

**IN THE MATTER OF AN ENQUIRY AND REPORT**

To the

AUSTRALIAN CROQUET ASSOCIATION

AND IN THE MATTER OF A COMPLAINT BY CHRIS CLARKE AND JENNY  
WILLIAMS

Before

**Messrs Fenwick Elliott, Landrebe and Sweeney**

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Report

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9th January 2008

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## Introduction

### *Executive Summary*

1. This Enquiry and Report arises out of the events at the Australian Open Doubles event on 5<sup>th</sup> November 2007.
2. The result of that event should stand. However, the decisions made as to the management of that event were not the most appropriate decisions that could have been made. Our findings appear at paragraph 112 below. This Report also contains recommendations at paragraph 113 below.

### *Definitions*

3. In this Report:

The **ACA** means the Australian Croquet Association

The **Chairman** means Robert Fenwick Elliott, chairman of this Enquiry

The **Complainants** means Chris Clarke and Jenny Williams

The **Complainants' Opponents** means Paddy Chapman and Greg Bryant

**Game 2** means the 2<sup>nd</sup> game of the final of the 2007 Australian Open Doubles

The **MPP** means the ACA's Member Protection Policy

The **Notice of Appeal** means the complaint of the Complainants of 9<sup>th</sup> November 2007

The **Panel** means those listed at paragraph 9 below.

The **Tournament Manager** means Mr Brian Reither

**WCF** means World Croquet Federation

### *This Enquiry*

4. This enquiry arises out of a complaint made by Chris Clarke and Jenny Williams on 9<sup>th</sup> November 2007 concerning events at the Australian Open Doubles Final on 5<sup>th</sup> November 2007. The complaint was made in the form of a Notice of Appeal, and appears at paragraph 116 in [Attachment 1](#).
5. For the reasons set out in a letter dated 19<sup>th</sup> November 2007 (see [Attachment 2](#) below), the Complainants were invited at the Chairman's suggestion to agree that the matter should proceed by way of Enquiry and Report, and they accepted that suggestion; see Attachment 3.
6. It is inherent in this process that this Report be made public.

### *The Parties*

7. The Complainants are both very experienced and skilful players. At the time of the Report, Chris Clarke is ranked 3 in the world. Jenny Williams is ranked 21, the highest ranking of any woman in the world. Chris Clarke is English, and Jenny Williams is a New Zealander: they both now live in New Zealand.

8. The Complainant's Opponents in the final were Paddy Chapman and Greg Bryant. Their world rankings are 12 and 29 respectively. They are both New Zealanders. Neither of them accepted the invitation extended to them to take any part in these proceedings.

### **The Panel**

9. The Panel consisted of the following:

- a) Robert Fenwick Elliott, Chairman. He is a lawyer admitted in England & Wales, New South Wales and South Australia, proprietor of Fenwick Elliott Mallets and plays croquet with the much more modest world ranking of 576. He was born in England and now lives in Australia.
- b) Peter Landrebe. He is an experienced croquet player, with a world ranking of 8. He was born in New Zealand and now lives in Australia.
- c) Michael Sweeney. He is a member of the Victorian bar based in Melbourne. He is an arbitrator, being a fellow of the Institute of Arbitrators and Mediators Australia and of the Chartered Institute of Arbitrators (UK). He has sat on ACA MPP panels, but otherwise has no connection with croquet.

10. All of the Panel have had various contacts with the interested parties in the past. In a relatively small sport, this is more or less inevitable. None of those contacts are such as to give rise to any partiality.

11. Prior to the commencement of this process, the Complainants asked that the Panel be nominated by the WCF. Since this is not a WCF matter, the ACA regarded this as inappropriate, but has indicated that it is satisfied that the makeup of the Panel appropriately addresses the Complainant's concern as to neutrality.

### **The evidence – procedure**

12. In the first instance, our inquiry is preceded by inviting submissions from a number of interested parties. A bundle containing these submissions was made available to the Complainants and to the Tournament Manager in order that they should have an opportunity of comment.

13. On 19<sup>th</sup> December we held a Hearing at Owen Dixon Chambers in Melbourne, attended by the Panel, Mr Reither, Mr Murray and – by telephone conference call – the Complainants in New Zealand.

14. The Panel has treated itself as independent of the ACA, and the ACA has made no attempt to compromise that independence. The Panel has seen no evidence that the ACA has sought in any way to suppress the complaint made: on the contrary, the ACA's approach in relation to this process suggests a real desire to establish the facts and to remedy anything that might need remedying.

15. We should say at once that, whilst their standing is such that it is obvious that a complaint by them should be taken seriously, neither of the Complainants appear to

the Panel to have sought at any time to abuse their seniority as players to obtain any unfair advantage.

## The Harassment Issue

16. The first ground of complaint is that Jenny Williams was harassed. The background to this complaint is not in issue. Jenny Williams says in her statement:

During the second game it was dark and relatively cold outside, and the lights had been brought into play. Because we were both unused to the conditions of using lights, and the lighting in the clubhouse and outdoors was very different, we found it preferable to stand in the clubhouse (for shelter and warmth), but with a door ajar, so that we could concentrate on what was happening outside and keeping ourselves acclimatised to the lighting outside for when we had to play. After Chris and I had conferred on our next line of play, I went back inside and again stood with the door ajar.

17. Chris Clarke explains that

After about five minutes of the second game, Steve Jones asked us to close the door and I explained to him that we were keeping the door open so as to keep our eyes adjusted to the outside lights. Steve accepted this. We remained in the same position for I would estimate another 20 minutes before I went onto the lawn to take the lift shot.

18. This account is supported by what Tim Murphy recalled:

During the break by Chapman, Clarke/Williams were standing in front of the fully open doorway. It was a cool night and one or two players asked for the doors to be closed. Clarke said glare from the lights through the glass was hindering his ability to watch the game.

When Clarke/Williams went out for their lift shot the doors were closed to applause. When Williams returned she fully opened the doors again.

This account suggested that the spectators as a whole were interfering with the players' chosen vantage arrangements. Similarly Max Murray's statement:

There was some obvious dissatisfaction by other spectators with this because of the cold draught coming through the doorway.

And Charlotte Morgan:

As the game progressed, an air of antagonism developed between the spectators and Chris and Jenny. Some spectators made loud comments about how cold they were. When Chris and Jenny stepped outside at one stage, a spectator got up and closed the doors to the loud approval of other spectators. There was even a suggestion that the door should be locked with Chris and Jenny outside.

19. It seems clear that this antagonism was bound to be felt by the Complainants. It is at this point that accounts slightly differ. Jenny Williams says that she was approached by a particular spectator who was "very aggressive" and who told her that

she and Chris Clarke were “making fools” of themselves. That spectator’s account explains that rather she was seeking to be helpful, by quietly explaining to Jenny Williams, with whom she felt she had earlier in the day established some rapport, what the feelings in the room were. But it was not just this spectator’s comments which discomforted Jenny Williams:

The general comments in support of [that spectator’s] actions towards me from some of the men who were watching the match made me feel additionally uncomfortable, and I chose not to look at them to enable them to engage me in whatever comments they wanted to add.

20. Harassment is defined in the MPP as follows:

8. What is Harassment?

8.1 Harassment is any behaviour by a person or organisation to whom this Policy applies which is offensive, abusive, belittling or threatening and which is directed at a person or a group of people because of a particular characteristic of that person or group of people. The behaviour must be unwelcome and the sort of behaviour a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated. Whether or not the behaviour is Harassment is determined from the point of view of the person receiving the Harassment.

8.2 Harassment includes:

- (a) Sexual Harassment (clauses 8.3 to 8.7);
- (b) Racial Harassment (clauses 8.8 and 8.9);
- (c) Sexuality Harassment (clauses 8.10 to 8.12);
- (d) Disability Harassment (clauses 8.13 and 8.14);
- (e) Abuse (clauses 8.15 to 8.17);
- (f) Vilification (clause 8.18 and 8.19); and
- (g) Discrimination (clause 9).

21. Abuse is defined as follows:

8.15 Abuse may be a form of Harassment. It includes:

- a) physical abuse, (e.g. assault);
- b) emotional abuse, (e.g. blackmail, repeated requests or demands, excluding someone or ‘bastardisation’ practices);
- c) neglect, (e.g. failure to provide the basic physical and emotional necessities of life);
- d) abuse of power, which the harasser holds over the harassed.

Examples of relationships in (d) that involve a power disparity include a coach–athlete, manager–athlete, employer–employee, and doctor–patient. People in such positions of power need to be particularly wary not to exploit that power.

8.16 Examples of abusive behaviour include:

- Bullying and humiliation of players by coaches;
- Verbal abuse and insults directed by players or parents at opposing participants;
- Verbal and/or physical abuse of officials by players and coaches.

22. Having reviewed the evidence, we find:

- a) That it was reasonable for the Complainants to stand in the open doorway. As competitors in an important final, their interests as competitors should have taken precedence over those of the spectators;
- b) That the spectators could have stayed warm by seating themselves away from the door in question, and whilst the area by the door in question may well have afforded them the best vantage point, they were not entitled to the benefit of both the warmth and the best vantage point, to the prejudice of the players. As a matter of etiquette, the spectators should not have intruded upon the players' concentration. Their behaviour fell short, however, of the threshold for harassment;
- c) That the spectator who spoke to Jenny Williams had no intention to harass her, and we are not satisfied that it was such as a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated;
- d) That, as a matter of fact, the behaviour of all the spectators did cause Jenny Williams discomfort and distraction.

23. In light of these findings, the Panel sees no useful purpose in identifying in this public Report the individual spectator in respect of whom this complaint was made.

## **Should the result be overturned?**

24. The Complainants seek a rematch. That would involve an overturning of the result that was declared. Is that possible? And would it offend against the rights of the Complainants' Opponents?

25. In considering and making findings in respect of the complaints, the Enquiry must, as a first step, establish whether or not the decision of the Tournament Manager was validly made in accordance with the Regulations. Whether the Tournament Manager acted wisely or unwisely, temperately or harshly or if there be options for the decision, did or did not select a preferable option, are secondary questions and, whilst such actions may be of importance to another aspect of this Enquiry; they do not affect a determination of the validity or otherwise of the complained decision which is to be tested against the Regulations.

26. The relevant Regulations are the ACA's Regulations for Tournaments of 2nd April 2007, Regulation 12 of which provides as follows:

### **12. THE TOURNAMENT MANAGER**

#### **(a) POWERS AND DUTIES**

The powers and duties of a Tournament Manager are as follows.

- (1) ...
- (2) To be responsible for the conduct of all events contained in the tournament program.

(3) To observe and adhere to all conditions for the tournament as contained in the Australian Tournament Regulations or approved by the Committee of Management for the event.

...

(c) DURING TOURNAMENT

The Tournament Manager during the Tournament is responsible for:

- (1) Adhering to all conditions for the tournament as contained in the Australian Tournament Regulations or approved by the Committee of Management for the event;
- (2) Arranging any daily draws to be available by 4:00pm on the preceding day;
- (3) Deciding, and if necessary in consultation with Venue managers, the suitability of weather (including whether it is too hot for play to start or continue) and court conditions for playing matches;
- (4) Forwarding results to persons designated by the Committee of Management;
- (5) Submitting a report including recommendations to the Committee of Management, if required.

(d) DELEGATION

The Tournament Manager during the Tournament has the following powers and duties. If more than one venue is being used then the Tournament Manager will delegate these powers and duties to the Venue Managers.

- (1) To observe all conditions for the tournament as contained in the Tournament Regulations or approved by the Committee of Management for the event.
- (2) To ensure that regulation hoops are set to the required width and approved balls are used and to relocate hoops as necessary.
- (3) To allot courts for the matches to be played at the venue.
- (4) To ensure that courts are ready for play prior to the scheduled commencement of play.
- (5) To allow up to 15 minutes between games, except for a meal break. In that case, players are allowed up to 30 minutes between games.
- (6) To ensure that a clock or suitable electronic timepiece is available for each game and is visible to all players.
- (7) To ensure that matches commence at the designated starting time each day unless decided otherwise by the Tournament Manager.
- (8) To determine whether or not a player not in readiness to play at the appointed time, without a valid reason, be disqualified from that game. Such a player has the right of appeal to the Tournament Committee.
- (9) To report in writing to the Tournament Committee any player guilty of misconduct (N.B. Any deliberate substantial damage to equipment or courts shall be classed as misconduct.).
- (10) To peg-down unfinished games, or nominate a referee to do so, and in doing so avoid, if possible, a situation involving a ball in a critical position (Law 6(d));
- (11) To be responsible for setting out of the court prior to resumption of a pegged-down game.
- (12) Have the discretion to allow a 5 minute practice on the court immediately prior to the game with the actual balls to be used.
- (13) Have the discretion to allow other practice on the tournament courts.

27. There is no express power for the Tournament Manager to decide when games should be pegged down, bringing play to an end for that day, but the breadth of the powers as a whole lead the Panel to conclude that that matter does lie within the power of the Tournament Manager, either on the basis of the power to decide on the suitability of court conditions under [Regulation 12\(c\)\(3\)](#), or as an aspect of his general powers under [Regulation 12\(a\)\(2\)](#).

28. We note in particular that the Tournament Dinner would not readily fall into the category of a “meal break” within the meaning of [Regulation 12\(d\)\(5\)](#), because it was bound to be a much more lengthy affair than the “up to 30 minutes” mentioned in that Regulation; in fact it appears to have taken about three times that length of time. But we do not read that Regulation as absolutely forbidding a resumption of play after a break of longer than the 15 or 30 minute time periods mentioned in that Regulation.

29. Competitors have through their entry into the ACA Australian Open entered into an agreement which amongst other things binds them to the rules of the tournament and by incorporation to the rules and regulations for the conduct of tournaments under the auspices of the ACA. By reason of such agreement, it has already been agreed that certain affairs such as management of the tournament and disputes shall be managed in a prescribed manner by the Tournament Manager and ACA Executive. The Panel must look to see whether or not the decision of the Tournament Manager was validly made in accordance with the Regulations that so bind the competitors.

30. Consequently, if the Enquiry were to find that the decision complained of has been validly made in accordance with the Regulations, it would not make any recommendation that would seek to interfere with the decision merely on the grounds that there might have been a ‘preferable’ decision. We consider this later issue (including the evidence concerning it) as a separate matter at paragraph 57 and following below.

31. The decision complained of is the call by the Tournament Manager for the final match to be resumed after the Tournament Dinner. The Complainants were not willing to so play; their opponents were. The decision made was in fact made in two parts:

- a) At around 8 o’clock, that the 2<sup>nd</sup> game of the final should start after the Tournament Dinner, and
- b) At around 9 o’clock, that that game should not be pegged down when requested by the Complainants, after their opponents had made their first 9 hoops, and Chris Clarke had hit the lift shot.

32. It seems clear that the Tournament Manager gave what was in effect an ultimatum to the Complainants (at least on the second occasion): continue play or you will forfeit Game 2. Chris Clarke recalled:

the Manager told us that if we did not continue to play we would “forfeit” the second game and that the third would be played later in the week

And the Tournament Manager’s statement was to similar effect:

I then advised that he continue to play or he forfeit the game

33. On the first occasion, the Complainants did accede to the Tournament Manger's direction. On the second, they did not. It is thus the second occasion that is particularly material. The Tournament Manager was then faced with making a decision on whether or not to proceed with the second game and the match, or to stop play, and resume the match later in the week.

### **Disqualification of Forfeit?**

34. There was some discussion as to whether or not the Tournament Manager's actions amounted to a disqualification of the Complainants, or whether this is a case of forfeit. We doubt that anything of consequence turns on this semantic issue – the effect is the same whether the ultimatum be put in terms of a disqualification or a forced forfeit. We doubt if the language of [Regulation 12\(d\)\(8\)](#) is appropriate to permit disqualification in such circumstances, because that regulation appears to be concerned with an “appointed time”, which must mean a time for the commencement of play; as such this regulation does not extend to continuation of play. But this is not to say that a Tournament Manger is powerless to declare a “default result” if one player or pair fails to proceed with a game in progress.

35. In any event, it appears that, in face of the ultimatum put to them, the Complainants withdrew. The Tournament Manager said:

At 8.55pm Clark[e] stated he would withdraw from the tournament, to which I asked did he mean both doubles and singles. He responded that it was from the whole tournament so I accepted his withdrawal. At no stage did I say he was disqualified.

And that account is consistent with what the Complainants said:

...we were left with little option but to withdraw.

36. Accordingly, we conclude that the Complainants did in fact withdraw.

### **Conclusion on prima facie Power**

37. The Tournament Manager plainly had a number of options open to him under the Regulations, as to which he could exercise his discretion. The Enquiry finds as a matter of fact that the decision actually made by the Tournament Manager was made within the scope of his powers under the Regulations, and thus was (subject to the next following point) a decision that was validly made.

### **Vitiating**

38. It has in effect been asserted by the Complainants that the decision was unreasonable in all the circumstances prevailing on the evening and the decision was sufficiently unreasonable as to warrant a reversal of the match result. Given our finding that the decision was validly made under the Regulations it would follow that such a decision should not normally or lightly be altered or reversed.

39. However could a decision, although validly made and technically in accordance with relevant rules and regulations, be so unreasonable in all the circumstances as to be unfair and to warrant reversal? In other words, are there circumstances a decision, although *prima facie intra vires*, is so tainted by unreasonableness or unfairness as to be not truly a decision within the purposes of the rules?

40. To assist the Enquiry in its thinking upon this aspect, it is useful to consider the approach taken by courts when deciding certain matters involving sporting associations. The Enquiry's aim is to ensure that any recommendation it may make is consistent with general judicial thinking on matters which, unlike the matter before the Enquiry, were of a nature that brought them before the judicial process. It is not a question of this Enquiry being bound to follow the cases referred to but that they may provide some helpful pointers to consider whether the decision of the Tournament Manager, although *prima facie* valid, might be impugned for unreasonableness or unfairness.

41. A broad statement of the law in respect of disputes involving private or voluntary organisations such as sporting organisations may be taken from the case of *Cameron v Hogan* (1934) 51 CLR 358. The High Court indicated that the policy of law was against interference in the affairs of voluntary associations which do not confer upon members *civil rights susceptible to private enjoyment*. In the latter case of *Smith v South Australia Hockey Club* (1988) 48 SASR the Supreme Court noted that the courts should not lightly interfere in the domestic disputes of a non profit sporting body. Whilst there are several cases dealing with the circumstances that might enable a court to entertain the granting of a 'declaration', they concern issues which are not pertinent to the matter before this Enquiry.

42. Further, in the celebrated case of *R v Disciplinary Committee of the Jockey Club, ex parte Aga Khan* (1993) 2 All ER 853 the English Court of Appeal found that the jockey club was not a public body and therefore not subject to judicial review of its decisions.

43. So whilst the courts may not involve themselves in a matter such as the one before the Enquiry, the Enquiry has looked to some cases to assist its deliberation whether or not the decision of the Tournament Manager decision might be reversed or altered due the unreasonableness of the decision.

44. The Court of Appeal of the Supreme Court of Victoria in *Australian Football League and Others v Carlton Football Club Ltd and Another* [1998] 2 VR 546 considered the situation where it was possible for decision makers, each acting rationally, to reach differing conclusions on interpretation of the same matter [a rule concerning what constituted undue interference with an umpire]. Tadgell JA found that a court is entitled to substitute its own opinion for that of the tribunal only if the tribunal's decision is so aberrant that it cannot be classed as rational.

45. Using this thought process employed in the AFL case as an analogy to aid the considerations of the Enquiry, we are of the view that, of the alternatives potentially

open to the Tournament Manager under the Regulations for the making of his decision, his decision that the second game should continue was not so aberrant as to be irrational. We are of the view that the decision was not only validly made but that it was not so unreasonable in all the circumstances as to be unfair and to warrant reversal of the decision.

46. The position might well be otherwise if the Complainants' Opponents had indicated that they would prefer a re-match to take place. Such an indication would amount to a variation of the terms of the ACA's obligations towards those entrants, or a waiver of their rights. The Panel made an enquiry of the Complainants' Opponents as to whether they would prefer for a rematch, or for the result to stand. They chose not to respond at all. The Panel makes no criticism of them in this regard – they have been under no obligation to participate in these proceedings – and treats them as not having volunteered a rematch, which is their entitlement.

### **Natural Justice – Appeal process?**

47. That is not quite the end of the matter, however. There are other cases in which principles of fairness, sometimes framed in terms of natural justice, must be applied, otherwise a process will be treated as ineffective.

48. This point requires to be considered because the Complainants' statement includes the assertion:

10. We were not given the opportunity to represent ourselves at the tournament committee meeting.

49. At the hearing before us, it became apparent that the Complainants thought that there had been an appeal process conducted on the spot, whereby the Tournament Manager's decision had been referred by way of appeal to the Tournament Committee.

50. The legal principle, in short, is that where any body conducts any sort of disciplinary or appellate process, that body must observe some basic principles of fairness, including the right for parties to be heard. In *Russell v. Duke of Norfolk*<sup>1</sup>, the Court of Appeal said:

There are, in my view, no words which are of universal application to every kind of enquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth; accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

In *Wiseman v. Borneman*<sup>2</sup>, the House of Lords said:

Natural justice requires that the procedure before any tribunal which is acting judicially

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<sup>1</sup> [1949] 1 All E.R. 109; (1949) 65 T.L.R. 225; (1949) 93 S.J. 132.

<sup>2</sup> [1971] A.C. 297; [1969] 3 W.L.R. 706; [1969] 3 All E.R. 275.

shall be fair in all the circumstances, and I would be sorry to see this fundamental principle degenerate into hard-and-fast rules.

51. In various contexts, the courts have found that it is a requirement of justice that a person should not be judge in his own cause, that everyone is entitled to a fair hearing and, depending on the circumstances, that the parties are entitled to reasons for the decision. A breach of these principles can sometime invalidate a result. Thus, Thus, *in Regina v Disciplinary Committee of the Jockey Club ex parte Aga Khan* (which we have referred to above), the Court of Appeal, having declined to intervene in proceedings at the Jockey Club on the basis that only private, and not public rights were involved, went on, *per* Lord Justice Hoffmann:-

In the present case, however, the remedies in private law available to the Aga Khan seem to me entirely adequate. He has a contract with the Jockey Club, both as a registered owner and by virtue of having entered his horse in the Oaks. The Club has an implied obligation under the contract to conduct its disciplinary proceedings fairly. If it has not done so, the Aga Khan can obtain a declaration that the decision was ineffective (I avoid the slippery word void) and, if necessary, an injunction to restrain the Jockey Club from doing anything to implement it. No injustice is therefore likely to be caused in the present case by the denial of the public law remedy."

52. The court described the distinction between the original decisions and any reviews by way of appeal of disciplinary proceedings in *Calvin v Carr* [1979] UKPC 1 (15 January 1979)

In addition to these formal requirements, a reviewing Court must take account of the reality behind them. Races are run at short intervals; bets must be disposed of according to the result. Stewards are there in order to take rapid decisions as to such matters as the running of horses, being entitled to use the evidence of their eyes and their experience. As well as acting inquisitorially at the stage of deciding the result of a race, they may have to consider disciplinary action: at this point rules of natural justice become relevant. These require, at the least, that persons should be formally charged, heard in their own defence, and know the evidence against them. These essentials must always be observed but it is inevitable, and must be taken to be accepted, that there may not be time for procedural refinements. It is in order to enable decisions reached in this way to be reviewed at leisure that the appeal procedure exists. Those concerned know that they are entitled to a full hearing with opportunities to bring evidence and have it heard. But they know also that this appeal hearing is governed by the Rules of Racing, and that it remains an essentially domestic proceeding, in which experience and opinions as to what is in the interest of racing as a whole play a large part, and in which the standards are those which have come to be accepted over the history of this sporting activity. All those who partake in it have accepted the Rules of Racing, and the standards which lie behind them: they must also have accepted to be bound by the decisions of the bodies set up under those rules so long as when the process of reaching these decisions has been terminated, they can be said, by an objective observer, to have had fair treatment and consideration of their case on its merits.

53. Had there been an appeal process in this case, it would thus have been necessary to give the Complainants the opportunity to be heard. However, having heard the evidence, and considered the Regulations, we have concluded that there was no such process. We have noted at paragraph 34 above that this was not a situation that fell within [Regulation 12\(d\)\(8\)](#). All that happened was that the Tournament

Manger consulted with colleagues, including Tony Hall who did not consider himself a member of the Tournament Committee, as to what he should do. In our view, such consultation was sensible, and entirely unobjectionable. But it does not turn the process into one in which the rules of natural justice would apply.

54. In our view, the decision of the Tournament Manager to insist on Game 2 continuing is akin, not to an appeal process, but to the decision of the referee made during the course of an event. In our view, the fact that the Tournament Manager consulted with others does not disturb this conclusion, any more than it would in the case of a referee conferring with a touch judge conferring with a referee during the game of football.

55. As such, the Panel finds that it was not necessary for the Tournament Manager to observe the rules of natural justice (either in the public law sense or the private law equivalent) in making his decision.

### **Conclusion on Overturning**

56. Accordingly, there is no basis to reverse or alter in any way the decision of the Tournament Manager. Consequently we recommend that the decision of the Tournament Manager stand with the result that the match outcome be left unaltered.

### **Was the Tournament Referee's decision the right call?**

57. A distinct and very different question arises as to whether the Tournament Manager's decision as to the continuance of Game 2, albeit effective, was nevertheless the right call or the wrong call.

58. We consider this issue, partly because it is relevant to the Complainant's claim for compensation, and partly for the purpose of considering whether it is appropriate to make any and if so what recommendations as to the future management of events.

### ***The hindsight point***

59. With the benefit of hindsight, the Tournament Manager's decision was obviously an unfortunate call. With the benefit of hindsight, we find that there would have been sufficient time on the Wednesday afternoon to have completed the match without undue disruption to the Tournament Programme (see paragraph 85 et seq below). In any event, it has to be regarded as extremely unsatisfactory that the result of a final in a major event such as this should have been decided by a forced forfeit or withdrawal. This decision appears to have had the regrettable effect of tarnishing the reputation of Australian Croquet.

60. In our view, however, the hindsight test is not appropriate. The position of a panel such as this, after the event, is bound to be significantly different from the position of a Tournament Manager making a decision on the spot and at the time. Accordingly, we have sought to consider this question putting ourselves, as far as

possible, into the position in which the Tournament Manager found himself at the time.

### ***The Complainants' Five Points***

61. The Complainants make five separate points, which we have considered in turn.

### **The Length of the Playing Hours**

62. The Complainants say that being required to play some 13 hours after first arriving for the day's play is unreasonable. Chris Clarke gives the timings:

We arrived at the club at 07.50. We started play at around 08.20 due to our opponents not being ready. Our first game finished at about 09.10 after which our opponents took a 15 minute break. We finished the second game at about 10.25. I would estimate that I played for approximately 30 minutes during this time.

We started the final at about 16.15. I was pegged out at about 18.15 and the game finished at around 19.15. The final restarted at about 20.05 and I requested it be pegged down at about 20.55.

63. A pattern had been set the previous evening. In particular, we received a statement from Anna Miller, who said:

On the day in question my doubles partner and I started our last game in the block at 8AM. We completed that game and then commenced a Best of Three match at about 11.20AM. The match ended at about 11.20PM.

We had short breaks between games and one of the spectators brought a light takeaway meal for the players and others some time during the evening.

It was a cold night and the day had been cold and raining. During the last game of the match my partner and I sheltered inside the clubhouse between turns.

It was after midnight before we returned to our accommodation. We were back at the Victorian Croquet Centre at 8AM the following morning to play a semi-final at 8AM...

The problem for us was that there were only about six hours from arrival and departure to and from our accommodation. At AM on the following day we were feeling tired when we started the semi-final.

64. That statement, from a player no longer in the first flush of youth, seems to the Panel to represent a quite remarkable degree of stoicism. We heard evidence from the Complainants – who played Mrs Miller and her partner in that 8.00am match the following morning - that their play that next morning was not in keeping with their usual standard. That is hardly surprising. The view of the Panel is that such hours - 15 ½ hours of play, followed by 6 hours of rest/sleep, followed by an 8.00 am start - are wholly unreasonable.

65. We also received a statement from Mark Prater, which suggests that the problem is not a new one in Australia:

I was fortunate to reach the quarter finals of the Australian Men's championship in Hobart in February 2005. The format was three best of three games in two days. My quarter final was finished early, and I had to wait several hours for my opponent. There were no time limits placed on the other slow games.

The first game of the best of three semi-final commenced at about 5pm, which I lost.

The tournament manager then insisted that we start the second game. It was about 7pm by this time and threatening to rain. Although Hobart has a long twilight in summer, there were no lights available, and it was getting dark, cold and potentially wet.

I pointed out to the manager that there was no need to play another game tonight, there was plenty of time for the games to be played the next day. Even if the games could not be completed on the next day, all of the players involved were staying on to play in the interstate cup, and that left plenty of time to complete the event.

I was forced to withdraw from the event, and forfeit my remaining game.

At the presentation event, I was informed that I would receive no prize money for reaching the semi-finals (presumably as a punishment for not playing), even though there is no prize money for being a semi-finalist in the mens!

In summary, I think that my experience highlights the following problems

1. Scheduling three best of three games in two days will cause problems if the games are slow.
2. Time limits should be introduced to slow games - this will ensure a speedy conclusion to the game.
3. The managers need to be able to think outside of the square, and utilise other time to complete the event if it is available.
4. More consideration should be given to players. In my opinion, it is not reasonable to expect them to play croquet from 8:00am to 8:00pm or beyond.

After the problems in Hobart several of the older players expressed support in my actions, saying that the tournament format is unfair on the older players.

66. The Complainants referred to the comments made by five times World Champion Robert Fulford on the Nottingham Board on 9<sup>th</sup> November 2007:

“If an event is a serious championship the players should expect to be able to play in reasonable conditions unless there is simply no alternative”.

“Ideally you would hope to be at your most focused playing a match. Asking players to be available to play for longer than 12 hours turns a match into more of a test of mental stamina rather than of skill at croquet as we know it. Playing tired is also a completely joyless exercise.”

.....

“Starting at 8am and then requiring the same players to continue up to an unknown time at night in a major competition is simply failing to take into consideration the players needs.”

67. The Panel accepts the observation of Mr Fulford that events such as this should be a test of croquet skill, and not of endurance.

68. The Panel also noted, with concern, an extract from the second statement of the Tournament Referee, Mr Keddie:

I expected Chris and Jenny to win in 2 as did everyone else. But as both sides would have got on playing I would expect another 2 games to be finished before 11.00pm. Both Greg and Paddy are keen on TPO's. I expect Chris would also be happy... Had they kept playing without taking the break they would have been finished by 9.00pm. Remember Greg and Paddy had been playing from 8.00am, without long breaks.

69. The last sentence of that paragraph seems to us to be consistent only with a judgement that Greg Bryant and Paddy Chapmen were the less likely to win for the fact that they had been playing for such long hours. It is obviously inappropriate that any players should be adversely affected by the number of hours they have been playing, particularly previous matches.

70. We note that at the players meeting on 7<sup>th</sup> November 2007, extracts from the minutes of which appear at [Attachment 4](#) below, the view of the meeting was that games continually running into the evening was “unacceptable”.

71. We have carefully noted what Tony Hall has said in his statement:

... asked my advice several times, particularly as to whether it was reasonable to ask Clarke and Williams to play and to resume play. When in England and New Zealand I have noticed that matches are often continued as long as there is light. In 2003, for instance, I was required to commence a best-of-three singles at 7:00pm at Cheltenham during the English Open Singles, so I did not and do not consider the request unreasonable.

But treating practices in other countries, where conditions (including start times) are often very different, is dangerous, and in any event, treating other marathons as a starting point for further exertions is liable to lead to a undesirable sort of inflation, whereby one excess stands as precedent for the next.

72. The playing hours expected by the Tournament Manager in this event were, in our view, excessive.

73. We also note the observations of a number of others who have provided statements to the Enquiry who have made no complaint of these long hours. If all the players in a match are content to play on for excessive hours, then by all means let them do so. The unacceptable aspect of these long hours is requiring them of players who object to them. To put the same point another way, playing on for excessive hours should be conditional on the consent of *all* the players, not just *one or some* of them.

## Playing Under Lights

74. The Complainants say that they should not have been required to play under lights. Some matters are uncontroversial:

- a) The Conditions of Play did not mention that lights would or might be used.
- b) Neither of the Complainants had in fact ever played under lights.
- c) Neither of the Complainants did in fact anticipate that they would play under lights. Had they done so, they would have made of point of practising under lights on arrival.
- d) Playing under lights presents difficulties to players who are not used to it. We accept the evidence of Mr Ian Lines, who wrote:

12) Playing under lights for the first time in your life is more than a little tricky. I tried it myself the next night at a similar time as an experiment. I made several uncharacteristic errors/misshits and was unable to complete standard tps on a lawn where in daylight I did several consecutive delayed tps.

75. That evidence is broadly consistent with the experience of Judy Wembridge, as recorded by Anna Miller:

My doubles partner had only played under lights once before and she said it took her about an hour to get accustomed to the lights, after which she felt quite comfortable.

76. An hour of play can be a long time in croquet at this level; amply sufficient to lose a game that might otherwise be won.

77. In order to consider the policy ramifications, we asked Brian Storey of the World Croquet Federation a number of questions, to which he gave helpful and, in our view, persuasive answers:

1. *To what extent should national events which attract international players pay regard to the tournament practices of other countries?*

It is a matter for each WCF Member Association to draw up their own National Tournament Regulations. They may or may not take cognisance of others that exist elsewhere, and that would be considered to be good practice. Therefore it is the WCF view that National Associations do not need to pay regard to practices in other countries. They may be persuasive when drafting regulations.

2. *Is it reasonable to expect players from regions where lights are little used to play under lights?*

The WCF view is that if the Tournament Regulations or Event Conditions specifically state that is allowed or is likely to happen, then there is no problem and the answer is Yes.

If there is no mention of that possibility in Regulations or Conditions but where, from wide-spread local practice or some other prior indication, e.g. published playing schedule prior to the event commencing, it is obvious to a reasonable person that such play could happen, then the answer is still Yes.

3. *Heat is obviously an issue in hot countries, such that local conditions often lean towards play earlier in the morning and later in the evening. To what extent it is appropriate to balance those considerations against the expectations of international players?*

Again, WCF does not consider that "International Players" should be treated any differently from other players in the same event.

WCF would expect such tournament scheduling or the possibility of it to be published, prior to the event commencing, within any Tournament Regulations or Event Conditions.

78. Different views have been expressed as to whether the Complainants should reasonably have anticipated play under lights. They might have made such a deduction by extensive study of Nottingham List reports of previous competitions. We find

- That it was not obvious to a reasonable person that lights would be used
- That it would have been possible with reasonable endeavours for a reasonable person to have deduced that lights might be used.

79. In light of our finding as to the dinner issue (see paragraph 96 below), no further issue arises as to this, save to note that it would have been preferable for a clear statement to have been made in the Playing Conditions. We note that this is the view also of the WCF (paragraph 77 above) and the Players meeting (see [Attachment 4](#))

## **Colour Blindness**

80. We accept at face value Chris Clarke's assertion that he is colour blind. But he fairly conceded before us that he simply did not and does not know to what extent (if any) this condition exacerbates the inherent difficulties of playing under lights for the first time. Similarly, he made no claim that he was likely to have any difficulty in knowing which ball was which.

81. Further, we accept that the Tournament Manager did not know at the relevant time that Chris Clarke was colour blind. It is hard to see any basis, therefore, for any assertion that the Tournament Manager could have discriminated against him on the ground of any such disability.

82. Yet further, Discrimination as defined in the MPP is limited to certain identified areas of activity:

- 9.3 The areas in which Discrimination under this Policy are not permitted are in:
- (a) employment (including unpaid employment) by Croquet Australia, a Member State or a State Affiliate;
  - (b) the provision of goods and services by Croquet Australia, a Member State or a State Affiliate;
  - (c) the selection or otherwise of any person for competition or a team (domestic or international) by or on behalf of Croquet Australia, a Member State or a State Affiliate;
  - (d) the entry or otherwise of any player or other person to any competition held or sanctioned by Croquet Australia, a Member State or a State Affiliate;

(e) obtaining or retaining membership (including the rights and privileges of membership) of Croquet Australia, a Member State or a State Affiliate.

83. The continuation of a game is none of these areas.

84. In the Panel's view, there is nothing in the colour blindness issue in this case.

### **Ample Time**

85. The Complainants assert that would have been ample time to have played a deferred final game or games later in the week. In this, they are supported by the evidence of Ian Lines. Conversely, the Tournament Manager and other witnesses have suggested that time was tight, and the Tournament Referee suggests that there would have been "chaos" had the final not been completed on the night in question.

86. One relevant player, Mike Jenner, was playing in the doubles but not the subsequent singles, and had a plane to catch. But he was out of contention by the Monday evening, and so even if his position would earlier have been a consideration, it was not a consideration by the Monday evening.

87. We are careful not to judge this issue with hindsight. It will typically be the case that Tournament Managers must make their decisions on the basis of assessments as to how long future matches might take.

88. The Complainants point in particular to the Wednesday afternoon. The schedule for the Wednesday was lighter than the schedule for other days, and there was proposed to be (and indeed was) a process at 4.30 on the Wednesday afternoon for a draw and television presentation. No games were scheduled for that time. Why could the Tournament Manager not have re-scheduled the balance of the Doubles Final for that time?

89. The Tournament Manger did not seriously suggest that attendance of players at this draw process was more important than playing the final, but offered two explanations for not considering it:

- The time available from 4.30 might have been insufficient, and
- Officials would be at the draw.

90. Neither of these reasons is, in our view, cogent:

- Whilst time might have been insufficient at 4.30pm on Wednesday, it would have been more sufficient that the time starting at 9pm on Monday, and
- Sufficient officialdom could easily have been spared from the draw to attend to a resumed final.

91. Accordingly, we find that there was no compelling reason for final to have completed on the Monday "at any cost".

92. In any event, it is by no means clear that ploughing on on the Monday would necessarily have achieved that objective anyway. Two scenarios need to be considered:

93. First, had the Complainant carried on, it would have been readily conceivable that the match would have run past midnight, and thus past the advertised date. As we suggested to the Tournament Referee, and as he conceded, Chris Clarke might have succeeded in a TPO (he gave evidence that this would have been his intention), leading to a potentially lengthy 3 ball game of “cat and mouse”, which either side could have won. Such a game might of itself have gone past midnight. And if the Complainants had lost that game, it would have been readily predicable that a final could not possibly have been completed by midnight.

94. Secondly, suppose that the Complainants had accepted a forfeit of Game 2. The tally would then have been one game all. In evidence before us, the Tournament Manager said that in issuing his ultimatum to the Complainants to play on or forfeit that game, he had not turned his mind to the question of when the final game would be played. But in his statement, he said:

After the game had been in progress for about 30 minutes, Clarke confronted me and demanded that the game be pegged down. I refused his demand as I wanted to get the match finished that night if possible... He then asked what was going to happen if the match went to a third game, to which I responded, IF that happens I will consider rescheduling the deciding game till later in the week.

95. With the benefit of hindsight, this is obviously far from satisfactory; see paragraph 105 below. But in light of our conclusions on the dinner issue, nothing further turns on it.

## **The Evening Meal**

96. The essential complaint made here was that it was unreasonable to expect the Complainants to resume play after they had participated in the Tournament Dinner, which was held on the relevant evening. They assert that they were misled. In his written statement, Chris Clarke said:

There are several factors to be taken into account. I was told at 18.15 when I was pegged out that our tournament dinner would be kept warm and that we would be able to have it after the game had finished. In the tournament regulations, it defines the break periods between games and for lunch but does not indicate any break for “dinner”. This, by inference, suggests that players will not be expected to play after dinner. In the 22 years in which I have played, I have never played a game after having dinner. Both Jenny and myself would not have consumed what we did if we had known that another game would be started.

97. It is realistically not in dispute that both Complainants had a substantial meal, which they would not have had they known that they would be required to resume play after dinner. More important, in our view is that Jenny Williams drank two cans of Cola-Cola, a drink which is known to contain caffeine. She said in her statement:

It is well-known that I do not consume caffeine while I am playing croquet as it has an adverse effect on my play (generally physically shaky and less fine motor control). During tournaments I tend to drink water, ginger beer or fruit juice. During the tournament dinner I believed that I was not going to be required to continue the doubles final as we had completed one game, thus reached a natural stopping point, and had plenty of time in the forthcoming days to complete the event. As such, I had two cans of diet coke with my meal – which I definitely would not have had had I been informed I was to be forced to continue the match after the dinner, under lights (a situation I have never been faced with). I certainly do feel that this led to a poorer performance in my subsequent play.

98. There was a divergence in the evidence as to when various conversations took place. In his statement, the Tournament Manager said:

5. At 3:50pm I informed Clarke that their opponents were waiting. He responded that he was not playing and that he couldn't be made to play for more than 11 ½ hours. I pointed out that he had only played for three hours, to which he responded he had been here since 8AM.

6. At 4pm I informed Clarke that their opponents were waiting and he had to either play or forfeit. He said he would withdraw if he was forced to play. I responded that was his prerogative. He then decided to play

7. The final started at 4.15pm

8. The first game finished at 6.50pm and was won by Clarke and Williams. As the official dinner (for which the 4 players had paid) had commenced, I offered them the option of taking a meal break BEFORE the next game. This offer was accepted.

99. The Complainants were adamant that these events took place much later, and that the ultimatum point “play or forfeit” did not arise until the dinner was finishing. This point is crucial, not only because it goes to the reasonableness of requiring the Complainants to play after dinner (by which time Jenny Williams had compromised her ability to play by drinking caffeine), but also because it is clear from Tony Hall's statement that the views of those of the ACA Executive who were present were based upon the account of timing given by the Tournament Manager; Tony Hall noted in his statement that:

5. After Clarke and Williams departed I realized that it would be important to record the actual sequence of events during the day and I asked the TM to relate what he could remember. I also consulted anyone who I thought may remember the timings concerned, both that evening and on the following day. Among others, I talked to Greg Bryant, Paddy Chapman, Mike Jenner and Kevin Beard to establish what time the second semi-final finished and when the games of the final started. I asked the TM to write down exactly what he remembered, with the timings. His statement includes the timings and the sequence established.

100. If the “sequence established” was not accurate, the whole basis of the ACA Executive view is affected.

101. We are entirely satisfied that all those who provided accounts to us were intending to be as accurate as possible. No one sought to mislead us. But it is notorious that, with the best will in the world, discrepancies in evidence as to such matters do arise. We are satisfied, on the balance of probabilities, that the timing suggested by the Complainants is more accurate. We reach this conclusion, partly

because the Complainants account was clear and consistent, and partly because of concerns as to the consistency of the Tournament Manager's account. In particular, it would have been most strange for anyone, at 3.50pm, to have spoken of playing for more than 11 ½ hours. If this was reference back to the start of play, that would suggest a 3.20am start, which is obviously inaccurate. If it was an estimate, given some 7 ½ hours after play had started, 11 ½ hours would be curiously particular as an estimate of how much total time would be taken. 10 hours, 12 hours or even 11 hours might have been estimated. But it is not likely that anyone would have estimated 11 ½ hours. Conversely, if this figure was given, not at 3.50, but at around 8.00 pm, it would make perfect sense, since by then, it was the period that had elapsed since the Complainants had started to play.

102. Further, the evidence shows that there was earlier conversation. The Tournament Manager said in his statement:

At about 3pm Clarke told me he would not be "playing anymore today". I responded that would depend on when the other semi-final finished.

103. At the hearing before us, however, the Complainants explained that this remark was made by Chris Clarke to Jenny Williams, and that it was not a declaration of intent made to the Tournament Manager, but rather a prediction made by one partner to another, based on the progress of the other semi final which they were watching together. Chris Clarke recalled the words as, "It looks like we will not be playing any more today", but in any event, we accept that the words were overheard by, and not intended for, the Tournament Manager. It may well be that there was an element of misunderstanding, in the sense that the Tournament Manager may have picked up the impression that his authority was being challenged. We note the summary provided by Tim Murphy:

It's my view that better communication by both Reither and Clarke could have resulted in a more amicable solution. Clarke appeared to be trying to dictate to Reither how the event should be run and Reither thought he had no choice but to stand up to Clarke hence the decision to demand game 2 continue.

104. This summary may perhaps explain why the Tournament Manager acted as he did, but does not justify a requirement that play continue in the circumstances that prevailed.

105. It is particularly anomalous that the Complainants were told that, if they refused to resume play, they would forfeit Game 2, but not the match. If, as Mr Keddie has urged upon us, the Tournament Programme would have been thrown into chaos if the match had not been completed on the night in question, the logical thing to have done, even at this late hour, would have been to have insisted on the commencement of a final game. The imposition of a forfeit of the ongoing Game 2, but without a resumption of the match for the purpose of Game 3, smacks uncomfortably of a penalty being meted out to the Complainants for their refusal to fall in with the Tournament Manager's wishes about the continuance of play. In our view, there should be no element of punishment in these decisions. There should be no question of decisions about the suitability of conditions for continued play to be based on any aspect of "cracking the whip".

106. Accordingly, we find as facts that:

- a) The Complainants participated in the Tournament Dinner in the belief that they would not be expected to resume play that day. No warning had been given to them before the dinner that they would forfeit the next game if they declined to play;
- b) The Complainants would not have eaten a full meal had they known that they would be expected to play again. In particular, Jenny Williams would not have consumed caffeine;
- c) We accept that the consumption of caffeine had the potential to adversely affect Jenny Williams' play. We need make no finding as to the actual effect of caffeine on her: it is sufficient for our finding that she reasonably anticipated that it would have an effect on her ability to play;
- d) It was not reasonable in these circumstances for the Tournament Manager to expect the Complainants to resume play after the Tournament dinner.

107. We add the following by way of general comment. There is nothing that we have seen or heard that suggests that the behaviour of the Complainants at the Tournament Dinner was anything other than moderate. Other players in such circumstances might well reasonably have enjoyed some alcoholic drink. And the general effect of a social event such as a Tournament Dinner inevitably involves some degree – however restrained – of players and spectators “letting their hair down”. Croquet is not a game where spectators can readily be separated from players, and it was hardly satisfactory to resume a match (particularly a final) – without prior warning and against the protest of some of the players – after such a dinner. It is more than likely that the unfortunate discourtesy shown by spectators in the lead up to the alleged harassment (see paragraph 21 (d) above) was a function of this mismatch.

### ***Conclusion of the Correctness of the Call***

108. Taking all of these factors into account, it is the unanimous view of the Panel that the Tournament Manager made the wrong call in this case. To have required players to continue playing some 13 hours after they started on that day, and after they had sat down to dinner in the belief that they had finished playing for the day, was unreasonable. Continued play under those conditions should be conditional upon the assent of all the participants.

109. We wish to emphasise that, in coming to this conclusion, we cast no aspersions at all on the *bona fides* of the Tournament Referee. There is nothing we have seen which suggests any bias, nor any wilful disregard for the rules and regulations which he was applying. He properly consulted colleagues around him, and did what he – and they – thought right at the time. We are conscious that, whilst we seek to position ourselves as far as possible in his shoes at the time, yet we have had the opportunity of a full enquiry and ample consideration, and that has led us to the conclusion that the Tournament Manager got this one wrong. He deserves no vilification, any more that would a player who failed to get position in front of a hoop.

### **Is the ACA to blame?**

110. We have seen nothing to suggest that the ACA was to blame. We have seen no evidence to suggest that the Tournament Manager was other than appropriately

qualified to be appointed as Tournament Manager for this event, and the fact that this panel has expressed the view that it would have made a different judgement call, does not mean that the event was mismanaged by the ACA. The ACA should have mentioned the possibility of the use of lights if it intended lights might have been used, but that omission was not the effective cause of the difficulties in this case.

111. It flows from the above that we do not think it necessary for the ACA to formally apologise for its conduct to the Complainants, nor to compensate them.

## **Findings and Recommendations**

112. We find as follows:

- a) That on the night in question, there was a lapse of the courtesy which spectators owe to players, but that there was no harassment;
- b) That the decision of the Tournament Manager to insist on the playing of Game 2 after dinner was made in good faith, was within his power as Tournament Manager, was valid and should stand;
- c) That, nevertheless, that decision was not the most appropriate one that could have been made in the circumstances, and that the Complainants were prejudiced by it;
- d) That at no time did either Chris Clarke or Jenny Williams seek to use their seniority as a player to manipulate the conditions or outcome of the match.

113. In light of these findings we make the following recommendations:

- e) That the declared result of the 2007 Australian Open Doubles should stand;
- f) That there should be a review of the Tournament Regulations and/or Conditions of Play for ACA events in order to ensure that similar circumstances do not arise the future. In particular, we suggest that
  - If lights are or may be used, that possibility should be noted in the Conditions of Play for that event;
  - If there be a social event during a Tournament such as a Tournament Dinner, players should be clearly warned in advance of any play proposed to be resumed after that social event;
  - Unless he or she wishes to, no player should be required to play excessive hours in any one day. Requiring a player

to play or be available for more than 12 hours in a day is likely to be excessive;

- g) That this is not a case in which it would be appropriate for the ACA to offer a formal apology or financial compensation to the Complainants.

## **Conclusion**

114. The Panel wishes to acknowledge with thanks the careful and helpful statements and comments it has received from several individuals, and in particular:

Chris Clarke & Jenny Williams  
Brian Reither  
Bill Keddie  
Max Murray  
Tony Hall  
Brian Storey  
Ian Lines  
Tim Murphy  
Mark Prater  
George Latham  
Anna Miller  
Steve Jones  
Charlotte Morgan

115. We also wish to acknowledge the helpful and constructive input of Maree Skinner of the ACA into the practical arrangements for this process.

Dated this 9<sup>th</sup> day of January 2008

ROBERT FENWICK ELLIOTT  
PETER LANDREBE  
MICHAEL SWEENEY

## Attachments

### ***Attachment 1***

116. The Formal Notice of Appeal of 9th November 2007

Dear Sirs,

Jenny Williams and myself wish to lodge a formal appeal against our disqualification from the second game of the Australian Open Doubles Final. There are many issues that we feel were relevant. These range from harassment to discrimination to inconsiderate treatment to maladministration.

1. Jenny Williams was verbally harassed during the final.
2. We were forced to play after having been at the club for over 13 hours.
3. Chris was forced to play under lights despite this not being in the regulations and no consideration was given to the fact that he told the manager that he was colour blind and requested that the game be pegged down.
4. That there was ample time to finish the event over the following 6 days. Just to give one example, on the Wednesday 3 2.5 hour rounds were scheduled. All 12 lawns were empty by 16.30.
5. Chris was informed by the manager during the first game that their tournament dinner was being kept warm for them and that they would be able to enjoy it at the end of the first game. To then force us to continue to play considering what we had eaten and drunk was unreasonable and inconsiderate.

The above issues are not exhaustive, but should prove enough for the ACA to be able to issue a formal apology and reinstate us in the event which can be finished at a mutually convenient time. We trust that this formal request will remove the need to take this matter further.

Yours faithfully,

Chris Clarke and Jenny Williams

## **Attachment 2**

117. Letter Chairman to Maree Skinner 19th November 2007

Dear Maree

### **Chris Clarke and Jenny Williams**

I refer to your telephone call, in which you asked whether I would chair a process under Croquet Australia's Member Protection Policy in relation to the Chris Clarke/Jenny Williams matter. You indicated that this process looks as if it is headed for mediation, but could go to a tribunal hearing. I confirm that I would be content to serve in either role.

Having looked at the emails of 9<sup>th</sup> November, I do, however, have an observation about procedure which you might like to share with the Executive, and also Chris Clarke and Jenny Williams, before the choice of procedure is finalised.

There are three possible processes which have, I suspect, been canvassed by the emails, and they all run the risk of slightly missing the mark.

1. Mediation under clause 14.4 of the MPP would be possible, but I share the conventional view that mediation is something that best succeeds when the parties are there face to face, and this might give rise to some practical difficulty bearing in mind that Chris Clarke and Jenny Williams are presently in New Zealand. In the 20 years since I first qualified as a mediator, I have not seen a mediation attempted without the physical presence of the parties. Further, a mediation under the MPP is (as you have noted) confidential and could not of itself lead to any revision of the tournament committee's actions, since such a revision would affect the rights of other players in the match in question. In particular, neither I nor anyone else acting as mediator would have power to order a rematch.
2. A Hearing Tribunal under clause 16 of the MPP would be possible, and we have seen from a past MPP decision of mine that, in some cases, the actions of a group of officials can constitute harassment within the meaning of the MPP. But the function of a tribunal is to decide whether there has been harassment, discrimination or other complainable breach of the MPP, and not *per se* to review the decision of a tournament committee. Further, the results of such a process are, under the terms of the MPP, confidential, and it may be appropriate to have a more public resolution here? And the list of sanctions at clause 17.1.2 of the MPP does not mention a rematch, and in any event, such a decision would, as a matter of natural justice, require that the other finalists be given the opportunity of being heard.
3. Chris Clarke and Jenny Williams' first email of 9<sup>th</sup> November seeks a formal appeal against disqualification (if so it was – I make no pre-judgment) with a view of an apology and reinstatement. But there is no very obvious route for such an appeal as such under the terms of the MPP.

With these thoughts in mind, I float the suggestion that might be more appropriate, in this case, for the Executive to direct an Enquiry and Report in lieu of the complaint procedures laid down in the MPP. I would be happy to chair this if asked and there might be, say, another couple of appropriate individuals on the enquiry panel. The panel could accept written submissions, and also, if appropriate, hold a hearing in Melbourne with some sort of video link to New Zealand. The purpose of the report would be to consider the complaint that has been made, and make any recommendation that might be appropriate. It would not be in the power of such a

process to fine anybody or impose other sanction (as is the case in disciplinary proceedings under the MPP) and the report would be made public.

This course would need the agreement of both Chris Clarke and Jenny Williams and the Executive. If the proposal makes sense to you, you might like to make this suggestion to them?

Yours sincerely

**Robert Fenwick Elliott**

### **Attachment 3**

118. Letter from Chris Clarke and Jenny Williams of 29th November 2007

Dear Maree,

Thank you for your email of 20<sup>th</sup> November in which you enclosed a letter from Robert Fenwick Elliott. Please could you pass on our thanks to Robert for agreeing to help resolve this case and for his analysis of the issues relating to mediation and a tribunal hearing.

As Robert has noted, we have made several requests;

1. That we receive a formal apology.

We therefore believe that Robert is correct that the process must be open and transparent. This, together with the distances involved, suggests that mediation is inappropriate.

2. That the match is continued from the position in which we requested it be pegged down.

We accept that this decision should not be taken without due discussion with Greg and Paddy. However, the appeal body should be able to recommend that this is the correct course of action. Once again, this seems to make mediation unsuitable and also means that a Hearings Tribunal will not be satisfactory either.

3. That the costs we incurred are reimbursed.

We again accept that the appeal body may not have the authority to impose this, but request that it should have the authority to recommend it.

We would accept Robert's suggestion for an Enquiry and Report, to be chaired by Robert with "another couple of appropriate individuals". We would like to suggest that since this is already an international matter, the help of the WCF is sought to provide the two further individuals.

This should ensure that a balanced, reasonable view is obtained.

Whilst we are continuing to prepare our documentation relating to this, we would appreciate if you could let us know the composition of the "Tournament Committee" that met on the Monday night at Cairnlea.

Yours sincerely,

Chris Clarke & Jenny Williams

## **Attachment 4**

119. Extracts from the Minutes of players meeting held at the Australian National Championships 7/11/07 at the completion of the block rounds of the singles:

Chair Person: Trevor Bassett

Note Taker: Claire Gorton

51 players and spectators in attendance

| Topic               | Summary  | Recommendations  |
|---------------------|--|--|
| Doubles time limits | Doubles games were continually being played into the evening which was agreed to be unacceptable.  | For all doubles games to have time limits imposed. The limits suggested for Bof3 matches were 4/3/2.   |
| Singles time limits | Again it was decided that the singles games were dragging on too much and that time limits should be imposed for at least the early Bof3 rounds, especially where court conditions were sub-standard.  | Bof3 time limits should be a cumulative 4/3/2. This way we can ensure that 3 rounds will be completed in 2 days (hopefully without the use of lights). |
| Play under lights   | It was mentioned that conditions of entry should state that some games may need to be played under lights. This note should also not be taken advantage of and numerous times were discussed but not agreed on. Comment was made that if the games were time limited as suggested above that the need to use the lights should be minimised. | Conditions of entry to be changed to include that players may need to play some games under lights. Although this should be a back up only.            |