Trade & Investment
Office of Liquor, Gaming & Racing

Regulatory Impact Statement

Registered Clubs Regulation 2015

June 2015

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1 EXECUTIVE SUMMARY

Registered clubs provide lifestyle and community-focused goods and services to their members and the community at large. There is a community expectation that registered clubs are well regulated.

The *Registered Clubs Act* was enacted in 1976. Its objectives are to ensure that appropriate standards of conduct and management are observed by all registered clubs.[1]

Under the *Registered Clubs Act 1976*, registered clubs have a duty to act in good faith. They, along with members of the governing body and management, have a responsibility to ensure registered club operations are conducted with high standards of propriety. Members and the broader community need to be assured, and have confidence, that a registered club's funds are being used in accordance with the lawful objectives of the registered club. Members and the community also need to be satisfied that there is no impropriety by persons who are in a position of authority or have close connections with the operations of registered clubs.

Key requirements of the Act relate to the establishment of registered clubs, the rules that apply to registered clubs, and the management and operation of registered clubs. These provisions exist to ensure the integrity and proper conduct of the registered club industry, and the protection of the rights of registered club members.

Certain provisions in the Act require that matters be prescribed in a regulation to assist in achieving and supporting the objectives of the Act. These are outlined later in this Regulatory Impact Statement. Failure to make a regulation would leave these matters unspecified, and would impair the efficient operation of the Act. The matters are currently prescribed in the Registered Clubs Regulation 2009 (the existing Regulation).

On 1 September 2015, the existing Regulation is due for automatic repeal in accordance with section 10 of the *Subordinate Legislation Act 1989*.

The NSW Government is proposing to make a new regulation, the Registered Clubs Regulation 2015 (the proposed Regulation). The proposed Regulation is essentially a remake of the existing Regulation with some minor amendments that are machinery in nature. The proposed changes are set out in Chapter 5.

The costs and benefits of each aspect of the proposed Regulation were assessed and a range of options were considered, including non-regulatory options. Following this assessment, the conclusion was reached that the best option is to make the proposed Regulation.

This will best ensure that the purposes of the Act can continue to be realised by having in place the necessary supporting regulations envisaged by the Act. It is therefore recommended that the proposed Regulation be made.

A separate review of the 'accountability' provisions of the Act is currently underway. The NSW Government is considering issues raised by the registered clubs sector as part of that review. The review is examining provisions in the Act, along with supporting provisions in the existing Regulation. That review is expected to be finalised later in 2015. Its outcomes may necessitate changes to the 'accountability' provisions of the Act and the Regulation (Part 5) during 2015-16. These would be advanced separately in due course.

[1] Second Reading Speech, *Registered Clubs Bill 1976*, NSW Parliamentary Hansard, 24 February 1976

2 PUBLIC CONSULTATION

The *Subordinate Legislation Act 1989* requires that before a regulation is made, consultation must take place with appropriate representatives of the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule.

Accordingly, this Regulatory Impact Statement has been prepared to inform the consultative process for the making of the proposed *Registered Clubs Regulation 2015*.

The availability of these documents has been advertised through notices published in *The Sydney Morning Herald* and *The Daily Telegraph*, and by notice on the Office of Liquor, Gaming and Racing's website at www.olgr.nsw.gov.au. Notice has also been advertised in the NSW Government Gazette at http://nsw.gov.au/gazette.

Notice of the availability of these documents has been provided to relevant Government agencies and key stakeholder groups. The full list of stakeholders that have been notified is contained in Chapter 10.

2.1 Submissions

Interested persons and organisations are invited to make a submission in response to this Regulatory Impact Statement and the proposed *Registered Clubs Regulation 2015*.

The Office of Liquor, Gaming and Racing will review all submissions received and, based on this review, the proposed Regulation may be amended as appropriate.

Submissions can be emailed to registered.clubs@olgr.nsw.gov.au or posted to:

Registered Clubs Regulation Regulatory Impact Statement
Office of Liquor, Gaming and Racing
NSW Trade & Investment
GPO Box 7060, SYDNEY NSW 2001

The closing date for the receipt of submissions is 1 July 2015.

This Regulatory Impact Statement, including the consultation draft of the proposed *Registered Clubs Regulation 2015* is available from www.olgr.nsw.gov.au (under Registered Clubs > Discussion papers).

2.2 Confidentiality of Submissions

The consultation process is public. All submissions received will be published on the website of the Office of Liquor, Gaming and Racing. Requests for submissions to be treated as confidential must be accompanied by supporting reasons, and will be considered in the light of Government principles and requirements relevant to the public release of, and access to, information, including those established by the *Government Information (Public Access) Act 2009*.

If the proposed Regulation is made, a copy of this Regulatory Impact Statement, together with copies of all written comments and submissions received, will be provided to the NSW Parliament's Legislation Review Committee.

2.3 Terms used in this Regulatory Impact Statement

The following list contains terms that are used in this Regulatory Impact Statement and their meaning.

the Act	=	the *Registered Clubs Act 1976*
the existing Regulation	=	the Registered Clubs Regulation 2009
the proposed Regulation	=	the Registered Clubs Regulation 2015
the OLGR	=	the Office of Liquor, Gaming and Racing
the Authority	=	the Independent Liquor and Gaming Authority
secretary	=	the secretary of a registered club as defined in section 4 of the *Registered Clubs Act 1976*
the Secretary of the Department	=	the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services until 1 July 2015, after which time the reference will be to the Secretary of the Department of Justice
MoU	=	Memorandum of Understanding

3 THE STAGED REPEAL PROGRAM

The Registered Clubs Regulation 2009 is due to be repealed on 1 September 2015 in accordance with section 10 of the *Subordinate Legislation Act 1989*.

The *Subordinate Legislation Act* provides for regulations to have a limited life. In most cases, regulations are automatically repealed after five years (or a longer period of time where approved). When a regulation is due for repeal, a decision must be made whether to:

- postpone the repeal of the regulation, or
- remake the regulation (with or without changes), or
- allow the regulation to lapse without replacement.

Where it is proposed to remake a regulation, the *Subordinate Legislation Act* requires a Regulatory Impact Statement (RIS) to be prepared. The RIS must address the objectives sought to be achieved by the proposed regulation, and discuss the reasons for them.

Those objectives must be:

- reasonable and appropriate, and
- accord with the objectives, principles, spirit and intent of the enabling Act, and
- not be inconsistent with the objectives of other Acts, statutory rules and stated government policies.

The RIS must consider alternative options for achieving the stated objectives, including the option of not doing anything (i.e. allowing the regulation to lapse without replacement), and an evaluation must be made of the costs and benefits expected to arise from each option.

Implementation of the objectives by means of a regulation should not normally be undertaken unless the anticipated benefits to the community from the proposed regulation exceed the anticipated costs to the community. The option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the options available.

In determining the costs and benefits, the impact on the economy, consumers, the public, relevant interest groups, and any sector of the industry and commerce that may be affected, need to be considered. These factors must be taken into account when considering all options.

All new and amending regulatory proposals must demonstrate that the NSW Government's better regulation principles have been applied. Those principles are:

1. The need for government action should be established.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued efficiency and effectiveness.

This RIS has been prepared in accordance with the requirements of the *Subordinate Legislation Act* and the NSW Government's better regulation principles.

4 BACKGROUND TO THE REGULATORY FRAMEWORK

4.1 Registered clubs industry environment

The *Registered Clubs Act 1976* provides that registered clubs can be established for social, literary, political, sporting or athletic purposes or for any other lawful purpose. They must provide accommodation (facilities) for members and their guests.

The Act also requires that registered clubs must be conducted in good faith.[2] The *Gaming Machines Act 2001* allows registered clubs to operate gaming machines, subject to regulatory approval. The *Liquor Act 2007* enables registered clubs to sell liquor on their premises to members and their guests.

Generally, only the registered club and its members are entitled to derive, directly or indirectly, any profit, benefit or advantage from the fact that the registered club has applied for, or is granted, a liquor licence under the *Liquor Act 2007*.[3] As registered clubs are non-profit bodies, they must use their profits for the benefit of the registered club and its members.

As at 1 April 2015, there were 1,383 registered clubs in NSW. According to a report published by KPMG in 2012 on behalf of ClubsNSW (the *New South Wales Club Census 2011* report)[4], registered clubs' total membership across NSW was approximately 5.7 million in 2011. Some people are members of more than one registered club.

Registered clubs make a significant contribution to the economy, including through employment and engagement of volunteers. Registered clubs employed 39,911 staff, had 839 apprentices and trainees, and had 4,696 volunteers involved in registered club activities, according to information provided by registered clubs to the Office of Liquor, Gaming and Racing in the 2012-13 Biennial Liquor Licence Return.[5] This information was obtained from 94.9% (1,408) of registered clubs in existence in NSW at 31 August 2014.

4.2 Laws governing the operation of registered clubs in NSW

The principal law regulating registered clubs in NSW is the *Registered Clubs Act 1976.*

The Act primarily focuses on registered club governance and accountability. It includes provisions relating to registered club elections, membership, management, and reporting. A range of offences, and procedures relating to amalgamations, de-amalgamations, authorisations, and disciplinary action are also provided for in the Act.

The Act has been amended a number of times since the commencement of the existing Registered Clubs Regulation 2009 on 1 September 2009. Key changes have included amendments to:

- Facilitate registered club amalgamations and de-amalgamations – e.g. by enabling a registered club (liquor) licence to be transferred to another registered club following a de-amalgamation; enabling a parent club to sell core property by private treaty to another registered club involved in a de-amalgamation; and ensuring amalgamation requirements can be met where a dissolved club that proposes to de-amalgamate wishes to immediately amalgamate with another registered club.

[2] Section 10(1)(a) of the *Registered Clubs Act 1976* and note to section 10(2)

[3] Section 10(1)(j) of the *Registered Clubs Act 1976*

[4] KPMG, *New South Wales Club Census 2011*

[5] NSW *Trade & Investment, Office of Liquor, Gaming and Racing, 2012-13 Biennial Liquor Licence Return*

- Improve registered club corporate governance, viability and sustainability – e.g. by allowing for the establishment of a mandatory registered club director and manager training framework; allowing controls to be applied to voting eligibility for classes of members (if required); allowing the 'core features' of a registered club to be defined (if required); providing for the appointment of up to three directors by registered club boards (if required); facilitating mandatory three year rolling elections (if required), and limiting registered club boards to a maximum of nine members.
- Miscellaneous reforms – including measures to prevent registered clubs and their assets from falling into the hands of private interests and entrepreneurs; introducing a defence provision for registered club managers where reasonable steps are taken to comply with certain liquor laws; and to enable returned servicemen's league (RSL) and kindred clubs to permit current serving and ex-service defence force personnel entry to their clubs as honorary members without the need to sign into those clubs.

These and other amendments have resulted in significant changes being made to the existing Regulation over the past five years.

There are other laws governing the operation of registered clubs. The majority of registered clubs in NSW have been established as a company limited by guarantee under the *Corporations Act 2001* (Cth) and, therefore, are subject to the requirements of that Act. Other NSW registered clubs are either a co-operative established under the former *Co-operatives Act 1992,* or a corporation constituted by another Act.[6]

Other key legislation affecting the operation of registered clubs in NSW includes the *Liquor Act 2007*, the *Gaming Machines Act 2001*, and the *Gaming and Liquor Administration Act 2007*. For example, a registered club cannot exist unless it holds a club (liquor) licence under the *Liquor Act 2007*.

4.3 Decision making, administration, and enforcement responsibilities

Independent Liquor and Gaming Authority

The Independent Liquor and Gaming Authority is established under the *Gaming and Liquor Administration Act 2007.* The Authority is an administrative body which has functions conferred on it by the gaming and liquor legislation.

The Act is part of the gaming and liquor legislation for the purposes of the *Gaming and Liquor Administration Act 2007*. This latter Act contains administrative and other relevant provisions that apply in relation to the Act, including investigation and enforcement powers.

The Act also contains specific provisions relating to the functions of the Authority, which include:

- determining matters relating to the requirements of amalgamations, de-amalgamations, registered club elections, and complaints,
- approving persons to act as an administrator, liquidator, receiver or official manager,
- giving directions regarding the conduct of functions for minors,
- the taking of disciplinary action against registered clubs,
- granting authorisations for junior members, club functions and non-restricted areas,
- approving the form and manner of documents such as reports and applications,

[6] Section 10(1)(b) of the *Registered Clubs Act 1976*

- receiving notification of the cessation of a registered club's secretary and approving persons to act as secretary, and
- imposing conditions with respect to any matter that relates to the Authority's functions under the Act, and revoking or varying any such condition.

The Secretary of the Department

In addition to the functions specified under the *Liquor Act 2007* and the *Gaming Machines Act 2001*, the Secretary of the Department also has functions under the Act and the existing Regulation, which include:

- determining matters relating to the termination of contracts,
- applying to the Supreme Court for orders where property is disposed of otherwise than as provided for by section 41J of the Act,
- approving the form of returns, notices, applications for registered clubs seeking approval to dispose of core property referred to in section 41J of the Act, and the form and manner of registers used for recording disclosures, declarations and returns,
- making a disciplinary complaint to the Authority regarding a registered club,
- receiving amended rules and financial information and other information relating to registered clubs, members of a club's governing body, top executives, other staff members and consultants,
- giving directions to registered clubs with respect to calling for expressions of interest relating to amalgamations,
- considering of submissions in relation to registered club amalgamations and de-amalgamations,
- approving an 'exception area' relating to the five kilometre rule which restricts access to registered clubs by certain members of the community, and
- making conditions relating to 'exception areas' and approving, varying, and revoking these areas and authorisations.

Office of Liquor, Gaming and Racing

The Office of Liquor, Gaming and Racing provides policy advice to the Minister and Government relating to the governance and operation of registered clubs. The Office also performs functions such as developing forms and notices, processing applications, and providing information and assistance to registered clubs and others in the registered club sector. The Office conducts a strategic compliance and enforcement program to facilitate compliance with the provisions of the Act. Also, the Office exercises functions delegated by the Secretary of the Department.

NSW Police Force

The NSW Police Force, through the Commissioner of Police, has specific functions under the Act, including:

- receiving notification of authorisation applications and dates which members under the age of 18 years are to be given access to a registered club's premises,
- giving directions regarding the conduct of registered club functions for minors,
- inquiring into matters requested by the Secretary of the Department concerning a person who is the subject of an investigation, and
- making a disciplinary complaint to the Authority regarding a registered club.

4.4 Regulation making powers

Certain sections of the Act provide for the prescribing of matters by regulation. The proposed Regulation is made under sections 10(1)(k1), 17AE(2), 17AEA(1), 17AI(3) (definition of *major assets*), 17AK(1) and (2), 17AL, 23A (2), (5) and (9)(a)(ii), 30(1)(b) and (3C), 32(3), 38(1), 41B(1) (definition of *top executive*), 41F(1), 41J(4), 41ZB, 41ZC(1), 50B(2), 57F(1)(c), 63(2), 66 and 73 (the general regulation making power) of the Act.

5 NEED FOR GOVERNMENT ACTION

Certain provisions in the Act require that matters be prescribed in a regulation to assist in achieving the objectives of the Act.

Other provisions in the Act enable the making of regulations to deal with registered club amalgamations, de-amalgamations and a range of procedural matters, as well as registered club director, secretary and manager training. Regulations can also be made with respect to compliance mechanisms and offence provisions.

Failing to take some form of action in relation to these matters will leave them unspecified, and will impair the efficient operation of the Act. There will be operational uncertainty for registered club governing bodies and management. Confidence of members and the broader community in registered club operations and accountability will be affected. Members' rights will be eroded by not being kept informed about significant matters. Provisions of the Act designed to promote industry integrity and standards will be undermined, and an acceptable level of standards within the club industry will not be achieved.

It is necessary that action be taken by the Government on these matters.

For this Regulatory Impact Statement (which supports the making of the proposed Regulation as the means of taking action on the above matters), the objective of government action is to ensure the purpose of the Act can continue to be realised by having in place the necessary supporting regulation envisaged by that Act.

6 OBJECTIVES OF THE REGISTERED CLUBS REGULATION 2015

As noted earlier in this Regulatory Impact Statement, key requirements of the Act relate to the establishment of registered clubs, the rules that apply to registered clubs, and the management and operation of registered clubs. These provisions exist to ensure the integrity and proper conduct of the registered club movement, and the protection of the rights of registered club members.

Registered clubs have a duty to act in good faith. They, along with members of the governing body and top executives, have a responsibility to ensure registered club operations are conducted to high standards of propriety. Members and the broader community need to be assured, and have confidence, that a registered club's funds are being used in accordance with the lawful objectives of the club. Members and the community also need to be satisfied that there is no impropriety by persons who are in a position of authority or have close connections with the operations of registered clubs.

As noted earlier, certain provisions in the Act require that matters be prescribed in a regulation to assist in achieving the objectives of the Act. Some of those provisions relate to members' rights to:

- nominate for and elect the registered club's governing body,
- vote on matters that are likely to have a significant impact on their registered club's future,
- be kept informed of the registered club's financial position and certain commercial dealings, and
- be satisfied that gifts and remuneration received by members of the governing body, top executives and other staff, are appropriate and do not compromise the integrity or financial sustainability of the registered club.

Other provisions in the Act requiring the making of regulations that deal with registered club amalgamations and de-amalgamations and a range of procedural matters, as well as registered club director and manager training. Regulations can also be made with respect to compliance mechanisms and offence provisions, which act as an important deterrent to improper behaviour.

The objective of the proposed Regulation is to effectively support the operation of the Act and to facilitate the achievement of the objectives of the Act through regulatory practices that are transparent, consistent and reasonable.

6.1 Matters to be included in the proposed Regulation

The proposed Regulation makes provision with respect to the following:

- the amalgamation and de-amalgamation of registered clubs under the Act,
- the application for, and granting of, authorisations under the Act,
- the accountability of registered clubs,
- training for members of club governing bodies, club secretaries and managers of registered club premises,
- the rules of registered clubs,
- notification that a person has ceased to be the secretary of a registered club,
- the display of notices in registered clubs,

- evidentiary matters with respect to criminal proceedings under the Act,
- the persons authorised to make complaints under Part 6A of the Act,
- the issue of penalty notices and the amounts of the fines payable under such notices, and
- savings and transitional matters.

The proposed Regulation is essentially a remake of the existing Regulation with some minor amendments to remove redundant provisions, and to increase application fees from $50 to $100.

7 OPTIONS FOR ACHIEVING THE OBJECTIVES

The *Subordinate Legislation Act 1989* requires alternative options for achieving the objectives of the proposed Regulation to be considered before a regulation may be made. Not proceeding with any action is one option that must be considered.

As noted previously, a review of the accountability provisions of the Act and the existing Regulation is currently being conducted by the Office of Liquor, Gaming and Racing. The results of that review will be considered separately from the making of the proposed Regulation. The following discussion of options for achieving the Government's objectives does not seek to pre-empt the outcome of that wider review, which may result in changes to the accountability provisions of the Act and supporting regulations being separately considered by the Government during 2015-16.

7.1 The options

There are five options for achieving the Government's objectives referred to in Chapter 6:

Option 1 Take no action.

Option 2 Implement a system of industry self-regulation or co-regulation.

Option 3 Address matters in the Act rather than by regulation.

Option 4 Address matters by implementing administrative procedures.

Option 5 Make a regulation.

7.2 Impact assessment

The *Subordinate Legislation Act 1989* and the *Guide to Better Regulation* (2009) require an assessment of the costs and benefits of the regulatory proposal to demonstrate that the potential impacts of the proposal are understood.

A modified cost benefit analysis approach has been used in this Regulatory Impact Statement where the costs and benefits of making the proposed Regulation can be quantified. However, not all costs and benefits could be quantified and these have been dealt with by highlighting their impact as accurately as possible. This approach is similar to that taken in recent Regulatory Impact Statements prepared in support of subordinate legislation that regulates other sectors of industry in NSW.

7.2.1 Option 1 – Take no action

Option 1 would result in the current Regulation lapsing on 1 September 2015. It would not be replaced by another regulation.

Costs

The costs of this option are assessed overall as high for the matters that are addressed by the proposed Regulation (subject to the discussion of registered club accountability provisions above).

The Act requires that regulations provide for a range of important matters necessary for the Act's efficient operation. The absence of these provisions in a regulation would jeopardise the objectives of the Act.

Taking no action would result in issues such as accountability, amalgamations, registered club rules, notices and applications no longer being subject to necessary controls as envisaged by the Act. Registered clubs are likely to incur costs in seeking to comply with the Act in the absence of regulations providing the necessary guidance. It would also be difficult

for regulators to effectively carry out their enforcement functions, particularly where information and records have not been kept or are inadequate.

Benefits

The benefits of this option are assessed as low.

Regulatory costs for registered clubs would fall as some regulatory requirements would no longer apply. There would be minor reductions in enforcement and administration costs for government in no longer having to administer the provisions of the regulation. It is not possible to quantify these benefits as they will vary significantly depending on the circumstances of individual registered clubs, and would be largely offset by costs resulting from the need to provide assistance to registered clubs in the ensuing uncertain environment, and the need to respond to the increased risk of impropriety.

Conclusion

It is considered that the overall costs of this option significantly outweigh the overall benefits. Accordingly, this option is not supported.

This option may be further considered in relation to the accountability provisions of the Act and the supporting regulations which are currently the subject of a separate review as described above.

7.2.2 Option 2 – Industry self-regulation or co-regulation

As with option 1, this option would result in a regulation not being made. This option would place the responsibility for the development and oversight of certain aspects of the regulatory framework for registered clubs on an industry body.

Costs

The costs of this option are assessed overall as high for the matters that are addressed by the proposed Regulation (subject to the discussion of registered club accountability provisions above).

As previously noted, the Act requires that regulations provide for a range of important matters necessary for the Act's efficient operation. The absence of these provisions in a regulation would jeopardise the objectives of the Act.

It is noted that industry self-regulation has been adopted in other areas with respect to registered clubs. For example, the *Club Code of Practice* and *Best Practice Guidelines* (2014) developed by ClubsNSW are designed to improve industry standards in key areas of registered club operations and outline common standards of conduct for all members of ClubsNSW, with a specific focus on corporate governance. The Code establishes a Code Authority to deal with breaches.[7] However, the Code only applies to those registered clubs that are members of ClubsNSW, and such membership is voluntary. Further, while the ClubsNSW Code of Practice complements the governance objectives of the Act, it does not deal specifically with the matters that are provided for by the proposed Regulation, nor the entirety of the objectives outlined in Chapter 6.

While a self-regulatory system could require that a non-government penalty system be developed, such as making an apology or exclusion from an industry body for non-compliance with the regulatory framework, these are not considered to be sufficient deterrents. A system that is imposed that is wholly self-regulatory will not have the force of law to guarantee compliance, with the result that there would be a lack of effective deterrents for breaching the code.

[7] ClubsNSW, *Club Code of Practice* and *Best Practice Guidelines,* September 2014.

A pure self-regulatory system could lead to uncertainty within the clubs industry – particularly regarding the maintenance of industry standards (and associated loss of members' confidence in the way registered clubs are run), the right of members to be informed on financial matters, the effective and proper conduct of registered club amalgamations and de-amalgamations, and the right of members to be involved in decision-making concerning the future of their club.

Under a co-regulatory framework, some of the penalties provided under a self-regulatory system could have the force of law. But the issue still remains as to how this system could apply to all registered clubs. Further, matters that could be self-regulated by industry are not necessarily consistent with what is required to be prescribed under the Act, and it is considered unlikely that self-regulation is capable of achieving the same standards of probity.

A reduced role for government in the regulatory framework would create uncertainty in the effectiveness of any self-regulatory or co-regulatory approach. This could lead to a loss of member and public confidence in the conduct and operation of registered clubs.

Benefits

The benefits of option 2 are assessed as medium.

A benefit is that self-regulation and co-regulation may reduce compliance costs for registered clubs. However, registered clubs will be required to meet the costs of ensuring a representative body exists to establish and monitor compliance with standards. The Government may also experience a minor fall in administration and enforcement costs.

Conclusion

It is considered that the overall costs of this option outweigh the overall benefits. Accordingly, this option is not supported.

This option may be further considered in relation to the accountability provisions of the Act and the supporting regulations which are currently the subject of a separate review as described above.

7.2.3 Option 3 – Address the matters through the Act

As with option 1, this option would result in a regulation not being made. Instead, the matters addressed by the existing Regulation would be addressed by the Act itself.

Costs

The costs of this option are assessed as medium.

Parliament has determined that substantive matters of regulation for the registered clubs sector should be dealt with by principal legislation (an Act) and that lesser, routine matters be provided for in subordinate legislation (e.g. a regulation).

It is clear from the wording of the Act that regulations were envisaged to give effect to the Act. There is no expressed intention that the matters which are covered by the existing Regulation were to be specified in the Act at some later point in time.

Without the material contained in the proposed Regulation, the Act would be ineffective and ambiguous in its application and enforceability.

Maintaining these provisions in a regulation instead of the Act allows for a degree of flexibility in the regulatory framework. Should changes or enhancements be required, effecting such changes by regulation is a simpler and more efficient process than that involved in amending the Act.

Dealing with changes by regulation means that amendments can be made quickly and at less cost than is the case for principal legislation. Scrutiny of subordinate legislation by the

Legislation Review Committee of the NSW Parliament, along with the ability of Parliament itself to disallow regulations, ensures that there is an appropriate review procedure.

Benefits

The benefits of this option have been assessed as low.

One benefit would be the increased certainty that may flow from having matters addressed in principal legislation rather than subordinate legislation.

Conclusion

It is considered that the overall costs of this option outweigh the overall benefits. Accordingly, this option is not supported.

7.2.4 Option 4 – Address matters through administrative procedures

As with option 1, this option would result in a regulation not being made. Instead, the matters addressed by the existing Regulation would be addressed through administrative procedures.

Costs

The costs of this option are assessed overall as high for the matters that are addressed by the proposed Regulation (subject to the discussion of registered club accountability provisions above).

There are limits to the matters that can be dealt with administratively as the Act, in some circumstances, requires that regulations be made. Even where it is possible that matters may be able to be addressed administratively, there may be little assurance that appropriate standards will be met or maintained without the availability of sanctions for non-compliance or some other mechanism to facilitate compliance with administrative procedures. This option would also not provide the same degree of regulatory certainty for registered clubs, their members and the broader community compared to that provided by the proposed Regulation.

Benefits

The benefits of option 4 have been assessed as medium.

The benefit of taking administrative action is that it does not require the same degree of time or proportion of government resources to be invested when making principal or subordinate legislation, and provides greater flexibility to adapt to changing circumstances.

Conclusion

It is considered that the overall costs of this option outweigh the overall benefits. Accordingly, this option is not supported.

This option may be further considered in relation to the accountability provisions of the Act and the supporting regulations which are currently the subject of a separate review as described above.

7.2.5 Option 5 – Make the Regulation

This option would result in the repeal of the existing Regulation and the making of the proposed Regulation.

Costs

The costs of this option have been assessed as medium.

This option will result in registered clubs continuing to incur existing compliance and opportunity costs. These include a range of reporting requirements for registered club members, procedures for amalgamations and de-amalgamations, property disposal processes, appointment processes and rules for registered club governing bodies, training requirements and the display of notices.

The costs to the Government are considered low. The framework for regulatory administration and operation through the Act is already in place. The proposed amendments to the existing regulation are minimal in their effect, and will enhance the operation of the Act.

Benefits

The benefits of this option are assessed as high.

This approach is consistent with the intention of the Parliament as reflected in the provisions of the Act. In some instances, regulations are the only means of achieving the efficient operation of substantive provisions. In other instances, the proposed Regulation will complement relevant provisions of the Act.

By making a regulation, registered clubs, members of governing bodies and top executives will have certainty about the standard of conduct expected of them and their accountability to members and regulators as envisaged by the Act. Members and regulators will be assured that the information provided to them is relevant by ensuring consistent form and content.

A regulation provides confidence that provisions of the Act can be legally enforced. A regulation is also the only means by which certain exceptions to provisions of the Act may be made.

The option of maintaining the status quo through the making of a regulation to support the objects of the Act will have minimal impact and ensure stability of the operation and day to day management of registered clubs.

Conclusion

This option is supported as the overall benefits outweigh the overall costs.

Summary of Costs and Benefits for each option

Option 1	Costs	Benefits	Overall Benefit
Option 1	High	Low	Negative
Option 2	High	Medium	Negative
Option 3	High	Low	Negative
Option 4	High	Medium	Negative
Option 5	Medium	High	Positive

7.3 Conclusion

The preferred option for supporting the objectives and provisions of the Act is option 5 (i.e. to make the proposed Regulation).

It is considered that this option provides the greatest net benefit to registered clubs, their members and the broader community.

8 SUMMARY OF CHANGES FROM 2009 REGULATION

The proposed Registered Clubs Regulation 2015 is essentially a remake of the Registered Clubs Regulation 2009 but with some minor amendments that are machinery in nature. The table below identifies the amendments made to the existing regulation compared to the proposed Regulation.

Clause in 2009 Regulation (OLD)	Clause in 2015 Regulation (NEW)	Description of Provision	Change
Clause 2	Clause 2	Specifies the date of commencement of the proposed Regulation, and that it is a requirement for the proposed Regulation to be published on the NSW legislation website.	It is standard requirement when drafting regulations to state that the proposed Regulation is required to be published on the NSW legislation website. The new date is specified as 1 September 2015.
Clause 3	Clause 3	This provision defines certain terms in the proposed Regulation.	A new definition for "Department" which means the Department of Trade and Investment, Regional and Infrastructure (until 1 July 2015 after which time it will be amended to refer to the Department of Justice) so it is clear which government department the proposed Regulation is referring to has been inserted into the clause.
Clause 5A	Clause 6	This clause requires a submission relating to a proposed amalgamation to be made to the Independent Liquor and Gaming Authority within 30 days of the date on which an application is made under the *Liquor Act 2007* for transferring the liquor licence of the dissolved club.	This clause has been slightly modified to provide clarity.
Clause 8	Clause 12	This clause specifies the fee to accompany an application for a non-restricted area, a junior members and a registered clubs function authorisation.	This clause has been amended to increase the authorisation application fee from $50 to $100 to be consistent with similar authorisations under the *Liquor Act 2007*.
Clause 21A(5)	Clause 26(5)	This clause specifies the training requirements for members of registered club governing bodies, registered club secretaries and managers of club premises.	This clause has been slightly modified to provide clarity.
Clause 21B(1)(a)(b)	N/A	This clause specifies the timeframe of 30 June 2015 for secretaries and board managers who held such a position as at 1 July 2013 to have completed training.	This clause is redundant as the period for which this provision relates has expired.

Clause in 2009 Regulation (OLD)	Clause in 2015 Regulation (NEW)	Description of Provision	Change
Clause 21B(2)	Clause 27(1)	This clause specifies the timeframe by which secretaries and managers must complete training.	This clause has been slightly modified to remove reference to managers and secretaries appointed after 1 July 2013 and the timeframe by which they have to complete training as it is redundant.
Clause 25(2)	Clause 33(2)	This clause specifies where to obtain a notice under section 50B(2) of the Act stating that it is against the law for a member to enter the name of a person under the age of 18 years in the guest register.	This clause has been amended to make it clear that notices are obtained from the Office of Liquor, Gaming and Racing by removing reference to Communities NSW. The Office of Liquor, Gaming and Racing was previously a division of Communities NSW.
Clause 25(3)	N/A	This clause specified a timeframe of 31 March 2011 by which registered clubs were to display the new sign referred to under clauses 25(1) and (2) of the existing Regulation.	This clause is redundant as the period for which the new notice must be displayed has expired.
Clause 29	Clause 38	This clause specifies the time period by which section 41J of the Act does not apply to the disposal of land by a registered club for which a lease in relation to the land included an option to renew to take effect after the commencement of section 41J.	This clause now specifically states the time period of 1 April 2003 when section 41J of the Act commenced which will save time for persons applying the clause from having to research the date when this section commenced.
Clause 30	Clause 39	This is a savings clause which confirms that any matter or thing that, immediately before the repeal of the Registered Clubs Regulation 2009, had effect under that Regulation continues to have effect under the proposed Regulation.	This clause amends reference to the proposed Regulation that is being repealed by omitting “2009” and inserting “2015”.

In addition to the above, the reference to “Director-General” has been replaced with “Secretary” wherever a provision containing “Director-General” in the existing Regulation is carried over to the proposed Regulation.

9 ANALYSIS OF THE PROPOSED REGISTERED CLUBS REGULATION 2015

This Chapter examines the economic and social costs and benefits of the individual clauses in the proposed Regulation. The proposed Regulation comprises 7 Parts, which are made up of individual clauses.

9.1 Part 1 – Preliminary (Clauses 1 to 3)

This Part of the proposed Regulation deals with machinery matters.

Clause 1 – Name of Regulation states how the proposed Regulation is to be cited. It is to be named the Registered Clubs Regulation 2015.

Clause 2 – Commencement states the proposed Regulation will commence on 1 September 2015. This clause is carried forward from the existing Regulation, with a minor change to reflect the new commencement date.

Clause 3 – Definitions provides that the term 'core property' referred to in the proposed Regulation has the same meaning as in section 41J of the Act, and that the Department is the Department of Trade and Investment, Regional Infrastructure and Services. Note that this clause will be amended when the Office of Liquor, Gaming is transferred to the Department of Justice on 1 July 2015. This clause also provides that the notes included in the proposed Regulation do not form part of the proposed Regulation.

Costs and Benefits

There are no economic and social costs or benefits associated with Part 1 of the proposed Regulation. These clauses relate to machinery matters and facilitate the interpretation of the Act.

9.2 Part 2 – Amalgamations (Clauses 4 to 8)

On 13 October 2014, the NSW Government entered into the *Resilient Clubs, Resilient Communities* Memorandum of Understanding (MoU)[8] with ClubsNSW. The MoU includes a commitment to review the rules in the Act (and supporting Regulation) regarding registered club amalgamations and de-amalgamations with a view to streamlining both processes and allowing registered clubs to merge and de-merge as their local situation requires.

The NSW Government will soon commence the review arising from the 2014 MoU. Amendments to the Act and subordinate legislation relating to registered club amalgamations and de-amalgamations may result at a later time.

Clause 4 – Calling for expressions of interest

This clause requires that a registered club that is seeking or proposing to amalgamate must, before entering into any agreement or understanding with another registered club, call for expressions of interest from other registered clubs located within a radius of 50 kilometres of the premises of the proponent registered club.

The clause also provides that the Secretary of the Department may give directions to registered clubs calling for expressions of interest with which they must comply.

[8] *Resilient Clubs Resilient Communities* Memorandum of Understanding between ClubsNSW and the NSW Government on 13 October 2014

The option of not having restrictions placed on the area for registered clubs to call expressions of interest was considered. This option is not supported as it does not achieve the policy objective which is to facilitate the maintenance of registered club assets for the geographical community in which the registered club was originally established. Allowing for those registered clubs located within a reasonable distance from the registered club that is seeking to amalgamate to first be considered for amalgamation provides an incentive for the dissolved club's premises and facilities to remain in the area and to continue to be accessible by its members.

The 50 kilometre radius requirement is considered a reasonable distance to capture registered clubs in the vicinity that may potentially be interested in amalgamating. This increases the opportunity to negotiate an amalgamation proposal which provides for a dissolved club's assets and facilities to remain in the area, thereby ensuring that members can continue to access registered club premises and facilities.

Prescribing this matter is provided for in section 73(1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on the registered club seeking or proposing to amalgamate, which will be required to call for expressions of interest. Those costs include notifying registered clubs of the expressions of interest and processing responses. There will also be an administrative cost to those registered clubs that respond to the expression of interest. ClubsNSW provides assistance to its member clubs by advising industry of registered clubs seeking to amalgamate.

Benefits associated with this clause will flow to registered clubs within a 50 kilometre radius of the proponent club's premises, as they will be given the first opportunity to be considered for the proposed amalgamation. This may benefit those registered clubs through the financial advantages that can arise from amalgamations – such as economies of scale, additional revenue opportunities, increasing income from membership fees, and access to a greater pool of potential patrons.

Benefits associated with this clause will also flow to members of the registered club proposing to amalgamate, given that there is a greater potential for that registered club's assets (including its premises) to continue to be conveniently available to its members and the local community.

Clause 5 – Notification to club members

This clause specifies how members are to be notified of a proposed amalgamation to which their registered club is a party. The notice is to be displayed on a notice board on the registered club's premises and on the club's website (if any).

Notification by these means is considered to impose the least cost on registered clubs while providing an adequate opportunity for members to be aware of the proposed amalgamation. The option to require that members be individually notified by mail was considered. However, this option would result in significant costs for registered clubs – particularly those with large memberships. Registered clubs proposing to amalgamate are often suffering from financial pressures, and it is therefore important that notification costs be kept to a minimum.

This clause is carried forward from the existing Regulation.

Prescribing this matter is required by section 17AE(2) of the Act. The section cannot operate without the proposed clause being made. This is a minimum requirement and registered clubs can choose to notify their members in more comprehensive ways if they wish.

Costs and Benefits

Registered clubs will incur minor costs in having to display a notice on their noticeboard and website. However, the benefits associated with this clause will flow to members that are required to be notified. Such benefits will flow from members being made aware of the proposed amalgamation so they can express their views and vote on the matter.

Clause 6 – Submissions in relation to club amalgamations

This clause provides that a written submission that a person may wish to make in relation to a proposed amalgamation must be made to the Authority within 30 days of the date on which an application is made under section 60 of the *Liquor Act 2007* for the transfer of the dissolved club.

The option for having a period of other than 30 days was considered. Thirty days is consistent with similar timeframes for the making of submissions under the liquor and gaming laws. There is flexibility for the 30 day period to be lengthened should the circumstances warrant and the Authority thinks fit.

Prescribing this matter is required by section 17AEA of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation with minor changes to provide clarity to the clause.

Costs and Benefits

Costs associated with this clause will impact on persons and organisations that choose to make a submission to the Authority as they will need to prepare the submission within a 30 day timeframe.

It is beneficial to registered clubs and the Authority to have a timeframe enshrined in the proposed Regulation so that the Authority can undertake its role efficiently and registered clubs have certainty regarding timeframes.

There may be costs to registered clubs if the submission period is extended as it may delay the amalgamation process. However, the costs should be marginal given the significance and far-reaching financial benefit to registered clubs of completing the amalgamation process.

Clause 7 – Memorandum of Understanding between clubs

This clause requires that registered clubs proposing to amalgamate must enter into a Memorandum of Understanding (MoU). The clause specifies that the MoU must state each registered club's position regarding:

- the manner in which the premises and other facilities of the dissolved club will be managed, and the degree of autonomy that will be permitted in the management of those premises and facilities,
- a list of traditions, amenities and community support that will be preserved or continued by the amalgamated registered club,
- intentions regarding the future direction of the amalgamated registered club,
- the extent to which the employees of the amalgamated registered club will be protected,
- intentions regarding certain assets of the dissolved registered club (i.e. core property, cash or investments and gaming machine entitlements), and

- the circumstances that would permit the amalgamated registered club to cease trading on the premises of the dissolved club or to substantially change the objects of the dissolved club.

An agreed period of time is to be specified before any action can be taken in relation to these matters.

The clause also requires the MoU be made available to the registered club's ordinary members at least 21 days before any meeting held for the purposes of voting on whether to approve the proposed amalgamation. The MoU is to be displayed on the registered club's premises and on the registered club's website (if any).

The option not to require that a MoU be entered into, or to specify its content, was considered. This approach would be detrimental to members in that it would undermine their right to be aware of critical elements of registered club amalgamation proposals and to make an informed decision on the future of their registered club.

It is therefore appropriate to include in the proposed Regulation a requirement for a MoU, and to specify what is to be included in this document. This will help to ensure that members are sufficiently informed to make a decision on whether or not to support an amalgamation proposal.

The 21 day requirement for the availability of the MoU reflects a common standard applying in circumstances where members or shareholders are required to vote on critical issues affecting the future of a registered club or company. The option to require that members be individually provided with a copy of the MoU would result in significant costs for registered clubs – particularly those with large numbers of members. Registered clubs proposing to amalgamate are often suffering from financial pressures, and it is therefore important that these costs be kept to a minimum.

Prescribing this matter is provided for in section 73(1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with the clause will impact on the registered clubs proposing to amalgamate. They will result from the requirement for registered clubs to prepare and make available to members the MoU. While preparation of a MoU will likely require professional assistance, this could be provided to registered clubs at the same time as assistance is provided on other aspects of an amalgamation (as required under the Act and the *Corporations Act 2001*).

Benefits associated with this clause will flow to ordinary members of the registered club, in that those members will be properly informed of the future arrangements for their club's operations when considering whether or not to approve an amalgamation proposal. Members will have a degree of certainty that those arrangements will continue for a reasonable period into the future.

Clause 8 – "Major assets" of dissolved registered club

Section 17AI(1) of the Act provides that during the period of three years following an amalgamation, the parent club must not dispose of any of the 'major assets' of the dissolved club unless approved by the Authority. Under section 17AI(3), 'major assets' means assets that are of a class prescribed by the proposed Regulation.

Clause 8 specifies the class of assets which are defined as 'major assets' as being any core property. That is, any real property owned or occupied by the registered club that comprises:

- the defined premises of the registered club, or

- any facility provided by the registered club for the use of its members and their guests, or
- any other property declared to be core property by a resolution passed by a majority of the ordinary members at a general meeting.

However, ordinary members can pass a resolution at a general meeting declaring such property not to be core property of the registered club.

The option of not prescribing any property to be a major asset of a registered club was considered. However, this would result in section 17AI having no effect, and the objective of that provision (which is to ensure that registered club assets cannot be stripped following an amalgamation) would not be achieved.

Having only some core property included in the definition of major assets under clause 8 was also considered. However, it is considered unnecessary to further qualify core property given that section 17AI(2) allows the Authority to approve of the disposal of any of the major assets of a dissolved club within three years only if it is satisfied that the disposal is necessary to ensure the financial viability of the parent club and has been approved by a majority of members of the dissolved club.

Prescribing this matter is required by section 17AI(3) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause are that registered clubs may not be able to realise the monetary value of assets that are obtained via an amalgamation within three years of the amalgamation taking place. These costs can vary significantly, depending on the value of the property and assets.

This is outweighed by the benefits to members in that, during the three year period, the parent club is prevented from disposing of the assets of the dissolved club in a way that is not to the benefit of the original members of the dissolved club. This protects the interests of those members from any 'fire sale' of their former club's assets.

9.3 Part 3 – De-amalgamations (Clauses 9 to 11)

As noted previously under Part 2 which deals with registered club amalgamations, the NSW Government will soon commence a review of the amalgamation and de-amalgamation provisions of the Act and subordinate legislation and amendments may result at a later time.

Clause 9 – Notification of proposed de-amalgamations to club members

Clause 9 provides that an amalgamated registered clubs that is proposing to de-amalgamate must notify its members of the proposed de-amalgamation 21 days before a separate extraordinary general meeting of the ordinary members of the parent club and the dissolved club. This meeting is required to be held to decide whether or not to approve of the de-amalgamation.

If the de-amalgamation is approved in principle, the registered clubs must notify club members of the amalgamated registered club of the date when an application is to be made to transfer the amalgamated registered club's liquor licence to the de-amalgamated registered club. The registered club must inform members that submissions on the proposed de-amalgamation may be made to the Authority within 30 days of the application date. Any notice must be in writing and be displayed on a notice board on the registered club's premises and on the registered club's website (if any).

Costs and benefits

Notification by these means is considered to impose the least cost on registered club while providing an adequate opportunity for members to be aware of the proposed de-amalgamation. The option to require that members be individually notified by mail was considered. However, this option would result in significant costs for registered clubs – particularly those with a large membership.

Registered clubs will incur minor costs in having to display a notice on their noticeboard and website. However, the benefits associated with this clause will flow to members that are required to be notified and consulted. Such benefits will result from members being made aware of the proposed amalgamation and being able to express their views and vote on the matter.

Prescribing this matter is required by section 17AK(1) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Clause 10 – Submissions in relation to club de-amalgamations

This clause provides that a person may make a written submission in relation to a proposed de-amalgamation within 30 days of the date on which an application is made under section 60 of the *Liquor Act 2007* for the transfer of the de-amalgamated club, of the licence held by the amalgamated club.

The option for having a period of other than 30 days was considered. Thirty days is consistent with similar timeframes for the making of submissions under the liquor and gaming laws. There is flexibility for the 30 day period to be lengthened should the circumstances warrant and the Authority thinks fit.

Prescribing this matter is required by section 17AK(2) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on persons and organisations that choose to make a submission to the Authority as they will need to prepare the submission in a 30 day timeframe.

It is beneficial to registered clubs and the Authority to have a timeframe enshrined in the proposed Regulation so that the Authority can undertake its role efficiently and registered clubs have certainty regarding timeframes.

There may be costs to registered clubs if the submission period is extended as it may delay the de-amalgamation process.

Clause 11 – Statements relating to proposed de-amalgamations

Clause 11 specifies the information that registered clubs must include in a statement when registered clubs are proposing to de-amalgamate. The statement must include the following information:

- details of the proposed de-amalgamated registered club's premises including the name of the club,
- whether the premises will be transferred or leased to the de-amalgamated club and the amount of consideration or rent to be paid in respect of the transfer or lease,
- the number of gaming machine entitlements intended to be included in the transfer to the de-amalgamated club's premises,

- details and estimated values of other property, plant and equipment that will be transferred to the de-amalgamated club and how much this will cost,
- the steps to be taken to protect and preserve the leave and entitlements of employees of the amalgamated club who will become employees of the de-amalgamated club,
- where a copy of the constitution of the de-amalgamated club can be inspected,
- the anticipated effect of the de-amalgamation on the financial viability of the amalgamated club,
- where a copy of a report can be inspected on the future financial viability of the de-amalgamated club. This report must be prepared by an independent accountant, and
- an outline of the steps to be given effect to the de-amalgamation including the assignment of contracts of the amalgamated club to the de-amalgamated club.

This statement must be sent to all members of the amalgamated club, be published on the amalgamated club's website (if any) and be displayed on a notice board at the registered club's premises at least 21 days before the extraordinary general meeting of the ordinary members of the parent club and the dissolved club that must be held to decide whether or not to approve of the de-amalgamation.

Prescribing this matter is required by section 17AL of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and benefits

There will be costs to the amalgamated club to prepare the statement, associated reports and the new constitution, and to send the statement out to all members of the amalgamated club and to display the notice at the registered club's premises.

Benefits associated with this clause will flow to ordinary members of the parent club and the dissolved club, in that those members will be sent a copy of the statement and be properly informed of matters associated with the de-amalgamation when considering whether or not to approve a de-amalgamation proposal.

9.4 Part 4 – Applications (Clauses 12 to 17)

Part 4 of the proposed Regulation deals with authorisation applications relating to non-restricted areas, junior members, and registered club functions and other applications.

Clause 12 – Fees to accompany application for certain authorisations

This clause specifies a fee of $100 to accompany various types of authorisation applications.

The option of not charging a fee for the making of applications was considered. However, it is appropriate for the regulator to be able to recoup some of its administrative costs of processing and determining applications. A fee of $100 is considered reasonable and is consistent with the fee prescribed for similar applications under the Liquor Regulation 2008.

Prescribing this matter is required by sections 23A(2)(b) and 73(1)(h) of the Act. Section 23A(2)(b) cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation with an increase in fee from $50 to $100. The application fee will now be consistent with similar authorisations under the *Liquor Act 2007*, which were set at $100 on 1 September 2014.

Costs and Benefits

It is appropriate that some of the processing costs of authorisation applications be borne by those who will receive the benefit from the granting of such authorisations. The fee prescribed is minimal compared with the social benefits that members and the community will gain through the conduct of functions on registered club premises which normally would not be permitted. The registered club will also benefit through increased revenue. The application fee is offset against the Authority's administration costs in processing the application.

Clause 13 – Notice to be given to local authorities and police

This clause requires the applicant to give notice of an authorisation application to the local consent authority and local police no later than two working days after the application is made. The notice must be in the form approved by the Authority.

The option of not requiring notification to be given to police and local councils was considered. However, it is important that these stakeholders be aware of an application and be able to make a submission to the Authority if desired, given their community protection roles and the impact that the approval of an authorisation may have on their responsibilities. The notification requirements are consistent with similar provisions in the Liquor Regulation 2008.

Providing for a notification timeframe of more than two working days after an authorisation application is made was considered too long given that local councils and police have many other demands on their resources and they need to be made aware as early as possible of an application so they can respond to it, if necessary.

Prescribing these matters is provided for in sections 23A(2)(c) and 73(2A) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

The minor costs associated with this clause will impact on applicants. The costs will result from the requirement for applicants to notify the local consent authority and local police of authorisation applications made to the Authority. This requires the delivery of a notice to the local consent authority and local police. The costs of complying with this requirement will vary. If the notice (defined in the application form as a copy of the application) is mailed to police and the local consent authority, it will cost 70 cents to post each letter, plus the cost of the envelope and the cost of photocopying the application. This would be less than $1.50 for each notice. If the notice is emailed to police and the local consent authority the costs will be less than this. If the notices are physically lodged with police and the local consent authority then a person's hourly rate for doing this will have to be factored in. The hourly cost of a clerical or administrative worker including employee on-costs is approximately $53.00 per hour. It is estimated that it will take approximately one hour for a person to personally lodge each notice, at a total cost of $106 for two hours work. However, this task may be carried out by a volunteer of the registered club in which case this cost would not arise.

These costs, however, will be outweighed by the benefits which will flow to the local consent authority and local police and inevitably to the wider community. By making these bodies aware of an application, they may make submissions to the Authority about the merits of granting the application.

Having the Authority approve the form in which notice is to be given ensures consistency regarding the information provided, and helps to ensure the consent authority and police are sufficiently informed.

Clause 14 – Clubs functions authorisation notice to be fixed to premises

This clause states that an application for a registered club functions authorisation is to be fixed by the applicant to the registered club premises to which the application relates within two working days of making the application. The notice is to be in a form approved by the Authority.

The option of not requiring notice of an application to be fixed to the registered club premises was considered. However, it is important that members and local residents be aware of an application and be able to make a submission to the Authority if desired, given that approval of an application may have a positive or detrimental impact on their community.

The option of having a timeframe of other than two working days for the fixing of a notice on a registered club's premises after it was made was considered. A one day timeframe is considered too short as it provides insufficient time for the fixing of the notice. A period of more than two working days is considered too long as members and other persons need to be notified as soon as possible, given that such persons generally only have 30 days to make a submission in response to the application.

Prescribing this matter is provided for in sections 23A(2)(c) and 73(2A) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

The minor costs associated with this clause will impact on registered clubs. They will result from the requirement for registered clubs to fix a notice of their application on their premises. The application is 5 pages long which will be required to be photocopied and affixed to the registered club premises. The cost of photocopying the notice would be less than $1. It is estimated that it would take a clerical or administrative worker less than half an hour to photocopy the document and it affix it to the registered club's premises at an estimated cost of less than $30.

These costs, however, will be outweighed by the benefits which will flow to members and the local community, in that persons may become aware of the application and can thereby make submissions to the Authority about the merits of the application. Local residents who may be impacted by the granting of the application will be provided with an opportunity to outline to the Authority the possible impact that functions, if approved, may have upon their community.

Having the form of notice approved by the Authority ensures consistency regarding the information provided, and helps to ensure members and other relevant persons are sufficiently informed about the authorisation applications.

Clause 15 – Submissions in relation to applications

This clause provides that any person may make a submission to the Authority in relation to an application for an authorisation. A submission must specify details of the application to which the submission relates, and be made within 30 days of the date on which the application was made, or such shorter period as the Authority may determine. The Authority has discretion to extend the period submissions.

The option for having a period of other than 30 days was considered. Thirty days is consistent with similar timeframes for the making of submissions under the liquor and gaming laws. There is flexibility for the 30 day period to be lengthened or shortened should the circumstances warrant.

Prescribing this matter is required by section 23A(5) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on persons and organisations that make a submission to the Authority. They will result from persons and organisations needing to make a submission within a stipulated timeframe of 30 days.

Benefits associated with this clause are that the information required by clause 15 to be included in the submission enables the Authority to readily identify the application to which the submission relates. This will save time for the Authority in undertaking its tasks and, consequently, will help to reduce administrative costs.

Clause 16 – Advertising of other applications

This clause provides that the Authority may require applications that are not referred to in clause 12 to be advertised. The Authority may refuse to determine such applications that have not been advertised.

The option of not allowing the Authority to require such advertising of applications was considered. However, it is appropriate that the Authority be able to utilise its discretion in circumstances where the public interest would benefit from local stakeholders being made aware of an application by a registered club. This power is also available to the Authority in relation to liquor applications under clause 14 of the Liquor Regulation 2008.

Prescribing this matter is provided for in section 23A(2)(c) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on the applicant. They will result from the requirement for applicants to advertise their application in a manner directed by the Authority. This will be determined on a case by case basis, and may include display of a notice on the club premises, and providing notice to certain stakeholders.

Benefits associated with the clause will flow to the community as the clause will ensure members of the community can be made aware of applications (which they may otherwise not be) and will have an opportunity to raise issues if they wish.

Clause 17 – Conditions of junior members authorisations

This clause specifies the conditions to which a junior members' authorisation is subject. The conditions require that a registered club must record in a register the dates on which junior members are given access to registered club premises, and, at least 7 clear days before the event, give written notice to the local police of the dates junior members are to be given access to the premises.

The option of not requiring a register of dates to be maintained was considered. Given the substantial benefits to regulators in having access to this information (as detailed below), this option is not supported.

Restricted access to registered club premises by members and their guests, and restrictions on access by minors, are important principles of the registered club laws, and this clause assists in maintaining the integrity of those principles.

The option of requiring that local police be given more than, or less than, seven clear days' notice before a junior members event is to occur was considered. Given that police need to be aware that the event is occurring, seven clear days' notice is an appropriate amount of time to advise police that junior members will be given access to the registered club premises.

Prescribing this matter is provided for in section 23A(9)(a)(ii) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact upon registered clubs due to the requirement for registered clubs having to keep a register recording the dates junior members are given access to registered club premises and notifying police.

Benefits associated with this clause will flow to regulators by the keeping of a register. They will result from regulators having access to information which can assist in enforcing restrictions on entry to a registered club by non-members and minors.

9.5 Part 5 – Accountability (Clauses 18 to 25).

The accountability framework is contained in Part 4A of the Act and Part 4 of the existing Regulation (except for reporting provision under section 38 of the Act).

The accountability provisions provide a framework for registered clubs that recognises they are not-for-profit entities that exist for the benefit of their membership.

The provisions also recognise that registered clubs often enter significant commercial undertakings and large scale commercial contracts, and that these decisions must be transparent and made in the best interests of the registered club and its members.

The framework recognises that a registered club's core property is often its largest asset and, therefore, members need to be involved in any decision to dispose of core property. It also provides long term safeguards where a registered club's core property is used as security for loans, and in relation to management contracts involving persons undertaking management functions who are not directors or staff of the registered club.

The provisions include:

- requirements for gifts from an affiliated body or contractor to be disclosed and maintained in a register,
- requirements for annual reporting to members of prescribed particulars including the number of top executives at the registered club, details of registered club-related overseas travel undertaken by directors and staff, and the amount of funding provided under categories 1 and 2 of the ClubGRANTS scheme,
- requirements to be met by a registered club when disposing of core property,
- requirements to be met by a registered club when entering a contract involving a registered club's director, staff and others,
- a definition of "top executive" that designates those staff of registered clubs who are subject to certain reporting and disclosure requirements, and
- the definition of the core property of a registered club to provide a statutory framework for registered clubs to follow when disposing of this property to ensure members' interests are protected.

Accountability reforms introduced in 2011 (as part of reforms identified in the 2010 Memorandum of Understanding with ClubsNSW) require oversight of certain loan and management contracts by the Secretary of the Department, to ensure the interests of members are protected by preventing registered clubs and their assets being owned by private parties.

The accountability provisions are complemented by a regulatory framework under the registered club laws that include:

- requirements that must be met in operating a registered club, including the requirement that a registered club be conducted in good faith (section 10 of the Act),

- rules that are deemed to apply to registered clubs, including a rule that any profits or other income of the registered club is to be applied to the club and not distributed to members (sections 30, 30A, 30B and 31 of the Act),
- requirements for the management of registered clubs, including the requirement for a registered club's secretary to be approved by the Independent Liquor & Gaming Authority (sections 32- 41A of the Act), and
- offence and disciplinary provisions (sections 43A-56 and 57E-57L of the Act).

As previously noted, a separate review of the accountability provisions of the Act and the existing Regulation is currently being conducted by the Office of Liquor, Gaming and Racing. That review is considering options for an accountability framework, including: (1) maintaining the status quo, (2) self-regulation and/or co-regulation, and (3) the Government withdrawing from regulatory intervention. The results of that review will be considered separately from the making of the proposed Regulation. Changes to the accountability provisions of the Act and supporting regulations may be necessary during 2015-16 as a result of that review.

In the meantime, it is proposed to remake the existing accountability provisions in this part in the proposed Regulation so as to maintain a stable environment while the review is underway.

Clause 18 – Definition of "top executive"

Under section 41B(1) of the Act, registered club secretaries and managers appointed under section 66 of the *Liquor Act 2007* are defined as a 'top executive'. Top executives are subject to certain accountability requirements under Part 4A of the Act. Part 4A prohibits the registered club from entering into a contract with a top executive or a member of the club's governing body, or a company in which these persons have a pecuniary interest, unless the proposed contract is first approved by the governing body. Top executives must also declare specified financial interests and gifts. Remuneration of top executives must be approved by the governing body of the registered club.

These club accountability requirements exist in the Act to protect the registered club and its membership from inappropriate conduct by persons who, because of their senior position within the registered club, are able to have a significant influence on club decisions, particularly in relation to financial matters.

Section 41B(1)(c) provides for the regulations to prescribe other persons who may also be a 'top executive'.

Clause 18 does this by stating that a 'top executive' to include a person nominated by the registered club as a top executive, or a person who is one of the five highest paid employees of the registered club (including any person who acts in the position of any such employee for a continuous period of not less than 3 months).

Prescribing this matter is provided for in section 41B(1) of the Act.

This clause is carried forward from the existing Regulation

Costs and Benefits

This clause facilitates interpretation of the accountability provisions of the Act covered by Part 4A by making it clear which persons are a 'top executive'.

Costs associated with this clause will impact on top executives and registered clubs. They will result from the requirement for top executives having to declare to the secretary of the registered club in writing that they have a financial interest in a hotel, or have received a gift or remuneration from an affiliated body exceeding $500. Costs will also result in restricting a registered club from entering into a contract with top executives, or a company in which the top executive has a pecuniary interest. Costs will be imposed on registered clubs and

members of the governing body in having to meet to consider a proposed contract with a top executive.

Benefits associated with this clause flow to members by making them aware of such dealings. Members can therefore be satisfied that the registered club is operating with propriety. Registered clubs can be assured that their top executives are not personally benefiting from contracts it has entered into.

Clause 19 – Returns declaring gifts and remuneration

Section 41F of the Act requires that a member of the governing body of a registered club or an employee of a registered club must submit a written return in each year to the registered club, in accordance with the regulations, declaring any gift or remuneration received by the member or employee from a person or organisation that is a party to a contract with the registered club.

Clause 19 specifies that such a return is to be submitted within 21 days after the end of the financial year the gift or remuneration was received.

The clause prescribes guidelines to assist in determining what constitutes a gift that is to be disclosed. The clause specifies that gifts which exceed a value of $500 or when added to the value of all other gifts received from the same donor, exceeds $500 must be disclosed. If the value of a gift (other than money) is unable to be determined, the gift must be disclosed.

The form of the return is to be approved by the Secretary of the Department.

Prescribing these matters is required by sections 41F(1), 41ZB(a)-(b), and 41ZC(1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on persons required to submit a return. Those costs are minimised by requiring that the return need only be submitted once each financial year.

Benefits associated with this clause will flow to the registered club and its members. Making members of the governing body and registered club employees accountable will help to satisfy the registered club and its members that there is no conflict of interest in the registered club's operations.

Having the form of returns approved by the Secretary of the Department will ensure relevant information is provided in a consistent manner. This will help to reduce administrative costs in processing the returns and facilitate the efficient and accurate recording of information.

Clause 20 – Register of disclosures, declaration and returns

This clause requires the secretary of a registered club to maintain in the manner approved by the Secretary of the Department a register of disclosures, declarations and returns relating to gifts, remuneration, interests in contracts and financial interests in hotels by members of the governing body, top executives and other staff members. The recording of this information is required to be made in relation to the registered club under Division 2 of Part 4A of the Act. This clause includes a penalty (maximum 50 penalty units) for non-compliance.

Prescribing these matters is provided for in sections 41ZB(b1) and 73(3) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

The costs associated with this clause will impact on the members of the governing body, top executives and other staff who are required to provide the information to the registered club secretary. There will also be costs associated with registered club secretaries being required to maintain the registers.

These accountability measures requiring information about interests, gifts and remuneration received to be recorded in a register will benefit the standing of the registered club itself through making such information transparent. Members can be satisfied there is no conflict of interest and the registered club is being operated in a proper manner.

Clause 21 – Reporting – financial statements

Clause 21 requires that registered clubs must prepare, on a quarterly basis, financial statements that incorporate the registered club's profit and loss accounts and trading accounts for the quarter, and the balance sheet as at the end of each quarter. The financial statements must be provided to the governing body of the club and made available to members, and provided upon request to the Secretary of the Department and any particular member who requests such statements.

The clause also requires registered clubs to indicate, by displaying a notice in the form approved by the Secretary of the Department on the registered club's premises and on the registered club's website (if any), how the members of the registered club can access the financial statements.

There is a penalty (maximum 50 penalty units which is $5,500) for non-compliance with this clause.

Prescribing these matters is provided for by sections 38(1) and 73(3) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on registered clubs and members. They will result from the requirement for registered clubs having to prepare and provide periodic financial statements to the governing body and members, and the Secretary of the Department if requested. Registered clubs will also bear the costs of having to notify members of how to access the financial statements and associated costs in providing members access to records, and copies to the Secretary of the Department and members, if requested. As most registered clubs are required to prepare annual financial statements under the *Corporations Act 2001*, they are able to provide copies of the same documents to the Office of Liquor, Gaming and Racing and club members, which helps to minimise the costs to the registered club in having to comply with this clause.

Benefits associated with this clause ensure accountability to members regarding the registered club's financial position. It also ensures the Secretary of the Department is able to access financial and other records to assist in ensuring compliance with the Act and that there can be consideration of whether there is any impropriety. The imposition of a penalty for non-compliance with these provisions is appropriate given the detrimental effect on a registered club and persons having commercial dealings with the registered club who are reliant on such information should such records not be kept, or kept in a manner that reflects the true position of a registered club.

Having the Secretary of the Department approve the form of notice ensures relevant and consistent information is provided to members.

Clause 22 – Reporting – provision of information to members

This clause requires that registered clubs must record information, in a form approved by the Secretary of the Department, relating to any disclosure or return received by the registered club as required under Division 2 of Part 4A of the Act. Such disclosure or return relates to gifts, remuneration received by, and financial and other interests of, members of the governing body, top executives and other staff members. Other information that must be recorded includes:

- the number of top executives of the registered club whose total remuneration is $100,000 or over,
- details of any overseas travel by a member of the governing body or employee,
- details of any loan made to an employee which is over $1,000,
- details of any contract approved by the governing body relating to the remuneration of a top executive,
- the name of any employee who is a close relative of a member of the governing body or a top executive of the registered club and the employees remuneration,
- details of any amount equal to or more than $30,000 paid by the registered club to a consultant, and the total amount paid to all consultants,
- details of any legal settlements involving a member of the governing body or an employee,
- details of any legal fees paid by the registered club on behalf of any member of the governing body or an employee,
- the total amount of the profits (within the meaning of the *Gaming Machine Tax Act 2001*) from the operation of approved gaming machines in the registered club during the gaming machine tax period, and
- the amount applied by the registered club during the gaming machine tax period under the ClubGRANTS scheme.

The information must be made available to members within four months after the end of the reporting period. The information is also to be provided to the Secretary of the Department on request in writing.

The clause also requires the registered club to indicate, by displaying a notice in the form approved by the Secretary of the Department on the registered club's premises and on the club's website (if any), how the members of the registered club can access the financial statements.

There is a penalty (maximum 50 penalty units) for non-compliance with this clause.

Prescribing these matters is provided for by sections 38(1) and 73(3) of the Act.

This clause is carried forward from the existing Regulation.

<u>Costs and Benefits</u>

Costs associated with this clause will impact on registered clubs. They will result from the requirement for registered clubs having to compile and keep the information specified in this clause, and providing such information to members, and the Secretary of the Department if requested. Registered clubs will also bear the costs of having to notify members of how to access the information.

Benefits associated with this clause ensure accountability to members regarding the registered club's financial dealings and alleviate any concerns that might arise with respect to a perceived or actual conflict of interest. It also ensures the Secretary of the Department is

able to access records to assist in ensuring compliance with the Act and consideration of whether there is any impropriety. The imposition of a penalty for non-compliance with these provisions is appropriate given the importance for such information to be disclosed to members and the Secretary of the Department so they can be satisfied that the registered club is being conducted to high standards of probity.

Having the Secretary of the Department approve the form of how the information is recorded and the notice ensures relevant and consistent information is provided to members and the Secretary of the Department. This will also reduce administrative costs for government in processing the information.

Clause 23 – Exceptions relating to disposal of core property

This clause provides exceptions where core property of a registered club may be disposed of if property is being leased in certain circumstances; licensed for a certain period; being disposed of in a particular way or to a particular body; sold by private treaty when the property failed to sell at auction; when the terms and nature of the disposal are disclosed or the Secretary of the Department has approved of the property being disposed of otherwise than in accordance with section 41(J)(3) of the Act. Section 41J of the Act defines core property as any real property owned or occupied by the registered club that comprises:

- the defined premises of the registered club, or
- any facility provided by the registered club for the use of its members and their guests, or
- any other property declared to be core property by a resolution passed by a majority of the ordinary members at a general meeting.

Section 17AI(1) of the Act provides that during the period of three years following an amalgamation the parent club must not dispose of any core property of the dissolved club unless approved by the Authority.

Prescribing this matter is provided for by section 41J(4) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Cost will arise where a registered club has applied to the Secretary of the Department for approval to dispose of the property otherwise than in accordance with 41(J)(3) of the Act. The costs will arise during the preparation of the application and the gathering of the evidence as required by the Secretary of the Department.

Benefits associated with this clause will flow to registered clubs and their members. They will result from this clause facilitating the disposal of core property in certain circumstances where disposal would otherwise not be permitted by the Act.

Clause 24 – Exemptions from section 41L of the Act

Section 41L of the Act prohibits registered clubs from entering into contracts with certain persons who have a direct involvement with the registered club's operations and their close relatives.

Clause 24 exempts certain contracts that a registered club is prohibited from entering into under section 41L involving the secretary, manager, close relatives and others. Such contracts involve the provision of goods and services to club premises that are outside the metropolitan area and an open tender process being conducted.

The potential impact on registered clubs situated outside the metropolitan area (as defined by clause 20(2)) is that they may be disadvantaged as there may be limited availability of some goods and services in the registered club's local area. It is therefore considered

practical and in the best interests of these registered clubs to be exempted from entering into a contract prohibited under section 41L. In allowing such exemption the requirement for an open tender process is considered appropriate to ensure a proposed contract does not result in a conflict of interest.

Prescribing these matters is provided for in section 41ZB(c) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Cost associated with this clause will impact on registered clubs. They will result from registered clubs having to conduct an open tender process when entering into contracts for the delivery of goods and services outside the metropolitan area where those contracts involve persons with a direct involvement with the registered club's operations.

Clause 24 recognises that registered clubs situated outside the metropolitan area (defined by the clause) may have difficulty obtaining certain goods and services. Therefore, the benefits associated with this clause will flow to non-metropolitan registered clubs and their members, who will be able to access a greater range of goods and services in circumstances where choice may be limited or non-existent because of a regional or remote location.

Clause 25 – Pecuniary interests in companies

Section 41K(1) of the Act provides that a registered club must not enter into a contract with a member of the governing body or a top executive, or with a company or other body in which such a member or top executive has a pecuniary interest, unless the proposed contract is first approved by the governing body.

This matter will be considered as part of the review of the accountability provisions referred to previously.

Clause 25 specifies what constitutes a pecuniary interest for the purposes of section 41K(1). A shareholding of more than 5 per cent in a company is specified as a pecuniary interest, as this amount is considered to be a point at which a member of a governing body or top executive would be expected to derive a significant benefit from contracts and may be in a position to influence decision making at the company. Further, any shareholding in a company that carries on the business of supplying gaming machines or liquor to the club is a pecuniary interest to which section 41K(1) of the Act applies.

Prescribing this matter is provided for in section 41ZC(1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on members of a governing body, top executives and the registered club. They will result from the requirement for certain contracts to first be approved by the governing body.

Clause 25 facilitates the interpretation of the Act by making it clear what constitutes a pecuniary interest. Benefits associated with this clause flow to a registered club, its members and the community. They will result from a registered club's governing body being made aware that a member of the governing body or a top executive may personally benefit from the registered club entering into certain contracts. This allows members to be satisfied that such persons are acting properly and in the best interests of the registered club.

9.6 Part 6 – Training for members of club governing bodies, club secretaries and managers of club premises (Clauses 26 to 28)

The statutory training framework for directors and managers of NSW registered clubs commenced on 1 July 2013.

The framework was developed in consultation with the registered club industry. It recognises the need for registered club directors and managers to undergo training in governance and financial management to improve the viability of the registered club industry.

Club Director and Manager Training Exemption Guidelines have been issued by the Secretary of the Department, outlining the relevant qualifications, skills or work experience to be eligible for an exemption from the training requirements.

While it is proposed to remake Part 6 as proposed in the Regulation, the Office of Liquor, Gaming and Racing will be seeking feedback from peak industry bodies regarding the training framework later in 2015 to determine whether there are any issues impacting on registered clubs, particularly in relation to access to training and its impact on the industry.

Due to this, it is not possible to pre-empt what the outcome of the review will be in terms of amendments (if any) to the training requirements provisions.

Clauses 26 and 27 – Training requirements for members of governing bodies of registered clubs and secretaries and managers of registered clubs

Clause 26 requires that a person who is a member of the governing body of a registered club (other than a small registered club) must complete certain training requirements within 12 months of becoming a member.

Where persons were members of the governing body of a registered club as at 1 July 2013 (other than a small registered club), known as existing members, at least 50% of the existing members must complete the required training by 30 June 2016 and all remaining members must complete the training by 30 June 2018.

For small registered clubs (those with annual gaming machine profits of $1 million or less), the governing body of a small registered club must from 1 July 2016, comprise at least two members who have completed the required training.

The required training is the “Director Foundation and Management Collaboration” and “Finance for Club Boards” courses conducted by or on behalf of ClubsNSW, or the specific units of competency (as set out in the clause) conducted by an NVR registered training organisation. An NVR training organisation is one that is registered by the National VET Regulator as a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cth).

Clause 27 requires that a person who is the secretary or manager (as defined under the *Liquor Act 2007*) of a registered club must within two years of becoming the secretary or manager complete the “Board Governance, the Company Secretary and the General Manager” conducted by or on behalf of the Club Managers’ Association of Australia or any other course relating to registered club governance approved by the Secretary of the Department.

Prescribing these matters is provided for in section 73(1)(m) of the Act.

These clauses are carried forward from the existing Regulation with minor changes. The clauses have been amended to provide clarity and to remove a reference to managers and secretaries appointed after 1 July 2013 and the timeframe by which they have to complete training, as these aspects of the existing clause are now redundant.

Costs and Benefits

There are costs associated with requiring directors, managers and secretaries to undertake mandatory training. The cost of training for the registered club industry is dependent on many variables including the training provider, delivery methods, demand and location.

In relation to director training, ClubsNSW offers the prescribed director training modules online for free to its member registered clubs. Non-member clubs may also access the director training modules offered by ClubsNSW on a fee for service basis. The cost to access these courses for Club Director Institute (CDI) members is $290 plus GST, and for non-CDI members $390 plus GST. In relation to secretary and manager training, the Club Managers' Association Australia provides its manager training course for $320 plus GST for its members, and for $380 plus GST for non-members.

Requiring this training has the benefit of ensuring that all registered clubs have directors, secretaries and managers trained in registered club finance and corporate governance. IPART's *Review of the Registered Clubs Industry in NSW*[9] noted that many directors lacked the skills to undertake their role effectively, which affected clubs' financial viability. It was considered that mandating director training would make a significant impact on clubs' overall operations and financial viability. Training in registered club finance and corporate governance was identified as the two core areas that were the most critical to improving the viability of the registered club industry.

Clause 28 – Exemption from training requirements

This clause provides an exemption from the training requirements for registered club directors, secretaries and managers if they already have qualifications, skills or work experience that are equivalent to having completed the training.

Under the clause, the Secretary of the Department can issue guidelines to specify the kinds of relevant qualifications, skills or work experience that are equivalent to the training required to be completed. The guidelines must be made publicly available.

Prescribing these matters is provided for in section 73(1)(m) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

There is little cost associated with having exemption guidelines. The benefits are that there is no need for a director, secretary or manager of a registered club to undergo unnecessary training when the person already has the necessary qualifications, skills or work experience equivalent to the training required as provided for by the guidelines referred to above.

9.7 Part 7 – Miscellaneous (Clauses 29 to 39).

Part 7 of the proposed Regulation relates to a range of miscellaneous matters.

Clause 29 – Exceptions to 5-kilometre rule

The object of clause 29 is to enable local residents (that is, persons who ordinarily reside within a radius of five kilometres from the premises of a registered club) to be admitted as temporary members of that registered club in certain circumstances.

This clause permits the Secretary of the Department to approve applications for an area to be exempt from the five kilometre rule referred to under section 30(3B) of the Act.

[9] Independent Pricing and Regulatory Tribunal, *Review of the Registered Clubs Industry in NSW,* Final Report. June 2008

The five kilometre rule encourages persons living within a five kilometre radius from the premises of a registered club to become a permanent member of the registered club, rather than being admitted as a temporary member. The Act provides for flexibility in applying this rule to cater for situations where a person lives within a five kilometre radius, but travelling distance to a club is longer than five kilometres.

Clause 29 permits the Secretary of the Department to include conditions for the approval, such as displaying a registered club map depicting the boundaries relating to the application. The Secretary of the Department is able to vary or revoke the approval at any time. The application is to be in a form approved by the Secretary of the Department, who may also require additional information.

Not providing for any exceptions to the five kilometre rule was considered. However, this is inconsistent with the policy objective of section 30(3C) of the Act which is to provide for exceptions where appropriate, thereby allowing persons to access registered club facilities in circumstances where they would otherwise not be able to.

Prescribing this matter is provided for in section 30(3C) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on registered clubs. They will result in registered clubs having to make an application to the Secretary of the Department for an exception to the five kilometre rule, and having to comply with any conditions the Secretary of the Department may require, including the displaying of a map. These costs are likely to be minor.

Benefits associated with this clause will flow to registered clubs and members of the community. In particular, persons who live within a five kilometre radius of a registered club's premises, but where access by road is in excess of five kilometres, will have the benefit of being able to enter the registered club as a temporary member. Registered clubs will benefit in these circumstances from the patronage of the person who may not otherwise be inclined to visit the registered club.

The map, if required to be displayed, will give clarity to persons seeking entry to the registered club.

Having the Secretary of the Department approve the form of the application will reduce processing costs for the regulator by ensuring information is provided in a consistent manner.

Clause 30 – Approval of club rules that limit voting members

The Act at sections 30(1), 30(8) and 30(9) sets out the voting requirements of registered club members, who under registered club rules are entitled to vote at an election of the governing body of the registered club.

The procedure requires that any proposal to reduce the percentage of voting members must first be approved by a majority of registered club members present at a general meeting. Following approval by the members, the registered club can then make an application to the Secretary of the Department to reduce its percentage of full voting members to no less than 25% of total membership.

Any such application must be in the form and manner approved by the Secretary of the Department and be accompanied by such information as may be required by the Secretary of the Department.

Prescribing these matters is provided for in section 73(1)(n) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Cost associated with this clause relate to the cost of preparing and lodging the application with the Secretary of the Department. The costs involved are the labour costs associated with preparing and lodging the application. The cost of preparing and lodging the application will vary depending on the complexity of the information required. It is estimated that it will cost approximately $53 for each hour of work spent on preparing and lodging the application.

Benefits associated with this clause impact on members and the regulator. They will result in having safeguards in place to prevent a minority group of shareholders trying to take over the registered club, unless members have voted to change the rules to enable this to occur. Allowing the Secretary of the Department to issue directions regarding the changing of rules can help to ensure that a decision to change the registered club's rules properly reflects the wishes of registered club members and does not undermine the objectives of the registered club.

Clause 31 – Appointments made by governing body

This clause permits board members of a registered club to appoint up to two persons as a member of the governing body for a term of no more than three years. Such persons are to be an ordinary member of the registered club at the time of and duration of their appointment and cannot be re-appointed to the board under any circumstances once the three year period has expired.

In addition, the clause requires that a notice stating the reasons for a person's appointment, details of relevant skills and qualifications, and any payments to be made in relation to the appointment, is to be displayed on a notice board on the registered club's premises and on its website (if any) within 21 days of the appointment being made.

Prescribing these matters is provided for in section 30(1)(b1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and benefits

A benefit is that registered clubs will have the option of being able to appoint suitably qualified persons to the board where required, subject to certain safeguards, to help registered clubs attract people with appropriate skills and experience in making significant commercial decisions on behalf of a club and its members. It provides industry with regulatory certainty that direct appointments can be made subject to a club's constitution being amended, where necessary.

There are no costs associated with the clause.

Clause 32 – Notification of cessation as secretary

This clause states the information that is to be provided to the Authority by a registered club when a person ceases to act as registered club secretary. Specifically, the name and address of the registered club, its registration number, the former secretary's name and the date in which the former secretary ceased to be the secretary and the reason for the cessation.

The option of not prescribing that any information be provided was considered. However, section 32(3) of the Act, which requires notice to be provided no later than seven days after a person ceases to be the secretary of a registered club, would not operate properly, resulting in regulatory information being inaccurate and preventing proper enforcement of the Act.

Prescribing this matter is required by section 32(3) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and Benefits

Costs associated with this clause will impact on the registered club. They will result from the registered club having to provide the prescribed notification to the Authority of the cessation of a secretary. The costs associated with this will be the cost of preparing the notification and providing the notification to the Authority. It is estimated that it will cost the registered club in the order of approximately $53 per hour for each hour spent on preparing the notification and providing the notification to the Authority.

Benefits associated with this clause will flow to the regulator, registered clubs and their members. They result from ensuring regulatory records are accurate and up-to-date for compliance and enforcement purposes.

Specifying information that is to be given to the Authority will ensure essential information is provided by a registered club. This will help to reduce the regulator's administrative costs in processing the information.

Clause 33 – Display of notices

This clause prescribes the content of the notice which is to be displayed in the vicinity of the place where the registered club's 'sign in' registers are kept, so that members are reminded that the names of persons who are under the age of 18 years cannot be entered in the guests' register. The notice must be in the form approved by the Authority and be obtained from the Office of Liquor, Gaming and Racing.

The option not to prescribe the content of the notice or not to require that it be obtained from the Office of Liquor, Gaming and Racing was considered. This option is inappropriate given the need for a consistent and clear message to be provided to members in a consistent format that can be easily understood. An identical requirement applies to other notices under the liquor and gaming laws (including notices required to be displayed by registered clubs) via clauses 31 and 33 of the Liquor Regulation 2008.

Prescribing this matter is provided for in sections 50B(2) and 73(2A) of the Act.

This clause is carried forward from the existing Regulation, with minor changes referred to in Chapter 8.

Costs and Benefits

Costs associated with this clause impact on the registered club. They will result from the requirement for a notice required under section 50B(2) of the Act to be in a prescribed form and be obtained from the Office of Liquor, Gaming and Racing. The cost of this notice is $10.

Having the Office of Liquor, Gaming and Racing produce the notice will result in benefits for members as the notice's content will be accurate, consistent and in a form that is legible.

Clause 34 – Denial of allegation as to age

This clause provides for the means to deny an allegation that, at a specified time, a person was under the age of 18 years in relation to any proceedings for an offence under the Act or the regulations. The allegation must be denied:

- at any adjournment prior to the commencement of the proceedings, by informing the court, the informant or a person appearing for the informant in writing of the denial, or
- at any time not later than 14 days before the hearing of the charge, by informing the informant or a person appearing for the informant in writing of the denial.

Prescribing this matter is required by section 63(2) of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation. It is identical to clause 75 of the Liquor Regulation 2008, which performs a similar role.

Costs and Benefits

There are no costs associated with this clause.

Benefits associated with this clause will flow from facilitating the efficient conduct of relevant matters before the court.

Clause 35 – Disciplinary action – persons authorised to make complaints

This clause authorises the general manager of a local council to make a disciplinary complaint in relation to a registered club under Part 6A of the Act.

The option to not prescribe additional persons who can make a disciplinary complaint was considered. However, it is appropriate that the general manager of a local council be able to make a complaint against a registered club, particularly in relation to section 57F(3) of the Act (referred to below). Prescribing the general manager of a local council is consistent with clause 73 of the Liquor Regulation 2008.

Prescribing this matter is provided for in section 57F(1)(c) of the Act.

This clause is carried forward from the existing Regulation.

Costs and Benefits

There are no costs associated with this clause.

Benefits associated with this clause will flow to councils. They will result from councils being able to make a disciplinary complaint against a registered club as part of their environmental, planning and building controls and responsibilities. An example of such a complaint is provided under section 57F(3)(f) of the Act where the Authority may take disciplinary action against a registered club which has been conducted, or the premises have been habitually used, for an unlawful purpose.

Clause 36 – Limitation on number of members of governing board

This clause prescribes the date of 1 January 2017 by which all registered club boards must not exceed nine directors.

Prescribing this matter is provided for in section 10(1)(k1) of the Act.

This clause is carried forward from the existing Regulation.

Costs and benefits

There are no costs associated with this clause. There are benefits to registered clubs in that registered clubs have sufficient time to implement the requirement. If the date was prior to 1 January 2017, registered clubs would incur significant costs by not being provided with sufficient time to reduce their boards to a maximum of nine members and allowing existing board members to complete their term of appointment. Registered clubs will also have to hold an extraordinary meeting to obtain approval from members to reduce the registered club's board to nine members by the prescribed date.

Clause 37 – Penalty notice offences

This clause facilitates the interpretation of Schedule 1 of the proposed Regulation relating to penalty notice offences by providing that offences listed in Column 1, and penalties listed in Column 2 of the Schedule, are the offences for which a penalty notice can be issued.

Prescribing this matter is required by section 66 of the Act. The section cannot operate without the proposed clause being made.

This clause is carried forward from the existing Regulation.

Costs and Benefits

This clause relates to a machinery matter and facilitates the interpretation of Schedule 1 of the proposed Regulation. There are no associated costs.

Clause 38 – Transitional provision – disposal of real property

Section 41J of the Act specifies the conditions in which core property (i.e. real property) of a registered club can be disposed of namely:

- that the property has been valued by a registered valuer,
- the disposal has been approved by a majority of ordinary members at a general meeting, and
- the sale is by way of a public auction or open tender conducted by an independent real estate agent or auctioneer.

Clause 38 relates to transitional provisions relating to section 41J of the Act. Specifically, where the disposal of land by a registered club relates to a lease concerning land which was entered into before the commencement of section 41J and the lease included an option to renew, it would take effect after that commencement.

This clause is carried forward from the existing Regulation with minor changes. The clause now specifies the period of 1 April 2003 which was when section 41J of the Act commenced.

Costs and Benefits

There are no costs associated with this clause.

Benefits associated with this clause will flow to registered clubs in that arrangements entered into before the commencement of section 41J can continue to be honoured by registered clubs.

Another benefit is that as the clause specifically states that the period of 1 April 2003 is when section 41J of the Act commenced. This will save time for a person applying the clause, from having to research the date when the section commenced.

Clause 39 – Savings

This clause provides that any act, matter or thing immediately before the repeal of the *Registered Clubs Regulation 2009*, that had effect under the existing Regulation, continues to have effect under this proposed Regulation.

This clause is carried forward from the existing Regulation, with minor changes. The reference to 2009 in the existing Regulation is replaced with 2015.

Costs and Benefits

This clause relates to a machinery matter with no associated costs. The benefits of this clause are that matters underway at the time the existing Regulation is repealed can continue under the proposed Regulation.

9.8 Schedule 1 – Penalty notice offences

Schedule 1 lists the provisions of the Act and the proposed Regulation for which penalty notice offences may be issued, and the amount of penalty to be paid. Such notices may be issued to a registered club secretary and a registered club.

Prescribing these matters is required by section 66 of the Act. The section cannot operate without the proposed clause being made.

This Schedule is carried forward from the existing Regulation.

Costs and Benefits

There are benefits to the regulator as the issuing of penalty notices is a more cost effective way to remedy minor breaches relating to administrative and procedural matters, than requiring these matters to be the subject of potentially costly court proceedings. Defendants always have the option of requesting that the matter be dealt with in the courts if they wish.

10 CONSULTATION PROGRAM

The *Subordinate Legislation Act 1989* requires that consultation on this Regulatory Impact Statement be undertaken with relevant individuals, groups and industry that may be affected.

A key element of regulatory development is consultation with these stakeholders.

This Regulatory Impact Statement is part of the consultative process for the proposed Registered Clubs Regulation 2015.

The following bodies will be consulted and a copy of the Regulatory Impact Statement will be provided directly to these stakeholders.

Industry and Community Organisations and Advisory Bodies:

- Bowls NSW
- Clubs Managers' Association of Australia
- ClubsNSW
- Golf NSW
- Leagues Clubs Australia
- Local Government NSW
- RSL & Services Clubs Association

Government Agencies:

- Department of Planning and Environment
- Department of Premier and Cabinet
- Independent Liquor and Gaming Authority
- Legislation Review Committee
- Ministry for Police and Emergency Services
- NSW Police Force
- NSW Treasury
- Office of Local Government
- Office of Finance and Services

New South Wales

Registered Clubs Regulation 2015

under the

Registered Clubs Act 1976

[The following enacting formula will be included if this Regulation is made:]
His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Registered Clubs Act 1976*.

Minister for Racing

Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Registered Clubs Regulation 2009*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

(a) the amalgamation and de-amalgamation of registered clubs under the *Registered Clubs Act 1976* (***the Act***),

(b) the application for, and granting of, authorisations under the Act,

(c) the accountability of registered clubs,

(d) training for members of club governing bodies, club secretaries and managers of club premises,

(e) the rules of registered clubs,

(f) notification that a person has ceased to be the secretary of a registered club,

(g) the display of notices in registered clubs,

(h) evidentiary matters with respect to criminal proceedings under the Act,

(i) the persons authorised to make complaints under Part 6A of the Act,

(j) the issue of penalty notices and the amounts of the fines payable under such notices.

This Regulation is made under the *Registered Clubs Act 1976*, including sections 10 (1) (k1), 17AE (2), 17AEA (1), 17AI (3) (definition of ***major assets***), 17AK (1) and (2), 17AL, 23A (2), (5) and (9) (a) (ii), 30 (1) (b) and (3C), 32 (3), 38 (1), 41B (1) (definition of ***top executive***), 41F (1), 41J (4), 41ZB, 41ZC (1), 50B (2), 57F (1) (c), 63 (2), 66 and 73 (the general regulation-making power).

Contents

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Registered Clubs Regulation 2015

under the

Registered Clubs Act 1976

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Registered Clubs Regulation 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Registered Clubs Regulation 2009*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

core property has the same meaning as in section 41J of the Act.

Department means the Department of Trade and Investment, Regional Infrastructure and Services.

the Act means the *Registered Clubs Act 1976*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Amalgamations

4 Calling for expressions of interest

(1) A registered club (***the proponent club***) that is seeking or proposing to amalgamate must, before entering into any agreement or understanding with another registered club about an amalgamation (regardless of where the premises of that other club are situated), call for expressions of interest in amalgamating from each other registered club that has premises within a radius of 50 kilometres of the premises of the proponent club.

(2) The Secretary of the Department may give directions to registered clubs with respect to calling for expressions of interest under subclause (1) and a registered club must, in calling for expressions of interest, comply with any such direction given to the club.

5 Notification to club members

For the purposes of section 17AE (2) of the Act, the members of a registered club that is a party to a proposed amalgamation must be notified of the proposed amalgamation by means of a notice:

(a) displayed on a notice board on the club's premises, and

(b) published on the club's website (if any).

6 Submissions in relation to club amalgamations

(1) A written submission to the Authority under section 17AEA of the Act in relation to a proposed amalgamation must be made within 30 days of the date on which the application is made under section 60 of the *Liquor Act 2007* for the transfer of the licence of the dissolved club.

(2) Despite subclause (1), the Authority may, in such case as it thinks fit, extend the period in which any such submission may be made.

7 Memorandum of understanding between clubs

(1) Registered clubs that are proposing to amalgamate must enter into a memorandum of understanding with respect to the proposed amalgamation.

(2) The memorandum of understanding must state each club's position regarding the proposed amalgamation and deal with (or include) the following:

(a) the manner in which the premises and other facilities of the dissolved club will be managed and the degree of autonomy that will be permitted in the management of those premises and facilities,

(b) a list of the traditions, amenities and community support that will be preserved or continued by the amalgamated club,

(c) intentions regarding the future direction of the amalgamated club,

(d) the extent to which the employees of the amalgamated club will be protected,

(e) intentions regarding the following assets of the dissolved club:

(i) any core property of the club,

(ii) any cash or investments held by the club,

(iii) any gaming machine entitlements held by the club,

(f) the circumstances that would permit the amalgamated club to cease trading on the premises of the dissolved club or to substantially change the objects of the dissolved club,

(g) an agreed period of time before any action referred to in paragraph (f) can be taken by the amalgamated club.

(3) The memorandum of understanding must:

(a) be made available to the ordinary members of each registered club that is a party to the proposed amalgamation at least 21 days before any meeting is held by the members of the club for the purposes of voting on whether to approve the proposed amalgamation, and

(b) be made available for inspection on the premises of each such registered club and on the club's website (if any) for at least 21 days before any such meeting is held.

8 "Major assets" of dissolved club

For the purposes of the definition of ***major assets*** of a dissolved club in section 17AI (3) of the Act, any core property of the club is a prescribed class of assets.

Note. Section 17AI of the Act restricts the "parent" club from disposing of the major assets of the dissolved club during the period of 3 years following the amalgamation.

Part 3 De-amalgamations

9 Notification of proposed de-amalgamation to club members

(1) An amalgamated club that is proposing to de-amalgamate must notify its members of the proposed de-amalgamation at least 21 days before any meeting referred to in section 17AM (d) of the Act is held to decide whether or not to approve of the proposed de-amalgamation in principle.

(2) If the proposed de-amalgamation is approved in principle by the members of the amalgamated club, the club is to notify the club members:

(a) of the date on which an application under section 60 of the *Liquor Act 2007* is to be made for the transfer to the de-amalgamated club of the licence held by the amalgamated club in respect of the relevant premises, and

(b) that submissions on the proposed de-amalgamation may be made to the Authority within 30 days of that date.

(3) Any notification under this clause is to be made by means of a written notice:

(a) displayed on a notice board on the premises of the amalgamated club, and

(b) published on the club's website (if any).

10 Submissions in relation to club de-amalgamations

(1) A written submission to the Authority under section 17AK of the Act in relation to a proposed de-amalgamation must be made within 30 days of the date on which the application is made under section 60 of the *Liquor Act 2007* for the transfer to the de-amalgamated club of the licence held by the amalgamated club in respect of the relevant premises.

(2) Despite subclause (1), the Authority may, in such case as it thinks fit, extend the period in which any such submission may be made.

11 Statement relating to proposed de-amalgamation

(1) The following information is required to be included in a statement referred to in section 17AL of the Act:

(a) details of the premises that will be the premises of the de-amalgamated club (including the title reference),

(b) whether the premises will be transferred or leased to the de-amalgamated club and the amount of consideration or rent (if any) to be paid in respect of the transfer or lease,

(c) the number of gaming machine entitlements intended to be transferred to the premises of the de-amalgamated club,

(d) details and estimated values of other property, plant and equipment that will be transferred to the de-amalgamated club and the consideration (if any) to be paid for the transfer,

(e) the steps to be taken to protect and preserve the leave and other entitlements of those employees of the amalgamated club who will become employees of the de-amalgamated club,

(f) where a copy of the constitution of the de-amalgamated club can be inspected,

(g) details of the composition (including members' names) of the governing body of the de-amalgamated club,

(h) the anticipated effect of the de-amalgamation on the financial viability of the amalgamated club,

(i) where a copy of a report on the future financial viability of the de-amalgamated club, as prepared by an independent accountant, can be inspected,

(j) an outline of the steps to be taken to give effect to the de-amalgamation, including the assignment of contracts of the amalgamated club to the de-amalgamated club.

(2) The statement must:

(a) be sent to all the members of the amalgamated club, and

(b) be published on the amalgamated club's website (if any), and be displayed on a notice board on the club's premises, for at least 21 days before any meeting referred to in section 17AM (d) of the Act is held to decide whether or not to approve the de-amalgamation.

Part 4 Applications and authorisations

12 Fees to accompany application for certain authorisations

For the purposes of section 23A (2) (b) of the Act, $100 is prescribed as the fee that is to accompany an application for any of the following:

(a) a non-restricted area authorisation under section 22 of the Act,

(b) a junior members authorisation under section 22A of the Act,

(c) a club functions authorisation under section 23 of the Act.

13 Notice to be given to local consent authorities and police

(1) An applicant for an authorisation referred to in clause 12 must provide the local consent authority and the local police with a notice relating to the application.

(2) The notice may be given before the making of the application but must be given no later than 2 working days after the application is made.

(3) The notice must be in the form approved by the Authority.

14 Club functions authorisation notice to be fixed to premises

(1) An applicant for a club functions authorisation under section 23 of the Act must, within 2 working days of making the application, affix a notice relating to the application:

(a) to the club premises to which the application relates or, if the club premises have not been erected, to a notice board erected on the land on which it is proposed to erect the premises, and

(b) in any other place as may be directed by the Authority.

(2) The notice must:

(a) be in the form approved by the Authority, and

(b) be fixed so that it is legible to members of the public passing the relevant club premises, land or other place, and

(c) be fixed until such time as the application is determined by the Authority.

15 Submissions in relation to applications

(1) Any person may make a submission to the Authority in relation to an application referred to in clause 12.

(2) Any such submission must:

(a) specify details of the application to which the submission relates, and

(b) be made within 30 days of the date on which the application was made, or such shorter period as the Authority may determine in any particular case.

(3) Despite subclause (2) (b), the Authority may, in such cases as the Authority thinks fit, extend the period in which persons may make submissions in relation to any particular application or class of applications.

16 Advertising of other applications

(1) The Authority may require an application (other than an application referred to in clause 12) to be advertised in such manner as the Authority considers appropriate.

(2) The Authority may refuse to determine any such application unless it has been advertised in accordance with any such requirement.

17 Conditions of junior members authorisations

For the purposes of section 23A (9) (a) (ii) of the Act, a junior members authorisation under section 22A of the Act is subject to the following conditions:

(a) the club that holds the authorisation must keep a register of the dates on which members under the age of 18 years are given access to the club premises in accordance with the authorisation,

(b) the club must give written notice to the local police of each date on which members under the age of 18 years are to be given such access at least 7 clear days before that date.

Part 5 Accountability

18 Definition of "top executive"

(1) Except as provided by subclause (2), the following persons are prescribed for the purposes of the definition of ***top executive*** of a registered club in section 41B (1) of the Act:

(a) a person (other than the secretary of the club, any manager appointed under section 66 of the *Liquor Act 2007* or any person referred to in paragraph (b)) who is one of the 5 highest paid employees of the club (including any person who acts in the position of any such employee for a continuous period of not less than 3 months),

(b) any person who is nominated by the club as a top executive.

Note. Club secretaries (including acting club secretaries) and managers of club premises are already covered by the definition of ***top executive*** in section 41B (1) of the Act.

(2) Subclause (1) does not apply in relation to a person if:

(a) the person's total remuneration package does not exceed $100,000 per year, or

(b) the person is not involved in the general administration of the registered club or with its liquor and gaming business.

19 Returns declaring gifts and remuneration

(1) A return submitted under section 41F of the Act by a member of the governing body of a registered club or an employee of a registered club:

(a) is to be submitted within 21 days after the end of each financial year of the registered club, and

(b) is to relate to gifts or remuneration received during that financial year, and

(c) is to be in a form approved by the Secretary of the Department.

(2) For the purposes of section 41ZC (1) of the Act, the prescribed guidelines for determining what constitutes a gift to be disclosed in a return referred to in subclause (1) are as follows:

(a) a gift must be disclosed if its value exceeds $500 or, when added to the value of all other gifts received from the same donor during the financial year to which the return relates, exceeds $500,

(b) if the value of a gift (other than money) is unable to be determined in accordance with subclause (3), the gift must be disclosed.

(3) The value of any gift (other than money) is to be determined as a reasonable estimate of the amount that the gift would have cost the recipient if the recipient was required to obtain it for himself or herself at the time at which it was given.

20 Register of disclosures, declarations and returns

The secretary of a registered club must keep, in the form and manner approved by the Secretary of the Department, a register of all disclosures, declarations and returns made in relation to the club under Division 2 of Part 4A of the Act (including a declaration recorded as referred to in section 41D (4) of the Act).

Maximum penalty: 50 penalty units.

21 Reporting—financial statements

A registered club must:

(a) prepare, on a quarterly basis, financial statements that incorporate:

(i) the club's profit and loss accounts and trading accounts for the quarter, and

(ii) a balance sheet as at the end of the quarter, and

(b) provide the financial statements to the governing body of the club, and

(c) make the financial statements available to the members of the club within 48 hours of the statements being adopted by the governing body, and

(d) indicate, by displaying a notice in the form approved by the Secretary of the Department on the club's premises and on the club's website (if any), how the members of the club can access the financial statements, and

(e) provide a copy of the financial statements to any member of the club or the Secretary of the Department on the request (in writing) of the member or the Secretary of the Department.

Maximum penalty: 50 penalty units.

22 Reporting—provision of information to members

(1) A registered club must:

(a) record the information specified in subclause (2) and keep it in a form approved by the Secretary of the Department, and

(b) make the information available to the members of the club within 4 months after the end of the reporting period to which the information relates, and

(c) indicate, by displaying a notice in the form approved by the Secretary of the Department on the club's premises and on the club's website (if any), how the members of the club can access the information, and

(d) provide a copy of the information to any member of the club or the Secretary of the Department on the request (in writing) of the member or the Secretary of the Department.

Maximum penalty: 50 penalty units.

(2) The information to be recorded is as follows:

(a) any disclosure, declaration or return received by the club under Division 2 of Part 4A of the Act during the reporting period,

(b) the number of top executives of the club (if any) whose total remuneration for the reporting period (comprising salary, allowances and other benefits) falls within each successive $10,000 band commencing at $100,000,

(c) details (including the main purpose) of any overseas travel during the reporting period by a member of the governing body of the club or an employee of the club in the person's capacity as a member of the governing body or employee, including the costs wholly or partly met by the club for the member of the governing body, employee and any other person connected with any such travel,

(d) details of any loan made during the reporting period to an employee of the club if the amount of the loan (together with the amount of any other loan to the employee by the club that has not been repaid) is more than $1,000, including the amount of the loan and the interest rate, if any,

(e) details of any contract for remuneration approved during the reporting period under section 41M of the Act,

(f) the name of any employee of the club who the registered club is aware is a close relative of a member of the governing body of the club or of a top executive of the club and the amount of the remuneration package paid to the employee,

(g) details of any amount equal to or more than $30,000 paid by the club during the reporting period to a particular consultant, including the name of the consultant and the nature of the services provided by the consultant,

(h) the total amount paid by the club during the reporting period to consultants (other than amounts required to be included under paragraph (g)),

(i) details of any settlement made during the reporting period with a member of the governing body of the club or an employee of the club as a result of a legal dispute and the amount of any associated legal fees incurred by the member or employee that were or are to be paid by the club, unless the disclosure of such information would be in breach of any confidentiality provision agreed to by the club,

(j) details of any legal fees (not referred to in paragraph (i)) paid by the club on behalf of a member of the governing body of the club or an employee of the club,

(k) the total amount of the profits (within the meaning of the *Gaming Machine Tax Act 2001*) from the operation of approved gaming machines in the club during the gaming machine tax period relating to the reporting period,

(l) the amount applied by the club during the gaming machine tax period to community development and support under Part 4 of the *Gaming Machine Tax Act 2001*.

(3) For the purposes of subclause (2) (f), a registered club is to make all reasonable inquiries to ascertain the name of any employee of the club who is a close relative of a member of the governing body of the club or of a top executive of the club.

(4) A reference in subclause (2) (f) or (3) to an employee of a registered club does not include a reference to an employee who:

(a) holds a position that is subject to an industrial award under a law of the State or the Commonwealth, and

(b) receives a remuneration package for that position of a value not exceeding the rate of pay applicable to the position that is provided for in the award.

(5) In this clause:

gaming machine tax period means the period of 12 months beginning on 1 September in the financial year concerned and ending on 31 August in the following year.

reporting period means the relevant financial year of the registered club in relation to which the information is provided.

23 Exceptions relating to disposal of core property

(1) Section 41J (3) of the Act does not apply in relation to the disposal of any core property of a registered club in any of the following circumstances:

(a) the property is being leased or licensed for a period not exceeding 10 years on terms that have been the subject of a valuation by a registered valuer,

(b) the property is being disposed of to a wholly owned subsidiary of the club,

(c) the property is being leased or licensed to a telecommunications provider for the purposes of a telecommunication tower,

(d) the disposal of the property involves calling for expressions of interest and a subsequent selective tendering process, and the disposal and the disposal process have been approved by a majority vote at a general meeting of the ordinary members of the club,

(e) the property is being sold by private treaty, but only if it failed to sell at public auction or open tender following compliance with the requirements of section 41J (3) of the Act,

(f) the terms and nature of the disposal (including details of the parties, property, price and valuation) are disclosed to the ordinary members of the club, and the disposal is approved at a general meeting of the ordinary members of the club,

(g) the property is being disposed of to a government department, statutory body representing the Crown, State owned corporation or local council,

(h) the Secretary of the Department has, on application by the registered club, approved of the property being disposed of otherwise than in accordance with section 41J (3) of the Act.

(2) An application under subclause (1) (h) for the approval of the Secretary of the Department must:

(a) be in the form and manner approved by the Secretary of the Department, and

(b) be accompanied by such information as may be required by the Secretary of the Department.

(3) Section 41J (3) of the Act does not apply in relation to the leasing or licensing of any core property of a registered club if the lease or licence:

(a) is granted to a person for the purpose of enabling the person to provide goods or services exclusively to members of the club and their guests and to other persons attending the club in accordance with a club functions authorisation held by the club under section 23 of the Act, or

(b) is granted to a person for the purpose of enabling the person to provide goods or services to members of the club and their guests and to other members of the public and the granting of the lease or licence for that purpose has been approved at a general meeting of the ordinary members of the club.

24 Exemptions from section 41L of Act

(1) A contract entered into by a registered club for the provision of goods or services by a person or body referred to in section 41L (1) of the Act is exempt from section 41L of the Act if:

(a) the premises of the club for which the goods and services are to be provided are not situated in the metropolitan area, and

(b) the contract has been entered into as a result of an open tender process conducted by the club.

(2) In this clause, the ***metropolitan area*** comprises the local government areas of Ashfield, Auburn, Bankstown, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunter's Hill, Hurstville, Kogarah, Ku-ring-gai, Lake Macquarie, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, The Hills, Warringah, Waverley, Willoughby, Wollondilly, Wollongong, Woollahra and Wyong.

25 Pecuniary interests in companies

For the purposes of section 41ZC (1) of the Act, the following guidelines are prescribed for determining whether or not a member of the governing body of a registered club, or a top executive of a registered club, has a pecuniary interest to which section 41K (1) of the Act applies:

(a) a shareholding of more than 5% in a company is a pecuniary interest to which section 41K (1) of the Act applies (unless the company is of a kind referred to in paragraph (b)),

(b) any shareholding interest in a company that carries on the business of supplying gaming machines or liquor to the club is a pecuniary interest to which section 41K (1) of the Act applies.

Part 6 Training for members of club governing bodies, club secretaries and managers of club premises

26 Training requirements for members of governing bodies of registered clubs

(1) **General requirements**

A person who is a member of the governing body of a registered club (other than a small club) must, within 12 months of becoming a member, complete the required training.

(2) The following arrangements apply to the persons who, as at 1 July 2013, were members of the governing body of a registered club (other than a small club) (***existing members***):

(a) at least 50% of the existing members must complete the required training by 30 June 2016,

(b) all existing members must complete the required training by 30 June 2018.

(3) **Requirements for small clubs**

The governing body of a small club must, on and from 1 July 2016, comprise at least 2 members who have completed the required training.

(4) If, at any time, the number of members of the governing body of a small club who have completed the required training falls below 2, another member must, within 12 months, complete the required training.

(5) In this clause:

required training means:

(a) the courses entitled "Director Foundation and Management Collaboration" and "Finance for Club Boards" conducted by or on behalf of Clubs NSW, or

(b) the units of competency entitled "Implement Board member responsibilities—BSBGOV401", "Work within organisational structure—BSBGOV402" and "Analyse financial reports and budgets—BSBGOV403" conducted by an NVR registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth) or any units of competency that supersede and are equivalent to those units.

small club means a registered club in respect of which the annual profits from all gaming machines kept on the premises of the club do not exceed $1,000,000.

27 Training requirements for secretaries and managers of registered clubs

(1) A person who is the secretary or manager of a registered club must, within 2 years of becoming the secretary or manager, complete:

(a) the course entitled "Board Governance, the Company Secretary and the General Manager" conducted by or on behalf of the Club Managers' Association of Australia, or

(b) any other course relating to club governance approved by the Secretary of the Department.

(2) This clause does not apply to the secretary or manager of a registered club who is a member of the governing body of the club.

(3) In this clause:

manager means a person who is the manager (within the meaning of the *Liquor Act 2007*) of any premises of a registered club.

28 Exemption from training requirements

(1) A person is not required to complete training under this Part if the person has relevant qualifications, skills or work experience that are equivalent to the person having completed that training.

(2) The Secretary of the Department may issue guidelines that indicate the kinds of relevant qualifications, skills or work experience that are equivalent to the training required to be completed under this Part. The guidelines are to be made publicly available.

Part 7 Miscellaneous

29 Exceptions to 5 kilometre rule

(1) The object of this clause is to enable local residents (that is, persons who ordinarily reside within a radius of 5 kilometres from the premises of a registered club) to be admitted as temporary members of that club in certain circumstances.

(2) Section 30 (3B) of the Act does not apply in relation to a person who ordinarily resides in an area that is for the time being approved by the Secretary of the Department as an excepted area for the purposes of this clause.

Note. Under section 30 (3B) of the Act, a person whose ordinary place of residence is within a 5 kilometre radius of the premises of a registered club is not eligible for admission as a temporary member of that club.

(3) The Secretary of the Department may, on application by a registered club, approve an area that is within a radius of 5 kilometres of the premises of the club as an excepted area.

(4) Any such application must be in the form and manner approved by the Secretary of the Department and be accompanied by such information as may be required by the Secretary of the Department.

(5) An area that is within a radius of 5 kilometres of the premises of a registered club may be approved as an excepted area only if the Secretary of the Department is satisfied that persons living in that area are required, because of a geographical or other physical barrier, to travel more than 5 kilometres (using the most direct or practicable route) in order to reach the premises of the club.

(6) An approval under this clause:

(a) is subject to such conditions as may be determined by the Secretary of the Department, and

(b) may be varied or revoked at any time by the Secretary of the Department.

(7) Without limiting the conditions to which an approval may be subject, the Secretary of the Department may impose a condition requiring the registered club to which the approval relates to indicate the excepted area concerned on the map displayed under section 30 (2A) (a) of the Act.

30 Approval of club rules that limit voting members

(1) In this clause, ***voting member*** of a registered club means a full member who, under the rules of the club, is entitled to vote in an election of the governing body of the club.

Note. Under section 30 (9) (a) of the Act, at least 25% of the club's full members have to be voting members.

(2) Any rule of a registered club that provides for its voting members to comprise less than 50% of the full members of the club has no effect unless:

(a) the rule has been approved by a majority vote at a general meeting of the ordinary members of the club, and

(b) the club has complied with such directions as may be given by the Secretary of the Department in relation to the rule.

31 Appointments made by governing body

(1) The elected members of the governing body of a registered club may appoint up to 2 persons as members of the governing body.

(2) A person appointed under subclause (1):

(a) may be appointed for a term of no more than 3 years, and

(b) must be an ordinary member of the club at the time of, and for the duration of, his or her appointment, and

(c) is not eligible for re-appointment under subclause (1), including re-appointment after the end of that term.

(3) Within 21 days of an appointment being made under subclause (1), a notice must be clearly displayed on a notice board on the premises of the registered club and on the club's website (if any) that states:

(a) the reasons for the person's appointment, and

(b) the person's relevant skills and qualifications, and

(c) any payments to be made to the person in connection with his or her appointment.

32 Notification of cessation as secretary

For the purposes of section 32 (3) of the Act, the prescribed notification is a notification in writing containing the following particulars:

(a) the name and address of the registered club,

(b) the registration number,

(c) the former secretary's name,

(d) the date on which the former secretary ceased to be the secretary and the reason for the cessation.

33 Display of notices

(1) For the purposes of section 50B (2) of the Act, the notice must contain the following words and otherwise comply with this clause:

IT IS AGAINST THE LAW FOR A MEMBER TO ENTER THE NAME OF A PERSON UNDER THE AGE OF 18 YEARS IN THE GUEST REGISTER.

(2) The notice must be in the form approved by the Authority and be obtained from the NSW Office of Liquor, Gaming and Racing.

34 Denial of allegation as to age

For the purposes of section 63 (2) of the Act, an allegation in relation to any proceedings for an offence under the Act or this Regulation is denied as prescribed if it is denied:

(a) at any adjournment prior to the commencement of the proceedings—by informing the court, the informant or a person appearing for the informant in writing of the denial, or

(b) at any time not later than 14 days before the hearing of the charge—by informing the informant or a person appearing for the informant in writing of the denial.

35 Disciplinary action—persons authorised to make complaints

For the purposes of section 57F (1) (c) of the Act, the general manager of a local council is authorised to make a complaint to the Authority under Part 6A of the Act.

36 Limitation on number of members of governing body

For the purposes of section 10 (1) (k1) of the Act, the prescribed date is 1 January 2017.

37 Penalty notice offences

(1) For the purposes of section 66 of the Act:

(a) each offence created by a provision of the Act or this Regulation specified in Column 1 of Schedule 1 is stated to be an offence to which that section applies, and

(b) the prescribed penalty payable for such an offence if dealt with under that section is the amount specified in Column 2 of Schedule 1.

(2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.

38 Transitional provision—disposal of real property

Section 41J of the Act does not apply to the disposal of land by a registered club if a lease in relation to the land was entered into before 9 April 2004 (being the date that section commenced) and the lease included an option to renew that would take effect after that date.

39 Savings

Any act, matter or thing that, immediately before the repeal of the *Registered Clubs Regulation 2009*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Penalty notice offences

(Clause 37)

Offences under the Act

Column 1	Column 2
Offence	**Penalty**
Section 22 (2) in the case of a registered club	$220
Section 22 (2) in the case of a secretary	$110
Section 22A (4) in the case of a registered club	$220
Section 22A (4) in the case of a secretary	$110
Section 23 (4) in the case of a registered club	$220
Section 23 (4) in the case of a secretary	$110
Section 23A (4)	$220
Section 31 (3)	$220
Section 32 (1)	$1,100
Section 32 (3)	$1,100
Section 33A (1)	$1,100
Section 34 (2) (a)	$550
Section 34 (2) (b)	$1,100
Section 35A (5)	$220
Section 41C (1)	$1,100
Section 41D (1)	$1,100
Section 41D (2)	$1,100
Section 41D (3)	$1,100
Section 41E (1)	$1,100
Section 41F (1)	$1,100
Section 41T	$440
Section 41V	$1,100
Section 43A (1)	$1,100
Section 43A (2)	$1,100
Section 43A (3)	$1,100
Section 45 (1) in the case of a person other than a minor	$110
Section 45 (1) in the case of a minor	$55
Section 45A in the case of a person other than a minor	$110
Section 45A in the case of a minor	$55
Section 47 (a)	$110
Section 47 (b)	$55
Section 49	$55

Offences under the Act

Column 1	Column 2
Offence	**Penalty**
Section 50B (2)	$220
Section 57J (5)	$110

Offences under this Regulation

Column 1	Column 2
Offence	**Penalty**
Clause 20	$1,100
Clause 21	$1,100
Clause 22 (1)	$1,100