



New South Wales

Registered Clubs Amendment Regulation 2007

under the

Registered Clubs Act 1976

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Registered Clubs Act 1976*.

GRAHAM WEST, M.P.,
Minister for Gaming and Racing

Explanatory note

The object of this Regulation is to make a number of amendments to the *Registered Clubs Regulation 1996* as a consequence of the *Registered Clubs Amendment Act 2006*. In particular, this Regulation:

- (a) specifies requirements relating to club amalgamations (including calling for expressions of interests, notice to club members and entering into a memorandum of understanding) and defines the major assets of a dissolved club in relation to an amalgamation, and
- (b) specifies the reporting requirements of registered clubs (including the preparation of financial statements and the provision of information about the club's financial affairs to its members), and
- (c) provides for exceptions to the requirements under section 41J of the *Registered Clubs Act 1976* in relation to the disposal of a club's core property, and
- (d) provides that any rule of a club that limits the class of members who are entitled to vote in an election of the club's governing body to less than 50% of the club's full members has no effect unless the rule has been approved by a majority of the ordinary members of the club and the club has complied with any direction by the Director of Liquor and Gaming in relation to the rule.

This Regulation is made under the *Registered Clubs Act 1976* (as amended by the *Registered Clubs Amendment Act 2006*), including sections 17AE, 17AH (2), 17AI (3) (definition of **major assets**), 38 (1), 41B (1) (definition of **top executive**), 41J (4), 41ZB (b1) and (c), 41ZC, 66 and 73 (the general regulation-making power).

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Clause 1 Registered Clubs Amendment Regulation 2007

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under the

Registered Clubs Act 1976

1 Name of Regulation

This Regulation is the *Registered Clubs Amendment Regulation 2007*.

2 Commencement

This Regulation commences on 21 December 2007.

3 Amendment of Registered Clubs Regulation 1996

The *Registered Clubs Regulation 1996* is amended as set out in Schedule 1.

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(Clause 3)

[1] Part 2A

Insert after Part 2:

Part 2A Requirements relating to club amalgamations

11A Calling for expressions of interest

- (1) If a registered club (*the proponent club*) is seeking or proposing to amalgamate, the proponent club must, before entering into any agreement or understanding with another 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 Director 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.

11B Notification to club members of proposed amalgamation

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).

11C Memorandum of understanding between amalgamating clubs

- (1) If 2 or more registered clubs are proposing to amalgamate, the clubs 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,

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- (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 (within the meaning of section 41J of the Act) of the club,
 - (ii) any cash or investments held by the club,
 - (iii) any poker machine entitlements allocated under the *Gaming Machines Act 2001* in respect of the premises of 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.
- (4) If a conditional application is made under section 17A (2) of the Act for approval of the amalgamation of 2 or more registered clubs, the application must be accompanied by a copy of the memorandum of understanding required to be entered into under this clause.

11D “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 (within the meaning of section 41J of the Act) 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.

[2] Clause 47FA

Insert before clause 47F (in Part 6B):

47FA 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:

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

- (a) a person appointed under section 34A (3) of the Act to act as a manager of any premises of the club,
- (b) a person (other than the secretary of the club, any manager appointed under section 34A of the Act or any person referred to in paragraph (a)) 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),
- (c) any person who is nominated by the club as a top executive.

- (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.

[3] Clause 47F Returns under section 41F of the Act

Insert “or remuneration” after “gifts” in clause 47F (1) (b).

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[4] Clause 47G

Omit the clause. Insert instead:

47G Secretary to keep register of disclosures, declarations and returns

The secretary of a registered club must keep, in the form and manner approved by the Director, 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)).

Maximum penalty: 50 penalty units.

[5] Clauses 47H and 47HA

Omit clause 47H. Insert instead:

47H Reporting requirements of clubs—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 Director 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 Director on the request (in writing) of the member or the Director.

Maximum penalty: 50 penalty units.

47HA Reporting requirements of clubs—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 Director, and

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- (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 Director 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 Director on the request (in writing) of the member or the Director.

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 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,

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- (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.

[6] Clause 47I

Omit the clause. Insert instead:

47I Exceptions to requirements 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 disposal process has 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 Director 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) (g) for the Director's approval must:
 - (a) be in the form and manner approved by the Director, and
 - (b) be accompanied by such information as may be required by the Director.

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- (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 functions authority 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.
- (4) Section 41J (3) of the Act does not apply in relation to the disposal of any core property of a registered club to a government department, statutory body representing the Crown, State owned corporation or local council.

[7] **Clause 47J Exemptions from section 41L of the Act in relation to contracts with secretary, manager, close relative and others**

Omit “(as defined in section 17AC (1) of the Act)” from clause 47J (a).

[8] **Clause 47J (2)**

Insert at the end of clause 47J:

- (2) In this clause, **metropolitan area** means any of the following areas as determined by the Australian Bureau of Statistics:
 - (a) the Sydney Statistical Division,
 - (b) the Statistical Local Areas of Newcastle (Statistical Local Areas 5901 and 5902),
 - (c) the Statistical Local Area of Lake Macquarie (Statistical Local Area 4650),
 - (d) the Statistical Local Area of Wollongong (Statistical Local Area 8450).

[9] **Clause 47K**

Omit the clause. Insert instead:

47K Pecuniary interests in companies (section 41K of the Act)

The following guidelines are prescribed under section 41ZC of the Act for determining whether or not a member of the

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governing body of a registered club, or a top executive of a registered club, has a pecuniary interest in a company for the purposes of section 41K (1) of the Act:

- (a) a shareholding of more than 5% in a company is a pecuniary interest (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.

[10] Clause 50 Submission of regular statements of income and expenditure to club's board or committee

Omit the clause.

[11] Clause 50D

Insert after clause 50C:

50D Approval of club rules that limit voting members to less than 50% of full 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 Director in relation to the rule.

[12] Clause 51 Penalty notice offences

Omit "Column 4" and "Column 5" from clause 51 (b).

Insert instead "Column 2" and "Column 3", respectively.

[13] Clause 52 Short descriptions of offences

Omit the clause.

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[14] Schedule 3

Omit the Schedule. Insert instead:

Schedule 3 Penalty notice offences

(Clause 51)

Offences under the Act

Column 1	Column 2	Column 3
Offence	Penalty (other than minors)	Penalty (minors)
Section 27A	\$220	—
Section 27B	\$220	—
Section 32 (3)	\$1,100	—
Section 34 (2) (a)	\$550	—
Section 34 (2) (b)	\$1,100	—
Section 34A (1)	\$550	—
Section 41V	\$1,100	—
Section 44 (1)	\$220	—
Section 44 (2)	\$110	—
Section 44A	\$550	—
Section 45 (1)	\$110	\$55
Section 45A	\$110	\$55
Section 47 (a)	\$110	—
Section 47 (b)	\$55	—
Section 48 (6)	\$55	—
Section 49	\$55	—
Section 50 (1)	\$550	—
Section 50 (2) and (2A)	\$220	—
Section 50B	\$220	—
Section 51	—	\$55
Section 52	—	\$55
Section 52A (2)	\$110	\$55
Section 52B	\$550	—

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Column 1	Column 2	Column 3
Offence	Penalty (other than minors)	Penalty (minors)
Section 52C	—	\$55
Section 54B (1) (a)	\$220	—
Section 54B (1) (b) and (2)	\$110	—
Section 54C (1)	\$550	—
Section 55	\$550	\$55
Section 57 (2)	—	\$110
Section 57 (3)	\$220	\$110
Section 67A (4)	\$550	\$55

Offences under this Regulation

Column 1	Column 2	Column 3
Offence	Penalty (other than minors)	Penalty (minors)
Clause 47B	\$550	—
Clause 47C	\$110	—
Clause 47CA (1)	\$550	—
Clause 47CA (2)	\$110	—
Clause 47H	\$550	—
Clause 47HA (1)	\$550	—

BY AUTHORITY