the events at Mt Isa were very significant, and he was shocked that cabins were being built and supplied within nothing in place. He escalated his concerns.

[1022] Mr Deane stated that Clayton Utz wanted to hear from the board, not from Ms Madden. Clayton Utz declared that it would not be doing any further work.

[1023] Mr Deane declared that he was later shocked to learn of Mr Weiss’ involvement.

### **Evidence of Mr Brian O’Reilly**

[1024] Mr Brian O’Reilly, director of Street Swags, provided a statement in these proceedings. Mr Reilly was, at the time of making his first statement in 2016, a teacher at St Joseph’s Nudgee College. He has since retired. Prior to being appointed as director of Street Swags, he helped out at Street Swags with fundraising as a volunteer.

[1025] He said that around October 2008, Ms Madden asked him to become a director to replace her mother, who was a director and chairperson of the board at that time. On 25 October 2008, he was then appointed as a director, and because Ms Madden’s mother had been the chairperson of the board, he said he immediately stepped into that role.

### *Involvement of Nudgee College*

[1026] Mr O’Reilly said that at that time, the College was a big supporter of the Street Swags charity and provided a part of the process in the ‘supply chain’ for swags. He said that the management of Nudgee College had entered into an arrangement with Street Swags whereby students of the College rolled and packed the swags for distribution.

[1027] Mr O'Reilly said that in 2013, Nudgee College sought a \$50,000 grant from the NAB for the construction of a facility to store swags and related materials, and to allow students to roll and distribute the swags. He said it was later granted and paid to the College, but by the time construction had finished in early 2016, the facility had cost around \$350,000 with the difference being made up primarily by donations from within the Nudgee area community. He said that Nudgee College opened the facility in 2016, and it is also used for other social justice programs.

[1028] Mr O'Reilly said that Nudgee College has a heavy involvement in the production of swags for Street Swags, and in addition to the use of the facilities at the College, he notes its students have rolled and packed over 30,000 swags for Street Swags, resulting in a considerable saving in labour costs.

#### *Resignation as director*

[1029] On 30 June 2013, Mr O'Reilly resigned as a director of Street Swags. At that time, the board comprised of himself, Mr Gillet, Mr Baker, Mr Lewis and Ms Madden. He said the board was concerned with what it saw as governance issues regarding Ms Madden's growing involvement in her 'community healing project'. Mr O'Reilly said that he, Mr Baker and Mr Gillet resigned because of these concerns.

[1030] Mr O'Reilly cited the problem as Street Swags is a public company and a registered charity organisation set up for the sole purpose of manufacturing and distributing swags to the homeless. He said that on this basis, the public was donating money to the charity and therefore legally those funds could only be used for that purpose. He considered that Ms Madden's community healing project did not appear to fit within the objects of Street Swags, and yet was being run by Ms Madden from the Street Swags office as a Street Swags project.

[1031] Mr O'Reilly said the board of Street Swags was nervous about this fact, and put to Ms Madden that if she was doing these community healing projects, where was the money for it coming from, and where does the money appear in the accounts of Street Swags? Mr O'Reilly said there appeared to be no separation in the accounts between funds for the swags operation and funds for Ms Madden's community healing project to enable these transactions to be separately recorded and accounted for. He said there was no evidence as to how the money was being spent. The board asked Ms Madden to set up the accounts and to itemise expenditure, however it is his evidence that they had no evidence whether that happened.

[1032] Mr O'Reilly said that to ensure proper governance and due diligence, the board asked Ms Madden for a business plan setting out where the money came from, how the money would be spent, what the outcome of the project was supposed to be, and where that sat with the objects of Street Swags. He said that Ms Madden did not take the board's advice, and all they received was "*smoke and mirrors*".

[1033] Mr O'Reilly stated that as their concerns were not sufficiently addressed, the board was concerned that they could not fulfil their directors' obligations of proper governance and due diligence. Mr O'Reilly said that the board members supported the objects of the charity and Ms Madden personally, however they were seeking proper governance, and they couldn't get it. Accordingly, the entire board except for the treasurer and Ms Madden resigned from the board on 20 June 2013.

[1034] Mr O'Reilly referred to Ms Madden's statement and her evidence that he was attempting to get her 'expelled' from Street Swags. Mr O'Reilly stated that this was not true. He said the board was concerned about their personal liability, and "*if there was the proper governance, check and balances and proper documentation using donors' money*", he would not have resigned.

*Reappointment as director*

[1035] Mr O'Reilly said after his resignation as director, Nudgee College then received the grant money. It is his evidence that the Principal of the College said to him words to the effect, "*We are not going to be involved with Street Swags unless we have you there with your finger on the pulse*".

[1036] Mr O'Reilly said he therefore contacted Ms Madden, and after getting her approval to return, he agreed to return to Street Swags as a director. He said the formal Memorandum of Understanding was drawn up between the College and Street Swags, and once this was done, he was formally appointed as a director on 1 July 2013.

*Clarendon and cabins projects*

[1037] Mr O'Reilly stated that he had little cause for concern for the legitimate business dealings of Street Swags, as the Street Swags operation was simply that they received donations from the public, they purchased canvas, tape and cartons, the prisoners manufactured the swags free of charge, students rolled the swags free of charge, and they had freight for the transport.

[1038] He said however it was the emergence of the community healing projects and then the 'Clarendon' and cabin projects which made him nervous, especially around the use of donated funds for swags being 'blended' into these other projects.

[1039] Mr O'Reilly said that in 2015, Ms Madden wanted Street Swags to purchase a rural property called 'Clarendon Station' to turn it into an agricultural training facility. He said as part of the project, Ms Madden wanted cabins built on the property where people could live, while receiving training. He said this made him nervous as it appeared to have nothing to do with providing swags to homeless people.

[1040] Mr O'Reilly said the concept was put to the board and the board looked at it and determined the figures did not add up, and therefore it was agreed to pay Ms Daniels to work on it and do the 'feasibility'.

*Board meeting – 18 May 2015*

[1041] Mr O'Reilly said he chaired a board meeting of 18 May 2015, at which these issues were raised and discussed. He said during the meeting, he expressed his concern over funds donated to Street Swags being used for the Clarendon project or the cabins. Mr O'Reilly said that the Board passed the following resolution, which were binding on Ms Madden in her role as CEO:

- (a) The concept of the Clarendon Station and cabin project was supported however further due diligence and development of a business plan was required before the project could proceed;
- (b) Any funding of the Clarendon Station would be on the basis of a loan from available funds in Walkabout Beds Pty Ltd only and not from Street Swags Ltd funds, in particular donations;
- (c) A full business plan for Clarendon Station was to be submitted for consideration at the next meeting;
- (d) Ms Virginia Daniels was to be engaged on a contract basis to assist with the development of the business plan for the Clarendon Station; and
- (e) No changes were to be made to staff until the business plan for Clarendon Station had been finalised and approved by the board, including outline of responsibilities for any proposed new roles.

#### *Reports to the Board*

[1042] Mr O'Reilly confirmed that Clayton Utz were subsequently engaged by Ms Madden on behalf of Street Swags, on a pro bono basis to prepare the due diligence report.

[1043] He confirmed Mr De Maria's evidence that on 14 June 2015, Ms Madden emailed the board and others copies of two reports prepared by her and Ms Daniels – being a 'Clarendon Station due diligence summary' and 'WAB SWAGS and WAB Cabins operational recommendations summary'. He noted that the Clarendon Station due diligence summary was not to be confused with any due diligence report being prepared by Clayton Utz.

#### *Concerns raised by Ms Quinn*

[1044] Mr O'Reilly stated that around the time Clayton Utz was preparing its due diligence report for the projects, he became aware of a dispute between Ms Madden, Ms Quinn and Ms Ryan regarding company expenditure by Ms Madden. He stated that Ms Quinn had been a friend of Ms Madden and was appointed as company secretary on 1 July 2013.

[1045] Mr O'Reilly stated that on 18 June 2015, Ms Quinn sent the directors an email raising concerns about the Clarendon and Cabins projects and urging the board to halt the projects until the Clayton Utz due diligence report had been completed. He said that he remembered the board was "very, very, nervous" of being found to have disregarded their corporate governance and due diligence obligations regarding the Clarendon and cabins projects. He stated that Ms Quinn was a lawyer and had said she was "*professionally concerned*".

#### *Involvement of Clayton Utz*

[1046] As to the 'Clarendon Station due diligence summary' produced by Ms Madden, Mr O'Reilly noted that it stated:

- (a) Mr Tony Deane and Mr John Middleton of Clayton Utz 'were both extremely supportive of the proposed plans';
- (b) "[Mr Dean and Mr Middleton] have committed to support the work"; and
- (c) "[Street Swags] will liaise closely with Clayton Utz at every state (sic) of our development and believe that their enthusiasm and commitment to the project and our



future direction will ensure we are fully protected and compliant through every phase”.

[1047] Mr O’Reilly said that these statements were repeated on the first page of the ‘WAB SWAGS and WAB Cabins operational recommendations summary’ document.

[1048] Mr O’Reilly’s evidence is that he was “*very nervous*” about Ms Madden’s proposed projects as it was unclear how they sat with the objects of Street Swags. He said however, he drew comfort from knowing that Clayton Utz were preparing the due diligence report and that no further expenses would be authorised in relation to the projects until the board was in receipt of the independent advice from Clayton Utz. He reiterated that the decisions of the board were binding on Ms Madden in her role as CEO.

[1049] He said that he was led to believe that the support from Clayton Utz and their ongoing involvement remained unchanged. He said at no time did Ms Madden inform him or the board that Clayton Utz were no longer in support of the plans or that they had ceased to act for Street Swags. He stated it wasn’t until they instructed Boss Lawyers to obtain a copy of Clayton Utz’ Street Swag file in October 2016 that the board discovered Ms Madden had known by mid-July 2015 that she no longer had the support of Clayton Utz and that they were no longer acting for Street Swags.

[1050] Mr O’Reilly said he was shocked when he found this out, and also shocked to read on Clayton Utz file that a conversation had been had on 16 July 2015 between Mr Hillard and Ms Madden, where Mr Hillard was recorded to have said to Ms Madden:

*“I am extremely concerned that advice has been provided by us in relation to a high risk project and despite that advice, Jean has chosen to proceed with the project and not address the concerns we raised. I was also very concerned to read in the document provided to the Street Swags Board, under the heading Legal Advice and Risk Mitigation, that Jean described Clayton Utz as being “extremely supportive of the proposed plans”. We are not extremely supportive of the proposal. We think there are significant risks associated.”*

[1051] Mr O’Reilly noted this was in complete contrast to what Ms Madden had caused the board to believe, and he believed that if this information and advice had been disclosed to the board at the time, the cabin project would have been vetoed. He said however the board had no knowledge of this advice at the time.

[1052] Mr O’Reilly believed that Ms Madden would have understood that disclosing the advice to the board would result in the immediate termination of the projects, therefore he believed Ms Madden had intentionally chosen not to disclose the information so that she could continue with the projects. He believed that her failure to disclose these matters was a serious breach of her duties as a fiduciary, employee, and director of Street Swags.

#### *Board Meeting – 20 June 2015*

[1053] Mr O’Reilly said that a board meeting was held on 20 June 2015 to discuss concerns about Ms Madden’s projects. Those in attendance were Mr O’Reilly, Mr Daly, Ms Quinn and Mr De Maria. Ms Madden was not present. The minutes were attached to Mr O’Reilly’s statement, confirming the board:

- (a) Ratified the resolution made during the meeting held on 18 May 2015 that the concept of the Clarendon Station and Cabin projects was supported however further due diligence and development of a business plan was required before the project could proceed;
- (b) Ratified the previous decision to fund the building of one cabin as a prototype for due diligence investigations and for Ms Daniels to be engaged to assist in developing the business plan for the Clarendon and cabin projects;
- (c) Resolved that no further funds (other than the funds already approved and noted in the previous resolution) be expended in relation to the Clarendon project or cabins until the Board has received and considered the independent advice of Clayton Utz and the business plans; and
- (d) Resolved to re-affirm the previous delegations of authority from the Board as circulated with the Notice of Meeting.

[1054] He said that those decisions of the board were binding on Ms Madden in her role as CEO. He said that at this time, Ms Madden had wanted to travel to Western Australia to announce the cabin project at a press conference, however the other directors said as a board that she couldn't go as the due diligence and feasibility were yet to be completed and it was inconsistent with what the board had decided. His evidence is that Ms Madden ignored the board and travelled to Western Australia anyway, and announce the cabin project to the media.

*Ms Ryan blamed for incorrect coding*

[1055] Mr O'Reilly said that Ms Madden's statement states an independent audit revealed that Ms Ryan had incorrectly coded transactions to inflate project expenditure. Mr O'Reilly said that at the time, Ms Ryan was the operations manager for Street Swags and he dealt with her most days through his employment with Nudgee College.

[1056] Mr O'Reilly said that around June or July 2015, Ms Madden visited him at the College and presented him with invoices which she claimed had been miscoded by Ms Ryan. He said that it made no sense to him that Ms Ryan was being blamed for the invoices, noting Ms Ryan did not incur the expenses, it was expenses incurred by Ms Madden who was supposed to 'ok to pay' each of her own receipts and invoices and code them to the relevant project or job. He said during his conversation with Ms Madden at the College, he said words to the effect:

*"Surely you authorised these before they were put into the leger accounting system. It wasn't the responsibility of Shelly Ryan to make those decisions – it is the responsibility of the person who incurred the expense."*

[1057] He said he wasn't further involved in this matter, and as a director he didn't get involved with the day to day matters of Street Swags. He said his dealings with Ms Ryan were purely that he was an employee of Nudgee College and Ms Ryan was an employee of Street Swags.

*Recoding the accounts*

[1058] He stated his understanding that Ms Madden 'sacked' Ms Ryan around mid to late 2015, and she then engaged her sister to recode the accounts. He believed Ms Madden's sister

is a nurse practitioner “*or something like that.*” He confirmed that Ms Madden’s sister was later replaced by Ms Cleland.

**[1059]** He reiterated that he was not involved in the day to day running of Street Swags. He said that from the College’s perspective, after Ms Ryan left the company, the College was dealing with Ms Todd who organised events for students to demonstrate rolling the swags, and then they dealt with Ms Cleland who became the person putting out orders.

*AGM on 11 December 2015*

**[1060]** Mr O’Reilly confirmed he was present at the AGM of 11 December 2015. At that time, he was nervous about the proposed cabin project as the board was yet to see a due diligence report from Clayton Utz, and he remained ‘sceptical’ whether the project fit the objects of Street Swags’ Constitution.

**[1061]** He said that at this AGM, Ms Madden had Ms Daniels present the proposed financing model for the cabin project. Under this model, the client would order the cabin, Ms Daniels would arrange finance between the client and a finance company, who would then pay then manufacturer to construct the cabin. He said that ownership of the cabin would go to the client, and Street Swags would be paid an agreed amount of commission for each cabin sold. He said that based on Ms Daniels’ presentation, it was his understanding that under this model, Street Swags would merely receive a commission and had no liability. His understanding was that it was purely an ‘income stream’.

**[1062]** Mr O’Reilly said that Street Swags had been debt-free, and until he was informed by Mr De Maria in March 2016 of unauthorised finance agreements entered into by Ms Madden, it had remained that way ‘as far as he was aware’. He said there was no mention of Street Swags being a party to any finance agreement, or being liable to the manufacturer in any way. He said the board had decided it was not proceeding with production of anything more than a prototype until the project, including finance model, had been thoroughly vetted by Clayton Utz and approved by the board.

**[1063]** Mr O’Reilly said that at the AGM, Ms Madden or Mr Weiss had proposed that Mr Weiss could build the cabins for cost. Mr O’Reilly stated to those present that Mr Weiss shouldn’t propose producing a product at cost, as there needs to be a profit margin so that his business is sustainable. Mr O’Reilly said that under the financial model proposed by Ms Daniels, profit would have to be built into the cost price to the client. He said under this model, it would not have been recoverable from Street Swags, and he made no suggestion that it could be recoverable from Street Swags.

*Mr Weiss*

**[1064]** Mr O’Reilly said that he was not aware Ms Madden was in a de facto relationship with Mr Weiss until the AGM of 11 December 2015. He said before that, he only thought they were neighbours and friends.

**[1065]** He said that in Ms Madden’s statement, she says that she declared the relationship at the AGM. Mr O’Reilly said however he did not recall whether it was declared to anyone, or just to him privately. He said at the time, Street Swags was only engaging Mr Weiss to

produce a prototype cabin and he became immediately concerned about a potential conflict in engaging Ms Madden's de facto partner to be the one to carry out any further production.

[1066] Mr O'Reilly said that at the end of the 11 December 2015 AGM, he spoke to Ms Madden's personal assistant, Ms Todd, and said words to the effect:

Mr O'Reilly: *"Isn't this a conflict of interest?"*

Ms Todd: *"It's all documented"*

[1067] Mr O'Reilly said he was not satisfied with this response and therefore spoke to Ms Madden. He asked her what would happen to the work if something happened in her relationship with Mr Weiss, and Ms Madden reassured him that she had the arrangement documented in writing, and they both agreed that there should be a formal contract in place as soon as possible. Mr O'Reilly said he didn't congratulate her about the relationship as suggested in her statement.

[1068] He reiterated that at the time, only production of the prototype cabin had been approved. He now knows, however, that the agreement with Mr Weiss for *"actual production"* was already in place before the 11 December 2015 meeting, and that the arrangement had been made in breach of the delegations of authority and resolutions of the board. He said it was also done without the board having any knowledge of Ms Madden's de facto relationship with Mr Weiss.

[1069] Mr O'Reilly's evidence is that this was a serious breach of Ms Madden's duties to Street Swags to avoid conflict and to keep the board advised of relevant matters.

*False records of the AGM on 11 December 2015*

[1070] Mr O'Reilly said that the normal process required that the draft minutes of the AGM be circulated to the directors for review and approval. He said once this is done, they are then formally adopted at the next directors' meeting and become the minutes of the previous meeting.

[1071] As to the 11 December 2015 AGM, he said this didn't happen. He never received a copy of the minutes for review, *"and then events over took the opportunity for them to be approved at the next meeting"*. Mr O'Reilly said that he rang Ms Todd, chasing the minutes of that meeting, and also requested a copy by email, however he received no response. He confirmed he never received a copy of the minutes, and they remain unapproved.

[1072] He said that Ms Madden has annexed a document purported to be the minutes of the 11 December 2015 AGM, however he disputes that they are the true minutes of the meeting, as no minutes were ever approved by the Board, and the minutes as attached by Ms Madden contain false statements. He noted that:

- (a) Exhibit "JEM-2" at item 6. Chairs Report, states "He noted concern about those keen to see Street Swags come unstuck". Mr O'Reilly's evidence: "I did not say that and it is not something that I would say."
- (b) Exhibit "JEM-2" at item 7. Managing Director's Report, states "The Chair ... suggested ... moving the Street Swags office to the Darra shed". Mr O'Reilly's

evidence: “I did not say that, and it is factually wrong. It appears to show that I somehow endorsed Ms Madden transferring the staff to Mr Weiss’ work shed after we suspended her employment on 24 March 2016. This was definitely not the case.”

(c) Exhibit “JEM-2” at item 7. Managing Director’s Report, states “Brian suggested paying for storing the imported sub-standard swags in the Darra shed, as the Nudgee shed was not large enough to cope with the extra volume of swags”. Mr O’Reilly’s evidence: “I did not say that and it is factually wrong. What happened was:

- i. The swags were stored at the shed at Nudgee College which was funded and built for that purpose. There was more than enough storage space in the shed. Street Swags was not paying any rent for this.
- ii. In early 2016, management at Nudgee College decided to install new pallet racking in the Shed at Nudgee College. On 3 February 2016, I emailed staff at Nudgee College regarding the anticipated installation of the pallet racking for the shed...
- iii. It became apparent that to install the racking, the swags had to be temporarily relocated from the shed to allow for the installation. In my capacity as an employee of Nudgee College, I rang Ms Madden and we agreed that the swags could be temporarily stored at Mr Weiss’ workshop in Darra, without charge, until the racking had been installed.
- iv. We had a group of volunteers including staff and students assist us in moving 100 cartons (each holding 10 swags) from Nudgee College to Mr Weiss’ work premises at Darra where they were stacked on top of a mezzanine floor of the work shed.
- v. The pallet racking was subsequently installed at the Nudgee College and the swags were supposed to be returned to Nudgee College. However, when Ms Madden appointed administrators to Walkabout Beds without notice, the swags got caught in that action and were held back by the administrators.
- vi. At no time did I suggest paying for storing any swags at Mr Weiss’ premises at Darra. It is a ridiculous suggestion given the existence of the Nudgee College shed which was funded by a grant and donations for that very purpose.
- vii. I observe that the reason for moving the swags to Darra did not arise until well after the 11 December meeting at which the minutes attached to Ms Madden’s statement report that I supposedly made the suggestion.
- viii. This false record contained in the minutes appears to show that I somehow endorsed paying Mr Weiss for storage at his shed in Darra, when in fact I did not.”

(d) Exhibit “JEM-2” at item 9. Financial Report, states “Brian re-assured Jean that the expenses of research and development will balance out and not to be too concerned about the balance sheet fluctuations”. Mr O’Reilly’s evidence: “I did not say that and it is not correct:

- i. I did not refer to “research and development”. The only “research and development” that had been approved by the board was the manufacture of a single prototype cabin (which we have never seen).
- ii. At the meeting, what I talked about was the pre-purchase of 2000 swags from India ahead of orders for those swags and how this would put the figure for the manufacturing costs up as against income. I said

that the stock value of the swags would be reflected in the following years' account, so don't be too concerned about that."

*Decision to suspend Ms Madden – concerns raised by Mr De Maria*

[1073] Mr O'Reilly said that in March 2016, he was at the Gold Coast Airport about to fly to Cambodia and received a call from Mr De Maria, asking if he was aware of what was going on at Street Swags. Mr De Maria 'intimated' there were serious financial irregularities regarding Street Swags and Walkabout Beds. Mr O'Reilly said that he replied with words to the effect, "I'm getting on a plane. You do what you need to do and I'll see you about it when I get off the plane in 10 days' time". He said that he then emailed Mr De Maria the day before his return, and telephoned him from the airport regarding the meeting, before going immediately to meet him at a café in Spring Hill.

[1074] Mr O'Reilly said that during this meeting, Mr De Maria outlined his concerns about the financial irregularities, and it was agreed to attend the office of Boss Lawyers to review the invoices and seek legal advice.

[1075] As to the meeting with Boss Lawyers, Mr O'Reilly's evidence is that Mr De Maria ran him through bank statements and other documents, identifying matters of concern, and said words to the effect, "This is what I saw, and that was what you and Mr Daly were on about last year." Mr O'Reilly noted this was a reference to when he and Mr Daly raised concerns to the board in June 2015 regarding governance and accountability issues, during which time Mr De Maria had supported Ms Madden's position against Mr O'Reilly and Mr Daly.

[1076] Mr O'Reilly said that in conference with Boss Lawyers, Mr De Maria also advised that he was working at the Street Swags office as an employee, which Mr O'Reilly says he was unaware of. Mr O'Reilly stated that the board had previously agreed there would be no changes to staff, until the business plan for Clarendon Station had been finalised and approved by the board, including outline of responsibilities for any proposed new roles. Mr O'Reilly said this was yet to happen.

[1077] Mr De Maria told Mr O'Reilly that Ms Madden had said Mr O'Reilly was 'strongly supportive' of production and sale of the cabins, and that arrangements had his approval. Mr O'Reilly's evidence is that this was not the case at all, and as far as he had been aware, only production of the prototype had been approved and the board was still waiting on the due diligence report from Clayton Utz.

*Financial records*

[1078] Mr O'Reilly said it was immediately apparent to him that the financial numbers "were just all wrong". He noted that Street Swags had an income of about \$1.2 million per year, and it was paid about \$80,000 per year for materials, and it paid staff wages. He said despite this, there was only around \$40,000 left in the bank accounts. He said as to the rest of the money, the financial statements didn't appear to explain where it had gone, and he was extremely concerned about this.

[1079] Mr O'Reilly said that those payments of Street Swags' donated funds were not disclosed to the board, were not approved by the board, and the board was unable to locate or identify documentation to properly explain the transfers or how the funds were ultimately

disbursed. He said that as CEO and managing director, it was Ms Madden's responsibility to keep proper records and to properly advise the board of the financial position of Street Swags. He said however, it was clear that there were serious problems regarding governance, due diligence and disclosure to the board.

*Payment to Ms Madden's family law lawyers*

[1080] Mr O'Reilly noted the discovery in the bank accounts of Walkabout Beds of a payment of \$3,195.26 to Ms Madden's personal family law firm, Crowley Greenhalgh Solicitors on 26 February 2016. Mr O'Reilly said an email was later discovered from Crowley Greenhalgh Solicitors to Ms Madden on 31 March 2016, regarding her family law matter and which confirmed the board's suspicion of misuse of company funds, and suggested that further funds may have been used for this purpose.

[1081] Mr O'Reilly referred to Ms Madden's statement where she provided that 'the legal costs were approved by the board'. Mr O'Reilly said this was "*totally false*" and the board would not and did not approve such payments.

[1082] He referred also to Ms Madden's statement where she said she acted on the advice of the accountants and auditors of Street Swags and Walkabout Beds. Mr O'Reilly said however, Geraghty Accountants had since confirmed that they did not recall giving that advice, and did not believe they would have given such advice. Mr O'Reilly submitted his belief that Ms Madden misused company funds to pay her family law legal bills, which in itself demonstrated a serious corporate governance issue and a very serious breach of Ms Madden's duties as a fiduciary, employee and director of Street Swags.

*Contract with Mr Weiss*

[1083] Mr O'Reilly noted that another serious issue was the contract with Mr Weiss, dated 1 January 2016. He said he was unaware of the contract, and was unaware of its terms until the meeting with Boss Lawyers immediately prior to Ms Madden's suspension.

[1084] He said that under the delegation of authority regulating company expenditure, legally binding agreements for the provision of goods and services of more than \$10,000 required authorisation of the board. He noted that the contract with Mr Weiss was not budgeted for by Street Swags and was not disclosed to the board.

[1085] Mr O'Reilly further noted that Ms Madden's relationship with Mr Weiss was not disclosed to him until 11 December 2015, therefore the contract was in breach of Ms Madden's duties as a director to disclose any material personal interest in matters that relate to the affairs of the company. He said he believed that Ms Madden obtained a material interest in the profits made under that contract.

[1086] Mr O'Reilly noted the terms of the manufacturing contract were concerning as they appeared to operate solely to the advantage of Mr Weiss. He said based on the sales projections presented by Ms Daniels, the manufacturing contract was potentially worth millions of dollars and Ms Madden had awarded it to her de facto partner without disclosing its existence to the board. He reiterated this was in breach of the board's decisions not to proceed with production or further expenditure until after it was in receipt of the Clayton Utz due diligence report and had considered the matter further.

**[1087]** He said in his opinion, this was a serious breach of Ms Madden's duties as a fiduciary, employee and director of Street Swags. He said further, as a member of the board, he never would have agreed to Street Swags entering into that contract and the board likewise wouldn't have approved it.

*Invoices issued by Mr Weiss*

**[1088]** Mr O'Reilly said the board remained unsure of how much money was actually transferred to Mr Weiss in respect of the cabins, or how many related invoices were issued by Mr Weiss. He said that Street Swags had, at the time of filing his statement, located invoices issued by Mr Weiss for the cabins in the total value of \$245,716.13, but the board was only aware of three cabins having been manufactured.

**[1089]** Mr O'Reilly noted the following invoices:

- Invoice no 49 (issued to Walkabout Beds) dated 29 January 2016 for custom made doors and windows extra, and guttering kit, at \$1,870.00;
- Invoice no 39 (issued to Street Swags) dated 23 November 2015 for Clarendon cabin with electrical package, veranda with roof, lining package, and colonial doors and windows, at \$27,765.65;
- Invoice no 40 (issued to Street Swags) dated 23 November 2015 for Transportable cabin with deck, colonial door and window kit, and electrical package, at \$12,485.00;
- Invoice no 41 (issued to Street Swags) dated 23 November 2015 for Sublease of storage are for period of 12 months – for truck and trailer, and general palletised goods, at \$10,000.00;
- Invoice no 42 (issued to Street Swags) dated 23 November 2015 for deposit for 44 cabins, for \$15,666.60.

**[1090]** Mr O'Reilly noted the invoices to Street Swags totalled \$65,917.25.

**[1091]** He said the following invoices were also issued to Finrent, totalling \$134,806.38:

- Invoice no 39 dated 23 November 2015 for Clarendon Cabin with electrical package, veranda with roof, lining package and colonial doors and windows, for \$27,765.65;
- Invoice no 40 dated 23 November 2015 for Transportable cabin with deck, colonial door and window kit, and electrical package for \$12,485.00;
- Invoice no 43 dated 1 December 2015 for Clarendon cabin with deck, for \$23,732.39;
- Invoice no 44 dated 1 December 2015 for Clarendon cabin with electrical package, veranda with roof and railings, colonial doors and windows, sash windows, and guttering and downpipe kit, for \$27,857.61;
- Invoice no 45 dated 29 February 2016 for Transportable cabin for \$42,965.73.

**[1092]** Mr O'Reilly noted that invoices 39 and 40 issued to Street Swags appeared to be duplicated by invoices for the same items and invoice numbers, as issued to Finrent. He said further that the report issued by Worrells to Street Swags on 19 May 2016, identified that Mr Weiss may have been paid twice for amounts totalling \$65,396.14.



[1093] Mr O'Reilly said that in October 2016, Mr De Maria also located further invoices issued by Mr Weiss to Street Swags, relating to the construction and fit out of numerous cabins totalling \$43,122.50, as follows:

- Weiss Sawmilling invoice no 13 dated 24 March 2015 to Street Swags, of \$8,500;
- Weiss Sawmilling invoice no 16 dated 22 April 2015 to Street Swags, of \$8,800;
- Weiss Sawmilling invoice no 18 dated 3 June 2015 to Street Swags, of \$4,400;
- Weiss Sawmilling invoice no 19 dated 12 June 2015 to Street Swags, of \$19,360;
- Weiss Sawmilling invoice no 27 dated 10 August 2015 to Street Swags, of \$8,500.

[1094] Mr O'Reilly noted that invoices 13, 16, 18, 19 and 27 indicate they were paid.

[1095] He said that he was never aware of these transactions, and given that only a prototype cabin had been approved by the board, these transactions were unauthorised by the board. He said that none of these expenditures were disclosed or budgeted for. Further, under the delegation of authority regulating company expenditure, any non-budgeted expenditure over \$5,000 required authorisation of Ms Madden and Mr O'Reilly as Chair of the Board. He confirmed that he never authorised this expenditure and was not aware of it. He believed this conduct was a breach of Ms Madden's duties as a fiduciary, employee and director of Street Swags.

#### *Finance documents*

[1096] Mr O'Reilly said that during the meeting with Boss Lawyers, Mr De Maria showed him finance documents signed by Ms Madden as follows:

- (a) Finance arranged through Metro Finance for Walkabout Beds to purchase the Holden Colorado utility from Street Swags. The loan was for \$25,000 to be repaid over a term of 36 months, plus interest at a rate of 6.95%, and additional fees of \$1,400 plus GST. The loan was guaranteed by Street Swags.
- (b) Traded in the Street Swags Land Cruiser for a brand new Land Cruiser purchased for \$72,317.12 for which \$50,978.58 was funded by finance through Capital Finance.
- (c) Arranged finance through Capital Finance to pay Mr Weiss the sum of \$91,840.65 and the further sum of \$42,965.73 for cabins which were purportedly delivered to the Street Swags office.

[1097] Mr O'Reilly said that some of the documents had Street Swags as guarantor, and during the meeting with Boss Lawyers, words to the following effect were exchanged:

Mr O'Reilly:                   The board never approved that. The arrangement was to be no liability for Street Swags. Who authorised that?

Mr De Maria:                 I signed it. Jean told me that you okayed it.

Mr O'Reilly:                 I didn't authorise anything like that and Jean has not spoken to me about anything to do with it.

[1098] Mr O'Reilly stated he had no idea that Street Swags had any liability regarding the cabin project and would never have authorised Street Swags being a party to financial

agreements or exposing it to liability, particularly in light of the due diligence report from Clayton Utz not being provided.

[1099] He reiterated the delegation of authority regulating company expenditure, and said the board never authorised these transactions. He believed that this conduct was a serious breach of Ms Madden's duties as fiduciary, employee and director of Street Swags.

*Suspension of Ms Madden*

[1100] Mr O'Reilly said during the meeting with Mr De Maria and Boss Lawyers, it became apparent there were serious issues involved, and the view was formed that Ms Madden may have committed serious breaches of her duties both as an employee and a director, including applying company funds for personal expenses and conferring financial benefit on her de facto partner without proper authorisation. Mr O'Reilly said it was apparent that an independent investigation was urgently required, and further he was concerned that Ms Madden would attempt to stop any investigation into the matters. He said under the company constitution, directors had the power to stand down an employee and CEO.

[1101] Mr O'Reilly said that at that time, the directors of Street Swags were Ms Madden, Mr De Maria and himself. Therefore, under the constitution, a quorum for a meeting of directors was 2 directors entitled to vote. He noted Street Swags is a public company, and his understanding was that by law, Ms Madden had a material personal interest in the matter and therefore she was not entitled to vote on the issue or be present when the vote was taken. Accordingly, he and Mr De Maria held a director's meeting and resolved to suspend Ms Madden on full pay, pending the outcome of an investigation.

[1102] He referred here to article 8.1 of the Street Swags Constitution, and said that in accordance with such, a written resolution was passed on 24 March 2016 in the following terms:

- (a) That Ms Jean Madden be immediately suspended as Chief Executive Officer of Street Swags Limited until further notice
- (b) That Ms Jean Madden deliver up all property of Street Swags Limited in her possession or under her control to the office of Boss Lawyers at [address redacted] in Spring Hill in the State of Queensland by 10.00am on 29 March 2016
- (c) That Ms Jean Madden be prohibited from contacting any employee of Street Swags Limited concerning her suspension until further notice
- (d) That Ms Jean Madden be prohibited from entering any premises of Street Swags.

[1103] Mr O'Reilly said that Boss Lawyers were instructed on that same date to send a letter to Ms Madden by email and registered post, outlining the terms of her suspension and including a right to respond to any allegations against her at the conclusion of any investigation.

[1104] Mr O'Reilly said that the timing of the suspension was not to inconvenience anyone and was simply done as a matter of urgency as soon as they had the opportunity to do so as a board, following his return from overseas.

*Email to staff regarding the suspension*

[1105] He confirmed that on 25 March 2016 at around 8:18am, Mr De Maria emailed the staff of Street Swags, being Ms O'Dwyer, Ms Cleland, Ms Todd and Ms Daniels, advising of Ms Madden's suspension.

*Post-suspension conduct – members' meeting*

[1106] Mr O'Reilly's evidence confirmed that on 28 March 2016, Ms Madden sent an email purporting to be a notice of a general meeting of members to be held at 6pm that evening, at her residence at Upper Brookfield. His evidence is that the notice was not sent to all members and did not contain a description of any business to be transacted at the meeting.

[1107] Mr O'Reilly said that on legal advice, he formed the view that the meeting was invalid. Boss Lawyers were accordingly instructed on 28 March 2016 to email a letter to the members of Street Swags, advising that Ms Madden had no authority to organise a members' meeting. He said that on that same date, Ms Madden sent an email in response, asserting that she did have authority to call the meeting. On that same date, Boss Lawyers responded confirming that they acted for Street Swags, and attaching a further copy of the 24 March 2016 letter.

[1108] Mr O'Reilly said despite these exchanges of correspondence, Ms Madden convened a meeting of members and purported to pass resolutions to the effect that:

- (a) Notice of the Unauthorised Meeting be dispensed with;
- (b) All existing members of Street Swags' board of directors (which included Mr O'Reilly, Mr De Maria and Ms Madden) be removed;
- (c) That Dr Harold Thornton be appointed Chair of the board of Street Swags;
- (d) That Mr James Booth and Dr Angela Richards be appointed as 'members of the board' of Street Swags; and
- (e) That a further general meeting of members be held at 7.00pm on 5 April 2016.

[1109] Mr O'Reilly confirmed that a copy of the minutes of the 'unauthorised meeting' was circulated by email on 30 March 2016.

[1110] He referred to Ms Madden's statement in these proceedings, where she states that Mr O'Reilly attended the unauthorised meeting by phone. Mr O'Reilly disputes this statement, noting it is not true. He said around the time of the meeting, he received a call from Ms Madden's sister, and words to the following effect were exchanged:

Ms Madden's sister: What is going on?

Mr O'Reilly: We had some issues on governance that we need to investigate;  
[and he says he may also have said] "We need a forensic audit."

[1111] He said that Ms Madden's sister tried to ask more questions, but he responded, "That's all I can say at the moment", and he then ended the call. He said that at no time did he participate in the unauthorised meeting, nor did he acknowledge its validity or otherwise endorse it.

*Purported board meeting – 29 March 2016*

[1112] Mr O'Reilly said that it appeared that on 29 March 2016, Dr Thornton, Dr Richards and Mr Booth purported to hold a directors' meeting, as a copy of the minutes of the purported meeting was circulated by email on 30 March 2016.

[1113] Mr O'Reilly referred to the statements of Dr Thornton and Mr Booth, where they stated that they understood their appointments as directors to be temporary and they immediately attempted to reappoint Ms Madden as CEO at the purported board meeting. Mr O'Reilly stated that the 'real board' was forced to take the matter to the Supreme Court, and on 13 June 2016 the Court ordered by consent that the Notice of the Meeting dated 28 March 2016 was invalid and all resolutions passed at the purported meeting invalid.

*Alteration of the ASIC register*

[1114] Mr O'Reilly's evidence confirmed that on 29 March 2016 at 5.23pm, Ms Madden lodged ASIC forms, without Mr O'Reilly's knowledge or consent, falsely reporting that he and Mr De Maria had ceased being directors on 28 March 2016. It further purported to appoint Dr Thornton, Mr Booth and Dr Richards as directors of Street Swags, with Ms Todd as company secretary with her appointment backdated to 11 December 2015.

*Lockup of Street Swags' office*

[1115] Mr O'Reilly said he and Mr De Maria agreed to change the locks at the office to secure the books and records, until a proper investigation could be carried out. He said Mr De Maria informed him, and he believed, that Ms Madden subsequently attended the offices and engaged in conduct which required police attendance.

[1116] Mr O'Reilly said that at that time, Ms Madden had been suspended and directed not to attend the offices, and he believed Ms Madden had wilfully failed to comply with the board's direction of 24 March 2016 not to attend the premises and not to contact staff of Street Swags.

*Direction to staff not to attend at the office*

[1117] Mr O'Reilly said that further to the events of 28 and 29 March 2016, Street Swags instructed Boss Lawyers to email the staff of Street Swags to the following effect:

- a) Advising the staff that the office was temporarily closed and directing the staff not to attend the Street Swags office until further notice;
- b) Advising the staff that they would be paid as usual during the temporary closure;
- c) Directing staff to direct all enquiries to Mr De Maria or Mr O'Reilly.

*McCullough Robertson Letter – 30 March 2016*

[1118] Mr O'Reilly said that on instructions by Street Swags, Boss Lawyers wrote to McCullough Robertson on 30 March 2016, setting out more detailed reasons for Ms Madden's suspension and requesting responses to the board's concern.

*Unauthorised removal of staff to Mr Weiss' business*

[1119] Mr O'Reilly's evidence confirmed that the staff of Street Swags, being Ms O'Dwyer, Ms Cleland, Ms Todd and Ms Daniels had been advised of Ms Madden's suspension by Mr De Maria's email of 25 March 2016, which had:

- (a) Asked staff not to communicate with Ms Madden regarding the business of Street Swags, Walkabout Beds or the suspension and to inform the directors if this occurs
- (b) Stated that it was important during Ms Madden's suspension that all staff adhere to these conditions, so that the due process is not interfered with, and it was otherwise business as usual.
- (c) The directors will be assuming day-to-day control of Street Swags and will be carrying out all duties that were previously delegated by the board to Ms Madden.

[1120] He said however, around or before 30 March 2016, while suspended and in contravention of the direction of 24 March 2016, Ms Madden arranged for the staff of Street Swags to attend Mr Weiss' business premises at Darra to engage in the business of Street Swags, to the exclusion of the directors of Street Swags under her direction as CEO.

[1121] Mr O'Reilly said the board was not aware of this unauthorised directive of the company's employees to the premises of Mr Weiss, until after the proceedings before the Commission began.

[1122] Mr O'Reilly said from then on, it appears Ms Madden "*totally ignored her suspension*" and proceeded to set up an alternative office at Mr Weiss's business premises, along with Ms Cleland and Ms Todd. He said that without the board's knowledge or authority, they set up a new bank account, redirected Street Swags' mail, and contacted donors and redirected their donations. He said that as to these matters, he was aware of them via Mr De Maria keeping him updated.

[1123] He said that he believed this conduct showed a total disregard to the directions of the board and the terms of her suspension.

*Decision to terminate and removal from board of Street Swags*

[1124] Mr O'Reilly submitted that in his mind, Ms Madden's conduct had become so serious that it was now a matter for the police. He said Ms Madden was reported to the police, and she has since been charged with a fraud charge and police enquiries were ongoing at the time of filing his statement.

[1125] He said that in light of Ms Madden's misconduct, including altering the ASIC register without authority, he and Mr De Maria resolved to summarily terminate Ms Madden's employment for serious misconduct on 30 March 2016.

[1126] Mr O'Reilly said that in accordance with article 8.1 of the Constitution, the directors passed a written resolution on 30 March 2016 including the following terms:

- (a) That Ms Jean Madden be summarily dismissed as Chief Executive Officer of Street Swags Limited for serious misconduct pursuant to clause 13.2 of her Employment Contract.

- (b) That Ms Jean Madden be removed as a director of Street Swags Limited pursuant to clause 14.2 of her Employment Contract and article 5.3(c)(v) of the Street Swags Constitution.
- (c) That the directors be authorised to make all staff wage payments from National Australia Bank Account [redacted] until further notice.

[1127] Mr O'Reilly said that in accordance with this resolution, Boss Lawyers wrote to Ms Madden on 30 March 2016 informing of the termination of her employment.

*Ms Madden's response to the allegations*

[1128] Mr O'Reilly confirmed that on 30 March 2016, Boss Lawyers had written to McCullough Robertson setting out the reasons for Ms Madden's suspension and requesting responses. He said Ms Madden then provided a written response in a letter of 13 April 2016.

[1129] Mr O'Reilly stated that the board considered this response, but found it did not provide reasonable or believable explanation for the financial irregularities being investigated. He said it did not go "anywhere near" satisfying the board that Ms Madden had a reasonable explanation for the majority of concerns regarding her conduct and the lack of supporting documentation for the 'suspicious transactions'.

[1130] Mr O'Reilly said that on her response, it was also apparent that in wilful disregard of her suspension, Ms Madden was continuing to engage in conduct harmful to Street Swags and which was hindering the investigation.

*Unauthorised voluntary administration of Walkabout Beds*

[1131] Mr O'Reilly noted that Walkabout Beds is a wholly owned subsidiary of Street Swags, and Street Swags is the only shareholder of Walkabout Beds.

[1132] On 15 April 2016, he received an email from Ms Madden, advising that she had put Walkabout Beds into administration. He said he was caught by surprise with this news, and he had no notice that this may happen.

[1133] He was subsequently told by Mr Gillet, that Ms Madden put Walkabout Beds into voluntary administration also without his knowledge, and she accomplished this by submitting an ASIC form removing him from the register.

[1134] Mr O'Reilly did not believe there was any justification for placing Walkabout Beds into voluntary administration. He said that the only reason he could think of, was to stop Street Swags from investigating the irregular expenditure and transfers to Mr Weiss. He said that in putting Walkabout Beds into voluntary administration, Ms Madden has made it difficult for them to now determine where the missing money went. He believed that this conduct showed a disregard for Ms Madden's corporate governance obligations and the terms of her suspension.

*Ms Madden's resignation as director*

[1135] On 20 April 2016, Mr O'Reilly and Mr De Maria received an email from Ms Madden resigning as director of Street Swags, and on that same date, Ms Todd resigned from her

employment with Street Swags. Ms Todd's evidence is that she simply resigned as company secretary on this date, but did not resign her employment.

*Appointment of Mr Daly and Mr McDonald*

[1136] Mr O'Reilly stated that due to the seriousness of the financial irregularities regarding donated funds, and what appeared to be issues regarding governance and accountability, he knew there were difficult decisions ahead which he was nervous about especially in light of there only being two directors to deal with the problem. He said that an "extra pair of eyes" would be of great assistance, and therefore he contacted Mr Daly who is "very experienced". He said Mr Daly had been a senior executive of AMP in Queensland, and was the Chair of the Nudgee College Foundation. Mr O'Reilly stated that Mr Daly agreed to come on board as a director and was appointed on 29 April 2016.

[1137] Mr O'Reilly said that he contacted Mr Andrew McDonald, head of IT at the Business Convention Centre, noting he was good at documentation and procedure. Mr McDonald agreed to be appointed as company secretary and was formally appointed on 29 April 2016.

[1138] Mr O'Reilly said from that point on, resolutions of the board of Street Swags involved a joint decision of Mr De Maria, Mr Daly and himself, and they ensured that all four of them, including Mr McDonald, were present at the relevant times.

*Denial of Street Swags' Xero account*

[1139] Mr O'Reilly's evidence confirmed that Street Swags used a cloud based accounting software, Xero Accounting, with the subscription against an email account streetswags@gmail.com which was held by Ms Madden.

[1140] He said that on 21 April 2016, he exchanged emails with Ms Cleland, requesting access to the Xero records, however Ms Cleland refused to provide him with her access for the subscription.

[1141] He said that Geraghty Accountants advised Boss Lawyers that Ms Cleland had revoked their access on 14 April 2016. He said subsequently, Ms Madden also refused to hand over access to the accounting records, and therefore Street Swags filed an application in the Court to seek access. Transfer of the Xero subscription to the Street Swags board was awarded by the Court on 24 June 2016.

[1142] Mr O'Reilly's evidence was that Mr De Maria advised him, and he believed, that:

- (a) When the subscription was handed over, he discovered the records had been erased.
- (b) Mr De Maria was able to get the technicians to recover the files but Street Swags' new accountants, DLS Accountants advised him that the Xero accounts appeared to have been amended to remove itemisation of cash payments which can't be reconciled;
- (c) DLS Accountants advised that they cannot proceed with the appointment as Street Swags' accountants because there are insufficient financial records of Street Swags to enable them to do so.

[1143] Mr O'Reilly's evidence as to these matters was that he believed Ms Madden's refusal to hand over access, even in the face of a Court Order, showed a serious and wilful disregard

for her corporate governance obligations and her responsibilities under her employment contract to report to the board.

*Disparaging and defamatory comments concerning the directors of Street Swags*

[1144] Mr O'Reilly's evidence repeated Mr De Maria's evidence on this issue. I note that all of the concerns raised by Mr O'Reilly and Mr De Maria relevant to Ms Madden's conduct was post-employment conduct.

*Ms Madden representing Street Swags to third parties during suspension period*

[1145] Mr O'Reilly referred to Ms Madden's statement and her evidence that Mr Chu from the Department of Public Works contacted her during her suspension, and that she advised him she had "*stepped away from Street Swags and was concentrating on [her] cabin project*". Mr O'Reilly also referred to Ms Madden's evidence that at a meeting with representatives of the Commonwealth Games, she clearly represented herself and Walkabout Home, and did not discuss Street Swags or intimate that she represented Street Swags.

[1146] Mr O'Reilly's response to these matters was that the records show that Street Swags was used to fund the cabin business, however he was not aware of Street Swags being paid any money out of the cabin business it funded. He believed Ms Madden's actions as described in her statement demonstrate a serious conflict of interest and a breach of her fiduciary duties to Street Swags.

*Worrells Report*

[1147] Mr O'Reilly said that at the time they sought a forensic report from Worrells, the board was having great difficulty gaining access to Street Swags' financial records. He said in particular, Ms Madden's refusal to hand over access caused significant hindrance to their ability and the ability of Worrells to fully investigate the financial irregularities.

[1148] Mr O'Reilly said that on 19 May 2016, Worrells issued its report regarding alleged misuse of funds. He said that among other matters, the report indicated:

- (a) *That Ms Madden incurred up to \$441,339.43 in expenses from Street Swags and its subsidiary over the past year without proper authorisation.*
- (b) *That preliminary report provided to the respondent as a creditor by the Liquidators of Walkabout Beds shows that Street Swags was an unsecured creditor in the amount of \$197,842.00*
- (c) *It appears that Mr Weiss was been (sic) paid twice for amounts totalling at least \$65,396.14.*

[1149] Mr O'Reilly said these transactions were done without the knowledge or approval of the board, in reach of the delegations of authority from the board and the resolutions of 18 May 2015 and 20 June 2015 that:

- (a) The cabin project required further due diligence and a business plan before the project could proceed;
- (b) Only one cabin as a prototype for due diligence investigations was to be funded;



- (c) No funds were to be expended in relation to the Clarendon project or cabin project until the board has received and considered the independent written advice of Clayton Utz and the business plans.

*Summary dismissal notice of 19 May 2016*

[1150] Mr O'Reilly said that on considering the evidence and the board's own observations regarding the financial irregularities and Ms Madden's misconduct, on 19 May 2016 the board of directors of Street Swags, being himself, Mr De Maria, and Mr Daly, resolved to summarily dismiss Ms Madden and issued a letter of that date to Ms Madden advising of such and setting out the major reasons for the dismissal.

[1151] Mr O'Reilly said that at the time the board resolve to terminate Ms Madden's employment, there was no doubt in his mind that it was not only justified but also necessary to protect Street Swags from further harm. He said the matter had been reported to the police and reiterated that Ms Madden had since been charged with a fraud charge, with enquiries ongoing at the time of filing his statement.

[1152] Mr O'Reilly's evidence was that reinstatement of Ms Madden would be inappropriate because Street Swags could have no trust or confidence that she could act in the best interests of the company.

*Oral evidence at hearing*

[1153] In examination-in-chief, Mr O'Reilly stated that it was absurd that the board agreed in December 2015 to the payment of \$10,000 for Mr Weiss' storage issues. He cannot fathom why the \$10,000 was paid by Street Swags to the landlord in any event. He stated that the swags were not stored at Mr Weiss' factory until February 2016, and this was only a temporary issue anyway due to racking issues that had arisen in February 2016 at the College.

[1154] Mr O'Reilly stated that he did not know that Mr De Maria was employed by Street Swags until he was on his way to fly to Cambodia. His evidence is that he thought only the prototype was being put together, and he considered that independent advice was being sought to make sure it was safe. He had no knowledge of finance agreements.

[1155] Mr O'Reilly stated, "*People might criticize me and say I should have known. I can only know what I'm told.*" He said he found out afterwards about the contract having been awarded to Mr Weiss.

[1156] I asked Mr O'Reilly why he didn't approach Ms Madden to discuss the concerns before suspending her. He replied that Ms Madden called him, and he stated to her that they all needed to let the process take its course. He said he needed to learn if it was fact or fiction; he needed experts in.

[1157] He said that he didn't want somebody from within Street Swags, in the office telling him that "*This is for this*" when explaining accounts and finances. He said there was not a doubt in his mind he needed to take such action. He considered that he owed it to the people who had supported the charity.

[1158] Relevant to the meeting on 28 March 2016, Mr O'Reilly stated that he took a phone call from Ms Madden's sister, but he denies ever participating in the meeting.

[1159] He stated that he did not know about the contract awarded to Mr Weiss, the storage payment, the deposit payment, nor the \$2,500 per week retainer. He is not sure when he learned of the Finrent financing arrangement.

[1160] As to how Ms Madden became aware of certain material, he was not aware that Mr De Maria's emails were being covertly forwarded to Ms Cleland at Ms Cleland's initiative. He stated, "*We couldn't understand how we were learning of things; there was a leak. We had no way of figuring out how to stop it.*"

[1161] He stated that the defamatory statements made about him were very stressful. The bank accounts were frozen, and his evidence is that "*we had to put our own money in.*" He stated, "*Her behaviour left us with no option but to suspend her and then dismiss.*" When asked as to the reason he stated, "*the behaviour, approaching customers, the hate emails, the Worrells report. The bad behaviour as well. We had to stop it.*"

[1162] In cross-examination, Mr O'Reilly conceded that he does not know the constitution of Street Swags inside out. He was aware of the grant to fund the retreat work.

[1163] Mr O'Reilly stated that he was not aware all of the cabins were being built. He stated that he was expected a due diligence report from Clayton Utz. He did not know that supposedly there was a new pro bono law firm; he said that it was kept from the board.

[1164] Ms Madden put to him that although there had not been a board meeting in early February 2016, she had been sending him information. Mr O'Reilly said that while credit had been discussed at a board meeting, he understood that Ms Madden was organising a line of credit for the purchaser of the cabin. Ms Madden stated, "*I'm not disputing it.*"

### **Documents produced towards or at the conclusion of the hearing**

[1165] As a result of discussions during the hearing, I caused for a number of documents to be produced, either by the parties or by others. They are detailed below.

#### *Weekly bank transactions of Walkabout Beds Pty Ltd*

[1166] On 3 June 2020, per my direction, Ms Madden produced weekly bank statements of Walkabout Beds Pty Ltd. As I understand it, these were not in the possession of the Respondent until produced during the proceedings, some four years since the dismissal.

[1167] The bank statements demonstrate that from early 2015, Ms Madden was paid a weekly payment of approximately \$304.62 as wages. What is understood is that part of Ms Madden's annual salary was made from Walkabout Beds Pty Ltd, and part from the Respondent. It should be assumed that the \$304.62 weekly payment is a nett payment after the deduction of taxation.

[1168] By April 2015, the weekly amount had increased to approximately \$631.63 per week on account of an agreed increase in salary. For clarity, I consider it prudent to identify the payments made to Ms Madden as wages and paid into her bank account to demonstrate that

up until 5 February 2016, no deductions were made from Ms Madden's weekly payment to be used elsewhere, either for her purported payments to her law firm, or for paying for the cabin or cabins that had been put on her property:

2 January 2015	\$304.62
9 January 2015	\$304.62
16 January 2015	\$304.62
23 January 2015	\$304.62
30 January 2015	\$304.62
6 February 2015	\$304.62
13 February 2015	\$304.62
20 February 2015	\$304.62
27 February 2015	\$304.62
6 March 2015	\$304.62
13 March 2015	\$302.62
20 March 2015	\$302.62
27 March 2015	\$302.62
7 April 2015	\$631.63
10 April 2015	\$631.63
17 April 2015	\$631.63
24 April 2015	\$631.63
1 May 2015	\$631.63
8 May 2015	\$631.63
15 May 2015	\$631.63
22 May 2015	\$631.63
29 May 2015	\$631.63
5 June 2015	\$631.63
12 June 2015	\$631.63
19 June 2015	\$631.63
26 June 2015	\$631.63
3 July 2015	\$631.63
10 July 2015	\$631.63
17 July 2015	\$631.63
24 July 2015	\$631.63
31 July 2015	\$631.63
7 August 2015	\$631.63
14 August 2015	\$631.63
21 August 2015	\$631.63
28 August 2015	\$631.63
4 September 2015	\$631.63
11 September 2015	\$631.63
18 September 2015	\$631.63
25 September 2015	\$631.63
2 October 2015	\$631.63
9 October 2015	\$631.63
16 October 2015	\$631.63
23 October 2015	\$631.63
30 October 2015	\$631.63
6 November 2015	\$631.63
13 November 2015	\$631.63

20 November 2015	\$631.63
27 November 2015	\$631.63
4 December 2015	\$631.63
11 December 2015	\$631.63
18 December 2015	\$631.63
29 December 2015	\$631.63
4 January 2016	\$631.63
15 January 2016	\$631.63
22 January 2016	\$631.63
29 January 2016	\$631.63
5 February 2016	\$631.63

**[1169]** It is Ms Madden’s evidence that she then instructed that an amount be “held aside” from her wages in order to pay for her personal family law legal fees. The weekly bank statements show the following payments made to Ms Madden:

12 February 2016:	\$28.63
25 February 2016:	\$28.63
26 February 2016:	\$28.63

**[1170]** These amounts add up to a weekly amount of \$603 “held aside”. Three amounts of \$603 is equal to \$1,809. This is the amount that was “held aside”, constituting Ms Madden’s wages as at 26 February 2016.

**[1171]** On the same day, 26 February 2016, an amount of \$3,195.26 was paid by Walkabout Beds Pty Ltd to Crowley Greenhalgh, Ms Madden’s personal family law firm. The difference between \$3,195.26 paid to the law firm, and \$1,809 “held aside” is an amount of \$1,386.26.

**[1172]** On 4 March 2016, an amount of \$28.63 was paid into Ms Madden’s bank account. The same amount was paid on 11 March 2016, 18 March 2016 and 25 March 2016. That is an amount of four x \$603 “held aside” for Ms Madden, which totals \$2,402. The total amount withheld from Ms Madden’s nett wages ever, was \$4,221.00.

**[1173]** On 21 March 2016 a further payment of \$14,400 was paid by Walkabout Beds Pty Ltd to Crowley Greenhalgh.

**[1174]** It should also be noted that the weekly bank statements demonstrate that a payment of \$2,500 was made to Mr Weiss on 17 March 2016 and 24 March 2016.

#### *Pilot Partners*

**[1175]** On 3 June 2020, I ordered Mr Nigel Markey and Ms Ann Fordyce, Administrators of Walkabout Beds Pty Ltd to produce relevant documents and answer questions put by me. Mr Markey and Ms Fordyce complied with the order the following day.

**[1176]** Attached to the correspondence from Mr Markey and Ms Fordyce was a Report as to Affairs completed by Ms Madden relevant to Walkabout Beds Pty Ltd’s financial affairs dated 20 April 2016. Ms Madden declared approximately \$55,600 as the amount as sundry

debtors. She declared that she was owed approximately \$19,600 in statutory entitlements. She did not declare a payment made to Crowley Greenhalgh of \$14,400 on account of her personal family law matters made on 21 March 2016 as a potential sundry debtor.

[1177] Ms Madden gave oral evidence that she had held discussions with individuals at Pilot Partners who had said that she could “exchange” or “have forgiven” the amount on account of being owed an amount somewhat larger in leave entitlements.

[1178] I asked each of Mr Markey and Ms Fordyce the following questions which were answered as follows:

**Nigel Markey**

***a) Production of Ms Jean Madden’s “Report as to Affairs” dated 20 April 2016.***

A copy of Ms Jean Madden’s Report as to Affairs dated 20 April 2016 is **attached**.

***b) A statement of Mr Nigel Markey relevant to whether Ms Madden alerted Mr Markey to a sundry debtor being law firm Crowley Greenhalgh, in the amount of \$14,400 on account of this amount being paid by a person as yet unknown to Crowley Greenhalgh from the Walkabout Beds Pty Ltd NAB account for Ms Madden’s personal legal fees (family law matter). This amount was paid to Crowley Greenhalgh on 21 March 2016 by electronic bank transfer.***

Mr Markey was not alerted by Ms Madden regarding the payment of \$14,400 from the company’s NAB account to Crowley Greenhalgh on 21 March 2016.

***c) A statement of Mr Nigel Markey as to whether discussions were had with Ms Madden that any such payment to Crowley Greenhalgh ought to be “exchanged” or “forgiven” against Ms Madden’s employee entitlements of \$18,594.***

Mr Markey did not have discussions with Ms Madden that any such payment to Crowley Greenhalgh ought to be “exchanged” or “forgiven” against Ms Madden’s employee entitlements.

***d) A statement of Mr Nigel Markey as to whether the payment to Crowley Greenhalgh of \$14,400 on 21 March 2016 was disclosed and whether it came into consideration in paragraphs 8.6 and 8.7 of the Report to Creditors dated 13 May 2016.***

The payment to Crowley Greenhalgh on 21 March 2016 was not disclosed to Mr Markey. Please refer to Ms Fordyce’s response below regarding whether the payment was taken into consideration in paragraphs 8.6 and 8.7 of the Report to Creditors dated 13 May 2016.

**Ann Fordyce**

***a) Production of Ms Jean Madden’s “Report as to Affairs” dated 20 April 2016.***

A copy of Ms Jean Madden’s Report as to Affairs dated 20 April 2016 is **attached**.

***b) A statement of Ms Ann Fordyce relevant to whether Ms Madden alerted Ms Fordyce to a sundry debtor being law firm Crowley Greenhalgh, in the amount of \$14,400 on account of this amount being paid by a person as yet unknown to Crowley Greenhalgh from the Walkabout Beds Pty Ltd NAB account for Ms Madden’s personal legal fees (family law matter). This amount was paid to Crowley Greenhalgh on 21 March 2016 by electronic bank transfer.***

Ms Fordyce was not alerted by Ms Madden regarding the payment of \$14,400 from the company’s NAB account to Crowley Greenhalgh on 21 March 2016.

***c) A statement of Ms Ann Fordyce as to whether discussions were had with Ms Madden that any such payment to Crowley Greenhalgh ought to be “exchanged” or “forgiven” against Ms Madden’s employee entitlements of \$18,594.***

Ms Fordyce did not have discussions with Ms Madden that any such payment to Crowley Greenhalgh ought to be “exchanged” or “forgiven” against Ms Madden’s employee entitlements.

***d) A statement of Ms Ann Fordyce as to whether the payment to Crowley Greenhalgh of \$14,400 on 21 March 2016 was disclosed and whether it came into consideration in paragraphs 8.6 and 8.7 of the Report to Creditors dated 13 May 2016.***

The payment to Crowley Greenhalgh on 21 March 2016 was not disclosed to Ms Fordyce and was not taken into consideration in paragraphs 8.6 and 8.7 of the Report to Creditors dated 13 May 2016.

As noted at section 5 of the Report to Creditors dated 13 May 2016, limited company records had been delivered to the Administrators. As such, the payment was not taken into consideration at the time of issuing the report.

The payment was brought to Ms Fordyce’s attention following an email enclosing further information from Street Swag Limited’s solicitor, Boss Lawyers, on 18 May 2016.

Further investigations in respect of the payment was subsequently conducted and concluded on 11 July 2016. No further recovery action was taken for the following reasons: limited supporting documentation available, potential offset of the payment against Ms Madden’s claims against the company and the liquidation was without funds.

*Statutory declaration of Stacey Glover of Crowley Greenhalgh Solicitors*

[1179] On 3 June 2020, I issued an order for Ms Stacey Glover of Crowley Greenhalgh Solicitors in the following form:

“SCHEDULE

(a) A copy of Ms Jean Madden’s trust account ledger for the period 1 January 2016 to 31 December 2016.

(b) Emails between Ms Madden and Ms Stacey Glover relevant to payments made to the firm, Crowley Greenhalgh Solicitors by Ms Madden or by any other person or

entity, including Walkabout Beds Pty Ltd, for the period of 1 January 2016 to 31 December 2016 (inclusive).

(c) Relevant to an email sent by Ms Glover to Ms Madden on 31 March 2016 at approximately 4:41pm, were instructions provided by Ms Madden to repay to Walkabout Beds Pty Ltd the \$14,400 overpayment received by Crowley Greenhalgh on 22 March 2016? The evidence before the Fair Work Commission is that Ms Glover offered to have the money returned by way of a cheque to the (Walkabout Beds Pty Ltd) NAB account. This information may be produced to the Commission in the form of a witness statement of Ms Glover.

(d) If the payment of \$14,400 was not returned to Walkabout Beds Pty Ltd, information is required to understand what has happened to that sum of money. Evidence before the Fair Work Commission is that Ms Madden instructed Crowley Greenhalgh to forward some or all of that amount to a trust account of a different law firm instructed by Ms Madden. Please provide details of such requests and actions taken. This information may be produced to the Commission in the form of a witness statement of Ms Glover.

Note 1: The above does not, in the Commission's view, invoke client legal privilege. If any client legal privilege is claimed over legal advice, it may be redacted from the documents required to be produced.

Note 2: Relevant to the email sent by Ms Glover to Ms Madden on 31 March 2016, the Fair Work Commission considers that only this sentence is admitted into evidence, and the remainder of the email sent by Ms Glover to Ms Madden is protected by client legal privilege:

“Dear Jean

We received \$14,400 on 22 March, is the money from Walkabout Beds? Or is the \$1,016.81 in partial payment of an invoice? We can refund into a cheque via the NAB account.”

**[1180]** Ms Glover complied with the order on 5 June 2020. Her statutory declaration is as follows:

- “1. I am a Legal Practitioner in the employ of Crowley Greenhalgh Solicitors.
2. I acted for Jean Madden until July 2016, when she terminated her instructions.
3. In response to the Schedule that is attached to the Fair Work Commission's Order dated 3 June 2020, I say:
  - (a) An extract from Crowley Greenhalgh's Trust Account ledger for the period 1 January 2016 until 28 July 2016 for Ms Madden's matter is attached and marked with the letter “A”. There were no further transactions after that date.
  - (b) Attached and marked with the letter “B” are copies of the emails between Ms Madden and I regarding payments made to

Crowley Greenhalgh between the period 1 January 2016 and 31 December 2016.

- (c) A copy of the email I sent to Ms Madden at approximately 4.42pm on 31 March 2016, is included in the bundle marked “B”, I did offer a refund in that email. Having not heard further from Ms Madden, I emailed her on 5 April 2016. I had also tried to contact her via telephone a couple of times that day. An explanation why a refund was not made appears below.
- (d) They payment of \$14,400 was not returned to Walkabout Beds. At around 11am on 31 March 2016 our receptionist received a call from Ms Madden. I subsequently received an email from our receptionist regarding the telephone conversation: “Jean Madden left the message that she is topping up the trust account to 21,000 and we do not need to refund her work, as the money they deposited was part of her wages”.
  - i. On 31 March 2016 at around 4.41pm I emailed Ms Madden offering to provide a refund via a cheque into an NAB account.
  - ii. On 5 April 2016 I emailed Ms Madden, advising that the Barrister’s fees could be \$35,200, we had received \$25,000 and requested she deposit a further \$10,200.
  - iii. On or around 5.49pm on 5 April, an email was received from Ms Madden asking “how did it go from \$21k to 24 to 35k?”
  - iv. On 3 June 2016 I requested that Ms Madden deposit a further \$7,000 into our Trust Account.
  - v. On 17 June 2016 I telephoned Ms Madden we discussed a refund, the amount of \$4,000 was discussed. A refund of \$1,250 was subsequently paid to Ms Madden.
  - vi. On 4 July 2016 I wrote to Ms Madden regarding her legal costs. Subsequent to this letter being sent Ms Madden telephoned me. She said words to the effect, “*I reduced my pay from Walkabout Beds to \$27 per week and the rest is paid to you*”. She instructed me to cease work on her matter. She said she was going to find another solicitor. I advised her to read the barrister’s retainer again as there could be cancellation fees.
  - vii. On 7 July 2016 I received an email from Ms Madden requesting that we organise to have the barrister’s retainer transferred to Queensland Law Practice (“QLP”) and provided their bank details.
  - viii. On 7 July, I wrote to Ms Madden advising that once her replacement solicitor had accepted barrister’s retainer we would transfer the funds to their trust account.



- ix. On 7 July 2016 we received an email from QLP regarding the money we held for Ms Madden.
- x. On 12 July 2016 we received a trust account authority to release the monies we held to QLP.
- xi. On 22 July 2016 the barrister waived their cancellation fee.
- xii. On 28 July 2016 the amount of \$33,007.77 was paid to QLP's trust account."

[1181] The documents produced by Ms Glover, and already in the possession of the Respondent in these proceedings demonstrate that Ms Madden sent the following emails to Ms Glover on 29 March 2016:

*"Hi Stacey it has come to my attention that Walkabout Beds Pty Ltd has paid into your trust old invoices (which I had already paid) this was a mistake. Could you please organise all money paid to you by Walkabout Beds to be returned asap.*

*Direct deposit into BSB: 084-123 Account Number: 835768739 Name: Walkabout Beds Pty Ltd.*

*Thank you so much."*

And the following email copying in Ms Todd:

*"Subject: Incorrect Payment/s – Bank Account*

*Further to my earlier email*

*Could you please return the money to Walkabout Beds Pty Ltd.*

*Direct deposit into BSB: 084-123 Account number: 835768739 Account Name: Walkabout Beds Pty Ltd*

*Thank you."*

[1182] On 31 March 2016, Ms Glover wrote to Ms Madden as follows:

*"Dean Jean*

*We received \$14,400 on 22 March, is the money from Walkabout Beds? Or is the \$1,016.81 in partial payment of an invoice? We can refund via a cheque into the NAB account....."*

[1183] The letter sent by Ms Glover on 4 July 2016 reads in part:

*"....We enclose a trust account statement and account statement which shows your invoices to date. We bring the following to your attention:*

- (a) On 18 March 2016 the amount of \$1,016.81 was paid into our trust account. This was the balance of an outstanding invoice.*
- (b) On 22 March 2016 the amount of \$14,400 was paid into our trust account.*
- (c) On 29 March 2016 you sent the writer two emails:*

*“It has come to my attention that Walkabout Beds Pty Ltd has paid into your trust old invoices (which I had already paid) this was a mistake. Could you please organise all money paid to you by Walkabout Beds to be returned.”*

*“Could you please return the money to Walkabout Beds Pty Ltd” and quoted an account number.*

*(d) On 31 March 2016 the writer wrote to you enquiring which payment was from Walkabout Beds and that a refund could be made.*

*(e) On 31 March 2016 you telephoned this office and advised that a refund was not required and “your work” had made the deposit as part of your wage.*

*Can you please clarify whether Walkabout Beds deposited the \$14,400 or the \$1,016.81. If it was the \$14,400 then we will need to return it to you and have it replaced with funds from another source, not being you or Carl for the reason set out in 2 above [which was redacted].”*

**[1184]** On 4 July 2016, Ms Glover sent further correspondence after a telephone discussion with Ms Madden:

*“Dear Jean*

*We refer to your telephone conversation with the writer this morning:*

- 1. We confirm your instructions that the moneys that were paid into our bank account in March 2016 were part of your wage from Walkabout Beds.  
.....”*

*Osborn Consulting Engineers*

**[1185]** On 17 June 2020 I made an order for Osborn Consulting Engineers to produce documents relevant to the following transactions:

*“Relevant to the services performed by Osborn Consulting Engineers Pty Ltd to Timber Sales & Mobile Sawmilling, 40 Galvin Road, Upper Brookfield QLD 4069, or the other entities listed in (b), the following:*

*(a) A description of all invoices issued to Timber Sales & Mobile Sawmilling, particularly these invoices:*

*Invoice: 301470 \$1,837.00 Ref: BR15-0617*

*Invoice: 302350 \$957.00 Ref: BR15-0617*

*Invoice: 301718 \$3,269.20 Ref: BR15-0617*

*Please advise the work that was performed and for whom. Information relevant to the structure and location of the work performed is to be included.*

*(b) A statement as to whether any other invoices have been issued or served on Street Swags Limited, Walkabout Beds Pty Ltd or any entity associated with Mr Carl Weiss prior to May 2016. If so, please details the invoice(s) and the work performed.”*

[1186] On 18 June 2020, Mr Peter Brown, Director of Osborn Consulting Engineers complied with the order by sending an email with 18 attachments. It is not entirely clear as to which monies were expended, however *prima facie*, it appears that work conducted by Mr Weiss was paid for by Street Swags or Walkabout Beds in the amounts above.

*Documents produced by Boss Lawyers*

[1187] On 17 June 2020 I issued an order to Boss Lawyers, who were no longer acting for the Respondent. I requested particular information. On 19 June 2020, correspondence was received, complying with the order. Of particular relevance is an email from Mr Luke Walker of Boss Lawyers to Pilot Partners, administrator of Walkabout Beds Pty Ltd. The email is dated 18 May 2016, one day prior to Ms Madden’s dismissal. It is as follows:

*“Dear Liz*

*I attach a copy of a Walkabout Beds bank statement from 20 to 26 February 2016 and refer you to the highlighted entry.*

*The highlighted entry is for an amount of \$3,195.26 and is remitted to Crowley Greenhalgh Solicitors. The reference number therein corresponds with a family law matter in which they are acting for Ms Madden. Our client doubts that this is the only payment made from Walkabout Beds’ accounts to Crowley Greenhalgh as we have located other invoices from them in the Street Swags’ office that have been marked as “paid”.*

*The highlighted entry strongly suggests that Ms Madden has been using Walkabout Beds’ account to pay the legal fees in her family law dispute. In the circumstances, such payments would be recoverable pursuant to the Corporations Act 2001 (Cth) by the liquidator in any winding up of the company.*

*Please let us know if you require any further information and what the results of the administrators’ investigations into the above matters are.”*

[1188] Relevant to how the draft consent orders agreed to by Ms Madden, Dr Thornton et. al ultimately came to be orders made by the Supreme Court that Ms Madden was a director *as at 19 April 2016*, Mr Walker deposed an affidavit on 2 June 2016 in the Supreme Court proceedings noting that Ms Madden had resigned as director dated 20 April 2016. He attached for the Court’s consideration Ms Madden’s resignation as an annexure to his affidavit. In light of Ms Madden’s resignation as a director, an application to the Court was made that the consent order should be amended to read “as at 19 April 2016”.

[1189] Ms Madden signed the draft consent orders on 6 May 2016. The outline of argument was transparent to the Court in that the Respondent in these proceedings, being the applicant in the proceedings before the Court in its outline of argument declared that Ms Madden has resigned her position as director as at 20 April 2016, and therefore the orders that it had sought having declared her as a director were otiose.

[1190] During the hearing Ms Madden was exasperated that she had signed consent terms on 6 May 2016, declaring her as a director of Street Swags. She had, by that time, however,

resigned as a director, and that is what Boss Lawyers, on behalf of Street Swags informed the Court. The Court accepted the amendment request to the consent orders and stated that it recognised the directors as at 19 April 2016 as Mr De Maria, Mr O'Reilly and Ms Madden. The effect of that would be that Ms Madden's decision to resign as a director on 20 April 2016 would not displace the Court's eventual order.

## **SUMMARY OF THE PARTIES' SUBMISSIONS**

### **Ms Madden's submissions**

[1191] Ms Madden said that in January 2016, Mr De Maria was employed as a Sales Manager on a fixed term contract, and that in this role he was subordinate to Ms Madden. Ms Madden said that by March 2016, tensions had arisen in the company, as Mr De Maria was not meeting his targets as a sales manager and some of the female staff had started to express concerns about Mr De Maria's inappropriate workplace behaviours including unwarranted remarks of a sexual nature.

[1192] On 15 March 2016, a staff meeting was held and during that meeting Ms Madden advised Mr De Maria that as he had not met his targets, his contract would not be renewed. Mr De Maria's contract was due to come to an end at the end of March 2016.

[1193] Ms Madden said that after the staff meeting on 15 March 2016, Mr De Maria started communicating with Mr O'Reilly, in private, about Ms Madden's position as CEO, and that on 24 March 2016, Boss Lawyers, who had not previously been retained by the Respondent, purportedly issued correspondence to Ms Madden informing her that the board has resolved to stand her down due to allegations of financial irregularities.<sup>18</sup> Ms Madden said that the correspondence was sent by e-mail to the wrong e-mail address, and was also purportedly sent by registered post to Ms Madden's home address, but Ms Madden was not at home on 25 March 2016. Ms Madden said she never received a copy of the letter by way of post.

[1194] Ms Madden said that on 25 March 2016, which was the Good Friday public holiday, all staff except Ms Madden were advised by email that Ms Madden had been stood down.<sup>19</sup> On 28 March 2016, Ms Madden said she became aware of the all staff email but had still not received the stand down letter. Ms Madden said that at this point, in her role as Chief Executive Officer, she stood Mr De Maria down, pending the provision of allegations of misconduct.<sup>20</sup>

[1195] Later on 28 March 2016, Ms Madden convened a meeting of all members of the Respondent, which was attended by all active members of the company, except Mr De Maria, with Mr O'Reilly attending by telephone. At the meeting, Ms Madden said the members resolved:

- to terminate the appointment of Boss Lawyers;
- to terminate Mr O'Reilly, Mr De Maria, and Ms Madden's appointment as Directors;
- to appoint Dr Harold Thornton, Mr James Booth, and Dr Angela Richards as Directors; and
- to notify ASIC of the change of directors.

[1196] Ms Madden said that on 29 March 2016, a directors' meeting resolved to reinstate Ms Madden as the Chief Executive Officer of the Respondent.

[1197] On 30 March 2016, Ms Madden said she received correspondence from Boss Lawyers stating that she had no authority to lodge the documents with ASIC or make any statement to give any information on behalf of Street Swags; the lodgement of false documents was to be referred to the authorities; and that her employment was terminated immediately. Ms Madden said that at no time prior to 30 March 2016 was she given any opportunity to respond to the allegations contained in the termination letter.

[1198] Ms Madden said that prior to 30 March 2016, McCullough Robertson Lawyers had been retained by the new board to act on behalf of the Respondent. On 30 March 2016, Boss Lawyers wrote to McCullough Robertson setting out certain allegations about Ms Madden's conduct and seeking a response, which included purported financial irregularities. Over the following days, Ms Madden said McCullough Robertson made clear to Boss Lawyers on numerous occasions that they were taking instructions from the new board on behalf of the Respondent and that they did not act for Ms Madden personally.

[1199] On 12 April 2016, Boss Lawyers, on behalf of the Respondent, Mr De Maria, and Mr O'Reilly, filed an application in the Supreme Court of Queensland seeking declarations that the meeting of members on 28 March 2016 was invalid and the directors of the Respondent were Mr O'Reilly, Mr De Maria and Ms Madden.

[1200] Ms Madden said that on 13 April 2016, Ms Madden provided Boss Lawyers with a detailed response to the allegations contained in the letter to McCullough Robertson of 30 March 2016. Ms Madden said that given her employment had been terminated on 30 March 2016 and the letter of concerns had been sent to the lawyers who were acting for the new board, properly understood, those concerns could only have been directed at Ms Madden's conduct as a Director, not as an employee.

[1201] On 14 April 2016, the claim for interlocutory relief was resolved by way of the Respondents to the proceeding, including Ms Madden in this matter, agreeing that the meeting of 28 March 2016 was invalid; the correct directors of the respondent were Mr O'Reilly, Mr De Maria and Ms Madden; and Ms Madden would be stood down as CEO pending the investigation. A Consent Order was prepared to this effect. Ms Madden argued that the effect of the compromise was that Ms Madden's employment was reinstated, but this was never made clear by the Respondent.

[1202] Ms Madden said that on 19 April 2016, two months' notice was given of a meeting of members to be held on 19 June 2016, with the notified business of that meeting being to appoint members, appoint directors and appoint new company lawyers. Ms Madden said that on 20 April 2016, she resigned as a Director of Street Swags due to concerns about trading whilst insolvent, and on 22 April 2016 Ms Madden filed an unfair dismissal application. Ms Madden said the Respondent did not respond to that application by advising Ms Madden that she was still employed.

[1203] On 19 May 2016, Worrell's Accountants provided a report addressing the purported financial irregularities. Ms Madden submitted that the report was highly qualified and dependent upon the limited instructions provided by Mr O'Reilly and Mr De Maria.

**[1204]** Ms Madden said that on 19 May 2016 her employment was terminated for a second time, summarily. The reasons for the termination were purportedly that:

- (a) Since her suspension Ms Madden had refused to turn over property belonging to the Respondent;
- (b) Since the suspension date Ms Madden had intimated to third parties that she represented the Respondents;
- (c) Since the suspension date, Ms Madden had made derogatory statements about Mr O'Reilly and Mr De Maria; and
- (d) The Worrell's Report indicated that Ms Madden had incurred \$441,399.43 in unauthorized transactions.

**[1205]** Ms Madden submitted that at no time prior to 19 May 2016, after her earlier reinstatement, was Ms Madden given an opportunity to respond to the allegations contained in the second termination letter to explain her conduct or advised that her employment may be at risk.

*Application of the Small Business Code*

**[1206]** Ms Madden accepted that the Small Business Code applies to the Respondent. Ms Madden accepted that the Respondent employed fewer than 15 employees at the time of her suspension and dismissal in 2016. However, Ms Madden submitted that her summary dismissal was not based on reasonable grounds, and there was no evidence in 2016 or at any time since to support the finding Ms Madden engaged in serious misconduct. Ms Madden submitted that she had not been accused of violence or serious breaches of occupational health and safety procedures, and instead focused on the allegations of theft and fraud.

**[1207]** Ms Madden acknowledged that Mr De Maria had made a report to the Queensland Police Service alleging fraud on her behalf. Ms Madden said the report was made without any reasonable basis and absent any reasonable suspicion. Ms Madden submitted that while the formation of a reasonable belief or suspicion does not require concrete evidence, an allegation of fraud is serious and must be made on some evidence and on a reasonable basis.

**[1208]** Ms Madden said that at the time of her summary dismissal and when the report to the Queensland Police Service was made, there was no evidence of fraud or theft, and no evidence had been uncovered since to retrospectively justify her dismissal. Ms Madden said that the report to the Queensland Police Service was made despite there being no forensic audit of the accounts of Street Swags ever undertaken, and that while the Queensland Police Service charged Ms Madden with many offences over several years commencing in 2016, the charges have all been withdrawn due to lack of evidence.

**[1209]** Ms Madden submitted that to the extent a report was obtained from an accountant, the Commission may be satisfied the Worrell's Report did not support any suspicion or finding that she stole from the Respondent or engaged in fraud or any other misconduct in relation to the finances of Respondent. Ms Madden said that Pilot Partners, a reputable accounting firm, was also engaged by the Respondent during 2016 and did not identify or report any incidence of theft or fraud on the part of Ms Madden or any other directors, staff, or members of the Respondent.

[1210] Ms Madden asked that the Commission take into account and place significant weight on the decision by the Queensland Police Service to withdraw all charges against her, consistent with her submission that she did not engage in any serious misconduct during her time period as Director and CEO of the Respondent.

[1211] Ms Madden argued that the conduct of the Respondent in dismissing her without giving her a fair chance to be heard on the accusations made against her does not fall within the Small Business Fair Dismissal Code., and that in relation to her suspension and subsequent dismissal, the Small Business Fair Dismissal Code also does not render this lawful. Ms Madden submitted she was never given proper notice of her suspension, never given a chance to respond to the allegations against her and never given a fair hearing.

[1212] Ms Madden submitted there was no suggestion that she lacked the capacity to perform her role as Director and CEO, and there was no valid reason for her dismissal without notice or a fair opportunity to be heard by the Respondent. Ms Madden submitted that none of the evidence before the Commission, including after the hearing, supports the existence of a bona fide belief that there were financial irregularities.

*Section 387 of the Act – unfair dismissal considerations*

[1213] Ms Madden submitted that in determining this application, if the Commission is satisfied that the Small Business Fair Dismissal Code has not been complied with, the most relevant provisions of s.387 were whether there was a valid reason for the termination related to Ms Madden’s capacity or conduct; whether Ms Madden was given an opportunity to respond to any reason related to their capacity or conduct; and other relevant factors the Commission could consider under s.387(h).

*Valid reason*

[1214] Ms Madden submitted that there was no valid reason for her termination. She submitted that the four items of misconduct relied upon by the Respondent in dismissing Ms Madden could be grouped into two categories: the financial irregularities, and Ms Madden's conduct after being stood down.

[1215] Ms Madden said that she had given a detailed explanation for the financial irregularities. She said that the Worrells report was not put to her prior to her termination and is highly qualified, dependent on a number of instructions given to the report writer. Ms Madden said that those instructions were not correct, and to the extent that the report identifies possible irregularities that are not dependant on the instructions given, Ms Madden said she has provided an explanation for those matters. Ms Madden said the report does not attribute responsibility for, or knowledge, of the irregularities to Ms Madden. Ms Madden said that it is therefore apparent that there are no such irregularities, or that any such irregularities were the fault or responsibility of Ms Madden.

[1216] Ms Madden submitted that where the Respondent said that there was a reasonable basis to believe that Ms Madden had engaged in misconduct associated with the alleged irregularities, that submission should not be accepted. She argued that the given the highly qualified nature of the Worrells report, failing to provide the report to Ms Madden is inexplicable. Ms Madden conceded that the Respondent asked Ms Madden for an explanation

as to certain matters, but this was after Ms Madden had been dismissed, and an explanation was ultimately provided by Ms Madden.

[1217] Ms Madden said that the Respondent sought Ms Madden's response in respect of the instructions which were provided to Worrells. Ms Madden argued that given the central importance those instructions have in the "findings" made in the report, the failure to do so made the attempt to rely upon the report unreasonable. On that basis, Ms Madden argued that there is no reasonable basis for the Respondent to have believed that the alleged financial irregularities amounted to serious misconduct on behalf of Ms Madden.

[1218] Ms Madden submitted the second set of grounds the Respondent relied on in terminating her employment was Ms Madden's conduct after being stood down, which Ms Madden said included purportedly not returning property of the Respondent, disparaging the Respondent, and not providing the Respondent with, access to various electronic platforms.

[1219] Ms Madden argued that for at least two weeks of the stand down period, Ms Madden was not an employee, as her employment was terminated on 30 March 2016. Ms Madden said that a settlement was reached on 14 April 2016 resulting in her reinstatement. Ms Madden said it was never clear until the second termination that Ms Madden had been reinstated.

[1220] Ms Madden said that the stand down period involved a great upheaval in the Respondent's organisation and business. Ms Madden said that prior to that upheaval, Ms Madden had been the CEO and Managing Director of the Respondent, and argued that the upheaval started because Ms Madden proposed to not renew Mr De Maria's contract. Ms Madden said that on 26 March 2016 the members had voted to remove Mr De Maria and Mr O'Reilly, and that while this decision was set aside on the basis of a technicality, a new meeting which complied with the relevant requirements had been called and the outcome was likely to be that Mr O'Reilly and Mr De Maria would be removed as Directors.

[1221] Ms Madden said that throughout this period there was considerable uncertainty as to who was in charge and what authority they had to give directions, and that many of the purported directions from the Respondent were not given to Ms Madden in her capacity as an employee but as a director or ex-director and there was uncertainty as to whether Ms Madden was even employed. In those circumstances, Ms Madden argued it was unclear as to whether Ms Madden had contravened any lawful or reasonable directions given to her by the Respondent.

[1222] Ms Madden submitted that given that the Respondent was acutely aware of the confusion and uncertainty surrounding the proper control of the Respondent as an organisation, the capacity for the newly engaged lawyers to act on behalf of the Respondent, and Ms Madden's employment status, there was no reasonable basis for believing that she had failed to comply with a lawful direction. The only reasonable assessment to be made was that there was a substantial degree of uncertainty as to who was entitled to the lawful control of the Respondent and that neither party could be entirely sure that lawful or reasonable directions had been given or that Ms Madden was an employee.

[1223] In respect of the Xero account, Ms Madden said she repeatedly told Mr De Maria and Mr O'Reilly that they had been given read only access which was sufficient to enable them to access and copy all of the historical data. Ms Madden said the only difference between read



only access and full access was that Mr De Maria and Mr O'Reilly could not make changes to the historical data in Ms Madden's name.

[1224] Ms Madden submitted that for those reasons, there was no valid reason for the termination of Ms Madden's employment, and no reasonable basis for the Respondent to believe that Ms Madden had engaged in serious misconduct giving rise to grounds for termination.

*Opportunity to respond*

[1225] Ms Madden said that the Respondent did not give her an opportunity to respond to the allegations relied upon to terminate her employment as she was summarily terminated without notice on 30 March 2016. After that time, the Respondent's solicitors wrote to the solicitors for the new board, McCullough Robertson, raising issues about certain alleged financial irregularities. Then on 14 April 2016, Ms Madden was reinstated by agreement to her employment. Subsequently, the respondent did not put the allegations to Ms Madden.

[1226] Ms Madden submitted that the Respondent received the Worrells report on 19 May 2016, and did not put the report to her. She further submitted that the additional allegations relied upon in the second termination letter were never put to Ms Madden. Ms Madden submitted that it appeared the Respondent waited until the Consent Order had finally been made by the court, giving effect to the settlement on 14 April 2016, before immediately terminating Ms Madden. Ms Madden argued it was apparent from that timing that the Respondent's terminating Ms Madden was not related to her conduct in any way but was an attempt to cement the control of the organisation, which was especially so in circumstances where the members meeting was to be held on 19 June 2016.

*Harshness*

[1227] Ms Madden submitted that throughout late March, April and early May 2016, the affairs of the Respondent were in disarray due to an attempt by two of the Directors, Mr O'Reilly and Mr De Maria, to seize control of the Respondent. Ms Madden submitted that this was due to Ms Madden's intention to not renew Mr De Maria's contract of employment.

[1228] During this period, Ms Madden said the members had met and attempted to remove Mr O'Reilly and Mr De Maria from office, and while that meeting was set aside due to technicalities, another meeting had been validly called. Ms Madden submitted that as a result there was a considerable period where it was entirely unclear as to who was in control of the Respondent and who was entitled to give lawful and reasonable directions.

[1229] Ms Madden submitted that in circumstances where she was the founder, Managing Director and Chief Executive Officer of the Respondent, it was unduly harsh for the respondent to terminate her employment for conduct undertaken in the course of a dispute between the Directors as to who was entitled to control the respondent and whether Ms Madden's employment status was unclear. She submitted that in respect of the alleged financial irregularities, these were never discussed with her prior to her being stood down, which strongly suggested that the purported concerns in respect of the irregularities were not bona fide but merely being used as a pretence to remove Ms Madden from her position.

[1230] Ms Madden submitted that she had no prior history of poor performance or bad behaviour, and to the extent that her conduct could be criticised, it arose in a narrow period where she had a reasonable basis for acting as she did. Ms Madden submitted the decision to terminate her employment was not a proportionate response to her conduct, but a cynical attempt to gain the upper hand in the dispute before the members' meeting of 19 June 2016.

[1231] Ms Madden said the termination had been disastrous to Ms Madden's professional and personal life. Ms Madden submitted her termination had caused her significant and ongoing financial problems, including that she was not able to maintain possession of her family home, which impacted negatively on her custody arrangements in respect of her children. Further, Ms Madden said the Respondent's airing of its unfounded allegations has caused her significant and substantial reputational damage and significant social exclusion.

### **Respondent's submissions**

[1232] The Respondent submitted that Ms Madden had a demonstrated history of poor governance as Ms Madden failed to comply with her fiduciary responsibilities, failed to comply with Board directives and resolutions, breached her Delegation of Authority, and breached her employment contract. It was submitted that this was evidenced by the reasons behind the whole Board resigning in 2013 and two Directors in 2015, along with the withdrawal of pro-bono services provided by Clayton Utz in July 2015.

[1233] The Respondent submitted that Ms Madden had a track record of threatening to remove Directors as on 28 March 2016, Ms Madden called special general meetings of members, which were mainly comprised of family members and friends, that caused interference with investigations. It was submitted that since the incorporation of Street Swags Limited, 17 Directors and five Company Secretaries had resigned, which represented one resignation every five months (on average). All the Directors were highly qualified professionals that were capable of making significant contributions to the progress and development of Street Swags, but it was submitted that they ultimately resigned, often in frustration of Ms Madden's inability to take or adhere to directives of the Board.

[1234] It was submitted that over an extended period, Board Members had continually expressed concern regarding the projects Ms Madden was undertaking (Wellbeing Program, Community Healing, Clarendon and Cabin Project etc.). This was because there was concern as to whether it was lawful that money donated by the public for a specific purpose (i.e. Swags for the homeless) could or should be used to fund these projects and as a result, it was submitted that the Board passed resolutions that no funds of Street Swags be expended on these projects.

[1235] The Respondent submitted that in June 2015, two Directors, namely Ms Quinn and Mr Daly, called for the suspension of Ms Madden due to unapproved expenditure within Street Swags that was associated with the Cabin Project. It was submitted that Ms Madden had deceived the Board as Ms Madden claimed that Clayton Utz was in full support of the Cabin project, when it was not, and they considered it 'high risk'. The Respondent submitted that Ms Quinn and Mr Daly subsequently resigned due to the significant risk of liability associated with the Cabin Project and Ms Madden's failure to comply with resolutions passed by the Board. It was further submitted that Ms Quinn and Mr Daly also resigned because of the threat made by Ms Madden to have them removed by way of a Members' Meeting.

*Knowledge of Directors Leading to Decision for Dismissal*

**[1236]** The following contains the knowledge that the Respondent submits the Directors had before them at the time of the summary dismissal and that the Directors believed on reasonable grounds that Ms Madden's conduct was sufficiently serious to justify Ms Madden's summary dismissal. With respect to this, the Respondent submitted the following points.

**[1237]** The first knowledge was an unauthorised Manufacturing Contract, that was potentially worth millions of dollars per year, was entered with Ms Madden's partner (Mr Carl Weiss) without the approval of the Board on terms uncommercial to Street Swags. It was submitted that it was operated solely to the advancement of Mr Weiss which was in breach of the Corporations Act, Employment Agreement and Delegation of Authority.

**[1238]** The second knowledge was an unauthorised payment on 23 November 2015 of \$10,000 of Street Swags funds for a 'Storage Fee' paid yearly in advance, without the approval of the Board. It was submitted that the Board have stated that if it had been known it would not have been approved as alternative options would have been available. The unauthorised payment, which was for the benefit of Ms Madden's partner (Mr Weiss), was paid directly to the Trust Account of Mr Weiss' landlord (Blue Commercial). It was further submitted that Mr Weiss by his own admissions, and which is evidenced in emails, was trading insolvent, which was known to Ms Madden at the time of payment.

**[1239]** The third knowledge was an unauthorised payment that was made, without the approval of the board, from Walkabout Beds funds of \$15,666.67 that was paid in advance for a "Deposit on 44 Cabins" (Manufacturing Cabin Contract). The Respondent submitted that it was for the benefit of Mr Weiss and was paid directly into the Trust Account of Blue Commercial (Mr Weiss' landlord). It was submitted that the unauthorised payment did not reflect the terms of the unauthorised Manufacturing Cabin Contract which would have been \$17,600 (44 cabins at \$400). It was submitted that the unauthorised payment of \$15,666.67 was instead the initial deposit of a new lease of premise for Mr Weiss' business (Weiss Sawmilling at Darra). It was further submitted that Mr Weiss, by his own admissions and which can be evidenced in emails, was trading insolvent which was known by Ms Madden at the time of payment.

**[1240]** The fourth knowledge the Respondent submits was the unauthorised provision of a Street Swags branded vehicle for the exclusive use of Ms Madden's partner, as part of the unauthorised Manufacturing Cabin Contract.

**[1241]** The Respondent submits the fifth knowledge was Ms Madden's unauthorised payment of \$2,467.30 for Mr Weiss' steel bill, paid for using Ms Madden's Street Swags credit card. It was further submitted that during the hearing, Ms Madden's own submission was that this payment was made directly to the third-party supplier and not to Mr Weiss, which was contrary to the statement Ms Madden gave to the Queensland Police.

**[1242]** The sixth knowledge was that Ms Madden, without the approval of the Board and without lawful authority, used \$3,195.26 of donated funds held by Walkabout Beds. It was submitted this money was paid directly to the trust account of her personal legal representative in Ms Madden's family law dispute, and not to Ms Madden herself.

[1243] The seventh knowledge submitted by the Respondent was that on 15 March 2016 a Director, Mr De Maria, confronted Ms Madden seeking for the cabin project to be frozen as he expressed concerns regarding: the legality of the project, Mr Weiss' use of the company ute, the unauthorised Manufacturing Cabin Contract with Mr Weiss, the funds that were transferred from Street Swags Limited and Walkabout Beds to Mr Weiss, payments to Mr Weiss's supplier and for the charity's solvency. It was submitted that Mr De Maria stated his concern about these issues to Ms Madden and considered reporting the matters to the police.

[1244] The eighth knowledge was that Ms Madden, without the Board's approval and without lawful authority, used \$14,400 of donated funds that were held by Walkabout Beds to pay directly to the trust account of her personal legal representative (Crowley Greenhalgh) in her family law dispute. It was submitted that it was in breach of the Corporations Act, Ms Madden's employment contract and delegation of authority.

[1245] The ninth knowledge submitted was that Ms Madden entered into a \$25,000 unauthorised re-finance agreement with Metro Finance, without the approval of the Board and had no proper commercial basis in respect of the Street Swags vehicle. It was further submitted that the finance application was signed solely by Ms Madden as Director of Walkabout beds, without the signature or knowledge of the Company Secretary (Mr Gillet). The Respondent submitted that Street Swags Limited was listed as Guarantor for the lease agreement which was in breach of the Corporations Act, Ms Madden's employment agreement, and delegation authority as any legal agreement required the authorised of the Board.

[1246] The tenth knowledge was that Ms Madden entered into an \$91,840.65 unauthorised finance agreement with Capital Finance, without the approval of the Board. It was submitted that the finance application was signed only by Ms Madden as Director of Walkabout Beds, without the signature or knowledge of the Company Secretary. Further, that Street Swags Limited had been listed as Guarantor for the finance agreement which was in breach of the Corporations Act, Ms Madden's employment agreement, and the delegation of authority as any legal agreement required the authorisation of the Board.

[1247] The eleventh knowledge submitted by the Respondent was that Ms Madden failed to disclose the true nature of the financial documents to Mr De Maria, which Mr De Maria then signed as he believed the financial documents had the approval of the Chair of the Board.

[1248] The Respondent submits that the twelfth knowledge was an unauthorised Retention Agreement to pay Mr Weiss (Ms Madden's partner) a \$2,500 per week retainer, without the approval of the Board. It was submitted it included non-performance payments of \$3,000 per month, which was despite that the Manufacturing Cabin Contract already been paid.

[1249] The thirteenth knowledge was the unauthorised appropriation of a cabin on Ms Madden's property that was used to house her father (Dad's Cabin). The Respondent submits that Ms Madden believed this was entitled as it was funded by way of forgone salary from Walkabout Beds, which was without the approval of the Board.

[1250] The fourteenth knowledge was that despite a resolution of the Board in the June 2015 meeting that 'any funding for the cabins had to come by way of a loan from Walkabout Beds and donors funds into Street Swags was not to be used for that purpose' and "that to avoid the risk of loss of income, the cabins will only incur costs when an order is produced and if no

orders are forthcoming, we will not place orders ourselves and therefore incur no capital costs”, significant funds were transferred/caused by Ms Madden to Walkabout Beds. It was submitted that the production of cabins had commenced, however no orders had been received.

[1251] The fifteenth knowledge was that Ms Madden failed to disclose to the Board that she was in a relationship with Mr Weiss. It was submitted that Ms Madden awarded Mr Weiss a lucrative Manufacturing Contract of which Ms Madden would have had beneficial interest, which was prejudicial to Street Swags.

[1252] The sixteenth knowledge submitted by the Respondent was that Ms Madden, without the approval of the Board, spent unauthorised funds of Street Swags and Walkabout Beds on additional staff salaries and the Cabin Project. It was submitted that this unauthorised usage of funds was spent despite a resolution passed at the June 2015 meeting which stated that no further funds (other than funds already approved) were to be spent on the Clarendon Project or Cabin Project until the Board had considered the advice of Clayton Utz and the business plan. The Respondent submitted that there was no agreement in place for those ordering cabins to repay Street Swags or Walkabout Beds.

[1253] The seventeenth knowledge was that on 28 March 2016, Ms Madden held an unauthorised Members Meeting at her home notwithstanding the directive of the Directors not to do so as the meeting was invalid.

[1254] The eighteenth knowledge was on 29 March 2016, Ms Madden and Mr Weiss attended the Street Swag premises and locked the entrance of the shopping arcade that contained the Street Swag offices and other businesses. The Respondent submits this was in breach of her suspension orders, summary dismissal and without lawful basis. It was submitted their actions caused disturbances that required police intervention.

[1255] The nineteenth knowledge occurred on 6 April 2016, where Ms Madden, Mr Weiss and seven others, with two removal vans, attempted to access the Street Swags office. The Respondent submitted that in this process they assaulted a security guard and caused wilful damage to the Office Entry door.

[1256] The twentieth knowledge was that Ms Madden, in breach of her suspension orders, caused an agitator to attend the office of Street Swags with a concealed weapon (a cut down golf club) and threatened Mr De Maria, Mr Daly and Ms Ryan. It was submitted that this resulted in the police arresting the agitator who was subsequently charged with ‘trespass with intent’. The Respondent submitted that this caused security guards to be hired for Mr De Maria, who also relocated his family for three days as it was recommended by the Police due to the agitator threatening “*I know who you are and I know where your family lives*”.

[1257] The Respondent submits that the twenty-first knowledge occurred on 29 March 2016 where Ms Madden lodged, or caused to lodge, unauthorised ASIC Forms that contained materially false information. It was submitted this resulted in Mr De Maria and Mr O’Reily to be removed as Directors, who formed the view that this constituted serious misconduct that justified the initial dismissal of Ms Madden and that the dismissal was necessary in order to protect Street Swags from harm caused by further misconduct.

**[1258]** The twenty-second knowledge was that on 30 March 2016, the board discovered a letter from Ms Madden to Dr Thornton which contained statements as to what would happen to Street if Ms Madden was removed as Director. It is submitted that Ms Madden described these as “cold truths” but they appear to be threatening in nature which demonstrated a complete lack of regard for her fiduciary and statutory duties as they appeared to be to Ms Madden’s benefit and to the detriment of Street Swags.

**[1259]** The twenty-third knowledge was that on 30 March 2016, without the approval of the board and in breach of her suspension, Ms Madden contacted Street Swag staff to instruct them to work for her in Mr Weiss’ business premises. It was submitted Ms Madden proceeded to engage in wrongful conducts that was harmful to the Street Swags business.

**[1260]** The twenty-fourth knowledge was that Ms Madden, in breach of suspension and without approval of the board, caused Ms Todd and Ms Cleland to open an unauthorised bank account for Street Swags and diverted donated funds from the Respondent, and contacted donors of Street Swags to divert donations, to the unauthorised bank account.

**[1261]** The twenty-fifth knowledge submitted by the Respondent was that Ms Madden caused bank correspondence to be diverted to the Mr Weiss’ business premise, which was in breach of her suspension and without the approval of the Board.

**[1262]** The twenty-sixth knowledge was that Ms Madden provided altered ASIC documents (from the invalid Members Meeting) to the Ashgrove branch of National Australia Bank, in order to dispute her suspension of access to the bank account. The Respondent submitted this caused the bank account to be frozen which hindered the ability for staff to be paid and other regular financial commitments (rent etc.).

**[1263]** The twenty-seventh knowledge submitted by the Respondent was that without the approval of the Board Members (including Mr Gillet as Company Secretary), Ms Madden unlawfully lodged an ASIC form with ASIC which removed Mr Gillet from his position, as well as falsely backdated his removal. It is submitted this enabled Ms Madden to place Walkabout Beds into voluntary administration which hindered the financial irregularities investigation and caused Street Swags significant financial harm. The Respondent submitted that this included a \$197,842 loan to Walkabout Beds, a \$25,000 liability to Metro Finance and a Guarantee to Capital Finance of \$91,840.65, as well as disruption to Street Swags manufacture and supply of swags.

**[1264]** The twenty-eighth knowledge submitted was that on 13 May 2016, a Pilot Partners Report to creditors stated that the inadequate books and records of Walkabout Beds, which was the responsibility of Ms Madden, may be in breach of s.286 of the Corporations Act.

**[1265]** The twenty-ninth knowledge was that Ms Madden did not disclose to the Board that Clayton Utz considered the Cabin Project ‘extremely high risk’ and did not fully support it. It was submitted that Clayton Utz would not take direction or accept responses from Ms Madden, but only from the Board. The Respondent submitted that Clayton Utz required the Board to confirm that they understood the advice and were able to answer the questions raised.

**[1266]** The thirtieth knowledge was that Ms Madden did not inform the Board that from approximately 15 July 2015, that Clayton Utz did not act for Street Swags. The Respondent

submitted by Ms Madden allowing the Board to believe that the Cabin Project had support of Clayton Utz, despite knowledge that the due diligence report would not be completed, Ms Madden breached her duties as a fiduciary, an employee and as a Director.

**[1267]** The thirty-first knowledge submitted by the Respondent was that Ms Madden's post-suspension conduct was in contradiction of the Offer to Settle Supreme Court Proceedings that was signed by Ms Madden on 14 April 2016. It was submitted that it was in contradiction as Ms Madden placed Walkabout Beds into administration two days after the agreement was signed in order to conceal financial irregularities within Walkabout Beds as all transactions, within the Xero Accounting software, was removed by Pilot Partners.

**[1268]** The thirty-second knowledge was that Ms Madden repeatedly refused to return Street Swag's Toyota Landcruiser, which was in breach of Ms Madden's suspension orders and employment contract.

**[1269]** The thirty-third knowledge was that Ms Madden repeatedly refused the Xero Account Software subscription, which was in breach of Ms Madden's suspension orders and employment contract (but Ms Madden was allowed to access the subscription to access the financial records of Street Swags). It was submitted that Ms Madden was advised, in letters dated 29 April 2016 and 3 May 2016 from Boss Lawyers under instruction of the Board, that failing to turn over the subscription was serious misconduct and was grounds for summary dismissal.

**[1270]** The thirty-fourth knowledge was that Ms Madden lodged, or caused Ms Todd to lodge, an incorrect record that contained false and factually incorrect statements of the 11 December 2015 Minutes of Annual General Meeting Board and Members.

**[1271]** The thirty-fifth knowledge was concern regarding Ms Madden's fiduciary responsibilities, corporate governance, due diligence and disclosures to the Board. The Respondent submitted that Mr O'Reilly and Mr De Maria attended Boss Lawyers on 24 March 2016 and sorted through bank statements and other documents that identified matters of concern, which failed to explain as to why \$40,000 was left in the bank account of Street Swags and did not disclose the disbursement of funds.

### *The Dismissal*

**[1272]** The Respondent submitted that on 23 March 2016, based on the knowledge of the Director's at the time and the evidence before them, the Directors passed a written resolution which suspended Ms Madden in accordance with the Street Swags Constitution and Ms Madden's employment agreement. It was submitted that Boss Lawyers, through instructions from the Directors, sent a letter by email and by registered post to Ms Madden outlining the terms of her suspension (the Suspension Letter).

**[1273]** The Respondent submitted that on 28 March 2016 (the Termination Letter), based on Ms Madden's post suspension conduct, Mr O'Reilly and Mr De Maria as Directors of Street Swags, believed on reasonable grounds that Ms Madden's conduct and evidence before them was sufficiently serious to justify immediate dismissal.

**[1274]** It was submitted that Ms Madden's response to the dismissal, dated 13 April 2016, was considered by the Directors, but the Directors believed it did not provide adequate

explanation or sufficient document addressing the concerns outlined in the 30 March 2016 letter from Boss Lawyers to McCullough Robertson.

[1275] It was submitted that on 20 April 2016, Ms Madden resigned as Director of Street Swags. The Respondent submitted that the resignation was subsequent to Ms Madden placing Walkabout Beds into administration, accruing over \$350,000 in liability in Street Swags (from loans to Walkabout Beds and Guarantees to Metro and Capital Finance), and by Ms Madden's own submissions that she deliberately situated Street Swags into a vulnerable financial position that was in direct conflict of the her suspension orders and employment contract.

[1276] It was submitted that on the second week of April 2016, Mr O'Reilly and Mr De Maria as Street Swag Directors, attended a meeting with [name] of the [Trust name] who up until 2016, had gifted over \$700,000 to Street Swags. The Respondent submitted that [name] had received a letter from Ms Madden which sought support for Walkabout Homes (not to be confused with Walkabout Beds), as well as two phone calls in which Ms Madden made a statement to the effect of "the dodgy directors had taken over the charity and were emptying its bank accounts". It was submitted that a result, this caused Street Swags to lose [name] as its biggest donor, which caused financial harm and was in breach of Ms Madden's suspension orders and employment contract.

[1277] The Respondent submitted that on the second week of April 2016, Mr O'Reilly and Mr De Maria also attended a meeting with The John Villiers Trust who had provided a \$50,000 grant in advance to Street Swags for the Community Healing Project in Mt Isa, that was to be expended over a three year period. It was submitted that the Trustees advised that as Ms Madden failed to acquit for the grant, despite multiple requests to do so, that no further grants would be provided to Street Swags. The Respondent further submitted that the Directors believe that as the Aboriginal Land Council was not going to pay for the cabins, it was deceptive of Ms Madden to have Street Swags pay for cabins.

[1278] It was submitted that on 19 May 2016, Mr O'Reilly and Mr De Maria received the Worrell's Report which confirmed their beliefs that leading up to Ms Madden's summary dismissal, a number of Ms Madden's transactions were identified as breaches of the Corporations Act, suspension orders, employment contract and delegation of authority.

[1279] The Respondent submitted that the Directors immediately filed a report with the Queensland Police based on the knowledge before them and the belief of serious misconduct by Ms Madden.

*Submissions of the Respondent relating to knowledge acquired after Ms Madden's Dismissal*

[1280] The Respondent submitted that if the Commission makes a finding that the Respondent did not comply with the Small Business Code, and moves to the relevant considerations in s.387 of the Act, that the Respondent defers to the Respondent's Outline of Submissions lodged on 22 November 2016 by Boss Lawyers on behalf of the Respondent.

[1281] The Respondent made detailed submissions regarding what information and knowledge it became aware of after Ms Madden's dismissal on 19 May 2016. The Respondent submitted that on 20 April 2016, Ms Madden resigned as Director of Street Swags in accordance with 6.1(g) of its constitution that "A person ceases to be a managing



director if the person ceases to be a director”. The Respondent argued that this repudiated Ms Madden’s employment, which was made at Ms Madden’s intuitive, and therefore there had been no dismissal by the Respondent pursuant to s.386 of the Act.

**[1282]** The Respondent submitted that Ms Madden failed to return a payment of \$14,400 made from Walkabout Beds to her family lawyers, Crowley Greenhalgh, despite that Ms Madden was made aware of the payment by her solicitor, Ms Stacey Glover, on 31 March 2016. The Respondent submitted that in fact Ms Madden instructed her solicitor that the money does not need to be refunded as the deposit was part of her wages, which it was not.

**[1283]** The Respondent submitted that Ms Madden failed to disclose in the Report as to Affairs to Pilot Partner as Administrators for Walkabout Beds, that \$14,400 was owed to Walkabout Beds from her family lawyers, despite their offer to return the payment on 31 March 2016.

**[1284]** The Respondent submitted Ms Madden instructed her family lawyers to transfer funds, which consisted of the \$14,400 of funds owing to Walkabout Beds, to the trust account of her new family law solicitors, Queensland Law Practice (QLP), which was for Ms Madden’s personal benefit. The amount of was transferred on 7 July 2016.

**[1285]** The Respondent submitted that Ms Madden failed to advise Pilot Partners in the Report as to Affairs that:

1. Without the knowledge or authority of the Street Swags Board, Ms Madden had removed the Company Secretary of Walkabout Beds and had altered and backdated ASIC documents to allow Ms Madden to place Walkabout Beds into administration as sole director and without the authority of the Company Secretary or approval of the Board of Street Swags Ltd as wholly owned subsidiary of Street Swags Limited;
2. Ms Madden had put Street Swags Limited as Guarantor on the Metro Finance lease and Capital Finance loans without the approval of the Board causing them significant financial harm;
3. There was no evidence to support Street Swags as a sundry debtor for \$55,000 and Pilot Partners made no attempt to enquire or recover such debt resulting in assets of Street Swags being ceased, such as motor vehicle, swags and materials; and
4. Ms Madden had caused Mr Weiss to falsely submit invoices totalling \$18,500 being for unpaid retention monies, including non-performance payments, under a Retention Contract that was not known or approved by the Board of Street Swags.

*Unauthorised access to email accounts*

**[1286]** The Respondent submitted that Ms Cleland admitted during cross-examination that on or about 2 April 2016, having relocated to the Darra Office under instruction of Ms Madden and in breach of her employment agreement and directive of the Directors, placed a ‘forward email’ redirection on the private email address of Mr De Maria and the info@streetswags.org addresses, without knowledge or authority. The Respondent said that Ms Cleland continued to access and distribute private and confidential emails, between the Directors to Ms Madden, and that following Ms Cleland’s resignation on 14 April 2016, Ms Madden continued to access, or caused Ms Cleland or unknown parties to access, the private emails even beyond Ms Madden’s dismissal on 19 May 2016, pointing to the fact Ms Madden accessed the

confidential Worrell's Report as evidence. The Respondent submitted that these confidential email accounts were the only possible source for the report.

*Failure to pay superannuation and staff entitlements*

**[1287]** The Respondent said that further to the financial irregularities identified in the Worrell's Report, the Respondent discovered that no superannuation for Street Swags staff had been paid since April 2015. The Respondent said this resulted in a liability with the ATO amounting to approximately \$50,000 (which had since been settled). The Respondent said that Ms Daniels, who was an employee paid \$120,000 per annum in salary, without approval of the Board, had no PAYG taken out of her salary in breach of Tax Office regulations.

*Unauthorised payment of invoices*

**[1288]** The Respondent submitted that Ms Madden admitted during cross-examination (and in contradiction of her statement to the Queensland Police Service) that she had paid a 'steel bill' on behalf of Mr Carl Weiss because 'he was strapped for cash'. The invoice was for an amount of \$2,467.32 paid directly to the supplier on the credit card of Street Swags Ltd, and had not been repaid. The Respondent said that Ms Madden also paid two invoices from Osborn Consulting Engineering totalling \$5,706.20 from the account of Walkabout Beds on behalf of Mr Carl Weiss, and invoiced to Timber Sales & Mobile Sawmilling for structural drawings requirements of the building regulations. The Respondent said that this was an expense payable by Mr Weiss under the unauthorised manufacturing contract and should not have been paid by Walkabout Beds or Street Swags, and was the responsibility of Mr Weiss.

*Alleged fraud in relation to financing for cabins*

**[1289]** The Respondent said that Ms Madden failed to advise Capital Finance that of the five cabins financed, only one was for supplying accommodation for homeless people. Capital Finance advised that it had no knowledge that the cabins were being used for any other purpose other than for the supply of accommodation for homeless people, and if they had known they were being used for other purposes, they would not have provided finance. The Respondent said that the liability to Capital Finance still sits on the Balance Sheet of Street Swags Ltd, but Capital Finance have not pursued recovery of that debt and have referred the matter to their fraud squad, suggesting there had been serious breaches of the Credit Act, Corporations Act, employment agreement and delegation of authority. The Respondent said the matter was also reported to the Queensland Police Service for investigation.

*Unauthorised access to Xero Accounting Software*

**[1290]** The Respondent submitted that Ms Madden continued to access the Xero Accounting Software of Street Swags whilst under suspension and after dismissal on 19 May 2016. The Respondent said Ms Madden extracted confidential financial records and presented these at the invalid Members Meeting on 19 June 2016. The Respondent said it was forced to incur legal fees to obtain a Court Order instructing the Xero Accounting Software subscription to be returned, and upon return of the subscription on 27 June 2016 it discovered that all of Street Swags' payroll records had been deleted, causing significant expenses to be incurred recovering such records and hindering the Board's ability to properly investigate the financial irregularities.

*Access to Bendigo Bank Account*

[1291] The Respondent said that Ms Madden attended the Mt Ommaney Bendigo Bank branch on 23 June 2016 with documents purporting to be minutes of a meeting held and sought to have the signatories for the bank account changed to herself and the unlawfully appointed Directors appointed at the invalid meeting, causing it to be frozen to the detriment of Street Swags being able to conduct its financial affairs.

*Affidavit to Queensland Police Service*

[1292] The Respondent submitted that Ms Madden instructed her lawyer, Ms Sarah Parga of Slater Gordon, to send an email to the Queensland Police Service, which the Respondent alleged included defamatory comments and unproven allegations regarding Mr De Maria and used that as an exhibit in an affidavit filed in the Brisbane Magistrate Court by Ms Madden. The Respondent said that upon discovery of the email on 21 June 2016, it directed Boss Lawyers to write to Slater Gordon. On 23 June 2016, Slater Gordon acknowledged there was no proven basis for the statement and withdrew the unproven allegations of impropriety. Ms Madden was compelled to file an application to have her affidavit removed from the court file, and on 14 October 2016 the court ordered the affidavit be sealed and that Ms Madden pay Street Swags' costs. The Respondent said this demonstrated a wilful and destructive course of conduct to undermine the credibility of the Directors and cause harm to Street Swags.

*Use of social media*

[1293] The Respondent said that Ms Madden used social media platforms to make defamatory comments and false and serious allegations undermining the creditability of the Directors and to the detriment of Street Swags, on multiple occasions and in breach of Board's direction contained in the letter from Boss Lawyers dated 24 March 2016. The Respondent said that this caused severe financial harm resulting in the loss of major and minor donors, volunteer support, pro bono support, suppliers, services, grants, and workplace giving.

[1294] The Respondent said that these uses of social media included:

1. A video posted on Facebook on 30 June 2016 publicly commenting on financial irregularities of Street Swags and false allegations regarding Mr De Maria and Mr O'Reilly;
2. Unlawful denial of Street Swags' social media accounts on 17 July 2016 by hacking the website of [www.streetswags.org](http://www.streetswags.org) and making unauthorised changes to its content, including posting a YouTube video of Ms Madden making a number of allegations against Street Swags, Mr De Maria and Mr O'Reilly;
3. Ms Madden modified, or caused to modify, Street Swags' subscription on 16 July 2016 causing Street Swags and its employees to be locked out from accessing its Facebook account, email, Microsoft Office 365 Business Essentials subscription, and removed access to Street Swags' IT contractor;
4. Ms Madden posted defamatory comments on Facebook on 19 June 2016 against Mr De Maria and to the detriment of Street Swags Limited; and

5. On or before 27 July 2016, Ms Madden set up an “I stand for Jean” website seeking public donations in breach of the Board’s direction dated 24 March 2016 not to make any statements to the media or anyone else on behalf of Street Swags.

*Access to and distribution of the Worrell’s report*

[1295] The Respondent said that neither Ms Madden nor any of her witnesses were provided access to any copy of the Worrell’s Report or authorised to access, possess, or distribute any copy of the Worrell’s Report. The Respondent alleged that they had done so unlawfully and had accessed the emails of Mr De Maria on or after 19 May 2016.

[1296] The Respondent said that Ms Madden has refused to explain the timing and circumstances of how the Worrell’s Report came to her possession, and failed to deliver the document when in her possession after she gave her undertaking to the Supreme Court that she would deliver up any business or other records in her possession of Street Swags’ Limited created after 19 April 2016. In breach of Ms Madden’s undertakings, Ms Madden’s solicitors, under instruction, rejected to provide an explanation as to the timing and circumstances of how the Worrell’s Report came into possession to conceal unlawful conduct by Ms Madden.

*Fraud charges by Queensland Police Service*

[1297] The Respondent said that on 19 June 2016, the Queensland Police charged Ms Madden with a criminal offence of fraud against Street Swags. Subsequent charges of fraud were made by Queensland Police on 28 February 2017 and 4 March 2018. The Respondent said that the discontinuances and delayed proceedings over an extended period were attributable to the defence and not Street Swags or Queensland Police.

*Walkabout Homes*

[1298] The Respondent submitted that following Ms Madden’s summary dismissal on 19 May 2016, Ms Madden continued to conduct the business of Walkabout Homes Ltd in collaboration with her partner, Mr Weiss and his business, Weiss Sawmilling. The Respondent said that the success or otherwise of that venture is not known to the Directors of the Respondent and was not a concern of theirs. The Respondent said that it believed the partnership continued into 2017 in contradiction to Ms Madden’s assertion that she had not been able to work since March 2016 and relied on Centrelink, which the Respondent argued is only supported by a statement with a Centrelink PAYG statement commencing 1st July 2018.

*Media contact*

[1299] The Respondent said that the Directors of the Respondents have at no stage contacted the media in relation to this matter and the events surrounding it, and in the event of any enquiry by the media, a standard draft response was implemented and conducted by Mr Paul Daly who was the only person authorised to communicate with the media. The Respondent said that Ms Madden’s assertions regarding the attention of media was not because of the Respondent or its Directors and noted that Ms Madden conducted interviews with the press subsequent to her summary dismissal and criminal charges being dismissed.

*Ms Madden’s family law matters, teachers’ license*

**[1300]** The Respondent submitted that Ms Madden's family law matters were well advanced at the time of her summary dismissal and the relationship with her family members was already fractured at that time. The Respondent argued that the loss of her teachers' licence was not as a result of criminal charges, but of Ms Madden's failure to maintain the required Professional Development and pay registration fees.

### *Remedy*

**[1301]** The Respondent submitted that reinstatement was not appropriate. The Respondent argued that the evidence clearly and cogently demonstrates a consistent course of misconduct by Ms Madden since mid-2015 that is inconsistent with the fulfilment of her duties as an employee and her fiduciary duties as a Director of Street Swags, and that the element of trust and confidence has been lost. The Respondent submitted that Ms Madden's conduct was repugnant to and destructive of her relationship with Street Swags and argued the Commission should conclude that in the circumstance, reinstatement would not be appropriate.

**[1302]** The Respondent further submitted that compensation as not an appropriate remedy in the circumstances. The Respondent argued that the evidence demonstrates the consistent course of misconduct by Ms Madden caused significant financial harm to Street Swags and caused Street Swags to be put to significant cost to properly respond to the allegations in the application and to protect the reputation and creditability of Street Swags and its directors.

**[1303]** The Respondent acknowledged that if Ms Madden could evidence any unpaid salary, holiday pay, and superannuation, the Respondent would meet the commitment to pay these amounts. The Respondent noted that this may prove difficult as upon return of the Xero Accounting Software subscription on 27 June 2016, the Respondent discovered that all of Street Swag's payroll records had been deleted, either by Ms Madden or caused by Ms Madden.

## **CONSIDERATION**

### *Small Business Fair Dismissal Code*

**[1304]** In the case of dismissal by a small business employer, a person has not been unfairly dismissed if the Commission is satisfied that the dismissal was consistent with the Small Business Fair Dismissal Code (the Code). A person's dismissal is consistent with the Code if:

- immediately before the time of the dismissal or at the time the person was given notice of the dismissal (whichever happens first), the person's employer was a small business employer, and
- the employer complied with the Code in relation to the dismissal.

**[1305]** An employer is a small business employer if it employs fewer than 15 employees at the relevant time. All employees employed by the employer at the time, including the dismissed employee, any other employees dismissed at the same time, and those employed by associated entities, are to be counted, excluding casual employees who are not employed on a regular and systematic basis.

[1306] The Code states that it is fair to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. The Code defines serious misconduct as theft, fraud, violence and serious breaches of occupational health and safety procedures.

[1307] The Commission does not have to make a finding, on the evidence, whether the conduct occurred, but only needs to find whether the employer had a reasonable belief that the conduct of the employee was serious enough to warrant immediate dismissal.<sup>21</sup> Further, it is not necessary for the Commission to determine whether the employer was correct in the belief that it held.<sup>22</sup>

[1308] For an employer to believe on reasonable grounds that the conduct of the employee was serious enough to justify immediate dismissal, the employer must establish that they did in fact hold the belief that:

- the conduct was by the employee;
- the conduct was serious, and
- the conduct justified immediate dismissal.

[1309] The employer must establish that they had reasonable grounds to hold the belief, which could be established by providing evidence of inquiries or investigations the employer undertook to establish their belief.

*Was the Respondent a small business employer?*

[1310] The Respondent submitted that it was a small business employer, with less than 15 employees at the time of Ms Madden's dismissal. Ms Madden conceded that the Respondent employed less than 15 employees at the time of her dismissal.

[1311] The only potential associated entity related to the Respondent is Walkabout Beds. I note that Walkabout Beds was a separate project employing only Ms Madden, and that at the time of her dismissal, Walkabout Beds was being wound up. Even if Walkabout Beds was an associated entity, including Ms Madden would not change the number of employees or result in the Respondent employing more than 15 employees at the time of dismissal.

[1312] I am satisfied that the Respondent was a small business employer for the purposes of the Act.

*Was the dismissal consistent with the Small Business Fair Dismissal Code?*

[1313] As noted above, the Respondent must believe on reasonable grounds that Ms Madden's conduct was sufficiently serious as to justify immediate dismissal. This can include theft or fraud.

[1314] The Respondent contends that at the time of the dismissal, the Respondent believed that Ms Madden had mismanaged company funds, entered into unauthorised finance agreements, and misappropriated donated funds for her personal legal expenses, among other things.

[1315] As noted above, the Code provides that it is fair to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal.

[1316] It must be noted that the Respondent is only entitled to rely on the information it knew at the time of the dismissal which formed what it says is its belief on reasonable grounds that Ms Madden's conduct was sufficiently serious to justify immediate dismissal. It is clear that a significant number of other matters have come to the Respondent's attention since the dismissal, which are the subject of much of the material and evidence in this matter. I note that these are not matters that can be relied upon in consideration of the Code. These other matters could only be considered if the Commission finds that the Code has not been complied with and would therefore be appropriately considered under s.387 of the Act.

[1317] Regulation 1.07 of the *Fair Work Regulations 2009* states:

**“1.07 Meaning of serious misconduct**

(1) For the definition of *serious misconduct* in section 12 of the Act, serious misconduct has its ordinary meaning.

(2) For subregulation (1), conduct that is serious misconduct includes both of the following:

- (a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
- (b) conduct that causes serious and imminent risk to:
  - (i) the health or safety of a person; or
  - (ii) the reputation, viability or profitability of the employer's business.

(3) For subregulation (1), conduct that is serious misconduct includes each of the following:

- (a) the employee, in the course of the employee's employment, engaging in:
  - (i) theft; or
  - (ii) fraud; or
  - (iii) assault;
- (b) the employee being intoxicated at work;
- (c) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.”

[1318] The question of whether the belief of the Respondent that Ms Madden engaged in conduct sufficiently serious to warrant summary dismissal was based on reasonable grounds is to be determined objectively. It is also relevant to consider whether the Respondent had carried out a reasonable investigation into the matter resulting in Ms Madden's immediate dismissal.

*Observations of the evidence before the Commission*

[1319] Ms Madden, is, I have observed, an interesting person. She appears to me to be a chameleon; being able to charm many with gushing enthusiasm and purported facts or statements.

[1320] She rarely, however, can back up her purported facts or statements because her actions are, as has been put by some of the witnesses, smoke and mirrors. Regrettably, Ms Madden reminds me of the sleek lawyer and showman Mr Billy Flynn from the musical Chicago. As per the lyrics from his showcase song, "*Razzle Dazzle 'em*", Ms Madden knows how to "throw them a fake" and she is used to "being a big bamboozler".

[1321] Throughout the hearing and on careful examination of the evidence and material before me, I have caught Ms Madden out with complete and obvious untruths. Her trickery and charisma would lead a hurried person to accept her explanations of "*Oh, that wasn't paid*" or "*I had deductions to cover that payment*". Ms Madden is, in my view, a trickster and has the capacity, audacity and gall to have fooled many around her. She has established a fan base; a camp of supporters whom she has led to have them believe that Mr De Maria and Mr O'Reilly (principally) were on some power trip to improperly overthrow a hard-working and diligent CEO from the charity she founded.

[1322] In fact, it took for Mr De Maria to be within the operation of the charity to catch a sniff of the stench of unacceptable behaviour of Ms Madden; something he was unable to pin down while a non-executive director attending a few board meetings each year. Whether others are involved or implicated in Ms Madden's behaviour may be a matter for another court or tribunal; I suspect no criminal activity of other Street Swag staff, but the smoke and mirrors have allowed those working within the operation to have a less than satisfactory ability to have met their obligation to their employer and the supporters of the charity.

[1323] Just some examples of Ms Madden's duplicity can be demonstrated by her responses to the payments made by Walkabout Beds to her law firm at the time, Crowley Greenhalgh in March 2016. Ms Madden represented in her evidence that she had permitted relevant payroll deductions to be made from the part of her wages paid by Walkabout Beds. It is true that \$603 per week was put aside from her wages, presumably her nett wages, to go towards her family law legal costs. As is abundantly clear, however, by the time a payment of \$3,195.26 was made to Crowley Greenhalgh, only \$1,809 had been held aside for that purpose. An advance of \$1,386.26 was therefore made, without any independent authorisation. I understand Ms Madden's evidence to be that she didn't do the payroll, so she is not responsible for the payment having been made. It is extraordinary evidence to give to this Commission.

[1324] Further, on 21 March 2016, a payment of \$14,400 was made to Crowley Greenhalgh. This payment was not made by accident. It was a deliberate payment. We do not know who made the payment, whether it was made by Ms Madden or Ms Cleland. We do know that it was made, yet Ms Madden would only have had around \$1,000 or thereabouts in monies put aside for her to direct as she pleased.

[1325] The evidence demonstrates that as the sky fell in on Ms Madden around 29 March 2016, with her having been suspended, she sent two emails to Ms Glover, her lawyer, exclaiming the payments made by Walkabout Beds for \$14,400 as an error! During the hearing I noted that the account details Ms Madden provided for the payment to be returned were not correct, and I wonder, without requiring an answer, if that in itself was a ruse.



[1326] Ms Glover's statutory declaration confirms that Ms Madden then instructed the firm by telephone on 31 March 2016 that the monies were in fact her own and did not need to be refunded as they were amounts deducted from her wages "from work". It is fair to say that Ms Madden would have known that Walkabout Beds had not withheld \$14,400 in nett wages as it would have taken nearly six months to do so, and the arrangement had only been in place for a short number of weeks, and was already attempting to cover the earlier payment made.

[1327] Sadly, Ms Madden's duplicity did not end there. Ms Madden has attempted to explain before this Commission that she considered she could recover from Walkabout Beds an amount close to the outstanding leave balances she considered that she had. Unfortunately for Ms Madden, I am not so easily fooled, and I note that the payment made to Crowley Greenhalgh was on 21 March 2016, well before she placed Walkabout Beds into administration on 14 April 2016, and therefore such an amount could not have been contemplated as owing to her or crystallising.

[1328] The deceit continues; clearly, Ms Glover forewarned Ms Madden about her earlier statements of the payment from Walkabout Beds and it having been made purportedly in error. Ms Glover informed her that it could not be used towards her trust account with the firm and would need to be returned. Ms Madden's answer to that? Cease using that law firm and instruct the trust monies into a new law firm's account. Astonishing!

[1329] A further example of conduct that might come for scrutiny by others is the payment of Mr Weiss' steel bill on 17 March 2016. While Ms Madden is entitled not to answer questions as to whether she personally paid such a bill using Street Swags funds, and I am not to make any adverse inference on account of her refusal to answer such a question, Mr De Maria has led evidence before the Commission, which I accept, that he observed Ms Madden make the payment using the Street Swags credit card. Further, Ms Madden's evidence (given while represented by a law firm) is that the same amount then came off an invoice submitted by Mr Weiss to the Respondent (or to Walkabout Beds), yet no evidence of such a deduction is before the Commission because it simply did not happen.

*Dismissal needs to be consistent with the Code, and if not, consideration of s.387 comes into effect*

[1330] Despite what I have stated above, the consideration as to whether the dismissal is consistent with the Code comes down to what the Respondent believed at the time, not what the Respondent believes or knows now. Clearly, not all of the information above was within the Respondent's knowledge on 19 May 2016.

*What did the Respondent 'believe' at the time of the dismissal?*

[1331] While Mr De Maria's evidence at hearing is that he considered that Ms Madden had misappropriated *all* of the amounts stated within the Worrell's report, I do not accept that he did believe that *all* of the items were improper.

[1332] I am satisfied that Mr De Maria and Mr O'Reilly jointly made decisions relevant to Ms Madden's suspension, the investigation and the ultimate dismissal on 19 May 2016. Where I refer to the Respondent, I refer to what Mr De Maria and Mr O'Reilly knew and decided. Further information has come to light by way of the letter from Boss Lawyers to the

Respondent dated 24 March 2016, making it clear as to what was within the knowledge of the Respondent then, and further, what was within the knowledge of the Respondent by 19 May 2016.

**[1333]** There was, no doubt an extraordinary amount of turmoil for all involved in late March 2016 in Street Swags. Individuals put themselves into various camps, with supporters, employees, members, donors all caught up in the corporate tangle of one party, the true board, and the purported board and its supporters. One can reflect years later as to the actions of those involved, however I suspect that given Ms Madden's passion for the charity, and her band of supporters, she considered that she needed to expel those whom she considered working against her.

**[1334]** Ms Madden's dislike for Mr De Maria is obnoxious. She was attempting, in the face of what she saw as a snake in Mr De Maria, to cut him off, have a new board control the organisation and reinstate her to the position of CEO.

**[1335]** With all of the information before me I consider that the following was information *believed* by the Respondent as at 19 May 2016:

- (a) Ms Madden had authorised and had paid \$10,000 for storage fees on 23 November 2015 without authorisation of the board;
- (b) Lodgment of ASIC documents on 29 March 2016;
- (c) Ms Madden considered that she could establish an alternative cabin business and considered the IP as hers in her own right;
- (d) Ms Madden had executed a contract, without authority of the board for a minimum payment of \$528,000 per annum to Mr Weiss, her partner;
- (e) Mr Weiss had revealed by email he was insolvent on 14 March 2016. On the same day, Ms Madden proposed Street Swags pay to Mr Weiss, without any authorisation, an amount of \$2,500 per week;
- (f) From 17 March 2016, two payments were made to Mr Weiss in the amount of \$2,500 per week;
- (g) On 10 March 2016, Ms Madden authorised a further payment of \$10,000 to Mr Weiss from Street Swags;
- (h) On 17 March 2016, Ms Madden made a payment of \$2,467.32 on a Street Swags credit card to pay for Mr Weiss' steel;
- (i) Ms Madden had indebted Street Swags to finance arrangements with Finrent unbeknownst to the board;
- (j) Ms Madden had Walkabout Beds pay to her private family law firm an amount of \$3,195.26 and it suspected that there might have been more payments made;
- (k) Improperly put Walkabout Beds into administration;
- (l) Representing the Respondent during the period of suspension;
- (m) Refusal to hand over Xero login etc.;
- (n) Takeover of social media accounts;
- (o) Defamatory comments;
- (p) The information within the Worrell Report; and
- (q) Diversion of Street Swags mail.

*What did the Respondent discover following the dismissal?*

[1336] In the many years that have passed since the dismissal, as the parties have been involved in matters before the criminal court, and there has been further discovery in these proceedings, the following has been discovered by the Respondent. These matters cannot be used in the consideration as to whether the dismissal was consistent with the Code. These matters may only be considered if I determine that the dismissal was not consistent with the Code and it is necessary to have regard to them in a s.387 consideration:

- (a) Ms Madden paid to Crowley Greenhalgh the amount of \$14,400 for her private legal bills, attempted to say that it was an error, and eventually retained that money for an improper purpose;
- (b) Ms Madden misled the board as to the advice of Clayton Utz and its withdrawal of representation;
- (c) Establishment of new bank accounts in the name of Street Swags (prior to the dismissal);
- (d) Diversion of bank correspondence (prior to the dismissal);
- (e) Diversion of donor payments (prior to the dismissal);
- (f) Attempt by Ms Madden to change bank signatories (following the dismissal);
- (g) Damage to Street Swags on account of Walkabout Beds being put into administration;
- (h) Defamatory comments (following the dismissal);
- (i) Home land line established in February 2016; and
- (j) No payment by her towards cabin(s) on her property.

*Did the Respondent believe Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal?*

[1337] Mr De Maria and Mr O'Reilly, supported by Boss Lawyers and having in their possession the Worrells Report, sincerely believed that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal. Some of the matters considered included what Mr De Maria and Mr O'Reilly considered to be theft or fraud, or unauthorised payments. Further, they included payments to Mr Weiss, the partner of Ms Madden.

[1338] The list at [1334] is extensive and easily falls into the definition of serious misconduct at Regulation 1.07.

*Was the belief based on reasonable grounds?*

[1339] Given that there are so many beliefs covered above relevant to what was believed by the Respondent as at 19 May 2016, it is necessary to deal with each of them separately:

*\$10,000 storage fees*

[1340] Ms Madden had approved and had in fact allowed to be paid an amount of \$10,000 in storage fees for the benefit of Mr Weiss on 23 November 2015. This was never disclosed to the board, and was in advance of the December 2015 AGM where Ms Madden disclosed a relationship with Mr Weiss. I am satisfied that Ms Madden did not seek approval at the 2015 AGM for an amount of \$10,000 to be paid towards storage costs.

[1341] The payment wasn't even made to Mr Weiss; it was made on his behalf. There was no basis for doing so. Ms Madden has attempted to gloss over details, suggesting that hundreds

of swags were moved from the College to the Darra shed, but this did not occur until February 2016, and only occurred because of a temporary arrangement due to racking alterations at the College.

**[1342]** Mr O'Reilly was intimately aware of the storage capabilities at the purpose-built centre at the College. A grant had been given for this purpose, which was then required to be enormously topped up by the Nudgee community, and was done so on the basis of other social justice initiatives of the College. I accept that the board did not and would not have agreed, if it had been put to it for its consideration, to pay \$10,000 towards Mr Weiss' costs on account of supposed storage fees. I consider the purported minutes of the 2015 AGM to be a fabrication. The biggest giveaway is the minutes declare that Mr O'Reilly suggested that the staff move to the Darra office to cut down on office rent expenses. I accept Mr O'Reilly's evidence that he never made such a suggestion.

**[1343]** I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Lodgment of ASIC documents on 29 March 2016*

**[1344]** As it transpires, the parties were in a corporate tussle at or around 29 March 2016, with Ms Madden being informed of her stand down, and then orchestrating a coup of members to hold a purported members' meeting which has been declared by the Supreme Court to have been invalid.

**[1345]** Ms Madden denied that it was she who filed the ASIC documents, conveniently pointing the finger at Ms Todd. Clearly, Ms Todd did not initiate this action or even devise this idea. Ms Madden ultimately electronically signed the documents.

**[1346]** The parties then reached a consent position in mid-April 2016 as to the legitimacy of the 28 March 2016 members' meeting, so I consider that any wrongdoing by Ms Madden was rectified by the consent position put to the Court.

**[1347]** Given the huge turmoil and tussling the parties were involved in at that time, I am not satisfied that the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Ms Madden considered that she could establish an alternative cabin business and considered the IP as hers in her own right*

**[1348]** Curiously, in Ms Madden's correspondence with Dr Thornton, she was, I consider, throwing her weight around, making curious threats, or what she calls, home truths. It was not the first time Ms Madden had engaged in such behaviour; in mid-2015 she had used strong words to demand the support of the board otherwise she would call a special members' meeting seeking a resolution for the dissolution of the board.

**[1349]** It appears to me that whenever Ms Madden considered she had an opponent in her way, attempting to stop her from doing whatever it is she wanted, she steamrolled them out of the way. Directors who had considered that at various times she was out of control had resigned, and most notably, Ms Quinn, whose correspondence strikes me as most sensible and entirely reasonable with insight into Ms Madden's manic-like behaviour, had resigned as

company secretary in genuine fear of Ms Madden's path of determination that nothing would get in the way of her and the cabin project. Nothing! Not even sensible, correct, firm legal advice given on a pro bono basis by one of the largest law firms in the country.

**[1350]** The email sent from Ms Madden to Dr Thornton was known to the Respondent prior to the decision to dismiss Ms Madden. While the Respondent informed Ms Madden of the ridiculousness of her assertions on the two issues, that she could establish an alternative cabin business and considered the IP as hers in her own right, she never withdrew from this sentiment, and she carries this sentiment through to these proceedings.

**[1351]** These views expressed by Ms Madden are incongruous with her duties as an employee and as a CEO of the Respondent. I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Ms Madden had executed a contract, without authority of the board for a minimum payment of \$528,000 per annum to Mr Weiss, her partner*

**[1352]** It is impossible to know where to start in describing the appalling conduct engaged in by Ms Madden in devising a contract with Mr Weiss of this magnitude. At various times during the hearing Ms Madden explained that as she was the sole director of Walkabout Beds, it was a decision she could make without the authority of the Street Swags board. After I had heard this explanation from Ms Madden on a number of occasions, I had to incredulously inform her that she needed to stop such a ridiculous assertion.

**[1353]** The premise of finding a minimum of 44 people per annum, presumably homeless and having somebody permit them to occupy their land with a purpose-built, low-cost cabin is, in my view, a fairy tale. Further, under the scheme devised by Ms Madden, this homeless person would be agreeing to have parts of their welfare payments pay-off the financed cabin, as I understand it, for up to five years. The plan was that this would grow to hundreds of cabins per annum. The plan detailed that basic cabins would cost \$8,500 per year, with a \$3,500 markup for Street Swags, costing the purchaser \$12,000. Curiously, the cabin put on Ms Madden's land for her father cost Street Swags/Walkabout Beds close to \$30,000, without any evidence of Ms Madden having paid any money towards the cabin (later repossessed). It was supposedly going to be used as a 'trial'.

**[1354]** Ms Madden committed the Respondent, either through Street Swags or Walkabout Beds, it does not matter, to an extraordinary liability. These are the sorts of contracts you would expect your lawyers to draft, with the beneficial aspects for the drafter, not for the recipient and one's boyfriend. Ms Madden's incredulous evidence is that she allowed Ms Daniel's to assist with drafting of the contract and that would make it "at arm's length".

**[1355]** It appears to me that Ms Madden, even more than four years after the event considers there was nothing wrong with awarding a contract of such magnitude to Mr Weiss, without the board's consent. Interestingly, she has reasoned with herself that because she informed the board at the December 2015 AGM of her relationship with Mr Weiss, she was free to go on a half a million dollar per year frolic of her own with a charity underwriting her decision.

**[1356]** Again, repeatedly throughout her written and oral evidence, Ms Madden reasoned that she did not need any approval because the contract was with Walkabout Beds and not Street Swags. Yet, the documents produced in mid-2015 for consideration and put to the Board and

provided to Clayton Utz declared that no Street Swags money would be expended. The finance arrangement was that the purchaser would require finance, not Walkabout Beds and guaranteed by Street Swags.

**[1357]** I accept Mr O'Reilly's evidence that he was unaware of this contract until he returned from Cambodia and met with Mr De Maria at the premises of Boss Lawyers and discovered the contract.

**[1358]** I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Mr Weiss had revealed by email he was insolvent on 14 March 2016. On the same day, Ms Madden proposed Street Swags pay to Mr Weiss, without any authorisation, an amount of \$2,500 per week*

**[1359]** Ms Madden's evidence suggests that Mr Weiss' email states that he is not yet insolvent, but would be in a month's time because of the failure of the Respondent to order cabins. Mr Weiss' email does, in fact, state he is trading insolvent; the words do not require manipulation. Ms Madden's solution to such a dilemma was to then organise a staff meeting, and according to her, the staff decided that Mr Weiss should receive a weekly retainer of \$2,500.

**[1360]** The use of a charity's money to pay to the CEO's boyfriend this payment, particularly in light of his declaration of his financial position is beyond extraordinary. Ms Madden was, in my view, blinded by love, trying to do whatever she could to satisfy her dissatisfied and frustrated boyfriend who had been sold a commercial promise that could never be fulfilled.

**[1361]** The staff of this charity had no authority whatsoever to agree to the payment of \$130,000 per annum to any party. Their evidence, where given on this subject is almost cult-like; Ms Madden thought it a good idea, and they thought Mr De Maria was not pulling his weight so yeah, Mr Weiss should receive payment. Never mind the board is entrusted to make such important decisions, spending money donated by the community and corporate citizens. Never mind the impropriety of making such a payment to a person in a relationship with the CEO.

**[1362]** I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*From 17 March 2016, two payments were made to Mr Weiss in the amount of \$2,500 per week*

**[1363]** Ms Madden has given conflicting evidence on this issue; saying that weekly payments of \$2,500 to Mr Weiss were not paid, and alternatively, only a small number of payments were made. The facts are that two payments were made to Mr Weiss in March 2016.

**[1364]** Mr De Maria and Mr O'Reilly knew these payments to be unauthorised and improper. I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*On 10 March 2016, Ms Madden authorised a further payment of \$10,000 to Mr Weiss from Street Swags*

[1365] I am not clear on this issue as it is confused by payments to Mr Weiss on account of cabin manufacturing. I am not prepared to declare that I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*On 17 March 2016, Ms Madden made a payment of \$2,467.32 on a Street Swags credit card to pay for Mr Weiss' steel*

[1366] Mr De Maria's evidence, which I accept is that he witnessed Ms Madden make a payment on a Street Swags credit card to pay for Mr Weiss' steel bill. Smokes and mirrors have been wheeled out, with Ms Madden, at one stage, declaring that the amount then came off Mr Weiss' invoice for cabin manufacture. There is no evidence of this occurring at all. At hearing, at various times Ms Madden did not wish to address this payment, and I make no adverse inference from her right to refuse to answer the question put to her.

[1367] I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Ms Madden had indebted Street Swags to finance arrangements with Finrent unbeknownst to the board*

[1368] The arrangement Ms Madden and Ms Daniels put together for Finrent's involvement is messy and not for the benefit of the Respondent. All the risk was found at the feet of Walkabout Beds, and ultimately Street Swags. How Ms Madden and Ms Daniels thought it a good idea is perplexing. I consider it was simply a quick solution to allow for the manufacturing of the cabins to commence, in stark defiance to what the board was told in mid-2015.

[1369] I am certain that if Clayton Utz had been permitted to review the proposed financial arrangement, it would have advised against it. Ms Madden was, however, demonstrably like a bull at a gate, determined to get the project into manufacture, while committing the Respondent to large repayments. Ms Madden shared with Mr Deane the report she had provided to the Board, declaring that no Street Swags money would be put to manufacture of the cabins. Within a short period of time, she and Ms Daniels had turned that on its head.

[1370] Mr De Maria's involvement in signing the finance terms is curious. I accept his evidence that Ms Madden would intimate that Mr O'Reilly was across the plan, which led him to believe that the terms were acceptable. However, he fell well short of his obligations as a director when signing the finance terms. He did not adequately scrutinise the terms and blindly signed them, committing Walkabout Beds, and ultimately Street Swags as guarantor to hundreds of thousands of dollars in repayments.

[1371] I accept the evidence of Mr De Maria and Mr O'Reilly that Ms Madden was each telling them the other was across things, when they were not. Even though Mr De Maria was within the operation at the time as an employee, Mr De Maria and Mr O'Reilly's responsibilities as directors were not being met, as particularly in the case of Mr O'Reilly, he was a non-executive director. His involvement as a director was because of his obligation to

his employer, the College. Mr O'Reilly certainly did not have his finger on the pulse, meeting all of his board responsibilities, but with a competent and honest CEO, the board member would have less to scrutinise. I am of the view that Ms Madden was not a competent and honest CEO, and in engaging in the behaviour that she did, she razzle dazzled Mr O'Reilly and Mr De Maria into believing that the cabins project was full steam ahead with Clayton Utz overseeing due diligence. She deliberately misled each of Mr O'Reilly and Mr De Maria, particularly relevant to the withdrawal of Clayton Utz and its due diligence consideration.

[1372] The conduct of Ms Madden is particularly apparent where she informed Mr O'Reilly by text message at [49] that there were 67 orders from individuals who had confirmed their intent to buy. It is a complete falsehood. Further, I accept Mr De Maria's evidence where Ms Madden fabricated that Clayton Utz was interested in purchasing \$250,000 worth of cabins.

[1373] Mr O'Reilly would, no doubt, have been spinning on his return from Cambodia to learn of the mess the Respondent was in. He was learning so many things at this time, including that Mr De Maria was employed, of the manufacturing contract, and of finance arrangements.

[1374] By the time of the dismissal, both Mr O'Reilly and Mr De Maria knew far more, including the sum of money Ms Madden had indebted Street Swags to, exacerbated by her decision to put Walkabout Beds into administration. Mr O'Reilly and Mr De Maria, based on advice, considered that such an action had crystalized a debt owed.

[1375] I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Ms Madden had Walkabout Beds pay to her private family law firm an amount of \$3,195.26 and it suspected that there might have been more payments made*

[1376] In Mr De Maria's witness statement to the Commission he stated that he was satisfied that there was sufficient evidence to justify the view he had that she had improperly paid \$3,195.26 of money from the Walkabout Beds account to her private law firm.

[1377] Ms Madden's response was that the bank statement attached to Mr De Maria's statement demonstrated an amount of \$603 per week being deduced from her weekly wages and being redirected to the Crowley Greenhalgh trust account. Ms Madden stated, "*Walkabout Beds is a commercial company and I had no reason to disclose to the Street Swags directors which account my pay was going into.*"

[1378] Ms Madden's evidence is a complete fabrication. Yes, it is true that deductions of \$603 per week were made a short time prior to the payment of the \$3,195.26 to Crowley Greenhalgh, but as is demonstrative of the calculations above, only \$1,809 had been withheld when the payment was made. As is clear from the letter sent by Boss Lawyers to Pilot Partners, the directors of the Respondent were concerned that there had been more payments made, but at the time of the dismissal, they did not have evidence of fraudulent payments. This, in the form of the \$14,400 payment came later.

[1379] In answering questions from the Commission, Ms Madden fabricated that sufficient monies were set aside to cover the payment to Crowley Greenhalgh when it was made.



[1380] I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Improperly put Walkabout Beds into administration*

[1381] Ms Madden's actions in putting Walkabout Beds into administration on 14 April 2016 is astonishing. On the information before me, I consider that it was a malicious act, done for an improper purpose and to cause as much damage as possible.

[1382] Ms Madden had options if she considered that it was necessary to put Walkabout Beds into administration. She could have held a discussion with its one member shareholder, Street Swags to seek advice. As advised by Boss Lawyers, she could have informed Street Swags of her intent to resign as a director to allow for new directors to be appointed.

[1383] After improperly making a payment of \$14,400 to her lawyers from Walkabout Beds, or allowing it to be made if she did not do it herself, after agreeing to consent orders with the directors of Street Swags, she swiftly, and without notice, put Walkabout Beds into administration.

[1384] Whether it was to attempt to hide the payment of \$14,400 or for more sinister purposes, it is not clear. It is true that the Respondent was not aware of the \$14,400 payment at the time of the dismissal.

[1385] I am satisfied, however, that the act of improperly putting Walkabout Beds into administration was viewed by the Respondent as an act of serious misconduct, and I accept that it was an act of serious misconduct. It was not Ms Madden's place, even as a director to do so. I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Representing the Respondent during the period of suspension*

[1386] There is no doubt that Ms Madden attended a meeting with representatives of the Commonwealth Games with Mr Weiss in attendance. She did so while suspended as an employee of the Respondent. Her evidence is that she was there in her capacity of her own enterprise, Walkabout Homes Pty Ltd.

[1387] Ms Madden deliberately thumbed her nose at the Respondent in her actions of attending a meeting to discuss the potential of low-cost cabins with representatives of the Commonwealth Games. Ms Madden's own business was not in any way materially operational, and clearly she was invited to attend a meeting on the basis of her reputation and contacts as the CEO of the Respondent. The invitation even stated "Street Swags".

[1388] I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Refusal to hand over Xero login etc.*

[1389] Ms Madden, together with others, refused to provide login details to Mr De Maria for the Respondent's Xero accounts. She cited her concerns that in doing so, financial transactions then made by others would appear as though they were made by her.

[1390] Without understanding Xero products in any detail, I would suspect that if Ms Madden made a transaction on a certain date, let's say 20 March 2016, if that transaction was later updated, say, on 10 May 2016, the data would demonstrate 10 May 2016 as the latest transaction, even if it were to overwrite the 20 March 2016 transaction.

[1391] I note that ultimately the Court ordered Ms Madden to handover the login details and awarded costs against her.

[1392] I am sympathetic to Ms Madden's views at the time, and her concerns that if others had her login, and particularly Mr De Maria, she might be "set up" by attempts to have fraudulent transactions credited to her. If Ms Madden had been provided assurance by Xero that any transactions posted after she had provided her login could not overwrite her own transactions might have gone some way of alleviating her concerns that she could not be blamed for improper transactions after she had provided her login.

[1393] While I am certain her actions were considered malicious and a nuisance, and were very disruptive to the operations of the Respondent at a time when there was still corporate turmoil, I am not satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Takeover of social media accounts*

[1394] The Commission does not have before it any evidence of Ms Madden's "takeover" of social media accounts that pre-date the dismissal, despite it being included within the termination letter of 19 May 2016. Mr De Maria's witness statement includes details from July 2016 but not beforehand.

[1395] Presumably, if such a statement was included within the termination letter, Ms Madden must have had control of the Respondent's social media accounts at that time. I cannot, however, be satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Defamatory comments*

[1396] The only evidence the Commission has before it relevant to defamatory comments that pre-date Ms Madden's dismissal is:

- (a) her letter to Boss Lawyers of 29 April 2016, suggesting that Mr De Maria has been "trolling" through her emails;
- (b) The letter from Boss Lawyers to Ms Madden dated 29 April 2016 where the firm stated: "We do note that you shouted "have fun in hell" at the representative of our client and a solicitor of our firm as they left the meeting."

[1397] I note that Ms Madden agreed at [129] that she made personal comments about Mr De Maria and Mr O'Reilly, however it is not clear when these statements were made; during her employment or post-employment. Without additional evidence before me, I cannot be

satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*The information within the Worrells Report*

[1398] The termination letter dated 19 May 2016 nominated that the Worrells Report indicates that Ms Madden has incurred \$441,399.43 in unauthorised expenses in the past year. While I do not consider that Mr De Maria and Mr O'Reilly would have accepted that every expense in that large amount would have ultimately have been unauthorised, when further scrutinised, I am satisfied that they believed a very substantial amount was unauthorised.

[1399] The very large amounts include, of course, financed payments. Some of the monies, however, include the steel payment and the payment to Ms Madden's family law lawyer which were not specifically detailed within the termination letter.

[1400] Noting there would be appropriate deductions from the amount of \$441,399.43 where suitable explanations could be provided, I am satisfied that Mr De Maria and Mr O'Reilly considered a substantial sum of that amount constituted unauthorised payments.

[1401] On receipt of the Worrells Report, it was the first time Mr De Maria and Mr O'Reilly had before them accounting information that had not been produced by somebody Ms Madden had earlier engaged. I have observed the way that Ms Madden has manipulated the information provided to Pilot Partners in the Walkabout Beds administration report, and how she explains their report as providing that there was nothing wrong with her conduct. Ms Madden failed to provide a full picture to Pilot Partners, particularly relevant to the \$14,400 payment made to Crowley Greenhalgh. Further, they do not give her a clean bill of health, as she claims.

[1402] Considering the information before the Respondent contained within the Worrells Report, to an extent I am satisfied the belief of wildly inappropriate payments, some of which are extrapolated above, Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

*Diversion of Street Swags mail*

[1403] By late April 2016, Ms Madden was withholding Street Swags mail, and after meeting with the Respondent and Boss Lawyers, suggesting that if they had wanted the mail, which she had with her, they should have asked. Withholding mail as late as 29 April 2016 or thereabouts, when Ms Madden had confirmed she would sign the consent orders demonstrates an extraordinarily malicious and vexatious capacity to cause damage to Street Swags.

[1404] I am satisfied the belief that Ms Madden had engaged in conduct sufficiently serious to justify immediate dismissal was based on reasonable grounds.

**Dismissal consistent with the Code**

[1405] Relevant to my considerations above, I am more than satisfied that dismissal was consistent with the Code. Having satisfied myself of that, it is not necessary to turn my mind as to whether there was a valid reason for the dismissal, and other s.387 considerations, including whether Ms Madden was given an opportunity to respond to allegations.

[1406] I note, however, that there was a significant number of additional matters that came to the Respondent's attention following the dismissal. The most alarming of those matters is the payment of \$14,400 to Ms Madden's family law lawyers. Whether Ms Madden paid that amount herself or had somebody else pay that for her is unknown. What has become clear in these proceedings, however, is Ms Madden's conduct in retaining that payment for her benefit, even when she initially declared to her firm that the payment was an "error".

[1407] Ms Madden's conduct is nothing short of astonishing, and it surprised me that Ms Madden would continue her application, even after such information came before the Commission. It is difficult to understand Ms Madden's motivation in pursuing this application when the light has been shone on potential criminal conduct that might not have earlier been before the Court.

[1408] Where I consider that Ms Madden's cross-examination of Mr Deane of Clayton Utz was, at times, somewhat sycophantic in describing him as her mentor, Mr Deane's evidence demonstrates that Ms Madden was somebody who would not listen to appropriate legal advice, given for the benefit of the Respondent. Ms Madden simply did not want anyone or anything to stand in her way. Her failure to inform the board of the decision by Clayton Utz to withdraw its services, particularly at the August 2015 board meeting would easily have resulted in the dismissal of her unfair dismissal application had that been the only misconduct she had engaged in. Where Clayton Utz were requiring her to involve her board and have them acknowledge that they had been provided with the relevant advice, Ms Madden was doing everything in her power to ensure the board would not speak with Clayton Utz, lest the board discover the legitimate concerns of Clayton Utz relevant to the projects.

[1409] It is unnecessary to deal with the other matters in [1335], other than to say that Ms Madden could not have succeeded in her application before the Commission.

## Conclusion

[1410] While this decision is extraordinarily lengthy, I consider it has been necessary to lay bare all of the conduct engaged in by Ms Madden. This is not only for her benefit; to allow her to reflect how an objective person, without the perceived spite of Mr De Maria has collectively viewed the transactions she has improperly engaged in. It is also for the benefit of her supporters, whom I expect have been told many things over many years, probably only half true.

[1411] I sincerely hope such supporters can appreciate the disappointment that donors to the charity would experience when reading of Ms Madden's activity, and the way in which she so easily and inappropriately expended donated monies.

[1412] The charity in 2021 clearly does good work, supported by prisoners who sew the swags and students of Nudgee College who assist in rolling the swags. These are all meaningful tasks, all with the altruistic purpose of providing swags to homeless people. In my view, the charity should not be punished for the acts of Ms Madden engaged in during a period in 2015 and 2016.

[1413] The application is dismissed. An order [PR726170] will be issued with this decision.



COMMISSIONER

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<sup>1</sup> [2018] FWC 3828.

<sup>2</sup> [2020] FWC 1137.

<sup>3</sup> Witness Statement of Jean Madden dated 16 September 2016 at para 24

<sup>4</sup> Ibid at para 27

<sup>5</sup> Ibid at para 29

<sup>6</sup> Ibid at para 10

<sup>7</sup> Mr De Maria statement at [48].

<sup>8</sup> Applicant's reply statement at [99].

<sup>9</sup> Applicant's reply statement – annexure JEM-15.

<sup>10</sup> Applicant's reply statement at [100].

<sup>11</sup> Ibid [109].

<sup>12</sup> Ibid [113].

<sup>13</sup> Ibid [123].

<sup>14</sup> Ibid [128].

<sup>15</sup> Ibid [161].

<sup>16</sup> Ibid [203].

<sup>17</sup> Annexure AJD-14 to Mr Deane's statement.

<sup>18</sup> Witness Statement of Jean Madden dated 16 September 2016 at [49].

<sup>19</sup> Witness Statement of Candice Todd at [25]; Witness Statement of Kathleen Cleland at [15].

<sup>20</sup> Witness Statement of Jean Madden dated 16 September 2016 at [57].

<sup>21</sup> *Khammaneechan v Nanakhon Pty Ltd ATF Nanakhon Trading Trust T/A Banana Tree Cafe* [2010] FWA 7891 (Bartel DP, 14 October 2010) at para. 60, [(2010) 204 IR 39]; cited with approval in *Pinawin T/A RoseVi.Hair.Face.Body v Domingo* [2012] FWAFB 1359 (Watson VP, Richards SDP, Cloghan C, 21 March 2012) at paras 27, 29, [(2012) 219 IR 128] .

<sup>22</sup> *Pinawin T/A RoseVi.Hair.Face.Body v Domingo* [2012] FWAFB 1359 (Watson VP, Richards SDP, Cloghan C, 21 March 2012) at para. 29, [(2012) 219 IR 128].